PUBLICATION

Eleventh Circuit Restores Auto Body Shop Antitrust Case

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On September 7, the Eleventh Circuit Court of Appeals handed a big victory to a class of auto body shops in *Quality Auto Painting v. State Farm, et. al*, reversing a lower court decision that had dismissed the auto body shops' complaint for failure to state a claim. In a 2-1 decision, the court held that Middle District of Florida Senior Judge Gregory Presnell had acted too quickly in dismissing the plaintiffs' complaint, finding that the plaintiffs had "supplied enough allegations" to "raise a reasonable expectation that discovery will reveal evidence of illegal agreement."

The Eleventh Circuit's ruling is the first to consider a series of decisions by Judge Presnell that dismissed both *Quality Auto* and a group of similar cases (approximately 20 in all) that had all been consolidated before him by the Panel for Multidistrict Litigation, over the last two years. In *Quality Auto*, the auto body shop plaintiffs from Kentucky, Missouri, New Jersey and Virginia alleged that the auto insurers, in their respective states, had agreed not to pay more than the "market rate" for repairs, which was pegged to the amount that State Farm paid to those shops in its direct repair program (which did not include plaintiffs). Judge Presnell dismissed the plaintiffs' claims, finding that the plaintiffs had failed to allege facts that suggested agreement rather than independent, but parallel, conduct.

In reversing Judge Presnell's decision, Circuit Judge Wilson, writing for the majority, began his analysis by acknowledging that, under the Supreme Court's decision in *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007), a party claiming horizontal price fixing based on an inferred agreement "must show more than parallel conduct" because parallel conduct "falls short" by itself of the necessary requirements for pleading unlawful agreement. Typically referred to as "plus factors," Judge Wilson identified two plus factors in the plaintiffs' complaint that he concluded supported plaintiffs' allegation of unlawful agreement – (1) the adoption of a uniform price despite variables that would ordinarily result in divergent prices and (2) uniform practices by the allegedly conspiring insurers with respect to the nature of the repairs. Finding that Judge Presnell had failed to give these allegations sufficient weight, Judge Wilson held that "the body shops have consistently alleged parallel conduct and plus factors allowing an inference of an illegal agreement" and reversed the lower court decision on that basis.

Circuit Judge Anderson, however, authored a spirited dissent that disagreed at almost every turn with Judge Wilson's antitrust analysis, stating: "binding case law indicates to me that the allegations of the complaints do not give rise to the necessary reasonable inference of agreement or conspiracy." As to Judge Wilson's first "plus factor" – a uniform price – Judge Anderson maintains that a uniform price only excludes the possibility of conscious parallelism if it is "secret" and "simultaneous" and that the complaints expressly allege that "the insurers conform to State Farm's rate, whatever it may be" rather than agreeing on a rate in advance. This, Judge Anderson writes, is "textbook price leadership, a practice that we have repeatedly stated is insufficient to establish the existence of an agreement." As to Judge Wilson's second "plus factor" – uniform practices – Judge Anderson challenges it as well. While Judge Anderson acknowledges that uniform practices can be a plus factor, he contends that the contention that the insurers engaged in common tactics is found in the auto body shops' appellate brief, but not in their complaint, and that the allegations in the complaint seem to contradict it ("the majority's analysis of its second plus factor suggests that the insurance companies' tactics are highly uniform when even the complaint does not seem to believe that"). Accordingly, finding no support for either of the plus factors relied upon by the majority, Judge Anderson concludes by stating: "I submit that the

majority's analysis is inconsistent with Supreme Court and Eleventh Circuit precedent" and that he would affirm the dismissal of plaintiffs' antitrust claims.

Not surprisingly, given the significance of this MDL proceeding and the split decision by the Panel, the insurer defendants have requested rehearing en banc by the entire Eleventh Circuit. That request, filed on September 28, is currently pending. Accordingly, while the Panel decision constitutes a major victory for the auto body shops, it remains to be seen whether the decision will stand. Stay tuned.