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## CIVIL RIGHTS CLASS ACTIONS:

### A SINGULARLY EFFECTIVE TOOL TO COMBAT DISCRIMINATION\*

For over 50 years, class actions have been among the most powerful tools to secure civil rights in America. *Brown v. Board of Education*,<sup>1</sup> which outlawed school segregation and set the stage for the entire civil rights movement, was a class action lawsuit. More recent examples include the case portrayed in the Hollywood movie “North Country,” based on the case *Jenson v. Eveleth Mines* and considered to be the first sexual harassment class action lawsuit.<sup>2</sup>

This fact sheet describes why class actions are so important to remedy civil rights violations and highlights a number of significant civil rights class action lawsuits, which have brought justice to millions of Americans. This country would be a very different place without these critically important cases.

**There are many reasons why filing individual lawsuits (or arbitration) is an unrealistic option for those experiencing discrimination; in many instances, class actions are the only way to prove or remedy “systemic discrimination.”**

- **It is extremely expensive to prove institutional discrimination.** As explained by the NAACP Legal Defense & Educational Fund, Inc. in its amicus brief filed in the 2011 U.S. Supreme Court case, *AT&T Mobility LLC v. Concepcion*, (hereafter known as “LDF Brief”), “In many civil rights cases, most, if not all, pertinent information is within the exclusive province of the defendant—through its agents, employees, records, and documents. Discovery of this evidence—especially in challenges to institution-wide practices of large corporate defendants—is expensive; thus, the ability to spread the costs over a class is key to obtaining redress.”<sup>3</sup>

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\* This fact sheet relies heavily on the excellent research found in the amicus brief filed by the NAACP Legal Defense & Educational Fund, Inc. in Support of Respondents in the case, *AT&T Mobility LLC v. Concepcion*, 131 S. Ct. 1740 (2011) (herein known as “LDF Brief”). This brief can be found at [http://www.americanbar.org/content/dam/aba/publishing/preview/publiced\\_preview\\_briefs\\_pdfs\\_09\\_10\\_09\\_893\\_RespondentAmCuNAACPLDEF.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/publishing/preview/publiced_preview_briefs_pdfs_09_10_09_893_RespondentAmCuNAACPLDEF.authcheckdam.pdf).

- **Class actions may be the only way to prove a pattern or practice of discrimination.** Notes LDF, “Without a broad discovery of company-wide statistical and other data that class actions facilitate, it is difficult for civil rights plaintiffs to prove a pervasive pattern and practice of discrimination.”<sup>4</sup>
  - In the 1977 employment discrimination case, *Int’l Bhd. of Teamsters v. United States*,<sup>5</sup> the U.S. Supreme Court, citing earlier precedent, said, “In many cases the only available avenue of proof is the use of racial statistics to uncover clandestine and covert discrimination by the employer or union involved.”
  - In a class action brought by “approximately one thousand past and present African American employees of Kodak” for racial discrimination, the federal court judge noted, “Class actions are uniquely suitable for litigating discrimination claims under the pattern and practice framework.”<sup>6</sup> The U.S. Supreme Court has also acknowledged that statistical evidence of broad-based practices helps prove disparate-impact discrimination.<sup>7</sup>
  
- **Class actions can be the only way to remedy widespread discrimination.**
  - Courts have been clear that cases that proceed individually rarely lead to classwide relief that may be needed to end systemic discrimination. In the 2003 case *Sharpe v. Cureton*, involving retaliation against several firefighters by Knoxville, TN city politicians, the 6th Circuit said, “While district courts are not categorically prohibited from granting injunctive relief benefiting an entire class in an individual suit, such broad relief is rarely justified. . . .”<sup>8</sup> Also in *Brown v. Trs. of Boston Univ.*, a 1989 sex discrimination case brought by an assistant professor who was denied tenure, the 1st Circuit noted, “Ordinarily, classwide relief . . . is appropriate only where there is a properly certified class.”<sup>9</sup>
  - In a 1975 class action against Albemarle paper company, brought by African Americans who had been “locked in the lower paying job classifications,”<sup>10</sup> the U.S. Supreme Court observed, citing precedent, that class actions are frequently the most effective means to eradicate entrenched discrimination, both eliminating the discriminatory effects of the past as well as barring discrimination in the future.<sup>11</sup>
  - As the U.S. Supreme Court has also noted in cases like *Franks v. Bowman Transp. Co.*,<sup>12</sup> involving employment discrimination against minority truck drivers, class certification also “prevents an action from becoming moot even if a change in the circumstances of the named plaintiff renders her ineligible for relief”<sup>13</sup> and makes it difficult for wrongdoers to “strategically preempt individual claims and thereby avoid implementing structural relief. . . .”<sup>14</sup>

**In many specific areas of civil rights law, Congress clearly intended use of the class action tool. For example,**

- **Employment.** As noted by LDF, “when Congress amended Title VII in 1972, it expressly affirmed that class actions should be widely available to challenge employment discrimination.”<sup>15</sup>
- **Equal Credit.** Writes LDF, “When Congress amended [the Equal Credit Opportunity Act] (ECOA) in 1976 to include race, national origin, and religion among the prohibited categories of discrimination, it strengthened the Act’s express class-action enforcement provisions by increasing the ceiling for class-action damages.”<sup>16</sup>

**The following are examples of specific types of civil rights violations where class actions have exposed and remedied discrimination.**

- **Employment discrimination.**<sup>17</sup> Notes LDF, “Over the past two decades, class actions have exposed institution-wide discrimination, won significant monetary relief for thousands of minority and female employees, and led to comprehensive and innovative reforms of employment policies at a number of leading corporations. . . .”<sup>18</sup> These include the following major cases:
  - **Kodak.** *Davis v. Eastman Kodak Co.* (class settlement on behalf of over 3,000 current and former African-American employees).<sup>19</sup>
  - **Morgan Stanley.** *Curtis-Bauer v. Morgan Stanley & Co.* (class settlement on behalf of over 1,300 African-American and Latino financial advisors).<sup>20</sup>
  - **Xerox.** *Warren v. Xerox Corp.* (class settlement on behalf of nearly 1,500 African-American sales representatives).<sup>21</sup>
  - **Walgreens.** *Tucker v. Walgreen Co.* (consent decree on behalf of 10,000 African-American employees).<sup>22</sup>
  - **Federal Express.** *Satchell v. FedEx Corp.* (class settlement on behalf of 20,000 African-American and Latino employees).<sup>23</sup>
  - **Marriott.** *McReynolds v. Sodexo Marriott Servs., Inc.* (consent judgment on behalf of 2,600 current and former African-American managers).<sup>24</sup>
  - **Abercrombie & Fitch.** *Gonzalez v. Abercrombie & Fitch Stores, Inc.*, (consent decree settling claims of systemic discrimination against Latino, African-American, Asian-American, and female applicants and employees).<sup>25</sup>
  - **Coca-Cola.** *Ingram v. Coca-Cola Co.* (class settlement on behalf of 2,200 current and former African-American employees).<sup>26</sup>

- **Home Depot.** *Butler v. Home Depot, Inc.*, (consent decree on behalf of 17,000 current and former female employees and 200,000 unsuccessful applicants).<sup>27</sup>
- **Other recent cases include:**
  - *McClain v. Lufkin Industries, Inc.*, involving a large manufacturer engaged in the “practice of delegating subjective decision-making authority to its white managers with respect to . . . promotions [that] resulted in a disparate impact on [a class of over 700] black employees in violation of Title VII.”<sup>28</sup> Among the district court’s findings was that “white employees have a significant advantage in gaining the skills and abilities needed to qualify them for promotion. . . . [whereas] Black employees are more likely to be placed in dead-end positions and left to seek training on their own.”<sup>29</sup>
  - *Roberts v. Texaco, Inc.*, which resulted in a \$172 million settlement and included the creation of a Task Force on Equity and Fairness at Texaco to ensure equal opportunity for all Texaco employees. The district court noted that this case highlighted “the importance of private attorneys general in enforcement of the proscriptions against racial discrimination in the workplace” and “may well have important ameliorative impact not only at Texaco but in the corporate context as a whole.”<sup>30</sup>
  - *Haynes v. Shoney’s Inc.*, a class action brought because the Shoney’s restaurant chain “refused to hire blacks or only hired them for ‘back of the restaurant’ jobs where they would not come into contact with customers [as well as] discrimination in promotion, discharge, retaliation, and harassment on the job.”<sup>31</sup> The case “resulted in significant remedies for ‘allegations of an overt policy of blatant racial discrimination and retaliation’ at the Shoney’s restaurant chain that was ‘developed and directed’ by ‘top Shoney’s management’ and ‘implemented by all-white supervisory and management personnel.’”<sup>32</sup>
  - It should be noted that employees of restaurant chains are not the only people at risk for discrimination. Customers are vulnerable as well. The seminal 1968 class action, *Newman v. Piggie Park Enterprises, Inc.*, ended discrimination against African-American customers at a South Carolina restaurant chain.<sup>33</sup>
- **Housing and Lending.** Class actions have recently remedied:
  - “Racial steering” by real estate brokers.<sup>34</sup>
  - “Redlining” by lenders who refuse to do business within predominantly minority neighborhoods.<sup>35</sup>

- Predatory mortgage lending which “contributed to higher foreclosure rates for African-American and Latino homeowners.”<sup>36</sup>
- **Insurance Discrimination.** A nationwide class action was brought against Allstate by approximately five million African-American and Latino customers for charging “minority policyholders higher premiums for automobile and homeowners’ insurance than it charged similarly situated white policyholders.”<sup>37</sup> In 2007, writes LDF, “a district court recognized the ‘substantial and beneficial’ results of a nationwide class action” and approved a settlement including “not only monetary relief but also a ‘change in the [company’s] credit scoring formula, an educational outreach program, multi-cultural marketing, [and] an improved appeals process.’”<sup>38</sup>
- **Automobile Financing.** There has been a set of recent class actions which, writes LDF, “exposed financial arrangements between leading vehicle financing companies and car dealerships that resulted in systematically higher mark-ups on financing for African-American and Latino purchasers than for similarly situated whites.... These class actions led to industry-wide reforms, including caps on dealer mark-ups, as well as pre-approved financing for minority customers and consumer education initiatives.”<sup>39</sup>

## NOTES

<sup>1</sup> *Brown v. Board of Education*, 347 U.S. 483 (1954).

<sup>2</sup> <http://www.imdb.com/title/tt0395972/>. See also Center for Justice & Democracy, *Impact: Focus on Women* (Summer 2012), [http://centerjd.org/sites/default/files/IMPACT\\_11.4.pdf](http://centerjd.org/sites/default/files/IMPACT_11.4.pdf).

<sup>3</sup> Amicus brief filed by the NAACP Legal Defense & Educational Fund, Inc. in Support of Respondents in the case, *AT&T Mobility LLC v. Concepcion*, 131 S. Ct. 1740 (2011) (hereafter known as “LDF Brief”) at 19, [http://www.americanbar.org/content/dam/aba/publishing/preview/publiced\\_preview\\_briefs\\_pdfs\\_09\\_10\\_09\\_893\\_ResponseAmCuNAACPLDEF.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/publishing/preview/publiced_preview_briefs_pdfs_09_10_09_893_ResponseAmCuNAACPLDEF.authcheckdam.pdf).

<sup>4</sup> *Ibid.*

<sup>5</sup> *Int’l Bhd. of Teamsters v. United States*, 431 U.S. 324, 339-40 n. 20 (1977).

<sup>6</sup> *Employees Committed for Justice v. Eastman Kodak Co.*, 407 F. Supp. 2d 423, 428 (W.D.N.Y. 2005).

<sup>7</sup> See, e.g., *Lewis v. City of Chicago*, 130 S. Ct. 2191, 2197-98 (2010).

<sup>8</sup> *Sharpe v. Cureton*, 319 F.3d 259, 273 (6th Cir. 2003).

<sup>9</sup> *Brown v. Trs. of Boston Univ.*, 891 F.2d 337, 361 (1st Cir. 1989).

<sup>10</sup> *Albemarle Paper Co. v. Moody*, 422 U.S. 405, 409 (1975).

<sup>11</sup> LDF Brief at 20, citing *Albemarle Paper Co. v. Moody*, 422 U.S. 405, 418 (1975), [http://www.americanbar.org/content/dam/aba/publishing/preview/publiced\\_preview\\_briefs\\_pdfs\\_09\\_10\\_09\\_893\\_ResponseAmCuNAACPLDEF.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/publishing/preview/publiced_preview_briefs_pdfs_09_10_09_893_ResponseAmCuNAACPLDEF.authcheckdam.pdf).

<sup>12</sup> *Franks v. Bowman Transp. Co.*, 424 U.S. 747, 753-56 (1976).

<sup>13</sup> LDF Brief at 17,

[http://www.americanbar.org/content/dam/aba/publishing/preview/publiced\\_preview\\_briefs\\_pdfs\\_09\\_10\\_09\\_893\\_ResponseAmCuNAACPLDEF.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/publishing/preview/publiced_preview_briefs_pdfs_09_10_09_893_ResponseAmCuNAACPLDEF.authcheckdam.pdf).

<sup>14</sup> *Ibid.*

<sup>15</sup> *Id.* at 29. Writes LDF, “As the legislative history of the Equal Employment Opportunity Act of 1972, Pub. L. No. 92-261, 86 Stat. 103 (codified as amended at 42 U.S.C. § 2000e *et seq.*) reveals, Congress rebuffed an amendment to Title VII that would have restricted private class suits. See 118 Cong. Rec. 7168 (1972) (statement of Sen. Williams) (‘A provision limiting class actions was contained in the House bill and specifically rejected by the Conference Committee.’). Rather, Congress ‘agree[d] with the courts that Title VII actions are by their very nature class complaints, and that any restriction on such actions would greatly undermine the effectiveness of Title VII.’ S.

Rep. No. 92-415, at 27 (1971), *reprinted in* Subcomm. on Labor of the Senate Comm. on Labor and Public Welfare, 92d Cong., 2d Sess., *Legislative History of the Equal Employment Opportunity Act of 1972*, at 436 (1972); *see also*, Judith J. Johnson, *Rebuilding the Barriers: The Trend in Employment Discrimination Class Actions*, 19 Colum. Hum. Rts. L. Rev. 1, 5 (1987) (describing the legislative history of the rejected provision). When Congress again strengthened Title VII's protections in the Civil Rights Act of 1991, it rejected concerns about the scope of relief that could result from applying to class actions a new provision allowing for compensatory and punitive damages. *See* Civil Rights Act of 1991, Pub. L. No. 102-166, § 102(a)(1), (b), 105 Stat. 1071, 1072 (codified at 42 U.S.C. § 1981a(a)(1), (b)); *cf.* H.R. Rep. No. 102-40(II) at 68 (1991), *reprinted in* 1991 U.S.C.C.A.N. 694, 754 (dissenting views of Rep. Henry Hyde et al.).” LDF Brief at 29-30,

[http://www.americanbar.org/content/dam/aba/publishing/preview/publiced\\_preview\\_briefs\\_pdfs\\_09\\_10\\_09\\_893\\_Re spondentAmCuNAACPLDEF.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/publishing/preview/publiced_preview_briefs_pdfs_09_10_09_893_Re spondentAmCuNAACPLDEF.authcheckdam.pdf).

<sup>16</sup> *Id.* at 30. *See* Equal Credit Opportunity Act (ECOA), Pub. L. No. 93-495, Title V, 88 Stat. 1521 (1974) (codified as amended at 15 U.S.C. § 1691 *et seq.*), and Equal Credit Opportunity Act Amendments of 1976, Pub. L. No. 94-239, §§ 2, 6, 90 Stat. 251, 253 (codified as amended at 15 U.S.C. §§ 1691, 1691e). Notes LDF, “Although Congress simultaneously augmented public enforcement resources, the Senate Report emphasized that ‘the chief enforcement tool . . . will continue to be private actions for actual and punitive damages’ and stressed the importance of class treatment in such private actions. S. Rep. No. 94-589, at 13-14 (1976), *reprinted in* 1976 U.S.C.C.A.N. 403, 415-16.” LDF Brief at 30-1,

[http://www.americanbar.org/content/dam/aba/publishing/preview/publiced\\_preview\\_briefs\\_pdfs\\_09\\_10\\_09\\_893\\_Re spondentAmCuNAACPLDEF.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/publishing/preview/publiced_preview_briefs_pdfs_09_10_09_893_Re spondentAmCuNAACPLDEF.authcheckdam.pdf).

<sup>17</sup> Writes LDF, “[E]mployment discrimination... ‘persists in far too many industries and occupations.’ *See, e.g.*, Devah Pager et al., *Discrimination in a Low-Wage Labor Market: A Field Experiment*, 74 Am. Soc. Rev. 777, 792-93 (2009) (finding that African-American applicants were half as likely as equally qualified white applicants to receive a callback interview or job offer, and minority applicants *without* criminal records fared no better than white applicants *with* records); Marianne Bertrand & Sendhil Mullainathan, *Are Emily and Greg More Employable Than Lakisha and Jamal? A Field Experiment on Labor Market Discrimination*, 94 Am. Econ. Rev. 991, 992 (2004) (finding that applicants with distinctively white-sounding names received 50% more callbacks for interviews than equally qualified applicants with distinctively African-American names, and the gap widened for applicants with better resumes).” LDF Brief at 8,

[http://www.americanbar.org/content/dam/aba/publishing/preview/publiced\\_preview\\_briefs\\_pdfs\\_09\\_10\\_09\\_893\\_Re spondentAmCuNAACPLDEF.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/publishing/preview/publiced_preview_briefs_pdfs_09_10_09_893_Re spondentAmCuNAACPLDEF.authcheckdam.pdf).

<sup>18</sup> *Id.* at 8

<sup>19</sup> *Davis v. Eastman Kodak Co.*, Nos. 6:04-cv-6098, 6:07-cv-6512 (W.D.N.Y. Sept. 3, 2010).

<sup>20</sup> *Curtis-Bauer v. Morgan Stanley & Co.*, No. 3:06-cv-3903, 2008 WL 4667090 (N.D. Cal. Oct. 22, 2008).

<sup>21</sup> *Warren v. Xerox Corp.*, No. 1:01-cv-2909, 2008 WL 4371367 (E.D.N.Y. Sept. 19, 2008).

<sup>22</sup> *Tucker v. Walgreen Co.*, Nos. 3:05-cv-440, 3:07-cv-172 (S.D. Ill. Mar. 24, 2008).

<sup>23</sup> *Satchell v. FedEx Corp.*, Nos. 3:03-cv-2659, 3:03-cv-2878 (N.D. Cal. Aug. 14, 2007).

<sup>24</sup> *McReynolds v. Sodexo Marriott Servs., Inc.*, No. 1:01-cv-0510 (D.D.C. Aug. 10, 2005).

<sup>25</sup> *Gonzalez v. Abercrombie & Fitch Stores, Inc.*, Nos. 3:04-cv-2817, 3:04-cv-4730, 3:04-cv-4731 (N.D. Cal. Apr. 15, 2005).

<sup>26</sup> *Ingram v. Coca-Cola Co.*, 200 F.R.D. 685 (N.D. Ga. 2001).

<sup>27</sup> *Butler v. Home Depot, Inc.*, No. 3:94-cv-4335 (N.D. Cal. Jan. 14, 1998).

<sup>28</sup> *McClain v. Lufkin Industries, Inc.*, 519 F.3d 264, 272 (5th Cir. 2008).

<sup>29</sup> *McClain v. Lufkin Indus.*, No. 9:97-cv-63, 2005 U.S. Dist. LEXIS 42545, at \*32-33 (E.D. Tex. Jan. 13, 2005), *aff'd in relevant part*, 519 F.3d 264 (5th Cir. 2008).

<sup>30</sup> *Roberts v. Texaco, Inc.*, 979 F. Supp. 185, 189-93, 197-198 (S.D.N.Y. 1997).

<sup>31</sup> *See* University of Michigan Law School Civil Rights Clearinghouse, “Case Profile: Haynes v. Shoney’s, Inc. – Case Summary,” <http://www.clearinghouse.net/detail.php?id=10711>.

<sup>32</sup> LDF Brief at 9-10, citing *Haynes v. Shoney’s, Inc.*, No. 3:89-cv-30093, 1992 WL 752127, at 2, 20 (N.D. Fla. June 22, 1992) (certifying class action); *see also Haynes v. Shoney’s, Inc.*, No. 3:89-cv-30093, 1993 WL 19915, at 6-7 (N.D. Fla. Jan. 25, 1993) (approving consent decree requiring, among other things, \$105 million in relief to class members and significant corporation-wide reforms),

[http://www.americanbar.org/content/dam/aba/publishing/preview/publiced\\_preview\\_briefs\\_pdfs\\_09\\_10\\_09\\_893\\_Re spondentAmCuNAACPLDEF.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/publishing/preview/publiced_preview_briefs_pdfs_09_10_09_893_Re spondentAmCuNAACPLDEF.authcheckdam.pdf).

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<sup>33</sup> *Newman v. Piggie Park Enterprises, Inc.*, 390 U.S. 400, 400-02 (1968).

<sup>34</sup> *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 366-70 (1982).

<sup>35</sup> *Buycks-Roberson v. Citibank Fed. Sav. Bank*, 162 F.R.D. 322, 325-28 (N.D. Ill. 1995).

<sup>36</sup> See, e.g., Jacob S. Rugh & Douglas S. Massey, *Racial Segregation and the American Foreclosure Crisis*, 75 Am. Soc. Rev. 629, 632-34, 644-46 (2010); Debbie Gruenstein Bocian et al., *Race, Ethnicity and Sub-prime Home Loan Pricing*, 60 J. Econ. & Bus. 110, 121-23 (2008). For example, in July 2011, a federal court approved a nationwide class settlement on behalf of African-American and Hispanic borrowers. *Ramirez v. Greenpoint Mortgage Funding, Inc.*, No. 3:08-cv-369 (settlement approved July 12, 2011), <http://docs.justia.com/cases/federal/district-courts/california/candce/3:2008cv00369/199525/247/0.pdf?1303170363>. The victims alleged “that a mortgage lender violated the Equal Credit Opportunity Act (ECOA), 15 U.S.C. § 1691, and the Fair Housing Act (FHA), 42 U.S.C. § 3605, ‘by giving its authorized brokers discretion to mark up the price of wholesale mortgage loans, a policy that led minority borrowers to be charged disproportionately high rates compared to similarly situated whites.’ *Ramirez v. Greenpoint Mortgage Funding, Inc.*, No. 3:08-cv-369, 2010 WL 2867068, at 1 (N.D. Cal. July 20, 2010); see also *Ramirez v. Greenpoint Mortgage Funding, Inc.*, 633 F. Supp. 2d 922, 924 (N.D. Cal. 2008) (denying mortgage company’s motion to dismiss).” LDF Brief at 12, [http://www.americanbar.org/content/dam/aba/publishing/preview/publiced\\_preview\\_briefs\\_pdfs\\_09\\_10\\_09\\_893\\_ResponseAmCuNAACPLDEF.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/publishing/preview/publiced_preview_briefs_pdfs_09_10_09_893_ResponseAmCuNAACPLDEF.authcheckdam.pdf).

<sup>37</sup> LDF Brief at 12-13, citing *DeHoyos v. Allstate Corp.*, 240 F.R.D. 269, 275, 331 (W.D. Tex. 2007), [http://www.americanbar.org/content/dam/aba/publishing/preview/publiced\\_preview\\_briefs\\_pdfs\\_09\\_10\\_09\\_893\\_ResponseAmCuNAACPLDEF.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/publishing/preview/publiced_preview_briefs_pdfs_09_10_09_893_ResponseAmCuNAACPLDEF.authcheckdam.pdf).

<sup>38</sup> *Id.* at 12-13, citing *DeHoyos v. Allstate Corp.*, 240 F.R.D. 269, 275, 330-331 (W.D. Tex. 2007); *DeHoyos v. Allstate Corp.*, 345 F.3d 290 (5th Cir. 2003) (affirming denial of the insurer’s motion to dismiss).

<sup>39</sup> *Id.* at 13-14.