PUBLICATION

Strike Three: Antitrust Claims in Florida Auto Insurer Proceeding Dismissed With Prejudice

November 2, 2015

On September 23, District Court Judge Gregory Presnell (Middle District of Florida) dismissed the antitrust claims asserted by a class of auto body shops in *A&E Auto Body v. 21st Century Centennial Insurance*, this time *with* prejudice. Noting that this was the plaintiffs' third attempt to allege their claims against the auto insurer defendants with the precision required by the Federal Rules, Judge Presnell concluded that "the problems identified in response to [plaintiffs'] initial complaint – shotgun pleading, vagueness, and implausibility – have persisted in their subsequent efforts," and dismissed the claims on that basis.

The *A&E* action was the earliest filed of more than 20 antitrust actions filed by auto body shops across the country against the majority of the auto insurers offering policies in the states where the plaintiffs do business. The cases were subsequently consolidated by the Judicial Panel for Multidistrict Litigation before Judge Presnell as *In re Auto Body Shop Antitrust Litigation* (MDL 2557), with the A&E case being the most advanced case in the proceeding. In each case, the plaintiffs, typically a class of auto body shops, alleged that the auto insurer defendants in their states utilized market surveys designed to determine "market rates" and then used these rates as a mechanism to reduce their payments for covered services and steer business away from plaintiffs, who refuse to accept the "market rates" for their services.

In dismissing the *A&E* plaintiffs' antitrust claims, Judge Presnell began by noting that "the alleged behavior of the defendants – i.e., paying the same rates, refusing to pay for the same list of procedures, requiring lower-quality parts – is not enough, on its own, to violate Section One of the Sherman Act." The "crucial question," according to Judge Presnell, is "whether the conduct stems from independent decision or from an agreement, tacit or express." *Bell Atlantic v. Twombley*, 550 US 544, 553 (2007). To state a claim, plaintiffs "must provide enough factual matter, taken as true, to show that defendants took steps that would otherwise have been against their economic self-interest or that tends to show collusion." As Judge Presnell found, the *A&E* plaintiffs' allegations did not meet this standard.

First, the auto body shops had not adequately alleged that the insurers had acted against their self-interest. As Judge Presnell observed, "paying as little as possible for repairs is clearly in the self-interests of automobile insurers, as it improves their bottom lines." Second, Judge Presnell also found that plaintiffs had failed to allege sufficient "plus factors" to support their claim of collusion. As to plaintiffs' "market power" plus factor, Judge Presnell held that "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." Next, addressing plaintiffs' "motive" plus factor, the court held that "the defendants' desire to make a profit cannot constitute a plus factor, because conscious parallelism (which is not unlawful) is itself a profit-maximizing behavior." In addition, the "opportunity to conspire" that plaintiffs also attempted to characterize as a plus factor was also insufficient, as "a number of the defendants are not members of any of the [trade] organizations" and mere "participation in trade organizations 'provides no indication of conspiracy.'" Accordingly, having still failed adequately to allege any actionable conspiracy – on their third attempt – Judge Presnell held that plaintiffs' conspiracy claim should be dismissed with prejudice.

Turning next to plaintiffs' boycott claim, which focused on whether defendants "steered actual and potential customers away [from plaintiffs] by disseminating false statements about the quality, timeliness, and/or price of

the work done by the plaintiff shops," the court concluded that plaintiffs' allegations also failed to state an actionable claim under this antitrust theory. Specifically, the court held that "even accepting the allegations as true, they in no way suggest that the defendants have engaged in a *concerted* refusal to deal" with plaintiffs. Instead, because "there are no allegations that at any time any of these steering incidents occurred, the other defendants were also preventing their insureds from utilizing that particular plaintiff's services," concerted activity – necessary element of the claim – had not been adequately alleged. Accordingly, Judge Presnell also dismissed this antitrust claim as well.

After dismissing both of plaintiffs' antitrust claims, the court also dismissed plaintiffs' tortious interference and quantum meruit claims, and concluded that "plaintiffs' pleadings have not come remotely close to satisfying the minimum pleading requirements as to any of the claims asserted." In addition, with language that may have been a signal that the entire MDL proceeding may soon be coming to an end, Judge Presnell stated that the other "20 odd cases" in the MDL "almost all share the same shortcomings" as the A&E case. Motions by the defendants as to the claims in those cases have not yet been ruled upon by the court. Stay tuned.