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# Class reunion

These four blockbuster class-action and commercial settlements had impact beyond the dollar amount

BY TATIANA WALK-MORRIS

While litigating class-action cases for five or more years, everything from laws and appellate court justices to Supreme Court justices and their opinions could influence the outcome. Nevertheless, litigators say class-action cases present the opportunity to represent the collective interests of the individuals and institutions who can't bring cases on their own.

"They can take anywhere from three to five years to resolve, which is why they are risky endeavors for law firms to take on. You invest a lot of time and resources in them and it's uncertain what the outcome will be," said James Barz, partner at Robbins Geller Rudman & Dowd.

Illinois law firms have settled their fair share of class-action lawsuits against notably large companies. We spoke with the lawyers behind four of the biggest blockbuster class-action settlements of the last few years, as determined by the yearly JVR Settlements Report, which runs in each October edition of *Chicago Lawyer*.

Through the lens of these four cases, we explore what these costly, yearslong suits meant for the lawyers' careers, for their area of law and, in some cases, for society at large.

## KLEEN PRODUCTS LLC, ET AL. V. INTERNATIONAL PAPER, ET AL.

**Firm: Freed Kanner London & Millen and Mogin Rubin (San Diego)**
**Amount: $354 million**

Usually, when Michael Freed takes on an antitrust case, he expects the case to take six to seven years. It took Freed, a founding partner of Freed Kanner London & Millen in Bannockburn, and his colleagues nine years to wrap up the Kleen Products class-action antitrust suit — or so they thought. The court scheduled another hearing May 1 to authorize the last distribution of settlement funds, Freed said.

The plaintiffs alleged that the defendants — International Paper, Georgia-Pacific, Temple Inland Inc., WestRock, Weyerhaeuser Co., Norampac Holdings U.S. Inc., and Packaging Corporation of America — violated the Sherman Act by communicating with one another to coordinate their price increases and constrain the U.S. supply of containerboard. The suit also alleges that executives at the defendant companies had multiple opportunities to discuss supply and pricing with one another.

Looking back, Freed, the co-lead counsel, said class certifications held up the case, and the process of dispersing funds to claimants was quite a task, too. Though Freed said the judge was efficient in reviewing the material presented and ruling accordingly, it was determined that the parties could use word search instead of predictive coding for reviewing documents, the latter would have produced fewer and more relevant documents, he added.

"You can't even conceive the amount of documents produced," Freed said. "You are so overloaded with millions of pages of documents that it's really hard. Human beings can only do so much in processing information."

Over that span of time, multiple factors could affect cases like this, ranging from dramatic changes in the law to court justices or justices' attitudes toward class certifications or whether circumstantial or direct evidence establishes who's liable, he said. Therefore, when taking on cases of this kind, attorneys must not only concentrate on the current law, but also understand the trend and where courts are headed in the future, he added.

**Michael Freed**
Freed Kanner London & Millen

The payouts in question ranged from less than $10 to "many millions of dollars," Freed said. International Paper, Temple Inland and Weyerhaeuser agreed to a settlement of $354 million, but the settlements for Packaging Corporation of America and Cascades Canada ULC/Normapac Holdings for $17.6 million and $4.8 million, respectively, have not been distributed, according to the Containerboard Products Settlement site.

For the first distribution process, the firm sent out long-form notices to let people know that it had funds to be distributed. However, when the firm heads back to court on May 1 regarding the distribution of the second set of funds, the only previous approved claimants would be able to access those funds. Any company that had opted out or wasn't a qualified claimant wouldn't get a cut of the remaining funds, he said.

"I've been doing this for 40 years. I've probably been the lead counsel in 40 cases or so, maybe 10 or 12 anti-trust cases. This was one of the most complicated notices for this final distribution that we've ever had to work on," Freed said.

## JAFFE, ET AL. V. HOUSEHOLD INTERNATIONAL INC.

**Firm: Robbins, Geller, Rudman & Dowd**
**Amount: $1.575 billion**

Between 1999 and 2001, the stock price of Household International grew from about $40 per share to a high of $69 per share. As the company's predatory lending and "creative accounting" practices came to light in lawsuits brought by California and other states, its shares dropped dramatically from nearly $61 to about $28, prompting the plaintiffs to file a securities lawsuit that lasted from 2002 until 2016, according to court filings.

Michael Dowd, the San Diego-based lead trial counsel in the case and a founding partner of Robbins, Geller, Rudman & Dowd, and multiple colleagues at the firm temporarily relocated for the Illinois case. Though Dowd said Chicago is a fine city, "you're not in your own home."

"Everyone made sacrifices," he said.

By now, every approved claimant has received their check from the resulting $1.575 billion judgment, Dowd said. The firm distributed payouts to individual and institutional investors based on each claimants' House-

**Michael Dowd**
Robbins, Geller, Rudman & Dowd

hold shares, which ranged from $1 or $2 to millions of dollars, Dowd said.

Dowd hadn't worked on a case that took this long to litigate and the claims process to dispense a sizeable judgment wasn't easy given that the defendant had objected to more than 30,000 claims at one point. Further, the case taught him a great deal about the "fascinating" claims process. He spent time on the phone with "hundreds" of class members, explaining whether their claim was rejected or not, why and why their reward was taking so long to arrive.

While in court for that long, there's a chance that external changes, such as a change in state, appellate or Supreme Court justices or other high court rulings, can impact the outcome of one's case. For *Jaffe v. Household International Inc.*, the U.S. Supreme Court's *Janus Capital Group Inc. v. First Derivative Traders* ruling in 2011 clarified what constitutes making a false statement in connection to securities sales or purchases, a development which ultimately changed which executives had, in fact, given inaccurate statements.

**James Barz**
Robbins, Geller, Rudman & Dowd

In the end, this case gave Dowd and his group a chance to argue against some of the top lawyers in the field.

"When you go up against an adversary who's better, you get better," Dowd said, adding that the top lawyers understand what their case is truly about. "They fight the stuff that needs to be fought."

### CITY OF LAKELAND EMPLOYEES PENSION PLAN V. BAXTER INTERNATIONAL INC.

**Firm: Robbins, Geller, Rudman & Dowd**
**Amount: $42.5 million**

In 2010, Robbins Geller Rudman & Dowd set its sights on Baxter International Inc. The suit, which was settled in 2015 for $42.5 million, alleged that the medical device manufacturer made false and misleading statements about its plasma-derivative products business, causing its stock price to jump to as high as $61.71 per share and decline after disclosing that it was failing to comply with an Food and Drug Administration consent decree regarding one of its products.

The firm divided the $42.5 million recovery among claimants based on how many shares each claimant had, the price paid per share and whether claimants sold or held their shares, said Barz.

Echoing Freed's observation about changing courts, justices and legislation, Barz said the Supreme Court has been more active in this area of law than it has been in previous decades and in granting cert to review cases, thus defining what plaintiffs can and cannot litigate.

Though at one point the Supreme Court considered whether plaintiffs could bring these cases as class-action lawsuits, it decided not to upend current law, he added. In the aftermath of the Great Recession, cases like this demonstrate the need for shareholders to hold management accountable, especially when their profit-driven decisions are shortsighted, Barz said.

"As investors, we want to make money, but we want to make money that's real money, not money we'll have to pay back because our product fails or we polluted the environment," Barz said. "Think about the employees whose retirement savings were wiped out and they've now passed away … Some people lost their jobs. They lost their homes. They retired and lost their savings and the money was gone."

### LANCE W. SLAUGHTER, ET AL. V. WELLS FARGO ADVISORS LLC

**Firm: Stowell Friedman**
**Amount: $35.5 million**

It's no secret that Wells Fargo, a bank with more than 5,000 retail banking branches across the U.S., has been repeatedly sued for racial discrimination by its customers, including recent black and Latino homebuyers in Sacramento, Calif., and minority homebuyers in Oakland, Calif.

For Linda Friedman, class counsel in one such discrimination case and founding and managing partner at Stowell Friedman who has litigated a number of discrimination cases, it was not surprising to discover that the financial services firm had been engaging in discriminatory practices against its trainees and employees.

Her firm's suit against the bank alleges that it practices discriminatory policies against African-American financial advisers, including black advisers from high-value accounts and steering incoming lucrative customers away from black advisers.

"Erika [a client] didn't come to us for race discrimination. She came to us because they [Wells Fargo] were suing her for $50,000," Friedman said. The financial institution sued Williams following a company policy to recoup the cost of training recruits if they did not finish or failed to graduate the training program.

The plaintiffs maintained minority recruiters were given less resources than other trainees and thus were handicapped in their efforts to succeed in the training.

"If you're going to treat people the way that company treated African-Americans, it probably isn't a good idea to threaten to file a lawsuit," meaning an increased willingness to recapture training costs.

Friedman credited the judge for being brave enough to review and strike

**Linda Friedman**
Stowell Friedman

down the arbitration agreements, enabling the case to continue as a class-action lawsuit.

In an era when companies are increasingly shifting toward arbitration cases, this case exemplified the importance of civil rights class-action cases as a way to examine and address systemic discriminatory practices, because attorneys can — through discovery — obtain data about a company's inner workings and bring together plaintiffs with varying damage claims, she added.

Friedman declined to disclose the range of payouts distributed to claimants in the suit, but she said the process for determining how much each claimant should receive was a complicated process. Claimants were given the choice of either submitting a claim form and having their payout determined by an algorithm or presenting their claims to a group of neutrals headed up by Lynn Cohn, a clinical law professor and director of the Center on Negotiation and Mediation at Northwestern Pritzker School of Law.

Though the plaintiffs emerged victorious in Round One, the ramifications for them are everlasting thanks to the internet, she said.

Plaintiffs could lose their claims against the employer by their failure to win their suit, but even if they win they carry the risk in the future of a potential employer discovering the case and harming their chances for future employment, she explained.

"Somebody in the human resource department of a company [at which] they're trying to get a job can have a copy of the complaint with no paper trail at all on their desk literally within a matter of seconds," Friedman said. "It's a pretty heroic act to be willing to join arm and arm with lawyers and file these claims." CL

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