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COURT URGED TO REIN IN ABUSIVE CLASS ACTIONS

(Snider v. State Farm Mut. Automobile Ins. Co.)

The Washington Legal Foundation (WLF) today asked a state court in Illinois to reconsider its go-ahead for a massive class-action lawsuit that is unlikely to benefit any consumers but that could result in huge fees for the attorneys masterminding the litigation.

In a brief filed in *Snider v. State Farm Mut. Automobile Ins. Co.*, WLF argued that courts should never agree to certify class actions in which the number of class members is so large that notice could never be provided to all members of the class, the individual class members have little in common, and the laws of 50 different states would have to be applied to the various claims. WLF argued that such class-actions suits are essentially untriable, with two results: defendants in such suits are forced into settlements of claims that often are frivolous, and virtually all of the benefits of settlement flow to the lawyers rather than to their alleged clients.

WLF filed its brief on behalf of itself and the American Legislative Exchange Council, a nonprofit organization whose members are a bipartisan group of legislators from all 50 states.

"As this case well illustrates, abuse of the class action process is becoming an increasingly frequent occurrence," said WLF Chief Counsel Richard Samp after filing WLF's brief. "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," Samp said.

The Illinois suit challenges a long-standing business practice of State Farm Mutual Automobile Insurance Co. ("State Farm"), whereby State Farm provides in most of its insurance policies that it 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. State Farm asserts that by retaining the option to specify non-OEM parts, it encourages competition in the automobile repair parts industry and thereby reduces costs to consumers. The suit alleges that State Farm's

practice violates the Illinois consumer fraud statute because, the suit asserts, all non-OEM parts are inferior to OEM parts -- even though many states expressly authorize (and some *require*) use of OEM parts.

The two plaintiffs (both Illinois citizens) sought to maintain the suit as a class action on behalf of the 5,000,000 State Farm policyholders who received non-OEM parts. Even though courts elsewhere in the country have refused to certify such an unwieldy class in other cases raising identical claims, the Illinois plaintiffs found a judge in rural Williamson County, Illinois who was willing to certify their proposed class. Recognizing that applying the law from each class member's home state to that class member's claims would make the class totally unmanageable, the court agreed to apply Illinois's consumer fraud law all to the claims of *all* class members -- even though many class members had absolutely no ties to Illinois.

The judge also ruled that the jury could decide on a class-wide basis whether State Farm's conduct violated Illinois law; that ruling deprived State Farm of the opportunity to introduce evidence with respect to individual plaintiffs demonstrating that their rights under Illinois law had not been violated. Finally, the court waived the normal rule that a class plaintiff is required to mail notice of the suit to identifiable class members because, the court found, such a mailing to all 5,000,000 class members would be prohibitively expensive.

In asking the trial court to reconsider its decision to certify a class action, WLF argued that the court violated State Farm's due process rights in several respects. WLF argued that due process prohibits a state from applying its laws to an event that occurred outside the state and which lacks significant ties to the state; that due process requires a state to permit a defendant in a class action to introduce individualized proof to refute the fact-specific claims of individual class members; and that the trial court violated State Farm's due process rights when it refused to require the plaintiffs to provide actual notice to identifiable class members.

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. Last summer, WLF asked the U.S. Supreme Court to review the trial court's certification of a class action in this case. The Supreme Court issued an order in October 1998 declining to hear the case, thus prompting WLF's request that the trial court reconsider its previous certification order.

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