

STATE OF MAINE
ANDROSCOGGIN, SS.

SUPERIOR COURT
Civil Action
Docket No. _____

THE STATE OF MAINE,
Plaintiff

v.

CONSENT DECREE

ELMER NEIL CROSSLEY
d/b/a AUTO BODY SERVICE
AND SALES, 214 Minot
Avenue, Auburn, Maine
Defendant

Plaintiff, the State of Maine, having filed its complaint on alleging that Defendant has been guilty of certain misrepresentations and material omissions in the conduct of his business, and no summons having been issued and service of the complaint having been accepted by John Linnell, Esquire of 83 Pleasant Street, Auburn, Maine on behalf of Defendant and Plaintiff and Defendant by their respective attorneys having mutually agreed and approved the terms of the following Permanent Injunction, even though Defendant, while consenting to the entry of this Order, nevertheless denies the allegations of deceptive practices in the complaint petition;

NOW, THEREFORE, upon the consent of the parties hereto, it is hereby

I.

ORDERED AND ADJUDGED that this Court has and shall retain jurisdiction of this suit for the purpose of reviewing and enforcing the provisions of this Decree; and it is further

II.

ORDERED AND ADJUDGED that the above named Defendant (it shall be understood the Defendant shall include Defendant's agents, servants, employees, and all other persons in active

10

concert or participation with him) be enjoined and restrained and ordered to cease and desist from representing to customers (for the purpose of this Consent Decree the term customer shall be understood to include prospective customers unless clearly inappropriate within the context of a particular statement) that the odometer reading in the motor vehicles he sells represents the actual number of miles said vehicles have been driven when in truth and in fact the odometer reading in said vehicles does not represent the actual number of miles said vehicles have been driven; and it is further

III.

ORDERED AND ADJUDGED that the above named Defendant is ordered and directed to affirmatively disclose all relevant material facts to customers; such disclosures when appropriate shall include, but shall not be limited to informing customers that the odometer reading in motor vehicles sold by Defendant does not show the actual number of miles said vehicles have been driven; and it is further

IV.

ORDERED AND ADJUDGED that the Defendant shall keep a permanent business record of all motor vehicles on which the odometer is serviced, repaired, or replaced by Defendant. Said records shall contain a description of the motor vehicle including the make, model, year and serial number, the date on which the service, repair or replacement was made, the mileage before and after the service, repair, or replacement of the odometer, the name and address of the owner of the motor vehicle, and a statement signed by the owner and by Defendant saying that the odometer was not functioning properly and needed to be repaired, serviced or replaced; and it is further

V.

ORDERED AND ADJUDGED that the Defendant as transferor of motor vehicles is ordered and directed to affirmatively disclose in a written statement all relevant material facts to customers

and transferees of a motor vehicle before executing any transfer of ownership documents; such disclosures shall include, but shall not be limited to the following:

- 1] the odometer reading at the time of transfer, and
- 2] the date of the transfer; and
- 3] the transferor's name and current address; and
- 4] the identity of the vehicle, including its make, model, and body type, its vehicle identification number, and its last plate number; and
- 5] if the transferor knows that the odometer reading differs from the number of miles the vehicle has actually traveled, he shall include a statement that the actual vehicle mileage is unknown; and
- 6] if the transferor knows that the mileage indicated on the odometer is beyond the designed mechanical limits of said odometer, he shall include a statement of the total cumulative mileage; and
- 7] a statement that the transferor or his agent has repaired, replaced or serviced the odometer, if such is the fact; and
- 8] the signature of the transferor; and it is further

VI.

ORDERED AND ADJUDGED that Defendant shall enter in ink on the instruments executed by him at the time of transfer of a motor vehicle and on any form prescribed by the Department of Secretary of State, Division of Motor Vehicles, the odometer reading at the time of transfer, and if the Defendant knows that the odometer reading differs from the number of miles the vehicle has actually traveled, he shall include a statement that the actual vehicle mileage is unknown, and if Defendant knows that the mileage indicated on the odometer is beyond the designed mechanical limits of said odometer, he shall include a statement of the total cumulative mileage; and it is further

VII.

ORDERED AND ADJUDGED that the Defendant as transferee shall obtain from each transferor of a motor vehicle a statement written in ink containing the same information which is set forth in paragraph V. of this Decree and retain said statement as a permanent business record; and it is further

VIII.

ORDERED AND ADJUDGED that the Defendant, his agents, servants, representatives, salesmen, assigns and all persons in active concert or participation with him be enjoined and restrained and ordered to cease and desist from conducting his business using any fraudulent or deceptive acts and practices, and from any and all acts in aid or furtherance thereof, and it is further

IX.

ORDERED AND ADJUDGED that the Defendant shall make available to the Attorney General within ten (10) days from the notice of request therefor, by the Attorney General, any and all information and records pertaining to Defendant's operations and sales in the State of Maine that might in any way affect the enforcement of this Decree and further that such information shall be held in strict confidence by the Attorney General, unless directed otherwise by written order of this Court; and it is further

X.

ORDERED AND ADJUDGED that an attested copy of this Decree shall be sent by the Clerk of Courts within ten (10) days of the date of this Decree to Walter Durgin (it shall be understood that the rights of Walter Durgin under this Consent Decree shall also apply to any person who has purchased the vehicle sold to Walter Durgin by Defendant) together with a notice advising him that if he can demonstrate that he suffered damage as a result of any deceptive act or practice by the above named Defendant of the type set forth in this Decree, the Defendant will make restitution to him or any other relief as he deems appropriate (including but not limited to rescission of the entire contract); and it is further

XI.

ORDERED AND ADJUDGED that any customer who purchased a used motor vehicle from the above named Defendant prior to the

date of this Order and who now demands restitution or rescission of the contract of sale of said automobile or any other relief, must file, by himself or through his representative, a notice of claim with this Court within thirty (30) days of the date of this Order. If any purchaser has any questions concerning the procedure to be followed in complying with this Decree, he or she may contact Assistant Attorney General Rae Ann French, State House, Augusta, Maine, telephone #289-3717; and it is further

XII.

ORDERED AND ADJUDGED that Defendants shall render restitution and any other relief in compliance with the above Decree within sixty (60) days of the date of this Order to every purchaser thus entitled under the above Decree; in the event that the Defendant has reasonable justification for refusing to render the relief demanded by Walter Durgin within the time period, he shall file with this Court, the Plaintiff, and Walter Durgin within the sixty (60) day period, an affidavit setting forth completely its reasons in each case for either disputing the amount claimed or rejecting the claim entirely; and it is further

XIII.

ORDERED AND ADJUDGED that if the claim has not been settled and paid within the prescribed sixty (60) days, the matter shall be referred to this Court. If the case of Walter Durgin is referred to this Court, an attorney appointed by this Court shall represent Walter Durgin if he has filed a claim with this Court in accordance with the above Decree and if his claim has not been settled and paid within the prescribed sixty (60) day period. The expenditure for said legal counsel is considered to be a cost incident to the proceedings and shall be borne by the Defendant. Nothing herein is to be interpreted to preclude Walter Durgin from hiring his own attorney to represent him if his case is referred to this Court. The existence of a remedy hereunder

shall not preclude the right of Walter Durgin to pursue any other remedy afforded by law. However, the commencement of the presentation of evidence before this Court at a hearing called specifically as to Walter Durgin's claim filed hereunder shall constitute a waiver of said claimants' right to any other remedy against the above named Defendant, except that any judgment relating to said claim rendered by any Court of competent jurisdiction and which has become final prior to the time of the commencement of the presentation of evidence before the Referee as described aforesaid, shall result in a dismissal of the claim before this Court; and it is further

XIV.

ORDERED AND ADJUDGED that the Attorney General may make such further application under the provisions of this Permanent Injunction, or maintain any action for such other and further relief as Plaintiff may be advised is proper and necessary for the enforcement of this Permanent Injunction, all pursuant to Maine Revised Statutes Annotated, Title 5, Sections 206-212 (Unfair Trade Practices Act) and all other provisions of law applicable thereto; and it is further

ORDERED AND ADJUDGED that the Defendant pay to the Plaintiff the sum of two hundred and fifteen dollars (\$215), within twenty (20) days of the date of this Order as costs of its suit herein.

DATED at Augusta, Maine this day of , 1973.

SUPERIOR COURT

, JUSTICE

7-25-73

STATE OF MAINE
ANDROSCOGGIN, SS.

SUPERIOR COURT
Civil Action
Docket No. 6717

STATE OF MAINE]
 Plaintiff]]
v.]]
ELMER NEIL CROSSLEY d/b/a]]
AUTO BODY SERVICE AND SALES]]
214 Minot Avenue]]
Auburn, Maine]]
 Defendant]]

PETITION FOR PRELIMINARY
AND PERMANENT INJUNCTION
AND RESTORATION OF MONIES

The State of Maine, by and through Jon A. Lund, Attorney General of the State of Maine, alleges:

JURISDICTION AND VENUE

1] Jon A. Lund, as Attorney General of the State of Maine, acting to protect the public as citizens, consumers and competitors from deception, fraud and misrepresentation, unfair, fraudulent and unlawful business practices, submits this action in the public interest in the name of the State of Maine.

2] The Attorney General brings this action pursuant to and in furtherance of the provisions of Maine Revised Statutes Annotated, Title 5, Sections 206-212, as amended. Notice as required under Section 209 has been sent to the Defendant ten (10) days prior to the commencement of this action.

3] Defendant Elmer Neil Crossley, at all times mentioned herein, was sole proprietor of Auto Body Service and Sales located at 214 Minot Avenue, Auburn, Maine and in that capacity conducted, managed, and operated the activities of said business.

4] Defendant transacts business within the County of Androscoggin, State of Maine. The violations of law hereinafter described have occurred within the County of Androscoggin. The actions of Defendant as set out below are in violation of the laws and public policies of the State of Maine and are inimical to the rights and interests of the People of Maine as consumers and as competitors.

NATURE OF TRADE AND COMMERCE

5] Defendant, in his own behalf and through his agents, representatives, and employees, all hereinafter referred to as Defendant, is engaged in the business of advertising, offering for sale, selling purchasing, servicing and repairing automobiles and other motor vehicles.

COUNT I.

6] The allegations of paragraphs one through five are incorporated by reference in Count I., as if fully set forth herein.

7] In the course of conducting the trade or commerce described in paragraph five, Defendant has represented expressly or by implication to some of his customers that the odometer reading in the motor vehicles he sold represented the actual number of miles said vehicles had been driven when in truth and in fact the odometer reading in said vehicles did not represent the actual number of miles said vehicles had been driven because the number of miles showing on the odometer at the time Defendant sold said vehicles to said customers was less than the number of miles showing on the odometer in said vehicles at the time Defendant purchased said vehicles.

COUNT II.

8] The allegations of paragraphs one through seven are incorporated by reference in Count II., as if fully set forth herein.

9] Defendant failed to disclose to some of his customers that the odometer in the motor vehicles that said customers purchased from him showed less mileage than the odometer in said vehicles at the time Defendant purchased said vehicles.

WHEREFORE, Plaintiff prays:

1] That the Court declare that the aforementioned business practices constitute unfair and deceptive trade practices in violation of Title 5, M.R.S.A., Sections 206-212, as amended and preliminarily and permanently enjoin the Defendant and any agents, servants or employees, as well as any and all other persons in active concert or participation with him from hereafter:

a. misrepresenting the actual mileage which a motor vehicle has been driven;

b. failing to disclose the true and actual mileage which a motor vehicle has been driven.

2] That the Court grant such other and further relief as the Court deems just and equitable to dissipate the effects of the false, misleading, unfair and unlawful acts and practices complained of herein including but not limited to:

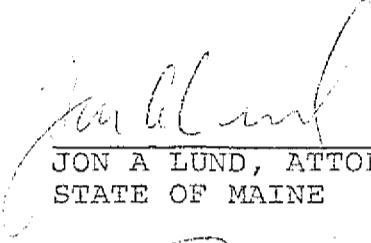
a. restitution to injured purchasers (as provided by Title 5, M.R.S.A., Section 209, as amended);

b. a judgment for Plaintiff's investigative expenses (as provided by Title 5, M.R.S.A., Section 209, as amended).

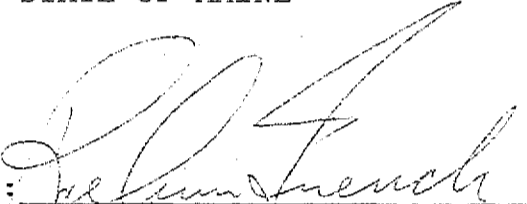
3] That if this request for an injunction is granted, no bond be required because counsel for the Plaintiff

is a public official of the State of Maine, acting in his official capacity to protect the interests of the State of Maine and the People of the State of Maine from Unfair and Deceptive Trade Practices.

DATED: At Augusta, Maine this twenty-fifth day of July, 1973.



JON A LUND, ATTORNEY GENERAL
STATE OF MAINE


BY: _____
Rae Ann French
Assistant Attorney General
Consumer Fraud Division