

PUBLICATION

Auto Insurers Score Another Victory in the Auto Body Shop Antitrust Litigation

September 1, 2015

On August 17, United States District Judge Greg Presnell (M.D. Fla.) handed the auto insurer defendants in the *In re Auto Body Antitrust Litigation* another significant victory, confirming a "Report and Recommendation" by Magistrate Judge Thomas Smith that recommended that plaintiffs' antitrust claims be dismissed. And, while the plaintiffs have been granted leave to amend their antitrust claims, the plaintiffs' decision not to object to Magistrate Smith's recommendation that the antitrust claims be dismissed (albeit without prejudice) certainly suggests that the plaintiffs may be losing enthusiasm for their antitrust claims and may have decided to focus going forward on the non-antitrust claims that they have also raised in the litigation.

For those unfamiliar with the litigation, the action was commenced by the filing of a single action by A&E Auto Body in federal court in the Middle District of Florida (*A&E Auto Body v. 21st Century Centennial Insurance Co.*), but was quickly transformed into a multi-district litigation proceeding after similar actions were filed by auto body shops in several states. The actions all center upon the claim that many of the nation's leading auto insurers conspired to reduce rates for the repair of damaged vehicles and to steer insureds away from plaintiffs' shops, after plaintiffs refused to accept lower reimbursement rates for their services. All of the cases were consolidated before Judge Presnell in late 2014, and in early 2015 the court dismissed the plaintiffs' claims in the *A&E* case, with leave to amend.

In February of 2015, plaintiffs in the consolidated cases filed an omnibus Amended Complaint, seeking to address the deficiencies in the *A&E* complaint that Judge Presnell had identified in dismissing that initial complaint. The auto insurers moved to dismiss the Amended Complaint as well, arguing that the new complaint was no less infirm than the *A&E* complaint had been.

In June, Magistrate Judge Thomas Smith issued a "Report and Recommendation" in the case, recommending to Judge Presnell that plaintiffs' antitrust claims (and many of their other claims as well) should be dismissed without prejudice. Magistrate Smith noted that the plaintiffs' allegations were quite similar to those in the *A&E* case, and that they failed for the same reasons. With respect to the antitrust allegations, Magistrate Smith concluded that the plaintiffs had again failed to allege sufficient facts to support their claim of unlawful agreement, principally relying upon unacceptable "group pleading" allegations and conclusory allegations rather than facts to support their claims. Specifically, in recommending dismissal of the antitrust claims, Magistrate Smith stated, "The Court's reasoning in dismissing the antitrust claims in [*A&E*] applies with equal force here. Therefore, I recommend that plaintiffs' claims for price fixing and group boycotts in violation of the Sherman Act be dismissed."

While the plaintiffs filed a 45-page brief objecting to Magistrate Smith's "Report," they did not challenge Magistrate Smith's recommendation that their antitrust claims be dismissed. Under the circumstances, Judge Presnell's adoption of Magistrate Smith's Report on the antitrust issue was unsurprising, but welcome news for the auto insurer defendants. Judge Presnell did, however, provide the plaintiffs with leave to amend their antitrust claims and refile them when they *again* amend their complaint. Whether the plaintiffs will accept that invitation, or move forward only with their various tort claims, remains to be seen. However, as of now, it certainly appears that the insurers have defeated the plaintiffs' antitrust claims, in a series of rulings that insurers across the country are likely applauding.

