

Illinois Supreme Court Blocks Road to Consumer Fraud Victims  
A look at *Avery v. State Farm*

Mark L. Evans  
Student Fellow, Institute for Consumer Antitrust Studies

In recent years, a national debate has emerged around the issue of class action lawsuits. Often, proponents of “tort reform” point to large jury verdicts as proof of juries gone wild. While this debate is an important one, we must remember that the class action provides an important remedy—often the only one—to victims of mass torts, and in particular, consumer fraud. Multi-million dollar verdicts might seem excessive in some cases, but consumers should be wary of any knee-jerk reaction to the perceived ills of the civil justice system.

This year, the Illinois Supreme Court reversed a \$1 billion judgment in favor of a class of insurance policy holders claiming breach of contract and violations under the Illinois Consumer Fraud Act (ICFA). In so doing, the court has taken a bold step into the national political arena, and sent a clear message that Illinois is no longer a friendly confine of the plaintiff’s bar.

#### The Cause of Action

Plaintiff’s claim centered on the State Farm’s specifications regarding the quality of parts to be used in repairing policyholders’ cars. At issue are two categories of replacement parts used to replace those that have been damaged in a crash. The first category, referred to as “Original Equipment Manufacturer” (OEM) crash parts, are those which have been made by or on behalf of the original manufacturer of the automobile. The other category consists of aftermarket parts, which have been made by companies not affiliated with the original manufacturers. These parts are termed “non-OEM” crash parts.

Plaintiffs’ suit was based on breach of contract as well as violations of the Illinois Consumer Fraud Act (ICFA). Plaintiffs alleged that, under its uniform insurance contract, State Farm promised to “restore plaintiffs’ vehicles to their pre-loss condition using parts of like kind and quality.” State Farm, however, specified the use of non-OEM crash parts whenever such cheaper parts were available. These parts, plaintiffs alleged, are categorically inferior to the OEM parts. Thus the use of non-OEM parts was alleged to be a breach of contract. Plaintiffs’ consumer fraud claim alleged false or deceptive practices in failing to disclose the inferior quality of the non-OEM parts used in the claims process.<sup>1</sup>

Plaintiffs contend that the use of non-OEM parts diminished the value of their cars. In addition, there are other concerns involving the use of such aftermarket parts. Internal memoranda within State Farm recognized a problem with the quality and fit of

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<sup>1</sup> *Avery v. State Farm*, 835 N.E.2d 801, 811 (2005).

the parts, as well as obvious safety problems.<sup>2</sup> Even though the inferior parts came at a cheaper cost to State Farm, the insurer provided no evidence that the use of such parts saved the policyholders any money.

### The Decision

The suit was tried in the circuit court of Williamson County, Illinois, where a \$1.18 billion judgment was handed down in favor of a nation-wide class of policy holders. The court found that, although there were some variations in the form of State Farm's policy from state to state, the operative language in each policy was susceptible to uniform interpretation. Each policy contained an identical promise, according to the court, to pay for parts "of like kind and quality" which would restore the policyholder's vehicle to its "original pre-loss condition".

The jury, after deliberating on the breach-of-contract claim, found that State Farm had breached its contract, and awarded damages to the class. After a bench trial on the consumer-fraud claim, the trial court found that "State Farm misrepresented, concealed, suppressed, or omitted material facts concerning the non-OEM crash parts...."

The Appellate Court of Illinois, Fifth District, affirmed the judgment of the trial court on all respects, with the exception of a certain portion of the damages. Emphasizing the discretion of the trial court with respect to certification, the appellate court found sufficient evidence to support the trial court's ruling that State Farm's policies made the same promise throughout the country. The appellate court also found ample support for the trial court's finding that issues which were common to all class members predominated over other issues. Finally, the appellate court rejected State Farm's claim that certification was inappropriate because varying consumer-fraud laws governed the claims of non-Illinois class members.<sup>3</sup>

The Illinois Supreme Court handed down a scathing opinion which attacked the lower courts' judgments on every issue. First on the chopping block was the class certification issue under the breach-of-contract claim. The Supreme Court began by faulting the appellate court for its decision to address the question of uniform contract interpretation at trial rather than at the class certification stage. Citing the differences in form of State Farm's contracts from state to state, the Supreme Court held that the appellate court abused its discretion in determining that the policies could be given a uniform interpretation. Thus, court reasoned, there could be no "commonality and predominance" of questions of fact and law as required by the Illinois class certification statute.

The Court next attacked the propriety of the class under ICFA. The Court interpreted the act to allow a cause of action when "circumstances that relate to the disputed transaction occur primarily in Illinois." Under this interpretation, the Court held

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<sup>2</sup> The American Trial Lawyer Association, *The Truth Behind Avery v. State Farm*, available at <http://www.atla.org/homepage/stat1124.aspx>.

<sup>3</sup> *Avery v. State Farm*, 746 N.E.2d 1442, 1247 (Ill. App. 5th Dist. 2001)(*rev'd* 835 N.E.2d 801 (2005))

that the out-of-state plaintiffs, whose vehicle damage, repair estimates, and vehicle repairs took place outside of Illinois, had no cause of action under the ICFA.

Finally, the Court slammed the door on the plaintiffs' claim by addressing the merits. The Court held that State Farm owed no duty to disclose the inferior nature non-OEM parts used in its claims process. Further, the Court held that plaintiffs could not demonstrate any damages resulting from State Farm's use of the inferior parts.<sup>4</sup>

### The Impact

The *Avery* decision is likely to have a chilling effect on future class actions in Illinois. This is especially troublesome to victims of consumer fraud, for whom class actions may provide the only means of protection.

The policy behind the class action lawsuit is to provide a means for parties to collectively vindicate their rights where a solo action would not be worth while.<sup>5</sup> The Illinois courts have recognized the particular importance of class actions in consumer protection cases, where individual suits are so often an economic impossibility.<sup>6</sup> The *Avery* decision, however, establishes a significant barrier to nationwide class actions under IFCA. Only where the cause of action arises primarily in Illinois may plaintiffs join such an action.

This potential effect on class actions may not have been accidental. Today, it is not uncommon to hear various cries for "tort reform" and accusations of juries "gone wild." Because of its broad scope, the ICFA has made Illinois an attractive forum for those bringing consumer fraud claims. Certain downstate Illinois counties, and particularly the Fifth Appellate district, are constant targets of criticism. It is possible that the court, with the expansive scope of the *Avery* decision, intended to combat the perception that plaintiffs in class action and ICFA suits have a home field advantage in Illinois.<sup>7</sup>

The first to recognize this possibility, and undoubtedly not the last, were the dissenting justices in the *Avery* decision. Justice Freeman, joined by Justice Kilbride, dissented from the majority. Freeman noted that the majority's opinion "appears to be my colleagues' point of entry into the ongoing national debate concerning class action litigation." Freeman further questioned the majority's hostility to the time-honored principles of the class action lawsuit. He also expressed his concern that that the opinion "sends a message that we, as a court, will employ different standards for cases coming out of the Fifth District on which national attention has been focused in order to reach a desired result."<sup>8</sup>

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<sup>4</sup> *Avery*, 835 N.E.2d 801 at 820

<sup>5</sup> *See Mace v. Van Ru Credit Corp.*, 109 F.3d 338, 344 (7th Cir., 1997). This policy reason was also recognized by the Fifth District in *Avery*. *Avery*, 746 N.E.2d at 1251.

<sup>6</sup> *Avery*, 746 N.E.2d at 1251.

<sup>7</sup> *Id.*

<sup>8</sup> *Avery*, 835 N.E.2d 801 at 882 (J. Freeman, Dissenting).

Only time will tell if the *Avery* decision will indeed have the chilling effect suggested above. One can only hope that the Illinois Supreme Court, in an effort to put the breaks on the perceived excesses of class action litigation in Illinois, has not closed the only avenue open to many victims of consumer fraud.