

IN THE CIRCUIT COURT FOR WILLIAMSON COUNTY, TENNESSEE

PRICE'S COLLISION CENTER, LLC,)	
In its own capacity and as Agent for Anne)	
Crockett,)	
)	
Plaintiff,)	Case No. 2011 CV-638
)	
v.)	
)	
PROGRESSIVE HAWAII INSURANCE)	
CORPORATION,)	
)	
Defendant.)	

COMPLAINT¹

Plaintiff Price's Collision Center, LLC, in its own capacity and as agent for Anne Crockett, hereby files this Complaint against Defendant Progressive Hawaii Insurance Corporation and states as follows:

I. NATURE OF THIS ACTION

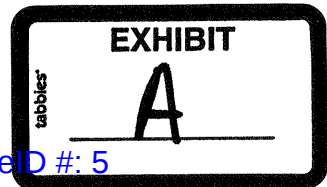
1. This is an action against Defendant Progressive Hawaii Insurance Corporation for breach of contract, violations of the Tennessee Consumer Protection Act, and tortious interference with existing and prospective business relationships.

II. PARTIES, JURISDICTION, AND VENUE

2. Plaintiff Price's Collision Center, LLC, is a Tennessee LLC with its principal place of business at 1676 Mallory Lane, Brentwood, Williamson County, Tennessee.

3. Anne Crockett is a resident of Nashville, Tennessee. Ms. Crockett assigned her rights in this litigation to Price's Collision Center, LLC on July 15, 2011.

¹ This action is an appeal from a General Sessions case. In conjunction with that appeal, in April 2012, the Plaintiff served discovery on the Defendant. In response to that discovery, the Defendant moved for a more definite statement of the Plaintiff's claims in this case as only the General Sessions "Civil Warrant" had been filed. This Complaint is filed with the Court and served upon the Defendant pursuant to an agreement between Plaintiff and Defendant that Plaintiff would clarify the claims asserted in this litigation by July 30, 2012.



4. Defendant Progressive Hawaii Insurance Corp. ("Progressive") is an Ohio corporation doing business in Tennessee under the umbrella of the familiar "Progressive" brand of insurance companies.

5. This Court has subject matter jurisdiction over this case pursuant to Tenn. Code Ann. § 16-10-101.

6. Venue is proper in this Court pursuant to Tenn. Code Ann. § 20-4-101.

FACTUAL BACKGROUND

7. On June 14, 2011, Anne Crockett was involved in a car accident that resulted in damages to her vehicle, a 2007 Honda Accord.

8. Ms. Crockett had a binding and valid collision insurance agreement with the Defendant.

9. Pursuant to their agreement, the Defendant was obligated to pay the costs of repairing Ms. Crockett's vehicle to its pre-accident (or "pre-loss") condition.

10. The insurance agreement between the Defendant and Ms. Crockett further allowed Ms. Crockett to choose the repair shop at which she would have her vehicle restored to its pre-loss condition.

11. Ms. Crockett chose to have her vehicle repaired at Price's Collision Center (the Plaintiff's repair shop) in Brentwood, Tennessee.

12. On June 15, 2011, an agent of the Defendant evaluated the damage to Ms. Crockett's vehicle, prepared an initial, preliminary estimate and sent that estimate to the Plaintiff. This initial, preliminary report estimated that the total repair cost would be \$5,751.04.

13. Shortly thereafter, Ms. Crockett delivered her vehicle to the Plaintiff for repair. During the repair process, the Plaintiff's employees identified additional repairs not noted by the

Defendant's initial, preliminary report that were necessary to restore Ms. Crockett's vehicle to its pre-loss condition.

14. After discovering these necessary repairs, the Plaintiff, through employee Rick Flores, sent a request to approve supplemental repairs to the Defendant, and the Plaintiff completed these additional necessary repairs.

15. Despite repeated requests, the Defendant has refused to pay for these additional repairs, valued at \$693.01.

16. Upon information and belief, the Defendant's refusal to pay for the supplemental repairs is part of a broader campaign waged against the Plaintiff's business. The Defendant recognizes that the Plaintiff's repair shop performs a thorough, quality job that guarantees that the vehicle is actually restored to pre-loss condition, and, as a result, the Plaintiff's shop may charge more than other repair shops.

17. Upon information and belief, in an effort to damage the Plaintiff's business and ultimately drive the Plaintiff from the marketplace, the Defendant "steers" customers away from the Plaintiff's shop either by actively discouraging its customers from having repairs done at the Plaintiff's shop and/or by discouraging customers from returning to the Plaintiff's shop by refusing to pay for the total amount of the repair and leaving the customer ultimately responsible for the balance of the cost of the repair.

18. On July 15, 2011, Ms. Crockett assigned her rights against the Defendant in this matter to the Plaintiff.

19. On August 15, 2011, the Plaintiff instituted this action in General Sessions Court.

20. After judgment was entered against the Plaintiff in General Sessions Court, the Plaintiff appealed this matter on November 14, 2011.

CLAIMS AGAINST PROGRESSIVE

BREACH OF CONTRACT (COUNT I)

21. Plaintiff incorporates the allegations in paragraphs 1 through 20 above as if fully restated.

22. Between the Defendant and Ms. Crockett there was a binding agreement for insurance coverage providing that, in exchange for insurance premium payments, the Defendant would, among other things, pay for all reasonable repairs to Ms. Crockett's vehicle necessary to restore the vehicle to its "pre-loss" condition following an accident. Ms. Crockett has assigned her rights under that insurance coverage agreement to the Plaintiff.

23. The supplemental repairs identified by the Plaintiff were reasonable and necessary to restore the vehicle to its pre-loss condition.

24. Without excuse or justification, the Defendant has refused to pay for the additional repairs, forcing the Plaintiff to institute this litigation to recover the uncompensated amount.

25. The Defendant has breached its insurance agreement with Ms. Crockett and is liable to the Plaintiff for the damages resulting from that breach.

VIOLATIONS OF THE TENNESSEE CONSUMER PROTECTION ACT (TCPA)
(COUNT II)

26. Plaintiff incorporates the allegations in paragraphs 1 through 25 above as if fully restated.

27. The Defendant disfavors the Plaintiff because the professional, thorough and exhaustive job that the Plaintiff performs on the vehicles owned by the Defendant's insured sometimes results in more expensive repairs and more costs to the Defendant than if the repairs were performed by another shop.

28. The Defendant therefore engages in conduct designed to discourage individuals from choosing the Plaintiff's repair shop, even though the insurance contracts at issue, including the one in place in this matter, entitle the insured to go to the repair shop of the insured's choosing.

29. Upon information and belief, in an effort to discourage its insured from using the Plaintiff's repair shop, the Defendant engages in various tactics to achieve that result, including "steering" customers from the Plaintiff's shop, discrediting the Plaintiff's shop, and/or refusing to pay for legitimate and necessary repairs performed by the Plaintiff. Full discovery will be necessary to reveal the scope of the Defendant's misconduct in this matter.

30. These practices, which discourage the insured from selecting the repair shop of her choosing and damage the Plaintiff's business and reputation, are unfair and deceptive practices in trade and commerce because they are designed to mislead reasonable customers into thinking, contrary to fact, that the Plaintiff's repair shop overcharges customers and does not provide a good value. These practices also deceive the Defendant's insured, including Ms. Crockett, as to their rights under the relevant insurance agreements. These practices deceive both the Plaintiff and its customers, including Ms. Crockett.

31. The Plaintiff's TCPA claim arises under T.C.A. § 47-18-104(b)(27)(2011), which broadly directs that any unfair or "deceptive" act in trade or commerce is actionable under the

TCPA.² As fully explained herein, the Defendant's conduct, which is directed at driving the Plaintiff from the marketplace and forcing its insured to select less competent car repair facilities, is unfair and deceptive in a myriad of ways, including:

(a) Through subtle or direct pressure, the Defendant actively encourages or "steers" its insured away from the Plaintiff's shop, despite the fact that the insured are entitled under their policies to choose the shop of their choice. Upon information and belief, these pressures include "warning" customers that repairs at the Plaintiff's shop may not be paid for, thereby suggesting that an insured who wishes to go to the Plaintiff's shop should go somewhere else;

(b) For those insured not dissuaded by the Defendant's tactics, the Defendant refuses to pay for legitimate, covered repairs simply because they were performed by the Plaintiff's shop; here, for instance, the Defendant has refused to pay for \$693.01 in legitimate repairs to Ms. Crockett's vehicle as part of its efforts to drive the Plaintiff from the marketplace and for its insured to select less competent car repair facilities;

(c) Upon information and belief, after not paying for a covered repair, the Defendant continues to discredit the Plaintiff's shop by telling the insured that the repair performed was not reasonable and necessary, when, in fact, it was.

32. In addition to violating T.C.A. § 47-18-104(b)(27)(2011), numerous other provisions of the TCPA are implicated by the Defendant's conduct in this matter, and Plaintiff

² The TCPA was amended in October 2011, to make this provision enforceable only by the Tennessee Attorney General. This matter was filed in August 2011, and this amendment is not retroactive, meaning that the version of the TCPA that broadly prohibits any unfair or deceptive act or practice in trade or commerce is applicable to this case. See *Asemota v. Suntrust Mortg.*, 2012 U.S. Dist. LEXIS 83744, 35-36 (W.D. Tenn. June 18, 2012) (discussing Section 104(b)(27) and stating that the "amendment took effect on October 1, 2011, and the Public Act did not indicate that it should be applied retroactively. . . . Therefore, the Court finds the controlling version of the TCPA to be the version in effect when Plaintiff filed suit in September of 2011.")

anticipates that discovery will confirm that the Defendant has violated other provisions of the T.C.P.A., including T.C.A. § 47-18-104(b)(2), (3), (5), (7), (8), (9), (11), (12), (15).

33. The Plaintiff and Ms. Crockett suffered an ascertainable loss as the result of the Defendant's conduct, as, among other things, the Defendant has failed to pay the full amount owed on the repair bill based on its business practice of actively discouraging customers from going to the Plaintiff's repair shop. Discovery in this matter may reveal additional misconduct and additional losses.

34. These violations of the Tennessee Consumer Protection Act entitle Plaintiff to attorney's fees and costs pursuant to T.C.A. § 47-18-109(e)(1).. Further, these violations were willful or knowing and thus entitle the Plaintiff to treble damages pursuant to T.C.A. § 47-18-109(a)(3).

TORTIOUS INTERFERENCE WITH BUSINESS RELATIONSHIPS (COUNT III)

35. Plaintiff incorporates the allegations in the paragraphs 1-34 above as if fully restated.

36. The Plaintiff and its customers, including Ms. Crockett, have an existing business relationship and, as future car repairs are concerned, a business relationship that is "prospective" as well.

37. The Defendant is acutely aware of these relationships, as, not infrequently, the Defendant's insured seek to become customers of the Plaintiff following a car accident.

38. Upon information and belief, the Defendant has actively sought to cause the termination of the existing or prospective relationship between the Plaintiff and its customers, including Ms. Crockett, by discouraging its insured from having their cars repaired at the

Plaintiff's shop because the thorough and professional work performed by the Plaintiff may result in costs that are higher than the Defendant wishes to pay.

39. This active discouragement involves assorted improper means and is driven by the improper motive of damaging the Plaintiff's business and driving the Plaintiff from the marketplace. Upon information and belief, these means include "steering" clients away from the Plaintiff's shop, publicly and privately discrediting the Plaintiff's shop, and/or refusing to pay the full amount of the repairs for work done by the Plaintiff's shop, as occurred in this case.

40. This interference with the Plaintiff's existing and prospective business relationships damages both the Plaintiff and its customers, such as Mrs. Crockett. That is, insured individuals will be less likely to visit or return to the Plaintiff's shop because of the hassles and additional costs created by the Defendant's practices, injuring the Plaintiff. The Plaintiff's customers, as in this case, are left personally responsible for a bill that the insurance company was obligated to pay and, upon information and belief, ultimately experience additional car repairs and costs as the result of being "steered" into less quality car repairs services.

41. The Defendant's conduct in discouraging insured individuals from using the Plaintiff's shop through a variety of improper means (and driven by improper motives) is intentional, fraudulent, reckless, and malicious and entitles the Plaintiff to punitive damages.

WHEREFORE, PREMISES CONSIDERED, Plaintiff respectfully requests the following:

1. That Plaintiff be awarded a judgment against Defendant in an amount sufficient to compensate it for the damages it has suffered. **Specifically, the Plaintiff now pleads that the damages in this case exceed the jurisdictional limits (\$24,999) of the General Sessions Court, and the Plaintiff hereby explicitly amends its demand to seek an amount in excess of**

those jurisdictional limits, to be proved during the course of these proceedings and/or at trial.

2. That Plaintiff be awarded treble damages and attorney's fees pursuant to the Tennessee Consumer Protection Act.

3. That Plaintiff be awarded punitive damages as a result of Defendant's intentional, fraudulent, reckless, and malicious conduct.

4. That pre-judgment and post-judgment interest be awarded to Plaintiff.

5. That Plaintiff receive such further and other general relief to which it may be entitled, including but not limited to its costs and attorney's fees.

Respectfully submitted,

NEAL & HARWELL, PLC

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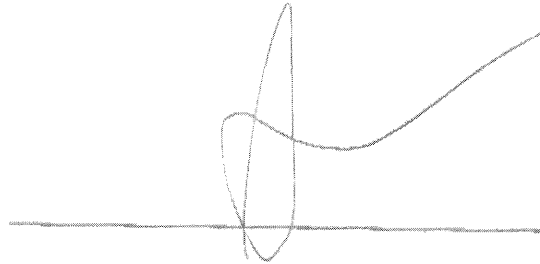
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served via U.S.

Mail and fax, postage prepaid to:

John Thomas Feeney
Feeney & Murray, P.C.
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Nashville, TN 37219
FAX: 615-242-7111

This the 27th day of July, 2012.

A handwritten signature in black ink, appearing to be "John Thomas Feeney", is written over a horizontal line. The signature is stylized with a large loop and a long tail that extends to the right.