

Gregory S. Arnold, Esq., JD, LL.M (Insurance Law)
Claims Desk, LLC
Insurance Expert Services
21 Sabina Circle
Leicester, MA 01542
(509) 212-5311
www.Claims-Desk.com

September 9, 2019

The Honorable Makan Delrahim, Esq.
Assistant Attorney General
Antitrust Division
United States Department of Justice
950 Pennsylvania Avenue, Northeast
Washington, DC 20530-0001

Via Email: JudgmentTerminationComments@usdoj.gov

Re: *U.S. v. Association of Casualty and Surety Companies, et al.*
Docket No.: 63 Civ. 3106

Dear Assistant Attorney General Delrahim:

This letter is in support of maintaining the 1963 Consent Decree on behalf of the auto repair industry in the Commonwealth of Massachusetts.

As you know, the 1963 Consent Decree was entered in *U.S. v. Association of Casualty and Surety Companies, et al.* (“Consent Decree”). As you are aware, the Consent Decree was entered to prohibit three insurance company trade associations, some of which have since been realigned and renamed, from conspiring to boycott, coerce and intimidate automobile damage appraisers and auto body repair shops for the purpose of depressing auto repair costs. The Consent Decree ordered the associations to abolish an insidious appraisal plan by which specific appraisers were chosen to act for the association members, all leading to a boycott of those auto body repair shops which rejected the appraisers’ estimates.

The need for the Consent Decree is as relevant today as it was back in 1963. Insurance companies are stubborn and have not learned their lessons and continue to act in bad faith, doing the same activities they were forbidden to do by virtue of the Consent Decree. Insurance companies continue to refuse to negotiate with claimants, preferring to act in bad faith toward policyholders during the claims-settlement process. The Consent Decree needs to remain in place to protect insureds against these abuses. When the rights of insureds are not protected, then the businesses of body shops and parts suppliers are prejudiced, because the funds are not available for proper parts and proper repairs. This leads to unnecessary profit-fade for businesses, or closing of failed businesses, and a safety risk to the insureds and the traveling public.

The stated justifications for termination of the Consent Decree do not measure up to the risks that would follow such a termination. The fact that some litigants are now deceased may be a justification for termination of a judgment between two landowners, or two small businesses that had a dispute with one another, but not for a Consent Decree that was intended to protect millions of Americans from the unscrupulous conduct of the insurance industry. The fact that businesses may have ceased to operate or to exist, such as manufacturing companies or service companies, may be a sufficient justification to terminate one or more other judgments, but certainly not a Consent Decree with the gravitas of the 1963 Consent Decree that was ordered for the protection of consumers from the uneven bargaining power of those intent upon wielding it in the bad faith manner employed by the insurance industry.

This is not a garden variety unexpired judgment. It is acknowledged that there are nearly 1,300 “legacy” antitrust judgments that were enacted without sunset dates. This is one of the few Consent Decrees that has enough teeth for protection of the consumers of this country that it should be maintained in perpetuity. Even the discussion of possible termination emboldens an industry that needs to be bridled on a constant basis. Terminating this 1963 Consent Decree in batch-like fashion with other, unexpired judgments, would be throwing the baby out with the bathwater. Termination would let loose an even more egregious wave of harm to consumers and businesses in Massachusetts and elsewhere in the United States. There may be old wood in case files to be discarded, but this case is a fortress of protection that must remain in place.

The 1963 Consent Decree is a model order for the protection of the consumers and auto-industry businesses of this country. In a country where so much has gone wrong, this is a shining example of what has been done right. The sun should never set on this hard-won victory for the auto repair industry. Of all the legacy judgments to be reviewed, this is not one that burdens American businesses, taxpayers and consumers with a judgment that no longer protects competition. No amount of pressure to close old files should be sufficient to terminate one of the country's highest achievements for the protection of its citizens. Rather than unclogging court dockets, the termination of the 1963 Consent Decree would result in countless filings of new suits against a freshly-emboldened insurance industry.

Thank you for your time and attention. I am available to speak with you in the event you would like to know more about the positive effects the 1963 Consent Decree has had on the auto parts and repair business in Massachusetts, and how termination of the Consent Decree would have a devastating effect on those same businesses.

Sincerely yours,

Gregory S. Arnold

Gregory S. Arnold, Esq., JD, LL.M (Insurance Law)
Claims Desk, LLC