News Release

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COURT URGED TO DECERTIFY OHIO CLASS ACTION SUIT

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

The Washington Legal Foundation (WLF) this week urged the Ohio Supreme Court to review (and ultimately overturn) a lower-court decision that certified a large class action against an insurance company. The suit was filed by a single policyholder whose chipped windshield was repaired by the defendant and who later decided that the defendant should have provided him with cash equal to the cost of *replacing* his windshield. The trial court certified him as the representative of a class of 100,000 Ohio policyholders whose windshields were repaired over the course of the last 20 years.

In a brief filed in *Cullen v. State Farm Mutual Automobile Ins. Co.*, WLF argued that the plaintiff failed to demonstrate that the case could manageably be tried as a class action. WLF argued that he failed to demonstrate that common questions of fact and law predominate over individual questions – an absolute prerequisite for certification of a class action lawsuit seeking money damages.

"There is little doubt that the only reason the plaintiff's lawyers sought class certification was to coerce the defendant into settling the case without regard to the merits of the plaintiffs' claims," said WLF Chief Counsel Richard Samp after filing WLF's brief. "Class actions of this sort – in which the claims of each policyholder turn on facts specific to him – are virtually never appropriate because they could never be brought to trial; yet they serve the purposes of the plaintiffs' bar by imposing tremendous settlement pressure on defendants," Samp said.

The defendant (State Farm Mutual Automobile Ins. Co.) has a company practice of encouraging policyholders to have minor windshield damage repaired, rather than replacing the whole windshield – albeit it also follows a practice of complying with the request of any policyholder with a damaged windshield who requests replacement. Michael Cullen (the plaintiff) insists that his policy provided him with a third option: receive cash equal to the cost of replacing the windshield (less any deductible on the policy) and then allowing him to decide whether to repair or replace. He contends that State Farm acted in bad faith by failing to inform him of this "cash out" option and instead encouraging him to allow State Farm to pay for repair costs (one of the options provided for in State Farm policies). State Farm denies that its policies include a "cash out" option.

The Ohio Court of Appeals affirmed the trial court's class certification order. It held that a class was properly certified under both Rule 23(B)(2) and Rule 23(B)(3). It determined that the plaintiff met Rule 23(B)(3)'s predominance requirement (*i.e.*, a showing that common questions of fact predominate over individual questions) but it failed to address the numerous individual questions of fact pointed out by State Farm. It also upheld certification under Rule 23(B)(2) (which allows class actions in cases seeking injunctive and declaratory relief, not money damages), reasoning that it would be a waste of judicial resources to look closely at the 23(B)(2) issue given that the class had also been certified under 23(B)(3).

In its brief urging the Ohio Supreme Court to review the case, WLF argued that the appeals court erred in failing to address the individual issues of fact cited by State Farm. In particular, WLF argued that whether policyholders were misled by State Farm into agreeing to windshield repair is an issue that would have to be litigated on a policyholder-by-policyholder basis. Every one of the class members had a unique set of reasons for agreeing to have his windshield repaired. WLF asserted that a trial of the lawsuit would be unmanageable if each of the 100,000 policyholders was called to testify regarding his unique set of reasons. Under those circumstance, the class was not properly certifiable under Rule 23(B)(3), WLF argued.

WLF also argued that the class should not have been certified under Rule 23(B)(2). That rule does not permit certification if collecting damages constitutes more than a minor part of the plaintiffs claims. WLF asserted that Cullen cannot meet that standard because the principal focus of his suit is an effort to recover damages.

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. WLF filed its brief with the *pro bono* assistance of three attorneys with the Ohio firm of Thompson Hine LLP: Elizabeth B. Wright, Brian A. Troyer, and Stephanie M. Chmiel. WLF filed its brief on behalf of itself and the Ohio Chemistry Technology Council.

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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.