

# **Jenkins increases offer to settle suit**

## **Law firm agrees to pay up to \$85 million in tax advice dispute**

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**By TERRY MAXON / The Dallas Morning News**

Dallas law firm Jenkins & Gilchrist agreed Friday to pay unhappy clients as much as \$85 million, up \$10 million from an earlier offer, to settle a class-action lawsuit over tax-shelter advice.

Jenkins said more than 90 percent of the plaintiffs have agreed to the settlement, with some parties still opting out. But the law firm backed off its previous warnings that the deal would collapse unless all plaintiffs agreed to its terms.

"We believe that we will have sufficient financial resources, including the remaining coverage with our excess [insurance] carriers, to defend or resolve the claims of these opt-outs," Jenkins chairman Tom Cantrill said in a message to Jenkins lawyers and employees.

The dispute arose from so-called COBRA investments that generated losses through a complex mechanism to buy and sell investments. Jenkins provided opinion letters to more than a thousand clients that the COBRAs "more likely than not" were legal under the U.S. tax code.

However, the Internal Revenue Service challenged the legality of the tax investments and began pursuing the people who bought the investments. It also won a court battle forcing Jenkins & Gilchrist to disclose the names of clients who received the opinion letters.

Dallas attorney David Deary, who personally represented about 250 plaintiffs, said Friday the agreement was reached after tough negotiations.

"The parties were entrenched in their positions, and it was very difficult to get anyone off their positions," he said. "But we are very, very pleased with the settlement, and we think it is a very good one for the class members."

Mr. Deary said that at one time, about 95 plaintiffs out of approximately 1,100 plaintiffs had opted out of the original settlement. However, more than a third have decided to rejoin the deal, he said.

Mr. Deary said U.S. District Judge Shira A. Scheindlin agreed Friday to give plaintiffs until 5 p.m. Thursday to retract their decision not to join the agreement.

"We believe by the deadline, a substantial number of the opt-outs will come back to the settlement," he said. "They're just flooding in right now."

Jenkins' potential liability from tax-shelter lawsuits had forced the firm to reassure doubters frequently over the past year and a half that its future wasn't in danger. Once the biggest law firm in Dallas, Jenkins' number of lawyers has shrunk considerably in recent years.

"After the court approves the settlement, we trust we will be able to put this matter behind us and move forward in a positive way in 2005," Mr. Cantrill said in his message. "Today's developments represent significant movement toward that goal."

