

Dallas Morning News Article



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Fen-phen legal pugilist pays it forward



Photo by: Evans Caglaga/Staff Photographer

The Empowerment Center, an adult learning center, will receive the proceeds of a book written by Attorney Kip Petroff that chronicles his legal battles with the makers of Fen-Phen.

Kip Petroff wrote a tell-all book to keep from reaching for his nightly bottle of Grey Goose vodka.

The founder and senior partner of Petroff & Associates LLP made a fortune leading the legal attack against Wyeth-Ayerst Laboratories, the makers of diet drugs Pondimin and Redux (a.k.a. fen-phen). Petroff filed the nation's first fen-phen personal injury lawsuit in the late 1990s.

But a decade of threats of both professional and financial annihilation — the kind of heavy-handed corporate intrigue and deceit befitting a John Grisham tale — took a severe personal toll.

Every evening, Petroff stewed alone at home, swigging down vodka and sometimes blacking out.

“As fen-phen spun out of control, so did my drinking,” says Petroff, who went to his first Alcoholics Anonymous meeting on Jan. 24, 2007.

To fill the void at 5 o’clock, which had been his nightly happy hour, Petroff began writing his fen-phen memoirs — as therapy and payback.

Now he’s using the book to pay it forward.

The 53-year-old plaintiff attorney is donating all the proceeds from his self-published *Battling Goliath: Inside a \$22 Billion Legal Scandal* to fund programs at New Hope Foundation, a nonprofit group that helps unemployed people in one of Dallas’ most impoverished neighborhoods finish high school and find work.

Petroff formed New Hope Foundation in late 2007.

“When you’re praying to God, ‘Get me out of this, and I’ll never do wrong again,’ and he does, you can’t then say, ‘Well, I didn’t need you after all,’” he says.

Last year, Petroff transformed an abandoned Jiffy Lube in south Oak Cliff into New Hope’s million-dollar, 5,000-square-foot, adult learning Empowerment Center, which typically finds jobs for a half-dozen people every month.

“Average income is about \$3,000 a year for these people,” says Petroff, who pays for the center’s day-to-day operations. “It’s my obligation. I could not imagine not doing this.”

The Rev. Johnny Flowers, who manages the center, says Petroff isn’t some rich publicity-seeking lawyer trying to look like a do-gooder.

“I have never met an attorney like him who has so much compassion for the underdog, the disenfranchised, the poor,” Flowers says. “He has a passion for this population of people and believes in the cause.”

Petroff has the wherewithal to be charitable.

Since 1991, he has pulled in almost \$100 million for his firm suing the makers of defective breast implants and fen-phen's Wyeth (now a unit of Pfizer).

For those of you shaking your heads and thinking he sounds like another money-grubbing attorney, Petroff makes no apologies.

Wyeth ultimately paid \$22 billion to settle about 400,000 cases. Petroff figures that wasn't near enough.

"Six million people were put at risk with a combination of drugs that was never tested, never approved or intended for that use," says Petroff, who estimates that he spent a third of his fen-phen fees bringing Wyeth to some semblance of justice. "I would have loved to have kicked their rear ends even harder and thrown them into bankruptcy."

Fort Worth personal injury attorney Robert Kisselburgh fought the fen-phen battle with his former partner. "Deep down, Kip's got a great heart. He's a junkyard dog. Just grabs hold and is not about to let loose. That's what I like about him."

Wrestling cases

Petroff, who grew up near Akron, Ohio, went to the University of Arizona on a wrestling scholarship.

He transferred the next semester to Kent State University, where he earned his degree in psychology in 1980 as preparation for law school at Notre Dame.

After graduation, he hired on at Strasburger & Price LLC in Dallas for \$35,000 a year. The 25-year-old began to make his legal mark early on as part of the legal team representing owners of a Ramada Inn on Interstate 30 where a fire killed four people and injured 40.

"I was like fourth lawyer on the totem pole. I did the grunt work," Petroff says. But working with investigators gave him a strategy. Strasburger went after the manufacturers of the noxious carpet to get money back for the insurance company.

"Toxic tort, 1983, new idea," says Petroff, never one for self-modesty. "We also sued the manufacturer of the television in one of the rooms because the thing just disintegrated."

He formed Kip Petroff PC in 1993. That same year, Petroff landed his first Dow Corning breast implant case. Within six months, he filed eight cases, which quickly grew to 50, then 400. Petroff's three-attorney firm made about \$5 million from lawsuits over implants.

In 1997, he heard about fen-phen. The Mayo Clinic reported that the drug, a combination of fenfluramine and phentermine, caused valvular heart disease and estimated that 1.8 million Americans would eventually become sick or die.

Two months later, Wyeth pulled its fen-phen drugs off the market.

"I decided to go all out," Petroff says. "I took everything I had and put it into fen-phen." He worked with a few clients before finding a test case that he took before a court in Canton, Texas, in 1999.

"We had flip charts and Polaroids," Petroff says. "They had a 30-foot screen in 3-D saying, 'This is who we are.'"

The jury awarded their client \$23 million. Even though the case settled out of court for \$2 million, his firm netted nearly \$1 million and publicity that pushed it to the fen-phen forefront.

Petroff's firm filed and settled more than 1,000 cases, bringing in about \$50 million in fees.

"We made a corporation pay for the bad drugs that they put on the market and the damage that they did, primarily to women in their 30s and 40s," Kisselburgh says. "We held them accountable. We were the leaders in it. No one would say otherwise."

Class-action crash course

In 2003, Petroff decided to pursue a class-action settlement from Wyeth.

"I knew that other lawyers would be grabbing cases and using my depositions to settle them. I just couldn't let that happen," Petroff says.

"Besides, it looked easy. It was a class-action settlement. That's like filing an insurance claim," he says, laughing at his naïveté. "It turned out to be way bigger than that."

In the settlement, Wyeth offered a free qualifying echocardiogram to people who wanted to become part of the settlement, but it required that all testing be completed within a one-year window. That effectively crimped the flow into the settlement pool to a trickle.

Undaunted, Petroff hired doctors and traveling teams of technicians, set up clinics in doctors' offices, hotels and office buildings in every state, and offered all comers a free screening.

"We had a vacant office building on the [Dallas North] Tollway where we did more than 10,000 echoes." Petroff says he spent \$25 million nationwide to get 100,000 tests done. Less than 10,000 of those tested qualified as clients.

Those cases ultimately yielded nearly \$50 million but came with untold mental pain and agony.

That's the meat of his book.

Darryl Fisher, a cardiovascular surgeon and attorney in Oklahoma City who helped Petroff determine whether clients had fen-phen-related heart valve damage, says *Battling Goliath* "shows the moral hazards of concentrated and unchecked power and wealth in the hands of a few."

Fisher calls his friend "passionate and persistent." Asked what words opponents might use, Fisher says, "*Fearsome* and *ferocious* would be a couple of adjectives that defense attorneys in a moment of anonymous candor might admit.

"Obviously a company doesn't hand over \$22 billion in settlement without a lot of fear and loathing for its opponents."

Given name: Clifford Alan Petroff (Kip came from his younger brother mangling his first name)

Age: 53

Born: Fort Wayne, Ind., and grew up in Copley, Ohio

Education: Degree in psychology, Kent State University, 1980; law degree, University of Notre Dame, 1983

Personal: Married to former teacher and author Suzi Zimmerman Petroff; blended family of five children



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