

*Client Alert*

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## *Illinois Supreme Court Rules Class Action Not Permitted for Mass Tort Case*

*by Marisa K. Perry, Matthew M. Neumeier, Avidan J. Stern, Howard S. Suskin*

On November 30, 2006, the Illinois Supreme Court unanimously ruled that the class action mechanism is unsuitable for most mass tort personal injury cases. *Smith v. Illinois Cent. R. Co.*, No. 102060 (Ill. Nov. 30, 2006). The ruling is significant because it was a case of first impression for the Court. In *Smith*, the Court held that the lower court abused its discretion in granting class certification to a group of plaintiffs who alleged injury from a train derailment and subsequent chemical spill. Although the Court recognized a trend toward class certification in personal injury cases arising from a single catastrophic cause, it found more persuasive recent cases decided by the Texas Supreme Court and United States Court of Appeals for the Fifth Circuit disfavoring class certification in mass tort personal injuries. In particular, the Court deemed the class mechanism inappropriate where individualized personal injury issues predominate over the question of liability for the catastrophic incident.

In this case, a freight train derailed in a small rural community, spilling its various chemical contents onto the ground. Some of the chemicals caught fire, resulting in a mandatory evacuation of some 1,000 individuals. Eleven plaintiffs sued, alleging various counts of negligence, nuisance and trespass. The class that was certified by the trial court consisted of individuals and businesses in the vicinity of the train derailment "who or which have sustained legally cognizable compensatory or punitive damages...as a proximate result of" the train derailment.

The Court rejected the reasoning of the lower courts, which concluded that certification was appropriate because issues of liability for the train derailment would predominate at trial. In reversing class certification, the Court noted that the bulk of the plaintiff injuries and damages stemmed from the chemical spill rather than the train derailment, and that the "lower courts in this case erroneously equated liability for the derailment with liability for the alleged health consequences arising from exposure to the chemicals." The Court concluded that proof of causation and damages would be highly individualized and would vary depending on the degree of exposure, the type of exposure, and the particular individual involved. The Court reasoned that even though liability for the derailment might be "relatively straightforward," that alone would not establish the Railroad's liability to the entire class for the variety of damages sought, as "[n]ot only will each individual plaintiff be required to prove the amount of damages, he or she will also have to prove which types of damages were incurred." Because the individual issues predominated over those common to the class, the Court rejected class certification and remanded the case for further proceedings.

The ruling in *Smith* potentially has broad ramifications for how class actions are viewed and permitted in Illinois. Consistent with recent trends in the consumer class action arena, the Illinois Supreme Court in *Smith* again has taken a more restrictive

approach on the issue of whether class actions are to be permitted. In the wake of *Smith*, whenever issues of proof of proximate causation and damages may be characterized as “highly individualized” or “consuming the bulk of the time at trial,” defendants will have a compelling argument that the statutory requirement of predominance cannot be met and a class action should not be certified.

Jenner & Block attorneys Stephanie A. Scharf, Co-Chair of our Products Liability and Mass Tort Defense Practice, and John K. Min authored an amicus brief in this case on behalf of the Products Liability Advisory Council.

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