

12,066 views | Nov 6, 2014, 12:38pm

Exploding RV Refrigerators Spark A War Among Plaintiff Lawyers



Daniel Fisher Forbes Staff

Personal Finance

I cover finance, the law, and how the two interact.

Margarite Nix was asleep on the couch in her 40-foot house trailer in Sacramento, Calif. earlier this year when she woke to see flames shooting two to three feet out of her refrigerator. She shouted to her 80-year-old husband, John, and they both rushed past the flaming icebox to the door.

“We just barely made it out,” said Margarite, 86, a retired California state employee. “The smoke was black by the door. I was having trouble breathing.”

Dressed only in nightclothes, the Nixes watched their trailer burn, taking with it all their possessions including furniture, clothing and family photographs.

“It burned up everything,” she said. “Fifty-three years worth of stuff we had.”

Similar incidents have occurred thousands of times over the past decade, according to the Nixes’ lawyer, Terrence Beard, as refrigerators that operate on a potentially explosive mixture of hydrogen and ammonia leak and catch fire, torching recreational vehicles and mobile homes and causing at least one death. Most of the refrigerators were Norcold brand units manufactured [Thetford Corp.](#), which is owned by the pioneering private-equity firm [Dyson-Kissner-Moran](#). DKM’s owners, the Dyson family of New York, have earned enough from Thetford and other businesses to fund [a \\$250 million foundation](#), multimillion-dollar gifts to Cornell and Washington and Lee colleges as well as a [Le Mans automobile racing team](#).



John and Margarite Nix lost all their possessions when a refrigerator fire torched their house trailer.

“This is a public-safety issue,” said Beard, a Pittsburg, Calif. trial lawyer who got his start in postal-worker dog-bite cases and won a \$500,000 settlement in a Norcold case last year. “These refrigerators are burning up at a rate of three to five a week.”

Not only is Beard locked in a legal battle with DKM, but he's also fighting class-action lawyers who were once his allies. Attorneys at [Zimmerman Reed](#) and [Ridout Lyon & Ottoson](#) earlier this year negotiated a \$33 million settlement with DKM that would pay the average Norcold owner \$57 -- new, the refrigerators cost \$1,000 to \$4,000 -- and do nothing to force the company to change its design.

YOU MAY ALSO LIKE

A federal judge late last month [rejected the first version of the settlement](#), saying there were glaring conflicts of interest between most of the representative plaintiffs, who stood to make much more under the deal, and the rest of the 575,000-member class.

The class-action lawyers aren't giving up, however. They defend their work by saying there is a high risk of losing in court or driving DKM into bankruptcy – even though a DKM spokesman told FORBES there is no risk of bankruptcy for the company – and they reject Beard's criticism as coming from a trial lawyer with no experience negotiating class actions.

“While Mr. Beard presents this as a slam-dunk, can't-lose case that shouldn't be settled, the results at trial suggest otherwise,” said Hart L. Robinovitch, a partner in Zimmerman Reed's Scottsdale, Ariz. office. (Beard lost his most recent Norcold case at trial, but the verdict was overturned due to jury misconduct and last year he negotiated a \$500,000 settlement for his clients.)

Norcold, of course, denies it makes a defective product, although the company has issued several recalls, under [National Highway Traffic Safety Administration prodding](#), to install fail-safe switches and pressure-relief valves to prevent fires. It says it has a better than 80% rate of compliance with those recalls, far greater than GM has achieved for its defective ignition switches. Like most defendants in class actions, it says it has agreed to settle to remove the uncertainty of litigation. “The highly responsible activities by Norcold, Thetford and Dyson- Kissner-Moran throughout the recall process speak more highly than any words could do,” said Larry Weis, a firm spokesman.



Hydrogen, ammonia -- what could go wrong?

Beard disagrees, and said the class action is the only way to establish legal liability for the alleged design defect in all of Norcold's refrigerators.

“We have what I consider to be pretty substantial, I think overwhelming, evidence of liability,” Beard told me. “In the rush to settle things and grab what’s on the table, everybody is forgetting the original reason for this class action was to address the public safety issue.”

Beard has obtained from Thetford and filed with the court “incident logs” showing the company has processed thousands of claims since the late 1990s, many them over leaks and fires. A company engineer also testified in a 2012 deposition that Norcold has paid claims on more than 800 fires allegedly caused by its 1200 series refrigerator since 1999. The total payout for all claims since 2001, according to that spreadsheet, is over \$60 million.

Yet the company hasn’t changed the design that a Thetford employee acknowledged in testimony lies at the heart of the problem, a metal boiler tube that can crack, allowing flammable gases to escape. (Sweden’s [Dometic Group](#) makes refrigerators with a similar design, which have also been the subject of lawsuits and an NHTSA recall.)

[Orion Keifer of Applications Engineering Group Inc.](#), a forensic engineer working for the plaintiffs, traced the problem to a weld in the boiler tube that corrodes relatively rapidly even as the rest of the metal looks fine.

“It’s been going on a long time, and it’s continuing,” said Keifer, who said he works for both defense and plaintiff lawyers. “We haven’t seen documentation there’s been extensive research by Norcold to figure out why it’s happening.”

Most of the lawsuits against Norcold so far have been subrogation claims by insurance companies seeking to recover the money they paid out for fires.

“We’re talking about an RV or a mobile home – it takes maybe eight minutes for the whole thing to be destroyed,” said Craig Evezich, a Seattle-area lawyer who has handled a number of subrogation cases over Norcold refrigerator fires. Consumers don’t often sue, because they either have insurance to cover their loss or “they don’t have insurance and they don’t have any money, because they just lost their trailer,” Evezich said.



"It takes maybe eight minutes for the whole thing to be destroyed."

Beard has handled four cases so far, including the lawsuit by the Nixes, but he doesn't believe individual lawsuits will force Norcold to change its design.

“If you’re looking at a systemic remedy, to fix the ones that are out there, to fix all of them, you’re never going to get that through individual lawsuits,” he said.

It was to obtain a verdict declaring the Norcold design defective that he turned to the class action, a court-overseen method for combining the claims of many consumers into a single lawsuit. Beard said he recruited Zimmerman Reed and Ridout Lyon & Ottoson to join him in the class action and convinced two of his clients, Jeffery and Susan Etter, to serve as named plaintiffs. The case was filed in state court in California last December and after six mediation sessions this year, the class-action lawyers announced they’d reached a deal. Norcold would pay \$33 million to owners of its series 1200 refrigerators and N6 and N8 models, minus \$2.5 million in administrative costs and legal fees of up to 25%.

Beard and the Eترز objected to the settlement once they discovered the class-action lawyers had agreed to a fraction of the \$700 million cost of replacing the allegedly defective boiler tubes. On Oct. 14, U.S. District Judge Josephine L. Staton in California rejected the preliminary settlement, saying Zimmerman Reed and Ridout Lyon & Ottoson had negotiated separate payouts within the same overall deal that would give eight of the named plaintiffs as much as \$68,000 on top of the class benefits. All of the representatives also owned 1200 series refrigerators, which stood to get 25 times the payout of other units, setting up a second conflict with the rest of the class, Staton said. Since the settlement specifically excludes people with personal injury or damage claims, who would still be free to sue on their own, the judge said the eight named plaintiffs likely are precluded from representing the class.

The judge also said the class-action lawyers had a fatal conflict of interest because they simultaneously represented the named plaintiffs in their suits and the class. Finally, she criticized the lawyers for negotiating a *cy pres* payout of uncollected sums to [International Association of Firefighters](#), a group she said was too far removed from the litigation to share in the proceeds.

Robinovitch said a revised settlement “will address the judge’s concerns by taking out the individual settlements.” When asked if there would still be a conflict, since he might be inclined to accept a lower settlement for the class in exchange for

higher offers for his individual clients, Robinovitch said: “I disagree with your interpretation of the settlement or the existence of a conflict.”

One mystery surrounding this case is how much Dyson- Kissner-Moran has earned from its Norcold business, and thus how much it might be willing to pay. The company firmly denied it is in financial trouble and indeed, the outward signs of prosperity are strong. Founded by Charles H. Dyson, the son of British emigrants who worked in the Roosevelt administration and later ran [Textron](#) TXT +1.16%, Dyson-Kissner-Moran launched into the then-new field of private equity in 1954 and by the time of his death in 1997 the New York Times reported it had \$600 million in sales.

DKM is now run by his son Robert, a Cornell MBA who with his brother John, also a Cornell grad, gave \$25 million in 2010 to [found the Charles H. Dyson School of Applied Economics and Management](#). The family gave \$2.5 million to [Washington and Lee](#), alma mater of Robert’s son Chris Dyson. Father and son have raced cars at Le Mans, and Chris now runs Dyson Racing, which fielded a pair of [Bentley GT3](#) cars in this year’s Pirelli World Challenge.

Beard estimates, based on sales figures the company has provided showing 60,000 units per year and revenue of \$1,000-\$4,000 per unit, that DKM has sold \$3 billion worth of Norcold refrigerators since the late 1990s. Weis called that estimate “grossly inaccurate,” but declined to provide any further information. In a heavily redacted court filing, DKM indicated its revenue is significantly less than \$700 million a year.

Beard also thinks DKM is highly profitable, although the company’s chief financial officer, Mark Chamberlain, told the court “essentially all assets worth securing” have been pledged to DKM’s lenders and the three annual installments of \$11 million was the most it could pay without defaulting on its loans.

Weis said there is “absolutely no risk of bankruptcy,” however, and he said DKM still earns enough to invest in research and development and new products.

Beard wants to take the class action to trial, of course, so he can try and get a verdict of liability that would help him with his individual cases. He said he

“worked together fine” with the other lawyers until mediation, “when they basically decided to sell everybody out for what I considered an inadequate amount of money.”

“My opinion has been discounted because I am not part of the class-action club,” he said.

“Our obligation to the class, and our obligation to the system, is to litigate these cases,” he continued. “If there is a risk, the risk is on us. The risk is our attorneys’ fees. But that’s our job.”

I am a senior editor at Forbes, covering legal affairs, corporate finance, macroeconomics and the occasional sailing story. I was the Southwest Bureau manager for Forbes in Houston from 1999 to 2003, when I returned home to Connecticut for a Knight fellowship at Yale Law Sch... MORE