MADISON – ST. CLAIR RECORD

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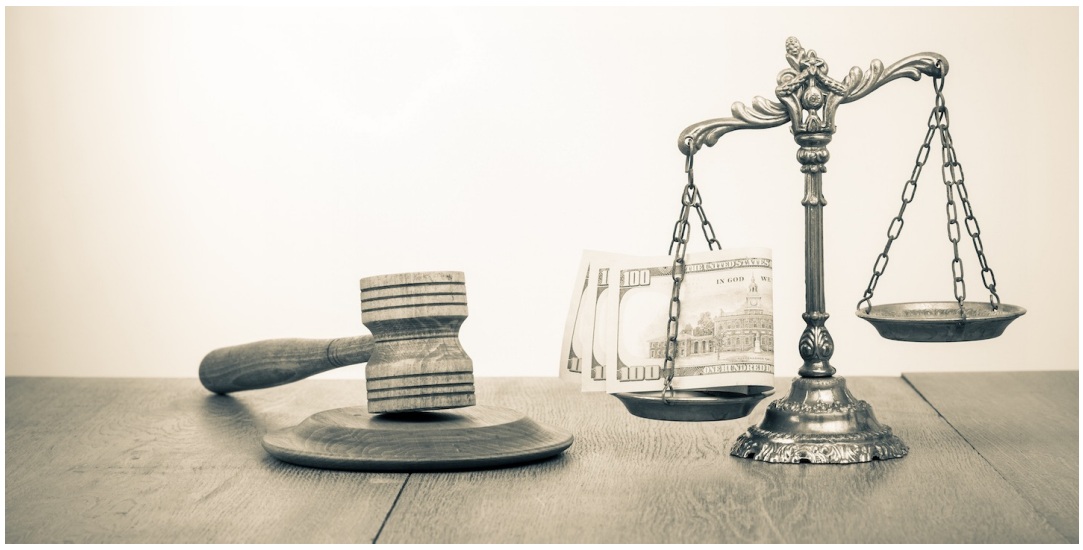
Herndon denies summary judgment to State Farm in $9 billion RICO case



By **The Madison County Record**
Feb 13, 2018

EAST ST. LOUIS – U.S. District Judge David Herndon on Feb. 6 denied summary judgment to State Farm on a $9 billion racketeering claim.

Lead plaintiff Mark Hale seeks damages from State Farm claiming defendants tainted the Illinois Supreme Court by securing Justice Lloyd Karmeier's election in 2004.

Hale claims Karmeier improperly participated in reversal of a billion-dollar judgment in a class action, *Avery v. State Farm*, in 2005.

He seeks to recover the judgment, roughly triple it with interest, and triple the result for punitive purposes.

The lawsuit seeks damages not only from State Farm but also from Illinois Civil Justice League director Ed Murnane and State Farm employee William Shepherd.

Herndon maintained in his order that he can't disturb the *Avery* decision.

Instead he adopted Hale's position that even if *Avery* deserved to lose, he deserved to lose in a clean court.

"Plaintiffs seek to vindicate their right to be judged by a tribunal that is uncontaminated by politics," Herndon wrote.

Trial is set to begin May 7.

In his order, Herndon recited allegations of lead plaintiff Hale.

"Specifically, what plaintiffs allege and what plaintiffs have in evidence that may create an inference to support plaintiffs' cause is that a judgment was rendered in the Illinois Supreme Court but that process was tainted by politics depriving plaintiffs of the opportunity for due process and a fair hearing, that damaged plaintiffs by taking away something of value which plaintiffs had in the jury's verdict and in the trial court and the appellate court judgments," he wrote.

"In essence, plaintiffs are asserting claims for an independent legal wrong which is the illegal acts or omissions of defendants.

"These claims are based on defendants' conduct, including misrepresentations to and concealment from plaintiffs and the court, not the state court decisions.

"These claims could not have been asserted in the state court proceedings; they did not fully manifest until after the Avery plaintiffs' last state court filing and they were not litigated in the state court proceedings.

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Herndon wrote that State Farm couldn't demonstrate that any issues in this action were identical to any issues that were decided by final judgment in *Avery*.

"As the parties are well aware, Avery was about State Farm's failure to equip its insureds' vehicles with proper replacement parts and this case is about State Farm's alleged conduct in secretly recruiting Judge Karmeier, covertly funneling millions of dollars to support Judge Karmeier's campaign and concealing and misrepresenting the degree and nature of its support of Justice Karmeier," Herndon wrote.

"Simply, defendants' actions in the two cases are entirely different and do not seek redress from the same wrong."

Herndon wrote that a motion for Karmeier's recusal from the *Avery* decision "was supported largely by newspaper articles."

He wrote that the articles didn't reveal State Farm's influence over Murnane and that they didn't reveal State Farm's involvement with the selection of Karmeier or its direction of campaign funds through intermediaries.

He wrote that they didn't reveal State Farm's "subversion of the Illinois State Bar Association's judicial candidate evaluation process."

"State Farm repeatedly denied its role in Justice Karmeier's election and the level of support for Justice Karmeier's candidacy," Herndon wrote.

He wrote that *Avery* plaintiffs were unable to find the exact extent of defendants' involvement without discovery.

He wrote that State Farm continued to deny the extent of its role.

"Plaintiffs have alleged and have evidence that one could rely on to infer that they did not have the opportunity or the possibility to litigate these matters in the Illinois Supreme Court because the evidence had not yet been uncovered and the judgment was already entered," he wrote.

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