

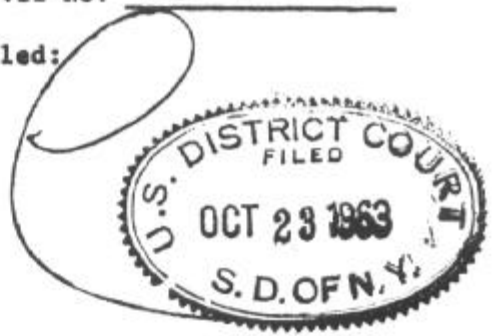
IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

U.S.

UNITED STATES OF AMERICA,  
  
Plaintiff,  
  
v.  
  
ASSOCIATION OF CASUALTY AND  
SURETY COMPANIES; AMERICAN  
MUTUAL INSURANCE ALLIANCE;  
and NATIONAL ASSOCIATION OF  
MUTUAL CASUALTY COMPANIES,  
  
Defendants.

63 Civil No. 3106

Filed:



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 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 defendants 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 associations;

- (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 of determining 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. Association of Casualty and Surety Companies (hereinafter referred to as "ACSC"), which maintains its principal office at 110 Williams Street, New York, New York, is made a defendant herein. ACSC 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 a "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 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 have 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, payments 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 claims representative, commonly referred to 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 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 costs; 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 consist of the repair and replacement of automobile parts and is engaged in by repair shops located in all states of the United States and the District of Columbia. The price charged by repair shops for automobile material damage repairs consist 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 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 Claim 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 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 costs. 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 Claim 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 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 sponsored appraiser charges are subject to the approval of the sponsoring Council or CCC. The sponsored appraiser is required to conform his operations to the principals 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 appraiser by member



companies and the sponsored appraisers is urged to solicit business from others in order to increase the effectiveness of the Plan.

19. Including 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 replace damaged parts by used rather than new parts; (3) 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, Claim Bureau, member companies, Councils and sponsored appraisers.

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 claim, the automobile material damage appraisal business and the automobile material 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 automobile material damage appraisal businesses;

- (d) Encourage the use of sponsored appraisers by others to increase the effectiveness of the Plan;
- (e) Required sponsored appraisers to conform their operation 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 appraisers; (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 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.

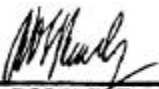
5. That pursuant to Section 5 of the Sherman Act an order be made and entered herein requiring defendants AMIA and NAMCC to be brought before the Court in this proceeding and directing the Marshal of the Northern District of Illinois to serve summons upon AMIA and NAMCC.

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

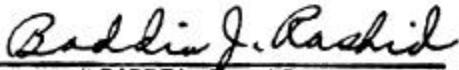
October 22<sup>nd</sup>, 1963.



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