No. 91494
IN THE
SUPREME COURT OF ILLINOIS

MICHAEL AVERY, et al., On Behalf of Themselves and All Others Similarly Situated, **Plaintiff-Appellees-Respondents,** **vs.** **STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,** **Defendant-Appellant-Petitioner.**	**On Petition for Leave on Appeal From the Appellate Court of Illinois, Fifth Judicial District** **No. 5-99-0830** **There Heard on Appeal From the Circuit Court, First Judicial Circuit Williamson County, Illinois** **No. 97-L-114** **CLASS ACTION** **Honorable John Speroni, Presiding Judge**

***AMICI* BRIEF OF TRIAL LAWYERS FOR PUBLIC JUSTICE, AARP AND THE NATIONAL ASSOCIATION OF CONSUMER ADVOCATES IN SUPPORT OF THE POSITION OF CLASS PLAINTIFFS-APPELLEES-RESPONDENTS**

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POINTS AND AUTHORITIES

Interest of Amici

Trial Lawyers for Public Justice ("TLPJ") is a national public interest law

firm that specializes in precedent-setting and socially significant civil litigation and is dedicated to pursuing justice for the victims of corporate and governmental abuses. Litigating throughout the federal and state courts, TLPJ prosecutes cases designed to advance consumers' and victims' rights, environmental protection and safety, civil rights and civil liberties, occupational health and employees' rights, the preservation and improvement of the civil justice system, and the protection of the poor and the powerless. While TLPJ regularly objects to abusive class action settlements, it strongly believes that nationwide class actions in appropriate cases are often the only way that consumers can effectively vindicate their legal rights.

AARP is a non-profit organization with more than 35 million members aged 50 and older. As the largest membership organization serving older Americans, AARP is greatly concerned about unfair and deceptive practices in the financial services and credit markets. AARP thus supports laws and public policies to protect consumers' rights and to preserve the means for them to seek legal redress when they are harmed in the marketplace.

The National Association of Consumer Advocates ("NACA") is a non-profit corporation whose members are private and public sector attorneys, legal services attorneys, and law professors and students whose primary practice involves the protection and representation of consumers.

SUMMARY OF ARGUMENT

State Farm asks this Court to "reverse the lower court's nationwide application of Illinois law." Petition at 6. State Farm argues that applying Illinois law on a nationwide basis "violates basic precepts of federalism" and is "contrary to the national trend. . . ." *Id*. State Farm would have this Court abandon an elemental and longstanding rule of class action law: when a defendant based in a state commits wrongful acts in that state that harm persons in other states, it is entirely appropriate for the law of the state to be applied to the claims of all wronged persons in the nation.

State Farm implies that few if any other states would apply their own laws to the in-state conduct of their own corporate citizens. *E.g.*, Petition at 7. In fact, over a period of several decades, a large number of state and federal trial and appellate courts have agreed with the principle that a state may apply its own law to the claims of non-residents when a resident corporation violates that state's laws. This brief will include and discuss a variety of these cases, including cases from large states and small, cases from federal and state courts, cases from appellate and trial courts, and cases nationwide. The most commonly articulated rationale for applying a state's law to the claims of non-residents in this setting is simple, powerful, and entirely applicable to this case: a state has a strong interest in

preventing its own corporate citizens from harming persons in other states.

While State Farm complains about the supposed radical nature of applying Illinois law to the claims of non-residents in a nationwide class action, this brief will demonstrate that this is a terribly common and entirely appropriate approach. Far from representing some great break with principles of federalism, the decision to permit non-Illinois residents to obtain relief for misconduct taking place in Illinois is entirely a common-place scenario.

ARGUMENT

I. COURTS HANDLING NATIONWIDE CLASS ACTIONS ROUTINELY APPLY THE LAW OF THE STATE WHERE THE CONDUCT TOOK PLACE TO THE CLAIMS OF ALL CLASS MEMBERS.

The U.S. Supreme Court has given some guidance as to when a state may constitutionally apply its own laws to the claims of non-residents. In *Philips Petroleum v. Shutts*, 472 U.S. 747 (1985), the Court held that when there are "true conflicts" between the laws of the state where a lawsuit is pending and the laws of other states, 472 U.S. at 816, that a state may only apply its own laws to the claims of non-residents if the state has a "significant contact or significant aggregation of contacts" to the claims asserted by the non-residents, so that the application of that state's laws is "neither arbitrary or unfair." 472 U.S. at 818.

Accordingly, this Court must look at two questions: (a) is there a "true conflict" between Illinois law and the law in other states on the matter at issue in this case; and (b) if so, would it be "arbitrary or unfair" to apply Illinois law to the claims of non-residents? This brief will address these questions in reverse order. As Part I-A below explains, the well-established law throughout the United States recognizes that Illinois has a very great interest in seeing that its corporate citizens do not violate its consumer protection laws. As Part I-B below explains, there is no conflict among the states on the true subject of this lawsuit – whether a corporation may deceive consumers or break its promises to them.

A. The Great Weight of Authority Nationwide Recognizes that Illinois has a Great Interest in Preventing its Own Corporate Citizens from Violating Illinois's Consumer Protection Laws.

As national organizations interested in consumer protection, *amici* are well-positioned on the central issue of when a state may apply its own law to the claims of non-resident class members. *Amici* are less well-positioned to discuss the factual conclusions to be drawn from the testimony and documents presented in this case. Accordingly, *amici* will assume that the Court of Appeals correctly affirmed the jury's determinations that State Farm breached its contracts with the

class and violated the Illinois Consumer Fraud Act.[1] Similarly, amici will assume that the Court of Appeals was correct when it found that the plaintiffs had presented sufficient evidence to support the jury's conclusion that the "policy and practice [at issue] was devised, implemented, dictated and monitored from [State Farm's] home office in Bloomington, Illinois." *Avery v. State Farm Mut. Auto Ins. Co.*, 321 Ill. App. 3d 269, 274, 746 N.E.2d 1242, 1248, 254 Ill. Dec. 194, 200 (2001).

The question then becomes whether these facts make it constitutional and appropriate for this Court to affirm the application of Illinois law to non-residents. In fact, this Court has already addressed this issue. In the course of an opinion permitting the application of Illinois law to the claims of persons throughout the United States, this Court observed that Illinois has "legitimate interests . . . in insuring that persons and entities with its jurisdiction, insofar as they undertake to act as agents, do so in accordance with its law." *Martin v. Heinhold Commodities,*

[1] While this brief will not address this issue in great detail, *amici* do note that the factual determinations of a jury that sat through nearly 30 days of often-conflicting factual and expert testimony are entitled to great deference, and that the Court of Appeals' decision traces through a great many excerpts of testimony and documents that (if true) would strongly support these findings.

Inc., 117 Ill.2d 67, 82, 510 N.E.2d 840, 847, 109 Ill. Dec. 772, 779 (1987).[2] This seminal case was discussed by the Court of Appeals in the decision below, 321 Ill. App. 3d at 281, 283, 746 N.E.2d at 1254, 254 Ill. Dec. at 206, and was also discussed at some length in the briefs of the parties to that court. To avoid duplication, and in the awareness that this Court is already quite familiar with its own jurisprudence and that of other Illinois appellate courts, this brief will not further add to the discussion of the *Martin* case.

In *Amici*'s capacity as national consumer organizations, however, we propose to demonstrate that this Court's decision and opinion in *Martin* are entirely consistent with the opinions from a great many courts throughout the United States. State Farm suggests that this Court should "revisit" its conclusions

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[2] *Martin* flowed naturally from this Court's earlier decision in *Miner v. Gillette Co.*, 87 Ill.2d 7, 428 N.E.2d 478, 56 Ill. Dec. 886 (1981), and has been repeatedly cited by this State's lower appellate courts. In addition, a number of courts in other jurisdictions have cited *Martin* for the proposition that a state may apply its law to the claims of non-residents against resident corporations. *E.g., Perry v. Household Retail Serv., Inc.*, 953 F. Supp 1378, 1382-83 (M.D. Ala. 1996) ("In *Martin*, for example, the court held that Illinois law – both the Illinois Consumer Fraud Act and the Illinois law of fiduciary responsibility – would be applied to all members of the class because Illinois had a substantial interest in seeing that companies operate in the state operate lawfully."); *Renaissance Cruises, Inc. v. Glassman*, 738 So.2d 436, 439 (Fla. Dist. Ct. App. 1999) (discussing *Martin* at length and then applying Florida law to all class members' claims because defendant's principal place of business was in Florida and defendant's business operations were controlled and carried out in Florida "[f]or the most part. . . .")

in *Martin*, Petition at 6, and suggests that this Court's opinion in *Martin* is now contrary to the "national trend." *Id*. In fact, *Martin* fits comfortably into a very large body of authority (old and new) throughout the nation.

A particularly powerful statement of this doctrine was set out by the Arizona Supreme Court, for example, in *State ex rel. Corbin v. Pickrell*, 136 Ariz. 589, 667 P.2d 1304 (Ariz. 1983). In the *Pickrell* case, the court held "that the state has legitimate interest in redressing the wrongs committed from within Arizona." 136 Ariz. at 597, 667 P.2d at 1312 The court gave two reasons for this position, each of which is equally applicable here. First, it explained that "[t]here is a moral imperative to provide redress for those injured." *Id*. The second reason was equally powerful:

> [W]hen out-of-state investors are swindled by Arizona enterprises, the reputations and businesses of the majority of honest business people within the state are harmed. That this state is willing to provide aid in redressing these wrongs is evidence that the state is serious in its fight to eradicate organized crime. This evidence may instill confidence in non-residents seeking to invest in the legitimate businesses of this state.

Id.

The California Supreme Court set forth similar reasons for reaching the same conclusion in *Diamond Multimedia Systems, Inc. v. Superior Court*, 19 Cal. 4th 1036, 968 P.2d 539, 80 Cal. Rptr. 2d 828 (Cal. 1999). The court strongly

approved the application of California's securities law to the claims of non-resident stock purchasers who were misled by conduct occurring in California. Like the Arizona Supreme Court, the California Supreme Court explained that such a policy helps California businesses:

> California also has a legitimate and compelling interest in preserving a business climate free of fraud and deceptive practices. California business depends on a national investment market to support our industry. The California remedy for market manipulation helps to ensure that the flow of out-of-state capital necessary to the growth of California business will continue.

19 Cal. 4th at 1064. The court also noted that enforcing laws "exposing illegitimate issuers to liability" has the effect of "protecting" legitimate California businesses. *Id*. at 1062 (citation omitted). The court's decision and rationale confirmed a number of previous California appellate decisions. *See, e.g., Hurtado v. Superior Court*, 11 Cal.3d 574, 584, 522 P.2d 666, 114 Cal. Rptr. 106 (Cal. 1974) ("California has a decided interest in applying its own law to California defendants who allegedly caused wrongful death within its borders."), and *Clothesrigger, Inc. v. G.T.E. Corp.*, 236 Cal. Rptr. 605, 609-610, 191 Cal. App. 3d 605 (1987) (citing *Hurtado*).

Another leading case in this line is *New York by Abrams v. Camera Warehouse, Inc.*, 496 N.Y.S.2d 659, 130 Misc. 2d 498 (N.Y Sup. Ct. 1985). In

Camera Warehouse, the court held that the State had the power to obtain restitution for violations of a statute prohibiting credit card surcharges "for all consumers . . . regardless of the residency of the consumer." *Id*. at 660. The court explained that "[a] state is damaged if its citizens are permitted to engage in fraudulent practices even though those parties damaged are non-residents of the state." *Id*.

A host of other courts have followed and applied these basic principles in a consistent line of cases stretching back for several decades. Some illustrative cases include:

- *In re Pizza Time Theatre Sec. Litig.*, 112 F.R.D. 15, 18 (N.D. Cal. 1986) (where, among other facts, the defendant was incorporated and headquartered in California and the alleged misrepresentations emanated from California, "California has a strong interest in the allegedly fraudulent conduct of its corporations and residents, and in protecting its residents *and others* from such fraud.") (emphasis added).
- *Boyes v. Greenwich Boat Works, Inc.*, 27 F. Supp.2d 543, 547 (D.N.J. 1998) (New Jersey law applied to claims against New Jersey corporation. "[T]his state has a powerful incentive to insure that local merchants deal fairly with citizens of other states and countries.")
- *Gruber v. Price Waterhouse*, 117 F.R.D. 75, 82 (E.D. Pa. 1987) (applies

Pennsylvania law to the claims of all plaintiffs in a nationwide class action, holding "that Pennsylvania has the most significant relationship particularly since the financial statements alleged to contain the misstatements emanated from Pennsylvania.")

- *New York by Abrams v. DeFelice*, 77 B.R. 376, 381 (D. Conn. Bkrpt. 1987) ("New York does not and need not limit its interest in consumer protection to its citizens. New York's quasi-sovereign interest is served whenever the perpetrators of consumer fraud within its borders are brought to justice regardless of whether their victims happen to be citizens.")
- *Nat'l Western Life Ins. Co. v. Rowe*, 86 S.W.3d 285 (Tex. Ct. App. Aug. 8, 2002) (applied Texas law to claims of class members in 41 states where, among other things, the defendant's principle place of business and administrative offices were in Texas, and "all conduct allegedly causing injury to the class members in both contract and tort occurred as a result of National's activities in Texas.")
- *Henry Schein, Inc. v. Stromboe*, 28 S.W.3d 196, 209 (Tex. Ct. App. 2000) (Texas law applied to the claims of all class members where software at issue was "designed, developed, programmed, manufactured, and shipped from Dallas, Texas.")

- *In re Great Southern Life Ins. Co. Sales Practices Litig.*, 192 F.R. D. 212 (N.D. Tex. 2000) (Texas law applied to the claims of class members in nationwide class action where "[t]he policy accountings were done in Great Southern's accounting offices, and the alleged decisions to breach the Texas contracts must have been made in the home offices of Great Southern." 192 F.R.D. at 218-19. In a case where the allegedly deceptive "materials were generated from the home office in Dallas," *id*. at 214, the court held that "[i]f a tort occurred, it occurred in Texas, not in the homes of Great Southern's customers." *Id*. at 219.)
- *Brown v. Market Devel., Inc.*, 41 Ohio Misc. 57, 322 N.E.2d 367, 372 (Oh. Ct. Comm. Pleas 1974) ("Ohio has an interest in illegal activities conducted within its borders, even though the damaged person may be located outside its borders.")
- *Grove v. Principal Mut. Life Ins. Co.*, 14 F. Supp.2d 1101, 1106 (S.D. Iowa 1998) (Iowa law applied to the claims of all class members where the defendant's principal place of business was in Iowa, "the sales presentation materials were designed and prepared in Iowa," and "plaintiffs allege that Iowa is the state from which the alleged nationwide fraudulent scheme was orchestrated.")

- *In re Kirschner Medical Corp. Sec. Litig.*, 139 F.R.D. 74, 84 (D. Md. 1991) (Maryland law governed claims of all members of nationwide class where defendant's principal place of business was located in the state, and "many of the alleged false and misleading statements upon which the Consolidated Complaint is based were prepared in and disseminated from Maryland.")
- *Randle v. Spectram*, 129 F.R.D. 386, 393 (D. Mass. 1988) (applying Massachusetts law to nationwide class where Massachusetts was the location where (a) the defendant kept its principal place of business; (b) decisions were made "regarding the timing and content of corporate disclosures"; and (c) "most of the activities of the defendants in connection with the public offering took place. . . .").
- *Rio Grande Oil Co. v. Texas*, 539 S.W.2d 917, 921 (Tex. Ct. App. 1976) (Texas law applied in securities case even though no purchasers were in Texas; defendant was located in Texas and made sales calls from Texas, and "[a] state is damaged if its citizens are permitted to engage in fraudulent practices even though those injured are outside its borders.")
- *Lobo Exploration Co. v. Amoco Production Co.*, 991 P.2d 1048, 1054 (Okla. Ct. Civ. App. 1999) ("Here Lobo complains of Amoco's conduct in Oklahoma. Oklahoma has an interest in redressing wrongs committed

within the state.")

- *In re Badger Mount. Irr. Dist. Sec. Litig.*, 143 F.R.D. 693, 700 (W.D. Wash. 1992) (Washington law would be applied to the claims of all class members where "all defendants reside or do business in Washington, and the alleged wrongful acts occurred in Washington.")
- *Grace v. Perception Technology Corp.*, 128 F.R.D. 165, 171-72 (D. Mass. 1989) (Massachusetts law was applied to the claims of all class members, where "[a]ll of the individual defendants reside in Massachusetts and all alleged misrepresentations emanated from Massachusetts.")
- *In re Computer Memories Sec. Litig.*, 111 F.R.D. 675, 686 (N.D. Cal. 1986) (California applied to the claims of all class members where, among other things, "the public offering of securities involved in the case emanated from California and most of the activities of the defendants in connection with the public offering took place in California.")
- *Zinberg v. Washington Bancorp., Inc.*, 138 F.R.D. 397, 411-12 (D.N.J. 1990) (New Jersey law applied to the claims of all class members where the defendant's principal place of business was in New Jersey and when "many of the false and misleading statements emanated from the corporate offices within the State.")

- *In re Bendectin Litig.*, 857 F.2d 290, 304-05 (6th Cir. 1988) ("Throughout this litigation there has been some discussion of the law of states in which non-Ohio plaintiffs are domiciled. We, however, see the law of the state of manufacture of the product as being more significant in this type of case than that of the state where an individual plaintiff happens to live.")

B. There Is No Conflict Between the Application of Illinois Law and the Law of Other States.

As the Court of Appeals' lengthy opinion attests, this case involves quite a few factual and legal disputes. This *amici* brief will not address all or even most of these disputes in great detail, however. Nonetheless, *amici* do note that the Court of Appeals' conclusion that there is no significant conflict between the law of Illinois and the law of other jurisdictions is persuasive.

No conflict may be found unless the court disregards the gravamen of the jury's holding in this case: that State Farm breached its promise to its policyholders, and that State Farm engaged in deceptive and misleading practices. If the jury's conclusions, reached after hearing many days of conflicting factual and expert testimony, are affirmed, then it is hard to perceive any conflict. *Amici* submit that the law in all 50 states requires parties to keep their contractual promises, whether those promises relate to auto parts or any other topics. As the

Supreme Court noted in another context, "contract law is not at its core 'diverse, nonuniform and confusing.'" *Cipollone v. Liggett Group, Inc.*, 505 U.S. 504 (1992) (holding, in part, that it did not conflict with federal law to hold a party to its contractual promises). *Amici* further suggests that whatever the law in various states may be as to the use of auto parts from various sources, no state permits (much less encourages) deceptive or misleading behavior on that subject or any other. *Cf. Hanlon v. Chrysler Corp*., 150 F.3d 1011, 1022-23 (9th Cir. 1998) ("idiosyncratic differences between state consumer protection laws are not sufficiently substantive to predominate over shared claims.")

Given that the plaintiffs here have obtained a superb result for the class, it is fairly clear that other states do not have an interest in seeing their citizens deprived of that recovery. In *In re Combustion, Inc.*, 960 F. Supp. 1056, 1068 (W.D. La. 1997), for example, the court found that when a forum state's laws will protect and benefit the residents of a foreign state at least as well as the law of the foreign state, that the foreign state has no interest in asserting its laws to interpret an insurance contract entered into by its domiciliary. This point is particularly powerful when one considers that the law of many states does little to protect their citizens from predatory business behavior taking place outside of their borders. *E.g., Consumer Protection v. Outdoor World*, 91 Md. App. 275, 603 A.2d 1376, 1383 (1992) (state

attorney general "has no authority, directly, to preclude sales practices that occur entirely within other states. If Pennsylvania and Virginia wish to permit the kinds of high-pressure sales techniques demonstrated in this record, that is their business.").

State Farm's suggestion that other states have an interest in breaking up a class action that has enormously benefitted their citizens is also contrary to the teaching of the U.S. Supreme Court that class actions allow claimants to aggregate small-value claims where individual adjudication might involve costs exceeding the value of recovery. "Where it is not economically feasible to obtain relief within the traditional framework of a multiplicity of small individual suits for damages, aggrieved persons may be without any effective redress unless they may employ the class action device." *Deposit Guaranty Nat'l Bank v. Roper*, 445 U.S. 326, 339 (1980). *See also Amchem Products, Inc. v. Windsor*, 521 U.S. 591, 617 (1997) ("The policy at the very core of the class action mechanism is to overcome the problem that small recoveries do not provide the incentive for any individual to bring a solo action prosecuting his or her rights. A class action solves this problem by aggregating the relatively paltry potential recoveries into something worth someone's (usually an attorney's) labor."), *citing Mace v. Van Ru Credit Corp.*, 109 F.3d 338, 344 (7th Cir. 1997); *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 809

(1985) ("Class actions also may permit the plaintiffs to pool claims which would be uneconomical to litigate individually. For example, this lawsuit involves claims averaging about $100 per plaintiff; most of the plaintiffs would have no realistic day in court if a class action were not available."); *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 161 (1974) ("A critical fact in this litigation is that petitioner's individual stake in the damages award he seeks is only $70. No competent attorney would undertake this complex antitrust action to recover so inconsequential an amount. Economic reality dictates that petitioner's suit proceed as a class action or not at all.")

CONCLUSION

State Farm's Petition incorrectly asserts that the Court of Appeals' decision to apply Illinois law on a nationwide basis was "radical" and "unprecedented." As the foregoing brief establishes, the Court of Appeals' decision was neither of these things. The decision below is not only consistent with this Court's own longstanding decisions, but is also consistent with a long line of cases from other jurisdictions.

Respectfully submitted,

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NOTICE OF FILING

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PLEASE BE ADVISED that on December 5, 2002, the **AMICUS BRIEF OF TRIAL LAWYERS FOR PUBLIC JUSTICE, AARP AND THE NATIONAL ASSOCIATION OF CONSUMER ADVOCATES IN SUPPORT OF CLASS PLAINTIFFS-APPELLEES-RESPONDENTS was** mailed via overnight delivery to the Clerk of the Supreme Court of Illinois.

By: _____

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PROOF OF SERVICE

I, Dmitry Feofanov, certify that I served three (3) copies of the above-referenced document and a Notice of Filing to each of the counsel on the Service List below, by enclosing these documents in an envelope plainly addressed to these persons at the addresses listed below, by sealing this envelope, and affixing to the envelope the proper amount of U.S. postage for regular mail, and then by depositing the envelope with its contents in the United States mail at the United States Post Office in Dixon, Illinois, at or before the hour of 5:00 p.m. on December 5, 2002.

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CERTIFICATION

Under penalties of perjury, I certify that the statement set forth in the foregoing Proof of Service are true and correct.

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