

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF ILLINOIS

DAVID BYRNE,
on his own behalf and on behalf of all
others similarly situated,

Plaintiff,

Case No. 3:10-cv-00337-JPG-CJP

vs.

CCC INFORMATION SERVICES, INC.
d/b/a CCC VALUESOURCE,

Serve: DAVID D MERRITT
222 MERCHANDISE MART
SUITE 900
CHICAGO, IL 60654

Defendant,

**PLAINTIFF DEMANDS
TRIAL BY JURY**

CLASS ACTION COMPLAINT

COMES NOW Plaintiff David Byrne, by and through counsel, and for his Class
Action Complaint against Defendant CCC Information Services, Inc. d/b/a CCC
Valuesource, alleges on personal knowledge as to his own actions and upon personal
belief as to all other allegations as follows:

INTRODUCTION

1. This action is brought by Plaintiff David Byrne on his own behalf, and on behalf
of a class of all similarly situated persons or entities who have had their vehicles
appraised for insurance purposes by Defendant CCC Information Services, Inc. d/b/a
CCC Valuesource (“CCC”).

2. Plaintiff's claims stem from CCC's practice of systematically underreporting, for insurance claim purposes, the salvage value of vehicles that are "totaled" as a result of an accident that is submitted to an insurance carrier.

3. Simply put, CCC's purported valuations for vehicles that have been totaled are fraudulent – they are intentionally based upon data that is outdated, not comparable, and/or entirely fabricated. These bogus valuations are then used by the insurance carriers who are making payments to Plaintiff and members of the class to determine how much will be paid on their insurance claim.

4. From the Defendant's perspective, the scheme worked out great – CCC developed a robust business, doing business with numerous insurance companies all over the country, and the insurance carriers paid less in claims to people making property damage claims against their policies.

5. As a direct and proximate result of this scheme, Plaintiff and the members of the class have been damaged, and Defendant has been unjustly enriched.

PARTIES, JURISDICTION AND VENUE

6. Plaintiff David Byrne is a resident of the state of Texas.

7. Defendant CCC INFORMATION SERVICES, INC. ("CCC") is a Delaware corporation in good standing, with its headquarters located at 222 Merchandise Mart Plaza, Suite 900, Chicago, Illinois. CCC does business as CCC Valuescope throughout the country, including in this district, by virtue of its agreements with numerous major automobile insurance providers to perform valuations of automobiles that are considered a total loss for insurance purposes ("Total Loss Vehicles"). CCC does business with numerous insurance companies all over the country, large and small alike, including

Travelers, GEICO, USAA, Personal Service Insurance, Nationwide, Bristol West, Ameriprise, Farmers, Sampo Insurance Company of Japan, Meristar Ins. Co., United Auto, and Safeco, among others.

8. Jurisdiction is proper pursuant to 28 U.S.C. 1332(d), as at least one member of the class of plaintiffs sought to be certified is a citizen of a State different from the Defendant, and the total amount in controversy exceeds \$5,000,000.

9. Venue is proper pursuant to 28 U.S.C. 1391 on the basis that Defendant resides in this district pursuant to 28 U.S.C. 1391(c) in that it is subject to personal jurisdiction at the time the action is commenced by virtue of its extensive contacts within this district.

CLASS ALLEGATIONS

10. Pursuant to Federal Rule of Civil Procedure 23, Plaintiff seeks certification of the following class:

All persons in the United States who have had made claims against the proceeds of an insurance policy issued by one of the Insurer Defendants where their vehicles were determined to be a total loss and CCC performed the valuation of that vehicle from July 19, 2005 through the present.

Excluded from the Class are: (a) Defendants, their subsidiaries and affiliates, officers, directors, and employees; (b) the judge to whom this case is assigned and any member of the judge's immediate family; (c) all persons who properly execute and file a timely request for exclusion from the Class.

11. The class is sufficiently numerous that joinder of all affected persons would be impracticable. Although the exact number of class members is unknown, because of the broad geographic reach of CCC's operations, and the large number of large and small insurers for whom it performs its services with respect to Total Loss Vehicles, the Class is estimated to comprise many thousands of people.

12. Common issues exist as to the members of the Class, including but not limited to the following:

- a. Whether CCC engaged in a conspiracy with its insurer partners to systematically undervalue Total Loss Vehicles;
- b. Whether CCC systematically undervalued vehicles, and the precise mechanism(s) it used to do so;
- c. Whether CCC knowingly misrepresented valuations for Total Loss Vehicles;
- d. Whether CCC failed to disclose that the valuations for Total Loss Vehicles were not representative of fair market value.
- e. Whether Plaintiff and the Class have sustained damages;
- f. Whether Defendant has been unjustly enriched as a result of the scheme described herein.

13. Plaintiff's claim is typical of that of the Class, such that the same discovery and evidence that would be used to support his claim would be used to support the claims of the members of the Class. Plaintiff Byrne's interests are harmonious with those of the Class, and he has no interests that are antagonistic to the members of the Class.

14. Plaintiff has retained counsel who are highly experienced in consumer protection class action litigation. Plaintiff and his counsel are committed to the vigorous prosecution of this action on behalf of the Class and will adequately represent the interests of the Class.

15. The common questions of law and fact present in this action predominate over any individual issues, if any, that may exist as to the members of the Class.

16. A class action is superior to other methods of fairly and efficiently adjudicating this litigation. While not inconsequential, the damages as to any individual litigant are such that individual litigation is likely not feasible. Furthermore, by virtue of Defendant's efforts to conceal their scheme, many class members may not even be aware that they have a claim. Accordingly, for most class members, a class action is the only mechanism by which they could reasonably expect to vindicate their rights.

17. Defendant has acted or refused to act in a manner that applies generally to the class, such that final injunctive relief is appropriate as to the class as a whole.

COMMON FACTUAL ALLEGATIONS

18. Defendant CCC provides services to insurance companies whereby they purport to place a value on vehicles that have been damaged in automobile accidents.

19. CCC has adopted the practice of systematically providing false and fraudulent valuations on behalf of their insurer clients.

20. CCC's deceptive and fraudulent valuation techniques include but are not limited to:

- a. Using purportedly "comparable" vehicles which are not, in fact, comparable for valuation purposes;
- b. Using sales data that is outdated or from different geographical markets;
- c. Outright falsifying valuations by indicating that purportedly independent third parties had appraised a vehicle at a particular price when, in fact, they had provided a higher valuation or no valuation at all.

21. Regardless of the mechanism that is used, CCC's valuations systematically and predictably come in under fair market value for the vehicles that are being evaluated.

22. These inaccurate valuations are more of a departure from true market value than would be expected from mere differences in opinion on value.

23. CCC's appraisal process is effectively backward. Upon information and belief, rather than performing an evaluation of the subject vehicle to determine its value, CCC's appraisal process begins with a determination of what the value will be, and data is then located or created which purports to support that valuation.

24. CCC's insurer clients would, in turn, use these deflated valuations as a basis to pay less than they would otherwise have to pay under their insurance policies to claimants.

25. Neither CCC nor its insurer clients disclose to Plaintiff and the members of the Class that the valuations that are provided do not accurately reflect true fair market value.

26. Both CCC and its insurer partners reap financial benefits from their arrangement. CCC enjoys significantly more business and market share because the insurers know that it will provide below-market valuations. The insurers, in turn, realize higher profits because they pay less to property damage claimants on a per-claim basis.

27. There exists no meaningful check upon CCC's valuation process. CCC's prime incentive is to provide as low a valuation as possible for its insurer clients. People making claims that are subject to CCC's valuations do not select CCC or have the option of using another valuation service, however, such that there is no corresponding pressure from the claimants affected by CCC's valuations to compel it to use fair valuations.

NAMED PLAINTIFF'S CLAIM

28. Plaintiff David Byrne's experience is demonstrative of the scheme. On or about March 26, 2010, Plaintiff's wife was involved in an automobile accident in Friendswood,

Texas while driving their 2000 Subaru Outback Limited 4 Door Station Wagon. The damage to the vehicle was significant, and the vehicle was determined to be a Total Loss (i.e., that it would cost more to repair it than the vehicle was worth).

29. The claim for the property damage on the vehicle was handled by Travelers, who used CCC to determine the amount that would be paid on the property damage claim.

30. CCC appraised the vehicle at \$5323 on April 2, 2010. Following Plaintiff's appeal that the valuation was too low, CCC adjusted the valuation twice – to \$5513 on April 6, 2010, and again to \$5713 on April 12, 2010. None of these valuations accurately reflect the value of the vehicle, which was significantly higher.

31. CCC Valuation methodology was deficient in that it failed to take into account available market information about the vehicle in a meaningful way. Specifically, it:

- a. Failed to take into account the trim line of the vehicle;
- b. Ignored market conditions;
- c. Based its valuation on comparable vehicles which were not, in fact, comparable;
- d. Failed to take into account valuation projections provided by industry sources like Kelly's Blue Book;
- e. Otherwise failed to base its valuation on valid market considerations.

32. CCC's failure to take this market information in account was intentional, was characterized by an evil motive, was made with express disregard of Plaintiff's rights, and was expressly designed to ensure that it could provide as low a valuation as possible.

33. Ultimately, Plaintiff accepted, under protest and without waiving any rights, payment in the amount of \$6157.36.

34. As a direct and proximate result of CCC's fraudulent valuation, Plaintiff sustained damage to the extent that he was not paid the full amount to which he was entitled.

**COUNT I –
BREACH OF THE DUTY OF GOOD FAITH AND FAIR DEALING**

35. Plaintiff incorporates each of the foregoing allegations as if set forth herein.

36. Defendant owed to Plaintiff and the class a duty of good faith and fair dealing in the performance of its valuation.

37. Defendant's behavior as described herein, including but not limited to the systematic under-valuation of Total Loss Vehicles, constitutes a breach of the duty of good faith and fair dealing.

38. As a direct and proximate result of Defendant's breach of the duty of good faith and fair dealing, Plaintiff and the class sustained damage to the extent that he was not paid the full amount to which he was entitled.

39. Defendant's conduct was intentional, designed to defraud Plaintiff and members of the class, and was marked by an evil motive, justifying the imposition of punitive damages.

**COUNT II –
FRAUDULENT MISREPRESENTATION AND/OR OMISSION**

40. Plaintiff incorporates each of the foregoing allegations as if set forth herein.

41. By providing valuations that were known to be false, based upon inapplicable or fabricated data, and which otherwise undervalued Total Loss vehicles, Defendant made false and misleading representations to Plaintiff and the class in the context of their valuation process.

42. Alternatively, Defendant, by virtue of its experience, access to information, and superior bargaining position owed Plaintiff and the class a duty of disclosure with respect to the true basis for its valuations.

43. That the valuations were not, in fact, fair or impartial was material to Plaintiff and the Class.

44. Plaintiff and the class reasonably relied to their detriment upon these false valuations and accepted less than full market value for their vehicles as a consequence thereof.

45. As a direct and proximate result of Defendant's fraudulent representations and/or omissions and their reasonable reliance thereon, Plaintiff and the class sustained damage to the extent that he was not paid the full amount to which he was entitled.

46. Defendant's conduct was intentional, designed to defraud Plaintiff and members of the class, and was marked by an evil motive, justifying the imposition of punitive damages.

**COUNT III –
VIOLATION OF THE ILLINOIS CONSUMER FRAUD ACT
(and other similar state statutes)**

47. Plaintiff incorporates each of the foregoing allegations as if set forth herein.

48. The Illinois Consumer Fraud and Deceptive Practices Act ("ICFA") broadly protects consumers against business practices which are unfair, deceptive or fraudulent. *See* 815 ILCS § 505/1 *et seq.* Other similar statutes exist in all 50 states.

49. Defendant is engaged in "trade or commerce" as that term is used in the ICFA.

50. Defendant's conduct described herein constitutes an "unfair or deceptive act or practice" as that terms is used in the ICFA.

51. Defendant's representations and omissions with respect to facts as described herein are material, and are made with the intent that others rely upon them.

52. As a direct and proximate result of Defendant's conduct as described herein, Plaintiff and the class sustained damage to the extent that he was not paid the full amount to which he was entitled.

53. Defendant's conduct was intentional, designed to defraud Plaintiff and members of the class, and was marked by an evil motive, justifying the imposition of punitive damages.

**COUNT IV –
BREACH OF CONTRACT BY THIRD-PARTY BENEFICIARIES**

54. Plaintiff incorporates each of the foregoing allegations as if set forth herein.

55. CCC has entered into various contracts with insurance companies which, upon information and belief, provide in substance that CCC will provide fair and unbiased valuations of Total Loss Vehicles.

56. Plaintiff and the class are third-party beneficiaries of these contracts, to the extent that the amount paid pursuant to their insurance claim is dependent upon CCC's purportedly fair and unbiased valuations.

57. Defendant's failure to provide true, accurate and fair valuations of the vehicles of Plaintiff and the Class constitutes a breach of its agreement with their insurance company clients.

58. Plaintiff and the class have fulfilled whatever obligations they have had to become and remain third-party beneficiaries of Defendant's contracts with its insurance company clients.

59. As a direct and proximate result of Defendant's breach of its agreement with their insurance company clients, Plaintiff and the class sustained damage to the extent that he was not paid the full amount to which he was entitled.

**COUNT V –
UNJUST ENRICHMENT**

60. Plaintiff incorporates each of the foregoing allegations as if set forth herein.

61. As a direct and proximate result of its conduct as described in more detail herein, Defendant CCC has been unjustly enriched in that it has used its systematic undervaluation of vehicles to generate demand for its business, and has recognized increased revenue and profit as a result.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays this Court award the following relief:

- a) Certify the class identified herein;
- b) Appoint Plaintiff David Byrne as Class Representative;
- c) Appoint Plaintiff's counsel as Class Counsel;
- d) Enter judgment in Plaintiff's favor;
- e) Award Plaintiff and the Class statutory and common law damages in an amount fair and reasonable to compensate them for their loss, as determined by a jury at trial;
- f) Enter an award of punitive damages against CCC to punish it for past conduct and to deter future like conduct;
- g) Award Plaintiff and the Class reasonable attorneys' fees and costs of suit;
- h) Enter judgment compelling Defendant to disgorge any ill-gotten revenues into a constructive trust for the benefit of Plaintiff and the Class;

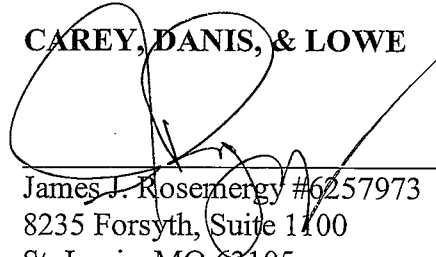
i) Enter such other and further relief as this Court deems just and appropriate.

PLAINTIFF DEMANDS TRIAL BY JURY ON ALL ISSUES SO TRIABLE

Dated: May 4, 2010

Respectfully submitted,

CAREY, DANIS, & LOWE



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