East Baton Rouge Parish Clerk of Court
Docket Report Results

Report Selection Criteria

Case ID: C632829
Docket Start Date:
Docket Ending Date:

Case Description

Case ID: C632829 - LA STATE OF VS STATE FARM FIRE & CSLTY CO ETAL - *NON JURY-*
Filing Date: Tuesday, August 19, 2014
Type: IN - Injunction
Status 2424 - CIT/SEC OF STATE

Charges

No charges were found.

Related Cases

No related cases were found.

Case Event Schedule

No case events where found.

Case Parties

Seq #	Assoc	End Date	Type	ID	Name	Race	Sex	Birth Date
1	4		Plaintiff	@1023126	**LA STATE OF**			
Address:	THRU JAMES D CALDWELL ATY 1885 N 3RD ST BATON ROUGE LA 70802				**Aliases:**	*none*		
2			Defendant	@1023127	**STATE FARM FIRE AND CASUALTY COMPANY**			
Address:	THRU LA SECRETARY OF STATE 8585 ARCHIVES AVE BATON ROUGE LA 70809				**Aliases:**	*none*		
3			Judge	S26	**BATES, HON. KAY**			
Address:	19TH JUDICIAL DISTRICT COURT 300 NORTH BLVD, RM 9D BATON ROUGE LA 70802 (225)389-4787				**Aliases:**	*none*		
4			Attorney	BR2211	**CALDWELL, HON JAMES DAVID**			
Address:	DIST ATTY 6TH JDC PO BOX 1389 TALLULAH LA 71282				**Aliases:**	*none*		
5			Defendant	@1023129	**STATE FARM GENERAL INSURANCE COMPANY**			
Address:	THRU LA SECRETARY OF STATE 8585 ARCHIVES AVE BATON ROUGE LA 70809				**Aliases:**	*none*		
6			Defendant	STATEFARM	**STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY**			
Address:	THRU LA SECRETARY OF STATE 8585 ARCHIVES AVE BATON ROUGE LA 70809				**Aliases:**	*none*		

Docket Entries

Filing Date	Description	Name	Party Association
19-Aug-2014 11:35 AM	PET/INJUNCTION	CALDWELL, HON JAMES DAVID	LA STATE OF
Entry:	*none*		
Image:	Image Available -	**Microfilm #:**	SR 8/28
19-Aug-2014 11:36 AM	ATTACH/EXHIBITS(W/COST)	CALDWELL, HON JAMES DAVID	LA STATE OF
Entry:	*none*		
Image:	Image Available -	**Microfilm #:**	SR 8/28
28-Aug-2014 03:23 PM	CIT/SEC OF STATE	CALDWELL, HON JAMES DAVID	LA STATE OF
Entry:	*none*		
Image:		**Microfilm #:**	
28-Aug-2014 03:34 PM	CIT/SEC OF STATE	CALDWELL, HON JAMES DAVID	LA STATE OF
Entry:	*none*		
Image:		**Microfilm #:**	
28-Aug-2014 03:42 PM	CIT/SEC OF STATE	CALDWELL, HON JAMES DAVID	LA STATE OF
Entry:	*none*		
Image:		**Microfilm #:**	
28-Aug-2014 03:48 PM	CIT/SEC OF STATE	CALDWELL, HON JAMES DAVID	LA STATE OF
Entry:	*none*		
Image:		**Microfilm #:**	

- record searched on 9/2/2014 1:24:23 PM for user "Public User" -

STATE OF LOUISIANA, EX REL JAMES D. "BUDDY" CALDWELL, ATTORNEY GENERAL	DIV. DOCKET NO. 632829 SEC. 26
VS.	19th JUDICIAL DISTRICT COURT
STATE FARM FIRE AND CASUALTY COMPANY, STATE FARM GENERAL INSURANCE COMPANY, AND STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY	EAST BATON ROUGE PARISH STATE OF LOUISIANA

****

PETITION FOR INJUNCTIVE RELIEF AND RESTITUTION

NOW INTO COURT, through the undersigned counsel, comes the State of Louisiana through the Honorable James D. "Buddy" Caldwell, Attorney General, who respectfully represents:

1.

This action is brought in the public interest to seek injunctive relief, restitution, and civil penalties against Defendants State Farm Fire and Casualty Company, State Farm General Insurance Company, and State Farm Mutual Automobile Insurance Company (collectively referred to herein as "State Farm") from engaging in conduct, activities, or proposed actions in violation of the Louisiana Unfair Trade Practices Act, LSA-R.S. 51:1401 *et seq*. and of the Monopolies Law, LSA-R.S. 51:121 *et seq.*

2.

Defendant State Farm Fire and Casualty Company is registered with the Louisiana Department of Insurance as a Louisiana insurance company licensed to do business in the state, and is doing business in the state of Louisiana.

3.

Defendant State Farm General Insurance Company is registered with the Louisiana Department of Insurance as a Louisiana insurance company licensed to do business in the state, and is doing business in the state of Louisiana.

4.

Defendant State Farm Mutual Automobile Insurance Company is registered with the Louisiana Department of Insurance as a Louisiana insurance company licensed to do business in the state, and is doing business in the state of Louisiana.

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5.

In 2012, Defendant State Farm Mutual Automobile Insurance Company wrote 33.63% of the private passenger and commercial automobile liability and physical damage policies in the state of Louisiana for a total of $1,020,766,673 in premiums.

JURISDICTION AND VENUE

6.

Defendants are subject to the jurisdiction of this court pursuant to LSA R.S. 51:1418 (A).

7.

Venue is proper before this court pursuant to LSA R.S. 51:1407.

STATUTORY BACKGROUND

8.

Pursuant to LSA-R.S. 51:1405, unfair methods of competition and unfair or deceptive acts and practices in the conduct of any trade or business are unlawful.

9.

Pursuant to LSA-R.S. 51:1407, whenever the Attorney General has reason to believe that someone is violating, or is about to violate, the Louisiana Unfair Trade Practices Act, he may bring an action to enjoin the conduct and seek injunctive relief, and may include restitution to remedy the unfair and deceptive acts as well as civil penalties. Such restraining orders or injunctions shall be issued without bond.

10.

Pursuant to LSA-R.S. 51:122, every contract or conspiracy in restraint of trade or commerce in this state is illegal.

11.

Pursuant to LSA-R.S. 51:123, no person shall monopolize or attempt, combine or conspire with another to monopolize any part of trade or commerce within this state.

12.

Pursuant to LSA-R.S. 51:128, the Attorney General may bring suit in district court to prevent or restrain any violation of the Monopolies Law, LSA-R.S. 51:121 *et seq.*

1963 CONSENT DECREE

13.

In 1963 the United States Department of Justice filed a complaint and entered into a consent decree with three defendant trade associations, whose members constituted the vast majority of insurers in existence at the time. [See Appendix A].

14.

The complaint alleged that through the defendant trade associations and related committees, automobile property insurers conspired to "depress and control automobile material damage repair costs." [Appendix A, p. 8, para. 17].

15.

The complaint described a system by which appraisers were controlled by defendants and related entities, and forced to follow a plan that strived to (1) repair rather than replace damaged parts; (2) replace damaged parts by used rather than new parts; (3) obtain discounts on new replacement parts; (4) establish strict labor time allowances by the sponsored appraisers; and (5) obtain the lowest possible hourly rate. [Appendix A, p. 9, para. 19].

16.

Furthermore, appraisers were required to enlist a number of repair shops who would agree to make automobile material damage repairs based upon the appraiser's estimate and to steer repairs towards those shops who would agree to such practices. [Appendix A, p. 9, para. 20].

17.

Pursuant to those allegations, defendants entered into a consent decree with the United States Department of Justice for violations of Section 1 and 3 of the Sherman Act. Under the consent decree, defendants were ordered to terminate their established plans to control the automobile material damage repair industry and depress its related costs, and were enjoined from placing into practice any future plans or programs which would have those effects. [Appendix B, p. 2].

PRESENT-DAY PRACTICES

18.

In contrast with practices in 1963, State Farm and most other current-day insurance companies directly employ their own claims adjusters and damage appraisers, obviating the need

for a specific plan or system through which to exert control upon those facets of the automobile material repair process.

19.

Most current-day insurance companies, including State Farm, utilize collision repair estimation software programs and databases, such as ADP, CCC and Mitchell. These repair estimation databases generate standardized labor times and materials.

20.

Most current-day insurance companies, including State Farm, utilize programs commonly known as "direct repair programs," or DRPs. In a DRP, automobile repairers enter into contracts with insurers in order to be placed upon a list of preferred repair providers recommended by the insurance company.

21.

Together, these factors—total control of adjusters and appraisers, utilization of software to generate standard labor times and rates, and implementation of DRPs—create an environment in the automobile collision repair industry that is nearly identical in practice to that which led to the 1963 Consent Decree.

STATE FARM'S AUTOMOBILE COLLISION REPAIR PRACTICES

22.

State Farm utilizes a program called "Select Service," and the participating repairers enter into a "Select Service Agreement" in order to be placed upon State Farm's list of preferred and/or recommended repair shops.

23.

Pursuant to the "Select Service Agreement," participating repair shops are required to engage in certain pricing structures dictated by State Farm for parts and labor rates.

24.

State Farm purports to use a survey process to determine recent and/or market labor rates.

25.

Upon information and belief, State Farm manipulates this survey process in a manner that artificially decreases the recent and/or market labor rates paid pursuant to the Select Service Agreement.

26.

Pursuant to the Select Service Agreement, State Farm's Select Service Providers are required to utilize an automated replacement parts locating service called Parts Trader.

27.

The Parts Trader software platform was developed for and funded by State Farm.

28.

The use of the Parts Trader software platform removes the ability of the repair facility to freely select replacement parts that are most appropriate for a specific repair.

29.

Upon information and belief, State Farm adjusters have become increasingly involved in the everyday tasks performed by repair facilities, including but not limited to locating specific replacement parts and mandating that repair facilities use the specific parts identified by the adjuster, even when the repair shop believes that such use is neither safe nor appropriate.

30.

The implementation of the Parts Trader program has given State Farm a platform through which to carefully monitor and control parts usage by participating repairers and has resulted in an increase in the practices described in paragraph 29.

31.

Pursuant to the Select Service Agreement, State Farm requires participating repair facilities to limit their use of supplemental damage estimates and to restrict their estimate upload activity to an initial estimate and final repair bill whenever possible.

32.

Upon information and belief, such restriction unduly pressures participating repair facilities to forgo repairs that are visually imperceptible prior to the disassembly of the vehicle and the initial estimate, but which a prudent repair facility would deem necessary.

33.

Pursuant to the Select Service Agreement, State Farm may limit the number of participating repair facilities and may rate or index the facilities based on a variety of factors using any available data.

34.

State Farm provides little or no explanation to participating facilities regarding their rank or index, which determines the order in which the facilities are recommended to consumers.

35.

Upon information and belief, State Farm has removed or demoted repair facilities who have no consumer complaints, no issues identified on their State Farm audits, and complete compliance with repair cycle times and efficiency requirements.

36.

Upon information and belief, the ranking system utilized by State Farm creates increased pressure upon participating repairers to adhere to repair standards that are dictated by State Farm and are wholly based upon repair costs, rather than consumer safety and those safety and performance standards dictated by the vehicle manufacturers.

EFFECT OF INSURER PRACTICES

37.

Pursuant to the Select Service Agreement and similar DRP contracts, repair facilities bill directly to and are paid directly by the insurer for the repairs performed on a consumer's vehicle.

38.

As a result of this payment arrangement, the insurer provides the approval and/or authorization for the repairs, and customarily the individual consumer is not meaningfully informed regarding the types of repairs made and the types and/or quality of replacement parts used until the entire repair process is complete.

39.

Each automobile manufacturer publishes guidelines for the appropriate repair of its vehicles, including the types of replacement parts and specific repair processes that should be used in order to make repairs that comply with the existing safety and performance standards associated with the vehicle.

40.

Pursuant to the Select Service Agreement and similar DRP contracts, insurers are able to exert a great degree of influence over the specific repairs performed by participating repair

facilities, including but not limited to mandating the use of specific used, recycled, or non-OEM replacement parts.

41.

Upon information and belief, insurers exert specific influence and control over participating repair facilities which directly results in the performance of repairs and utilization of parts that do not adhere to the manufacturer guidelines for specific vehicles.

42.

The estimation software systems used by the insurers generate standardized repair times that are based upon repairs to undamaged vehicles, using only original equipment manufacturer ("OEM") parts.

43.

In practice, participating facilities perform repairs on damaged vehicles and are frequently required and/or pressured by the insurers to utilize used, recycled, or non-OEM replacement parts.

44.

The actual time required by a repair facility to complete a necessary repair frequently exceeds the time generated by the estimation software.

45.

Insurers utilize the Select Service Agreement and similar DRP contracts to deny payment to participating facilities for repair times in excess of those generated by the estimation software.

46.

The influence exerted by insurers over the participating repair facilities—control of labor rates, of repair times, over the types and quality of replacement parts and over specific repair processes—operates to decrease repair costs to the insurers.

47.

The influence exerted by insurers over the participating repair facilities interferes with the judgment of the collision repairers as to the manner, parts, techniques and necessary procedures to safely and properly repair consumers' vehicles to pre-loss conditions.

48.

Upon information and belief, insurers systematically attempt to divert customers from collision repairers that are not participating DRP facilities, including State Farm's Select Service

Program, through misrepresentations to the consumer regarding their freedom to have their repairs performed by any repair facility of their choice.

49.

Upon information and belief, insurers systematically attempt to divert customers from collision repairers that are not participating DRP facilities, including State Farm's Select Service Program, by making misrepresentations to consumers regarding "problems" with non-participating repair facilities.

50.

Upon information and belief, insurers systematically attempt to divert customers from collision repairers that are not participating DRP facilities, including State Farm's Select Service Program, by making misrepresentations to consumers that they will be responsible for increased costs with non-participating repair facilities.

51.

Upon information and belief, insurers systematically attempt to divert customers from collision repairers that are not participating DRP facilities, including State Farm's Select Service Program, by misrepresenting to consumers that they will "guarantee" the work done by participating repair facilities, but that no such "guarantee" exists for work done by non-participating repair facilities.

52.

In truth and in fact, State Farm itself does not provide a "guarantee" of any sort for any work done by a participating repair facility.

53.

Upon information and belief, insurers systematically attempt to divert customers from collision repairers that are not participating DRP facilities, including State Farm's Select Service Program, by creating delays to repairs performed by non-participating repair facilities by failing to promptly and timely dispatch adjusters and appraisers to those facilities.

54.

Upon information and belief, insurers attempt to exert influence and control over non-participating repair facilities by subjecting them to the same terms and conditions as participating facilities through control of repair costs and denial of claims.

55.

Upon information and belief, insurers underpay claims made by non-DRP facilities by providing initial estimates based only upon visible damage, denying supplemental claims, and refusing to pay for procedures required by the manufacturer guidelines and the estimating companies' procedure pages.

56.

Upon information and belief, these practices by State Farm and other insurance companies lead to consumer vehicle repairs that are performed with cost-savings as the primary determining factor rather than safety and reliability.

SAFETY IMPLICATIONS

57.

Auto manufacturers design vehicles to absorb the impact of a collision. Many component parts of those vehicles must work together to maintain the integrity of the vehicle and to protect its occupants.

58.

The supplemental restraint systems installed by those manufacturers, including air bags and deployment sensors, must work together with the component parts of the vehicle in order to provide proper timing for air bag deployment.

59.

Typical airbag deployment occurs in approximately twenty to fifty milliseconds (0.02 – 0.05), from the initial crash detection until the airbag is fully inflated. The airbag then immediately deflates. The whole airbag deployment process, from detection to deflation, lasts approximately one tenth (0.1) of a second.

60.

Vehicle manufacturers engage in extensive engineering and rigorous testing to ensure that airbag deployment occurs at the exact moment in which the maximum safety benefits to the vehicle's passengers will be achieved.

61.

Variations to the types of component parts used in vehicle repair can directly result in improper timing of airbag deployment in a subsequent crash.

62.

Through the pressure and control they exert upon repair facilities, the practices of State Farm and other insurers lead to the use of non-OEM parts in repairs, directly affecting the timing of airbag deployment so that the repaired vehicle no longer meets the manufacturer's safety specifications.

63.

State Farm and other insurers routinely refuse to pay for procedures necessary to make complete repairs pursuant to the manufacturer guidelines and the procedure pages published by the estimation companies.

64.

Specifically, claims for necessary paint procedures such as feather, block and prime are routinely denied by State Farm and other insurance companies.

65.

Upon information and belief, the refusal of State Farm and other insurers to cover payments for costs associated with certain painting procedures that are necessary to make a complete repair often leads to repair facilities taking measures to cut costs associated with painting repaired vehicles.

66.

Upon information and belief, such cost-cutting measures include methods which result in airbag deployment sensors being painted over or otherwise compromised during the painting process.

67.

Through the pressure and control they exert upon repair facilities, the practices of State Farm and other insurers lead to the use of inappropriate procedures in repairs, including painting, directly affecting the timing of airbag deployment so that the repaired vehicle no longer meets the manufacturer's safety specifications.

68.

The use of front or rear repair "clips" involves replacing an entire section of a vehicle with a similar section from a donor vehicle.

69.

Many automobile manufacturers have publicly stated that they do not approve of the use of "clip" repairs, believe that they pose safety risks, and are not confident that such repairs return vehicles to pre-accident condition.

70.

Through the pressure and control they exert upon repair facilities, the practices of State Farm and other insurers lead to the use of "clip" repairs, which causes the repaired vehicle to no longer meet the manufacturer's safety specifications.

71.

Many automobile manufacturers have publicly stated that they do not approve of any repairs to aluminum wheels that involve welding, bending, straightening, reforming or adding new material, and that only those repairs to aluminum wheels which are strictly cosmetic are approved.

72.

Non-cosmetic repairs to aluminum wheels can result in an increased loss of vehicle control, vehicle rollover, personal injury and death.

73.

Use of non-recommended tires and wheels can cause steering, suspension, axle or transfer case/power unit failure.

74.

Upon information and belief, State Farm and other insurers routinely refuse to pay costs associated with OEM wheels and encourage repair facilities to recondition wheels or use non-OEM replacement parts.

75.

Through the pressure and control they exert upon repair facilities, the practices of State Farm and other insurers lead to the use of reconditioned and non-OEM replacement aluminum wheels, which causes the repaired vehicle to no longer meet the manufacturer's safety specifications.

76.

State Farm and other insurers routinely dictate the use of non-OEM aftermarket parts in a variety of repairs, and mandate that such parts must be Certified Automotive Parts Association (CAPA) certified.

77.

In truth and in fact, the CAPA certification process does not involve any actual safety testing of parts whatsoever.

78.

Non-OEM replacement parts, though CAPA certified, are frequently ill-fitting and inappropriate for the use in which they are marketed.

79.

Through the implementation of the Parts Trader program, State Farm has been able to source an increased volume of CAPA-certified parts and mandate their use in repairs.

80.

In addition to a complete lack of any safety testing and failure to meet manufacturer specifications, these CAPA-certified parts generate longer repair times due to issues with fit and finish.

81.

Insurers, including State Farm, routinely refuse to pay additional labor times associated with the use of CAPA-certified parts, while mandating their use.

82.

The systematic and repeated refusal to pay repair facilities for necessary parts, procedures and repair times induces repair facilities to seek other methods to minimize repair costs in ways which are unsafe and unfair to consumers.

CLAIMS FOR RELIEF

I. Violations of Monopolies statutes, LSA-R.S. 51:121 *et seq.*

83.

Plaintiff realleges and incorporates herein allegations in paragraphs 1 through 82.

84.

In the course of their business practices regarding their control over the automobile repair industry, Defendants have violated the provisions of LSA-R.S. 51:121 *et seq.*

85.

Defendants' repeated and continuing violations of the monopolies statutes include:

a. Intentionally and falsely leading consumers to believe that they cannot bring their vehicle to the repair facility of their choice;

b. Systematically attempting to divert customers away from repair facilities that do not participate in their direct repair programs (DRPs);

c. Falsely informing consumers that they have encountered problems working with certain non-participating repair facilities in the past;

d. Falsely representing to consumers that they will be liable for additional costs if they use a non-participating repair facility;

e. Falsely representing to consumers that the work will not be guaranteed by Defendants if performed by a non-participating repair facility, falsely insinuating that such a guarantee exists if performed by a participating facility;

f. Providing artificially low estimates on vehicles repaired at non-DRP facilities;

g. Failing to timely evaluate supplemental claims submitted by non-DRP facilities;

h. Denying many supplemental claims made by non-DRP facilities, including refusing payment requested for procedures required by manufacturer guidelines and procedure pages published by the estimation companies;

i. Manipulating their "survey" system to artificially lower and control labor rates;

j. Denying payment for labor rates to any repair facility that differs from the labor rates set and controlled by Defendants;

k. Using standardized labor times for repairs and refusing to pay for additional time necessary to actually complete such repairs; and

l. Using "miscellaneous" entries on estimates to account for any increases in labor rates or labor times allowed, so that such increases are not readily apparent and the labor rates and permitted labor times still appear "fixed."

86.

Defendants' continuing and systematic business practices meant to control and manipulate the automobile repair industry constitute a contract, combination or conspiracy in restraint of trade or commerce in this state in violation of LSA-R.S. 51:122.

87.

Defendants' continuing and systematic business practices meant to control and manipulate the automobile repair industry constitute an attempt to monopolize to conspire to monopolize any part of trade or commerce within this state in violation of LSA-R.S. 51:123.

88.

Pursuant to LSA-R.S. 51:128, the Attorney General has the right to seek injunctive relief to restrain Defendants' violations of the Monopolies statutes.

II. Violations of Louisiana Unfair Trade Practices Act, LSA-R.S. 51:1401 *et seq.*

89.

Plaintiff realleges and incorporates herein allegations in paragraphs 1 through 88.

90.

In the course of their business practices relative to the manipulation of the automotive repair industry, defendants have engaged in unfair and deceptive acts and practices in trade or commerce in violation of LSA-R.S. 51:1401 *et seq.* through the following actions:

a. Plaintiff realleges and incorporates herein allegations in paragraph 85;

b. Interfering with the judgment of collision repairers as to the manner, parts, techniques and necessary requirements to safely and properly repair consumers' vehicles;

c. Demanding the use of non-OEM parts that directly conflict with automobile manufacturer repair recommendations or guidelines;

d. Utilizing adjusters and appraisers with little or no background in automotive repair to evaluate the necessity of certain repairs, determine the types of parts to be used in repairs, and locate specific parts to be used in repairs and demand their usage;

e. Systematically underpaying claims made by non-DRP facilities so that such facilities are forced to file "short-pay" claims against them in order to collect for the full amount owed for the repair;

f. Systematically creating a procedure by which the consumer is removed from the repair decision-making process and is never given the opportunity to meaningfully evaluate the proposed repairs or give informed consent for those repairs that fall outside of the manufacturer guidelines; and

g. Manipulating the automobile repair process in a way that compromises safety not only for policyholders, but for all other consumers who travel on the roadways in proximity to such repaired vehicles.

91.

All actions described herein constitute deception to consumers, who are led to believe that they have little or no choice regarding the repair process and who are led to believe that the insurance companies have their best interests in mind with regards to automobile repairs.

92.

All actions described herein result in financial harm to consumers through the loss of value to their vehicles and material changes to vehicles which could void existing warranties or lead to further necessary repairs.

93.

All actions described herein create potential for further bodily and financial harm by placing into the stream of commerce vehicles whose repairs no longer meet the safety specifications of the vehicle manufacturer.

94.

The practices alleged in paragraph 90 constitute a pattern of unfair and deceptive trade practices in violation of LSA-R.S. 51:1405.

95.

Pursuant to LSA-R.S. 51:1407(A), the Attorney General has the right to seek injunctive relief to restrain Defendants' violations of the Louisiana Unfair Trade Practices Act.

96.

Pursuant to LSA-R.S. 51:1407(B) and (C), the Attorney General has the right to seek civil penalties for each violation, including enhanced civil penalties for violations committed against any elder or disabled person.

97.

Pursuant to LSA-R.S. 51:1407(E), the Attorney General may seek an award of restitution for consumer victims.

PRAYER FOR RELIEF

WHEREFORE, PETITIONER PRAYS that, in due course, the Court issue a permanent injunctive order against Defendants, including any employees, agents, contractors and those persons in active concert or participation with them, to restrain, enjoin and prohibit Defendants from:

1. Engaging in any activity in violation of the Louisiana Monopolies statutes, LSA-R.S. 51:121 *et seq.;*
2. Engaging in any activity in violation of the Louisiana Unfair Trade Practices and Consumer Protection Law, LSA-R.S. 51:1401 *et seq.;* or
3. Engaging in any activity that would be a violation of the 1963 Consent Decree;

Through their use of direct repair programs and other methods of controlling and manipulating the automobile repair industry, including but not limited to the specific allegations herein.

Plaintiff further prays that, in due course, the Court issue an Order that Defendants pay restitution to all consumers who have incurred a loss due to the conduct of the Defendants through any manner deemed practicable by the Court.

Plaintiff further prays that, in due course, the Court issue an Order requiring Defendants to reimburse the Office of the Attorney General for all costs and expenses incurred in the investigation and prosecution of this action.

Plaintiff further prays for all civil penalties as allowed under LSA-R.S. 51:1407 and LSA-R.S. 51:1722.

Plaintiff further prays for trial by jury on all issues that may be tried by a jury.

Plaintiff further prays that this court grant any further relief that this Court finds that justice may require or is otherwise equitable.

Respectfully submitted,

JAMES D. "BUDDY" CALDWELL
LOUISIANA ATTORNEY GENERAL

By: ______________________
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PLEASE SERVE:

STATE FARM FIRE AND CASUALTY COMPANY
Through its registered agent of service
Louisiana Secretary of State
8585 Archives Avenue
Baton Rouge, Louisiana 70809

STATE FARM GENERAL INSURANCE COMPANY
Through its registered agent of service
Louisiana Secretary of State
8585 Archives Avenue
Baton Rouge, Louisiana 70809

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY
Through its registered agent of service
Louisiana Secretary of State
8585 Archives Avenue
Baton Rouge, Louisiana 70809

IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK

U.S.

UNITED STATES OF AMERICA,
Plaintiff,
v.
ASSOCIATION OF CASUALTY AND SURETY COMPANIES; AMERICAN MUTUAL INSURANCE ALLIANCE; and NATIONAL ASSOCIATION OF MUTUAL CASUALTY COMPANIES,
Defendants.

63 Civil No. 3106
Filed:

U.S. DISTRICT COURT FILED OCT 23 1963 S.D. OF N.Y.

COMPLAINT

The United States of America, by its attorneys, acting under the direction of the Attorney General of the United States, brings this civil action to obtain equitable relief against the above named defendants, and complains and alleges as follows:

I

JURISDICTION AND VENUE

1. This complaint is filed and these proceedings are instituted under Section 4 of the Act of Congress of July 2, 1890, c. 647, 26 Stat. 209 (15 U.S.C. § 4), as amended, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," commonly known as the Sherman Act, in order to prevent and restrain continuing violations by the defendants, as hereinafter alleged, of Sections 1 and 3 of the Sherman Act.

2. The defendant Association of Casualty and Surety Companies transacts business and is found within the Southern District of New York.

II

DEFINITIONS

3. As used herein:

(a) "Member Companies" shall be deemed to mean member companies of any of the defendant associations;

EBR2493530

EXHIBIT A

(b) "Automobile" shall be deemed to mean a self-propelled vehicle used for the transportation of persons or property on the highway;

(c) "Automobile property damage liability insurance" shall be deemed to mean insurance against loss arising out of the insured's legal liability for damages to the property of others resulting from the ownership, maintenance or use of an automobile;

(d) "Automobile physical damage insurance" shall be deemed to mean insurance covering damages or loss to the automobile of the insured resulting from collision, fire, theft, and other perils;

(e) "Automobile property insurance" shall be deemed to mean automobile property damage liability insurance and automobile physical damage insurance;

(f) "Direct premiums earned" shall be deemed to mean that part of the premiums applicable to the expired part of the policy;

(g) "Direct losses incurred" shall be deemed to mean the amount of loss paid and outstanding;

(h) "Insured" shall be deemed to mean the party to whom or on behalf of whom the insurer agrees to pay losses under the insurance contract;

(i) "Insurer" shall be deemed to mean the party to the insurance contract who promises to pay losses;

(j) "Adjustment" shall be deemed to mean the process of determining the amount payable by the insurer to an insured or other claimant under the insurance contract, and the rights and obligations incident thereto;

(k) "Settlement" shall be deemed to mean the discharge of an obligation of an insurer to an insured or other claimant under an insurance contract as determined by adjustment of a claim;

(l) "Adjuster" shall be deemed to mean a person or firm who represents the insurer in the adjustment and settlement of claims with insureds or other claimants;

(m) "Automobile material damage" shall be deemed to mean any damage to an automobile resulting from collision, fire, or other perils for which automobile property insurance is available;

(n) "Repair shop" shall be deemed to mean a person or firm engaged in automobile material damage repair;

(o) "Agreed price" shall be deemed to mean a commitment by a repair shop to undertake to complete and guarantee automobile material damage repairs in consideration of the amount of an appraiser's estimate.

III

DEFENDANTS

4. Association of Casualty and Surety Companies (hereinafter referred to as "ACSC"), which maintains its principal office at 110 William Street, New York, New York, is made a defendant herein. ACSC is an unincorporated trade association whose membership is composed of 133 stock insurance companies doing business in the United States.

5. American Mutual Insurance Alliance (hereinafter referred to as "AMIA"), a corporation organized and existing under the laws of the State of Illinois, with its principal office at 20 North Wacker Drive, Chicago, Illinois, is made a defendant herein. AMIA is a trade association whose membership is composed of 106 mutual insurance companies doing business in the United States.

6. National Association of Mutual Casualty Companies (hereinafter referred to as "NAMCC"), a corporation organized and existing under the laws of the State of Illinois, with its principal office at 20 North Wacker Drive, Chicago, Illinois, is made a defendant herein. NAMCC is a trade association whose membership is composed of 26 mutual insurance companies doing business in the United States. All members of the NAMCC which write automobile property insurance are members also of AMIA.

IV

CO-CONSPIRATORS

7. Various other persons, firms, organizations and corporations, including but not limited to member companies, sponsored appraisers, and repair shops, not made defendants herein have participated as co-conspirators with the defendants in the offense hereinafter charged and have performed acts and have made statements in furtherance thereof.

V

NATURE OF TRADE AND COMMERCE

8. An important branch of the insurance industry is automobile property insurance which provides coverage for property losses arising out of the ownership or use of automobiles. This coverage is provided by two types of insurance: Automobile property damage liability insurance and automobile physical damage insurance.

9. Total direct premiums earned in the United States by all insurance companies in 1960 for automobile property insurance amounted to approximately $3,327,815,566. Of the total direct premiums earned in 1960, member companies accounted for approximately 35.5 percent, or approximately $1,183,642,376. Total direct losses incurred in the United States in 1960 by all insurance companies under automobile property insurance amounted to approximately $1,787,276,826. Of the total direct losses incurred in 1960, member companies accounted for approximately 35.2 percent, or $627,948,160.

10. Automobile property insurance is sold by insurance companies, including member companies, throughout the United States, and in the District of Columbia, by the issuance of an insurance contract, commonly called a policy, in exchange for an amount of money, commonly called premiums. The automobile property insurance business involves a continuous and indivisible stream of intercourse among states composed of collections of premiums, payments of policy obligations, and documents and communications essential to the negotiation and execution of policy contracts and the adjustment and settlement of claims.

11. A vital phase of the automobile property insurance business is the adjustment and settlement of claims. A great majority of the claims under automobile property insurance policies are for automobile material damage. It is the general practice for member companies to employ a claim representative, commonly referred to as a claim manager, to supervise and be responsible for the adjustment and settlement of claims, including those under automobile property insurance, arising in the territory assigned to him. An integral part of the process of adjustment and settlement of claims arising under automobile property insurance is determining the cost of repairing damaged automobiles. One way of accomplishing this is for the claim manager or adjuster to engage an appraiser to prepare an estimate of the repair cost.

12. An appraiser operates by examining the damaged automobile to determine the damage covered by automobile property insurance, the repairs that must be made, the time it will take to make them and thereafter securing an agreed price from a repair shop. The agreed price is transmitted by the appraiser to the claim manager or adjuster, and is used as a basis for adjusting and settling the claim. The process of adjustment and settlement of claims includes a continual transmission to and from and between home offices of insurance companies, claim managers, adjusters, appraisers, and claimants located in different

states of the United States and the District of Columbia of claim forms, statements, reports, directives, checks and drafts, documents and communications of various kinds, all of which are essential to the adjustment and settlement of claims.

13. A major part of direct losses incurred under automobile property insurance is attributable to automobile material damage repair costs; and a major part of the automobile material damage repair business is the repair of automobile damage covered by automobile property insurance. The automobile material damage repair business consists of the repair and replacement of automobile parts and is engaged in by repair shops located in all states of the United States and the District of Columbia. The price charged by repair shops for automobile material damage repairs consists of a labor charge, which is an hourly rate applied to the time taken to repair or replace parts, and a parts charge for any parts which are used to replace damaged parts on the automobile. Automobile parts are manufactured by automobile manufacturers and others in plants located in various states of the United States and are sold and shipped by them to jobbers, wholesalers and dealers located in the District of Columbia and states other than the states in which they were manufactured for resale to repair shops for sale and use in the repair of damaged automobiles.

Background of the Conspiracy

14. The ACSC has had for many years a committee known as the Advisory Committee of the Claims Bureau, sometimes referred to as the Claims Bureau Advisory Committee, which is composed of approximately 18 claims executives of member companies. The NAMCC has had for many years a committee known as the Claims Executive Committee which is composed of approximately 8 claims executives of member companies. It was and is the function of these committees to consider on behalf of their respective associations policies and programs relating to

claims administration. An additional function of the Advisory Committee of the Claims Bureau of the ACSC is to supervise the operations of and formulate policies for the Claims Bureau, a department of the ACSC. The Claims Bureau, which has a large administrative staff, maintains its headquarters at 110 William Street, New York, New York, and also has several regional offices located throughout the United States. The function of the Claims Bureau is to aid in claims administration.

15. Beginning in or about 1940, the Advisory Committee of the Claims Bureau of the ACSC and the Claims Executive Committee of the NAMCC began to hold joint meetings. These meetings were soon formalized into regular joint sessions and the group became known as the Joint Claims Committee and later the Combined Claims Committee (hereinafter referred to as "CCC"). These two committees were designated by their respective defendant associations to represent the interests of member companies on the CCC. The purpose and function of the CCC was and is to provide a common forum to consider policies and programs relating to claims administration. In 1962, by resolution of the governing boards of the defendants, the Claims Executive Committee of the NAMCC was designated to represent AHIA on the CCC.

16. On March 12, 1942 the CCC passed a resolution which provided for the organization of Casualty Insurance Claim Managers' Councils (hereinafter referred to as "Councils") in various areas of the United States to act as sub-committees of and under the direction and control of the CCC, then known as the Joint Claims Committee. These Councils are each chartered by the CCC. Each Council's membership is composed of those member companies which have a full time, salaried claim representative in the area under that Council's jurisdiction. The primary purpose and function of the Councils are to permit field claim managers of member companies to consider local problems of claims administration, including those arising under automobile property insurance. At the present time there are approximately 80 Councils located throughout the United States, including the District of Columbia.

17. In the Fall of 1946, the Pittsburgh, Pennsylvania Council met to consider what collective action might be taken by its members to depress and control automobile material damage repair costs in the Pittsburgh area. In March 1947, the Pittsburgh Council adopted a program, subsequently known as the Independent Appraisal Plan (hereinafter referred to as the "Plan"), intended to depress and control automobile material damage repair costs. The CCC in December 1948 and again in July 1949 formally adopted the Plan and since that time has sponsored it and actively promoted its expansion and use. Since its inception the Plan, under the supervision and direction of the CCC, and administered by the Claims Bureau of the ACSC and the Councils, has become a nationwide operation. By the end of 1961, it was in effect in 177 localities throughout the United States, including the District of Columbia. The CCC requires uniformity in the operation of the Plan throughout the United States.

18. Under the Plan, a Council in collaboration with the CCC, selects and sponsors an individual or partnership to act as appraiser to make determinations of automobile material damage costs for use in the adjustment and settlement of claims. Prior to the selection of a sponsored appraiser, Council members are instructed to submit to the Council the volume of business they anticipate giving the appraiser in the area for which he is to be sponsored. The sponsored appraiser is required to employ sufficient personnel to handle any volume of appraisal business in his territory. Most such appraisers have several employees. The sponsored appraiser is required to confine his operations to the territory for which he is sponsored by the Council or CCC. The fees which the sponsored appraiser charges are subject to the approval of the sponsoring Council or CCC. The sponsored appraiser is required to conform his operations to the principles of the Plan and to assure his compliance, his operations are supervised and controlled by the sponsoring Council and the Claims Bureau on behalf of the CCC. The Plan calls for exclusive use of the sponsored appraiser by member

companies and the sponsored appraiser is urged to solicit business from others in order to increase the effectiveness of the Plan.

19. Included among the means used under the Plan to control and depress automobile material damage repair costs are the following: (1) to repair rather than replace damaged parts; (2) to replace damaged parts by used rather than new parts; (3) to obtain discounts on new replacement parts; (4) to establish strict labor time allowances by the sponsored appraisers; and (5) to obtain the lowest possible hourly labor rate.

20. The Plan calls for the sponsored appraiser to arrange for a number of repair shops to agree to make automobile material damage repairs based upon his estimate without the repair shop first examining the damaged automobile. In those situations in which the damaged automobile is not already in the possession of a repair shop, the sponsored appraiser will recommend any of these repair shops to the adjuster or claim manager. In those instances where a particular repair shop in which the damaged automobile is located will not agree to make repairs based upon the sponsored appraiser's estimate, the Plan provides that the sponsored appraiser shall inform the adjuster or claim manager of the names of those repair shops which will accept his estimate and that the adjuster or claim manager will then, when possible, have the damaged automobile repaired by one of the repair shops which have agreed to accept the sponsored appraiser's estimate. It is seldom that a claim is settled at a higher figure than the sponsored appraiser's estimate.

21. The nationwide application of the Plan involves a continuous intercourse among the states composed of memoranda, correspondence, directives and other communications to and from and between the CCC, defendants, Claims Bureau, member companies, Councils and sponsored appraisers.

VI

OFFENSES CHARGED

22. Beginning in or about 1947, and continuing up to and including the date of the filing of this complaint, the defendants and co-conspirators have engaged in a combination and conspiracy in unreasonable restraint of the aforesaid trade and commerce in the adjustment and settlement of automobile property insurance claims, the automobile material damage appraisal business and the automobile material damage repair business, in violation of Sections 1 and 3 of the Sherman Act. Defendants are continuing and will continue said offenses unless the relief herein prayed for is granted.

23. The aforesaid combination and conspiracy has consisted of a continuing agreement and concert of action among the defendants and co-conspirators to eliminate competition among member companies in the adjustment and settlement of automobile property insurance claims, among appraisers and among repair shops, in order to control and depress automobile material damage repair costs through boycott, coercion and intimidation of repair shops.

24. Pursuant to and in effectuation of the aforesaid combination and conspiracy the defendants and co-conspirators did those things which, as hereinbefore alleged, they agreed to do and, among others, did the following things:

(a) Refused to recognize or sponsor more than one appraiser in a territory designated by a Council or the CCC;

(b) Coerced sponsored appraisers to operate only in the territories in which they are sponsored;

(c) Induced member companies to channel their automobile material damage appraisal business to the sponsored appraiser and boycott other automobile material damage appraisal businesses;

(d) Encouraged the use of sponsored appraisers by others to increase the effectiveness of the Plan;

(e) Required sponsored appraisers to conform their operations to the Plan and withdraw or threatened to withdraw the sponsorship of appraisers who failed to do so;

(f) Required fees charged by sponsored appraisers to be approved by Councils or the CCC;

(g) Induced member companies to refuse to settle a claim for an amount greater than a sponsored appraiser's estimate of the automobile material damage repair costs; and

(h) Induced member companies to channel automobile material damage repair business to those repair shops which will, and boycott those repair shops which will not:

(1) Accept the sponsored appraiser's estimate as to the cost of repairs;

(2) Give a price discount on replacement parts;

(3) Maintain hourly labor rates at a figure which is considered the lowest possible rate in the area; and

(4) Accede to the sponsored appraiser's determination of time allowances.

VII

EFFECTS

25 The aforesaid offenses have had, among others, the following effects:

(a) Elimination of competition in the adjustment and settlement of automobile property insurance claims, in the automobile material damage appraisal business and in the automobile material damage repair business;

(b) Non-sponsored appraisers engaged in or desiring to engage in the automobile material damage appraisal business have

been foreclosed from a substantial segment of the business;

(c) Repair shops which refuse to accept the sponsored appraisers' estimates have been foreclosed from a substantial segment of the automobile material damage repair business; and

(d) Prices charged by repair shops have been subjected to collective control and supervision by defendants and co-conspirators.

PRAYER

WHEREFORE, the plaintiff prays:

1. That the aforesaid combination and conspiracy be adjudged and decreed to be in violation of Sections 1 and 3 of the Sherman Act.

2. That each of the defendants, their officers, directors, agents, and employees, and all committees or persons acting or claiming to act on behalf of the defendants or any of them, be perpetually enjoined from continuing to carry out, directly or indirectly, the aforesaid combination and conspiracy to restrain interstate trade and commerce in the adjustment and settlement of automobile property insurance claims, the automobile material damage appraisal business and the automobile material damage repair business; and that they be perpetually enjoined from engaging in or participating in practices, contracts, agreements, or understandings, or claiming any rights thereunder, having the purpose or effect of continuing, reviving, or renewing the aforesaid offense or any offenses similar thereto.

3. That each of the defendants be enjoined from, either individually or in concert with others: (1) sponsoring or preferentially dealing with any appraiser; (2) boycotting any appraiser; (3) exercising any control over or influence upon the activities of any appraiser; (4) channeling or attempting to channel automobile material damage repair business to any repair shop or type of repair shop; (5) boycotting any repair shop or type of repair shop; or (6) coercing any repair shop to conform its prices for repair work or parts to the estimates of any appraiser or otherwise influencing the prices for repair work or parts.

4. That each of the defendants be ordered to amend its by-laws to require each of its member companies to refrain from acting in concert with any other companies in: (1) sponsoring or preferentially dealing with any

appraiser; (2) boycotting any appraiser; (3) exercising any control over or influence upon the activities of any appraiser; (4) channeling or attempting to channel automobile material damage repair business to any repair shop or type of repair shop; (5) boycotting any repair shop or type of repair shop; (6) coercing any repair shop to conform its prices for repair work or parts to the estimates of any appraiser or otherwise influencing the prices for repair work on parts; and to make compliance with such requirements a condition of membership.

5. That pursuant to Section 5 of the Sherman Act an order be made and entered herein requiring defendants AMIA and NAMCC to be brought before the Court in this proceeding and directing the Marshal of the Northern District of Illinois to serve summons upon AMIA and NAMCC.

6. That the plaintiff have such other and further relief as the nature of the case may require and the Court may deem just and proper.

7. That the Plaintiff recover the costs of this suit.

Dated: New York, New York
October 22, 1963.

ROBERT F. KENNEDY
Attorney General

WILLIAM H. ORRICK, JR.
Assistant Attorney General

BADDIA J. RASHID
Attorney, Department of Justice

JOHN H. WATERS

WILLIAM H. ROWAN

Attorneys, Department of Justice

Form No. 000

No. ____________

IN THE DISTRICT COURT

OF THE UNITED STATES

FOR THE

SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ASSOCIATION OF CASUALTY AND

SURETY COMPANIES; et al

Defendants

COMPLAINT

JOHN J. GALGAY
Attorney, Department of Justice
New York Field Office
42 Broadway, Room 500
New York, N.Y. - 10004
Cortlandt 7-7100

Filed ______________, 19___

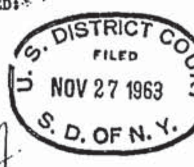
______________, Clerk.

By ______________, Deputy.

East Baton Rouge Parish Clerk of Court

C. McLean, Jr.

UNITED STATES OF AMERICA,)
Plaintiff,)
v.) CIVIL ACTION NO. 63 Civ. 3106
ASSOCIATION OF CASUALTY AND SURETY COMPANIES, AMERICAN MUTUAL INSURANCE ALLIANCE and the NATIONAL ASSOCIATION OF MUTUAL CASUALTY COMPANIES,) ENTERED:
Defendants.)



FINAL JUDGMENT

Plaintiff, United States of America, having filed its complaint herein on October 23, 1963, and the plaintiff and the defendants, by their respective attorneys, having consented to the entry of this Final Judgment without admission by any party with respect to any issue herein;

NOW, THEREFORE, before the taking of any testimony herein, without trial or adjudication of any issue, and upon such consent, as aforesaid, it is hereby

ORDERED, ADJUDGED AND DECREED as follows:

I

This Court has jurisdiction of the subject matter hereof and the parties hereto and the complaint states a claim upon which relief can be granted under Sections 1 and 3 of the Act of Congress of July 2, 1890, commonly known as the Sherman Act, as amended.

II

The provisions of this Final Judgment shall be binding upon each defendant and upon its officers, directors, agents, servants, employees, committees, successors and assigns, and upon all other persons in active

concert or participation with any defendant who shall have received actual notice of this Final Judgment by personal service or otherwise.

III

(A) Each defendant is ordered and directed within ninety (90) days from the entry of this Final Judgment to terminate, cancel and abandon the Independent Appraisal Plan, sometimes known as the Automotive Damage Appraisal Plan, which the defendants have established and are now administering, and each defendant is enjoined from reviving, renewing or again placing into effect that plan.

(B) Defendants are ordered and directed within ninety (90) days from the entry of this Final Judgment to send a written notice, in the form attached hereto as an exhibit, stating that all defendants have terminated, cancelled and abandoned the Independent Appraisal Plan (1) to each appraiser sponsored under the Plan, (2) to each member company, and (3) to each Local Casualty Insurance Claims Managers' Council.

IV

(A) Each defendant is enjoined from placing into effect any plan, program or practice which has the purpose or effect of

(1) sponsoring, endorsing or otherwise recommending any appraiser of damage to automotive vehicles;

(2) directing, advising or otherwise suggesting that any person or firm do business or refuse to do business with (a) any appraiser of damage to automotive vehicles with respect to the appraisal of such damage, or (b) any independent or dealer franchised automotive repair shop with respect to the repair of damage to automotive vehicles;

(3) exercising any control over the activities of any appraiser of damage to automotive vehicles;

(4) allocating or dividing customers, territories, markets or business among any appraisers of damage to automotive vehicles; or

(5) fixing, establishing, maintaining or otherwise controlling the prices to be paid for the appraisal of damage to automotive vehicles, or to be charged by independent or dealer franchised automotive repair shops for the repair of damage to automotive vehicles or for replacement parts or labor in connection therewith, whether by coercion, boycott or intimidation or by the use of flat rate or parts manuals or otherwise.

(B) Nothing in Subsection (A) above shall be deemed to prohibit the furnishing to any person or firm of any information indicating corrupt, fraudulent or unlawful practices on the part of any appraiser of damage to automotive vehicles or any independent or dealer franchised automotive repair shop, so long as the furnishing of such information is not part of a plan, program or practice enjoined in paragraphs (1) through (5) of Subsection (A) above. Each defendant shall include in any report of such information an affirmative statement that such report is not a recommendation and that the person or firm to whom such report is furnished should independently determine whether to do business with any appraiser or automotive repair shop to which the report relates.

V

Defendants are ordered and directed within ninety (90) days from the entry of this Final Judgment to cause the charter of each Local Casualty Insurance Claims Managers' Council to be amended so as to incorporate therein a declaration of policy that the Council shall not engage in any activity prohibited by Section IV of this Final Judgment.

VI

Nothing in Section IV of this Final Judgment shall be deemed to determine or constitute a waiver of any rights or immunities that defendants may have under the Act of Congress of March 9, 1945, commonly known as the McCarran-Ferguson Act.

VII

(A) For the purpose of determining and securing compliance with this Final Judgment and subject to any legally recognized privilege, duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General, or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to any defendant made to its principal office, be permitted

(1) access during the office hours of such defendant to all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of such defendant relating to any of the matters contained in this Final Judgment during which time counsel for such defendant may be present; and

(2) subject to the reasonable convenience of such defendant and without restraint or interference from it to interview officers or employees of such defendant, who may have counsel present, regarding any such matters.

(B) Any defendant, on the written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, shall submit within a reasonable time such reports in writing, under oath if requested, with respect to any matters contained in this Final Judgment as may be reasonably necessary for the purpose of the enforcement of this Final Judgment.

(C) No information obtained by the means provided in this Section VII shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch, except in the course of legal proceedings to which the United States of America is a party for the purpose of securing compliance with this Final Judgment or as otherwise required by law.

VIII

Jurisdiction is retained for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment or for the modification or termination of any of the provisions thereof, and for the enforcement of compliance therewith and punishment of violations thereof.

Dated: Nov. ~~25th~~ 27th, 1963

United States District Judge

JUDGMENT ENTERED 11/27/63

James E. Valiche
Clerk

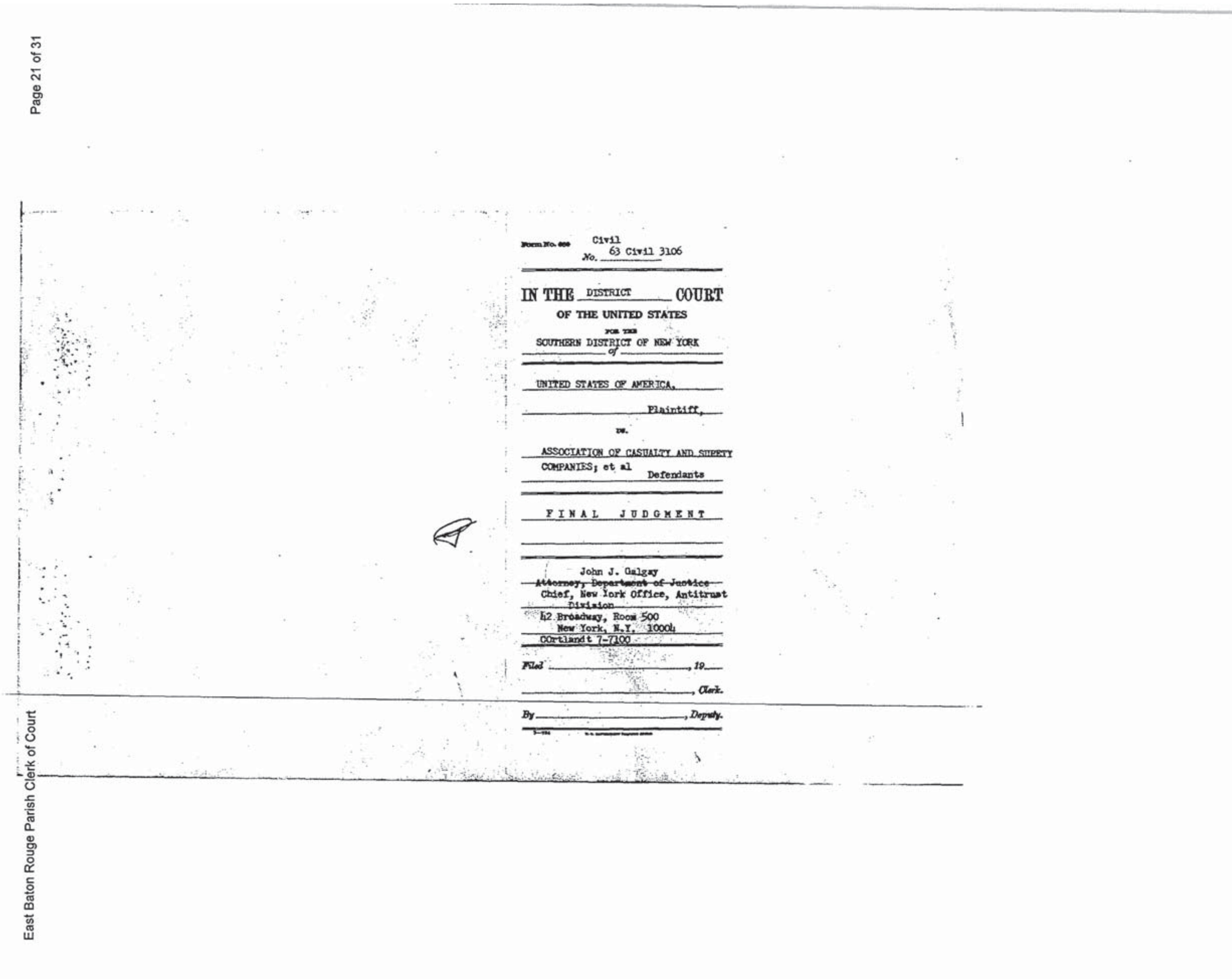
EXHIBIT

Special Bulletin

The United States Department of Justice on ________________, 1963, filed a complaint in the United States District Court for the Southern District of New York alleging that the Association of Casualty and Surety Companies, the American Mutual Insurance Alliance and the National Association of Mutual Casualty Companies had violated the antitrust laws.

On , 1963, a Consent Judgment was entered, having been previously agreed upon by the Department of Justice and by the attorneys for the three named defendants.

The Judgment commands, among other things, that the three defendants, their officers, directors, agents, servants, employees, committees, successors and assigns must, within ninety days of the entry of the Judgment, terminate, cancel and abandon the Independent Appraisal Plan, which has also been known as the Automotive Damage Appraisal Plan. Accordingly, this is to notify you that that plan is hereby terminated, that neither the three defendants nor anyone acting on their behalf, including the Local Casualty Insurance Claims Managers' Councils, will hereafter sponsor in any way any appraiser of damage to automotive vehicles, and that any existing sponsorship of any such appraiser is hereby withdrawn.



Form No. 000 Civil
No. 63 Civil 3106

IN THE DISTRICT COURT
OF THE UNITED STATES
FOR THE
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,
Plaintiff,

vs.

ASSOCIATION OF CASUALTY AND SURETY COMPANIES; et al
Defendants

FINAL JUDGMENT

John J. Galgay
~~Attorney, Department of Justice~~
Chief, New York Office, Antitrust Division
42 Broadway, Room 500
New York, N.Y. 10004
COrtlandt 7-7100

Filed __________, 19__

__________, Clerk.

By __________, Deputy.

East Baton Rouge Parish Clerk of Court

U.S.

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,
Plaintiff,
v.
ASSOCIATION OF CASUALTY AND SURETY COMPANIES, AMERICAN MUTUAL INSURANCE ALLIANCE and the NATIONAL ASSOCIATION OF MUTUAL CASUALTY COMPANIES,
Defendants.

CIVIL ACTION No. 3106 [handwritten]
ENTERED:

U.S. DISTRICT COURT FILED OCT 23 1963 S. D. OF N.Y.

STIPULATION

It is stipulated by and between the undersigned parties, by their respective attorneys, that:

(1) The parties consent that a Final Judgment in the form hereto attached may be filed and entered by the Court at any time after the expiration of thirty (30) days following the date of filing of this Stipulation without further notice to any party or other proceedings, either upon the motion of any party or upon the Court's own motion, provided that plaintiff has not withdrawn its consent as provided herein;

(2) The plaintiff may withdraw its consent hereto at any time within said period of thirty (30) days by serving notice thereof upon the other parties hereto and filing said notice with the Court;

(3) In the event plaintiff withdraws its consent hereto, this Stipulation shall be of no effect whatever in

this or any other proceeding and the making of this Stipulation shall not in any manner prejudice any consenting party in any subsequent proceedings.

Dated: October 22nd, 1963

For the Plaintiff:

William H. Orrick, Jr.,
Assistant Attorney General

Attorneys, Department of Justice

For the Defendant Association of Casualty and Surety Companies:

For the Defendants American Mutual Insurance Alliance and the National Association of Mutual Casualty Companies:

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, Plaintiff,	
v.	CIVIL ACTION No.
ASSOCIATION OF CASUALTY AND SURETY COMPANIES, AMERICAN MUTUAL INSURANCE ALLIANCE and the NATIONAL ASSOCIATION OF MUTUAL CASUALTY COMPANIES, Defendants.	ENTERED:

FINAL JUDGMENT

Plaintiff, United States of America, having filed its complaint herein on October 22nd, 1963, and the plaintiff and the defendants, by their respective attorneys, having consented to the entry of this Final Judgment without admission by any party with respect to any issue herein:

NOW, THEREFORE, before the taking of any testimony herein, without trial or adjudication of any issue, and upon such consent, as aforesaid, it is hereby

ORDERED, ADJUDGED AND DECREED as follows:

I

This Court has jurisdiction of the subject matter hereof and the parties hereto and the complaint states a claim upon which relief can be granted under Sections 1 and 3 of the Act of Congress of July 2, 1890, commonly known as the Sherman Act, as amended.

II

The provisions of this Final Judgment shall be binding upon each defendant and upon its officers, directors,

agents, servants, employees, committees, successors and assigns, and upon all other persons in active concert or participation with any defendant who shall have received actual notice of this Final Judgment by personal service or otherwise.

III

(A) Each defendant is ordered and directed within 90 days from the entry of this Final Judgment to terminate, cancel and abandon the Independent Appraisal Plan, sometimes known as the Automotive Damage Appraisal Plan, which the defendants have established and are now administering, and each defendant is enjoined from reviving, renewing or again placing into effect that plan.

(B) Defendants are ordered and directed within 90 days from the entry of this Final Judgment to send a written notice, in the form attached hereto as an exhibit, stating that all defendants have terminated, cancelled and abandoned the Independent Appraisal Plan (1) to each appraiser sponsored under the Plan, (2) to each member company, and (3) to each Local Casualty Insurance Claims Managers' Council.

IV

(A) Each defendant is enjoined from placing into effect any plan, program or practice which has the purpose or effect of

(1) sponsoring, endorsing or otherwise recommending any appraiser of damage to automotive vehicles;

(2) directing, advising or otherwise suggesting that any person or firm do business or refuse to do

business with (a) any appraiser of damage to automotive vehicles with respect to the appraisal of such damage, or (b) any independent or dealer franchised automotive repair shop with respect to the repair of damage to automotive vehicles;

(3) exercising any control over the activities of any appraiser of damage to automotive vehicles;

(4) allocating or dividing customers, territories, markets or business among any appraisers of damage to automotive vehicles; or

(5) fixing, establishing, maintaining or otherwise controlling the prices to be paid for the appraisal of damage to automotive vehicles, or to be charged by independent or dealer franchised automotive repair shops for the repair of damage to automotive vehicles or for replacement parts or labor in connection therewith, whether by coercion, boycott or intimidation or by the use of flat rate or parts manuals or otherwise.

(B) Nothing in Subsection (A) above shall be deemed to prohibit the furnishing to any person or firm of any information indicating corrupt, fraudulent or unlawful practices on the part of any appraiser of damage to automotive vehicles or any independent or dealer franchised automotive repair shop, so long as the furnishing of such information is not part of a plan, program or practice enjoined in paragraphs (1) through (5) of Subsection (A) above. Each defendant shall include in any report of such information an affirmative statement that such report is not a recommendation and that the person or firm to whom such report is furnished should independently determine whether to do business with any

appraiser or automotive repair shop to which the report relates.

V

Defendants are ordered and directed within 90 days from the entry of this Final Judgment to cause the charter of each Local Casualty Insurance Claims Managers' Council to be amended so as to incorporate therein a declaration of policy that the Council shall not engage in any activity prohibited by Section IV of this Final Judgment.

VI

Nothing in Section IV of this Final Judgment shall be deemed to determine or constitute a waiver of any rights or immunities that defendants may have under the Act of Congress of March 9, 1945, commonly known as the McCarran-Ferguson Act.

VII

(A) For the purpose of determining and securing compliance with this Final Judgment and subject to any legally recognized privilege, duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General, or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to any defendant made to its principal office, be permitted

(1) access during the office hours of such defendant to all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of such

defendant relating to any of the matters contained in this Final Judgment during which time counsel for such defendant may be present; and

(2) subject to the reasonable convenience of such defendant and without restraint or interference from it to interview officers or employees of such defendant, who may have counsel present, regarding any such matters.

(B) Any defendant, on the written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, shall submit within a reasonable time such reports in writing, under oath if requested, with respect to any matters contained in this Final Judgment as may be reasonably necessary for the purpose of the enforcement of this Final Judgment.

(C) No information obtained by the means provided in this Section VII shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch, except in the course of legal proceedings to which the United States of America is a party for the purpose of securing compliance with this Final Judgment or as otherwise required by law.

VIII

Jurisdiction is retained for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment or for the modification or termination of any of the provisions thereof, and for

the enforcement of compliance therewith and punishment of violations thereof.

Dated: , 1963

United States District Judge

EXHIBIT

Special Bulletin

The United States Department of Justice on ____________________, 1963, filed a complaint in the United States District Court for the Southern District of New York, alleging that the Association of Casualty and Surety Companies, the American Mutual Insurance Alliance and the National Association of Mutual Casualty Companies had violated the antitrust laws.

On , 1963, a Consent Judgment was entered, having been previously agreed upon by the Department of Justice and by the attorneys for the three named defendants.

The Judgment commands, among other things, that the three defendants, their officers, directors, agents, servants, employees, committees, successors and assigns must, within ninety days of the entry of the Judgment, terminate, cancel and abandon the Independent Appraisal Plan, which has also been known as the Automotive Damage Appraisal Plan. Accordingly, this is to notify you that that plan is hereby terminated, that neither the three defendants nor anyone acting on their behalf, including the Local Casualty Insurance Claims Managers' Councils, will hereafter sponsor in any way any appraiser of damage to automotive vehicles, and that any existing sponsorship of any such appraiser is hereby withdrawn.

Form No. 000

No. ____________

IN THE DISTRICT COURT

OF THE UNITED STATES

FOR THE

SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ASSOCIATION OF CASUALTY AND ~~SURETY COMPANIES, et al~~

Defendants

STIPULATION and PROPOSED

FINAL JUDGMENT

JOHN J. GALGAY

Attorney, Department of Justice
New York Field Office

42 Broadway, Room 500
New York, N.Y. - 10004
Cortlandt 7-7100

Filed ____________, 19__

____________, Clerk.

By ____________, Deputy.