

## **NCOIL Property-Casualty Insurance Committee Meeting: Auto Insurance Fraud and Vehicle Repair**

Mr. Chairman and Committee members: My name is Stephen Behrndt, I am a collision repair professional with 45 years experience in the auto body repair industry. I represent The Pennsylvania Collision Trade Guild as a director. I would like to thank members of NCOIL for allowing me to address this committee meeting and bring to your attention a potentially grave mistake NCOIL is making by representing yourselves as insurance legislators associated with violations of antitrust. To conspire with the insurance industry on issues that impact the collision repair industry has been found to be illegal.

I speak to you on behalf of The Coalition for Collision Repair Excellence, The Pennsylvania Collision Trade Guild, The National Committee for Consent Decree Enforcement / Consent Decree.com and all independent collision repair businesses and their consumers.

On October 23, 1963 Civil Order No. 3106 was filed in the United States District Court, Southern District of New York. This complaint was filed under Section 4 of the Act of Congress of July 2, 1890 to protect trade and commerce against unlawful restraints and monopolies, commonly know as the Sherman Act. What transpired throughout the investigation and filing of this Federal Complaint is referred to today as the **1963 Federal Antitrust Consent Order**.

A brief history and events that led to the 1963 Consent Decree are provided with this presentation. I highly recommend you read what I have distributed and realize the course NCOIL is considering has been previously addressed by our Federal Government and resolved through antitrust compliance. Prior to 1963 The United States Justice Department investigated and found that segments of the insurance industry had conspired with preferential repair shops (co-conspirators) to set labor rates, prices of goods and services thus controlling the collision repair marketplace. This conspiracy is referred to as The Automotive Damage Appraisal Plan or "The Plan" as referred throughout the 1963 Consent Order findings and was established through a nationwide network of insurance company sponsored automobile physical damage appraisers who steered and directed consumers to specifically recommended repair shops. The purpose under said plan was to control and depress automobile material damage repair cost.

In 1963 U.S. Attorney General Robert F. Kennedy brought forward a class action against 265 insurance companies and their associations to enforce our Federal Government's guidelines on antitrust laws and violations pertaining to the Sherman Antitrust Act of 1890. These 265 insurance companies through their association's attorneys agreed to **not interfere** in the business of auto body collision repair by signing and agreeing to the Consent Order's Final Judgment on Oct 22, 1963.

The Justice Department decreed:

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.

## FINAL JUDGMENT

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.

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.

On September 20, 2000 members of National Committee for Consent Decree Enforcement met with the United States Justice Department to discuss compliance and enforcement of the 1963 Consent Order. We were advised at this meeting the Consent Decree is as enforceable today as the day it was signed in 1963. The Justice Department advised us the document is a perpetual Consent Decree and the Justice Department anticipates compliance.

Due to the existence of the 1963 Federal Antitrust Consent Order it makes no sense for NCOIL's Property and Casualty Committee to seek model legislation currently mandated within a Federal Consent Order. We appreciate NCOIL's ambition with the introduction of legislation such as those addressed here today however the guidelines for protecting the citizens of America are already resolved within the Consent Decree. Our recommendation is for NCOIL to contact the United States Justice Department and call for immediate and accelerated enforcement and compliance. We would also recommend that each state modify current antitrust provisions and add language that supports similar antitrust guidelines of the 1963 Consent Decree which through proper compliance will protect and safeguard the citizens of the United States.

Let me close by reviewing Sect II of the Decree's Final Judgment with members of NCOIL.

## FINAL JUDGMENT 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.

For the purpose of being compliant with Federal Antitrust laws. The 1963 Federal Antitrust Consent Order No. 3106 has been served upon the National Committee of Insurance Legislators known as NCOIL on this day July 11, 2009. Any further discussions regarding model legislation that deals with the business of automobile material damage repair and the industry that provides these services may be considered violations of The Sherman Antitrust Act of 1890, The Clayton Act of 1914 and The Hobbs Act of 1951.

Thank you,  
Stephen E. Behrnt  
Pennsylvania Collision Trade Guild – Director  
Coalition for Collision Repair Excellence – Director  
National Committee for Consent Decree Enforcement /  
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