

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT — CHANCERY DIVISION

ARMANDO J. ROSSI and JAMIE BRAMWELL,)
individually and on behalf of all others similarly situated,)
)
Plaintiffs,)
) No. 00 CH 15534
v.)
) JURY DEMAND
AMERICAN AMBASSADOR CASUALTY COMPANY)
)
Defendant.)

**SECOND AMENDED CLASS ACTION COMPLAINT-INCLUDING REQUEST
FOR INJUNCTIVE RELIEF**

NOW COME Plaintiffs, ARMANDO J. ROSSI and JAMIE BRAMWELL, individually and on behalf of all others similarly situated, by their attorneys GOLD & COULSON, a partnership of professional and limited liability corporations, and complain of Defendant as follows:

INTRODUCTION

1. Plaintiffs seek redress from Defendant’s policy and practice of imposing an unreasonable and undisclosed limitation on the amount it reimburses insureds on auto collision claims. It is the Defendant’s policy and practice of rejecting all or part of legitimate physical damage claims by using a payment schedule that is unreasonably low and arbitrarily set, without regard to the fees actually charged by repair shops within the applicable geographic area. Specifically, Defendant limits automobile property damage collision claim payments for auto body labor rates to approximately half of the prevailing competitive price charged by collision

repair facilities . Defendant’s hidden cap on labor rate reimbursement wrongfully shifts the burden of paying the resulting balance to consumers.

THE PARTIES

2. Plaintiff, Armando J. Rossi (“Rossi”) is a resident of Oak Lawn, Cook County, Illinois.

3. Plaintiff, Jamie Bramwell (“Bramwell”) is a resident of Cook County, Illinois.

4. Defendant, American Ambassador Casualty Company (“AACC”) is an automobile insurance company authorized to do business in the state of Illinois.

JURISDICTION

5. This court has personal jurisdiction over the Defendant pursuant to 735 ILCS § 5/2-209(a)(4) as AACC contracted to insure property located in this state.

FACTUAL BACKGROUND

6. At all times relevant hereto Rossi and Bramwell were insured under identical standard automobile insurance policies (“Policy”) issued by AACC.

7. Both Rossi and Bramwell purchased “Collision” coverage from AACC which insured their vehicles against property damage incurred in a collision with another vehicle.

8. With respect to collision coverage, AACC’s Policy states in pertinent part:

PART V - PHYSICAL DAMAGE COVERAGE

G – Comprehensive Coverage or Other than Collision Coverage (excluding Collision)

H – Collision Coverage. At the Company’s option to have repaired or to pay

for loss caused by collision to the owned automobile or equipment which is common to the use of the owned automobile as a motor vehicle but only for the amount in excess of the deductible amount stated in the Declarations as applicable thereto.

.....

Limits of Liability. The Company's liability for all losses under Part V – "Physical Damage" Coverage shall not exceed the least of the following:

- (a) the actual cash value of stolen or damaged property or part thereof at the time of loss, less the deductible;
- (b) the amount necessary to repair the damaged property at the time of loss, less the deductible;
- (c) the amount necessary to replace the value of the stolen or damaged property at the time of loss with like kind and quality property less depreciation; or
- (d) the actual cash value of the stolen or damaged property less deductible and salvage value on retained vehicles nine (9) model years or older.

9. The Conditions portion of the policy states in pertinent part:

Part VI – Conditions

- 1. **Policy Period, Territory.** This policy applies only to accidents or losses during the policy period, as stated in the Declarations, while the automobile is within the United States of America, its territories or possessions, or Canada or is being transported between ports thereof...

.....

- 9. **Insured Duties In Event of Loss – Part V – "Physical Damage" Coverage.** In the event of loss the insured must:
 - (a) allow the Company to inspect and appraise the insured automobile before its repair or disposal.
 - (b) protect the automobile, whether or not the loss is covered by this policy, and any further loss due to the insured's failure to protect shall not be recoverable under this policy; reasonable expenses incurred in affording such protection shall be deemed incurred at the Company's request;
 - (c) report the loss to the Company within 31 days after loss, and within 60 days thereafter file with the Company his/her sworn proof of loss in such form and including such information as the Company may reasonably require;
 - (d) upon the Company's request, exhibit the damaged property and submit to examination under oath; and

(e) (Not applicable).

.....

11. Payment of Loss...

Part V – “Physical Damage” Coverage. The Company may, at its option, pay for the loss in money; or may repair or replace the damaged or stolen property; ...

10. AACC is engaged in a scheme designed to limit reimbursement on collision claims by placing unreasonable and undisclosed caps on property damage benefits. AACC has designed and implemented the following scheme: 1) after an insured files a collision claim, AACC proposes to adjust the loss using labor rates for body, paint, and mechanical repairs that do not reflect the reasonable cost of those services in the marketplace; 2) AACC then sends letters to its insureds attempting to steer the insureds to “discount” auto body shops that AACC falsely claims will repair the insured’s vehicle for the discounted rates ; 3) in these same letters, AACC indicates that insureds who select a shop of their choice rather than one of AACC’s “discount” auto body shops will be liable for charges exceeding the amount listed on AACC’s estimate of repair costs; and, 4) when an insured’s vehicle is repaired at a non-discount body shop, AACC caps or limits the auto body hourly labor rate reimbursement at an amount equal to approximately half of the prevailing competitive price charged by collision repair facilities in the marketplace, thereby exposing its insureds to liability for the balance of the repair bill.

11. Pursuant to the Labor and Storage Lien (Small Amount) Act (740 ILCS 50/1 et seq.), an auto body repair shop has the right to retain possession of a repaired vehicle until its charges for labor are paid in full. Because of Defendant’s scheme, insureds must pay the outstanding charges before their vehicles are released.

12. By using unreasonable labor rates in the adjustment of automobile property-damage losses, AACC intentionally and systematically underpays its policyholders' claims.

13. By using unreasonable labor rates in the adjustment of automobile property-damage losses, AACC, as a matter of policy and practice, makes arbitrary and unreasonable determinations concerning payment of its insured's physical damage claims.

14. AACC's insurance policy contains no limitations on labor rates payable under the Policy.

15. AACC's insurance policy contains no limitations on an insured's right to choose an auto body repair shop to perform repairs to his or her vehicle.

PLAINTIFFS' FACTS

Armando Rossi

16. On March 24, 2000, Rossi struck another vehicle from behind with his 1993 Cadillac. Rossi filed a timely collision claim with AACC.

17. AACC opted to pay for Rossi's loss in money.

18. AACC did not exercise its option to repair or replace Rossi's damaged property.

19. Rossi brought his vehicle to Broadway Collision Center ("Broadway") in Blue Island, Illinois, for repairs. Broadway is a duly licensed collision-repair facility pursuant to 625 ILCS 5/5-301.

20. Broadway estimated the cost of repairs at \$5,369.34 based on industry-standard repair manuals and competitive labor rates. Broadway's invoice listed the repair times and labor rates as follows:

| | | |
|-------|-----------------------|----------|
| PAINT | 16.4 HRS @ \$34.00/HR | \$557.60 |
| BODY | 26.1 HRS @ \$34.00/HR | \$536.00 |

| | | |
|-------|----------------------|----------|
| FRAME | 6.0 HRS @ \$60.00/HR | \$300.00 |
| MECH | 2.6 HRS @ \$55.00/HR | \$143.00 |

21. The labor rates used by Broadway to calculate the cost of repairs to Rossi's vehicle were reasonable.

22. On March 28, 2000, AACC sent Rossi a letter stating that, "we are able to secure various discounts with certain repair facilities which will perform the repairs to your vehicle in a professional and workmanlike manner. Should you choose a repair facility other than that of a company approved facility, you may run the risk of incurring additional expenses as a result of forfeited agreements/discounts."

23. On March 30, 2000 AACC sent Rossi a letter stating as follows:

We are informed that you do not want your automobile to be repaired by the shop with which we reached an agreed price. We are further informed that you have chosen another repairing garage.

We enclose herewith, our check made payable to you and your loss payee, if any. Also, enclosed please find a copy of the estimate on which this settlement is based.

Under the terms of your policy, American Ambassador Casualty Company is responsible to repair your automobile in a reasonable workmanlike fashion. The garage named in our enclosed estimate is willing to complete repairs for the amount stated in the estimate...

Exhibit 1, to initial complaint, March 30, 2000 letter from AACC to Rossi.

24. Enclosed with the March 30, 2000 correspondence from AACC was an appraisal of the repair costs totaling \$3,727.24 and a check for \$3,227.24 (reflecting the total appraisal less Rossi's \$500.00 deductible). With respect to the labor rates, the Appraisal listed the following repair times and rates of reimbursement:

| | | |
|------------|-----------------------|----------|
| BODY LABOR | 24.0 HRS @ \$22.00/HR | \$528.00 |
|------------|-----------------------|----------|

| | | |
|------------------|-----------------------|----------|
| PAINT LABOR | 16.4 HRS @ \$22.00/HR | \$360.80 |
| MECHANICAL LABOR | 2.5 HRS @ \$35.00/HR | \$87.50 |
| FRAME LABOR | 6.0 HRS @ \$30.00/HR | \$180.00 |

25. Broadway was the garage named on the estimate enclosed with AACC's March 30, 2000 letter to Rossi.

26. AACC's statement that it had reached an agreed price with Broadway for the repairs was false; Broadway never agreed to perform repairs to Rossi's vehicle for the amount stated in AACC's estimate.

27. The labor rates used by AACC in its estimate of the cost of repairs to Rossi's vehicle were unreasonable.

28. The actual and reasonable cost to repair Rossi's vehicle was \$5,369.34.

29. AACC's use of these unreasonable labor rates in the adjustment of Rossi's claim resulted in AACC's payment of only \$3,227.24 against Broadway's charges. Rossi was thereby forced to pay from his own personal funds the \$500.00 deductible and the difference of \$1,642.10.

30. AACC is a member of the Liberty Mutual Group of insurance companies.

31. At the time AACC adjusted Rossi's claim, Liberty Mutual Insurance Company was using the following labor rates to adjust claims under its policies of automobile insurance for repairs to be completed at Broadway: Body Labor - \$36.00/hour; Paint Labor - \$36.00/hour, Mechanical - \$50.00/hr.

Jamie Bramwell

32. On January 28, 2000, Bramwell's Volkswagon Beetle was hit by another vehicle

while it was parked on a street in St. Louis. Bramwell timely filed a collision claim with AACC.

33. AACC opted to pay for Bramwell's loss in money.

34. AACC did not exercise its option to repair or replace Bramwell's damaged property.

35. Bramwell brought her vehicle to J&J Auto Rebuilders, Inc. ("J&J") in Crestwood, Illinois for repairs. J&J is a duly licensed collision-repair facility pursuant to 625 ILCS 5/5-301.

36. Before repairing the vehicle, J&J drafted a "preliminary estimate" (hereinafter "Estimate"). The Estimate for the anticipated repairs to Bramwell's vehicle totaled \$1,727.75.

37. J&J's estimated the repair costs using industry-standard repair manuals and competitive labor rates. The Estimate listed the repair times and labor rates as follows:

| | | | | |
|------------------|----------|------|----------|--------|
| BODY LABOR | 13.4 HRS | @ \$ | 40.00/HR | 536.00 |
| PAINT LABOR | 7.6 HRS | @ \$ | 40.00/HR | 304.00 |
| MECHANICAL LABOR | 2.0 HRS | @ \$ | 65.00/HR | 130.00 |

38. The labor rates used by J&J to calculate the cost of repairs to Bramwell's vehicle were reasonable.

39. On or about February 1, 2000, AACC sent Bramwell an initial letter regarding her claim which stated that, "In addition, you are hereby warned not to authorize any repairs to your vehicle before we have inspected same." Exhibit 2 to original complaint, February 1, 2000 letter from AACC to Bramwell.

40. On or about, February 9, 2000, Larry Clarida ("Clarida"), an AACC appraiser, appraised the damage to Ms. Bramwell's car while it was at J&J and issued a written appraisal ("Appraisal"). The Appraisal totaled \$638.39.

41. With respect to the labor rate, the Appraisal listed the following repair times and rates of reimbursement:

| | | | | |
|-------------|---------|------|----------|--------|
| BODY LABOR | 5.2 HRS | @ \$ | 22.00/HR | 114.40 |
| PAINT LABOR | 5.9 HRS | @ \$ | 22.00/HR | 129.80 |

The Appraisal is attached hereto as Exhibit 3 to the original complaint.

42. The labor rates used by AACC to calculate the cost of repairs to Bramwell's vehicle were unreasonable.

43. On February 10, 2000, AACC followed up with a letter that stated in relevant part:

****** REMINDER ******

Regarding the Cost of Repairs . . .

As with other carriers, we are able to secure various discounts with certain repair facilities which will perform the repairs to your vehicle in a professional and workmanlike manner. Should you choose a repair facility other than that of a company approved facility, you may run the risk of incurring additional expenses as a result of forfeited agreements/discounts.

Exhibit 4 to original complaint, February 10, 2000 letter from AACC to Bramwell.

44. Accompanying the "Reminder" was a second letter from AACC, also dated February 10, 2000, which stated the following:

We are informed that you do not want your automobile to be repaired by the shop with which we reached an agreed price. We are further informed that you have chosen another repairing garage.

We enclose herewith, our check made payable to you and your loss payee, if any. Also, enclosed please find a copy of the estimate on which this settlement is based.

Under the terms of your policy, American Ambassador Casualty Company is responsible to repair your automobile in a reasonable workmanlike fashion. The garage named in our enclosed estimate is willing to complete repairs for the

amount stated in the estimate.

Exhibit 5 to original complaint, February 10, 2000 letter from AACC to Bramwell.

45. J&J was the garage named on the estimate enclosed with AACC's February 10, 2000 letter to Bramwell.

46. AACC's statement that it had reached an agreed price with J&J for the repairs was false; J&J never agreed to perform repairs to Bramwell's vehicle for the amount stated in AACC's estimate.

47. In the February 10, 2000 mailing, AACC enclosed a check to Bramwell for \$138.39 reflecting the amount of AACC's estimate minus Bramwell's \$500.00 deductible.

48. On or about March 7, 2000, Marty Culinovic, another AACC appraiser, conducted a second, supplemental appraisal of Bramwell's vehicle and wrote a second appraisal (hereinafter referred to as "Supplement") for \$389.90. The labor rates on the Supplement were capped at \$22 and \$35 per hour. The Supplement is attached to the original complaint as Exhibit 6.

49. AACC's claim summary ("Claim Summary"), which combines the figures in the Appraisal and the Supplement, indicates the following drastically reduced rates for "body" and "mechanical" work:

| | | | | |
|------------------|-----------|------|----------|--------|
| BODY LABOR | 10.0 hrs. | @ \$ | 22.00/hr | 220.00 |
| MECHANICAL LABOR | 1.0 hrs. | @ \$ | 35.00/hr | 35.00 |

50. The actual and reasonable cost to repair Bramwell's vehicle was \$1,727.75.

51. AACC's use of these unreasonable labor rates in the adjustment of Bramwell's claim resulted in AACC's payment of only \$528.29 against J&J's charges of \$1,727.75.

Bramwell was thereby forced to pay from her own personal funds the \$500.00 deductible and

the difference of \$699.49.

52. AACC is a member of the Liberty Mutual Group of insurance companies.

53. At the time AACC adjusted Bramwell's claim, Liberty Mutual Insurance Company was using the following labor rates to adjust claims under its policies of automobile insurance for repairs to be completed at J&J: Body Labor - \$36.00/hour; Paint Labor - \$36.00/hour, Mechanical - \$50.00/hr.

CLASS ALLEGATIONS

54. Plaintiffs seek to certify the following class pursuant to 735 ILCS 5/2-801 23(a) and (b)(3):

All AACC insureds who submitted claims under the physical damage provisions of their policies and were offered or tendered less than the reasonable amounts claimed based on AACC's policy and practice of depriving its insureds of reasonable payments on their physical damage claims through the use of arbitrary and unreasonable limits on labor rates for "body," "paint," and "mechanical" work (hereinafter the "Class")

55. The class period is limited to the applicable statute of limitations on breach of contract claims.

56. There are questions of law and fact that are common to all members of the Class, which questions predominate over any question affecting only individual class members.

57. The principal common issues are the following:

- (a) whether AACC's caps on auto body repair labor charges constitutes an undisclosed limitation on Policy benefits;
- (b) whether AACC's reduction of collision claims based on an undisclosed limitation on auto body repair labor charges constitutes a breach of its insurance contract;
- (c) whether AACC's undisclosed limitation on benefits constitutes a bad faith claims

handling practice;

- (d) whether AACC's conduct is unfair and deceptive.

58. In this case there is no question as to the identification of class members because the class is composed of AACC's insureds and can be identified from a review of AACC's records. There is also no issue as to the amount of class members' damages as damages can be easily determined from reviewing AACC's appraisals and claim checks.

59. The named Plaintiffs' claims are typical of the claims of the class members because all claims are based on the same legal and remedial theories.

60. The Plaintiffs will fairly and adequately protect the interests of all class members in the prosecution of this action and in the administration of all matters relating to the claims stated herein. Plaintiffs are similarly situated with, and have suffered similar injuries as, the members of the class they seek to represent. The Plaintiffs feel that they have been wronged, wish to obtain redress of the wrong and want Defendant stopped from perpetrating and continuing to profit from AACC's capping of collision benefits. To that end, the Plaintiffs have retained counsel experienced and knowledgeable in class action cases and insurance law. Neither the named Plaintiffs, nor counsel, have any interest that may cause them to not vigorously pursue this action.

61. A class action is superior to other available methods for the fair and efficient adjudication of the controversy, in that:

- a. the individual class members are not all aware that they have been wronged and are thus unable to prosecute individual actions;
- b. concentration of the litigation concerning this matter in this Court is desirable;

- c. the claims of the representative Plaintiffs are typical of the claims of the class;
- d. a failure of justice will result from the absence of a class action; and
- e. the class is of moderate size and the difficulties likely to be encountered in the management of a class action are not great.

62. The class is so numerous as to make it impracticable to join all members of the class of plaintiffs. Based on AACC's market share and the number of collision claims AACC receives per year, it is estimated that the class exceeds well over 100 class members.

COUNT I
(Breach of Contract)

63. Plaintiffs incorporate and re-allege the preceding paragraphs of this Complaint.

64. AACC entered into an insurance contract with Plaintiffs to provide physical damage coverage for their vehicles. (Exhibit 7 attached to the original complaint is AACC's policy insuring plaintiffs.)

65. At all times relevant herein, Plaintiffs' insurance coverage was valid and enforceable.

66. Plaintiffs complied with all conditions precedent of the policy, including premium payment.

67. Plaintiffs' vehicles were damaged in collisions. Plaintiffs timely filed collision claims with AACC.

68. AACC opted to pay for Plaintiffs' losses in money.

69. AACC did not exercise its option to repair or replace Plaintiffs' damaged property.

70. By exercising its option to pay Plaintiffs' claims in money, AACC was obligated

to pay for the reasonable cost of repairing Plaintiffs' vehicles, minus any applicable deductibles.

71. As is their right under the Policy, Plaintiffs selected their own auto body shops to repair their vehicles.

72. The duly licensed auto body shops selected by Plaintiffs used reasonable labor rates to calculate the cost of necessary repairs to Plaintiffs' vehicles and billed Plaintiffs for their services.

73. The repair estimates prepared by the auto body shops selected by Plaintiffs were reasonable based on the rates charged by shops in the area and included only those repairs necessary to restore Plaintiffs' vehicles to their pre-loss condition.

74. Plaintiffs paid their auto body shops the full amount of the outstanding charges for their repairs. Because Plaintiffs paid all charges related to the repairs, the amounts paid are presumed to reflect the reasonableness and necessity of repairs.

75. Plaintiffs submitted their respective paid repair bills to AACC for reimbursement as AACC had agreed to do under the terms of the policies issued to Plaintiffs.

76. AACC breached the terms of its policies with Plaintiffs in that it did not reimburse Plaintiffs the amounts they paid for repair of their vehicles less the appropriate deductions.

77. AACC further breached its insurance policies with Plaintiffs in that it failed and refused to reimburse Plaintiffs for the reasonable cost of repairs to their vehicles, minus their deductibles, but instead AACC used unreasonable labor rates to calculate the cost of necessary repairs to Plaintiffs' vehicles.

78. AACC breached the contract of insurance it entered into with Plaintiffs by using

unreasonably low labor rates in the adjustment of claims in an effort to compel compromise settlements of Plaintiffs' claims.

79. AACC breached the contract of insurance it entered into with Plaintiffs by limiting labor rate reimbursements to amounts that were approximately half of the prevailing competitive rates in the marketplace.

80. AACC's practice of capping labor rates constitutes an undisclosed limitation on collision benefits that is unsupported by the language of the Policy. AACC's refusal to reimburse Plaintiffs for their repair costs based on this limitation is a breach of the insurance contract.

81. Moreover, AACC's concomitant refusal to pay Plaintiffs' claims in full in a reasonable amount of time constitutes a breach of the insurance contract.

82. AACC's breach of the insurance contract has proximately caused Plaintiffs damages.

WHEREFORE, Plaintiffs pray that this Court grant the following relief:

- a. monetary damages;
- b. attorneys' fees and costs pursuant to statutory and/or common law authority;
- c. such other relief that this Court deems equitable and just.

COUNT II
(Bad Faith Claims Handling Practices)

83. Plaintiffs incorporate and re-allege the preceding paragraphs of this Complaint.

84. Section 155 of the Illinois Insurance Code provides:

In any action by or against a company wherein there is in issue the liability of a company on a policy or policies of insurance or the amount of the loss payable thereunder, or for an unreasonable delay in settling the claim, and it appears to the

court that such action or delay is vexatious and unreasonable, the court may allow as part of the taxable cost in the action, reasonable attorney's fees, other costs, plus an amount not to exceed any of the following amounts:

- (a) 25% of the amount which the court or jury finds such party is entitled to recover against the company, exclusive of all costs;
- (b) \$25,000;
- (c) the excess of the amount which the court or jury finds such party is entitled to recover, exclusive of costs, over the amount, if any, which the company offered to pay in settlement of the claim prior to the action.

85. AACC acted unreasonably and vexatiously in the adjustment of Rossi's claim by using labor rates of \$22.00 per hour for paint and body repairs when the reasonable cost of such repairs was \$34.00 per hour.

86. AACC acted unreasonably and vexatiously in the adjustment of Rossi's claim by using labor rates of \$35.00 per hour for mechanical repairs when the reasonable cost of such repairs was \$55.00 per hour.

87. AACC acted unreasonably and vexatiously in the adjustment of Bramwell's claim by using labor rates of \$22.00 per hour for paint and body repairs when the reasonable cost of such repairs was \$40.00 per hour.

88. AACC acted unreasonably and vexatiously in the adjustment of Bramwell's claim by using labor rates of \$35.00 per hour for mechanical repairs when the reasonable cost of such repairs was \$65.00 per hour.

89. AACC acted unreasonably and vexatiously in failing to timely pay Plaintiffs' valid collision claims. AACC also acted unreasonably and vexatiously in the adjustment of Plaintiffs' claims by applying an unreasonable limitation on labor rate reimbursements where no

such limitation or exception is contained in its Policy.

90. AACC acted unreasonably and vexatiously in the adjustment of Plaintiffs' claims by stating that it had reached agreements with repair facilities to perform repairs to Plaintiffs' vehicles for certain amounts and at certain rates when it, in fact, had not reached such agreements.

91. AACC's undisclosed limitation purportedly represents "discount" rates despite the fact that Plaintiffs paid full premium for an indemnity policies that does not limit their choice of repair shops to AACC's "discount" repair shop.

92. AACC's practice forces insureds to pay a portion of their repair bills over and above the contractually agreed deductible amounts. AACC's unreasonable and vexatious conduct is compounded by the fact that, due to the liens mechanics have against repaired vehicles, insureds must pay their full repair full bill before their vehicle is released.

93. AACC further engaged in the following improper claims practices as defined by Illinois Insurance Code (215 ILCS 154.6) and/or the Illinois Department of Insurance regulations (50 Ill. Adm. Code CH. I, Part 919):

- a. failing to effectuate settlement of Plaintiffs' claims within 40 calendar days from the date of notification of loss as required by section 919.80(b)(2);
- b. failing to prepare an estimate of repairs that was reasonable, in accordance with applicable policy provisions, and of an amount which would have allowed for repairs to be made in a workmanlike manner as required by section 919.80(d)(6);
and,
- c. attempting to settle Plaintiffs' claims for less than an amount to which a

reasonable person would believe Plaintiffs were entitled.

94. AACC has a regular policy and practice of underpaying the automobile repair bills incurred by its insureds.

95. AACC has a regular policy and practice of rejecting all or part of legitimate physical damage claims by using a payment schedule that is unreasonably low and arbitrarily set, without regard to the fees actually charged by repair shops within the applicable geographic area.

96. AACC adjusted Plaintiffs' claims in a manner designed to deprive them of the benefit of the insurance contract.

97. Bramwell's loss occurred on January 28, 2000. To date, AACC has not reimbursed Bramwell for the reasonable and necessary cost of repairs to her vehicle.

98. Rossi's loss occurred on March 24, 2000. To date, AACC has not reimbursed Rossi for the reasonable and necessary cost of repairs to his vehicle.

99. AACC acted unreasonably and vexatiously in failing to timely pay Plaintiffs' valid collision claims.

100. AACC's vexatious actions in determining the amount payable under its Policy and the company's unreasonable delay in setting Plaintiffs' claims violated Section 155 of the Illinois Insurance Code.

WHEREFORE, Plaintiffs pray that this Court grant the following relief:

- a. Statutory penalties of \$25,000 per class member;
- b. Attorneys' fees and costs pursuant to statutory and/or common law authority; and,
- c. Such other and further relief that this Court deems equitable and just.

COUNT III

(Consumer Fraud and Deceptive Trade Practices, 815 ILCS 505/1 et. seq.)

101. Plaintiffs incorporate and re-allege the preceding paragraphs of this Complaint.

102. AACC is an insurance company engaged in trade or commerce in the State of Illinois.

103. Plaintiffs purchased insurance policies from AACC.

104. At the time Plaintiffs purchased their policies from AACC, Plaintiffs were induced to purchase said policies by AACC's material representations that said policies were indemnity policies which on their face obligated AACC to reimburse Plaintiffs the amount necessary to repair their vehicles.

105. Plaintiffs relied on these material representations.

106. These representations were false and AACC knew they were false at the time, as AACC applied an undisclosed limitation on collision benefits by unreasonably capping labor rate reimbursement when Plaintiffs' vehicles were damaged and claims were submitted.

107. Specifically, it is AACC's practice to adjust physical damage claims based on labor rates of \$22.00 per hour for paint and body work and \$35.00 for mechanical work even though such rates do not reflect the reasonable cost of such services in the geographic region. This hidden cap on benefits was never disclosed to Plaintiffs.

108. AACC knowingly omitted these labor rate limitations from its Policy and knowingly concealed its undisclosed limitations on benefits from its insureds until after a collision physical damage claim was made and the insureds were in need of repairs to their vehicles.

109. AACC knew that its Policy did not allow for reimbursement at "discount" rates or

at rates below the prevailing competitive rates but, despite this knowledge, still adjusted claims using unreasonably low labor rates.

110. AACC knowingly reduced or denied hundreds of collision and comprehensive claims based on its undisclosed labor-rate limitation, wrongfully exposing each and every insured to liability for the cost of vehicle repairs over and above their deductibles.

111. Limitations AACC places on the labor rates it uses to adjust and settle physical damage claims is information that would be material to a consumer's decision to purchase insurance from AACC.

112. As part of its scheme, AACC uses form letters that tell consumers that the company has reached an agreement with a particular body shop to perform repairs to the insured's vehicle for the specific amount listed on AACC's estimate of repair costs when AACC knows such statements are false.

113. AACC knowingly used its superior position, power and sophistication to force these limitations on unwitting consumers who needed their vehicles fixed and returned to use.

114. AACC knew full well that consumers would be forced to pay their repair shops the balance of their bills to get their cars back and used this pressure to its advantage.

115. AACC's outrageous misconduct in the handling of Plaintiffs' claims evidenced a reckless indifference toward the rights of its policyholders. Furthermore, because AACC adjusts all or most of its automobile property damage claims by applying undisclosed and unreasonable limitations on labor rates, AACC's deceptive practices have a high likelihood of recurrence and implicate consumer protection concerns.

WHEREFORE, Plaintiffs pray that this Court grant the following relief:

- a. Damages in excess of \$50,000;
- b. Injunctive relief in accordance with 815 ILCS 505/7;
- c. Attorneys' fees and costs pursuant to statutory and/or common law authority; and,
- d. Such other and further relief that this Court deems equitable and just.

**COUNT IV
(Estoppel)**

116. Plaintiffs incorporate and re-allege the preceding paragraphs of this Complaint.

117. On or about February 10, 2000 AACC sent Bramwell a letter stating that AACC had reached an agreement with J & J to perform repairs to Bramwell's vehicle for the amount listed on AACC's estimate of repair costs.

118. Bramwell subsequently had her vehicle repaired at J & J but AACC refused to pay the full amount of J & J's charges.

119. On or about March 30, 2000 AACC sent Rossi a letter stating that AACC had reached an agreement with Broadway to perform repairs to Rossi's vehicle for the amount listed on AACC's estimate of repair costs.

120. Rossi subsequently had his vehicle repaired at Broadway but AACC refused to pay the full amount of Broadway's charges.

121. The statements by AACC that it had reached agreements with Plaintiffs' chosen repair facilities to perform repairs for the amounts stated on AACC's estimates were false and misled the Plaintiffs. On or about April 10, 1997, the Youngs acted in good faith and disclosed to Walton the complete facts relating to the subject vehicle's condition and approximate value.

122. Plaintiffs were reasonable in their reliance on AACC's representations that it had reached an agreement with J & J and Broadway with respect to the cost of repairs to Plaintiffs' respective vehicles.

123. Plaintiffs' reliance on AACC's statements was detrimental in that Plaintiffs' had their vehicles repaired at the shops listed on AACC's estimates but AACC refused to pay the full amount of the shops' charges.

124. AACC's misrepresentations caused Plaintiffs damage in that Plaintiffs were required to pay for repairs that AACC subsequently claimed were not covered under the policy.

125. Because Plaintiffs were prejudiced by the actions and conduct of AACC, AACC should be estopped from denying coverage for the cost of repairs to Plaintiffs' vehicles as billed by J & J and Broadway.

WHEREFORE, Plaintiffs pray that this Court grant the following relief;

- a. Entry of an order estopping AACC from denying Plaintiffs' claims for the cost of repairs to their vehicles as billed by J & J and Broadway;
- b. Monetary damages.
- c. Attorney's fees and costs pursuant to statutory or common law authority;
- d. Such other and further relief that this Court deems equitable and just.

Respectfully submitted,
on behalf of the Plaintiffs

Attorney for Plaintiffs

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