

U.S. justices limit court-shopping Class-action case originated in Arkansas' Miller County

By: Alex Daniels – March 20, 2013

In a unanimous ruling, the U.S. Supreme Court on Tuesday struck a blow against plaintiffs' lawyers in class-action lawsuits who attempt to "forum shop" to find favorable local courts to hear their cases.

In *Standard Fire Insurance v. Knowles*, Greg Knowles of Miller County, whose house was damaged by a hailstorm, sought to file a class-action lawsuit in Texarkana against his insurer, arguing that the insurance company had shortchanged him as well as "hundreds and possibly thousands" of other Arkansans.

Since 2005, federal law has allowed defendants to move their cases from state court to federal court if the plaintiffs are seeking \$5 million or more in damages. But Knowles and his attorneys attempted to keep the case in state court in Miller County by stipulating that his claim and the claims of all others who might join the class-action suit would not exceed that amount.

The court said that Knowles and plaintiffs like him "cannot legally bind members of the proposed class before the class is certified." The Class Action Fairness Act sought to eliminate "magnet courts" for class-action lawsuits. Miller County in Arkansas and Madison County in Illinois have gained a reputation as friendly jurisdictions for trial lawyers. Cases in those counties have dragged on for years. In one instance, Farmer's Insurance, which wrote a friend-of-the-court brief on behalf of Standard Fire Insurance, said that to satisfy the Miller County court it had to produce 55 million pages of documents at a cost of \$9 million.

Defendants were settling groundless suits in these counties simply to avoid high legal fees, critics said. And the settlements helped plaintiffs' attorneys rake in millions of dollars.

The ruling was a defeat for Arkansas Attorney General Dustin McDaniel, who wrote a brief siding with Knowles. It was also a defeat for Knowles' original lawyer, John Goodson, of Texarkana, who is married to Arkansas Supreme Court Justice Courtney Hudson Goodson.

In the 9-0 ruling, Justice Stephen Breyer wrote that Knowles' stipulation that damages would not exceed \$5 million was not binding on the rest of the homeowners who might join the suit.

"Knowles lacked the authority to concede the amount-in-controversy for the absent class members," Breyer wrote.

The case was originally filed in Miller County Circuit Court, dubbed a "judicial hellhole" for defendants in class-action lawsuits, according to the Center for Class Action Fairness,

a conservative advocacy group. The Texarkana court let cases languish, dragging out discovery for years, according to the group.

The "judicial hellhole" label stuck - Fortune magazine, for example, used the term in a story about Miller County.

In May 2011, Standard Fire asked that the case be moved to the U.S. District Court for the Western District of Arkansas, but Judge P.K. Holmes, who serves on the federal court, declined and sent the case back to Miller County.

Standard Fire appealed the ruling to the 8th U.S. Circuit Court of Appeals, but in January 2012, judges there wouldn't hear the dispute. So the insurer appealed to the U.S. Supreme Court, which agreed to review the case.

The court's decision Tuesday "enforces the clear terms of the Class Action Fairness Act to ensure class-action plaintiffs cannot manipulate the system by slicing and dicing claims in order to defeat federal jurisdiction and it will prevent the state court class-action abuses that Congress intended to prohibit," said Theodore Boutros, who argued the case for Standard Fire.

Paul Byrd, a Little Rock trial lawyer, defended other litigators who have filed cases in Miller County. Some, including Keil & Goodson in Texarkana, which represented Knowles in the case before it went to the Supreme Court, have made a regular practice of representing class-action plaintiffs at the Miller County Circuit Court.

Attorneys at Keil & Goodson declined to comment.

Byrd said the only remedy to take on a powerful company is a tenacious lawyer willing to work on a contingency fee.

"It's not for the faint-hearted to go after a billion-dollar company that can afford to pay three- or four-hundred dollar an hour attorneys," he said. "Companies don't just pay money out. It's really hard to get companies to pay, and when they do, they obviously did something they got caught on." McDaniel filed an amicus brief with the court that was joined by the attorneys general of Delaware and Mississippi. McDaniel wrote that "Arkansas and the other states É have a substantial interest in vindicating principles of federalism and in preserving the ability of their citizens to adjudicate controversies within their own jurisdiction." McDaniel declined to comment Tuesday.

Standard Fire was backed by the Arkansas Chamber of Commerce, the U.S. Chamber of Commerce and 18 state attorneys general.

As Congress debated the Class Action Fairness Act, "the search began to find a way to dodge the rules, and there is no one as good at finding loopholes than a trial lawyer," said Walter Olson, a senior fellow at the Cato Institute, a conservative research group in Washington that filed a friend-of-the-court brief on behalf of Standard Fire Insurance in the case.

Before the law went into effect, 11 class-action cases were filed in Miller County Circuit Court, which Olson called a "problem jurisdiction." Major companies, including Google, Allstate and State Farm, had been forced to defend themselves in the southwest Arkansas judicial system.

Previously, Olson said, the court had split on class-action cases. That's what happened in *Dukes v. Wal-Mart*, where a divided court found in favor of the Bentonville retailer.

But Tuesday's unanimous decision, Olson said, showed that the court was unified on issues of judicial procedure.

"All nine justices share a commitment to process, and they don't want people to engage in this sort of gamesmanship," he said.

The surge of class-action suits in Miller County has made it difficult for the court, which doesn't have law clerks and a large staff, said one of the county's three justices, Judge Joe Griffin. He defended the rulings the court has made and said he's looking forward to doing few class-action cases "We're not jealous if anyone wants to take them up," he said. "We're not looking for the business."