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2/24/2011 **Executive Alert**

Seventh Circuit Issues Significant Decision on Consumer Injunctive Relief Class

In a decision authoritatively rejecting the use of injunctive relief on a class basis for consumer claims, on February 14, 2011, the Seventh Circuit Court of Appeals reversed certification of a class under Rule 23(b)(2). *Kartman v. State Farm Mut. Automobile Ins. Co.*, Case no. 09-1725, 2011 U.S. App. LEXIS 2830.

Baker Hostetler argued on behalf of State Farm, and the Court of Appeals agreed, that the trial court erroneously certified a class action on the issue of whether State Farm should be required, by issuance of a mandatory injunction, to re-inspect 49,000 policyholders' roofs for hail damage using a "reasonable, objective standard." True to recent precedent, the Seventh Circuit analyzed the underlying merits of plaintiffs' claims in finding that the requirements for class certification had not been met.

The Court of Appeals first clarified, as State Farm had argued, that the plaintiffs only had one possible injury—the alleged underpayment of insurance claims for hail damage to their roofs. It ruled that the remedy for that injury was damages, and not an injunction requiring State Farm to re-inspect roofs. The Court further stated that State Farm had no independent duty to use a particular method to evaluate hail-damage claims. Because the trial court correctly denied the plaintiffs' request to proceed as a class action for money damages under Rule 23(b)(3), the Court of Appeals found that the class action should have ended there.

The Court of Appeals then held that the request for an injunction requiring State Farm to re-inspect roofs was improper for several reasons. First, plaintiffs had an adequate remedy at law for the alleged injury—the underpayment of insurance claims—which could be remedied by payment of damages, rendering an injunction unnecessary and improper. Moreover, it found that the equities of an injunction would weigh disproportionately on State Farm, requiring State Farm to reinspect roofs of class members who had been fully compensated for their loss, and reinspections would be moot for those class members who had already replaced their roofs. The Court also found that the plaintiffs' "reasonable, objective standard" for measuring hail damage was far too general to notify State Farm of what was required of a re-inspection, and anything more specific would require the Court to write an insurance-adjustment code, which it was not prepared to do. Finally, the Court found that injunctive relief would not be a final remedy, but would only lead to thousands of proceedings to determine whether State Farm had in fact underpaid claims of each class member—individualized factual inquiries that are not proper for a class action.

This decision is significant in its rejection of the creative attempt to certify a class of consumer claims for injunctive relief, the analysis of the "finality" and "appropriateness" elements of Rule 23(b)(2) for which little authority exists, and the willingness to delve into the merits of the underlying claims to determine that class certification was not appropriate.

If you have any questions about this decision or how it may impact your business, please contact Ernie Vargo (evargo@bakerlaw.com or 216.861.7349), Mark Johnson (mjohnson@bakerlaw.com or 614.462.2698) or your regular Baker Hostetler contact.

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