

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

PHILLIP M. PROCTOR, d/b/a)
Proctor Auto Service,)
5532 Chestnut Street,)
Philadelphia, Pennsylvania;)

WILLIAM W. CUMMING, JR., d/b/a)
Cumming Motors, Inc.,)
27 Greenwood Road,)
Altoona, Pennsylvania;)

RICHARD T. HOGG, d/b/a)
Dick Hogg, Inc.,)
Berkley and Ardmore Avenues,)
Lansdowne, Pennsylvania;)

OLD DOMINION BODY SHOP, INC.,)
a Virginia corporation, d/b/a)
Old Dominion Service Center,)
6015 Farrington Avenue,)
Alexandria, Virginia;)

On behalf of themselves and all)
others similarly situated;)

Plaintiffs,)

v.)

STATE FARM MUTUAL AUTOMOBILE)
INSURANCE COMPANY, an Illinois)
corporation;)

ALLSTATE INSURANCE COMPANY, an)
Illinois corporation;)

NATIONWIDE MUTUAL INSURANCE)
COMPANY, an Ohio corporation;)

THE TRAVELERS CORPORATION,)
a Connecticut corporation;)

LIBERTY MUTUAL INSURANCE COMPANY,)
a Massachusetts corporation;)

GENERAL ADJUSTMENT BUREAU, INC.,)
a New York corporation;)

CRAWFORD & COMPANY, a Georgia)
corporation;)

Defendants.)

CIVIL ACTION

NO.

CLASS ACTION

JURY TRIAL DEMANDED

ANTITRUST COMPLAINT FOR TREBLE
DAMAGES AND INJUNCTIVE RELIEF

1. This Complaint is filed and these proceedings are instituted under Section 4 of the Act of Congress of October 15, 1914 (15 U.S.C. §15), commonly known as the Clayton Act, to recover treble damages and obtain injunctive relief for the injuries sustained by Plaintiffs and other members of the class represented by them, resulting from violations by Defendants of Section 1 of the Act of Congress of July 2, 1890 (15 U.S.C. §1), commonly known as the Sherman Act.

2. Each of the Defendants herein described transacts business and is found in the District of Columbia.

3. Plaintiff Phillip M. Proctor is the owner and operator of an independent repair shop, as defined herein, for the repair of automobile material damage, as defined herein, doing business as Proctor Auto Service at 5532 Chestnut Street, Philadelphia, Pennsylvania.

Plaintiff William W. Cumming, Jr. is the owner and operator of an independent repair shop, for the repair of automobile material damage, doing business as Cumming Motors, Inc. at 27 Greenwood Road, Altoona, Pennsylvania.

Plaintiff Richard T. Hogg, is the owner and operator of an independent repair shop, for the repair of automobile material damage, doing business as Dick Hogg, Inc., at Berkley and Ardmore Avenues, Lansdowne, Pennsylvania.

Plaintiff Old Dominion Body Shop, Inc. is a Virginia corporation, trading as Old Dominion Service Center, with its principal place of business at 6015 Farrington Avenue, Alexandria, Virginia. It is principally engaged in the business of operating an independent repair shop for the repair of automobile material damage.

4. Plaintiffs are representative of the class, as defined by Rule 23(a) of the Federal Rules of Civil Procedure, and bring this action on behalf of the entire class. The class consists of all independent repair shop operators and owners in the United States engaged principally in the repair of automobile material damage, and who are not affiliated with, operated or owned by a franchised automobile dealer or insurance underwriter of automobiles.

The class, as so defined, meets the requirements of Rule 23(a), (b) (2) and (b) (3) of the Federal Rules of Civil Procedure in that the class is so numerous that joinder of all of the approximately 9,200 members of the class is impracticable. There are questions of law and fact common to the class which predominate over any questions affecting only the individual members. Since the acts complained of are carried on in the ordinary course of Defendants' business on a nationwide basis, the claims of Plaintiffs will fairly and adequately protect the interest of the class.

5. Defendant State Farm Mutual Automobile Insurance Company, is an Illinois corporation, with its principal place of business at 112 East Washington Street, Bloomington, Illinois,

61701. During the period of time covered by this Complaint, said Defendant has been engaged in the business of, among other things, the underwriting of automobile property damage liability and physical damage insurance, as defined herein. In the year 1970, it had earned premiums of \$310,881,000 in automobile property damage liability insurance and \$573,309,000 in automobile physical damage insurance. Said Defendant, and its subsidiaries, do business in all States of the Union and the District of Columbia.

Defendant Allstate Insurance Company, is an Illinois corporation, with its principal place of business at Allstate Plaza, Northbrook, Illinois, 60062. During the period of time covered by this Complaint, said Defendant has been engaged in the business of, among other things, the underwriting of automobile property damage liability and physical damage insurance. In the year 1970, it had earned premiums of \$238,882,000 in automobile property damage liability insurance and \$384,944,000 in automobile physical damage insurance. Said Defendant, and its subsidiaries, do business in all States of the Union and the District of Columbia.

Defendant Nationwide Mutual Insurance Company, is an Ohio corporation, with its principal place of business at 146 North High Street, Columbus, Ohio, 43216. During the time covered by this Complaint, said Defendant has been engaged in the business of, among other things, the underwriting of automobile property damage liability and physical damage insurance. In

the year 1970, it had direct premiums in automobile property damage liability of \$91,382,000 and \$124,984,000 in automobile physical damage insurance. Said Defendant, and its subsidiaries, do business in all States of the Union and the District of Columbia.

Defendant The Travelers Corporation, is a Connecticut corporation, doing business at One Tower Square, Hartford, Connecticut, 06115. Through its direct ownership of The Travelers Insurance Company, during the period of time covered by this Complaint, said Defendant has been engaged in the business of, among other things, the underwriting of automobile property damage liability insurance and physical damage insurance. Its income from direct premiums from the underwriting of automobile insurance in 1970 was \$134,472,095. However, the amount attributable to automobile property damage liability and physical damage insurance is presently unknown. Said Defendant, and its subsidiaries, do business in most of the States of the Union, including Pennsylvania and the District of Columbia.

Defendant Liberty Mutual Insurance Company, is a Massachusetts corporation, with its principal place of business at 175 Berkeley Street, Boston, Massachusetts, 02117. During the period of time covered by this Complaint, said Defendant has been engaged in the business of, among other things, the underwriting of automobile property damage liability and automobile physical damage insurance. In 1970, it received premiums for automobile property damage liability insurance of \$88,771,000

and \$112,453,000 for automobile physical damage insurance.

Defendant General Adjustment Bureau, Inc., is a New York corporation, with its principal office at 123 William Street, New York, New York. It is engaged in the business of, among other things, the adjustment, as defined herein, of automobile insurance claims. It has represented at times, during the period of the offenses alleged in this Complaint, in various parts of the country nearly all of the underwriters of automobile insurance in the United States. At least until approximately August 1, 1970, its stock was owned by approximately 170 insurance companies. In carrying out its business, it operates in all of the States of the Union and the District of Columbia.

Defendant Crawford & Company, is a Georgia corporation, with its principal office at 131 Ponce De Leon Avenue, N.E., Atlanta, Georgia. It is engaged in the business of, among other things, the adjustment of automobile insurance claims for approximately 250 underwriters of automobile insurance in the United States. In carrying out its business, it operates in all States of the Union and the District of Columbia.

6. Various other persons, firms and corporations not made defendants herein have combined with and participated as co-conspirators with the Defendants in the offenses charged in this Complaint and have performed acts and made statements in furtherance thereof.

7. The acts charged in this Complaint to have been done by Defendants herein were authorized, ordered or done by

its officers, agents, employees or representatives while actively engaged in the management of its affairs.

8. As used herein:

A. "Automobile property damage liability insurance" means 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.

B. "Automobile physical damage insurance" means insurance covering damages or loss to the automobile of the insured resulting from collision, fire, theft and other perils.

C. "Adjustment" means the process of determining the amount payable by the insurer of an insured or other claimant under an insurance contract and the rights and obligations incident thereto.

D. "Insured" means the party to whom or on behalf of whom the insurer agrees to pay losses under the insurance contract.

E. "Insurer" means the party to the insurance contract who promises to pay the losses.

F. "Adjuster" means a person or firm who represents the insurer in the adjustment and settlement of claims with insureds or other claimants.

G. "Automobile material damage" means any damage to an automobile resulting from collision, fire or other perils for which automobile property and physical damage insurance is available.

H. "Independent repair shop" means a person or firm engaged principally in the business of operating a business for the repair of automobile material damage repair and who are not affiliated with, operated or owned by a franchised automobile dealer or underwriter of automobile insurance.

I. "Crash parts" means parts which are related to the structure of the automobile, such as, but not limited to, fenders, bumpers and body panels.

J. "Mechanical parts" means parts and other items which are related to the mechanical operation of the car, such as, but not limited to, spark plugs, carburetors and transmissions.

9. Defendants, State Farm, Allstate, Nationwide, Travelers and Liberty Mutual, underwrite automobile property insurance which provides coverage for property losses arising from 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. These same Defendants employ their own adjusters and, on occasion, use firms engaged in the adjustment business for the purpose of adjusting claims under their contracts with their insureds.

Defendants, General Adjustment Bureau, Inc. and Crawford & Company, are firms engaged in the adjustment business. They are retained by automobile insurance companies for

the purpose of adjusting and settling, among other things, automobile property damage liability and physical damage claims.

10. Most of said claims are settled by appraisers who deal directly with the Plaintiffs and the members of the class they represent herein. The appraiser examines the damaged automobile to determine the damage covered by automobile property and/or physical damage insurance, repairs that must be made, the time it will take to make them and, thereafter, either establish or attempt to establish the price for repairs by the independent repair shop. The 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 the continual transmission in interstate commerce 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 central to the adjustment and settlement of said claims.

11. The automobile material damage repair business consists of the repair and replacement of automobile parts and is engaged in by Plaintiffs herein and the class they represent in all States of the Union and the District of Columbia. The price charged by repair shops for automobile material damage repairs consists of a labor charge which is an hourly rate applied to the time taken to repair or replace parts, a parts

charge for any parts which are used to replace damaged parts on the automobile, and other charges incidental to restoring damaged vehicles to pre-crash condition.

12. Automobile crash and repair parts are manufactured by automobile manufacturers and others in plants located in various States of the United States and shipped and sold by them to jobbers, wholesalers and dealers located in the District of Columbia and States other than the States in which they are manufactured for resale to independent repair shops for sale and use in the repair of damaged automobiles.

Paints and other equipment used in the repair of the automobiles serviced by Plaintiffs herein also are shipped in interstate commerce to Plaintiffs and the other members of the class they represent. Further, the automobiles repaired by Plaintiffs move in interstate commerce.

Automobile insurance is sold by Defendants, State Farm, Allstate, Nationwide, Travelers and Liberty Mutual, throughout the United States and in the District of Columbia by the issuance of an insurance policy. The automobile property insurance business involves a continuous and indivisible stream of intercourse among States composed of collections of premiums, payments of policy obligations and documents and communications essential to the negotiation and execution of policy contracts and the adjustment and settlement of claims.

13. Beginning in or about at least 1967, the precise dates of which are not now available to the Plaintiffs, and continuing up to and including the date of the filing of this

Complaint, the Defendants, co-conspirators and others, have engaged in a combination and conspiracy in unreasonable restraint of the aforesaid trade in commerce in violation of Sections 1 and 3 of the Sherman Act.

14. Defendants, co-conspirators and others, acted in concert for the purpose of furthering the aforesaid combination and conspiracy in violation of Sections 1 and 3 of the Sherman Act have done, among other things, the following:

A. Coerced and intimidated independent repair shops to accept their appraisers' estimates as to the cost of the repairs;

B. Coerced and intimidated independent repair shops to give a price discount on crash and repair parts, and to accept an inadequate mark-up on used parts;

C. Fixed and maintained hourly rates to be paid independent repair shops;

D. Fixed and maintained the time allowance at which independent repair shops must do Defendants' work;

E. Fixed and maintained the price at which automobile repairs shall be made;

F. Fixed and maintained the price which repair shops shall be paid for crash and repair parts used in the work of Defendants;

G. Engaged in boycotts of those independent

repair shops that will not accede to their appraisers' estimates of the price of repairs, give a requested discount on replacement parts, maintain the hourly labor rates as set by Defendants, and who will not accede to Defendants' determination of time allowances;

H. Refuse to pay justifiable charges necessarily involved in the repair of automobiles and to authorize and pay for necessary repairs.

15. As a direct result of the illegal acts and violations of Sections 1 and 3 of the Sherman Act alleged herein, Plaintiffs and other members of the class have suffered the following effects:

A. Competition has been suppressed in the automobile material damage repair business;

B. Great monetary losses have been suffered because of the aforesaid coercion, intimidation and boycotts;

C. Competition has been restrained in the automobile material damage repair business in that Plaintiffs and members of the class who have not acceded to the intimidations and coercion have been boycotted and have been cut off from a substantial share of automobile material damage repair business;

D. Prices charged by independent repair shops have been subjected to collective control and supervision by Defendants and co-conspirators causing loss of profits and revenues to the Plaintiffs and other members of the class herein;

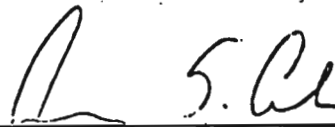
E. Prices for the repair of automobiles have been fixed, established and maintained at artificial amounts.

16. As a direct result of the actions herein alleged, Plaintiffs and the members of the class they represent have been injured in their property and business in an amount which is presently undetermined.

WHEREFORE, Plaintiffs pray that:

- a. Defendants be adjudged to have violated Sections 1 and 3 of the Sherman Act;
- b. Judgment be entered for Plaintiffs and the class they represent against Defendants for threefold the actual amount of damages sustained by them that have resulted in violations alleged herein, together with the cost of this suit, including a reasonable attorney's fee;
- c. Defendants be enjoined from engaging in the unlawful conduct alleged in the Complaint;
- d. Plaintiffs may have such other and further relief as this Court may deem just and proper.

Dated: February 9, 1972


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