

PUBLICATION

Auto Body Shop Antitrust Appeal in Jeopardy of Being Dismissed on Procedural Grounds

August 31, 2017

On August 17, the clerk of the Eleventh Circuit Court of Appeals issued a notice to all counsel in *Indiana Autobody Association v. State Farm Mutual Automobile Insurance, et al.*, apprising the parties that the plaintiffs' appeal (which challenges the dismissal of their Second Amended Complaint) may be barred on subject matter jurisdiction grounds and directing that the parties file briefs on the issue within 21 days of the notice.

The case is one of several class action antitrust cases brought by auto body shops against several large auto insurers, each of which centers on the claim that the insurers conspired to reduce their payments for insured repairs and to steer insureds away from the plaintiffs' shops. All of the cases were consolidated before Judge Gregory Presnell (Middle District of Florida) in 2015 and, in a series of rulings on the plaintiffs' complaints, Judge Presnell found that the plaintiffs' allegations of conspiracy were insufficient as a matter of law.

While the Indiana auto body shops' appeal takes issue with Judge Presnell's substantive ruling on the sufficiency of their antitrust allegations, the auto body shops will now be required to fend off a series of significant procedural issues before the court will even reach the antitrust issue in the case. Specifically, the notice indicates that plaintiffs' Second Amended Complaint (which is the subject of the appeal) was filed after the deadline established by Judge Presnell and questions whether plaintiffs' failure to file the Second Amended Complaint within the time granted by Judge Presnell transformed his earlier dismissal with leave to amend into a final judgment, divesting the court of any jurisdiction to consider the amended complaint. The notice also requires the parties to address whether "assuming the District Court was without power to grant the [untimely] motion to amend, the plaintiffs were required to seek relief from a final judgment before seeking leave to amend" (which they admittedly failed to do). Finally, the notice also directs the parties to brief whether plaintiffs' failure to take these procedural steps can be excused in this case, notwithstanding the Eleventh Circuit's "demonstrated wariness of grants of Rule 60(b)(1) relief for excusable neglect based on claims of attorney error."

As the series of questions posed by the court make clear, the auto body shops appear to face a very significant procedural challenge to their appeal and this challenge has the potential to bring the case to a close without the Eleventh Circuit ever addressing the merits of the auto body shops' antitrust claim. Will this development ultimately bring an end to a case that has been closely followed by the entire auto insurance industry for several years? Only time will tell; stay tuned.