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## **ILLINOIS SUPREME COURT REVERSES BILLION DOLLAR CLASS ACTION AWARD**

*(Avery v. State Farm Mut. Automobile Ins. Co.)*

The Washington Legal Foundation today scored a major victory for consumers, and a blow against “regulation by litigation,” when the Illinois Supreme Court overturned an unprecedented \$1.05 billion class action judgment entered against State Farm Automobile Insurance Company. The Court ruled 6-0 that it was wrong for the case to be certified as a nationwide class action on behalf of auto insurance policy holders, and that in any event, the plaintiffs failed to establish breach of contract damages or consumer fraud.

The Illinois suit was filed in 1997 and challenged a long-standing State Farm business practice whereby the company 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 asserted 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 alleged that State Farm’s practice violates the Illinois consumer fraud statute because all non-OEM parts are inferior to OEM parts -- even though many states expressly authorize (and some *require*) use of non-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 for whom non-OEM parts were specified. 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 favorable 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 trial 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 such a mailing would be too expensive. A jury found in favor of the plaintiff class and awarded breach of contract

damages totaling \$456 million. The trial judge found that State Farm had violated the Illinois consumer fraud statute and tacked on an additional \$730 million in damages, including punitive damages. The intermediate appellate court reduced the combined award of \$1.186 billion to \$1.056 billion.

The Illinois Supreme Court ruled that nationwide class certification was inappropriate because of differing facts of each of the policyholders claims. More importantly, the Court held that the "plaintiffs' claim for breach of contract claim fails on the merits" because the specification of non-OEM parts does not breach any of the individual policy forms. As for the statutory consumer fraud claim under Illinois law, the Court held that there was only named plaintiff whose vehicle was repaired in Illinois, and that person failed to establish causation or prove that he suffered any actual damages.

WLF had filed three briefs in the case during various stages of the litigation over the last several years. In addition to the brief filed in the Illinois Supreme Court, WLF filed at the trial level and in the U.S. Supreme Court, arguing that the case should not have been certified as a nationwide class action because individual class members have little in common; the laws of all 50 states should be applied to the various claims, and that individual notice was not provided to the millions of class members. More specifically, WLF argued the vast size of the class and its members' divergent interests made it impossible for the trial court to consider whether any individual insured actually received a substandard repair part for his car.

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 participates in numerous class action cases by either opposing class certification or opposing excessive attorney fee awards on behalf of objecting class members.

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For further information, contact W.F. Chief Counsel Richard Samp or WLF Senior Executive Counsel Paul Kamenar at (202) 588-0302. WLF's brief is posted on its web site, [www.wlf.org](http://www.wlf.org).

For the Court Decision, click link below:

<http://www.state.il.us/court/Opinions/SupremeCourt/2005/August/Opinions/Html/91494.htm>.