Industry Insight
with John Yoswick

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Legal Battle That Began with Non-OEM Parts Back in 1997 Still Being Waged Today

Lloyd Karmeier

Back in 1999, a court decision in a class action lawsuit resulted in a $1.2 billion judgment against State Farm – at the time one of the largest judgments ever levied against an insurer. The ruling changed the way many insurance companies dealt with non-OEM parts for years, and despite the fact that the judgment was later nullified, the "Avery vs State Farm" lawsuit even today is seen as the basis for State Farm's limited use of such parts.

But now, 18 years after that lawsuit began, the lawyers who represented the vehicle-owners in the Avery lawsuit are still fighting against the overturning of that judgment by the Illinois Supreme Court. The amount they are seeking from State Farm this time is considerably larger: triple the damages of the Avery case plus more than a decade of interest, all adding up to more than $8 billion.

Though a portion of that money would still go to the vehicle-owners who sued back in the late 1990s, the current lawsuit has nothing to do with parts and everything to do with political influence. The suit alleges that State Farm played a pivotal role in the successful 2004 election campaign of a judge to the Illinois Supreme Court – a judge that the next year became the fourth vote on that court to overturn the Avery decision and nullify the judgment against State Farm.

Some quick background

The original Avery lawsuit on behalf of about 4.5 million drivers who had non-OEM parts installed on their vehicles as part of their State Farm claim alleged that the parts were inferior to OEM, and thus the insurer breached its contract to return those cars to "pre-loss condition." A jury in 1999 agreed, finding also that State Farm had defrauded consumers by concealing known problems with the parts.

In 2001 in response to an appeal by State Farm, an appellate court affirmed the decision but lowered the damage award to $1.05 billion. State Farm then filed an appeal with the Illinois Supreme Court.

In 2004, Judge **Lloyd Karmeier** was elected to his first 10-year term on the Illinois Supreme Court. At that time, lawyers for the plaintiffs in the Avery case sought to have Karmeier recuse himself from participating in the Avery decision because they claimed his election campaign had received significant campaign contributions from State Farm. But Karmeier did not recuse himself.

The next year, four of the six Justices on the Court—including Karmeier—voted to overturn the Avery ruling. The court ruled that the case should not have been approved as a national class action because State Farm uses different policy language in different states and even within the same state. The Court found no breach of contract under any of the three different policy wordings related to the use of parts. It ruled that the plaintiffs in the case failed to demonstrate damages. And the court pointed out that plaintiffs did not contend that non-OEM parts are defective, only that they are all not as good as OEM parts.

The decision emboldened insurers, some of which had curtailed calling for the use of non-OEM parts for some years after the 1999 Avery judgment, to return to pushing shops to use the parts.

New findings, new lawsuit

But in 2011, lawyers for the plaintiffs in the Avery case filed a lawsuit claiming they had new evidence of State Farm's involvement in the recruitment of Karmeier as a candidate and in financing the campaign that lead to his election to the Illinois Supreme Court. That campaign shattered state and national spending records for a judicial seat, with the two candidates spending more than $9 million combined. The current lawsuit argues that State Farm "delivered 'tremendous' financial support (at least $2.5 million and as much as $4 million) to Justice Karmeier's campaign."

The plaintiffs' attorneys argue, for example that State Farm attorney and lobbyist William Shepherd was on the executive committee of the Illinois Civil Justice League (ICJL), which recruited and endorsed Karmeier as a candidate for the seat on the court, and was involved with weekly conference calls with Karmeier's campaign manager (the head of the ICJL).

The money trail described in the court filings to date is a bit convoluted, indicating that the contributions largely came through intermediary organizations being influenced by State Farm. The ICJL, for example, through its political action committee made $1.1 million in direct and in-kind contributions to Karmeier's campaign.

Also at the time, the lawsuit argues, State Farm CEO Ed Rust was part of the U.S. Chamber's leadership team that selected which judicial campaigns to target, and Illinois was identified as a "Tier 1" state to target. State Farm donated $1 million to the U.S. Chamber's judicial election efforts, the U.S. Chamber donated over $2 million to the Illinois Republican Party, and that organization in turn bought $1.94 million in advertising for the Karmeier campaign.

Attorneys say the new evidence should lead the court to reinstate the judgment against State Farm, or alternatively redecide the case without Karmeier's involvement.

State Farm has argued that overturning the Avery ruling would be "disruptive in the extreme" to the Illinois legal system because the ruling has been cited in more than 200 subsequent court opinions. The insurer argues the contributions to Karmeier's campaign from State Farm employees and others connected with the insurer were "quite modest," estimated to be about $350,000. And it says the notion of "State Farm-influenced contributions" relies on an unsubstantiated argument that the insurer controls such organizations as the U.S. Chamber and the ICJL.

Deposition of a Supreme Court Justice

The most recent argument in the ongoing legal battle has been over whether Karmeier can be questioned under oath. A deposition of a sitting justice on a state supreme court is extraordinarily rate. A magistrate judge earlier this year ruled the attorneys suing State Farm could submit 20 questions to Karmeier in writing, but that Karmeier could not be subjected to a formal deposition.

But in a dramatic turn-about in March, U.S. District Court Judge David Herndon overturned that ruling, saying that having Karmeier give testimony is the only way to give both sides a fair opportunity to "explore the facts, and for the public, in the face of such allegation, to learn the truth." Judge Herndon said Karmeier can be questioned about all aspects of his election campaign but not about his deliberations in any case while on the Supreme Court.

In addition, he ruled that the plaintiffs' attorneys also may depose State Farm vice president Robert Shultz about his involvement in Karmeier's election. Shultz served on the Illinois State Bar Association committee that evaluated Karmeier and his opponent prior to the 2004 election.

The attorneys argue that Shultz should have recused himself from that evaluation committee given the Supreme Court's pending review of the "Avery" lawsuit. But Schultz did not recuse himself, and the committee rated Karmeier as "highly qualified," while rating his opponent, Gordon Maag, as only "qualified."

Why might State Farm have preferred Karmeier's election over Maag's? One possible reason: Prior to unsuccessfully running against Karmeier in 2004, Maag was one of the five appellate judges who in 2001 had affirmed the judgment against State Farm in the Avery non-OEM parts lawsuit.

Judge Herndon said the deposition of Schultz could explore "whether he made any attempt to persuade his fellow committee members in any way, and if so what his motives in doing so were, and whether he was encouraged to do so by anyone acting on behalf of State Farm."

No doubt many such interim legal skirmishes will be waged before next January when an actual trial in the case is tentatively scheduled to begin. The legal battle that began over non-OEM parts back in 1997 has still not seen its final chapter.