

PUBLICATION

Insurers Gain Additional Dismissals in the Florida Auto Body Action

May 2, 2016

In early 2014, a group of Florida auto body shops sued the leading auto insurers in their state, alleging that the insurers had conspired to suppress the amounts the auto body shops received in reimbursement rates. The case, *A&E Auto Body v. 21st Century Centennial Insurance*, was followed by the filing of similar class action proceedings by auto body shops in other states, until there were 24 cases in all. Late in 2014, all of the cases were consolidated into a multidistrict litigation proceeding (*In Re Auto Body Shop Antitrust Litigation*) before Judge Gregory Presnell in the Middle District of Florida.

In September of 2015, Judge Presnell dismissed the A&E plaintiffs' antitrust claims, finding that they had failed adequately to allege that the insurers had entered into any unlawful agreement, or that they had participated in a concerted refusal to deal with the plaintiffs. Since that ruling, Judge Presnell has carefully worked his way through the allegations of conspiracy contained in each of the other complaints, in each case dismissing the claims on the grounds that the plaintiffs had failed adequately to allege any insurer conspiracy.

Most recently in March, Judge Presnell ruled on the sufficiency of the complaints filed by a class of Louisiana auto body shops (*Parker Auto Body v. State Farm et al.*) and a class of Utah auto body shops (*Alpine Straightening Systems v. State Farm et al.*). Consistent with his prior rulings, Judge Presnell concluded that antitrust claims alleged by the Louisiana and Utah plaintiffs were also insufficient as a matter of law.

In each decision, Judge Presnell began his analysis by noting that "the crucial question is whether the challenged anticompetitive conduct stems from independent decision or from an agreement, tacit or express (citing *Twombly*)." Judge Presnell further noted that because the plaintiffs lack any direct evidence of agreement, they are required to allege "plus factors" that suggest that the defendants' parallel conduct is suggestive of a collusive agreement to restrain trade. As to the *Parker* plaintiffs' allegations, Judge Presnell held that an assertion that the insurers possess market power was insufficient, because "the fact that a group of alleged price-fixers possess power in a particular market does not, standing alone, make it more likely that the members of that group have entered into an agreement to fix prices." In addition, Judge Presnell observed that merely participating in a trade association similarly "provides no indication of a conspiracy." As to plaintiffs' boycott claim, the Court stated that "there are no allegations in the Second Amended Complaint that any defendant (much less all of them) has ever refused to do business with plaintiffs." Instead, the plaintiffs alleged only that the insurers would not deal with plaintiffs on the terms plaintiffs sought, which the Court held was insufficient.

Similarly, in *Alpine Straightening*, Judge Presnell found plaintiffs' allegation that all of the insurers had taken a similar position on reimbursement issues inadequate. He explained that plaintiffs offer "no explanation" as to how the practice of refusing to pay for repair procedures that other insurers won't pay for is any more suggestive of collusion than independent conduct, and that such conduct is nothing more than a "refusal to pay more than one's competitor pays, which is not a violation of the Sherman Act." Finally, as to the Utah plaintiffs' boycott claim, Judge Presnell again observed that the plaintiffs had failed to allege a refusal by the insurers to do business with them, only that the insurer would not do so on the terms plaintiffs preferred.

As noted above, the *Parker* and *Alpine* decisions are only two of the most recent decisions in this matter, and several of the 24 complaints remain for Judge Presnell's review. However, plaintiffs in five of the earlier

decided cases – *Quality Auto Painting*, *Ultimate Collision Repair*, *Campbell County Auto Body*, *Lee Pappas Body Shop* and *Concord Auto Body* – have already filed an appeal with the 11th Circuit, challenging Judge Presnell's dismissal of their antitrust claims. In a unified brief filed in early April, the plaintiff/appellants contend that Judge Presnell "disregarded the relevant pleading standard and disregarded or disbelieved the facts asserted in the complaints," and urge the 11th Circuit to overturn Judge Presnell's dismissals. The insurers' response to appellants' brief is due in early May. Stay tuned.