Press Release

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# COURT URGED TO OVERTURN NATIONWIDE CLASS ACTION CERTIFICATION

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

The Washington Legal Foundation (WLF) this week urged the U.S. Court of Appeals for the Eleventh Circuit in Atlanta to overturn a district court decision that certified a class action involving antitrust claims supposedly being brought on behalf of 70 million car insurance policy holders nationwide.

In a brief filed in *Gilchrist v. State Farm Mut. Automobile Ins. Co.*, WLF argued that the trial court's decision to certify the gargantuan class action epitomizes all that is wrong with class action lawsuits in our nation's courts. WLF argued that the case is so large that it could never actually be tried; the result is that unless the certification order is reversed, the defendants will have little choice but to settle what is essentially a frivolous suit, WLF argued.

"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 suit, filed in federal district court in Florida, challenges 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 alleges that the industry practice violates the antitrust laws because, the suit asserts, 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 allege 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 but 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 is a clear error of law and is 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. Among the questions the court never addressed were the following: Will a jury be requested to review each state's regulatory determination regarding the reasonableness of the rates charged by each insurance carrier? And if so, what is the level of deference that the jury is required to accord to the decisions of those regulators that the rates charged were reasonable? WLF argued that the federal courts should be extremely reluctant ever to second-guess the rate-making decisions of state insurance regulators, and should be especially reluctant to do so in the context of a nationwide class action tort suit.

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 filed an earlier brief in the case in December 2002, urging the appeals court to hear this appeal; in a victory for WLF, the appeals court agreed to do so in February.

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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.