

# The National Law Journal's Plaintiffs' Hot List



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*The National Law Journal's* annual Plaintiffs' Hot List attempts to provide a snapshot of the most successful plaintiffs' practices of the moment. To identify them, we asked firms to provide us with a year's worth of representative cases, verdicts and settlements from June 2010 to June 2011. From there we sifted through dozens of potential firms, reporting on and researching each to come up with our list. In this special report, you'll find the results: We profile 20 firms that are at the cutting edge of plaintiffs' work—and that are giving defense players a run for their money.

## KOREIN TILLERY

St. Louis-based Korein Tillery has chalked up big wins for small clients against large corporations in the past year. The firm won a case for 18,000 retirees who were shortchanged when their pension plan didn't add a cost-of-living adjustment. The firm also represented more than 200 Missouri cities in a series of suits against wireless carriers to recover unpaid municipal taxes.

### NOTEWORTHY CASES

- *Williams v. Rohm and Haas Pension Plan*, No. 04-CV-0078 (S.D. Ind.). Lead attorneys were Douglas Sprong and Steven Katz, joined by co-counsel Jenner & Block and the Law Office of William Carr. A class action was filed by Korein Tillery on behalf of about 18,000 retirees who elected to receive annual pension plan payments. Rohm and Haas settled for \$180.5 million for its failure to include future cost-of-living adjustments. The firm was awarded legal fees totaling \$43.5 million.

- *City of Univ. City v. AT&T Wireless Serv.*, 2101CC-04454-02 (St. Louis Co., Mo., Cir. Ct.). Lead attorneys were John Hoffman and Douglas Sprong. Co-counsel included John Mulligan Jr., city attorney for Richmond Heights, Mo., and Howard Paperner, city attorney for Maryland Heights, Mo. The firm teamed up with the municipal attorneys to take on major wireless carriers in a bid to recover unpaid municipal taxes. The settlements totaled \$253 million, including a settlement with T-Mobile reached in October 2010 of \$55 million. Attorney fees constituted 5.6% of the settlement.

- *Price v. Philip Morris*, No. 00-L-112 (Madison Co., Ill., Cir. Ct.). The lead attorney from Korein was Stephen Tillery. Co-counsel were Joseph A. Power Jr. of Power Rogers & Smith and Michael J. Brickman and Nina Hunter Fields of Richardson, Patrick, Westbrook & Brickman. Korein Tillery argued that deceptive advertising used by Philip Morris marketed "light" or "lowered tar and nicotine" cigarettes as safer than regular cigarettes when the company knew it to be contrary. The trial judge awarded a judgment of \$10.1 billion in damages against Philip Morris.

## Even global crises have a bright side

ARE THESE THE plaintiffs' bar's salad days?

Hear us out. That the global economic system is teetering on the brink of a pit has not escaped our notice. The failure of financial monuments like Lehman Brothers Holdings Inc., American International Group Inc., Fannie Mae and Freddie Mac seem to have taken the wind out of stockholder lawsuits intended to recoup some of investors' staggering financial losses. Even if such suits succeed, the vaporization of hundreds of billions of dollars in assets might complicate collecting any money. On top of everything, the U.S. Supreme Court seems inclined, with rulings like *Stoneridge Inv. Partners v. Scientific Atlanta*, to make it harder for plaintiffs to make financial evildoers—and their henchmen—pay.

It's impossible to know how all of this will end, but we wouldn't count out this country's plaintiffs' lawyers. They've shown in the past that their capacity for innovation is at least a match for the corporate world's capacity for mischief.

### More settlements

Events are moving way too fast, but it's worth remembering that notwithstanding tort reform, the number of settlements reached hit an all-time high in 2007, according to the Securities Class Action Services' annual survey of top plaintiffs' law firms. The number of cases in the pipeline was trending upward even then. The top five firms by settlement value brought in more than \$13.75 billion, up from \$12.8 billion in 2006.

"This is the time when as an investor—

institutional or individual—you really appreciate that there are legal remedies in our country," said Gerald H. Silk of Bernstein Litowitz Berger & Grossmann in New York.

This is the seventh year for the NLJ's Plaintiffs' Hot List, our survey of the country's most impressive plaintiffs' firms. We asked our readers to nominate firms in the United States that did exemplary, cutting-edge work on the plaintiffs' side between the summer of 2007 and the summer of 2008. Firms needed at least one significant win and an impressive track record within the previous three to five years. A "significant" win meant prevailing in a bench or jury trial when the stakes were high, such as a substantial amount of money, or the case could affect the litigation strategy or outcome of similar cases nationally. Eligible firms needed to devote at least 50% of their litigation resources to plaintiffs' work.

We don't pretend the results are scientific, and concede that some excellent firms don't appear here. We looked for firms that struck us as representing the best qualities of the plaintiffs' bar and that demonstrated unusual dedication and creativity.

Firms like San Francisco's Lieff Cabraser Heimann & Bernstein and St. Louis' Korein Tillery, to name two examples.

These were among the plaintiffs' firms that weren't afraid to take on one of the business world's great white whales. De Beers S.A. diamond merchants had flouted the authority of U.S. courts for years, simply declining to show up if any court

had the temerity to assert jurisdiction over the self-avowed monopoly. The plaintiffs' firms' pluck, and some luck, resulted in a \$295 million settlement for De Beers' customers. If the agreement fell short of the billions of dollars the plaintiffs might have held out for, it nevertheless secured De Beers' pledge to abide by federal and state antitrust laws and accept court oversight to ensure compliance, as NLJ contributor Emily Heller explains inside. [See article, "Global diamond cartel is cut down to size."]

That case raises an important point about this list. Major class actions are the work of many plaintiffs firms—something like 10 in the De Beers case. We regret that space didn't allow us to list all of the co-counsel firms involved in some of the cases listed here, but it's worth remembering that many of the most important courtroom victories are the product of collaborations.

Elsewhere inside, Staff Reporter Peter Page brings us up to date on the Vioxx litigation. He reports that a series of trial wins prompted Merck & Co. Inc. to settle after spending \$1.9 billion defending its anti-inflammatory drug—but that Merck might have done pretty well for all that. [*National Law Journal*, 10/6/08, "Persistence pays in Vioxx litigation," Page S3.]

Additionally, contributor June D. Bell tells how a plaintiffs' firm found a way to place value on the ineffable. [*National Law Journal*, 10/6/08, "What price your pet, or peace of mind?," Page S16.]

—Michael Moline

## The plaintiffs' bar isn't dead yet

FUNNY THING about the death of the class action: Someone forgot to send the memo to the plaintiffs' bar.

Judging from the dozens of nominations we received for this, our sixth, annual list of the country's most prominent plaintiffs' firms, the plaintiff's bar is as aggressive as ever, maybe even more so. Plaintiffs' attorneys racked up impressive verdicts and settlements in the usual areas like securities fraud and products liability since last year, while exploring fresh ground against self-serving managers and controlling shareholders in corporate deal-making.

They even got something like a class action to fly in Europe, as staff reporter Vesna Jaksic discovered.

The bottom lines on these cases look bigger, too. The top five firms in the Securities Class Action Services ranking of plaintiffs' firms by settlement value brought in nearly \$12.8 billion in 2006, compared with a shade less than \$9.8 billion in 2005.

What we've got here, said Stanley Bernstein of Bernstein Liebhard & Lifshitz in New York, is "the law of unintended consequences of the Securities Reform Act" and other tort reforms. That process

has culled the herd of weaker cases, but freed plaintiffs' counsel to more vigorously litigate the cases that remain. Witnesses who might have escaped notice in the past are more likely to find themselves in a deposition room now.

"When you finally survive all the hurdles that Congress and the courts have put in the way, you've got an unbelievable case—and that case is going to be pursued to the very end," Bernstein said. "The ultimate dollars paid are going to be bigger."

"Good firms are creative and tenacious and will find ways to win," said Sherrie R. Savett, a partner at Philadelphia's Berger & Montague. "Even if the cases are difficult and there are obstacles—legal obstacles, difficult judges, evidentiary problems."

As Bernstein noted: "Fraud's the same." And a vigilant plaintiffs' bar is perhaps the best corrective, as staff reporter Lynne Marek reports. Our regular contributor Peter Page found another example involving health insurers accused of gaming the system to deny or delay reimbursements to doctors. Matthew Hirsch of NLJ affiliate *The Recorder* examines what happens when a settlement doesn't stay settled.

The Hot List is our unscientific survey of the litigation scene since the summer of 2006. We asked our readers to nominate exemplary firms that devote at least half of their resources to plaintiffs' work, and which have achieved at least one significant win during that period. "Significant" means winning an awful lot of money through a bench or jury verdict, or otherwise defining industry practices or the progress of related litigation.

We also considered firms' track record over the preceding five years, and supplemented the fat pile of nominations we received with our own research. We recognize that important cases don't always end in verdicts, so we highlight a number of significant settlements here. We admit that the process was subjective, and that some wonderful firms didn't quite make the cut.

Of those that did, seven firms were on last year's list—including Coughlin Stoia Geller Rudman & Robbins, minus former name partner William S. Lerach, one of the year's casualties.

—Michael Moline

## Results come before reputation

THIS SECTION CONTAINS The National Law Journal's list of plaintiffs' litigation firms that we feel have done exemplary work during the past year.

Though we paid careful attention to recent successes, all the firms chosen have track records that go back years, sometimes decades. But our selections were not based on vaunted reputations, impressive client lists or cases filed. We looked for results.

Each of the 20 firms selected is described in a thumbnail sketch, which includes recent cases. This presented a challenge for some firms, especially those that handle large commercial cases, since so many settle confidentially. Consequently, the cases listed do not always represent the firm's most impressive achievements.

To be eligible for selection, at least half of a firm's work had to be for plaintiffs and at least half had to be litigation. Most of the firms fit comfortably within those bounds. Two Houston firms, Susman Godfrey and Gibbs & Bruns, reported a greater percentage of defense work than the others, but still tilt toward plaintiffs.

We eliminated solo practitioners and very small firms, regardless of their success, simply because our purpose was to recognize the work of law firms, not individual lawyers.

Though some firms also appeared on our first list last year, we tried to begin with a blank slate and judge each nominee de novo. We do not wish to

imply, however, that this process was scientific. We did not adopt objective standards against which to measure firms. The selections were subjective, and there are undoubtedly firms as worthy as those we picked. The choice of 20 was also an arbitrary limitation that forced the elimination of firms that otherwise were deserving.

The firms included are a varied group, the largest of which is 135 lawyers. There are class action securities firms, toxic tort specialists, a firm that mostly does automobile cases and one that specializes in representing whistleblowers. They are scattered around the country, though fully a quarter are based in Texas.

It was that geographic quirk that led to one of the three feature stories included in this section: one in which we tried to explain why quality plaintiffs' lawyers seem to be so plentiful in Texas.

Another story was suggested by the splitting of the firm that appeared last year as Milberg Weiss Bershad Hynes & Lerach. We wondered whether one of the two firms it became, or some other firm on our list, was likely to become the new leader prosecuting securities class actions.

Finally, we profiled a Florida firm that specializes in nursing home litigation, pursuing cases in seven states.

Coincidentally, the three stories share a common theme. Each is a story about change and turmoil. "Tort reform" is forcing changes in nurs-

ing home litigation. The Milberg Weiss breakup has shaken up the securities class action field. And several factors, including ubiquitous arbitration clauses and escalating litigation costs, have Texas lawyers worried about the trial lawyer's very survival.

Perhaps it isn't a coincidence after all. Given the central position of tort reform and trial lawyers in a presidential campaign in which the Democrats' presumptive vice presidential candidate is a trial lawyer himself, how could our stories have avoided that theme?

A word about what we are not claiming for the selected firms. We do not say they are the most successful or best. We don't know how we would begin to judge which firms are best.

Joe Jamail, who has been dubbed "The King of Torts," recently discussed this topic in his Houston office. The crown was first given to him "tongue in cheek" by Melvin Belli, he said, who had tired of wearing it himself. Then, as a joke, local judges presented him with a literal crown now encased in glass on the conference table in his "war room." The whole notion strikes him as absurd:

"That title to me is tantamount to being elected the fattest horse in the glue factory."

Cleo Cacoulidis wrote the thumbnail sketches of the firms and conducted the research, assisted by Lindsay Fortado. —David Hechler

## Twenty-five go-to teams for when the going gets tough

FOR 15 YEARS this newspaper has published an annual section called Winning, which describes the recent triumphs and techniques of a handful of litigators with notable records of trial court achievement.

The section in your hands today represents our extension of that idea to law firms on the plaintiffs' side. This is our pick of 25 litigation firms that seem exemplary—the successor to the Litigation 50 that we introduced last year.

We were looking for firms that you'd want to call if you had a claim.

They had to be plaintiffs' litigation shops—that is, they had to perform at least half of their work for plaintiffs and devote at least half of their resources to litigation.

This left out firms that might have been obvious choices a few years ago, like Boies, Schiller & Flexner, which, these days, devotes much of its time and resources to defense work. Two Houston firms that made the list, Susman Godfrey and Gibbs & Bruns, divide their labors around fifty-fifty. The others seemed comfortably on the plaintiffs' side.

We tried to select firms to cover the major practice areas. We also aimed for geographic diversity, but we didn't choose a firm based on its location if it wasn't at least as qualified as the competition.

We eliminated solo practitioners and shops where

one or two lawyers try all of the cases because we wanted a list of firms, not a list of lawyers.

Finally, there was a "hotness" quotient, meaning we paid attention to recent results as well as track records. We had in mind verdicts and settlements, not just filings and headlines. In other words, we were looking for the kind of heat that produces sweat, not sizzle.

The process by which this list was derived was subjective. We didn't try to apply an objective measure, and we don't claim these are the best plaintiffs' firms or the most aggressive or the most successful. Many that aren't here could be. The arbitrary cutoff of 25 required some more or less arbitrary choices.

We sought to cast a wide net by brainstorming internally and by contacting dozens of general counsel and asking for the names of plaintiffs' firms they use and recommend.

We also asked many attorneys, on both the plaintiffs' and defense side, to identify litigation firms that seemed particularly strong to them.

To winnow the list, we consulted Web sites, legal databases, news archives and colleagues around the country. We contacted some firms and requested additional information.

On the pages that follow, you'll find profiles of three law firms and thumbnail sketches of 22.

The three treated at greater length were picked

because they are established firms located in different parts of the country specializing in different practice areas. These three happen to be from Washington, Dallas and Los Angeles. We could just as easily have focused on three others.

In the short profiles of the other 22, we included with the help of the firms brief descriptions of some of their recent successes. These include settlements, and because some firms settle many of their cases with confidentiality agreements, it was sometimes impossible to report their biggest achievements.

This sampling of litigation firms reveals, not surprisingly, a huge variety in the U.S. plaintiffs' bar.

The firms come in all shapes and sizes. There's the five-lawyer firm in Washington specializing in whistleblower litigation. There's the 40-lawyer Alabama firm branching out from its base in employment litigation. And there's the (at last count) 179-lawyer bicoastal securities class action powerhouse that, like a giant paramecium, is splitting in two.

The thumbnails are by Cleo Cacoulidis, Dee McAree and Andrew Harris. Led by Cacoulidis, McAree, Harris and Gail Diane Cox also did most of the research. —David Hechler

## 2008

Korein Tillery doesn't rest on its laurels. Best known for its \$10 billion trial verdict against Philip Morris USA Inc. in 2003, the firm remains in hot pursuit of malefaction involving pension funds, insurance, securities, computer technology and corporate fraud. It has been named class counsel in more than 50 class actions. During the past 12 months, it played a major role in major litigation against the De Beers diamond cartel. The 20-attorney firm has offices in St. Louis, Chicago and Belleville, Ill.

### NOTEWORTHY CASES:

- **Sullivan v. DB Investments**, No. 04-02819 (D.N.J.). Co-lead counsel Steven A. Katz and Howard Becker. The firm helped prime the pump for a \$295 million class action settlement against the avowed diamond monopolist by securing an antitrust default judgment in Illinois state court. That case was later consolidated with a raft of similar actions around the country. The firm participated in settlement negotiations.
- **University City v. AT&T Wireless Services Inc.**, No. 1-CC-4454 (St. Louis Co., Mo., Cir. Ct.). Lead counsel Douglas Sprong and John W. Hoffman. The team scored a \$25 million settlement in August 2007 against Verizon Communications Inc. over its refusal to pay local business-licence taxes. Since then, recoveries against other telecommunications companies have raked in an additional \$133 million for 228 local governments.

## 2007

Korein Tillery is a 20-attorney law firm with offices in St. Louis and Chicago and a reputation for aggressive prosecution of insurance, securities, antitrust and consumer fraud litigation. Notable for its \$10.1 billion judgment in 2003 against Phillip Morris in the first consumer action over "light" cigarettes, the firm has distinguished itself during the past year with actions involving prescription drugs and consumer protection.

### NOTEWORTHY CASES:

- **Hoormann v. SmithKline Beecham Corp.**, No. 04-L-715 (Madison Co., Ill., Cir. Ct.). Lead counsel Stephen Tillery and Aaron Zigler. Three years of litigation ended this summer when SmithKline Beecham agreed to pay \$63.8 million to settle claims that it promoted the antidepressant Paxil to children notwithstanding evidence of dangerous side effects for young people.
- **Nash v. Sears, Roebuck and Co.**, No. 04-L-716 (Madison Co., Ill., Cir. Ct.). Lead counsel Stephen Tillery. The firm says it got everything it asked for in this settlement involving claims that Sears sold dangerously unstable gas and electric ranges: The retailer agreed to install anti-tipping devices on class members' ranges and any future products. The firm valued the deal at more than \$400 million.
- **University City v. AT&T Wireless Svcs.**, No. 01-CC-04454 (St. Louis Co., Mo., Cir. Ct.). Lead counsel Stephen Tillery and John Hoffman. This Missouri state court case, in which the firm went after wireless and land line telephone companies for back business-licence taxes on behalf of a group of municipalities, got sidetracked into the Missouri Legislature and state Supreme Court. State lawmakers voted essentially to gut the litigation, but the state high court overturned the law. Finally, in August, Verizon Wireless settled its portion of the case by agreeing to pay about \$25 million in back taxes and to pay its license taxes at existing rates in the future.

## 2004

A 20-lawyer firm in St. Louis, Korein Tillery earlier this year won a \$10.1 billion judgment against Philip Morris, including \$3 billion in punitives, in the first consumer fraud class action over "light" cigarettes. The firm's specialty practice areas include class actions (consumer fraud and ERISA), mass torts, individual tobacco cases, products liability and medical malpractice.

### NOTEWORTHY CASES:

- **Sparks v. Lucent Technologies** (Madison Co., Ill., Cir. Ct. 2002), lead attorney Stephen Tillery. One of the largest class actions in terms of class size, it alleged consumer fraud in the residential telephone leasing programs of Lucent and AT&T Corp. The six-year-long litigation involved three appeals, one of which made it to the Illinois Supreme Court. It settled the week it was to proceed to trial, in August 2002, for \$300 million.
- **Esden v. The Retirement Plan of the First National Bank of Boston** (2d U.S. Circuit Court of Appeals 2000), lead attorneys Steven Katz and Douglas Sprong. The case was the first ERISA class action to challenge successfully cash-balance-type benefit plans. It led the way for a number of later class actions which netted hundreds of millions of dollars for retirees. The case settled for a confidential amount after an appellate court granted summary judgment in favor of the plaintiffs.
- **Malloy v. Ameritech** (S.D. Ill. 2000), lead attorneys Steven Katz and Douglas Sprong. The firm represented several thousand Ameritech retirees who challenged the way Ameritech benefit plans computed lump-sum distributions. The case settled for more than \$175 million after Korein Tillery won summary judgment on liability.



## 2003

Korein Tillery's national class action practice comprises insurance claims, securities and consumer fraud, products liability and antitrust. The firm's 18 lawyers also prosecute personal injury claims. Based in St. Louis with Illinois offices in Belleville and Chicago, Korein Tillery is probably best known for its \$10.1 billion judgment in 2003 against Philip Morris in the first consumer class action over "light" cigarettes.

### NOTEWORTHY CASES:

- **Price v. Philip Morris** (Madison Co., Ill., Cir. Ct. 2003), lead attorney Stephen Tillery. The plaintiffs accused Philip Morris of fraud in marketing Marlboro Lights and Cambridge Lights as safer alternatives to regular cigarettes. The judge awarded the plaintiffs \$10.1 billion.
- **Berger v. Xerox Corp. Retirement Income Guaranty Plan** (S.D. Ill. 2004), lead attorneys Douglas Sprong and Steven Katz. Xerox allegedly manipulated pension benefits of former employees. The case settled for \$239 million.
- **McClintock v. BOC Group Cash Balance Retirement Plan** (S.D. Ill. 2004), lead attorneys Douglas Sprong and Steven Katz. BOC settled for \$69 million after it, too, allegedly manipulated pension benefits of former employees.



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