

Connecticut Supreme Court Delivers \$35 Million Body Blow to Body Shops

September 28, 2015

Auto insurers control the cost of collision repairs through the use of direct repair programs. The programs feature networks of auto body repair shops that enter into contracts agreeing to discount labor rates and other charges in exchange for a steady stream of customer referrals and streamlined adjustment procedures. As insurer referrals constitute the vast majority of business for most auto body repair shops, direct repair programs effectively set the market for labor rates at a level much lower than the "posted" rates auto body repair shops would otherwise charge. In an effort to realize higher rates, auto body repair shops throughout the country continue to mount legal challenges to the labor rates associated with such direct repair programs. Recently, a longstanding challenge to the "artificially low" labor rates insurers pay for auto repairs through the use of direct repair programs recently came to a crashing halt. In *Artie's Auto Body, Inc. et al v. The Hartford Fire Insurance Company*, the Connecticut Supreme Court reversed a \$34.7 million judgment against the insurer in a class action suit initiated by a group of more than 1,500 Connecticut collision shops. The plaintiffs filed suit in 2003 in an attempt to circumvent the contracts the body shops entered into through The Hartford's direct repair program. The plaintiffs initially prevailed at trial on their theory that the insurer violated the Connecticut Unfair Trade Practices Act (CUTPA) by requiring its staff appraisers to use the negotiated hourly labor rates set forth in the contracts the body shops agreed to enter, instead of rates that the plaintiffs contended more accurately reflected the actual value of their repair services. According to the plaintiffs, the insurer's conduct constituted an unfair trade practice because it offended the public policy set forth in Connecticut regulation §38a-790-8 which governs the ethics of appraisers and requires them to "approach the appraisal of damaged property without prejudice against, or favoritism toward, any party involved in order to make fair and impartial appraisals...." Following a trial, the jury awarded plaintiffs \$14,765,556.27 in compensatory damages, and the trial court awarded the plaintiffs \$20,000,000 in punitive damages. On appeal, the Hartford argued that §38a-790-8 did not apply to labor rates or the conduct at issue in this case and that the Connecticut insurance department had "consistently" interpreted §38a-790-8's "favoritism" prohibition to allow for the company's quid pro quo rate program. The Connecticut Supreme Court

agreed that insurance companies in Connecticut "have the right to negotiate the hourly labor rate that they are willing to pay for auto body repairs and to refuse to give their business to an auto body repair shop with which they are unable to agree on such a rate." In determining that The Hartford's use of staff appraisers through its direct repair program did not violate §38a-790-8 or otherwise constitute a CUTPA violation, the court noted: "**Indeed, we are unable to discern why appraisers, when negotiating for the cost of auto repairs on behalf of their employers, would ever owe a duty of impartiality to the auto body repair shops with whom they are negotiating.** Under our regulatory provisions, those businesses are deemed to be capable of representing their own interests, and certainly are under no obligation to accept insurance related work that is not sufficiently remunerative." The court therefore agreed with the defendant that the trial court incorrectly concluded that §38a-790-8 supports the plaintiffs' CUTPA claim alleging unfair labor rate practices, and accordingly, reversed.

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