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Auto body shop lawsuit likely headed to state Supreme Court

By: Patrick Gallagher

The Hartford Insurance Co. has appealed a Stamford Superior Court ruling that it must pay \$20 million in punitive damages to Connecticut auto body shops after a jury ruled in 2009 that the insurer violated the state's Unfair Trade Practices Act.

In *Artie's Auto Body Inc. v. The Hartford Fire Insurance Co.*, a class action lawsuit originally filed in 2003 and filed on behalf of more than 1,000 auto body shops, plaintiffs claimed The Hartford directed its clients and other insurance claimants to auto body shops favored by The Hartford.

The jury ruled in favor of the plaintiffs, which include A&R Body Specialty, T&J Auto Body, Skrip's Auto Body and the Auto Body Association of Connecticut, in a \$15 million decision that was handed down in November 2009.

A spokesman for The Hartford said the firm was disappointed with the ruling for punitive damages by Superior Court Judge Alfred J. Jennings Jr., but declined to comment further.

David Slossberg, a lead attorney for the plaintiffs, said Connecticut auto body shops make about \$50 an hour, on average, while auto mechanics make about \$90 an hour for work that he said is much less capital intensive.

"The reason for that was that The Hartford, through contractual relations with a small network of direct repair shops, was sending volume to those shops in exchange for concessions on the labor rate," said Slossberg, of Hurwitz, Sagarin, Slossberg and Knuff in Milford. That effectively put downward pressure on the market rate for auto body repair work, he said.

Additionally, plaintiffs claimed that The Hartford, through the use of positive and negative employee incentives, sought to influence its own independent appraisers to establish an artificially low standard of hourly labor rates for auto body repair work.

In a May 24 Memorandum of Decision on the plaintiff's motion for permanent injunction, Superior Court Judge Alfred J. Jennings Jr. elaborated on the conflict facing appraisers.

"Under the Code of Ethics the appraiser must perform the independent fair and impartial appraisal free from efforts on the part of others to influence his or her judgment," Jennings stated in the letter.

“This puts the appraisers collectively in the position of making judgments within a wide range having implications that extend far beyond the fair impartial resolution of a damaged automobile claim, but also determine policy that can have serious repercussions on the employer’s competitive position in the auto insurance marketplace and on the livelihoods of vendors such as the plaintiff class.”

Slossberg said the case illustrates an industry-wide conflict facing insurers.

“The problem with all of this is that insurance companies have an inherent conflict of interest,” he said. “On the one hand, their insureds need and expect that they will get a quality repair and get their car returned to pre-accident condition, and on the other, the insurance company desires to spend as little money as they can making that happen.”

Slossberg said the case would likely be heard by the Connecticut Supreme Court. “Our hope is that this will be resolved in the next 12 to 18 months,” he said. “We’re confident that the verdict is on solid ground.”

While the lawsuit has worked its way through the legal system, Slossberg said auto body shops have suffered, with many going out of business.

“Hundreds of these guys have gone out of business during the arguing of this lawsuit,” Slossberg said. “What you’re getting is folks who cannot compete, and you’re getting this small consolidation of body shops, which is bad for consumers.

“Ultimately, this is bad in the marketplace — there’s less choice for consumers, and you have a situation where the insurance companies are dictating how your car should be fixed,” he added.