

DIRECT REPLY TO:
Donald A. Randall, Washington Attorney
321 D. Street, N.E.
Washington, D.C. 20002 Tel. (202) 543-1440



January 25, 1988

Mr. G. Robert Mecherle
Claims Vice President
State Farm Mutual Automobile Insurance Company
One State Farm Plaza
Bloomington, IL 61701

Re: Your letter dated December 4, 1987 re: McCarran-Ferguson

Dear Bob:

Please pardon the delay in responding to your December 4, 1987 letter.

I have not had an opportunity to review the video tape of my speech to NACE but, in brief, I believe I told those attending that their contracts to repair insured vehicles are between them and the vehicle owner - not the insurer. Further, any shop owner who conspired or agreed with any insurer to deprive the vehicle owner of his rights could be found in violation of the U.S. antitrust laws. (Blue Cross v. McCreedy, 102 S.Ct. 2540 (1982))

I did stress that unless the insurer, under its contract with the vehicle owner, elected to repair the damaged vehicle, the insurer was not legally a party to the separate contract of repairing the vehicle. I stated that the insurers are "mythical third party negotiators who have no legal right to dictate to shop owners the prices charged to vehicle owners or the place of purchase or the cost of replacement parts."

The heart of the disharmony, discontent, and legitimate legal claims of collision repair shops against automotive casualty insurers is simply stated: insurers have no legal right to cause the repair shops to charge vehicle owners a specific price for

Mr. G. Robert Mecherle

Page 2

January 25, 1988

repairs. Furthermore, insurers have no legal right to cause shops to buy non-standard, substandard or any replacement parts which result in less than the highest quality repairs consistent with free open competitive rates in that particular trade area. Insurers have no right to cause shops to use repair procedures that do not return the insured's vehicle to the highest possible standard of repair, or as near the pre-crash value as possible. But insurers do so!

The method by which this is achieved by most insurers is through threat of or actual intimidation of the operators of collision repair shops, or threats to insureds that they will have to pay more than their deductibles.

Repeal of McCarran-Ferguson would remove insurers' ability to agree upon and use generally standard, uniformly vague and indefinite, and certainly confusing insurance contracts. Without McCarran-Ferguson, there might be real competition among insurers in offering clearly defined coverages. There would be competitive pressures on insurers to compete not only in prices for premiums but in the real quality of claims settlement.

The fact that wealthy insurers have in the past prevailed over several small, underfunded plaintiff shop owners is irrelevant.

Intimidation by insurers was reflected by the audience at NACE '87. It has been evident at every body shop conference I have attended over the last 15 years. The antagonism, created and fostered by the insurers, serves no useful purpose. I predict it will sooner or later result in more government regulation for the insurers.

Bob, you surely do not deny that your claims settlement system tells shop owners what you will pay per labor hour; tells them what repair procedures you approve; tells them what parts you will or will not pay for; tells them what painting procedures you will or will not pay for, etc.

Your company is not the vehicle owner! You have no fiduciary interest in the vehicle! Banks and other lenders holding the title on a loan do have a fiduciary interest, but they do not inject themselves into the contractual relationship between the shop and the owner. You may make any legal contract you wish

Mr. G. Robert Mecherle

Page 3

January 25, 1988

between you and your insured, but you have no legal right to contract with, or conspire with collision shops to cause the shops to deliver any quality of repair that is less than the full restoration of the insured's vehicle. The insurer's obligation is to indemnify the insured by restoring the insured's vehicle to the condition it was before the loss. The insured is not entitled to receive more nor less than he or she is due. It is through vague, indefinite, and confusing written contracts, insurers impose policy interpretations that cause many insured's vehicles to be restored to only a "commercially acceptable state of repair." Many times that does not indemnify or make whole the loss. That causes the owner to suffer economic-depreciated value to his/her vehicle and the insurers have breached their contracts. If this is done through agreement with a repair shop, both the shop owner and the insurers can be held liable under the antitrust laws for treble damages and costs (McCready, 102 S.Ct. 2540 (1982)).

Regrettably, the insurers, hiding behind the uncertain terms of their unwarranted antitrust exemption, granted by the McCarran-Ferguson Act, have successfully used deep-pocket legal defenses to defeat the few feeble attempts to hold them liable under the current law.

Creating a truly competitive market is the most positive objective of my support for removal of the unwarranted antitrust exemption for insurers under McCarran-Ferguson.

I totally agree with Chairman Dan Oliver of the Federal Trade Commission who said the principal role of the FTC should be to work to remove all unwarranted and unjustified controls, private and governmental, from our market places.

I urge that the Federal Trade Commission be directed by Congress to study, investigate and report to Congress on the operations of the insurance industry, including its unwarranted increases in premiums, obscene profits and potentially intentional predatory behavior aimed at putting the smaller insurers out of business.

I support the application of state and federal laws that will force insurers out of the practices of artificially dictating the prices and procedures involved with third party suppliers in their dealings with their customers - who just happen to be insureds.

Mr. G. Robert Mecherle
Page 4
January 25, 1988

Bob, the collision repair shop owners have for more than 15 years tried to "honestly communicate" their grievances to the nation's automobile insurers. For the most part, they have been ignored and stonewalled! You, more than any other individual or company representative, have tried to be attentive and solicitous, but unless and until the insurers get out of the shops and start promoting quality repairs and real competition --not artificial competition -- among collision shops, there will continue to be a "wedge" between shops and insurers.

Best Wishes.

Sincerely,

Donald A. Randall

DAR/fg

C: Allen Richey, ASA
George W. Merwin, III, ASA

AUTOMOTIVE SERVICE ASSOCIATION, INC.
P.O.Box 929 1901 Airport Freeway Suite 100 Bedford, Texas 76021-0929
(817) 283-6205 Metro 267-1376