

# ***Crawford's* AUTO CENTER, INC.**

302 West Uwchlan Avenue • Downingtown, PA 19335 • 24 hr. Towing 610-363-9111  
PHONE: 610-269-1610 • FAX: 610-269-7513 • <http://www.crawfordsac.com>

January 27, 2016

## **A Public Hearing On House Bill No. 1638 Is Critical**

### **Senate Banking & Insurance Committee**

The PA House of Representatives has proposed changes to the PA Motor Vehicle Physical Damage Appraisers Act (Appraisers Law). We thank you for this opportunity to provide a better understanding from the experience of the collision repair industry on how these changes will have an effect on the Commonwealth's consumers. I would like to explain to you an abbreviated history of automotive appraisals in Pennsylvania and why photo estimating is not good for vehicle owners. Hopefully, this will help Pennsylvania avoid repeating history.

The Appraiser Law was passed in 1972 for the purpose of controlling the behavior and market conduct of insurance appraisers representing insurance companies. Particularly on the ways they went about their duties of inspecting and writing damage appraisals on consumer's damaged vehicles across the Commonwealth. These appraisers prior to 1972 were mostly independent and received their assignments through contracts with partner insurance companies. Due to their ability to forge relationships with favored auto body shops these independent appraisers would steer and direct consumers into these partnered repair shops for a percentage (kick-back) of the written appraisal. If a repair shop did not participate with the kick-back system the appraisers would blackball these repairs shops and if a consumer chose a shop not participating in the scheme the appraiser would underwrite the damage on the consumer's vehicle in retaliation.

**A Federal Investigation by the Unites States Justice Department into these practices began in the early 1960's and found that independent appraisers representing insurance companies nationally had created a scheme known as "The Plan" where insurance companies financially benefited through relationships with favored auto body shops and contracted appraisers for kick-backs to the partner appraiser. This collusion between insurance companies and appraisers was brought to the attention of the Federal Government. In 1963, The U.S. Justice Department filed a class action lawsuit against these**

**wrongful insurance companies for violations of the Sherman Antitrust Act. The lawsuit resolved in the signing of the 1963 Federal Antitrust Consent Decree by 245 Insurance Corporations. The insurance companies promised to never interfere in the business of collision repair again. This Federal Consent Order is a perpetual agreement between these corporations and the United States Government, which also states all insurance companies, must abide by the guidelines of the judgment. (See Full Consent Decree, Attached)**

Pennsylvania insurance companies and their contracted appraisers were very much a part of these Federal antitrust investigations given that the "appraisal plan" originated and was organized out of the Pittsburgh, PA region. The Commonwealth paid close attention to the U.S. Justice Department investigation and enacted strong consumer protection laws that controlled the manner in which automotive appraisers went about the business of appraising damaged vehicles.

The purpose of The PA Motors Vehicle Physical Damage Appraiser Act is to protect the consumers of the Commonwealth, whose automobile is their second most valuable investment. Please take a moment and review these sections of the current PA Motor Vehicle Physical Damage Appraiser Law that are in place to protect the rights of Pennsylvania consumers.

§ 861. Compliance with act

(a) Each appraiser, while engaged in appraisal duties, shall carry the license issued to him by the Insurance Department and shall display it, upon request, to an owner whose vehicle is being inspected, to the repair shop representative involved or to any authorized representative of the Insurance Department.

(b) The appraiser shall leave a legible copy of his appraisal with that of the repair shop selected by the consumer to make the repairs and also furnish a copy to the owner of the vehicle. This appraisal shall contain the name of the insurance company ordering it, if any, the insurance file number, the number of the appraiser's license and the proper identification number of the vehicle being inspected. All unrelated or old damage should be clearly indicated on the appraisal which shall include an itemized listing of all damages, specifying those parts to be replaced or repaired. Because an appraiser is charged with a high degree of regard for the public safety, the operational safety of the vehicle shall be paramount in considering the specification of new parts. This consideration is vitally important where the parts involved pertain to the drive train, steering gear, suspension units, brake system or tires.

(c) No appraiser shall secure or use repair estimates that have been obtained by the use of photographs, telephone calls or in any manner other than a personal inspection.

- (d) No appraiser or his employer shall require that repairs be made in any specified repair shop.
- (e) Every appraiser shall promptly re-inspect damaged vehicles prior to the repairs in question when supplementary allowances are requested by repair shops and the amount or extent of damages is in dispute.
- (f) Every appraiser shall:
- (1) Conduct himself in such a manner as to inspire public confidence by fair and honorable dealings.
  - (2) Approach the appraisal of damaged property without prejudice against, or favoritism toward, any party involved in order to make fair and impartial appraisals.
  - (3) Disregard any efforts on the part of others to influence his judgment in the interest of the parties involved.
  - (4) Prepare an independent appraisal of damage.
  - (5) Inspect a vehicle within six working days of assignment to the appraiser unless intervening circumstances (i.e. catastrophe, death, failure of the parties to cooperate) render such inspection impossible.

Reading this important law and understanding the requirement of a personal inspection. The section that applies to the safety of a consumer's vehicle is as follows: "Because an appraiser is charged with a high degree of regard for the public safety, the operational safety of the vehicle shall be paramount in considering the specification of new parts. This consideration is vitally important where the parts involved pertain to the drive train, steering gear, suspension units, brake system or tires."

As Collision Repair Experts and State Licensed Appraisers we oppose changes to the Pa Motor Vehicle Physical Damage Appraiser Law.

Our opposition to a revision of the appraiser law is due to the safety of the items mentioned that cannot be appraised without a personal hands-on inspection. Allowing insurance companies to write appraisals based on photos taken by telephones, cameras or even drones can place Pennsylvania vehicle owners and their families at great risk. The entire law is based on the state licensed damage appraisers who can physically inspect damaged vehicles, "The Pa Motor Vehicle Physical Damage Appraiser Act".

The insurance industry is asking to change a few simple words in the appraiser's law. The real loss to consumers will be when the Department of Insurance is required to revise the Appraiser's Regulation based on photo estimating in comparison to

the mandatory hands-on physical inspection. The insurance industry's ambition is to underpay claims based on photo estimates that are desk reviewed using automated estimating programs then scrubbed by computer robots to eliminate real world repair judgmental items.

As a state licensed appraiser with over fifty years of hands-on experience in the collision repair, mechanical, and towing industry I could never write an accurate appraisal by looking at pictures of a damaged vehicle. Please reconsider this modification to a good and safety minded, pro-consumer state law. Our lives may depend on the personal inspection the insurance industry is asking you to legislate away.

Thank you,

Stephen E Behrndt, President

Crawford's Auto Center, Inc.

Pennsylvania Collision Trade Guild-Director

PA Towing Association- Member

SCRC- Member

# HOUSE BILL 1638: PHOTO-ESTIMATING

**D**o not permit the insurance industry to change pro-consumer law. A physical inspection is a safety requirement that is important for all who travel our roadways. The insurance industry has introduced legislation that removes the physical requirement that is currently state mandated.

On October 20<sup>th</sup>, 2015 House Bill 1638 was introduced into The PA House of Representatives Insurance Committee sponsored by The PA Insurance Federation. The motive behind HB 1638 is to amend the current state appraiser law permitting the use of photo-estimates across the Commonwealth. The current PA Motor Vehicle Physical Damage Appraiser Act requires a state licensed damage appraiser to complete a physical inspection of automobile damages prior to taking photos to insure that a consumer receives accurate and safe property damage settlement. The original purpose of enacting the Appraiser Act of 1972 was to control the conduct and behavior of independent auto damage appraisers as they went about inspecting damaged automobiles.

Prior to 1972 insurance companies and their contracted appraisal companies had developed relationships with preferred body shops where the appraisers would direct volumes of auto repairs into their partner shops for hourly rate concessions and discounted procedures. Due to wrongfully settled auto claims and unfair total loss settlements the state was forced to step in and legislate pro-consumer law for the appraisal of damaged vehicles. This law is called the PA Motor Vehicle Physical Damage Appraiser Act.

House Bill 1638 is an attempt by the insurance industry to dilute the appraisal process enabling the insurance industry to settle auto claims through photo estimating, taking advantage of unaware consumers whose inability to identify auto damages will lower their property

damage settlements. Concerns of unsafe and improperly appraised vehicles have created an outcry from independent collision repairers, damage appraisers and vehicle owners across the state. A request for public hearings in front of the House Insurance Committee was denied. When asked why the Insurance Committee will not hold hearings we were advised the HB 1638 is to be fast-tracked for a vote on the House floor.

FYI, several insurance companies have already started the use of photo-estimating in PA even though it is illegal. The PA Collision Trade Guild (PCTG) has filed numerous complaints through the PA Department of Insurance asking for compliance of the current Appraisal Law and enforcement to stop the practice of consumer photo-estimating. *Asking an unaware consumer to take their own photos of accident damages leads to questions of safety and liability. Can the average consumer identify bent or missing suspension components or tire damage? Will an unaware consumer be able to correctly identify fault codes in the airbag and restraint systems that are built into every automobile manufactured over the past 10 years? Can the average vehicle owner correctly identify frame and structural damage? Another consideration is who will accept the liability if the vehicle owner sends in the photos as requested but misses an important suspension or electrical part that fails and creates another vehicle accident?*

*Can the average consumer identify bent or missing suspension components or tire damage? Will an unaware consumer be able to correctly identify fault codes in the airbag and restraint systems that are built into every automobile manufactured over the past 10 years? Can the average vehicle owner correctly identify frame and structural damage? Another consideration is who will accept the liability if the vehicle owner sends in the photos as requested but misses an important suspension or electrical part that fails and creates another vehicle accident?*

HB 1638 passed the House of Representatives on December 7<sup>th</sup>, 2015 with a vote of 111 to 70. The Bill is now in front of the Senate where the battle of consumer's rights and the safety of properly appraised and repaired vehicles will be decided in front of the Senate Banking and Insurance Committee. **Please call your State Senator and ask that this anti-consumer legislation be stopped. That is, unless you feel your iPhone pictures will provide you with a properly settled claim.**

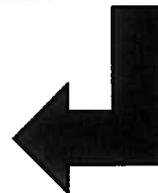
## Photo Estimating - Who Wins & Who Loses?



Our customer stops in and explains that she needs her car repaired. She advised Allstate has sent her a check. We asked for her appraisal of damages and she tells us they did not send her one, just a check for \$899.79. I looked at her vehicle and explained sorry but you have at least \$3,000.00 worth of damage. Let me guess? They asked you to take photos and send them in so they can settle your claim? She says yes, that is exactly what happened. I used my phone and took five pictures and they sent me the check.



Knowing the vehicle was underwritten and short paid we immediately called Allstate for a supplemental on 11-6-15. Customer drops vehicle off for repairs on 11-9-15 and we dismantled the left rear corner to inspect the damages. Customer's car sits waiting for Allstate until 11-13-15 when an Allstate staff appraiser stops by to physically inspect the damages. Allstate agrees with our repair assessment and writes their supplemental for \$2,986.13 with a total repair at \$3,985.92.

This proves why our opposition to HB 1638 is so important. The insurance policy is an *Indemnification Contract*. The purpose is to return your property to its same condition before the accident. HB 1638 allows the insurance industry to underpay your loss based on photos that you have sent to them. Now you become a liable party to your own loss because you took the photos. In the event you missed a safety related part or drivability is questionable and another accident occurs, will you be held negligent in the eyes of the court? Remember the insurance companies have an obligation to indemnify your loss - Allowing photo estimating through HB 1638, opens the door for them to short pay your loss and shift their liability over to you. A physical inspection by a certified state licensed physical damage appraiser protects your automotive investment and the safety of your family as well as the safety of the Commonwealth's motoring public.

**Vote NO to HB 1638**

Brought to by the PA Collision Trade Guild

**PHOTO ESTIMATING  
DOES NOT WORK**

# HAVE YOU READ YOUR INSURANCE POLICY LATELY?

Here, let us help you ----

A quick lesson regarding what your insurance company promises you within their TV, radio, and magazine ads and what you actually receive are important to know. The advertisements we witness are nothing more than propaganda. We have provided you with segments from the actual auto policies of four leading insurance companies and their true intentions. We focus on the Limits of Liability sections of the policy where the insurer's intentions are somewhat different than your expectations.

FYI - The prevailing competitive rates referred to in these policies are not based on normal market competitive rates. What the insurers are using in these policy segments are insurance contracted labor rates. Read the State Farm section where they refer to a "survey made by us." The survey is a controlled questionnaire based on their Direct Repair Partner contracted shops that have already agreed to the insurer's contracted labor rates to stay on State Farm's DRP program.

Reading these policy statements you will see where the insurer writes, "determined by us" or, "We have the right to choose" or my favorite is, "You agree with us" Our question is... did you?

**GEICO:**  
**LIMIT OF LIABILITY**  
The limit of our liability for **loss**.  
1. is the **actual cash value** of the property at the time of **loss**;  
2. will not exceed the prevailing competitive price to repair or replace the property at the time of **loss**, or any of its parts, including parts from non-original equipment manufacturers, with other of like kind and quality and will not include compensation for any diminution of value claimed to result from the **loss**. Although, **you** have the right to choose any repair facility or location, the limit of liability for repair or replacement of such property is the prevailing competitive price, which is the price we can secure from a competent and conveniently located repair facility. At **your** request, we will identify a repair facility that will perform the repairs at the prevailing competitive price;

**ALLSTATE:**  
**Limits of Liability**  
Allstate's limit of liability is the least of:  
1. the actual cash value of the property or damaged part of the property at the time of loss, which may include a deduction for depreciation; or  
2. the cost to repair the property or part to its physical condition at the time of loss using parts produced by or for the vehicle's manufacturer, or parts from other sources, including, but not limited to, non-original equipment manufacturers, subject to applicable state laws and regulations; or  
3. \$500, if the loss is to a covered trailer not described on the Policy Declarations.

**PROGRESSIVE:**  
**LIMITS OF LIABILITY**  
(...)  
d. In determining the amount necessary to repair damaged property to its pre-loss condition, the amount to be paid by us:  
(i) will not exceed the prevailing competitive labor rates charged in the area where the property is to be repaired and the cost of repair or replacement parts and equipment, as reasonably determined by us; and  
(ii) will be based on the cost of repair or replacement parts and equipment which may be new, reconditioned, remanufactured or used, including, but not limited to:  
(a) original manufacturer parts or equipment; and  
(b) nonoriginal manufacturer parts or equipment.

Most people we speak with had no idea they agreed to the use of aftermarket, imitation or reconditioned parts. However, when you purchased each of these policies and the majority of all the others you have waived your rights to original factory parts. There are no holds barred when State Farm spells out what you will get in their auto policy. "We have the right to choose one of the following to determine the cost to repair the covered vehicle" or, "You agree with us the repair estimate may include new, used, recycled, and reconditioned parts. Any of these may be either original equipment manufactured or non-original manufactured parts" On top of this they also state within the policy. "A bid or repair estimate approved by us."

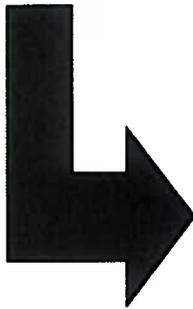
Most customers tell us they prefer original factory parts used in the repair of their damaged vehicles - We agree and believe those are the only parts that will return your damaged vehicle to a properly repaired automobile or truck. However, it helps us to help you by reading what's your auto policy covers.

**STATE FARM:**  
**Limits and Loss Settlement - Comprehensive Coverage and Collision Coverage**  
(...)  
a. Pay the cost to repair the **covered vehicle** minus any applicable deductible.  
(1) **We** have the right to choose one of the following to determine the cost to repair the **covered vehicle**:  
(a) The cost agreed to by both the owner of the **covered vehicle** and **us**;  
(b) A bid or repair estimate approved by **us**; or  
(c) A repair estimate that is written based upon or adjusted to:  
(i) The prevailing competitive price;  
(ii) The lower paintless dent repair pricing established by an agreement we have with a third party or the paintless dent repair service that is competitive in the market; or  
(iii) A combination of (i) and (ii) above.  
The prevailing competitive price means prices charged by a majority of the repair market in the area where the **covered vehicle** is to be repaired as determined by a survey made by **us**. If asked, we will identify some facilities that will perform the repairs at the prevailing competitive price. The estimate will include parts sufficient to restore the **covered vehicle** to its pre-loss condition.  
**You** agree with **us** that the repair estimate may include new, used, recycled, and reconditioned parts. Any of these parts may be either original equipment manufacturer parts or non-original equipment manufacturer parts.

# Photo Estimating – Who Wins & Who Loses?



Our customer stops in and explains that she needs her car repaired. She advised Allstate has sent her a check. We asked for her appraisal of damages and she tells us they did not send her one, just a check for \$899.79. I looked at her vehicle and explained sorry but you have at least \$3,000.00 worth of damage. Let me guess? They asked you to take photos and send them in so they can settle your claim? She says yes, that is exactly what happened. I used my phone and took five pictures and they sent me the check.

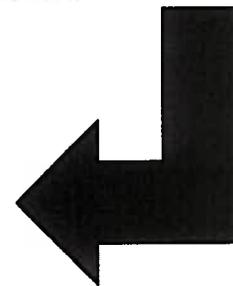


INURED: [REDACTED]	POLICY NUMBER: [REDACTED]	CLASS: [REDACTED]
IN PAYMENT OF LOSS ON 10/16/2015	TAX ID: [REDACTED]	DESK LOC: [REDACTED]
PAY: EIGHT HUNDRED NINETY NINE DOLLARS AND SEVENTY-NINE CENTS	ISSUE DATE: 06/19/2016	AMOUNT: 899.79
<b>Allstate</b>	INVOICE NUMBER: 168430296	COMPANY: ALLSTATE FIRE AND CASUALTY INSURANCE COMPANY
TO THE ORDER OF: [REDACTED]	DATE: 11/19/2016	SIGNATURE: [REDACTED]

Knowing the vehicle was underwritten and short paid we immediately called Allstate for a supplemental on 11-6-15. Customer drops vehicle off for repairs on 11-9-15 and we dismantled the left rear corner to inspect the damages. Customer's car sits waiting for Allstate until 11-13-15 when an Allstate staff appraiser stops by to physically inspect the damages. Allstate agrees with our repair assessment and writes their supplemental for \$2,986.13 with a total repair at \$ 3,985.92.



INURED: [REDACTED]	Policy Number: [REDACTED]	Allstate
In payment for Collision for Date of Loss 10/16/2015	Date: 11/13/2015	Check # 38817260
Two Thousand Nine Hundred Eighty Six & 13/100 USD	PMCO: 385D	Employee: KENNETH LINSALATA
[REDACTED] and CRAWFORDS AUTO CENTER	AMOUNT: 2,986.13	COMPANY: Allstate Fire and Casualty Insurance Company
TO THE ORDER OF: [REDACTED]	DATE: 11/13/2015	SIGNATURE: [REDACTED]



This proves why our opposition to HB 1638 is so important. The insurance policy is an *Indemnification Contract*. The purpose is to return your property to its same condition before the accident. HB 1638 allows the insurance industry to underpay your loss based on photos that you have sent to them. Now you become a liable party to your own loss because you took the photos. In the event you missed a safety related part or drivability is questionable and another accident occurs, will you be held negligent in the eyes of the court? Remember the insurance companies have an obligation to indemnify your loss – Allowing photo estimating through HB 1638, opens the door for them to short pay your loss and shift their liability over to you. A physical inspection by a certified state licensed physical damage appraiser protects your automotive investment and the safety of your family as well as the safety of the Commonwealth's motoring public.

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## 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 is an unincorporated trade association whose membership is composed of 133 stock insurance companies doing business in the United States.
5. American Mutual Insurance Alliance (hereinafter referred to "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 an order be made and entered herein requiring defendants AMIA and NAMCC to be brought before the Court in this proceeding and directing the Marshal of the Northern District of Illinois to serve summons upon AMIA and NAMCC. 6. That the plaintiff have such other and further relief as the nature of the case may require and the Court may deem just and proper. 7. That the Plaintiff recover the costs of this suit. Dated: New York, New York October 22<sup>nd</sup> 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 -----  
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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 counsel for such defendant may be present; and (2) subject to the reasonable convenience of such defendant and without restraint or interference from it to interview officers or employees of such defendant, who may have counsel present, regarding any such matters. (B) Any defendant, on 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 -----