

PUBLICATION

Auto Body Shop Antitrust Case Crashes on Appeal; Can It Be Repaired?

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Over two years ago, class action antitrust cases were commenced by numerous auto body shops against many of the largest auto insurers in the nation. In each case, the auto body shops contended that the insurers had conspired to limit the reimbursement rates provided by the insurers for insured repairs. The cases were ultimately consolidated before Judge Gregory Presnell (Middle District of Florida) as the *In re Auto Body Shop Antitrust Litigation*.

Earlier this year, in a series of rulings, Judge Presnell dismissed the claims in each of plaintiffs' actions, finding that plaintiffs had failed to state any actionable claim against the insurers. Several plaintiffs appealed Judge Presnell's rulings to the 11th Circuit Court of Appeals, maintaining that Judge Presnell acted too quickly in dismissing their actions.

Plaintiffs filed their appeal brief in the earliest filed appeal, *Parker Auto Body v. State Farm*, in September, contending that Judge Presnell applied a higher pleading standard to their claims than permitted under *Twombly*, by "disregarding or discrediting facts alleged in the complaint, mischaracterizing factual allegations as conclusory statements, applying affirmative defenses to causes of action, and requiring appellants to plead specific facts beyond that required by Rule 8 of the Federal Rules of Civil Procedure."

The insurers' brief was scheduled to be due on October 31, but in an October 5 Order, the 11th Circuit dismissed the appeal on procedural grounds. Specifically, the Court order indicates that the appellants failed to file the case appendix (the records from the district court that the appellate court reviews when considering an appeal) with their appellate brief, in violation of court rules. While the auto body shops have filed an emergency motion seeking to have the appeal reinstated (claiming that the clerk of the court had informed them that the appendix could be filed at a later date), the Court has not yet ruled on the auto body shops' request.

In addition, the appeal in one of the companion cases (*Alpine Straightening Systems v. State Farm et al.*) may suffer from the same procedural problems. Those appellants (represented by the same counsel as the *Parker Auto Body* plaintiffs) filed their appellate brief on October 11, again without the required appendix. No action has been taken, to date, in that action.

Accordingly, while the 11th Circuit certainly has the power to reinstate the auto body shop appeals should it choose to do so, unless it does so, it appears that appellants may be facing a possible dismissal of their appeals without the opportunity to have the 11th Circuit address Judge Presnell's rulings on the merits. Should that occur, it would bring a rather unorthodox conclusion to a matter that has been closely watched by the entire auto insurer industry for over two years. Stay tuned.