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A&R BODY SPECIALTY, SKRIP'S AUTO BODY, FAMILY GARAGE and THE AUTO BODY ASSOCIATION OF CONNECTICUT on Behalf of Themselves and all Others Similarly Situated, Plaintiffs, - against - PROGRESSIVE CASUALTY INSURANCE COMPANY and PROGRESSIVE DIRECT INSURANCE COMPANY, Defendants.

Civil Action No. 3:07 cv 0929 (WWE)

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF CONNECTICUT

2007 U.S. Dist. Ct. Pleadings 929; 2007 U.S. Dist. Ct. Pleadings LEXIS 7347

November 16, 2007

Amendment to Pleadings

VIEW OTHER AVAILABLE CONTENT RELATED TO THIS DOCUMENT: U.S. District Court: Motion(s)

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TITLE: AMENDED COMPLAINT

TEXT: I. INTRODUCTION

1. This class action is brought by plaintiffs A&R Body Specialty, Skrip's Auto Body, Family Garage and the Auto Body Association of Connecticut ("ABAC"), by their attorneys, on behalf of themselves and all other licensed auto body repairers in the State of Connecticut who have performed repairs during the class period for any person with automobile insurance underwritten and/or administered by Progressive Casualty Insurance Company and Progressive Direct Insurance Company (collectively "Progressive" or the "Company"). Plaintiffs seek to recover for the harm caused by Progressive in its consistent pattern of [*2] unfair and deceptive acts and practices in commerce within the State of

Connecticut.

2. Progressive is a major nationwide insurer selling automobile insurance to thousands of Connecticut residents. In order to extract enormous profits from the automobile insurance programs in the State of Connecticut, Progressive has instituted and managed a program of direct repair shops and in-house, non-independent appraisers, in order to illegally suppress labor rates paid to auto body repair shops and to illegally steer its insureds to a network of preferred body shops that it controls. This conduct has caused very substantial damages to the class of hardworking, highly skilled, auto body repair shops that are trying to earn an honest living in their industry. Plaintiffs seek recovery under the Connecticut Unfair Trade Practices Act ("CUTPA") (Counts I and II) and for Unjust Enrichment (Count III). Plaintiffs also seek injunctive relief (Count IV).

II. JURISDICTION AND VENUE

3. This Court has jurisdiction pursuant to the Class Action Fairness Act, 28 U.S.C. § 1332(d). Jurisdiction is proper because (1) the claims of all Plaintiffs, aggregated together, exceed [*3] \$ 5,000,000 and (2) the Plaintiffs and the Defendants are citizens of different states. 28 U.S.C. § 1332(d)(2).

4. Venue is proper in this Court under 28 U.S.C. § 1391(a) because the Plaintiffs and the members of the putative class reside in the District of Connecticut and a substantial part of the events or omissions giving rise to the claims occurred in this District.

III. THE PARTIES

5. Plaintiff A&R Body Specialty ("A&R") is a Connecticut corporation with its principal place of business at 151 North Plains Industrial Road, Wallingford, Connecticut 06420. A&R is licensed to perform automobile physical damage repairs in the State of Connecticut. A&R has performed automobile physical damage repairs on damaged automobiles insured under Progressive policies and has been paid unreasonably low labor rates by Progressive. In addition, Progressive has improperly steered business away from A&R.

6. Plaintiff Skrip's Auto Body ("Skrip's") is a Connecticut corporation with its principal place of business at 104 Cheshire Road, Prospect, Connecticut 06712. Skrip's is licensed to perform automobile physical damage repairs in the State [*4] of Connecticut. Skrip's has performed automobile physical damage repairs on damaged automobiles insured under Progressive policies and has been paid unreasonably low labor rates by Progressive. In addition, Progressive has improperly steered business away from Skrip's.

7. Plaintiff Family Garage ("FG") is a Connecticut corporation with its principal place of business at 88 North Avenue, Bridgeport, Connecticut, 06606. FG is licensed to perform automobile physical damage repair in the State of Connecticut. Family Garage has performed automobile physical damage repairs on damaged automobiles insured under Progressive policies and has been paid unreasonably low labor rates by Progressive. In addition, Progressive has improperly steered business away from Family Garage.

8. Plaintiff Auto Body Association of Connecticut ("ABAC") is a not-for-profit association of auto body shops, located at 2111 Dixwell Avenue, Hamden, Connecticut 06514. It is comprised of over one hundred automobile physical damage repair shops in the State of Connecticut. The ABAC is a statewide trade association of professionals dedicated to the advancement of the collision repair industry. The ABAC limits its claim [*5] to the injunctive relief requested in Count IV below.

9. Defendant Progressive is a Connecticut licensed insurer with corporate offices in Mayfield Heights, Ohio. Progressive is in the business of, among other things, underwriting and issuing automobile insurance policies in the state of Connecticut to Connecticut residents.

IV. The Nature Of Progressive's Unlawful Conduct

A. Steering And Setting Of Unfair Labor Rates

10. Through a consistent and continuous course of conduct for more than a decade, Progressive has instituted and utilized a program of direct repair program shops ("DRPs"), in-house appraisers and claims handlers to suppress the labor rates paid for auto body repair in the State of Connecticut and to steer its insureds to its DRPs where it exerts greater control over the entire repair process.

11. DRPs have a direct, contractual relationship with Progressive to perform automobile damage repair by referral from Progressive under strict conditions set by Progressive. One of the principal conditions is that DRPs agree to work at labor rates set by Progressive which are well below the reasonable labor rates posted by auto repair shops in the State of [*6] Connecticut.

12. When Progressive's insureds require automobile damage repair, Progressive engages in a pervasive and strictly enforced policy and practice of steering these insureds to Progressive's direct repair shops and appraisers it favors and/or controls. Its employees field calls from Progressive insureds and direct them to a DRP through Progressive's "Concierge" Program. Progressive uses its position of power over its insureds, in the form of incentives and requirements, to carry out its program of steering.

13. Progressive employees tell insureds, among other things, that Progressive does not do business with a non-DRP shop, that a claim may not get paid if done at another shop, that it is "easier" to have the car repaired at one of its shops, that the insured can receive free towing if the vehicle is brought to a DRP shop, that the insured can receive a discount off of his or her deductible by using a DRP shop, and that it will not guarantee work done at a non-DRP shop, but will guarantee the work at its DRP shops for the life of the vehicle.

14. Progressive requires its insureds to have all damage inspected and assessed by appraisers employed by Progressive. These appraisers [*7] are not independent; their appraisal content and practices are monitored and controlled by Progressive.

15. In 2007, Progressive opened two regional assessment centers, one in Newington, Connecticut, and one in Milford, Connecticut. These centers conduct all assessments and appraisals of damage for Progressive insureds in Connecticut. These centers have been instituted to further control the appraisal process, the labor rates Progressive will pay, and the steering of insureds to DRPs.

16. The appraisers employed by Progressive are prohibited by Progressive from approving labor rates for auto repairs that are above the artificially low rates imposed by Progressive. The labor rate cap illegally imposed by Progressive for auto body repair is presently approximately \$ 44-46 per hour. By contrast, the average posted labor rates for auto body repair work not covered by insurance is in excess of \$ 70 an hour, which represents the fair market value of the services performed by auto body repair shops in the State of Connecticut.

17. Defendants represented to plaintiffs and members of the putative class that they pay labor rates constituting fair market rates, while at all times knowing that [*8] said rates result from insurer pressure, are well below posted labor rates for work not covered by insurance, and are not reasonable rates for the State of Connecticut.

18. Defendants represented to plaintiffs and members of the putative class that their appraisers produce fair and unbiased appraisals, when in fact defendants prohibit the use of independent appraisers, set strict parameters for their appraisers to follow, and dictate the labor rates to be used by their appraisers, even where the appraisers do not consider said rates to be fair and reasonable for the State of Connecticut.

19. While defendants contend that there are supposedly legitimate reasons for requiring their insureds to have their automobiles appraised and repaired at Progressive selected shops, the principal reason is corporate greed, and

Progressive's overriding objective to enhance corporate profit.

B. The Federal Consent Decree and State Laws and Regulations

20. For more than forty years public policy, as expressed in the form of state statute and regulations, and federal consent decree, have prohibited attempts by the insurance industry to illegally fix and control the content of appraisals for [*9] damage to automobiles, as well as the costs for repairs to those vehicles, through such illegal practices as steering and suppression of labor rates.

21. In 1963, the United States Justice Department brought an action seeking to enjoin insurance companies from fixing, establishing, maintaining or otherwise controlling the prices to be paid for the appraisal of damage, or to be charged by shops for repair.

22. The suit was resolved prior to trial through entry of a Consent Decree by the major insurance industry trade associations, whose members included approximately 265 insurance companies, that extended to "all other persons in active concert or participation with any defendant. *See United States v. Association of Casualty and Surety Companies, American Mutual Insurance Alliance and the National Association of Mutual Casualty Companies*, 1963 U.S. Dist. LEXIS 9949 (SDNY) ("Consent Decree"). The Consent Decree provided as follows:

(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; [*10]

(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 automotive vehicles with respect to the appraisal of such damage, or (b) any independent or dealer franchised repair shop with respect to the repair of damage to automotive 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;

(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.

23. Statute and regulations of the State of Connecticut are consistent with the Consent Decree, and are designed to prevent insurance companies from forcing their policy holders to use specific appraisers [*11] or auto body repair shops to repair damage to automobiles within the State of Connecticut. The purpose of these laws is to (a) allow insureds the opportunity to select auto repair facilities and appraisers without being pressured by insurance carriers which have a conflict between their interests in paying as little as possible for repairs and those of their policy holders to obtain reasonable, appropriate, quality repairs, and (b) to provide a level playing field for auto body repairers to compete for business without unfair interference by insurance carriers.

24. Connecticut General Statute §§ 38a-354, originally enacted in 1958 as C.G.S. §38-175u, specifically prohibits

automobile appraisers and insurers from steering policy holders to specific auto body repair shops when there is damage to their vehicles, as follows:

(a) No automobile physical damage appraiser shall require that appraisals or repairs should or should not be made in a specified facility or repair shops or shop.

(b) No insurance company doing business in this state, or agent or adjuster for such company shall require any insured to use a specific person for the provision of [*12] automobile physical damage repairs, automobile glass replacement, glass repair services or glass products unless otherwise agreed to in writing by the insured.

25. Connecticut State Regulations on the Conduct of Motor Vehicle Physical Damage Appraisers, specifically, § 38a-790-8, "Code of Ethics," further requires that appraisers be independent and free of interference and influence of insurance companies, stating, in relevant part that every appraiser shall "... (2) approach the appraisal of damaged property without... favoritism toward any party involved in order to make fair and impartial appraisals," that he/she must "(3) disregard any efforts on the part of others to influence his judgment in the interest of the parties involved," and that he/she shall "(4) prepare an independent appraisal of damage." (emphasis added)

V. Class Action Allegations

26. Pursuant to Federal Rule of Civil Procedure 23 and Conn. Gen. Stat. §42-110g, plaintiffs bring this action on behalf of themselves and all other persons and/or entities licensed to perform automobile physical damage repairs in the State of Connecticut [*13] who have performed at least one auto body repair for a Progressive insured from inception of its direct repair program to present.

27. The Class is so numerous that joinder of all members is impracticable. There are approximately 750 persons and/or entities licensed to perform automobile physical damage repairs in the State of Connecticut.

28. Common questions of law and fact exist as to all members of the Class and predominate over any questions affecting solely individual members of the Class. Among the questions of law and fact common to the Class are:

- a. whether Progressive's conduct improperly suppressed hourly labor rates for reimbursement to non-DRPs, including plaintiffs and members of plaintiffs' class;
- b. whether Progressive improperly steered its policy holders to repair shops and appraisers favored and/or controlled by Progressive, including Direct Repair Providers and in-house appraisers;
- c. whether Progressive violated C.G.S. §§ 38a-354;
- d. whether Progressive violated the public policy set forth in the Consent Decree;
- e. whether Progressive violated the Connecticut Unfair Trade Practices Act, C.G.S. §42-110b *et seq.* ("CUTPA");
- f. whether the members of the [*14] class were harmed as a result of Progressive's improper conduct; and
- g. whether Progressive has been unjustly enriched by its actions as alleged herein.

29. Plaintiffs are members of the Class. They are auto body repair shops that are licensed to perform automobile physical damage repairs in the State of Connecticut who have been damaged by Progressive's steering of its insureds and through Progressive's suppression of labor rates it will pay to non-DRPs below reasonable market rates.

30. Plaintiffs' claims are typical of the claims of the Class, and plaintiffs have the same interests as the other Class

members.

31. Plaintiffs will fairly and adequately represent and protect the interests of the Class. Plaintiffs have retained qualified counsel with extensive experience in class action litigation. The interests of the plaintiffs are coincident with, and not antagonistic to, the interests of the other Class members.

32. The questions of law and fact common to the members of the Class predominate over any questions affecting only individual members, including legal and factual issues relating to liability and damages.

33. A class action is superior to other available methods for [*15] the fair and efficient adjudication of this controversy because joinder of all Class members is impracticable. Moreover, since the damages suffered by individual members of the Class may be relatively small, the expense and burden of individual litigation make it impossible for the members of the Class individually to redress the wrongs done to them. The Class is readily definable, and prosecution of this action as a class action will eliminate the possibility of repetitious litigation. There will be no difficulty in the management of this action as a class action.

FIRST CAUSE OF ACTION

(Violation Of The Connecticut Unfair Trade Practices Act - Unfair Practices)

34. Plaintiffs repeat and reallege the allegations in paragraphs 1 through 33 of the complaint as if fully set forth herein.

35. Progressive has for many years continuously and systematically violated the public policy set forth in the Consent Decree and Connecticut State law by:

- a. artificially suppressing labor rates paid to non-DRP shops, including plaintiffs and members of plaintiffs' class, below reasonable market rates;
- b. facilitating the suppression of labor rates by prohibiting the use of independent [*16] appraisers;
- c. requiring its appraisers to write appraisals at labor rates set by Progressive; and
- d. improperly steering its policy holders to repair shops and appraisers favored and/or controlled by Progressive, including DRPs and in-house appraisers that utilize labor and other rates well below reasonable market rates.

36. Said practices are immoral, unethical, oppressive and/or unscrupulous.

37. By virtue of the foregoing unfair methods of competition in the conduct of trade or commerce, plaintiffs and the members of the Class have been substantially injured. In particular, plaintiffs and members of the Class have lost considerable business and income because they have been paid labor rates for repair work for Progressive insureds well below reasonable market rates, and large numbers of Progressive's policy holders have been improperly steered by Progressive's practices to repair shops and appraisers approved and controlled by Progressive.

38. The substantial injury to plaintiffs arises from the inherent conflict of interest between defendants' obligation to its insureds to pay for quality auto body repairs, and its overriding interest in managing its repair program to earn [*17] the largest possible profit. In placing disproportionate emphasis on corporate profit through its unlawful practices, defendant improperly injured the ability of insureds to obtain quality repairs at the repair shop of their choice, and the ability of the plaintiffs and members of the class to earn a reasonable hourly labor rate. The substantial injury to plaintiffs and members of the putative class outweigh any conceivable benefit to the public from defendants' unfair practices and could not reasonably have been avoided.

39. The foregoing acts of Progressive constitute unfair business practices under CUTPA, C.G.S. § 42-110b(a).

40. Defendants' conduct as alleged in this cause of action was an intentional and wanton violation of plaintiffs' rights and the rights of the members of the Class, or was done with a reckless indifference to those rights.

41. As a result of defendants' unfair business practices, plaintiffs and the members of the Class have suffered ascertainable loss and substantial money damages.

SECOND CAUSE OF ACTION

(Violation Of The Connecticut Unfair Trade Practices Act - Deceptive Practices)

42. Plaintiffs repeat and reallege the allegations [*18] in paragraphs 1 through 41 of the complaint as if fully set forth herein.

43. Defendants represented to plaintiffs and members of the putative class that they pay labor rates constituting fair market rates, while at all times knowing that said rates result from insurer pressure, are well below posted labor rates for work not covered by insurance, and are not reasonable rates for the State of Connecticut.

44. Defendants represented to plaintiffs and members of the putative class that their appraisers produce fair and unbiased appraisals, when in fact defendants prohibit the use of independent appraisers, set strict parameters for their appraisers to follow, and dictate the labor rates to be used by its appraisers, even where the appraisers do not consider said rates to be fair and reasonable for the State of Connecticut.

45. Defendants' conduct and statements were designed to mislead and manipulate both plaintiffs and members of the putative class for the principal purpose of increasing corporate profit.

46. Defendants' misrepresentations, omissions and other acts were material to defendants' conduct of business with plaintiffs and members of the putative class, who interpreted [*19] said statements, omissions and acts reasonably.

47. The foregoing acts of Progressive constitute deceptive acts or practices under CUTPA, C.G.S. § 42-110b(a).

48. Defendants' conduct as alleged in this cause of action was an intentional and wanton violation of plaintiffs' rights and the rights of members of the Class, or was done with reckless indifference to those rights.

49. As a result of defendants' conduct, plaintiffs and the members of the Class have suffered ascertainable loss and substantial money damages.

THIRD CAUSE OF ACTION

(Unjust Enrichment)

50. Plaintiffs repeat and reallege the allegations in paragraphs 1 through 49 of the complaint as if fully set forth herein.

51. As a result of Progressive's unfair, deceptive and unlawful conduct, as described herein, Progressive has been unjustly enriched by retaining monies it improperly failed to pay to plaintiffs and members of the putative class for auto body repairs.

52. Progressive is not entitled to keep the monies improperly retained through its practice of suppressing labor rates and steering its insureds to DRP shops.

53. Plaintiffs and the Class seek an order of restitution from Progressive [*20] and request an order of this Court to Progressive requiring it to disgorge all profits and other compensation retained by Progressive as a result of its wrongful conduct, plus attorney's fees, expert's fees, interest, expenses, disbursements and costs.

FOURTH CAUSE OF ACTION**(Injunctive Relief)**

54. Plaintiffs repeat and reallege the allegations in paragraphs 1 through 53 of the complaint as if fully set forth herein.

55. The aforesaid acts of Progressive violate public policy as expressed in the Consent Decree, the laws of the State of Connecticut, the Connecticut Unfair Trade Practices Act, and the Connecticut Unfair Insurance Practices Act. These unlawful acts will continue unless this Court orders that such acts be enjoined.

56. Accordingly, plaintiffs and the Class seek an Order from this Court that all acts committed by Progressive which may be found in violation of Connecticut law, the Consent Decree, CUTPA and the common law be temporarily and permanently enjoined.

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a trial by jury on behalf of themselves and the members of the class as defined herein on all claims so triable.

PRAYER FOR RELIEF [*21]

WHEREFORE, plaintiffs, on behalf of themselves and on behalf of the members of the putative class, pray for judgment and relief as follows:

A. As soon as practicable, an order certifying that the action may be maintained as a class action, pursuant to Federal Rules Of Civil Procedure 23 and C.G.S. § 42-110g(b);

B. Compensatory damages pursuant to C.G.S. §§ 42-110g(a);

C. Disgorgement of all profits, benefits, and other compensation received or obtained by Progressive as a result of its wrongful conduct;

D. Punitive damages pursuant to C.G.S. § 42-110g(a), 52-240(b), and common law;

E. An award of plaintiffs reasonable attorney's fees, expert's fees, costs and expenses incurred in connection with this suit pursuant to C.G.S. §§ 42-110g(d) and/or 52-240(a) and/or common law; and

F. The granting under Count IV of a temporary and permanent injunction pursuant to C.G.S. § 42-110g(d) against Progressive's continued violation of the Consent Decree, Connecticut Anti-Steering Law, C.G.S. § 38a-354, Connecticut State Regulations on the Conduct of Motor Vehicle Physical Damage Appraisers § 38a-790-8, the Connecticut Unfair Trade Practices [*22] Act and the Connecticut Unfair Insurance Practices Act.

G. Such other and further legal and equitable relief as the Court deems just and proper.

THE PLAINTIFFS

By: /s/ [Signature]

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CERTIFICATE OF SERVICE

This is to certify that on November 16, 2007, a copy of the foregoing was filed electronically and served by mail on anyone unable to accept electronic filing. Notice of this filing will be sent by e-mail to all parties by operation of the Court's electronic filing system and by mail to all parties that are unable to accept electronic filing. Parties may access this filing through the Court's electronic system.

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