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COURT DISMISSES NATIONWIDE CLASS ACTION AGAINST AUTO INSURANCE INDUSTRY

(Gilchrist v. State Farm Mutual Automobile Ins. Co.)

The U.S. Court of Appeals for the Eleventh Circuit in Atlanta this week threw out a lawsuit involving antitrust claims supposedly being brought on behalf of 70 million car insurance policy holders nationwide. The lower court had certified the case as a nationwide class action; the appeals court held that the case never should have been allowed to go forward at all.

The decision in *Gilchrist v. State Farm Mut. Automobile Ins. Co.* was a victory for the Washington Legal Foundation (WLF), which had filed a brief urging that the trial court decision be overturned. WLF argued that the trial court's decision to certify the gargantuan class action epitomized all that is wrong with class action lawsuits in our nation's courts. WLF argued that the case was so large that it could never actually be tried; unless the certification order was reversed, the defendants would have little choice but to settle what was essentially a frivolous suit, WLF argued.

The appeals court agreed with WLF that the suit was essentially frivolous. But instead of merely decertifying the plaintiff class, the appeals court dismissed the case altogether. The appeals court held that the plaintiffs' antitrust claims involved the "business of insurance." It held that the federal courts lack jurisdiction to hear such claims because the federal McCarran-Ferguson Act deprives the federal courts of jurisdiction to hear antitrust claims involving the "business of insurance."

"As this case well illustrates, abuse of the class action process is becoming an increasingly frequent occurrence," said WLF Chief Counsel Richard Samp after reviewing the Eleventh Circuit's decision. "Such suits are not meant to redress real injuries of real plaintiffs, but are used to extort settlements from deep-pocketed companies for the exclusive benefit of the plaintiffs' bar. The appeals court should be applauded for seeing through the smokescreen thrown up by plaintiffs' lawyers and throwing the case out of court," Samp said.

The suit, filed in federal district court in Florida, challenged a long-standing business practice of the nation's four largest car insurers, whereby they provide in most of their insurance policies that they may specify use of parts manufactured by sources other than the

original equipment manufacturer ("non-OEM parts") when adjusting claims for damage to insured vehicles. The insurers assert that by retaining the option to specify non-OEM parts, they encourage competition in the automobile repair parts industry and thereby reduce costs to consumers. The suit alleged that the industry practice violates the antitrust laws because, the suit asserted, all non-OEM parts are inferior to OEM parts -- even though many states expressly authorize, and some *require*, use of non-OEM parts.

The three plaintiffs (all Florida residents) sought to maintain the suit as a class action on behalf of the 70,000,000 policyholders of the defendants; they alleged that the defendants engaged in fraud by representing (allegedly falsely) to their policyholders that they would receive quality replacement parts in the event of a collision, and that rates would have been lower if not for that alleged fraud. Even though courts elsewhere in the country have refused to certify such an unwieldy class in other cases raising nearly identical claims, the plaintiffs found a judge in Florida willing to certify their alleged nationwide class.

One obvious problem with such a class action is that factual issues unique to each plaintiff would seem to predominate over classwide issues; for example, in a fraud suit, each plaintiff generally must demonstrate that he relied on the alleged misrepresentation. The trial judge avoided that issue by ruling that such reliance could be "presumed" under the facts of this case. In its brief to the appeals court, WLF argued that the trial court's presumption of reliance was a clear error of law and was reason enough by itself to overturn the certification order. WLF also argued that the district court failed to consider how a class action of this magnitude -- involving 70 million plaintiffs challenging insurance rates in 51 different jurisdictions over a six-year period -- could ever be effectively managed.

The appeals court avoided having to address these class action issues by raising on its own the question of whether it had jurisdiction over the plaintiffs' claims. In invoking the McCarran-Ferguson Act to dismiss the case entirely, the court noted that Congress has made clear its preference that the insurance industry be regulated at the state level, not in the federal courts.

WLF is a public interest law and policy center with supporters in all 50 states. It devotes a substantial portion of its resources to promoting tort reform and reining in excessive litigation. It also filed a brief in the case in December 2002, urging the appeals court to hear this appeal on an interlocutory basis; WLF gained a preliminary victory in 2003, when the appeals court agreed to do so.

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For further information, contact WLF Chief Counsel Richard Samp, (202) 588-0302. A copy of WLF's brief is posted on its web site, www.wlf.org.