

Monday, June 9, 2008

Images



David W. Harple

Auto body shops in the state claim that The Hartford unfairly drives down labor rates by funneling work to a list of preferred shops.



Summer Pierce Weinstein

Plaintiffs' attorney David Slossberg said the state Supreme Court's opinion 'greatly advances our ability to recover in this case.'

Ready To Roll Into Court

Group of auto repair shops green-lighted for class action suit

By DOUGLAS S. MALAN

The state Supreme Court has cleared the way for in-state auto body repair shops to bring a class action lawsuit against The Hartford insurance company, a case that some observers say could involve hundreds of millions of dollars in damages.

Three repair shops and the Auto Body Association of Connecticut (ABAC) filed suit in 2003 accusing The Hartford of violating the Connecticut Unfair Trade Practices Act (CUTPA) by pressuring policyholders to use a repair shop in The Hartford's closed network of "preferred" or "direct repair" businesses when fixing a crash-damaged car.

The plaintiffs allege that The Hartford forced these preferred shops to charge below-market labor rates in exchange for a steady volume of work. Additionally, The Hartford is accused of pressuring "purportedly independent insurance appraisers" into accepting any monetary limits the company proposed for specific repairs.

A trial court granted class certification in 2006, and The Hartford appealed. But the state Supreme Court, in a decision released June 3, upheld the class certification. Some defense bar members were surprised to read the unanimous decision in *Artie's Auto Body, Inc., et al v. The Hartford Fire Insurance Company*, because the same court denied class certification in two similar 2006 cases — *Collins v. Anthem Health Plans, Inc.* and *Macomber v. Travelers Property & Casualty Corp.*

Those cases were referenced by The Hartford's lawyers from Robinson & Cole as reasons why the justices should deny certification in the auto body case. The lawyers, who declined comment for this story, contended there was a similar failure in the auto body case to show that the issues predominated the class. In other words, the lawyers said that a fair resolution of each plaintiff's case could not be achieved through generalized proof of damages rather than individualized proof.

"We disagree," Justice Peter T. Zarella wrote in the opinion. "The predominance requirement has been satisfied...and the trial court did not abuse its discretion in granting the plaintiffs' motion for class certification."

The class action lawsuit now sits on the complex litigation docket in Stamford before Judge Alfred J. Jennings Jr. Jury selection is scheduled for mid-November and the trial is slated for early December.

A lawyer familiar with the case said damages could reach into the hundreds of millions of dollars. CUTPA allows for attorneys' fees and treble damages.

A Big Decision

Reaction among defense lawyers was mixed.

Cesar Noble, president of the Connecticut Defense Lawyers Association, said his group had no comment "because it appears to be more of a technical decision regarding certification of class action more than anything else that our membership would be interested in."

Meanwhile, John W. Mills, an insurance defense lawyer in New Haven not affiliated with the case, said "it's one of the biggest insurance decisions of the last five years" in the state. "All major insurance companies are going to be interested in this case," said Mills, who does work for Allstate and State Farm. "This is big, big news for the auto insurance industry."

Plaintiffs' lead counsel David A. Slossberg, of Hurwitz, Sagarin, Slossberg & Knuff in Milford, argued the matter before the Supreme Court last November.

"We think this decision greatly advances our ability to recover in this case," said Slossberg. "This permits us to roll up our sleeves and get ready for trial."

Slossberg teamed with associate Allison Near and Westport attorney Alan Neigher, who has been long-time counsel for the Auto Body Association of Connecticut.

Slossberg also has a case pending in federal court in Bridgeport before Judge Warren W. Eginton involving auto body shops and the Progressive Insurance Group Co. That case is awaiting class certification, Slossberg said. Wiggin and Dana is serving as defense counsel, and their lawyers declined comment for this story.

And there are more lawsuits yet to be filed against three of "the big ones" in the state insurance industry, said ABAC president Bob Skrip. He said his case has made waves throughout the country as auto body associations in other states have contacted him about filing similar lawsuits in their jurisdictions.

"We are so looking forward to this trial" against The Hartford, Skrip said. "Shops that make these decisions to participate [in preferred programs], we can't deny them their right to do business. But it does nothing but favor the insurance industry. As long as the direct repair shops are out there, the non-direct repair shops cannot get raises."

Allegations of faulty service from preferred shops leading to safety concerns never were addressed in the Supreme Court's decision, although Skrip said that such corner-cutting practices by preferred auto body shops prompted the lawsuits.

Internal Memos

Slossberg's case relies on extensive documentation from The Hartford, including internal memos describing and evaluating its policies and programs along with several depositions by company employees. His team also leaned heavily on expert witness Dr. Frederic B. Jennings Jr., an economic consultant who created a formula that attempted to measure the impact of The Hartford's practices on nonpreferred auto body shops.

Typically, this is how The Hartford handles accident claims, according to court documents: Insured motorists seeking repairs call customer care specialists for The Hartford. The specialists inform policyholders that by using a recommended shop they will receive \$100 off of their deductible and a lifetime guarantee of repair.

These specialists follow scripts to communicate with customers in a uniform manner, and supervisors scrutinize their performance. The Hartford offers cash bonuses and other incentives to specialists who steer the most customers to shops on the preferred list, which have contractual agreements with The Hartford.

Meanwhile, Slossberg said he uncovered evidence that The Hartford has been eliminating the use of independent appraisers in recent years and turning to in-house appraisers to control labor and parts costs. The Hartford has characterized shops that charge considerably more than its approved labor rate as "militant."

Jennings, the economic consultant, said that as a result of such policies, shops not on the preferred list received 60 percent fewer jobs from The Hartford policyholders than they otherwise would have. He also said the prevailing labor rate in an uncontrolled market was twice the rate approved by The Hartford. As a result, the economist's formula "generates an overall loss due to The Hartford's suppression of labor rates," the court noted.

The Hartford countered that Jennings's information was too general to prove "ascertainable loss of money or property" by every class member, and invoked *Collins* as part of its argument.

That case involved surgeons seeking class certification against Anthem Health Plans for denial of payment. The Supreme Court reversed the trial court's certification because the surgeons failed to meet the predominance requirement.

But the Supreme Court opined that *Collins* was dissimilar to the auto body case because the former was "complicated by numerous distinctions among class members," including the types of medical services provided and the specific coverage provided under the patient's benefit plan.

The Supreme Court also reversed a class certification ruling in *Macomber* due to incomplete discovery, but allowed the plaintiff more time to develop evidence to meet the predominance requirement.

Mills, the New Haven insurance defense lawyer, called the auto body opinion "far-reaching" because The Hartford's practices don't seem much different from any business agreement in which a company offers a steady volume of work to a vendor for a discounted price.

"The insurance industry is so competitive that their whole focus is on ways to be more cost-efficient," he said. "Most of the big companies operate like this. I can't imagine that they aren't going to be worried."