IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 03-10799-HH

LINDA GILCHRIST, JOANNE ZIPPERER, JACKIE VALENTINE,
Individually and on behalf of a class

Plaintiffs-Appellees

v.

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, ALLSTATE INSURANCE COMPANY, NATIONWIDE MUTUAL FIRE INSURANCE COMPANY, GOVERNMENT EMPLOYEES INSURANCE CORPORATION,

Defendants-Appellants.

BRIEF OF NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS AS *AMICUS CURIAE* IN SUPPORT OF DEFENDANTS/APPELLANTS

Ross S. Myers
National Association of Insurance Commissioners
2301 McGee Street, Suite 800
Kansas City, Missouri, 64108-2604
Voice (816) 842-3600
Fax (816) 460-7515
Attorney for *Amicus Curiae*
National Association of Insurance Commissioners

Gilchrist, et al. v. State Farm Mutual Automobile Insurance Co., et al.

No. 03-10799-HH

CERTIFICATE OF INTERESTED PERSONS AND CORPORATE DISCLOSURE STATEMENT

Comes now the National Association of Insurance Commissioners (NAIC) and its counsel of record and pursuant to FRAP 26.1 states that to the best of their knowledge the parties of interest are as listed in the Certificate of Interested Persons and Corporate Disclosure Statement contained in the *Brief of Defendants/Appellants*. With regard to the NAIC, until two years ago it was a non-profit unincorporated association but now is a non-profit Delaware corporation. It has no parent corporation or stock. The National Insurance Producer Registry is an affiliate of the NAIC and is a non-profit Missouri corporation. The NAIC is its sole member.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

INTEREST OF THE NAIC[1]

The National Association of Insurance Commissioners (NAIC) is a non-profit corporation whose membership consists solely of the principal insurance regulatory officials of the fifty States, the District of Columbia, the territories and insular possessions of the United States. Started in 1871, it has been the nation's oldest association of state government officials. The members of the NAIC completely control the same.

The NAIC performs numerous crucial services on behalf of state government, including the management of accreditation standards for and coordination of the review of insurance departments, the operation of extensive solvency, financial and regulatory databases and regulatory analysis of insurance company financial data, education and training programs for state, federal and international financial regulators, the operation of the Securities Valuation Office and the International Insurers Department, the development and publication of model laws, regulations and bulletins, financial and accounting standards, coordination of quarterly national meetings and interim meetings of various NAIC committees, task forces and working groups and the creation and publication of white papers, consumer guides, handbooks, periodicals and the *Proceedings of the*

[1] The *Motion of National Association of Insurance Commissioners for Leave to File a Brief as Amicus Curiae* has been filed contemporaneously with this brief.

NAIC. Hundreds of state and federal laws assign duties to the NAIC and make reference to and incorporate NAIC standards, models and publications.

In filing this *amicus curiae* brief, the NAIC seeks to demonstrate its interest in this proceeding and to fulfill the mission of the NAIC, as set out in its Annual Report, to:

> assist state insurance regulators, individually and collectively, in serving the public interest and achieving the following fundamental insurance regulatory goals in a responsive, efficient and cost-effective manner, consistent with the wishes of its members:
>
> 1. Protect the public interest, promote competitive markets and facilitate the fair and equitable treatment of insurance consumers;
> 2. Promote the reliability, solvency, and financial solidity of insurance institutions; and
> 3. Support and improve state regulation of insurance.

The Executive Committee of the NAIC voted to apply for leave of this Honorable Court to file its brief in support of Defendants-Appellants with regard to certain issues involved in this massive multi-state class action. The interest of the NAIC in this matter arises out of the regulatory responsibility vested in each insurance commissioner to see that all laws respecting insurance companies and the types of policies offered for sale in his or her State are executed faithfully and to safeguard the solvency and financial integrity of insurance companies for the benefit of insurance consumers. The commissioners, directors and superintendents of the various States, the members of the NAIC, are charged with the responsibility

of regulating the business of insurance within their jurisdictions pursuant to the McCarran-Ferguson Act, 15 U.S.C. § 1011, *et seq.*, and state insurance laws.

The members of the NAIC have reviewed the decision of the United States District Court in this cause and the brief filed by the Defendants with this Court and believe the issues involved are of great interest and concern. The NAIC has extensive experience with the interpretation and application of the McCarran-Ferguson Act and various State laws, many of which are based on NAIC model laws, along with constitutional challenges and administrative law matters. The members of the NAIC are the statutory heads of state insurance departments which have approximately 11,000 staff members, including 282 actuaries, 681 rate and form analysts, and 1,175 financial examiners. NAIC, *2001 Insurance Department Resources Report* Tables 3 and 6 (2002).

With regard to the McCarran-Ferguson Act, the Supreme Court has stated that "[t]he views of the NAIC are particularly significant, because the Act ultimately passed was based in large part on the NAIC bill." *Group Life and Health Ins. Co. v. Royal Drug Co.,* 440 U.S. 205, 221, 99 S.Ct. 1067, 1078 (1979).

The members of the NAIC believe that, to ensure the continued viability of state regulation of the business of insurance is not impaired by allowing this nation-wide lawsuit to continue, this Court should grant the Defendants' appeal

and set aside the decision of the U.S. District Court that certified this class of approximately 70 million people.

The members of the NAIC believe that such an outcome is in the best interest of insurance consumers, to whom all insurance commissioners, superintendents and directors (all of whom are members of and control the NAIC) are charged by both State and Federal law to protect.

STATEMENT OF FACTS

Amicus curiae NAIC adopts the statement of facts as set out in the *Brief of Defendants/Appellants.*

SUMMARY OF ARGUMENT

The members of the National Association of Insurance Commissioners believe this Court should grant the Defendants' appeal and set aside the decision of the U.S. District Court that certified this class of approximately 70 million people because: (1) contrary to the finding of the U.S. District Court, state insurance laws do in fact affirmatively regulate anti-trust conspiracies as distinct prohibited activities in addition to prohibiting every specific wrongful act that the Plaintiffs allege Defendants conspired to perform to restrain trade; (2) the McCarran-Ferguson Act thus prohibits the enforcement of the Sherman Act in this case since the U.S. Supreme Court has unambiguously held that the activities that are the subject of this action are the business of insurance, and (3) the class certification decision is incorrect because each state law gives class members completely different legal rights, choices and disclosures in regard to the use of non-OEM parts and remedies for alleged fraud or misrepresentation by insurance companies in selling and representing the provisions of their insurance policies; a legal fact not considered at all by the U.S. District Court.

ARGUMENT

I. CONTRARY TO THE FINDING OF THE U.S. DISTRICT COURT, STATE INSURANCE LAWS DO IN FACT AFFIRMATIVELY REGULATE ANTI-TRUST CONSPIRACIES AS DISTINCT PROHIBITED ACTIVITIES IN ADDITION TO PROHIBITING EVERY SPECIFIC WRONGFUL ACT THAT THE PLAINTIFFS ALLEGE DEFENDANTS CONSPIRED TO PERFORM TO RESTRAIN TRADE, THUS THE MCCARRAN-FERGUSON ACT PROHIBITS THE ENFORCEMENT OF THE SHERMAN AND CLAYTON ACTS IN THIS CASE AND THEREFORE THE DECISION OF THE U.S. DISTRICT COURT CERTIFYING A CLASS ACTION SHOULD BE SET ASIDE.

After reviewing the orders of the U.S. District Court for the Northern District of Florida dated November 17, 2000 and November 20, 2002, the members of the NAIC believe that the District Court has overlooked state insurance laws directly on point that affirmatively regulate each and every wrongful activity alleged by Plaintiffs, as well as regulate any attempt to monopolize or restrain trade in regard to rates, benefits, policy forms or to restrain trade or lessen competition. These are duties assigned by state law to state insurance commissioners, directors and superintendents of insurance.

As a basis for its order of November 20, 2002, certifying a potential class of 70 million people, the U.S. District Court stated that "[t]he defendants' final argument addresses whether a class action is the superior method of adjudicating this dispute since individual state insurance commissioners regulate insurance and could provide regulatory relief. The Court agrees with plaintiffs that bringing myriad cases in front of state insurance commissions – which are not even charged

with the enforcement of state antitrust laws, much less the Sherman and Clayton Acts – is not the best or even a proper solution to resolve such contentions." *Order of U.S. District Court dated November 19, 2002*, page 11. Likewise, Plaintiffs have argued before the District Court that the reason the McCarran-Ferguson Act does not bar their action is because the states do not regulate or prohibit the actual conspiracies to restrain trade, apart from whether or not they may regulate or prohibit the acts that the Defendants allegedly conspired to commit (*i.e.*, *Plaintiffs' Consolidated Opposition to Defendants' Motion to Dismiss*, page 24). Again, this is absolutely incorrect. Section 12 of the NAIC Model Property and Casualty Rating Law says:

> **Section 12. Insurers and Advisory Organizations: Prohibited Activity**
>
> A. No insurer or advisory organization shall:
>
> (1) Attempt to monopolize, or combine or conspire with any other person to monopolize an insurance market.
>
> (2) Engage in a boycott, on a concerted basis, of an insurance market.
>
> B. (1) No insurer shall agree with any other insurer or with an advisory organization to mandate adherence to or to mandate use of any rate, prospective loss cost, rating plan, rating schedule, rating rule, policy or bond form, rate classification, rate territory, underwriting rule, survey, inspection or similar material, except as needed to facilitate the reporting of statistics to advisory organizations, statistical agents or the commissioner.

> The fact that two (2) or more insurers, whether or not members or subscribers of an advisory organization, use consistently or intermittently the same rates, prospective loss cost, rating plans, rating schedules, rating rules, policy or bond forms, rate classifications, rate territories, underwriting rules, surveys or inspections or similar materials is not sufficient in itself to support a finding that an agreement exists.
>
> (2) Two (2) or more insurers having a common ownership or operating in this State under common management or control may act in concert between or among themselves with respect to any matters pertaining to those activities authorized in this Act as if they constituted a single insurer.
>
> C. No insurer or advisory organization shall make any arrangement with any other insurer, advisory organization, or other person which has the purpose or effect of unreasonably restraining trade or unreasonably lessening competition in the business of insurance.

Property and Casualty Model Rating Law (File and Use Version), NAIC, *Model Laws, Regulations and Guidelines*, Vol. V, p. 775 (1998). Section 22 of the model law prohibits the withholding of information or the providing of false or misleading information and Section 25 provides for the imposition of penalties, cease and desist orders and the revocation of insurer licenses for violation of the law. The law, as part of the regulatory scheme to protect insurance consumers and also guard against insurance insolvency or greatly increased insurance company costs, does not provide for private civil actions or treble damages, unlike the Sherman and Clayton Acts. This model, or the prior approval version, or some variation of them, has been adopted by all 50 states. The wrongful activity alleged

by Plaintiffs is specifically regulated by state law.[2] Thus, the members of the NAIC believe the District Court is mistaken. Furthermore, apart from the conspiracy itself being regulated by state law, the actual wrongful acts that the Plaintiffs are alleging the Defendants conspired to perform are regulated by state law. Telling falsehoods, making misrepresentations, misstating the benefits of policy terms and committing fraud are regulated by the Unfair Trade Practices Act.[3] The methods of fulfilling policy promises when they become due (*i.e.*, paying claims) are regulated by the Unfair Claims Settlement Practices Act.[4] Again, every state in the country has

---

[2] "[W]e find that the State of Minnesota provides the Insurance Commissioner with regulatory authority over unfair methods of competition. ...Under such circumstances we find that the application of the federal antitrust laws is suspended under section 2(b) of the McCarran-Ferguson Act." *In re Workers' Compensation Insurance Antitrust Litigation*, 867 F.2d 1552, 1560 (8th Cir. 1989). Senator Ferguson, in a discussion on the preemptive effect of the McCarran-Ferguson Act, stated "if the States were specifically to legislate upon a particular point, and that legislation were contrary to the Sherman Act, the Clayton Act, or the Federal Trade Commission Act, then the State law would be binding. This is exactly what we intended to do in the bill. It is clear what we intended to do ...." 91 Cong. Rec. 1481 (Feb. 27, 1945).

[3] The Unfair Trade Practices Act prohibits the making of any communication by an insurance company that "(1) Misrepresents the benefits, advantages, conditions or terms of any policy... ." Unfair Trade Practices Act, NAIC, *Model Laws, Regulations and Guidelines*, Vol. V, p. 880 (1993). In some states, the exclusive remedy for its violation is regulatory action by the state insurance department and the McCarran-Ferguson Act bars the enforcement of federal law which conflicts with that regulatory scheme. *E.g., LaBarre v. Credit Acceptance Corporation*, 175 F.3d 640, 643 (8th Cir. 1999).

[4] The Unfair Claims Settlement Practices Act, among many other prohibitions, prohibits "[k]nowingly misrepresenting to claimants and insureds relevant facts or policy provisions relating to coverages at issue ..." as well as requiring insurers "in good faith to effectuate prompt, fair and equitable settlement of claims submitted

adopted some version of these model acts. The use of non-OEM parts is extensively regulated by numerous state laws that are specific directives to insurance companies directing them on how to legally fulfill their promises to their insureds.

The Plaintiffs, in making the absolutely legally incorrect argument that no state "regulatory agency has 'primary jurisdiction'" also stated to the District Court that even if that were true, the District Court would still have jurisdiction. *Plaintiffs' Consolidated Opposition to Defendants' Motion to Dismiss*, page 42. Under the McCarran-Ferguson Act the general rule of course is that a federal law that does not specifically relate "to the business of insurance" is still enforceable so long as it does not "frustrate any declared state policy or interfere with a State's administrative regime ... ." *Humana v. Forsyth*, 525 U.S. 299, 310, 119 S.Ct 710 717 (1999). With regard to the Sherman and Clayton Acts though this analysis is not true. If an activity otherwise prohibited by the Sherman and Clayton Acts is within the definition of the "business of insurance" and is regulated by state insurance laws, the Sherman and Clayton Acts are not applicable or enforceable in any respect whatsoever, even if the enforcement of these federal laws would arguably be compatible or consistent with the state regulatory scheme. 15 U.S.C.

---

in which liability has become reasonably clear ... ." Unfair Claims Practices Act, NAIC, *Model Laws, Regulations and Guidelines*, Vol. V, p. 900 (1997).

1012. *Humana,* 525 U.S. at 309, 119 S.Ct at 717. This is how Congress structured the regulation of the business of insurance by the states.

The District Court has held that "the alleged agreements at issue here are not within the ambit of the 'business of insurance' and there is therefore no need for this Court to defer to state regulatory authorities in the interpretation and enforcement of a federal statute that a state regulatory commission would not even have jurisdiction to enforce." *Order of U.S. District Court dated November 19, 2002*, page 11. But the District Court, in so holding, referred to *Group Life & Health Insurance Company v. Royal Drug Company*, 440 U.S. 205, 99 S.Ct. 1067 (1979), *Union Labor Life Insurance Company v. Pireno*, 458 U.S. 119, 102 S.Ct 3002 (1982) and *Hartford Fire Insurance Company v. California*, 509 U.S. 764, 113 S.Ct. 2891 (1993), all cases involving third parties to the insurance agreement.

This case concerns alleged restraint of trade agreements between insurers and the only parties involved are parties to the insurance agreement. The Plaintiffs are exclusively insureds. *Royal Drug* involved agreements between insurers and pharmacies, with the pharmacies as injured parties. *Pireno* involved agreements between insurers and chiropractors, with the chiropractors as injured parties. *Royal Drug* and *Pireno* revolved around payments to contractors. This case revolves around insurance company policy payments to their insureds. *Hartford Fire* involved a boycott claim and the District Court has ruled that Count II of

Plaintiff's complaint does not state a boycott claim. *Order of U.S. District Court dated November 19, 2002*, page 12.

Plaintiffs have exclusively argued to the District Court that the agreements between the defendant insurers and between the insurers and the insureds are the sources of their causes of action. These cannot be characterized in any manner as "ancillary activities." Plaintiffs have asserted that the insureds are the injured parties, not entities outside the insurance agreement. *Amicus curiae* believes that the cases cited by the District Court are thus not on point and the agreements at bar here are entirely within the Supreme Court's definition of the business of insurance.

The Supreme Court agrees with this analysis:

> [W]e do not read *Pireno* to suggest that the business of insurance is confined entirely to the writing of insurance contracts, as opposed to their performance. *Pireno* and *Royal Drug* held only that "ancillary activities" that do not affect performance of the insurance contract or enforcement of contractual obligations do not enjoy the antitrust exemption of laws regulating the "business of insurance." ... There can be no doubt that the actual performance of an insurance contract falls within the "business of insurance," as we understood that phrase in *Pireno* and *Royal Drug*. To hold otherwise would be mere formalism.

United States Department of Treasury v. Fabe, 508 U.S. 491, 503, 113 S.Ct. 2202, 2209 (1993). The Supreme Court has also noted that "[t]he cases confirm that 'the business of insurance' should be read to single out one activity from others, not to

distinguish one entity from another." *Hartford Fire Ins. Co.,* 509 U.S. at 781, 113 S.Ct. at 2901.

The members of the NAIC are very concerned that the certification of this massive class in all their states can negate numerous state insurance laws, trampling on the statutory scheme of benefits and remedies carefully considered and crafted by state legislatures, taking into consideration the needs, desires and peculiar local concerns of their citizens. This is an undertaking that is absolutely impossible for a U.S. District Court to do in a 70 million person class action lawsuit that ignores all of these laws. Congress shares these concerns. That is why it passed the McCarran-Ferguson Act to begin with, and why it reaffirmed the policy enunciated in that act again in the Gramm-Leach-Bliley Act. 15 U.S.C. 6701(a) (the McCarran-Ferguson Act "remains the law of the United States.").

The Supreme Court has said:

> The relationship between insurer and insured, the type of policy which could be issued, its reliability, interpretation, and enforcement--these were the core of the "business of insurance." Undoubtedly, other activities of insurance companies relate so closely to their status as reliable insurers that they to must be placed in the same class. But whatever the exact scope of the statutory term, it is clear where the focus was--it was on the relationship between the insurance company and the policyholder. Statutes aimed at protecting or regulating this relationship, directly or indirectly are laws regulating the 'business of insurance.'

Securities and Exchange Commission v. National Securities, Inc., 393 U.S. 453, 460, 89 S.Ct. 564, 568 (1969).

The essence and the core of this class action lawsuit concerns nothing but the "relationship between the insurance company and the policyholder." The Supreme Court has stated that, with regard to the McCarran-Ferguson Act, "[t]he views of the NAIC are particularly significant, because the Act ultimately passed was based in large part on the NAIC bill." *Group Life and Health Ins. Co. v. Royal Drug Co.,* 440 U.S. at 221, 99 S.Ct. at 1078. In this matter, the views of the NAIC are that the wrongful activities of the Defendants as alleged in this class action lawsuit are the very essence of the business of insurance and, as such, the Sherman and Clayton Acts simply are inapplicable in this case because the wrongful activities alleged by Plaintiffs are exhaustively regulated by the members of the NAIC pursuant to state insurance laws.

II. NUMEROUS STATE LAWS GIVE CLASS MEMBERS COMPLETELY DIFFERENT RIGHTS, CHOICES AND DISCLOSURES IN REGARD TO THE USE OF NON-OEM PARTS AS WELL AS DIFFERENT REMEDIES FOR ALLEGED FRAUD OR MISREPRESENTATION BY INSURANCE COMPANIES IN SELLING AND REPRESENTING PROVISIONS OF THEIR INSURANCE POLICIES, A LEGAL FACT NOT CONSIDERED AT ALL BY THE U.S. DISTRICT COURT, AND THEREFORE THE DECISION OF THE U.S. DISTRICT COURT CERTIFYING A CLASS ACTION SHOULD BE SET ASIDE TO AVOID CONFLICT WITH THESE LAWS.

The NAIC's members are concerned that the certification of this class violates the prerequisites to a class action set out by FRCP 23(a). Because of numerous and varied state laws governing insurance company duties, consumer rights, disclosures and choices concerning the use of non-OEM parts the members do not believe that there are sufficient common questions of law or fact. The members of the NAIC also believe that the claims or defenses of the representative parties cannot be typical of the class because the many and varied state laws give very different rights, administrative remedies, causes of action, disclosures and duties to both insureds and insurers in each state.

The state laws governing non-OEM parts reflect state policies that in many instances encourage the use of these parts as a means of reducing the cost of automobile insurance for a state's citizens. There is extensive and varied state

regulation of after-market non-OEM automobile parts.[5] The use of non-OEM parts is extensively regulated by numerous state laws that are specific commands to insurance companies directing them on how to legally fulfill their promises to their insureds. These laws reflect the different public policies of the states in allowing and encouraging the use of non-OEM parts.[6]

Likewise, the Unfair Trade Practices Act and the Unfair Claims Settlement Practices Act, as adopted and interpreted by the courts in many states, bar any civil tort action for wrongful acts that are described in these laws. In other states, private actions are allowed, either because of the model acts or the state common law. *See generally Farmer's Union Central Exchange, Inc. v. Reliance Ins. Co.,* 675 F. Supp. 1534 (D.N.D. 1987).

As mentioned earlier, the actual wrongful acts that the Plaintiffs are alleging the Defendants conspired to perform are regulated by these state laws. Telling falsehoods, making misrepresentations, misstating the benefits of policy terms and

---

[5] The Addendum to this brief is a table of state laws regulating aftermarket automobile parts. Laws on Aftermarket Automobile Parts, NAIC, *Compendium of State Laws on Insurance Topics*, Table PC-48 (2002). As the table documents, there are numerous state laws regulating insurance companies in regard to the use of aftermarket automobile parts.

[6] *See Workman v. Great Plains Ins. Co*, 200 N.W.2d 8, 11 (Neb. 1972) ("It is obvious that the public policy of the State of Nebraska as to insurance may be expressed and enforced by the Department of Insurance through the exercise of its powers under this and other statutes, as well as by the Legislature in the enactment of specific statutes.").

committing fraud are regulated by the Unfair Trade Practices Act.[7] The methods of fulfilling policy promises when they become due (*i.e.*, paying claims) are regulated by the Unfair Claims Settlement Practices Act.[8] Again, every state in the country has adopted some version of these model acts.

This class action lawsuit, as certified by the District Court, overrides and negates these laws, and the state insurance antitrust laws, as well as the case law interpreting them because it is a civil cause of action allowing for civil judgments and treble damages when many states only allow administrative actions for the alleged insurance company misbehavior the plaintiffs assert the defendants have engaged in. State insurance laws are negated, state public policies are overridden and the intent of state legislatures is thwarted by allowing this class action lawsuit to go forward. This result is at war with the plain language of the McCarran-Ferguson Act, which states that "[t]he business of insurance, and every person engaged therein, *shall be subject to the laws of the several States* which relate to the regulation or taxation of such business." 15 U.S.C. § 1012 (emphasis added). If this class action continues, the laws of the several states are made meaningless. For example, the following regulatory policies would be overturned:

> We conclude that allegations that an insurance company is engaging in a persistent course of conduct involving fraud or unfair claim practices may more properly be evaluated and, if proved, be redressed

[7] *Supra*, footnote 3.
[8] *Supra*, footnote 4.

> by the Superintendent of Insurance, who is charged by law with the regulation of this industry, rather than by private litigants. The availability of punitive damages in private lawsuits premised on unfair claim practices has been preempted by the administrative remedies available to the Superintendent of Insurance pursuant to Insurance Law § 2601.

Roldan v. Allstate Ins. Co., 149 A.D.2d 20, 43, 544 N.Y.S.2d 359, 374 (N.Y. App. Div. 1989)

> Minnesota law does not provide a private cause of action for violations of these prohibitions. ... Instead, the Commissioner of Commerce is empowered to investigate violations, file charges, issue orders, and impose fines. ... Minnesota has determined that its insurance market can best be regulated by the Commissioner's pursuit of fines and injunctive relief.

Doe v. Norwest Bank Minnesota N.A., 107 F.3d 1297, 1306-1308 (8th Cir. 1997) (citations omitted).

> Under Title 22, there is a detailed enforcement mechanism by which the Commissioner of Insurance is empowered to investigate allegations of unfair methods of competition or unfair or deceptive acts in the insurance business, to hold hearings, to issue cease and desist orders, to assess monetary penalties against violators, and to suspend or revoke the license of violators. ... However, no provision in this statutory scheme creates a cause of action in favor of a person allegedly injured by unfair trade practices in the insurance business ... [f]urther, Clausen has pointed to no case, nor have we found one, which jurisprudentially creates a private cause of action ... .

Clausen v. Fidelity and Deposit Co. of Maryland, 660 So.2d 83, 86 (La. App. 1995).

> [C]ivil liability will not arise from a violation of the Unfair Claims Settlement Act or the Unfair Insurance Practices Act. In fact, an Illinois court has so construed an identical provision in the Illinois

> Insurance Code. ... Moreover, the Missouri courts have indicated that no such right of action exists at common law.

Tufts v. Madesco Investment Corp., 524 F. Supp. 484, 487 (E.D.Mo. 1981).

The members do not believe that a massive, multi-state, 70 million member class can be sustainable without ignoring and in effect negating the regulatory systems and the rights, duties, defenses and the public policies created by these state laws.

> When class claims are governed by the laws of multiple states, it becomes more difficult for the class to show that questions of law common to the class exist. ... This is especially true when the subject matter of the lawsuit is the interpretation and enforcement of insurance contracts. ... Many courts that have addressed the issue conclude that the application of varying state laws not common to the class precludes class certification. ... The laws of the several states range from allowing the use of non-OEM parts in a vehicle if the owner is given notice, to forbidding the use of non-OEM parts as a condition to payment of a claim. A kaleidoscope of rules litters the continuum between these two extremes.

State ex rel. American Family Mutual Ins. Co. v. Clark, 2003 WL 21074484, 2-3 (Mo. May 13, 2003) (en banc).

The NAIC members do not believe the District Court considered the effect of these laws. Indeed, the Plaintiffs have successfully argued to the District Court that such laws do not even exist (*i.e.*, "Plaintiffs Are Aware Of No State Regulation of Defendants' 'Crash Parts' Activities," *Plaintiff's Consolidated Opposition to Defendant's Motions to Dismiss*, page 24). This is why *amicus*

curiae NAIC asks that this Honorable Court set aside the District Court's order certifying this class action.

CONCLUSION

In construing the preemptive effect and overall purposes of the McCarran-Ferguson Act, the members of the National Association of Insurance Commissioners, the nation's oldest association of state government officials, believe that the clear intent of Congress is to allow state governments to continue to oversee the business of insurance because of their long experience and expertise in this very complicated and sometimes arcane area of financial regulation. This Congressional intent will likely be frustrated by the certification of this class action lawsuit that seems to ignore and negate state insurance laws. The members of the NAIC believe that Congressional intent should be followed. To do so would avoid an absurd result and would be in the best interests of insurance consumers, whom the members of the NAIC are charged by both State and Federal law to protect.

Respectfully submitted,

Ross S. Myers, Senior Counsel
National Association of Insurance Commissioners
2301 McGee Street, Suite 800
Kansas City, Missouri, 64108-2604
Voice (816) 842-3600
Fax (816) 460-7515
Attorney for *Amicus Curiae*
National Association of Insurance Commissioners

CERTIFICATE OF COMPLIANCE WITH RULES

The undersigned hereby certifies he is admitted to the bar of this Court and that this brief complies with the type-volume limitations of FRAP 32(a)(7) because the brief uses proportionately spaced Times New Roman 14 point type and contains 5260 words, excluding the parts of the brief exempted by FRAP 32(a)(7)(B)(iii).

Ross S. Myers
National Association of Insurance Commissioners
2301 McGee Street, Suite 800
Kansas City, Missouri, 64108-2604
Voice (816) 842-3600
Fax (816) 460-7515

CERTIFICATE OF SERVICE

I, the undersigned, Ross S. Myers, certify that two copies of the *Brief of the National Association of Insurance Commissioners as Amicus Curiae in Support of Petitioners* were served by first-class U.S. mail, postage prepaid, to each of the following on this 15th day of July, 2003:

R. Stephen Berry, Esq.
J. Daniel Leftwich, Esq.
BERRY & LEFTWICH
2000 K Street, N.W.
Suite 350
Washington, D.C. 20006-1809

William N. Avera, Esq.
Mark A. Avera, Esq.
AVERA & AVERA
305 Southeast Second Avenue
Gainesville, FL 32602-2519

Charles M. Jones, Esq.
JONES, OSTEEN, JONES & ARNOLD
206 East Court Street
Hinesville, GA 31313-3607

Jerome W. Hoffman, Esq.
HOLLAND & KNIGHT
315 South Calhoun Street
Tallahassee, FL 32301

Sheila Carmody, Esq.
Dan W. Goldfine, Esq.
SNELL & WILMER, L.L.P.
One Arizona Center
400 E. Van Buren
Phoenix, AZ 85004

Carey P. DeDeyn
SUTHERLAND, ASBILL & BRENNAN, L.L.P.
999 Peachtree Street, N.E.

Atlanta, GA 30309
Michael R. Nelson
NELSON, LEVINE DE LUCA & HORST
Four Sentry Parkway
Suite 300
Blue Bell, PA 19422

Jeffrey P. Lenard
SONNENSCHEIN, NATH & ROSENTHAL, L.L.P.
8000 Sears Tower
233 So. Wacker Drive
Chicago, IL 60606

William J. Baer
ARNOLD & PORTER
Thurman Arnold Building
555 Twelfth Street, N.W.
Washington, D.C. 20004-1202

Chris S. Coutroulis
CARLTON FIELDS, P.A.
One Harbor Place
P.O. Box 3239
Tampa, FL 33601-3239

Ross S. Myers
Attorney for NAIC

LAWS ON AFTERMARKET AUTOMOBILE PARTS
Non-Original Equipment Manufacture (non-OEM)

8/02

STATE	CITATION	REPLACEMENT PART STANDARD	MANUFACTURER IDENTIFICATION	DISCLOSURE	ADVISING CONSUMER	CONSUMER CONSENT	MISCELLANEOUS
AL	§§ 32-17A-1 to 32-17A-3	No provision	Non-OEM part manufactured or supplied for use after 1/1/1990 shall have logo, ID number, or name of manufacturer, which shall be visible after installation where practicable.	Where non-OEM parts used in preparing estimate, the estimate shall clearly identify each non-OEM part, with disclosure document attached.	No provision	No provision	
AK	No provision						
AZ	§§ 20-461; 44-1291 to 44-1294	No provision	Non-OEM part manufacturer shall affix or inscribe its logo or name on the part.	Repair facility or parts installer shall not use non-OEM part unless consumer advised in notice attached to estimate that identifies each part and contains disclosure statement.	Repair facility or parts installer shall not use non-OEM part unless consumer advised in notice attached to estimate that identifies each part and contains disclosure statement.	No provision	

LAWS ON AFTERMARKET AUTOMOBILE PARTS
Non-Original Equipment Manufacture (non-OEM)

8/02

STATE	CITATION	REPLACEMENT PART STANDARD	MANUFACTURER IDENTIFICATION	DISCLOSURE	ADVISING CONSUMER	CONSUMER CONSENT	MISCELLANEOUS
AR	§§ 4-90-301 to 4-90-307	If insurer intends to require or specify use of aftermarket parts, it must disclose that it may require or specify use of non-OEM parts at least equal in terms of fit, quality, performance, and warranty to OEM parts they will replace.	Non-OEM part manufactured or supplied for use after 1/1/92 shall have logo, ID number, or name of manufacturer, which shall be visible after installation where practicable.	If insurer intends to require or specify use of aftermarket parts, it must disclose that it may require or specify use of non-OEM parts at least equal in terms of fit, quality, performance, and warranty to OEM parts they will replace. Estimate shall identify non-OEM parts used in preparation of estimate. Disclosure statement shall be attached.	No provision	Where vehicle still under original warranty, only OEM parts may be used unless owner consents.	
CA	Bus. & Prof. §§ 9875 to 9875.2; Reg. tit. 10 § 2695.8, tit. 16 §§ 3352 to 3359	No insurer shall require use of non-OEM part unless part is at least equal to OEM parts in terms of kind, quality, safety, fit, and performance. Insurer must warrant the same about the non-OEM parts.	OEM and non-OEM parts manufactured after 1/14/93 shall carry permanent, non-removable identification of the manufacturer. Identification shall be accessible to greatest extent possible after installation.	Where insurer intends use of non-OEM parts, estimate shall identify each part and its non-OEM manufacturer or distributor, and disclosure document shall be attached. Invoice shall also identify non-OEM parts used.	No insurer shall require use of non-OEM parts unless consumer advised in written estimate before repairs are made.	No provision	Insurer specifying use of non-OEM parts shall pay cost of any part modifications necessary to effect repair.

LAWS ON AFTERMARKET AUTOMOBILE PARTS
Non-Original Equipment Manufacture (non-OEM)

8/02

STATE	CITATION	REPLACEMENT PART STANDARD	MANUFACTURER IDENTIFICATION	DISCLOSURE	ADVISING CONSUMER	CONSUMER CONSENT	MISCELLANEOUS
CO	§§ 10-3-1301 to 10-3-1307, 42-9-107 to 42-9-108	No provision	Any non-OEM part supplied for use shall have name or trademark of manufacturer affixed or inscribed. Name or trademark shall be placed so as to be visible after installation wherever practicable.	No insurer shall specify use of non-OEM part without disclosing intended use to insured. Estimate shall clearly identify each non-OEM part, and a disclosure document shall be attached.	No provision	Repair facility shall obtain customer consent before any OEM, non-OEM, used, reconditioned, or rebuilt parts are installed.	Invoice shall include itemization of which parts are used, reconditioned, or rebuilt.
CT	§ 38a-355	No provision	No provision	In preparing the estimate, insurer or repairer shall clearly identify each non-OEM part to be used. Notice shall be attached.	No provision	No provision	
DE	No provision						
DC	No provision						

LAWS ON AFTERMARKET AUTOMOBILE PARTS
Non-Original Equipment Manufacture (non-OEM)

8/02

STATE	CITATION	REPLACEMENT PART STANDARD	MANUFACTURER IDENTIFICATION	DISCLOSURE	ADVISING CONSUMER	CONSUMER CONSENT	MISCELLANEOUS
FL	§§ 501.30 to 501.34	No provision	No provision	Where non-OEM parts are used in preparing estimate, the estimate prepared by insurer or repair facility shall identify each non-OEM part. Disclosure statement shall be attached.	No provision	No provision	
GA	§ 33-6-5; Reg. ch. 120-2-52-.05	Price of non-OEM parts may be used by insurers to determine repair costs, provided using non-OEM parts would restore vehicle to pre-accident condition relative to quality, safety, function, and appearance.	Any aftermarket crash part manufactured or supplied for use after 1/1/90 shall have affixed or inscribed the logo, ID number, or name of manufacturer, which shall be visible after installation wherever practicable.	Where non-OEM parts are used in preparing an estimate, the estimate shall clearly identify each non-OEM part. Disclosure document shall be attached.	No provision	No provision	As part of claims settlement, no insurer may require an insured to authorize use of non-OEM parts.

LAWS ON AFTERMARKET AUTOMOBILE PARTS
Non-Original Equipment Manufacture (non-OEM)

8/02

STATE	CITATION	REPLACEMENT PART STANDARD	MANUFACTURER IDENTIFICATION	DISCLOSURE	ADVISING CONSUMER	CONSUMER CONSENT	MISCELLANEOUS
HI	§§ 437B-13; 437B-15	No provision	No provision	Invoice shall clearly state if any used, crash, rebuilt, or reconditioned parts are supplied. If any non-OEM parts are to be supplied or installed, estimate shall clearly identify each part; information on any manufacturer's warranty or a part's compliance with certified testing program may be included.	No provision	No repair dealer, mechanic, or apprentice shall use non-OEM parts unless vehicle owner accepts their use and signs estimate in acknowledgment.	
ID	§§ 41-1328A to 41-1328D	No provision	Any non-OEM part supplied for use shall have affixed or inscribed the logo or name of the manufacturer, which shall be visible after installation whenever practicable.	Where non-OEM parts are intended to be used by insurer, estimate shall clearly identify each part intended for use and a disclosure document shall be attached.	It shall be an unfair claims settlement practice for an insurer to specify the use of a non-OEM part, or for a repair facility or installer to use a non-OEM part in a repair, if consumer has not been advised in writing.	No provision	

LAWS ON AFTERMARKET AUTOMOBILE PARTS
Non-Original Equipment Manufacture (non-OEM)

8/02

STATE	CITATION	REPLACEMENT PART STANDARD	MANUFACTURER IDENTIFICATION	DISCLOSURE	ADVISING CONSUMER	CONSUMER CONSENT	MISCELLANEOUS
IL	215 ILCS 5/155.29; Reg. tit. 50 § 919.80	No insurer shall require the use of replacement parts unless the replacement is at least equal in like kind and quality to the original part in terms of fit, quality, and performance.	Any non-OEM part supplied for use after 1990 shall have affixed or inscribed the logo or name of the manufacturer, which shall be visible after installation whenever practicable.	Where insurer intends that non-OEM parts be used, insurer shall provide customer with estimate identifying each non-OEM part and a disclosure statement shall be attached.	No insurer shall specify use of non-OEM parts in repairs, nor shall any repair facility or installer use non-OEM parts unless the customer is advised in writing.	No provision	Insurers specifying use of replacement parts shall consider cost of modifications that may be necessary.
IN	§§ 27-4-1.5-1 to 27-4-1.5-13	No provision	No provision	An insurer that fails to provide notice of insured's right to approve of body parts used in repair commits an unfair claims settlement practice.	For the five years after a vehicle's model year, insurer may not direct a body shop to repair a vehicle until insurer provides insured with notice that informs insured of right to approve of type of body parts to be used in repair, and that gives insured opportunity to select from OEM, non-OEM, and used body parts. If insurer fails to provide such notice and directs body shop to repair, insurer commits an unfair claims settlement practice.	An insurer that does not give the insured an opportunity to indicate approval of repair parts or directs the body shop to use a different type of repair part commits an unfair claims settlement practice.	An insurer that refuses to pay for or direct a body to use the parts approved by insured commits an unfair claims settlement practice.

LAWS ON AFTERMARKET AUTOMOBILE PARTS
Non-Original Equipment Manufacture (non-OEM)

8/02

STATE	CITATION	REPLACEMENT PART STANDARD	MANUFACTURER IDENTIFICATION	DISCLOSURE	ADVISING CONSUMER	CONSUMER CONSENT	MISCELLANEOUS
IA	§§ 537B.4, 537B.6, 714.16; Reg. 191-15.15	No provision	Non-OEM part supplied for use after 1/1/91 shall have affixed or inscribed the logo or name of the manufacturer. Repair facility shall install the part so that the logo or name is visible after installation whenever practicable.	Repair facility shall not use non-OEM parts without disclosing their proposed use in the estimate prior to repair. Estimate shall clearly identify each non-OEM part proposed for use, and disclosure statement shall be attached. Reg. has form for disclosure that consumer may pay difference if chooses non-OEM parts.	No provision	No provision	It is a deceptive act to fail to provide the consumer with an itemized list of parts used in repair, and a statement of whether they are used, remanufactured, or rebuilt if the are not new.
KS	§§ 50-660 to 50-664	No provision	No provision	No insurer shall require the use of non-OEM parts without disclosing to vehicle owner the intent to use such parts. No person who prepares an estimate shall specify the use of non-OEM parts without disclosing intended use to vehicle owner. Where non-OEM parts are intended for use, estimate shall clearly identify each non-OEM part, and a disclosure document shall be attached. (This does not apply to vehicles more than 10 model years of age or older.)	No provision	No provision	Installer of non-OEM parts shall be responsible for negligent installation. (This does not apply to vehicles more than 10 model years of age or older.)

LAWS ON AFTERMARKET AUTOMOBILE PARTS
Non-Original Equipment Manufacture (non-OEM)

8/02

STATE	CITATION	REPLACEMENT PART STANDARD	MANUFACTURER IDENTIFICATION	DISCLOSURE	ADVISING CONSUMER	CONSUMER CONSENT	MISCELLANEOUS
KY	Reg. 806 KAR 12:095	Insurer shall not require the use of replacement crash parts unless the part is at least equal in kind and quality to the part being replaced in terms of fit, quality, and performance.	No provision	No provision	No provision	No provision	Insurers specifying the use of replacement crash parts shall consider the cost of any necessary modifications.
LA	§§ 51:2421 to 51:2425	No provision	Any non-OEM part supplied for use after 1990 shall have affixed or inscribed the logo or name of the manufacturer, which shall be visible after installation whenever practicable.	Where the insurer intends to use non-OEM parts, the estimate shall clearly identify each part and a disclosure document shall be attached.	No insurer shall specify the use of a non-OEM part, nor shall a repair facility or installer use non-OEM parts, unless the insured is advised.	No provision	
ME	tit. 29-A §§ 1804 to 1805	No provision	No provision	Repair facility must post notice indicating that it cannot install used or rebuilt parts unless customer specifically agrees in advance.	No provision	Unless the customer specifically agrees before installation, a repair facility may not install a used, reconditioned, or rebuilt part.	

LAWS ON AFTERMARKET AUTOMOBILE PARTS
Non-Original Equipment Manufacture (non-OEM)

8/02

STATE	CITATION	REPLACEMENT PART STANDARD	MANUFACTURER IDENTIFICATION	DISCLOSURE	ADVISING CONSUMER	CONSUMER CONSENT	MISCELLANEOUS
MD	Com. §§ 14-2301 to 14-2304; Ins. § 27-906	No provision	No provision	Before beginning work, a body shop shall provide to vehicle owner a list of crash parts intended for use in making repairs and shall specify which parts are OEM parts. If non-OEM parts are to be used, disclosure statement is to be provided.	No provision	No provision	Insurer that issues policy that provides coverage for repair of physical damage shall provide upon request a copy of the warranty for non-OEM parts.
MA	ch. 90:34R; Reg. 211 CMR 133:04	When a part is to be replaced, a rebuilt, aftermarket, or used part of like kind and quality shall be used in the appraisal unless safety of vehicle might be impaired; reasonable efforts to locate such a part have been unsuccessful; new part of like kind and quality is available at same or lower cost; or vehicle has been used no more than 15,000 miles unless pre-accident condition warrants otherwise.	No provision	Insurer or repairer preparing estimate shall clearly identify each major non-OEM part to be used in the repair, and notice shall be attached to estimate. On repair order or repair certification form, repairer shall identify manufacturer or supplier of any non-OEM parts to be used. When an insurer specifies the use of used, rebuilt, or aftermarket parts, the source and specific part must be indicated on the appraisal.	No provision	No provision	If repairer uses the used, rebuilt, or aftermarket part specified on the appraisal, and the part is determined to be unfit, insurer is responsible for costs of restoring parts to usable condition.

LAWS ON AFTERMARKET AUTOMOBILE PARTS
Non-Original Equipment Manufacture (non-OEM)

8/02

STATE	CITATION	REPLACEMENT PART STANDARD	MANUFACTURER IDENTIFICATION	DISCLOSURE	ADVISING CONSUMER	CONSUMER CONSENT	MISCELLANEOUS
MI	§§ 257.1361 to 257.1364	No provision	No provision	If insurer requests the use of non-OEM parts, repair facility or installer may use them in the vehicle repair only if insured receives estimate clearly identifying each non-OEM part with disclosure statement attached.	No provision	No provision	
MN	§§ 72A.021; 72B.091; 325F.60	It is an unfair trade practice to require, as a condition for payment of a claim, that parts (other than window glass) must be replaced with non-OEM parts.	No provision	Appraisal shall include itemized listing of parts to be replaced with new, used, rebuilt, reconditioned, or replated parts. Appraisal must disclose any parts to be used (other than window glass) that are non-OEM parts or that are not covered by manufacturer's warranty. Invoice shall indicate which parts are new, used, rebuilt, reconditioned, or replated. If parts (other than window glass) used in the repair are new parts, the invoice must indicate whether or not they are OEM parts.	No provision	No provision	

LAWS ON AFTERMARKET AUTOMOBILE PARTS
Non-Original Equipment Manufacture (non-OEM)

8/02

STATE	CITATION	REPLACEMENT PART STANDARD	MANUFACTURER IDENTIFICATION	DISCLOSURE	ADVISING CONSUMER	CONSUMER CONSENT	MISCELLANEOUS
MS	§§ 63-27-1 to 63-27-7; 83-65-111	No provision	Any non-OEM part manufactured or supplied for use after 1/1/1991 shall have affixed or inscribed the logo, ID number, or name of the manufacturer, which shall be visible after installation whenever practicable.	Where non-OEM parts are used in preparing a repair estimate, the estimate shall clearly identify each non-OEM part, and a disclosure document shall be attached.	No provision	No provision	Vehicle service contract must set forth the conditions on which non-OEM parts will be allowed.
MO	§ 407.295; Reg. tit. 20 § 100-1.050	No insurer shall require the use non-OEM parts unless they are at least equal in like, kind, and quality to the original in terms of fit, quality, and performance.	Any non-OEM part manufactured or supplied for use after 1/1/1990 (10/31/1991 according to regulation) shall have affixed or inscribed the logo or name of the manufacturer, which shall be visible after installation whenever practicable.	No insurer shall specify the use of non-OEM parts without disclosing the intended use of such parts. The estimate shall clearly identify each non-OEM part to be used, and a disclosure statement shall be attached.	No provision	No provision	Insurers specifying the use of non-OEM parts shall consider the cost of any necessary modifications.
MT	No provision						

LAWS ON AFTERMARKET AUTOMOBILE PARTS
Non-Original Equipment Manufacture (non-OEM)

8/02

STATE	CITATION	REPLACEMENT PART STANDARD	MANUFACTURER IDENTIFICATION	DISCLOSURE	ADVISING CONSUMER	CONSUMER CONSENT	MISCELLANEOUS
NE	Reg. tit. 210 ch. 45	No insurer shall require the use of aftermarket parts unless they are at least equal in like, kind, and quality to the originals in terms of fit, quality, and performance.	All aftermarket parts manufactured after 1/1/88 shall carry sufficient permanent identification so as to identify the manufacturer, which shall be accessible after installation to the extent possible.	All aftermarket parts installed shall be clearly identified on the estimate. Disclosure statement shall be attached to estimate.	No provision	No provision	Insurers specifying the use of aftermarket parts shall consider the cost of any modifications that may be necessary.
NV	Reg. 686A.240	No provision	No provision	If estimate based upon use of non-OEM part, insurer shall disclose this to claimant. Disclosure statement must be attached to estimate.	No provision	No provision	

LAWS ON AFTERMARKET AUTOMOBILE PARTS
Non-Original Equipment Manufacture (non-OEM)

8/02

STATE	CITATION	REPLACEMENT PART STANDARD	MANUFACTURER IDENTIFICATION	DISCLOSURE	ADVISING CONSUMER	CONSUMER CONSENT	MISCELLANEOUS
NH	§§ 407-D:1 to 407-D:5; Bulletins of May 5, 1998 and September 20, 1999	No insurer shall require the use of aftermarket parts unless they are at least equal in like kind and quality to the original in terms of fit, quality, and performance. Insurer must certify or state in writing that part is of like kind and quality.	All aftermarket parts manufactured after 1/1/89 shall carry sufficient permanent identification so as to identify the manufacturer, which shall be accessible after installation to the extent possible.	All aftermarket parts installed shall be clearly identified on the estimate. Disclosure statement shall be attached to estimate.	No provision	No provision	Insurers specifying the use of aftermarket parts shall consider the cost of any modifications that may be necessary. Insurers shall capture claim and financial information on costs of modifications due to use of aftermarket parts. No insurer shall require or specify the use of aftermarket parts on vehicles placed in service in previous two years or which have less than 30,000 miles, or for leased vehicles if aftermarket parts will cause diminution of residual value of lease.

LAWS ON AFTERMARKET AUTOMOBILE PARTS
Non-Original Equipment Manufacture (non-OEM)

8/02

STATE	CITATION	REPLACEMENT PART STANDARD	MANUFACTURER IDENTIFICATION	DISCLOSURE	ADVISING CONSUMER	CONSUMER CONSENT	MISCELLANEOUS
NJ	Reg. 11:2-17.3, 11:2-17.10	No insurer shall require the use of non-OEM parts unless the parts are warranted by the manufacturer and are at least equal in like kind and quality to available OEM parts in terms of fit, quality, and performance. Parts certified by independent testing laboratory will satisfy this requirement.	Non-OEM parts shall carry sufficient permanent identification so as to identity the manufacturer, which shall be accessible after installation to extent possible.	Non-OEM parts installed shall be clearly identified on the estimate. Where insurer specifies use of non-OEM parts, disclosure statement shall be attached to estimate.	No provision	No provision	Insurers specifying use of non-OEM parts shall pay for any modifications that may be necessary.
NM	Reg. tit. 1 § 2.6.12	No provision	No provision	It is an unfair or deceptive trade practice for a repair facility or insurer to fail to disclose whether used, rebuilt, or aftermarket parts were used. If so, parts shall be warranted as new parts.	No provision	No provision	

LAWS ON AFTERMARKET AUTOMOBILE PARTS
Non-Original Equipment Manufacture (non-OEM)

8/02

STATE	CITATION	REPLACEMENT PART STANDARD	MANUFACTURER IDENTIFICATION	DISCLOSURE	ADVISING CONSUMER	CONSUMER CONSENT	MISCELLANEOUS
NY	Reg. tit. 11 § 216.7	Non-OEM part shall equal or exceed the comparable OEM part in terms of fit, finish, quality, and performance. Non-OEM part must be warranted by non-OEM at least to extent and duration of comparable OEM part. Insurer shall specify only certified parts; if part not certified by entity acceptable to superintendent, non-OEM must issue warranty for duration of insured's ownership of vehicle that part equals or exceeds comparable OEM part in terms of fit, finish, quality, and performance. If non-OEM fails to honor this warranty, insurer shall meet that warranty.	No provision	If the estimate is based upon the use of any non-OEM parts, the estimate shall specify the non-OEM or the non-OEM supplier.	No provision	Without insured's consent, insurer shall not specify non-OEM parts from three different suppliers for any one repair.	

LAWS ON AFTERMARKET AUTOMOBILE PARTS
Non-Original Equipment Manufacture (non-OEM)

8/02

STATE	CITATION	REPLACEMENT PART STANDARD	MANUFACTURER IDENTIFICATION	DISCLOSURE	ADVISING CONSUMER	CONSUMER CONSENT	MISCELLANEOUS
NC	Reg. tit. 11 ch. 4 §§ .0425 to .0427	No insurer shall require use of a non-OEM part unless the part is at equal to the original in terms of fit, quality, performance, and warranty.	No provision	Non-OEM parts installed shall be clearly identified on estimate and invoice. Insurers intending to require or specify the use of non-OEM parts must attach disclosure statement to policy and to estimate.	No provision	No provision	Insurers specifying the use of non-OEM parts shall include the costs of any modifications that may be necessary.
ND	No provision						
OH	§ 1345.81 Reg. 3901-1-54	Salvage parts may be used if of like kind and quality to part needing repair and if removed by licensed dealer.	Prior to installation, non-OEM parts manufactured after 1990 shall have permanently affixed or inscribed the name or logo of the manufacturer. When practical, location of name or logo shall ensure the information is accessible after installation.	If person requesting repair chooses to receive a written estimate, the estimate shall clearly identify each non-OEM part to be used in the repair and shall contain disclosure statement. Receipt and approval shall be acknowledged by signature of requesting person at bottom of estimate. If requesting person chooses to receive an oral estimate or no estimate, the insurer, repairer, or installer providing it or seeking approval to begin repair work shall furnish or read to requesting person a disclosure statement that shall appear in final invoice.	The estimate shall clearly indicate where the "like kind and quality" parts are to be obtained.	No provision	

LAWS ON AFTERMARKET AUTOMOBILE PARTS
Non-Original Equipment Manufacture (non-OEM)

8/02

STATE	CITATION	REPLACEMENT PART STANDARD	MANUFACTURER IDENTIFICATION	DISCLOSURE	ADVISING CONSUMER	CONSUMER CONSENT	MISCELLANEOUS
OK	tit. 15 §§ 951 to 956	No provision	Any non-OEM part supplied for use after 9/1/91 shall have affixed or inscribed the logo or name of its manufacturer, which shall be visible after installation whenever practicable.	Where non-OEM parts are intended for use, the estimate shall clearly identify each such part and a disclosure statement shall be attached.	No insurer shall specify the use of non-OEM parts nor shall a repair facility or installer use non-OEM parts unless the consumer is advised in writing.	No provision	
OR	§§ 746.287 to 746.292; Reg. 836-080-0240	Without owner's consent, insurer may not require that a repair shop supply or install any non-OEM part unless it has been certified by an independent test facility to be at least equivalent to part being replaced. A non-OEM part is at least equal if it is the same kind of part and is at least the same quality with respect to fit, finish, function and corrosion resistance.	No provision	An insurer offering a policy that provides coverage for repairs shall make available its non-OEM parts warranty when insured requests one. If non-OEM parts are to be used, the parts shall be accompanied by a warranty guaranteeing that they meet or exceed OEM parts standards. If non-OEM parts are to be used, disclosure statement shall be attached to warranty. Estimate shall identify non-OEM parts to be supplied or installed in a clearly understandable manner.	No provision	Without owner's consent, insurer may not require that a repair shop supply or install any non-OEM part unless it has been certified by an independent test facility to be at least equal to part being replaced.	

LAWS ON AFTERMARKET AUTOMOBILE PARTS
Non-Original Equipment Manufacture (non-OEM)

8/02

STATE	CITATION	REPLACEMENT PART STANDARD	MANUFACTURER IDENTIFICATION	DISCLOSURE	ADVISING CONSUMER	CONSUMER CONSENT	MISCELLANEOUS
PA	Reg. tit. 31 § 62.3	No provision	No provision	Appraisal shall identify any non-OEM parts used and include a disclosure statement.	No. provision.	No provision	
RI	§§ 5-38.3-3; 27-10.2-1 to 27-10.2-2; Reg. R27-73-007	Estimate shall indicate necessary parts that are not new parts of at least original equipment quality. For vehicles 30 months or more beyond the date of manufacture, insurer shall not require use of non-OEM parts unless part is at least equal in kind and quality to original in terms of fit, quality, and performance.	Non-OEM parts shall carry sufficient permanent identification so as to identify the manufacturer, which shall be accessible after installation to extent possible.	Estimate shall indicate necessary parts that are not new parts of at least original equipment quality. Invoice shall indicate status of any part that is not new or of at least original quality. Also, when an insurer intends to specify the use of non-OEM parts, the insured shall be notified in writing.	No provision	For vehicles less than 30 months beyond date of manufacture, repair shop shall not use non-OEM parts without consent of vehicle owner, and no insurer may require the use of non-OEM parts unless repairer has owner consent.	Insurers specifying use of non-OEM parts shall consider the cost of any modifications that may be necessary.
SC	No provision						

LAWS ON AFTERMARKET AUTOMOBILE PARTS
Non-Original Equipment Manufacture (non-OEM)

8/02

STATE	CITATION	REPLACEMENT PART STANDARD	MANUFACTURER IDENTIFICATION	DISCLOSURE	ADVISING CONSUMER	CONSUMER CONSENT	MISCELLANEOUS
SD	§§ 32-15-35 to 32-35-36, 58-33-70 to 58-33-71	No provision	Non-OEM parts shall have affixed or inscribed the logo or name of manufacturer, which shall be visible after installation if practicable.	No insurer may specify use of non-OEM parts, nor may repair facility or installer use non-OEM parts unless consumer advised in writing. Where insurer intends use of non-OEM parts, estimate shall clearly identify each such part, and a disclosure document shall be attached.	No provision	No provision	
TN	Reg. ch. 0780-1-59-.01 to 0780-1-59-.06	No provision	Any non-OEM part specified for use by an insurer and supplied for use after 9/18/89 shall have affixed or inscribed the logo or name of its manufacturer, which shall be visible after installation whenever practicable.	No insurer shall specify the use of non-OEM parts without disclosing their intended use to the insured. Where non-OEM parts are intended for use, estimate shall clearly identify each such part and a disclosure document shall be attached.	No provision	Non-OEM parts shall not be used on current or immediate prior model year vehicles without permission of insured.	
TX	I.C. art. 5.07-1	No provision	No provision	No provision	No provision	No provision	Insurer may not limit coverage by specifying the brand, type, kind, or condition of parts to be used.

LAWS ON AFTERMARKET AUTOMOBILE PARTS
Non-Original Equipment Manufacture (non-OEM)

8/02

STATE	CITATION	REPLACEMENT PART STANDARD	MANUFACTURER IDENTIFICATION	DISCLOSURE	ADVISING CONSUMER	CONSUMER CONSENT	MISCELLANEOUS
UT	§§ 31A-22-316 to 31A-22-319	No provision	Any non-OEM part supplied for use shall have the logo or name of the manufacturer affixed or inscribed, which shall be visible after installation whenever practicable.	Unless insured given notice in writing, insurer may not specify use of non-OEM parts in the repair. This notice shall identify non-OEM parts as not made by or for vehicle manufacturer. Unless consumer given notice in writing prior to installation, facility or installer may not use non-OEM parts to repair vehicle. Where non-OEM parts are intended to be used by insurer, estimate shall clearly identify each non-OEM part and a disclosure document shall be attached.	No provision	No provision	
VT	No provision						
VA	§§ 38.2-510; 59.1-207.5	If insurer prepares or uses estimate based on use of non-OEM parts, disclosure statement must indicate that non-OEM parts are required to be at least equal in like kind and quality in terms of fit, quality, and performance to OEM parts they are replacing.	No provision	No insurer shall prepare or use estimate of repair costs based on use of non-OEM parts unless disclosure document attached. Upon completion of repair work repair facility shall provide the customer a written invoice, which clearly identifies those parts that are used, rebuilt, or reconditioned.	No provision	No provision	

LAWS ON AFTERMARKET AUTOMOBILE PARTS
Non-Original Equipment Manufacture (non-OEM)

8/02

STATE	CITATION	REPLACEMENT PART STANDARD	MANUFACTURER IDENTIFICATION	DISCLOSURE	ADVISING CONSUMER	CONSUMER CONSENT	MISCELLANEOUS
WA	§§ 46.71.015	No provision	No provision	Invoice shall indicate whether parts supplied are non-OEM parts.	No provision	No provision	
WV	§§ 46A-6B-1 to 46A-6B-6	For vehicles requiring repair in the year of manufacture or in next two years after, body shops must use genuine parts sufficient to maintain manufacturer's warranty unless customer consents in writing to use of non-OEM parts.	No provision	Before beginning repair work, body shop shall provide list of parts to be used in repair, specify which are OEM parts, and identify manufacturer of non-OEM parts to be used. Disclosure statement shall be included with estimate.	No provision	For vehicles requiring repair in the year of manufacture or in next two years after, body shops must use genuine parts sufficient to maintain manufacturer's warranty unless customer consents in writing to use of non-OEM parts. No insurer may require use of non-OEM parts with respect to vehicles requiring repair in the year of manufacture or in next two years after unless customer consents in writing.	

LAWS ON AFTERMARKET AUTOMOBILE PARTS
Non-Original Equipment Manufacture (non-OEM)

8/02

STATE	CITATION	REPLACEMENT PART STANDARD	MANUFACTURER IDENTIFICATION	DISCLOSURE	ADVISING CONSUMER	CONSUMER CONSENT	MISCELLANEOUS
WI	§ 632.38	No provision	No provision	Insurer may not require use of non-OEM parts unless insurer provides notice to insured. Notice shall include clear identification of each non-OEM part intended for use and a disclosure statement. Notice shall be attached to estimate if based on use of any non-OEM parts and prepared by insurer. Notice generally shall be delivered before vehicle is repaired.	No provision	No provision	
WY	Ins. Reg. ch. 19	No insurer shall require use of any aftermarket part unless it is at least equal in quality to original in terms of fit and performance. Cost of any modifications that may be necessary shall be considered as a factor in determining quality.	No insurer shall require the use of any aftermarket part that does not carry sufficient permanent identification to identify manufacturer. Identification shall be accessible after installation to extent possible.	Estimate shall clearly identify all aftermarket parts installed. Disclosure document must be attached to estimate.	Consumer must be advised that he or she is not required to accept non-OEM parts.	No insurer shall require use of non-OEM parts nor shall insurer accept any estimate or authorize any repair unless consumer advised the he or she is not required to accept non-OEM parts and consents to use of non-OEM parts before repairs made.	

This chart does not constitute a formal legal opinion by the NAIC staff on the provisions of state law and should not be relied upon as such. Every effort has been made to provide correct and accurate summaries to assist the reader in targeting useful information. For further details, the statutes and regulations cited should be consulted.