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Commercial Law

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Gasoline Price Gouging Suit Rejected

In *Siegel v. Shell Oil Co.*, 612 F.3d 932 (7th Cir. 2010), the Seventh Circuit Court of Appeals rejected a class action lawsuit involving the high price of gasoline. The plaintiff sued five of the eight largest oil companies and sought class certification for claims under the Illinois Consumer Fraud and Deceptive Business Practices Act ("ICFA") and the common law doctrine of unjust enrichment. The plaintiff asserted that the oil companies acted in concert by manipulating refinery margins and capacity to reduce the nation's supply of gasoline and that this manipulation caused him to purchase the defendants' branded gasoline at artificially inflated prices. *Siegel*, 612 F.3d at 933. The plaintiff moved to certify a class comprised of all Illinois retail purchasers of gasoline. *Id.* at 934.

The District Court, Northern District of Illinois, denied class certification, concluding that the plaintiff could not establish through common proof that the allegations against the defendants proximately caused harm to each member of the putative class. The district court subsequently granted the defendants' motion for summary judgment. *Id.* The plaintiff appealed the district court's rulings, and the Seventh Circuit affirmed. *Id.* at 934, 938.

With respect to class certification, the district court found that the plaintiff failed to demonstrate that common issues predominated over individual issues. The district court focused on the elements of an ICFA claim and concluded that it would be required to make individual determinations concerning why a plaintiff bought gasoline from a particular supplier (*e.g.*, price, necessity, convenience, location or quality of gasoline) to determine whether the defendants' conduct proximately caused each plaintiff's injuries, which would require the need for individual proof of causation. As a result, the district court found that common issues did not predominate. *Id.* at 935-36. On appeal, the plaintiff argued that the defendants' unfair conduct could be readily proven on a class-wide basis, without the need for individual determinations. The Seventh Circuit rejected these arguments, finding that the plaintiff could not establish that the class members purchased gasoline for the same reason. The appellate court reasoned that the plaintiff himself had named a number of factors that he considered in determining whether to purchase his gasoline, and absent proof as to why a putative class member purchased a particular brand of gasoline, the plaintiff could not establish that the defendants' conduct caused him or her to make that purchase. *Id.* at 936.

With respect to summary judgment, the appellate court found that even if the plaintiff could establish the defendants' practices were unfair, in order to establish harm, the plaintiff had to show that he suffered substantial injury and that he could not avoid this injury. The court found that the plaintiff could not establish harm because he testified that he could and did purchase gasoline from stations owned by non-defendants and that he continued to purchase gasoline from the defendants even after he brought this lawsuit. Thus, the plaintiff could not establish that the defendants' conduct caused him to purchase their gasoline, because many factors contributed to his gasoline purchasing decisions. The court also affirmed summary judgment on the unjust enrichment claim, finding that it could not survive because absent a cognizable injury under the ICFA an unjust enrichment does not constitute a separate cause of action. *Siegel*, 612 F.3d at 937.

This decision is a victory not only for oil companies, but also for any company that is pursued for claims alleging unfair pricing policies.

About the Author

James K. Borcia is a partner with the Chicago firm of *Tressler LLP*, and is active in the firm's litigation practice with an emphasis on commercial and complex litigation. He was admitted to the bar in 1989 after he received his J.D. from Chicago-Kent College of Law. Mr. Borcia is a member of the Chicago and Illinois State Bar Associations, as well as the IDC and DRI.

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