

# Class Action: Attorney tells other side of lawsuits story

BY DIANE WILKINS

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[Wilkins@mariondaily.com](mailto:Wilkins@mariondaily.com)

618-993-2626 x106

MARION – Attorney Stephen M. Tillery wants to set the record straight about class action suits.

Tillery is well-known for his distinguished career, not just in the Midwest, but throughout the entire country as well. In fact, in three out of the last four years, his law firm Korein Tillery has been voted as one of the top plaintiff's litigation firms in the United States by the National Law Journal. No other firm in Illinois has been selected and only one other firm located in Birmingham has been selected from the middle of the country.

A graduate of St. Louis University, J.D. cum laude in 1976, Tillery says his choice of his profession and his actions continue to be governed by his pursuit of justice and truth. It is these two fundamental principals that are at the heart of why Steve Tillery is out to set the record straight when it comes to filing class action lawsuits.

“Big business and their representative organizations have continually characterized attorneys who pursue class action lawsuits as lawyers who just want to line their pockets with money, with little or no regard for anyone or anything else other than the settlement” Tillery said. “There has been an absence within our industry as a whole in responding to these attacks, and I believe it is time to dispel the myth that has been so unfairly created.”

Tillery says he, and most of his colleagues consider themselves consumer advocates.

“If all businesses aided by the law and offered the protections that they should, we would not be needed” said Tillery.

Tillery strongly feels that class actions are unfairly maligned.

“Too often, the media only focuses on the settlements and fees – not the positive impact of the decision on the lives of people and what is given back to the consumer, to communities and our society as a whole” said Tillery.

To substantiate his statements, Tillery cites several recent cases. The first, which his firm represented is Prather v. Pfizer Inc., which was filed in the spring of 2002. It arose from the marketing and sale of the prescription drug Rezulin, a diabetes treatment medicine, which was advertised as a ‘breakthrough new drug’ that was as ‘safe as a placebo.’ Over the course of the three years that Rezulin was on the market, many people died and many more were seriously injured as a result of its use. Because of the harmful effects of Rezulin, thousands of personal injury cases and 50 class action cases were filed. Of the 50 Rezulin class actions, this was the only action to lead to any recovery.

The settlement that was reached did not face a single objection and established a fund of \$60,000,000 to pay plaintiffs a cash award of 85 percent of their out-of-pocket expenses for Rezulin and to pay an additional \$20,000,000 cy pres award to finance diabetes research. The cy pres was distributed as follows:

- \$5,000,000 to University of Chicago School of Medicine Diabetes Research Center, 5841 S. Maryland Avenue, Chicago, Illinois 60637
- \$5,000,000 to Centers for Disease Control, Illinois Diabetes Prevention and Control program, Illinois Department of Human Services, 102 East De Young, Marion, Illinois 62959
- \$5,000,000 to Illinois Institute of Technology, Engineering Center for Diabetes Research and Education, 3300 South Federal Street, Chicago, Illinois 60616-3793
- \$2,000,000 to Lubavitch Chabad of Illinois, 2833 West Howard Street, Chicago, Illinois 60645
- \$3,000,000 to United Way of Metropolitan Chicago, 560 West Lake Street, Chicago, Illinois 60661

The settlement was reported as the largest settlement or verdict in Illinois in 2004. This settlement was also used on the floor of the Senate as an example of why state court based class actions serve the public good.

Adapted from trust and estate law, 'cy pres' allows for distribution of unclaimed damage awards in class-action lawsuits where it is not possible to determine each plaintiff's actual damages or when plaintiffs fail to collect their portion of the award.

The second case Tillery cites is his firm's lead involvement with the case Plaintiff v. Sears, Roebuck and Co.

In the 1960's, kitchen range manufacturers started reducing the weight of metal in an effort to competitively lower the price of kitchen ranges. Over the course of several years, advances in materials allowed manufacturers to produce ranges which were durable and which were extremely light weight. However, because the oven doors on the front of the ranges serve as a lever and fulcrum, the light weight of the new ranges created an extremely dangerous tipping hazard. For example, if a person were to place a turkey roaster in an open and horizontal oven door, the added weight would cause these newly designed ranges to tip forward spilling the hot contents onto anyone standing in the vicinity.

Children who opened and used the range door as a step could unknowingly and very suddenly tip boiling pots onto themselves. Over the last several years dozens and dozens of people have been killed and literally hundreds have been maimed with scars and amputations as a result of this problem.

Recognizing the need for a solution to this dangerous hazard, manufacturers and regulators came up with a solution. A very simple device, an anti-tip bracket, could be attached to the wall or floor at the back end of the range then attached to the range, preventing any forward tipping and maintaining complete stability. The installation is

simple and the light weight bracket costs pennies. The rule required the installation of the anti-tip brackets in all range installations in the United States. Everyone involved in this dispute acknowledged that a properly installed anti-tip bracket completely solved the tipping hazard and threat of harm.

Sears, Roebuck & Company has been the largest retail seller of kitchen ranges in the United States for many years. It has averaged over 800,000 range sales per year. When Sears sells a gas or electric range it generally includes installation and hookup to a power source, thus, it has become the installer of the majority of kitchen ranges in the United States. For economic reasons, Sears adopted a policy of refusing to install anti-tip brackets during normal installation unless they were paid extra for the installation of the bracket. In addition, they refused to even tell consumers about the hazard or the added benefit of anti-tip bracket installation.

In 2004, Tillery filed a nationwide class action lawsuit against Sears Roebuck & Company over its policy of refusing to install anti-tip brackets. The case proceeded through the court system and eventually resulted in settlement which was approved Jan. 15, 2008. Under the terms of the settlement, Sears provides a complete relief to all Class Members in the United States going back to July 2000. They are required to install brackets in all residences of Class Members throughout the United States and to reimburse Class Members who paid for such installation up to \$100.00. In addition, they are required for a period of three years to alter their business model and to install ranges with an anti-tip bracket in every installation in America. The value of the settlement ranges from approximately \$450 million to \$550 million. They are required to pay costs and attorneys fees totaling \$17 million, which is less than 4 percent of the recovery for the Class. Tillery says it is without any question the finest settlement of a class action case he has ever been involved in. Recently Public Citizen touted this settlement as an example as to how consumer class actions benefit society.

“I would be very happy if I were put out of business because companies dealt fairly with consumers,” Tillery said. “If they would straighten up their act, I would not be needed.”