Denial of Class Certification

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Attorneys Peter L. Bosse and Tanya T. Austin successfully opposed the certification of a 26,000+ member class on behalf of Safety Insurance Company, limiting potential recovery to two individual plaintiffs. In *McGilloway v. Safety Insurance Company*, a case that has been pending since 2017 and which has already been before the Supreme Judicial Court on preliminary questions, the plaintiffs sought to certify a class consisting of persons to whom Safety had made third-party payments for damage to their vehicles in accidents, but had not included "diminished value damages"—damages allegedly sustained due to a vehicle's reduced value on the market after being repaired, and which could purportedly be calculated by reference to nationwide databases. Failure to pay such damages, the plaintiffs contended, was a breach of contract and an unfair and deceptive practice in violation of G.L. c. 93A.

Citing to the Supreme Judicial Court's prior holding that "individualized proof" was required to determine whether a given vehicle had in fact incurred diminished value damages, and noting that such proof was necessarily vehicle-specific rather than ascertainable on a class-wide basis, Safety argued that class certification was inappropriate. The Court agreed, concluding that the need for individualized proof—supported by specific inquiry into the details of each potentially-affected vehicle– made it impossible for the plaintiffs to satisfy the predominance requirement of Mass. R. Civ. P. 23. The Court further determined that as claims for unfair and deceptive conduct under G.L. c. 93A were dependent on whether an individual plaintiff had suffered any injury at all, class certification was similarly inappropriate on the plaintiffs' G.L. c. 93A claims.