

IN THE CIRCUIT COURT  
THIRD JUDICIAL CIRCUIT  
MADISON COUNTY, ILLINOIS

**FILED**

DEC 17 2007

CLERK OF CIRCUIT COURT #47  
THIRD JUDICIAL CIRCUIT  
MADISON COUNTY, ILLINOIS

No. 04-L-716

Hon. Barbara Crowder

CLASS ACTION

CHARLES & ANNEMARIE PARKER  
and DAVID & JOYCE SUMPTER,  
Individually and On Behalf of All Others  
Similarly Situated,

Plaintiffs,

vs.

SEARS, ROEBUCK & CO.,

Defendant.

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**AFFIDAVIT OF LEROY J. GROSSMAN**

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I, Leroy J. Grossman, being first duly sworn upon my oath, depose and state as follows:

1. Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, I certify that the statements set forth in this instrument are true and correct. I make the following statements based on my personal knowledge and if called, I could competently testify to the matters stated herein.

2. I am a Professor Emeritus of Economics and a former dean of the John Cook School of Business at St. Louis University. I taught economics for over 30 years at St. Louis University and have been the sole proprietor of Econo-Tech, an economic consulting firm, for over 25 years. My curriculum vita is attached as Exhibit "A".

3. I have been asked by attorneys representing Plaintiffs in this matter to evaluate the value of the settlement with respect to the class and to discuss the externalities or societal benefits resulting from the settlement. The value of a settlement from an economist's viewpoint

is the benefit afforded the class members and the net benefits to society as a whole. For an economist, the ultimate test of the desirability of such a settlement is its overall benefit or potential benefit to consumers.

4. I have reviewed the complaint in this matter, the Settlement Agreement between the parties, as well as documents submitted by the defendant attorneys to plaintiff attorneys relating to the settlement.

5. Based on my review of those documents, it is my understanding that the Settlement Agreement governs, within the scope of its subject matter, Sears, Roebuck & Co. and all members of the Settlement Class, which is defined generally as:

All persons (individuals, sole proprietorships, partnerships, companies, corporations and all other legal entities) in the fifty United States, the District of Columbia or Puerto Rico who (or someone acting on their behalf), during the period commencing on July 2, 2000, and continuing through [September 18, 2007]<sup>1</sup>, purchased from Sears a freestanding or slide-in gas or electric range, arranged with Sears to have the range delivered to their home and had Sears connect the range to an energy source, and, as of the date of submitting a claim, continued to reside in that same home.

6. Specifically, excluded from the settlement class are:
- a. Those persons who have claims for personal injury, wrongful death or property damage against Sears related to range tipping.
  - b. Those persons who opted at the time of purchase or delivery to have Sears install the device which was in fact installed.
  - c. Those persons whose home or range make it inordinately difficult to currently install an anti-tipping device.
  - d. Those persons who have changed residences since the range was purchased and installed.

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<sup>1</sup> The class period is thus 7 years, 2 months, 17 days or 2,635 days.

7. The settlement agreement provides three options to members of the class.
  - a. Those Class Members who do not have a Range Stability Device installed may receive installation of such a device by Sears free of charge.
  - b. Those Class members who had a Range Stability Device installed after the original installation by Sears and paid either Sears or a third party will be entitled to reimbursement up to \$100.
  - c. Those Class Members who do not have a Range Stability Device installed may, in lieu of a free installation, receive a non-transferable \$50 gift card that can be used towards the purchase and installation of a new regular price range from Sears.
8. Sears, Roebuck & Co. caused Rust Consulting to mail 5,349,619 individual notices to those customers its records indicated purchased a Sears range during the Class period at a cost to Sears of \$1,561,658.00. *See* Holland Declaration at ¶¶ 8-9.
9. However, because the Class definition specifically excludes certain groups the mailed notice is over-inclusive.
10. I am informed that a statistically insignificant number of individual claims related to stove-tipping are filed against Sears in any given year.
11. I am also informed that Sears estimates that virtually zero percent of its customers had anti-tip brackets installed at the time of delivery by Sears. *See* Sears' Response to Plaintiffs' Third Request for Admission Number 25. This is not a statically significant number.
12. Sears estimates that less than two percent of its customers were installing the anti-tip brackets after delivery by Sears. The percentage that performed the installation themselves and are not included in the Class likely make up a small percentage of that total and are thus not statistically significant.

13. The only numerically significant group of range customers who are excluded by the settlement are those who have moved since their purchase. The U.S. Census Bureau maintains statistics detailing the movement of U.S. residents. These statistics show that residents of owner-occupied housing units moved at rates of 6.6%, 6.8% and 7.4% in 2001, 2003 and 2005, respectively.

14. Evidence in the record reveals that Sears' sales of ranges stayed relatively constant at approximately 800,000 ranges per year. *See* Sears' Response to Plaintiffs' Third Request for Admission Number 52; Oct. 16, 2996 Deposition of J. Drake at 105:20-25. This allows estimation of the total number of sales for each year during the class period. (5.3 million stoves over 2,635 days = 2,030.2159 stoves per day. 183 days of class period during 2000 = 371,671 stoves sold. 365 days in 2001, 2002, 2003, 2005, 2006 = 741,310 stoves sold per year. 366 days in 2004 = 743, 059 stoves sold. 261 days in 2007 = 530,088 stoves sold). Using this data, one can estimate that 26.9581286% of potential class members are excluded because they have moved during the class period. Accordingly, it can be estimated that 3,907,462 people remain in the Class who would be eligible for one of the three options.

15. Because the percentage of class members who have had a bracket installed is so small (less than two percent) is not likely that a significant number of persons will be eligible to receive the reimbursement of up to \$100. Additionally, it is likely that only a Class member already planning on buying a new range would take advantage of the \$50 discount on the sale of a regular priced Sears range. Thus it is not likely that a significant number of Class members will choose this option. For that reason, it is appropriate to apply the value of bracket installation to the number of Class members in order to find the approximate value of the settlement.

16. Sears currently charges \$100 to \$170 to supply an anti-bracket and install it. The

midpoint of that range - \$135 - is accordingly an appropriate approximation of the value of bracket installation to each class member. The value of this benefit to the class is \$527,507,347.00. (3,907,462 x \$135).

17. The settlement also provides for the payment, by Sears, of Plaintiffs' attorneys' fees and legal expenses, which do not serve to reduce Class members' recoveries, directly or indirectly. The attorneys' fees and legal expenses to be paid by Sears is \$17.0 million.

18. The settlement also provides for the payment, by Sears, of the costs of providing notice to the class. I am informed that this expense totaled \$1,561,658.

19. Thus, the settlement offers a total of \$544,507,347 million in pecuniary benefits to the Class (3.9 million class members x \$135 = \$527,507,347 + \$17,000,000 + 1,561,658 = 546,069,005).

20. In addition, the proposed settlement has positive societal benefits well above the amount of the benefits directly accruing to the Class members. Even though these benefits are difficult to quantify, they are real and directly benefit the Class. A few of these societal benefits are listed below:

- a. Sears has agreed to install anti-tip device on all ranges sold and installed for the next three years.
- b. Because of corporate inertia and fear of a similar suit in the future, Sears is highly likely to continue installing anti-tip devices for the foreseeable future (i.e., beyond the agreed upon three years).
- c. Sears has agreed to provide anti-tip bracket installation to non-class members at a reduced priced of \$90 (as compared to the regular price range of \$100 to \$170).
- d. Because of this settlement, other manufacturers and sellers will be inclined,

because of competition, to install such devices in the future.

- e. The notice provided to the class as well as the publicity surrounding the lawsuit will increase awareness of the safety issue and as a result will encourage non-class members to have anti-tip brackets installed.
- f. Due to the installation of anti-tip brackets pursuant to the settlement, Sears' future installation of anti-tip devices, possible installation of additional anti-tip devices for non-class members at the discounted price and the possible installation of additional anti-tip devices by other manufacturers and sellers, numerous tipping accidents with their attendant personal and property damage, should be avoided in the future.
- g. The reduction of damages to persons or property from reduced tipping accidents will have the effect of reducing medical expenditures, repairs, health insurance, the cost of property insurance, taxes and increasing the productivity of the economy.

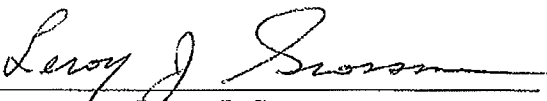
21. All of these items (the \$546,069,005 in pecuniary benefits plus the societal benefits) demonstrate that the proposed settlement provides for a significant recovery for the Class and society as a whole.

22. I have also been asked to calculate the percentage that the proposed attorney fee award represents of the total value of the settlement. The proposed fee award of \$17 million represents 3 percent of the total value of the settlement. While I am informed that this calculation is to be made on the total amount made available to the class (*See Boeing v. Van Gemert*, 444 U.S. 472 (1980)), I understand that it is not uncommon for some to request that this percentage be calculated based upon the value actually collected by the class. In this case, if the

settlement's value was calculated solely upon the amount of benefits actually paid to by the class, it would require a claim rate lower than 6.03% to cause the percentage of attorneys' fees to rise above 33% of the value of the settlement.

Further Affiant Sayeth Naught.

Dated: December 11, 2007

  
Leroy J. Grossman