

Friday, March 10, 2006

Texas Judge Finds Outlawing Insurer-Owned Shop Law is Constitutional

Nearly a year and a half after final arguments, the judge has issued his decision. Allstate testimony raises issues of unfair competition and conflict of interest.

A U.S. District Court in Dallas on Thursday issued a long-awaited opinion on the Texas insurer-owned shop law. District Judge Ed Kinkeade has decided that the law passed in 2004 to prohibit insurer-owned shops in the State of Texas is constitutional, and may be allowed to stand, with the exception of a few restrictions placed on existing insurer-owned shops which must be stricken from the existing law.

In short, the decision in *Allstate Insurance Co. and Sterling Collision Centers Inc. v. Greg Abbott, Attorney General; Carol Strayhorn, Comptroller of Public Accounts* upholds the Texas legislature's premise that a conflict of interests exists when an insurance company owns a collision repair facility. The law will stand- prohibiting any further insurer-owned shops from opening in the state of Texas while allowing the original 15 Sterling stores to remain in operation.

The Automotive Service Association had supported a grass roots effort in Texas to pass the insurer-owned shop legislation, and is very pleased with the court's decision. Bob Redding, ASA Washington, D.C., representative, said, "This new law in Texas demonstrates what collision shop owners can do when they join together with a common message under a single banner. Texas repairers should be very proud and look to how they can continue to improve the collision repair industry. This decision will have ramifications in the collision industry throughout the United States. Many state collision leaders were watching this decision to determine if similar legislation would be introduced in their states."

Just four sections of the law were indeed found to violate Allstate's freedom of speech under the Constitution, however those sections only deal with how Allstate and Sterling may operate their existing 15 stores, and has no bearing on the ban of additional shops.

Evidence in the trial was presented, and testimony given by Allstate representatives that supported the idea that a conflict of interests exists, despite Allstate's claims to the contrary.

Among the evidence the judge highlighted in supporting his decision was:

Allstate and Sterling maintained a database, called the "Paris" database, which contained significant pricing information obtained from its PRO shops, used to make decisions on how to operate Sterling. This included data down to specific claims paid by Allstate to its PRO shops. Other data included technician pay, labor costs, hours worked, parts costs, and profits.

Allstate admitted to "dialing down" some large PRO shops that it determined were operating too close to Sterling stores in order to boost Sterling's volume.

To increase volume at Sterling, Allstate engaged in a practice of "right -sizing" competitive PRO shops within ten miles of a Sterling store, in some cases this meant eliminating some PRO shops.

Evidence in the case showed that after years of operations, costs of repairs at Sterling stores still "tended to be higher" than similar shops in the PRO network, and the quality of Sterling work was found to be below PRO standards at 60 percent of Sterling facilities. Yet, knowing these issues existed, Allstate continued referring its customers to Sterling shops.

When Allstate reduced the size of its PRO network, it did not remove any Sterling stores, even though they had proven to be suffering from quality problems and performing at levels below PRO standards.

Allstate conducted a consumer survey before purchasing the Sterling stores and found that consumers were indeed sensitive to the conflict of interest issues raised by an insurer-owned shop.

Though the ruling will allow Allstate to operate its existing 15 Sterling stores in Texas, Allstate may close them after all. Sterling representatives testified that Sterling stores went

from making a \$2 million profit before the enactment of HB1131 to losing \$2 million dollars after HB1131 due to the limitations placed on the organization for gaining increased efficiencies of scale. The Sterling group had been counting on adding more stores in order to improve efficiency.

Part of HB 1131, which was not found to be in violation of the law, prohibits the insurance company owner of a collision repair facility to subsidize the operation of its owned facilities. If the testimony involving Sterling's financial performance was accurate, and the repair chain is forced to operate in a competitive market without the benefit of seeing its competitor's performance numbers as it had in the past, then the Sterling network might just fail under the weight of its own inability to compete.

[Download the decision](#) in Adobe Acrobat format (79 pgs 2.78 MB)

TIMELINE

December 2002, Texas State Senator John Carona (R-Dallas) appears at the NACE exposition in Dallas to brief the industry on legislation he planned to introduce banning insurance company ownership of body shops.

February 2003, Texas Senate introduces SB435, modeled after California's earlier SB1648 ([failed in California Assembly in August 2002](#)). Outlaws any insurer ownership interest, both controlling interest and minority interest, affecting the minority-owned Caliber shops as well as the wholly-owned Sterling Collision Centers.

June 2003, Texas Governor signs HB 1131 into law to take effect September 1, 2003.

August 2003, Allstate-[Sterling files suit in the District Court](#) of Dallas County Texas challenging the constitutionality of Texas' new insurer-owned shop law. The suit against Attorney General of the State of Texas, and the Texas Comptroller of Public Accounts claims that the new law violates Allstate's rights under the 1st and 14th Amendments of the U.S Constitution. Insurer uses similar argument to New York case in 2000.

December 2003- U.S. District Court of North Texas, Dallas County, [grants Allstate's request for a preliminary injunction](#), temporarily prevents the new insurer-owned shop law from being enforced until a court decides the case.

January 2004 - Deadline to appeal the injunction passes. Trial scheduled for September.

September 2004 - opening arguments heard in the case of Allstate v. Abbott in the United States District Court in Dallas, with District Judge Ed Kinkeade presiding.

It was expected that a decision would be rendered sometime in December 2004 or January 2005.