

Client Alert

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EVERY V. STATE FARM *Decision Issues**by Matthew M. Neumeier, Howard S. Suskin and Kathy A. Karcher*

The Illinois Supreme Court has issued its long-awaited ruling in *Avery v. State Farm Mutual Automobile Insurance Company*, Case No. 91494, reversing the decisions below in all material respects. In particular, the Court held that the lower court erred by certifying a nationwide class.

This ruling is significant on several grounds:

- The Court reiterated that in order to certify a class action in Illinois, questions common to the class must predominate over individual issues. See 735 ILCS 5/2-801(2). Here, the class members had different insurance contracts requiring different rights and duties.
- The Court limited the use of statistical inference to determine aggregate damages in class actions, holding that the use of such methodology in this case resulted in a violation of the defendant's due process rights.
- The Court held that the Illinois Consumer Fraud Act does not apply to a fraudulent transaction if the circumstances that relate to the disputed transaction occur primarily and substantially outside of Illinois.

Lower Court Rulings

Plaintiffs filed a complaint in Williamson County Circuit Court seeking to represent a nationwide class of automobile policyholders against State Farm Mutual Automobile Insurance Company ("State Farm"), and asserting breach of contract and statutory consumer fraud claims. They alleged that State Farm had a uniform practice of repairing policyholders' vehicles with inferior parts that were not made by or on behalf of the original equipment manufacturers. Plaintiffs claimed that by using non-OEM parts, State Farm failed to restore their vehicles to their pre-loss condition as required by contract, and engaged in consumer fraud by failing to disclose this practice.

The trial court certified a 48-state class under Illinois law, finding no conflict of law between Illinois and the other states, and concluding that the application of Illinois law comported with due process. At trial in 1999, the jury was instructed that State Farm's contractual obligations were the same for each class member. The jury determined that State Farm had breached its contracts with class members and awarded damages of \$456,180,000. The circuit court ruled separately on the consumer fraud claims, and awarded \$130 million in disgorgement damages and \$600 million in punitive damages, for a total judgment of \$1,186,180,000 against State Farm.

On appeal, the Fifth District Appellate Court affirmed the lower court's certification of the class under Illinois law and affirmed the judgment, but disallowed the disgorgement damages as impermissibly duplicative, reducing the total judgment to \$1,056,180,000.

Contract Claims

The Illinois Supreme Court reversed the certification of the nationwide contract class because individual issues predominated over questions common to the class. In particular, the Court held that the trial court erred when it concluded that the operative language in class members' insurance policies could be given a uniform interpretation. In fact, class members did not have contracts with uniform policy language.

On the merits, the Court held that the verdict on the contract claims could not be upheld as to any subclass because Plaintiffs had failed to establish any breach of contract by State Farm, particularly in light of the individualized proof required to establish a breach.

In addition, the Court held that Plaintiffs could not prove any damages on their contract claims, under either of two theories presented by Plaintiffs. First, the Court rejected Plaintiffs' aggregation of contract damages under their "specification damages" theory.

That theory was based on the cost difference between the non-OEM parts listed on the repair estimate, and the OEM parts that were not specified. The Court held that this simple calculation was inappropriate and that individual determinations of actual loss or damages would be necessary, which would destroy the requisite commonality for a class action. The Court then rejected Plaintiffs' "installation damages" theory. Under that theory, Plaintiffs estimated the additional costs that would be incurred by class members if they replaced non-OEM parts on their vehicles with OEM parts. The Court held that use of this theory for determining damages "constituted an arbitrary deprivation of property in violation of State Farm's due process rights."

Illinois Consumer Fraud Act

The Court also held that a nationwide class could not be certified for the consumer fraud claim. The Court first noted that a consumer fraud claim cannot be based simply on an alleged breach of contractual obligations. In addition, Plaintiffs failed to show that any of the named plaintiffs had actually seen alleged misrepresentations by State Farm that non-OEM parts were of equal quality or better than OEM parts, which was a necessary element of a consumer fraud claim. The Court reiterated its holding in *Oliveira v. Amoco Oil Co.*, 201 Ill. 2d 134 (2002), that the Illinois Consumer Fraud Act ("ICFA") does not recognize a "market theory" of causation. The Court also rejected the named Plaintiffs' claim regarding State Farm's guarantee to replace parts, concluding that this claim was unfounded in the absence of any evidence that Plaintiffs had problems enforcing the guarantee.

One of the decision's most significant rulings concerns the propriety of certifying a nationwide class under the ICFA generally. The Court held that the ICFA does not apply to fraudulent transactions

that take place outside of Illinois. Rather, a plaintiff may pursue a private cause of action under the ICFA only "if the circumstances that relate to the disputed transaction occur primarily and substantially in Illinois." In this case, the Court concluded that "[t]he overwhelming majority of circumstances relating to the disputed transactions in this case – State Farm's claims practices – occurred outside of Illinois for the out-of-state plaintiffs," and therefore the out-of-state class members could not pursue a consumer fraud claim under the ICFA.

The Court also considered whether the only named Plaintiff whose vehicle was repaired in Illinois could represent a statewide class for a consumer fraud claim. The Court concluded that this Plaintiff had no consumer fraud claim, and therefore could not be a class representative, for two reasons. First, he could not satisfy the ICFA's requirement of actual damage, because he sold his vehicle for a price that was not reduced despite the use of non-OEM parts, and he was not entitled to specification or installation damages. Second, he failed to prove proximate causation of any damages under the ICFA, because he could not show that he was actually deceived by a misrepresentation. Since the only Illinois named Plaintiff could not prove a private cause of action under the ICFA, the Court held that there could not be certification of even a class of Illinois-only claimants.

This decision will have significant impact on class action practice in Illinois. The Illinois Supreme Court made clear that a plaintiff attempting to represent a class must have a viable claim of his own. More importantly, for consumer fraud claims, the Court not only upheld its prior rulings requiring a plaintiff to show actual deception and damages in order to have a claim, it finally clarified the scope of the ICFA and limited it to truly Illinois-based conduct.

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