Press Release

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WLF Asks En Banc Eleventh Circuit to Adhere to SCOTUS Pleading Threshold in Antitrust Suits

(Quality Auto Painting Ctr of Roselle, Inc. v. State Farm Indem. Co.)

"Unless hundreds of auto insurers have, for decades, maintained *omertà* worthy of 'Men in Black' studying aliens at Area 51, the historic reality of the market practices at issue here sinks the plaintiffs' implausible complaints."
—Cory Andrews, WLF Senior Litigation Counsel

WASHINGTON, DC—Washington Legal Foundation (WLF) yesterday urged the *en banc* U.S. Court of Appeals for the Eleventh Circuit to affirm the dismissal of several antitrust complaints in *Quality Auto Painting Ctr. of Roselle, Inc. v. State Farm Indem. Co*.

The case arises from a consolidated appeal of five antitrust actions by auto-body shops against dozens of insurers. They allege that the defendant-insurers violated the Sherman Antitrust Act by conspiring to fix auto-repair reimbursement rates and to boycott certain body shops in favor of others. Those claims were dismissed by the U.S. District Court for the Middle District of Florida, but a divided panel of the Eleventh Circuit later reversed the dismissal and reinstated the case. After vacating that panel decision and granting rehearing, the *en banc* appeals court requested another round of briefing.

As WLF's brief explains, the plaintiffs' position, if adopted, would permit an antitrust complaint to allege merely parallel conduct among competitors as a sufficient basis for pleading an illegal agreement among competitor defendants. WLF urges the Eleventh Circuit to affirm the district court's dismissal in light of the Supreme Court's decision in *Twombly v. Bell Atlantic Corp*., which requires antitrust plaintiffs to assert more than merely parallel conduct among competitors to plead the existence of a conspiracy. As *Twombly* makes clear, because parallel conduct alone can just as easily reflect rational and competitive business strategies prompted by the free market, it cannot serve as the basis for an antitrust complaint.

WLF's brief also emphasizes the implausibility of any conspiracy, given the vast size and scope of the cartel alleged by the plaintiffs. The plaintiffs sued 89 defendants in all; many of the individual lawsuits underlying the appeal involve dozens of insurance companies. As WLF's brief explains, an antitrust plaintiff claiming so intricate and large a conspiracy faces several unique problems—problems of formation, enforcement, and detection—that the plaintiffs cannot possibly overcome. Beyond that, WLF's brief explains, the plaintiffs allege the existence of a pointless and highly implausible cartel—one that conspires to organize behavior long established by market forces.

The Eleventh Circuit has set *en banc* oral argument in the case for the week of October 22, 2018.

Celebrating its 41st year, WLF is America's premier public-interest law firm and policy center advocating for free-market principles, limited government, individual liberty, and the rule of law.

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