UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

INDIANA AUTOBODY ASSOCIATION, INC., GARY CONNS COLLISION CENTER, INC., CROSS PAINT & BODY SHOP, INCORPORATED, DAN T. GRATZ BODY SHOP, INC., DECKER & VICKERY, INC., ENNEKING'S AUTO BODY, INC., EXCEL AUTO BODY, INC., JON'S BODY SHOP, INC., MAIN STREET BODY SHOP, INC., MINTON BODY SHOP, INC., PRESTIGE AUTO BODY REPAIR, INC., KEVIN WELLS, dba KNJ LLC and QUALITY COLLISION, INC., SOUTHLAKE COLLISION CENTER, INC., TEAM 150, INC., and Carl THURMAN dba THURMAN BODY SHOP, LLC,	)	
Plaintiffs,	)	
-vs-	)	CASE NO: 1:14-cv-507
STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, STATE FARM FIRE AND CASUALTY COMPANY, STATE FARM GENERAL INSURANCE COMPANY, PROGRESSIVE CASUALTY INSURANCE COMPANY, PROGRESSIVE AMERICAN INSURANCE COMPANY, PROGRESSIVE CLASSIC INSURANCE COMPANY, PROGRESSIVE DIRECT INSURANCE COMPANY, PROGRESSIVE MAX INSURANCE COMPANY, INDIANA FARMERS MUTUAL INSURANCE COMPANY, ALLSTATE INDEMNITY COMPANY, ALLSTATE INSURANCE COMPANY, ALLSTATE PROPERTY AND CASUALTY INSURANCE COMPANY, ALLSTATE VEHICLE AND PROPERTY INSURANCE COMPANY, GEICO GENERAL INSURANCE COMPANY, GEICO INDEMNITY COMPANY, SHELTER GENERAL INSURANCE COMPANY, SHELTER MUTUAL INSURANCE COMPANY, NATIONWIDE MUTUAL INSURANCE COMPANY, NATIONWIDE PROPERTY AND CASUALTY INSURANCE COMPANY, NATIONWIDE	)	

ASSURANCE COMPANY, AMERICAN FAMILY MUTUAL INSURANCE COMPANY, ERIE INSURANCE COMPANY, ERIE INSURANCE PROPERTY & CASUALTY COMPANY, AUTO-OWNERS INSURANCE COMPANY, ZURICH AMERICAN INSURANCE COMPANY, ZURICH AMERICAN INSURANCE COMPANY OF ILLINOIS, and LIBERTY MUTUAL INSURANCE COMPANY,

Defendants.

Jury Trial Requested

COMPLAINT

Introduction

1. This is an action for injunctive relief and damages brought by multiple Indiana body shops against multiple insurance companies. The body shops ("Shops") protect and provide services to consumers by repairing damaged vehicles so that they are safe to operate on public roads, and so they may protect the general public should those vehicles be involved in another collision. The insurance companies ("Insurers") are improperly intruding upon the relationship between the Shops and consumers, and placing the driving public at harm by their practices.

Jurisdiction, Venue and Cause of Action

2. This Court has original subject matter jurisdiction of the federal questions presented herein pursuant to 28 U.S.C. §§ 1331 and 1343. This Court has supplemental jurisdiction of the state law claims presented pursuant to 28 U.S.C. § 1367(a), because the state and federal claims "derive from a common nucleus of operative fact." *United Mine Workers v. Gibbs*, 383 U.S. 715, 725 (1966).

3. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b), for some of the Defendants reside in this judicial district, and the events or omissions giving rise to these claims arose here.

4. This is an action brought pursuant to the right of action recognized by the Sherman Antitrust Act of 1890, 15 U.S.C. § 1 et seq., as amended, and by the laws of the State of Indiana.

Parties

5. Plaintiff Indiana AutoBody Association, Inc. ("IABA"), is a non-profit domestic corporation, incorporated and existing in the State of Indiana. IABA is a trade organization that represents businesses engaged in collision repair of automobiles statewide; promotes professionalism; and promotes consumer awareness of the automotive collision repair industry in the State of Indiana.

6. Plaintiff Gary Conns Collision Center, Inc., is a business incorporated and operating in the State of Indiana, engaged in the collision repair of automobiles.

7. Plaintiff Cross Paint & Body Shop, Inc., is a business incorporated and operating in the State of Indiana, engaged in the collision repair of automobiles.

8. Plaintiff Dan T. Gratz Body & Paint Shop, Inc., is a business incorporated and operating in the State of Indiana, engaged in the collision repair of automobiles.

9. Decker & Vickory Inc., is a business incorporated and operating in the State of Indiana, engaged in the collision repair of automobiles.

10. Plaintiff Enneking Auto Body, Inc., is a business incorporated and operating in the State of Indiana, engaged in the collision repair of automobiles.

11. Plaintiff Excel Auto Body & Glass, Inc., is a business incorporated and operating in the State of Indiana, engaged in the collision repair of automobiles.

12. Plaintiff Jon's Body Shop, Inc., is a business incorporated and operating in the State of Indiana, engaged in the collision repair of automobiles.

13. Main Street Body Shop, Inc., is a business incorporated and operating in the State of Indiana, engaged in the collision repair of automobiles.

14. Plaintiff Minton Body Shop, Inc., is a business incorporated and operating in the State of Indiana, engaged in the collision repair of automobiles.

15. Plaintiff Prestige Auto Body Repair, Inc., is a business incorporated and operating in the State of Indiana, engaged in the collision repair of automobiles.

16. Plaintiff Kevin Wells, d/b/a KNJ LLC and Quality Collision, Inc., is a business operating in the State of Indiana, engaged in the collision repair of automobiles.

17. Plaintiff Southlake Collision Center, Inc., is a business incorporated and operating in the State of Indiana, engaged in the collision repair of automobiles.

18. Plaintiff Team 150, Inc., is a business incorporated and operating in the State of Indiana, engaged in the collision repair of automobiles.

19. Plaintiff Carl Thurman, d/b/a, Thurman Body Shop, LLC, is a business operating in the State of Indiana, engaged in the collision repair of automobiles.

20. Defendant State Farm Mutual Automobile Insurance Company is an insurance company, pursuant to Indiana Code § 27-1-2-3, registered with the Indiana Department of Insurance ("IDOI"), to do business within the State of Indiana.

21. Defendant State Farm Fire and Casualty Company is an insurance company, pursuant to I.C. § 27-1-2-3, registered with the IDOI to do business within the State of Indiana.

22. Defendant State Farm General Insurance Company is an insurance company, pursuant to I.C. § 27-1-2-3, registered with the IDOI to do business within the State of Indiana. (State Farm Mutual Automobile Insurance Company, State Farm Fire and Casualty Company and State Farm General Insurance Company are hereinafter collectively referred to as "State Farm").

23. Defendant Progressive Casualty Insurance Company is an insurance company, pursuant to I.C. § 27-1-2-3, registered with the IDOI to do business within the State of Indiana.

24. Defendant Progressive American Insurance Company is an insurance company, pursuant to I.C. § 27-1-2-3, registered with the IDOI to do business within the State of Indiana.

25. Defendant Progressive Classic Insurance Company is an insurance company, pursuant to I.C. § 27-1-2-3, registered with the IDOI to do business within the State of Indiana.

26. Defendant Progressive Direct Insurance Company is an insurance company, pursuant to I.C. § 27-1-2-3, registered with the IDOI to do business within the State of Indiana.

27. Defendant Progressive Max Insurance Company is an insurance company, pursuant to I.C. § 27-1-2-3, registered with the IDOI to do business within the State of Indiana. (Progressive Casualty Insurance Company, Progressive American Insurance

Company, Progressive Classic Insurance Company, Progressive Direct Insurance Company and Progressive Max Insurance Company are hereinafter collectively referred to as "Progressive.")

28. Defendant Indiana Farmers Mutual Insurance Company is an insurance company, pursuant to I.C. § 27-1-2-3, registered with the IDOI to do business within the State of Indiana.

29. Defendant Allstate Indemnity Company is an insurance company, pursuant to I.C. § 27-1-2-3, registered with the IDOI to do business within the State of Indiana.

30. Defendant Allstate Insurance Company is an insurance company, pursuant to I.C. § 27-1-2-3, registered with the IDOI to do business within the State of Indiana.

31. Defendant Allstate Property and Casualty Insurance Company is an insurance company, pursuant to I.C. § 27-1-2-3, registered with the IDOI to do business within the State of Indiana.

32. Defendant Allstate Vehicle and Property Insurance Company is an insurance company, pursuant to I.C. § 27-1-2-3, registered with the IDOI to do business within the State of Indiana.

33. Defendant GEICO General Insurance Company is an insurance company, pursuant to I.C. § 27-1-2-3, registered with the IDOI to do business within the State of Indiana.

34. Defendant GEICO Indemnity Company is an insurance company, pursuant to I.C. § 27-1-2-3, registered with the IDOI to do business within the State of Indiana.

35. Defendant Shelter General Insurance Company is an insurance company, pursuant to I.C. § 27-1-2-3, registered with the IDOI to do business within the State of Indiana.

36. Defendant Shelter Mutual Insurance Company is an insurance company, pursuant to I.C. § 27-1-2-3, registered with the IDOI to do business within the State of Indiana.

37. Defendant Nationwide Mutual Insurance Company is an insurance company, pursuant to I.C. § 27-1-2-3, registered with the IDOI to do business within the State of Indiana.

38. Defendant Nationwide Property and Casualty Insurance Company is an insurance company, pursuant to I.C. § 27-1-2-3, registered with the IDOI to do business within the State of Indiana.

39. Defendant Nationwide Assurance Company is an insurance company, pursuant to I.C. § 27-1-2-3, registered with the IDOI to do business within the State of Indiana.

40. Defendant American Family Mutual Insurance Company is an insurance company, pursuant to I.C. § 27-1-2-3, registered with the IDOI to do business within the State of Indiana.

41. Defendant Erie Insurance Company is an insurance company, pursuant to I.C. § 27-1-2-3, registered with the IDOI to do business within the State of Indiana.

42. Defendant Erie Insurance Property & Casualty Company is an insurance company, pursuant to I.C. § 27-1-2-3, registered with the IDOI to do business within the State of Indiana.

43. Defendant Auto-Owners Insurance Company is an insurance company, pursuant to I.C. § 27-1-2-3, registered with the IDOI to do business within the State of Indiana.

44. Defendant Zurich American Insurance Company is an insurance company, pursuant to I.C. § 27-1-2-3, registered with the IDOI to do business within the State of Indiana.

45. Defendant Zurich American Insurance Company of Illinois is an insurance company, pursuant to I.C. § 27-1-2-3, registered with the IDOI to do business within the State of Indiana.

46. Defendant Liberty Mutual Insurance Company is an insurance company, pursuant to I.C. § 27-1-2-3, registered with the IDOI to do business within the State of Indiana.

Factual Allegations

47. Each individual Plaintiff except for the IABA (also collectively referred to as the "Shops"), is in the business of recovery and repair of motor vehicles involved in collisions.

48. The IABA is a non-profit association, of which the Shops and other body shops are members, that seeks to protect the interests of its members in their business relationships with insurers, promote professionalism and consumer awareness of the automotive collision industry.

49. Each individual Defendant is an insurer providing automobile policies to consumers throughout the state of Indiana.

50. Each Plaintiff has done business at various times over the course of years

with Defendants' policyholders and claimants by providing to them motor vehicle collision repair services. Defendant Insurers are generally individually responsible for payment of those repairs for their respective policyholders and claimants, pursuant to insurance agreements between the Defendants, on one side, and the policyholders and claimants on the other.

51. Upon information and belief, over the course of several years, the Defendants have engaged in an ongoing, concerted and intentional course of action and conduct with State Farm spearheading efforts to control and artificially depress automobile damage repair costs to the detriment of the Plaintiffs, policyholders, claimants and consumers, but to the substantial advantage of the Defendants.

52. One method by which the Defendants exert control over Plaintiffs' businesses is by entering "program agreements" with individual Plaintiffs and other body shops that are similarly situated. Although each Defendant's program agreements have unique titles, such agreements are known generally and generically within the collision repair industry as Direct Repair Program agreements ("DRPs").

53. DRPs were presented and characterized by the Defendants to the Plaintiffs as a mutually beneficial opportunity. In exchange for providing certain concessions of price, priority and similar matters, the individual Defendant would list the body shop as a "preferred provider."

54. However, the concessions demanded by the Insurers in exchange for remaining on the Direct Repair Program were not balanced by the purported benefits. The Defendants, particularly State Farm, have utilized these agreements to exert control over the Shops in a variety of manners, and well beyond the constraints imposed by an

ordinary business agreement.

55. Upon information and belief, Defendants, particularly State Farm, have engaged in an ongoing pattern and practice of coercion and implied threats to the pecuniary health of the individual Plaintiff's businesses in order to force compliance with unreasonable and onerous concessions. Failure to comply by a Shop results in either removal from the DRP, combined with improper "steering" of customers away from the Plaintiff's business, or simply punishment to decrease the number of customers utilizing the Plaintiff's services.

56. According to the Company Market Share Report, as of May 21, 2013, State Farm has captured 24.98% of the private passenger automobile insurance business within the market area of the state of Indiana. (*See Indiana 2012 Market Share Report*, p. 1, attached hereto as Exhibit 1). The market share for its closest competitor, Progressive is 9.81%. (*Id*.) The next closest competitor, Indiana Farm Bureau Group (which appears to be coterminous with Indiana Farmers Mutual Insurance Company), holds less than a third of the market share of State Farm, 7.98%. (*Id*.)

57. Based upon the foregoing, State Farm holds an unchallenged and clearly dominant position within the automobile insurance industry in the Indiana market.

58. Collectively, upon information and belief, the Defendants control over 75% of the market within the State of Indiana. (*Id*.)

59. Upon information and belief, the vast majority of the Plaintiffs' business is generated by customers for whom the Defendants are responsible to pay repair costs.

60. Customers with insurance account for between seventy and ninety-five percent of each shop's revenue. Courts have acknowledged the significant role played by

insurance companies in funding automobile collision repairs, as well as the ability and market power to exert substantial influence and control over where its customer will take a wrecked car for repairs. *See*, e.g., *Allstate Ins. Co. v. Abbott*, 2006 U.S. Dist. LEXIS 9342 (N.D. Tex. 2006) (aff'd, *Allstate Ins. Co. v. Abbott*, 495 F.3d 151 (5th Cir. 2007).

61. Generally, each DRP usually contains a statement to the effect that the body shop will charge the respective insurance company no more for any particular repair than the going rate in the market area (also referred to as the "Market Rate").

62. In order to establish the Market Rate, State Farm utilizes what it terms "surveys." The geographical boundaries of the market area to be surveyed to establish the Market Rate are wholly within the control and direction of State Farm.

63. Under the terms of its DRP, State Farm is not required to disclose any of the methods by which it establishes either the market area, the Market Rate, or any other factual bases for its determination of the Market Rate. The agreement contains no provisions for independent and neutral verification of the data utilized, nor any meaningful oversight not directly within the control and direction of State Farm. The Shops are simply required to blindly accept State Farm's pronouncements regarding these matters.

64. State Farm Surveys were previously conducted by sending written documents to individual body shops. The owner or designated representative of the shop would fill out the survey and return it to State Farm. Recently, this process has been transferred to an electronic forum, State Farm's Business-to-Business portal, whereby the shops go online to complete the survey.

65. State Farm does not perform a survey that has any scientific validity,

whereby information is obtained and results produced that establish an accurate baseline of all the shops' information. With respect to labor rates, for example, State Farm's methodology does not represent what the majority of shops in a given area charge. Instead, State Farm's methodology lists the shops in a given market (as determined by State Farm) with the highest rates at the top of the list and descending to the least expensive hourly rates at the bottom.

66. State Farm then lists how many technicians a shop employs or the number of work bays available, whichever is lesser. Those are totaled and State Farm employs its "50% plus one" method. If, for example, a State-Farm-determined market area has a total of fifty (50) technicians or work bays, State Farm's "50% plus one" formula equals twenty-six (26). With that number, starting at the bottom of the shop list, State Farm counts each shop's technicians until the "half plus one" number is reached, twenty six, and whatever that shop's rate happens to be is declared the market rate.

67. There might be some validity to this method if it accounted for the variance in shop size, but it does not. However, the greatest problem with this method is that State Farm can and does unilaterally and wrongalter the labor rates that are submitted by the shops, decreasing those arbitrarily deemed too high, or higher than State Farm wishes to pay.

68. By altering the rates entered, particularly those of the larger shops, with the most technicians and/or work bays, State Farm manipulates the results to achieve a wholly artificial Market Rate. The results are therefore not that of a scientific survey that reflects the designated market area but instead are created from whole cloth by State Farm.

69. Furthermore, State Farm attempts to prohibit the shops from discussing with each other the information each has entered into the survey, asserting any discussion may constitute illegal price-fixing.

70. State Farm selects the geographical boundaries of the survey, and State Farm retains the right to alter the survey results and does so without disclosure or oversight.

71. Another electronic page on State Farm's business portal is known as the Dashboard.

72. The Dashboard has multiple functions and effects. It serves as the record of an individual shop's survey responses. It also provides a "report card" and rating of the individual shop based primarily upon three criteria: quality, efficiency and competitiveness.

73. Within the quality criterion, the shop's reported customer satisfaction, customer complaints, and quality issues identified by an audit are scored.

74. The efficiency criterion evaluates repair-cycle time, number of days a vehicle is in the shop, utilizing information input by the shops on the car's drop-off and pick-up dates.

75. The competitiveness criterion analyzes the average estimate for each State Farm repair, the cost of parts, whether a vehicle is repaired or replacement parts are utilized, the number of hours required to complete repair and similar matters.

76. In rating an individual shop, a total score of 1000 is possible. However, State Farm is under no obligation to disclose the weight or total number of points possible given to each factor included in reaching the score, particularly those factors

included under the competitiveness criterion. To date, State Farm has refused to disclose its method of determining competitiveness to the Shops, and even, upon information and belief, to its own team leaders.

77. Due to these opaque practices, State Farm maintains complete, unsupervised, and unreviewable authority to determine an individual shop's rating. It is therefore possible for a shop to have no customer complaints, high customer satisfaction, no issues identified on an audit, complete compliance with all repair cycle time and inefficiency requirements and yet still have a low rating. It is also possible for a shop to have multiple customer complaints, poor customer satisfaction, numerous issues identified on audit and complete failure to meet efficiency expectations and yet have a very high rating.

78. The Dashboard rating is very important as a shop's rating determines its position on the list of preferred providers. When a consumer logs on to the State Farm web site seeking a repair shop, those shops with the highest ratings are displayed first. A shop with a low rating will be at the bottom of the list, often pages and pages down, making it difficult for a potential customer to find it. If a customer calls State Farm, the representative provides the preferred shops beginning with those holding the highest rating.

Suppression of Labor Rates

79. Among the questions asked by the survey is the individual shop's hourly labor rate. This information is supposed to be provided by the shop and to accurately reflect that shop's labor rate to allow State Farm to reach a market average. State Farm's actual method of determining a "market rate" is described above.

80. If State Farm unilaterally deems the labor rate information unacceptable, a State Farm representative will contact the shop and demand the labor rate be lowered to an amount State Farm wishes to pay.

81. If the body shop advises a labor rate increase is required, State Farm representatives will inform the body shop they are the only shop in the area that has raised its rates and therefore the higher rate does not conform with the "market rate" and is thus a violation of the DRP agreement.

82. At various points in time, State Farm has utilized this method of depressing labor rates, falsely telling each shop they are the only one to demand a higher labor rate when, in fact, State Farm knew multiple shops had attempted to raise their labor rates and advised State Farm of such.

83. Should a shop persist in its efforts to raise its labor rate, State Farm will take one or more of several "corrective" measures: it will go into the individual shop's survey responses and unilaterally and wrongfully alter the labor rate listed without the knowledge or consent of the shop and use this lowered rate to justify its determination of the "market rate." It will threaten to remove the shop from the Direct Repair Program to coerce compliance. It will also remove the shop from the Direct Repair Program.

84. The net effect of this tactic is to allow State Farm to manipulate the "market rate" and artificially suppress the labor rate for the relevant geographic area, which is defined solely by State Farm and is not subject to either neutral verification or even disclosure.

85. Upon information and belief, the remaining Defendants, intentionally and by agreement and/or conscious parallel behavior, specifically advised the Plaintiffs they

will pay no more than State Farm pays for labor. These Defendants have not conducted any surveys of their own in which the Plaintiffs have participated to determine market rates. They have agreed to join forces with State Farm, the dominant market holder, and each other to coerce the Plaintiffs into accepting the artificially created less-than-market labor rates through intimidation and threats to the Plaintiffs' financial ability to remain operational and viable.

Suppression of Repair and Material Costs

86. Through various methods, the Defendants have, independently and in concert, instituted numerous methods of coercing the Plaintiffs into accepting less than actual and/or market costs for materials and supplies expended in completing repairs.

87. Some of these methods include but are not limited to: refusal to compensate the shops for replacement parts when repair is possible though strongly not recommended based upon the shop's professional opinion; utilizing used and or recycled parts rather than new parts, even when new parts are available and a new part would be the best and highest quality repair to the vehicle; requiring discounts and/or concessions be provided, even when doing so requires the shop to operate at a loss; and de facto compulsory utilization of parts procurement programs.

88. In addition to the above, the Defendants have repeatedly and intentionally failed to abide by industry standards for auto repairs. Three leading collision repair estimating databases are in ordinary usage within the auto body collision repair industry:

(a) ADP;

(b) CCC; and

(c) Mitchell.

89. These databases provide software and average costs associated with particularized types of repairs to create estimates. The estimates generated by these databases include the ordinary and customary repairs, repair time (labor) and materials necessary to return a vehicle to its pre-accident condition. These databases and the estimates they generate are accepted within the industry as authoritative, barring unusual or exceptional circumstances.

90. Over the course of years, the Defendants have admitted the authoritative position of the estimating databases within the industry, but have nonetheless engaged in a course of conduct of refusing to make the full payment for procedures and materials. In many instances the Defendants will refuse to allow the body shop to perform required procedures and processes, thereby requiring the Plaintiffs to perform less than quality work or suffer a financial loss.

91. The Defendants refuse to pay and/or pay in full for a large number of procedures and processes that are required to be performed by the Shops to return the vehicles of their insured and/or claimants to their pre-collision state.

92. At the same time, Defendants selectively rely upon and assert the definitive nature of these databases when doing so is to their respective financial advantage. For example, when a particular repair requires twenty hours of labor to complete but the database estimate notes fifteen hours of labor is standard for that type of repair, Defendant will cite the database estimate and pay for only fifteen hours of labor time.

93. With respect to some materials that must be expended to repair automobile collisions, Defendants simply refuse to pay for them, asserting materials are part of the

cost of doing business. This is the Defendants' position even when the authoritative databases specifically state that such materials are not included in the repair procedure pages.

94. The only partial exception to the foregoing practice is paint. While paint costs are factored into the amount the Defendants will pay, they are calculated via a formula that compensates the shops for only half the actual cost on average. The Defendants' method of calculating paint payment does not take into account the type of paint needed/used, the requirement that paint be mixed to match the existing color of the vehicle, the actual amount of paint required to complete the job, the type of vehicle involved or any other factor.

95. This continued refusal and/or failure to compensate Plaintiffs for ordinary and customary repairs and materials costs places Plaintiffs in the untenable position of either performing incomplete and/or substandard repairs and thus breaching their obligation to automobile owners to return vehicles to pre-accident condition, or performing labor and expending materials without proper compensation and thereby jeopardizing the continuing viability of their business enterprise.

96. The foregoing concerns prompted a meeting between many body shops involved in an action currently pending in the United States District Court, Southern District of Mississippi, styled as Cause No. 3:14-cv-12-CWR-FKB. There, body shops, Tim Bartlett, State Farm Estimatix team leader, John Findley, Estimatix section manager, Steve Simkins, State Farm counsel for Mississippi and Alabama, and members of the Mississippi Department of Insurance met in April, 2013. At this meeting, the members of the automobile collision repair industry expressed their dissatisfaction and concerns

with the very practice of refusing to compensate fully and fairly for repairs that were performed and State Farm's inconsistent application of the database estimating software, i.e., utilizing database estimates only when it is in State Farm's financial best interest to do so.

97. State Farm representative Bartlett acknowledged before witnesses that repairs and subsequent payment for those repairs should be consistent with the estimates prepared through the database software. Mr. Bartlett assured those present and the Department of Insurance representative that State Farm would abide by those database estimates and stated it would raise the matter at its insurance industry meetings, held locally approximately once a month.

98. Also at that meeting, Mr. Simpkins asked if they might be permitted to attend the meetings of the Mississippi automobile collision society. The auto body representative present for the meeting, John Mosley, agreed and invited State Farm to attend those Association meetings contingent upon State Farm permitting members of the auto body Association to attend the insurance meetings. Mr. Simkins refused.

99. Despite the assurances given to the body shop representatives and the Department of Insurance at this meeting, State Farm has failed to perform as promised, in either Mississippi or Indiana. State Farm, and the other Defendants in collusion with State Farm, have continued to refuse to make payment and/or full payment for necessary and proper repairs.

100. Defendant State Farm also imposes restrictions upon the Plaintiffs' ability to obtain and utilize quality replacement parts and materials. As part of its DRP agreement, State Farm asserts it has the unilateral authority to enter into separate

agreements with manufacturers, distributors or suppliers of automotive parts, supplies or materials.

101. Despite the fact that the shops have no involvement in the negotiation of those separate agreements, they are de facto required to abide by the pricing agreements reached. Although presented as an option to participate, this option is rendered meaningless by additional language which requires the shops to accept as payment only that amount for which the parts and/or materials could have been obtained through those agreements. Participation or lack thereof is therefore completely meaningless and the optional language is illusory.

102. Moreover, shops are required to "stack" this purportedly optional usage of separate agreements with other discounts required elsewhere within the agreement. Thus, the limitation on payment, refusal to compensate for nearly all materials and the compelled discounts cause a shop to operate at or near a loss for each repair.

103. Though led by State Farm as the dominant market shareholder, upon information and belief, all Defendants have agreed to and/or consciously parallel the compensation ceilings established by State Farm solely for their own profit.

Steering

104. Upon information and belief, the Defendants regularly and routinely engage in "steering" in order to punish noncompliant shops. Indiana law prohibits automobile insurance companies from requiring consumers to use particular body shops to effect repairs. In order to avoid facially violating this law, the Defendants will "steer" their insureds and/or claimants to favored compliant shops through misrepresentation, insinuation, and by casting aspersions upon the integrity and quality of disfavored repair

shops.

105. Examples of this practice include wrongfully: advising consumers that a particular chosen shop is not on the preferred provider list; relating that quality issues have arisen with that particular shop; that complaints have been received about that particular shop from other consumers; that the shop charges more than any other shop in the area and these additional costs will have to be paid by the consumer; that repairs at the disfavored shop will take much longer than at other, preferred shops and the consumer will be responsible for rental car fees beyond a certain date; and that the particular Defendant cannot guarantee the work of that shop as it can at other shops.

106. These statements have been made about certain Plaintiffs without any attempt to ascertain the truth thereof. Further, some of the ills recited that implicitly criticize the shops are wholly attributable to the insurer itself. For instance, the statement that repairs will take longer at a disfavored shop: consumers are not told that the delay in beginning repairs is due to the insurer's decision to delay sending an appraiser to evaluate the damage, which is a decision wholly within the control of the Defendant. Asserting the shop charges more is often not a function of what the shop actually charges but the Defendants' refusal to pay, also a factor wholly and completely within the control of the respective Defendant. Yet both are wrongfully conveyed to the public as problems with the shop.

107. The most egregious of these statements – that the Defendant cannot guarantee the work of the shop – is particularly misleading, as none of the Defendants offer a guarantee for repair work. Instead, the Defendants require the body shops to provide a limited lifetime guarantee on work performed. In the event additional work is

required, the body shop is required to do so without any additional payment, or to indemnify the insurer for costs if work is performed at another shop.

108. Thus, while it may be a facially truthful statement that an insurer cannot guarantee the work of a particular shop, the clear implication is that it can and will guarantee the work of another, favored shop, which is simply not true.

Intentional Nature of Defendants' Conduct

109. In 1963, a consent decree was entered in *United States vs. Association of Casualty and Surety Companies, et al.*, Docket No. 3106, upon complaint filed in the Southern District of New York. The allegations of that complaint included violations of Sections 1 and 3 of the Sherman Act, also known as the Sherman Antitrust Act. A copy of this Decree is attached hereto as Exhibit 2.[1]

110. Specific actions supporting the aforementioned allegations included insurance company practices involving: (1) requiring repair rather than replacement of damaged parts; (2) replacing damaged parts with used rather than new parts; (3) obtaining discounts on new replacement parts; (4) establishing strict labor time allowances; (5) suppressing the hourly labor rate; (6) channeling auto repairs to those repair shops which would abide by the insurer estimates and boycotting those which refused. The complaint further alleged a conspiracy and combination in unreasonable restraint of trade and commerce for these practices.

111. The Consent Decree order provided the following relief: it enjoined the defendants from placing into effect any plan, program or practice which has the purpose or effect of directing, advising or otherwise suggesting that any person or firm do

[1] A copy of the Decree also appears at https://www.ican2000.com/documents/1963/, last visited April 2, 2014.

business or refuse to do business with any independent or dealer-franchised automotive repair shop with respect to the repair of damage to automobile vehicles; (2) exercising any control over the activities of any appraiser of damages to automotive vehicles; (3) fixing, establishing, maintaining or otherwise controlling the prices 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.

112. Whether or not any current Defendant is legally bound by this Decree, the actions described in the present cause fall squarely within those prohibited by the Decree. The Decree has been "on the books" for over fifty years and is well-known within the insurance industry.

113. Upon information and belief, Defendants were fully aware their actions, plans, programs, and combinations and/or conspiracy to effectuate the same have been willful, intentional and conducted with complete and reckless disregard for the rights of the Plaintiffs.

Legal Claims

Count I – Quantum Meruit
Brought Pursuant to State Law

114. Plaintiffs incorporate and restate by reference herein all allegations set forth above.

115. Claims alleging quantum meruit rest upon the equitable principle that a party is not allowed to enrich itself at the expense of another. More specifically, the law implies a promise to pay a reasonable amount for the labor and materials furnished, even absent a specific contract therefore. *Bayh v. Sonnenburg*, 573 N.E.2d 398 (Ind. 1991)

116. To prevail upon such a claim, Plaintiffs must show that, "a measurable benefit has been conferred on the defendant under such circumstances that the defendant's retention of the benefit without payment would be unjust." *Bayh*, 573 N.E.2d at 408.

117. Here, a measurable financial benefit has been conferred upon Defendants under circumstances that their retention of same, without payment to Plaintiffs, would be unjust.

118. Plaintiffs have performed valuable services and expended material resources with the reasonable expectation of compensation for those services and materials. Performing said services and expending material resources benefitted Defendants and Defendants' insured and/or claimants for whom Defendants are required to provide payment for repairs.

119. It has always been foreseeable the Plaintiffs were not performing labor or providing services and materials without expectation of full payment. However, Defendants have simply taken the position that payment may not be made unless they choose to provide it, regardless of any other factor or consideration and have thus enriched themselves at the expense of Plaintiffs.

120. Plaintiffs are equitably entitled to receive payment for the materials and services rendered.

121. In the present case, Defendants' insureds and claimants entrusted the Plaintiffs with the full and complete repair of their vehicles, the cost of which is incumbent upon the Defendants to pay. An obligation was thus created to provide payment to Plaintiffs for their work and expended materials.

122. By failing to make partial and/or payment for the necessary and reasonable costs of repair, Defendants have obtained or retained money that, in equity, rightfully belongs to the Plaintiffs

Count II – Tortious Interference with a Contractual Relationship Brought Pursuant to State Law

123. Plaintiffs incorporate and restate by reference herein all allegations set forth above.

124. The Defendants have repeatedly steered and attempted to steer customers away from the Plaintiffs' businesses through their repeated campaign of misrepresentation of facts, failure to verify facts damaging or tending to cause damage to the Plaintiffs business reputations before conveying the same to members of the public, implications of poor quality work, poor quality efficiency, poor business ethics and practices, and unreliability.

125. The purpose of these actions was twofold: to punish the Plaintiffs who complained about or refused to submit to the oppressive and unilateral price ceilings the Defendants were enforcing upon them, and to direct potential customers of the Plaintiffs to other vendors who would comply with the maximum price ceiling unilaterally imposed by the Defendants.

126. A tortious interference with a contractual relationship occurs when a valid and enforceable contract exists, of which the defendants know, and intentionally induce breach thereof, without justification, which results in damages. *Melton v. Ousley*, 925 N.E.2d 430, 440 (Ind. Ct. App. 2010).

127. Multiple contractual relationships exist, or have existed, between Plaintiffs and consumers, of which Defendants know.

128. The Defendants have, through their actions described *supra*, intentionally and maliciously induced the breach of these contractual relationships, without justification.

129. The above breach of the contractual relationships have proximately caused Plaintiffs damages, including financial losses.

Count III – Tortious Interference with a Business Relationship Brought Pursuant to State Law

130. Plaintiffs incorporate and restate by reference herein all allegations set forth above.

131. The Defendants have repeatedly steered and attempted to steer customers away from the Plaintiffs' businesses through their repeated campaign of misrepresentation of facts, failure to verify facts damaging or tending to cause damage to the Plaintiffs' business reputations before conveying the implications of poor quality work, poor quality efficiency, poor business ethics and practices, and unreliability to members of the public.

132. The purpose of these actions was twofold: to punish the Plaintiffs who complained about or refused to submit to the oppressive and unilateral price ceilings the Defendants were enforcing upon them, and to direct potential customers of the Plaintiffs to other vendors who would comply with the maximum price ceiling unilaterally imposed by the Defendants.

133. A tortious interference with a business relationship occurs when a business relationship exists, of which the defendants know, and intentionally induce breach thereof, illegally and without justification, which results in damages. *Melton*, 925 N.E.2d 430 at 440 (Ind. Ct. App. 2010) (n. 9).

134. Multiple business relationships exist, or have existed, between Plaintiffs and consumers, of which Defendants know.

135. The Defendants have through their actions described *supra* intentionally and maliciously induced the breach of these contractual relationships.

136. The Defendants' behavior described *supra* violates Ind. Code 27-4-1, *et seq*., in particular the following provision:

> Sec. 3. No person shall engage in this state in any trade practice which is defined in this chapter or determined pursuant to this chapter as an unfair method of competition or as an unfair or deceptive act or practice in the business of insurance as defined in IC 27-1-2-3.

I.C. 27-4-1-3

137. Indiana Code provides examples of unfair methods of competition, and unfair or deceptive acts or practices in the business of insurance, including, but not limited to, the following:

> Sec. 4. (a) The following are hereby defined as unfair methods of competition and unfair and deceptive acts and practices in the business of insurance:
>
> (1) Making, issuing, circulating, or causing to be made, issued, or circulated, any estimate, illustration, circular, or statement;
>
> (A) misrepresenting the terms of any policy issued or to be issued or the benefits or advantages promised thereby or the dividends or share of the surplus to be received thereon… ;
>
> (E) making any misrepresentation to any policyholder insured in any company for the purpose of inducing or tending to induce such policyholder to lapse, forfeit, or surrender the policyholder's insurance….
>
> (16) Committing or performing, with such frequency as to indicate a general practice, unfair claim settlement practices (as defined in section 4.5 of this chapter).

I.C. § 27-4-1-4

138. Indiana Code also enumerates certain "unfair claim settlement practices":

> Sec. 4.5. The following are unfair claim settlement practices:
>
> (1) Misrepresenting pertinent facts or insurance policy provisions relating to coverages at issue…
>
> (4) Refusing to pay claims without conducting a reasonable investigation based upon all available information…
>
> (6) Not attempting in good faith to effectuate prompt, fair, and equitable settlements of claims in which liability has become reasonably clear.
>
> (8) Attempting to settle a claim for less than the amount to which a reasonable individual would have believed the individual was entitled by reference to written or printed advertising material accompanying or made part of an application.
>
> (16) The unfair claims settlement practices defined in IC 27-4-1.5.

I.C. § 27-4-1-4.5

139. Defendants have violated, by their intentional conduct described *supra*, the unfair methods of competition, unfair or deceptive acts or practices in the business of insurance, and/or the unfair claims settlement practices noted above.[2]

140. The tortious interference with business relationships have caused Plaintiffs damages, including financial losses.

Count IV – Violations of the Sherman Act – Price-Fixing
Brought Pursuant to 15 U.S.C. § 1

141. Plaintiffs incorporate and restate by reference herein all allegations set

[2]Count III is not being brought pursuant to any cause of action granted by Ind. Code § 27, but statutory excerpts are cited to illustrate only the illegality of the alleged conduct.

forth above.

142. The Sherman Act prohibits contracts, combinations or conspiracies in restraint of trade. 15 U.S.C. § 1. Such agreements are illegal if (1) their purpose or effect is to create an unreasonable restraint of trade, or (2) they constitute a per se violation of the statute.

143. Through parallel actions, and/or explicit agreement, the Defendants have formed and engaged in a vertical conspiracy or combination to impose maximum price limits upon the Plaintiffs for their products and services.

144. The United States Supreme Court has noted that agreements to fix maximum prices, no less than those to fix minimum prices, cripple the freedom of traders and thereby restrain their ability to sell in accordance with their own judgment. *Kiefer-Stewart Co. v. Joseph E. Seagram and Sons, Inc*., 340 U.S. 211 (1951).

145. The Defendants and co–conspirators have engaged in combination and/or conspiracy in an unreasonable restraint of trade and commerce in the automobile damage repair industry that affects interstate commerce and unreasonably restrains trade.

146. The aforesaid combination and/or conspiracy has consisted of a continuing agreement in concert of action among the Defendants and co-conspirators to control and suppress automobile damage repair costs, automobile material repair costs through coercion and intimidation of these shops.

147. Evidence of this conspiracy or combination include, but is not limited to, admission before witnesses that members of the insurance industry meet regularly to discuss such matters in and amongst themselves but refused to allow members of the auto collision repair industry to attend those meetings, explicit statements by Defendants that

they will conform to State Farm's imposed payment structure but failing to do so, followed by the uniformity of action of all Defendants.

148. The aforesaid offenses have had, among others, the effect of eliminating competition within the automobile damage repair industry, elimination of some shops from a substantial segment of the automobile damage repair industry for refusing or attempting to refuse the Defendants' arbitrary price ceilings, and subjecting repair shops to collective control and supervision of prices by the Defendants and co-conspirators.

149. Neither the Plaintiffs, nor other members of the auto collision repair industry, are able to effectively engage in competitive business practices as the Defendants have effectively and explicitly determined what their business practices will be.

150. The individual and collective actions of the Defendants have violated federal law and proximately caused the Plaintiffs to incur substantial damages. The pattern and practice of the Defendants continue and will continue unless and until the relief herein prayed for is granted.

Count V – Violations of the Sherman Act – Boycott
Brought Pursuant to 15 U.S.C. § 1

151. Plaintiffs incorporate and restate by reference herein all allegations set forth above.

152. The United States Supreme Court has held that boycotts constitute a violation of the Sherman Act, 15 U. S. C. § 1. A "boycott" has been defined within the antitrust law context as "pressuring a party with whom one has a dispute by withholding, or enlisting others to withhold, patronage or services from the target." *St. Paul Fire & Marine Ins. Co. v. Barry*, 438 U.S. 531, 541 (1978).

153. The Defendants have engaged, and continue to engage, in boycott and boycotting activity through their repeated actions of steering customers away from the Plaintiffs through allegations and intimations of poor quality work, of poor efficiency in performing work, of questionable business practices, of overcharging, impugning integrity, and similar actions so as to withhold and/or enlist others to withhold patronage from the Plaintiffs.

154. This boycott was specifically designed to pressure, intimidate, and/or coerce the Plaintiffs into complying with the maximum-price limitations unilaterally conceived by State Farm and agreed to collusively by the other Defendants.

155. The Defendants and co–conspirators have engaged in combination and conspiracy in unreasonable restraint of trade and commerce in the automobile damage repair industry that affects interstate commerce and unreasonably restrains trade.

156. It is irrelevant for purposes of Sherman antitrust boycott activity that the Plaintiffs and Defendants are not direct competitors within the same industry: "boycotters and the ultimate target need not be in a competitive relationship with each other." *St. Paul Fire and Marine Insurance Company*, 438 U.S. at 543.

157. The enlistment of third parties as a means of compelling capitulation by the boycotted group has long been viewed as conduct supporting a finding of unlawful boycott. *Id*.

158. In the present matter, the Defendants have not only engaged in a boycott, but have regularly, routinely and purposefully enlisted the aid of unwitting third parties in carrying out their boycott through their intentional acts of steering those customers away from the Plaintiffs.

159. Defendants' boycott was created and carried out with the sole purpose and intent of financially coercing and threatening the Plaintiffs into complying with the Defendants' price caps.

160. The Defendants' actions are violations of federal law and have proximately caused the Plaintiffs to incur substantial damages. Defendants are continuing and will continue said offenses unless the relief requested herein is granted.

Prayer for Relief

161. Plaintiffs incorporate and restate by reference herein all allegations set forth above.

162. As a result of the Defendants' actions, Plaintiffs have been substantially harmed and will continue to suffer unless and until the relief requested herein is granted. The Plaintiffs therefore pray for the following relief:

A. Compensatory damages for all non-payment and underpayment for work completed on behalf of the Defendants' insureds and claimants as determined by a jury.

B. Damages sufficient to compensate Plaintiffs for lost business opportunities as determined by a jury.

C. Treble damages, reasonable attorneys' fees and costs for violations of the Sherman Act, as required under 15 U.S.C. § 15.

D. Injunctive relief prohibiting the Defendants from further engaging in any of the following:

(I) Placing into effect any plan, program or practice which has the purpose or effect of:

(a) directing, advising or otherwise suggesting that any person or firm do business or refuse to do business with any Plaintiff automotive repair shop with respect to the repair of damage to automobiles.

(b) fixing, establishing or otherwise controlling the prices to be charged by independent or dealer franchised automotive repair shops for the repair of damage to automobiles 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.

(2) Placing into effect any plan, program or practice which explicitly requires or has the purpose or effect of requiring Plaintiffs to participate in any parts procurement program.

(3) Providing untruthful and/or unverified information to customers or third persons regarding the quality, cost, efficiency or reputation of any Plaintiff ("steering").

(4) Prohibiting Defendant State Farm from altering or amending any Plaintiff response to its survey without the express written permission of the affected Plaintiff.

E. Punitive and/or exemplary damages sufficient to punish Defendants for their intentional acts and deter each Defendant and similar entities from pursuing this improper conduct in the future.

F. Pre- and post-judgment interest.

G. Any additional relief the Court deems just and appropriate.

Respectfully submitted,

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PROPERTY/CASUALTY INSURANCE INDUSTRY
BY LINE MARKET SHARE
PRIVATE PASSENGER AUTO

May 21, 2013

19.1, 19.2 - PRIVATE PASSENGER AUTO NO-FAULT (PIP) + OTHER PRIVATE PASSENGER AUTO LIABILITY

INDIANA

Rank	NAIC Code	Company/Group Name	Direct Written Premium	Direct Earned Premium	Direct Loss to EP Ratio[1]	Direct Loss and DCC to EP Ratio[2]	Market Share	Cumulative Market Share
1	176	STATE FARM GRP	420,673,762	419,273,277	48.19	52.02	24.98	24.98
2	155	PROGRESSIVE GRP	165,247,382	159,543,787	60.66	62.07	9.81	34.80
3	542	INDIANA FARM BUREAU GRP	134,400,169	132,181,841	69.90	73.04	7.98	42.78
4	8	ALLSTATE INS GRP	119,353,617	118,704,911	63.18	66.88	7.09	49.87
5	473	AMERICAN FAMILY INS GRP	83,959,071	85,075,232	59.23	62.52	4.99	54.86
6	31	BERKSHIRE HATHAWAY GRP	74,850,936	73,333,786	64.48	67.43	4.45	59.30
7	212	ZURICH INS GRP	61,418,743	61,435,177	62.87	65.52	3.65	62.95
8	111	LIBERTY MUT GRP	59,316,367	58,567,258	44.29	50.38	3.52	66.47
9	140	NATIONWIDE CORP GRP	46,078,936	46,667,390	51.51	53.49	2.74	69.21
10	213	ERIE INS GRP	45,933,599	44,214,236	69.85	74.71	2.73	71.94
11	280	AUTO OWNERS GRP	38,412,185	38,068,225	65.59	69.72	2.28	74.22
12	22624	INDIANA FARMERS MUT INS CO	32,542,225	31,729,457	94.13	97.37	1.93	76.15
13	200	UNITED SERV AUTOMOBILE ASSN GRP	29,637,106	29,004,421	84.31	88.78	1.76	77.91
14	91	HARTFORD FIRE & CAS GRP	19,356,782	19,517,817	58.31	61.02	1.15	79.06
15	175	STATE AUTO MUT GRP	18,580,870	19,461,968	51.21	53.52	1.10	80.17
16	244	CINCINNATI FIN GRP	18,236,359	17,676,268	63.42	66.42	1.08	81.25
17	1278	CALIFORNIA STATE AUTO GRP	17,692,787	17,606,203	65.58	69.61	1.05	82.30
18	3548	TRAVELERS GRP	17,321,401	17,213,192	61.07	63.03	1.03	83.33
19	267	GRANGE MUT CAS GRP	16,553,000	16,727,040	53.15	56.87	0.98	84.31
20	25405	SAFE AUTO INS CO	16,534,523	16,759,831	77.09	78.90	0.98	85.29
21	241	METROPOLITAN GRP	15,922,640	15,540,426	62.10	63.76	0.95	86.24
22	228	WESTFIELD GRP	14,336,313	14,356,542	46.49	52.45	0.85	87.09
23	153	PEKIN INS GRP	14,076,998	14,458,245	60.22	61.65	0.84	87.93
24	14176	HASTINGS MUT INS CO	13,227,539	13,327,651	73.25	77.22	0.79	88.71
25	207	WESTERN RESERVE GRP	12,381,995	12,067,939	88.72	93.04	0.74	89.45
26	88	THE HANOVER INS GRP	12,165,957	12,026,232	53.40	55.89	0.72	90.17
27	123	SHELTER INS GRP	12,164,854	12,190,628	63.89	68.78	0.72	90.89
28	201	UTICA GRP	10,229,874	10,400,338	56.59	45.97	0.61	91.50
29	35	CELINA GRP	8,804,961	8,481,728	68.15	72.11	0.52	92.02
30	5	ALFA INS GRP	8,531,889	8,315,868	61.04	64.88	0.51	92.53
31	242	SELECTIVE INS GRP	7,402,600	7,041,158	69.37	75.54	0.44	92.97
32	55	AUTOMOBILE CLUB MI GRP	7,189,665	7,236,107	43.31	50.18	0.43	93.40
33	10730	AMERICAN ACCESS CAS CO	7,125,545	7,571,566	51.35	57.62	0.42	93.82
34	291	MOTORISTS MUT GRP	5,512,434	5,608,553	65.82	72.08	0.33	94.15
35	169	SENTRY INS GRP	5,446,732	5,825,432	51.84	53.49	0.32	94.47
36	15350	WEST BEND MUT INS CO	5,317,364	5,054,877	37.07	37.77	0.32	94.79
37	3596	AFFIRMATIVE INS GRP	5,253,194	4,901,176	55.11	57.17	0.31	95.10
38	408	AMERICAN NATL FIN GRP	4,534,620	4,717,685	46.13	51.75	0.27	95.37
39	36	CENTRAL MUT INS CO GRP	4,498,955	4,597,391	95.62	97.86	0.27	95.64
40	10922	INSUREMAX INS CO	4,384,608	4,408,728	70.03	73.56	0.26	95.90
41	15199	STANDARD MUT INS CO	4,065,722	4,297,362	51.72	53.13	0.24	96.14
42	4727	J & P HOLDINGS GRP	3,796,652	3,802,134	54.43	61.63	0.23	96.36
43	2538	AMTRUST GMACI MAIDEN GRP	3,782,393	3,649,606	58.33	58.83	0.22	96.59
44	796	QBE INS GRP	3,463,630	4,136,760	79.08	85.26	0.21	96.79
45	3362	FIRST ACCEPTANCE INS GRP	3,403,645	3,330,829	67.03	70.96	0.20	97.00
46	215	KEMPER CORP GRP	3,064,630	3,317,699	74.20	74.40	0.18	97.18
47	300	HORACE MANN GRP	2,977,959	2,996,134	61.30	62.47	0.18	97.35
48	14184	ACUITY A MUT INS CO	2,870,105	2,774,016	85.37	91.01	0.17	97.52
49	309	WESTERN NATL MUT GRP	2,636,678	2,451,971	35.39	35.74	0.16	97.68
50	4	AMERIPRISE FIN GRP	2,621,062	2,630,760	89.49	98.24	0.16	97.84
51	411	MAPFRE INS GRP	2,608,444	2,638,711	74.84	89.31	0.15	97.99
52	15407	WOLVERINE MUT INS CO	2,588,038	2,595,471	47.59	53.41	0.15	98.15
53	28	AMICA MUT GRP	2,357,845	2,241,522	126.43	134.62	0.14	98.29
54	4717	HALUDU CORP GRP	2,191,942	1,994,157	68.78	72.07	0.13	98.42
55	46	BUCKEYE INS GRP	2,176,676	2,155,092	64.33	68.14	0.13	98.55
56	518	GRINNELL MUT GRP	2,152,789	2,128,603	26.63	29.34	0.13	98.67
57	303	GUIDEONE INS GRP	2,124,508	2,191,529	64.86	65.45	0.13	98.80
58	3678	AMERICAN INDEPENDENT INS GRP	1,995,282	1,973,902	74.29	79.36	0.12	98.92
59	10648	GENEVA INS CO	1,747,379	1,696,356	44.59	46.43	0.10	99.02
60	62	EMC INS CO GRP	1,606,213	1,608,793	71.52	74.03	0.10	99.12
61	1235	UNITED AUTOMOBILE INS GRP	1,425,784	1,592,398	74.94	79.71	0.08	99.20

[1] (Direct losses incurred) / (Direct premiums earned)

[2] (Direct losses incurred + Direct defense and cost containment expenses incurred) / (Direct premiums earned)

PROPERTY/CASUALTY INSURANCE INDUSTRY
BY LINE MARKET SHARE
PRIVATE PASSENGER AUTO

May 21, 2013

19.1, 19.2 - PRIVATE PASSENGER AUTO NO-FAULT (PIP) + OTHER PRIVATE PASSENGER AUTO LIABILITY

INDIANA

Rank	NAIC Code	Company/Group Name	Direct Written Premium	Direct Earned Premium	Direct Loss to EP Ratio[1]	Direct Loss and DCC to EP Ratio[2]	Market Share	Cumulative Market Share
62	1318	AUTO CLUB ENTERPRISES INS GRP	1,215,687	1,179,519	126.48	137.35	0.07	99.27
63	33	CALIFORNIA CAS MGMT GRP	1,176,459	1,121,151	74.01	81.03	0.07	99.34
64	11558	ASSURANCEAMERICA INS CO	1,086,922	900,247	64.66	71.45	0.06	99.41
65	38	CHUBB INC GRP	1,026,316	943,109	77.55	78.52	0.06	99.47
66	96	SECURA INS GRP	1,025,640	987,108	44.87	49.67	0.06	99.53
67	361	MUNICH RE GRP	889,588	937,550	34.60	37.18	0.05	99.58
68	867	BALDWIN & LYONS GRP	878,291	1,208,276	59.07	61.55	0.05	99.64
69	1129	WHITE MOUNTAINS GRP	868,774	831,819	6.98	6.68	0.05	99.69
70	311	MAIN STREET AMER GRP	758,123	726,959	67.34	71.15	0.05	99.73
71	1326	KINGSWAY GRP	742,608	998,866	-67.41	-86.76	0.04	99.78
72	4761	EVERETT MUT GRP	617,206	548,940	140.94	142.08	0.04	99.81
73	57	ELECTRIC INS GRP	562,098	582,633	25.56	23.89	0.03	99.85
74	14044	GOODVILLE MUT CAS CO	407,821	403,189	110.30	115.56	0.02	99.87
75	761	ALLIANZ INS GRP	317,304	332,316	55.70	56.17	0.02	99.89
		STATE TOTAL	1,683,708,249	1,670,614,922	59.42	62.73	100.00	100.00

[1] (Direct losses incurred) / (Direct premiums earned)

[2] (Direct losses incurred + Direct defense and cost containment expenses incurred) / (Direct premiums earned)

1963 CONSENT DECREE
IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK Civil No. 3106 Filed: October 23 1963 UNITED STATES OF AMERICA Plaintiff, v. ASSOCIATION OF CASUALTY AND SURETY COMPANIES; AMERICAN MUTUAL INSURANCE ALLIANCE; and NATIONAL ASSOCIATION OF MUTUAL CASUALTY COMPANIES, Defendants. 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 association; (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 to determine 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. Associations 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. ASCS in 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 "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 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, payment 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 known 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 the 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 cost; 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 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 interest 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 AMIA 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 the 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 cost.

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 sponsoring 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 appraisers 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 replaced 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 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 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 withdrew 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' estimate 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 to 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 on 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 22nd 1963 signed by: Robert F. Kennedy Attorney General William H. Orrick, Jr. Assistant Attorney General Baddia J. Rashid Attorney, Department of Justice John H. Waters Attorney, Department of Justice William H. Rowan Attorney, Department of Justice ---------- ---------- ---------- ----------

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

CIVIL ACTION No. 63 Civ. 3106 ENTERED: November 27,1963 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

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 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 automobile 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 automobile 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 automobile 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 character 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 council 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 council present, regarding any such matters. (B) Any defendant, on 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: November 27, 1963 /s/ Edward C. McLean United States District Judge ---------- ----------
IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK
CIVIL ACTION No. 63 Civ. 3106
Filed October 23,1963 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. 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 23, 1963. For the Plaintiff: WILLIAM H. ORRICK, JR. Assistant Attorney General JOHN H. WATERS WILLIAM D. KILGORE, JR. WILLIAM H. ROWAN BADDIA J. RASHID CHARLES F. B. McALEER Attorneys, Department of Justice For the Defendant Association of Casualty and Surety Companies: ROBERT MacCRATE For the Defendants American Mutual Insurance Alliance and the National Association of Mutual Casualty Companies: HUGH B. COX ---------- ----------

JS 44 (Rev 09/10)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA

CIVIL COVER SHEET

This automated JS-44 conforms generally to the manual JS-44 approved by the Judicial Conference of the United States in September 1974. The data is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. The information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law.

Plaintiff(s):

First Listed Plaintiff:
Indiana AutoBody Association, Inc ;
County of Residence: Marion County

Additional Plaintiff(s):
Gary Conns Collision Center, Inc. ;
Cross Paint & Body Shop, Incorporated ;
Dan T. Gratz Body Shop, Inc. ;
Decker & Vickery, Inc. ;
Enneking's Auto Body, Inc. ;
Excel Auto Body, Inc. ;
Jon's Body Shop, Inc. ;
Main Street Body Shop, Inc. ;
Minton Body Shop, Inc. ;
Prestige Auto Body Repair, Inc. ;
Kevin Wells dba KNJ LLC and Quality Collision, Inc. ;
Southlake Collision Center, Inc. ;
Team 150, Inc. ;
Carl Thurman dba Thurman Body Shop, LLC ;

Defendant(s):

First Listed Defendant:
State Farm Mutual Automobile Insurance Company ;
County of Residence: Outside This District

Additional Defendants(s):
State Farm Fire and Casualty Company ;
State Farm General Insurance Company ;
Progressive Casualty Insurance Company ;
Progressive American Insurance Company ;
Progressive Classic Insurance Company ;
Progressive Direct Insurance Company ;
Progressive Max Insurance Company ;
Indiana Farmers Mutual Insurance Company ;
Allstate Indemnity Company ;
Allstate Insurance Company ;
Allstate Property and Casualty Insurance Company ;
Allstate Vehicle and Property Insurance Company ;
GEICO General Insurance Company ;
GEICO Indemnity Company ;
Shelter General Insurance Company ;
Shelter Mutual Insurance Company ;
Nationwide Mutual Insurance Company ;
Nationwide Property and Casualty Insurance Company ;
Nationwide Assurance Company ;
American Family Mutual Insurance Company ;
Erie Insurance Company ;
Erie Insurance Property & Casualty Company ;
Auto-Owners Insurance Company ;
Zurich American Insurance Company ;
Zurich American Insurance Company of Illinois ;
Liberty Mutual Insurance Company ;

County Where Claim For Relief Arose: Marion County

Plaintiff's Attorney(s):

Mark W. Sniderman (Indiana AutoBody Association, Inc)
Sniderman Nguyen LLP
47 S. Meridian St., Ste. 400
Indianapolis , Indiana 46204
Phone: 317.361.4700
Fax: 317.464.5111

Defendant's Attorney(s):

Email: mark@snlawyers.com

Basis of Jurisdiction: 3. Federal Question (U.S. not a party)

Citizenship of Principal Parties (Diversity Cases Only)

Plaintiff: N/A

Defendant: N/A

Origin: 1. Original Proceeding

Nature of Suit: 410 Antitrust

Cause of Action: 15 U.S.C. 1, et seq., for alleged violations of the Sherman Antitrust Act.

Requested in Complaint

Class Action: Not filed as a Class Action

Monetary Demand (in Thousands):

Jury Demand: Yes

Related Cases: Is NOT a refiling of a previously dismissed action

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Signature: Mark W. Sniderman

Date: 4/2/2014

If any of this information is incorrect, please close this window and go back to the Civil Cover Sheet Input form to make the correction and generate the updated JS44. Once corrected, print this form, sign and date it, and submit it with your new civil action.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

INDIANA AUTOBODY ASSOCIATION, INC., GARY CONNS COLLISION CENTER, INC., CROSS PAINT & BODY SHOP, INCORPORATED, DAN T. GRATZ BODY SHOP, INC., DECKER & VICKERY, INC., ENNEKING'S AUTO BODY, INC., EXCEL AUTO BODY, INC., JON'S BODY SHOP, INC., MAIN STREET BODY SHOP, INC., MINTON BODY SHOP, INC., PRESTIGE AUTO BODY REPAIR, INC., KEVIN WELLS, dba KNJ LLC and QUALITY COLLISION, INC., SOUTHLAKE COLLISION CENTER, INC., TEAM 150, INC., and Carl THURMAN dba THURMAN BODY SHOP, LLC,	)	
Plaintiffs,	)	
-vs-	)	CASE NO: 1:14-cv-507
STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, STATE FARM FIRE AND CASUALTY COMPANY, STATE FARM GENERAL INSURANCE COMPANY, PROGRESSIVE CASUALTY INSURANCE COMPANY, PROGRESSIVE AMERICAN INSURANCE COMPANY, PROGRESSIVE CLASSIC INSURANCE COMPANY, PROGRESSIVE DIRECT INSURANCE COMPANY, PROGRESSIVE MAX INSURANCE COMPANY, INDIANA FARMERS MUTUAL INSURANCE COMPANY, ALLSTATE INDEMNITY COMPANY, ALLSTATE INSURANCE COMPANY, ALLSTATE PROPERTY AND CASUALTY INSURANCE COMPANY, ALLSTATE VEHICLE AND PROPERTY INSURANCE COMPANY, GEICO GENERAL INSURANCE COMPANY, GEICO INDEMNITY COMPANY, SHELTER GENERAL INSURANCE COMPANY, SHELTER MUTUAL INSURANCE COMPANY, NATIONWIDE MUTUAL INSURANCE COMPANY, NATIONWIDE PROPERTY AND CASUALTY INSURANCE COMPANY, NATIONWIDE	)	

ASSURANCE COMPANY, AMERICAN FAMILY MUTUAL INSURANCE COMPANY, ERIE INSURANCE COMPANY, ERIE INSURANCE PROPERTY & CASUALTY COMPANY, AUTO-OWNERS INSURANCE COMPANY, ZURICH AMERICAN INSURANCE COMPANY, ZURICH AMERICAN INSURANCE COMPANY OF ILLINOIS, and LIBERTY MUTUAL INSURANCE COMPANY,

Defendants.) Jury Trial Requested

SUMMONS IN A CIVIL ACTION

TO:

State Farm Mutual Automobile Insurance Company
c/o Valerie Clinton, Registered Agent
9200 Keystone Xing Ste. 400
Indianapolis, IN 46240-2169

State Farm Fire and Casualty Company
c/o Valerie Clinton, Registered Agent
9200 Keystone Xing Ste. 400
Indianapolis, IN 46240-2169

State Farm General Insurance Company
c/o Valerie Clinton, Registered Agent9200 Keystone Xing Ste. 400
Indianapolis, IN 46240-2169

Progressive Casualty Insurance Company
CT Corporation System
150 West Market Street, Suite 800
Indianapolis, IN 46204

Progressive American Insurance Company
CT Corporation System
150 West Market Street, Suite 800
Indianapolis, IN 46204

Progressive Classic Insurance Company
CT Corporation System
150 West Market Street, Suite 800
Indianapolis, IN 46204

Progressive Direct Insurance Company
CT Corporation System
150 West Market Street, Suite 800
Indianapolis, IN 46204

Progressive Max Insurance Company
CT Corporation System
150 West Market Street, Suite 800
Indianapolis, IN, 46204

Indiana Farmers Mutual Insurance Company
c/o Kim O. Smith, Registered Agent
10 West 10th Street
Indianapolis, IN 46290

Allstate Indemnity Company
CT CORPORATION SYSTEM
251 E. Ohio Street, Suite 1100
Indianapolis, IN 46204

Allstate Insurance Company
CT Corporation System
150 W Market St., Ste. 800
Indianapolis, IN 46204-2814

Allstate Property And Casualty Insurance Company
CT Corporation System
251 E. Ohio Street, Suite 1100
Indianapolis, IN 46204

Allstate Vehicle and Property Insurance Company
CT Corporation System
251 East Ohio Street, Suite 1100
Indianapolis, IN 46204

GEICO General Insurance Company
CT Corporation System
251 East Ohio St., Suite 1100
Indianapolis, IN 46204

GEICO Indemnity Company
CT Corporation System
251 E. Ohio Street, Suite 1100,
Indianapolis, IN 46204

Shelter General Insurance Company
CT Corporation System
251 East Ohio Street, Suite 500
Indianapolis, IN 46204

Shelter Mutual Insurance Company
CT Corporation System
251 East Ohio Street, Suite 500
Indianapolis, IN 46204

Nationwide Mutual Insurance Company
CT Corporation System
150 West Market Street, Suite 800
Indianapolis, IN 46204

Nationwide Property And Casualty Insurance Company
CT Corporation System
150 West Market Street, Suite 800
Indianapolis, IN 46204

Nationwide Assurance Company
CT Corporation System
150 West Market Street, Suite 800
Indianapolis, IN 46204

American Family Mutual Insurance Company
Corporation Service Company
251 E Ohio St., Ste. 500
Indianapolis, IN 46204-2184

Erie Insurance Company
c/o Anthony Dabreo, Registered Agent
One Parkwood, 250 E 96th St., Ste. 201
Indianapolis, IN 46240

Erie Insurance Property & Casualty Company
c/o Anthony Dabreo, Registered Agent
One Parkwood, 250 E 96th St., Ste. 201
Indianapolis, IN 46240

Auto-Owners Insurance Company
CT Corporation System
150 West Market Street, Suite 800
Indianapolis, IN 46204-2814

Zurich American Insurance Company
Corporation Service Company
251 E Ohio St., Ste. 500
Indianapolis, IN 46204-2184

Zurich American Insurance Company Of Illinois
Corporation Service Company
251 E Ohio St., Ste. 500
Indianapolis, IN 46204-2184

Liberty Mutual Insurance Company
Corporation Service Company
251 East Ohio St., Suite 50
Indianapolis, IN 46204

A lawsuit has been filed against you. Within 21 days after service of this summons on you (not counting the day you received it) – or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) – you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Mark W. Sniderman
SNIDERMAN NGUYEN LLP
47 S. Meridian St., Ste. 400
Indianapolis, IN 46204

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____ _____

Signature of Clerk or Deputy Clerk

Civil Action Number: _____

PROOF OF SERVICE

(this section should not be filed with the court unless required by Fed. R. Civ. P. 4(l))

This summons for *(name of individual and title, if any)*

_____ was received by me on

*(date)*_____.1

☐ I personally served the summons on the individual at *(place)*

_____

_____ on *(date)*

_____; or

☐ I left the summons at the individual's residence or usual place of abode with

*(name)*_____

_____, a person of suitable age and

discretion who resides there, on *(date)* _____, and mailed a copy

to the individual's last known address; or

☐ I served the summons on *(name of individual)*

_____, who is designated by law to

accept service of process on behalf of *(name of organization)*

_____ _____on *(date)*

_____; or

☐ I returned the summons unexecuted because

_____; or

☐ Other *(specify)*:

My fees are $ _____for travel and $_____for services, for a total of $_____.

I declare under penalty of perjury that this information is true.

Date: _____

_____

Server's Signature

_____

Printed name and title

_____

Server's address

Additional information regarding attempted service, etc.