



CLASS ACTION PRACTICE GROUP

**ILLINOIS SUPREME COURT ISSUES
SIGNIFICANT CLASS ACTION DECISION**

On August 18, 2005, the Illinois Supreme Court issued an important class action ruling in Avery v. State Farm Mutual Automobile Insurance Co., Docket No. 91494, reversing the trial court and lower appellate court decisions in their entirety. Significantly, the Court reversed a \$1 billion verdict and held that the trial court erred when it certified a nationwide class action against State Farm Mutual Automobile Insurance Company ("State Farm") on plaintiffs' breach of contract and consumer fraud claims.

LOWER COURT PROCEEDINGS

The suit was filed against State Farm in Williamson County, Illinois, Circuit Court asserting claims for breach of contract and consumer fraud on behalf of a nationwide class of State Farm automobile insurance policyholders. The plaintiffs claimed that the generic non-OEM replacement parts used to repair their vehicles were inferior to replacement parts from original equipment manufacturers ("OEM"). The allegations were that when non-original equipment manufacturers parts were installed for repairs, State Farm breached the insurance contract by failing to restore plaintiffs' vehicles to pre-loss condition and committed consumer fraud by concealing this practice.

The trial court certified plaintiffs' claims as a 48-state class action and found that Illinois law could be applied without violating principles of due process. The trial court also took the position that the specific form of each insurance policy was immaterial so long as the contractual language in each policy was subject to uniform interpretation. A trial began on August 16, 1999, and the breach of contract claim was tried before a jury, while the remaining claims were tried before the court. The trial court instructed the jury that State Farm's contractual obligation was exactly the same for each class member, and the jury found that State Farm breached its contract with the plaintiff class and awarded contract damages of \$456,180,000. The trial court also entered judgment in plaintiffs' favor on the consumer fraud claim and awarded \$130 million in

disgorgement damages and \$600 million in punitive damages, resulting in a total award of \$1,186,180,000 on all claims against State Farm. The Fifth District Appellate Court affirmed the class action certification under Illinois law and upheld most of the damages awarded except for the \$130 million in disgorgement damages which constituted an impermissible double recovery, reducing the award to \$1,056,180,000.

The Illinois Supreme Court reversed the certification of a nationwide class on both the breach of contract and consumer fraud claims.

**CONTRACT CLAIMS NOT SUITABLE FOR
CLASS TREATMENT**

On the breach of contract claims, the Court found that individual issues predominated over questions common to the class. Specifically, the trial court erred when it held that the operative language in State Farm's various insurance policies could be given a uniform interpretation across the class. The class members in fact did not have policies with uniform language. The two main State Farm policies, which the Court held were not the same, were referred to as "like kind and quality" and "pre-loss condition," the later of which contained an express provision for non-OEM replacement parts. The Court held that for the subclasses, plaintiffs failed to establish any breach of contract by State Farm because of the individualized proof necessary to establish a breach.

The Court also held that plaintiffs failed to establish any contract damages under either their "specification damages" or "installation damages" theories. The "specification damages" theory was based on the claim that the contract was breached by the specification of non-OEM parts and was calculated as the cost difference between OEM parts and the non-OEM parts State Farm listed on the repair estimate. The Court held that this theory of damages had "no basis in the law" and that individual determinations of the actual loss would be necessary for each class member, thus eliminating the

commonality necessary for a class action. The Court also rejected plaintiffs' "installation damages" theory. Under that theory, the damages consisted of the additional costs incurred by plaintiffs in removing non-OEM parts from their vehicles and replacing them with OEM parts. The Court held that the evidence offered in support of these damages was too speculative and uncertain to support an award of damages.

CONSUMER FRAUD ACT LIMITED TO ILLINOIS

The Court also held that the claims under the Illinois Consumer Fraud Act ("ICFA") could not be certified as a nationwide class action. In rejecting the consumer fraud claims, the Court held that plaintiffs' claims could not be based on a breach of a promise in their insurance policy. [Additionally, plaintiffs failed to show a necessary element of consumer fraud, that any named plaintiff actually saw the alleged misrepresentations by State Farm that non-OEM parts were of equal quality or better than OEM parts.] The Court also held that the use of phrases like "quality replacement parts" and "high performance criteria" were merely "puffing" and could not support a consumer fraud claim, and that the guarantee provided by State Farm to replace parts could not form the basis of the consumer fraud claim.

The Court determined that the core allegation of plaintiffs' fraud claim was State Farm's failure to disclose the categorical inferiority of non-OEM parts. The Court held that the ICFA does not apply to fraudulent transactions that take place outside of Illinois. Only one named plaintiff had his vehicle repaired in Illinois, and the Court concluded that he could not even represent a statewide class for a consumer fraud claim as a class representative for two reasons: he had no actual damages under the ICFA because he sold his vehicle for a price that was not reduced due to the installation of non-OEM parts, and he failed to prove proximate causation of damages under the ICFA because no proof that he was actually deceived by a misrepresentation was presented. This eliminated even the possibility of certification of an Illinois only class of plaintiffs on the consumer fraud claim.

The decision by the Illinois Supreme Court is significant in that it represents a shift in appellate review of class action certifications in Illinois and should ensure a thorough review of the elements necessary for class certification from the trial court through appellate levels.

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