IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
TRIAL DIVISION—CIVIL

| | | |
|---|---|---|
| **ALFA AUTO WORLD, INC.,** individually and on behalf of all others similarly situated | : | February Term, 2008 |
| | : | Case No. 03341 |
| *Plaintiff* | : | |
| **v.** | : | Commerce Program |
| **AAA MID-ATLANTIC INC.** | : | |
| *Defendant* | : | Control No. 11055323 |

**ORDER**

**AND NOW**, this ___5th___ day of November, 2012, upon consideration of plaintiff's Motion for Class Certification, defendant's Response in Opposition, the respective memoranda of law, all matters of record, after a hearing held on June 13-14, 2012, and upon Proposed Findings-of-Fact and Conclusions-of-Law submitted by the parties, it is **ORDERED** that the class is certified as follows:

A. the class shall include

> All Pennsylvania residents who were emergency road service contractors of defendant AAA Mid-Atlantic, Inc. and who entered into Roadside Assistance Service Provider Agreements to provide emergency roadside services including towing, push-outs, battery replacement and jump starts to AAA Mid-Atlantic, Inc. and its members from January, 1 1998, through September 30, 2005 (the "Class Period.")

B. This class shall not include

> any emergency roadside service contractor of defendant AAA Mid-Atlantic, Inc., who entered with defendant into a Settlement and Release Agreement

Alfa Auto World Inc Vs -ORDER

08020334100153



COPIES SENT PURSUANT TO Pa.R.C.P. 236(b) C. HART 11/06/2012

as typified by the document found at Exhibit 37 in
AAA Mid—Atlantic, Inc.'s Class Certification Exhibits;

and,

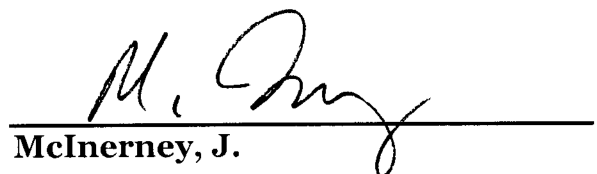
C. This class shall not include

Any emergency roadside service contractor of defendant AAA Mid—Atlantic, Inc. who entered into a separate Roadside Assistance Service Provider Agreement, as typified by Contract Number 3555 dated 1 June 2008, found as Exhibit 40 of AAA Mid-Atlantic, Inc.'s Class Certification Exhibits.

It is further **ORDERED** as follows:

1. Every member as described in Section A. above is included, unless a member files of record a written election to be excluded from the class on or before December 31, 2012.
2. A proposed form of notice to the class shall be prepared by counsel for plaintiffs pursuant to Pa. R.C.P. 1712(c), and shall be filed with the court and served upon counsel for defendant on or before November 26, 2012. Any objections to the proposed notice shall be filed with the court and served upon plaintiff's attorney no later than ten days after the filing of the proposed notice.
3. A hearing on the proposed form of notice as well as objections thereto will be scheduled by separate Order of the court, consistent with Pa. R.C.P. 1712(a).

**By The Court,**



**McInerney, J.**

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
TRIAL DIVISION—CIVIL

| | | |
|---|---|---|
| **ALFA AUTO WORLD, INC.,** individually and on behalf of all others similarly situated | : | February Term, 2008 |
| | : | Case No. 03341 |
| *Plaintiff* | : | |
| **v.** | : | Commerce Program |
| **AAA MID-ATLANTIC INC.** | : | |
| *Defendant* | : | Control No. 11055323 |

## Findings-of-Fact

1. Plaintiff, Alfa Auto World, Inc. ("Alfa,") is a Philadelphia, Pennsylvania corporation. Before winding down its business, Alfa provided automobile restoration, repair, and towing services.
2. Defendant, AAA Mid—Atlantic, Inc. ("AAA,") is a non-stock, non-profit corporation with an office in Philadelphia, Pennsylvania. AAA provides its members with emergency roadside services, including towing, push-outs, battery replacements, jump starts, and key and locksmith services, in the counties of Philadelphia, Montgomery, Delaware, Bucks and Chester.
3. Historically, AAA enters into contract with independent local contractors who agree to provide emergency roadside services to distressed members of AAA.
4. AAA and Alfa specifically entered into two contracts, dated respectively July 19, 2001 and November 1, 2002. Under the contracts, Alfa was assigned specific territories in which Alfa, as an independent contractor, was required to provide

emergency roadside services to distressed members of AAA.[1]

5. The respective addenda to the July 19, 2001 and November 10, 2002 contracts state that "[AAA] reserves the right, at its sole discretion ... to assign calls within [Alfa's] territory to other [emergency roadside contractors] ("ERCs.")[2]

6. Neither the two contracts, nor their addenda, define the term "other ERCs."

7. AAA entered into similar contracts with well over two-hundred different ERCs.

8. The contractual relationship between Alfa and AAA was terminated by AAA on September 24, 2004.[3]

9. Between 1998 and September 30, 2005, AAA assigned to its own fleet of vehicles (*hereinafter*, "Club Fleet,") a number of emergency roadside service calls within territories contractually assigned to the ERCs.

10. In January 2005, an independent contractor of AAA, Seiple's Collision & Restoration, Inc. ("Seiple's,") filed a lawsuit against AAA in the Court of Common Pleas, Philadelphia County.[4] Seiple's Complaint alleged that AAA had breached its emergency roadside assistance contract with Seiple's by "assigning emergency roadside assistance and towing calls in Seiple's contractual territory to AAA ... and failing to assign these calls to Seiple's.[5] This case went to trial and a jury returned a verdict in favor of Seiple's in the amount of $143,000.[6] The parties eventually settled in the amount of $123,000.

---

[1] Emergency Roadside Service Contracts No. 5927 between AAA—Mid Atlantic, Inc. and Alfa Auto World, Exhibits B—6 and C—7 entered into the record by stipulation at the Class Action Certification Hearing.
[2] Addenda to the July 19, 2001 and November 1, 2002 contracts between Plaintiff Alfa Auto World, Inc. and AAA—Mid Atlantic, Inc., Exhibit B—6 and C—7 entered into the record by stipulation at the Class Action Certification Hearing.
[3] Termination Letter dated August 24, 2004, Exhibit B to the Response in Opposition to Plaintiff's Motion for Class Action Certification.
[4] Seiple's Collision & Restoration, Inc. v. AAA Mid Atlantic, Inc. Case No. 0501-02212.
[5] Id., Complaint, ¶ 31(d), Exhibit J to Alfa's Motion for Class Action Certification.
[6] Transcript of Hearing dated June 13, 2012, pp. 90-91.

11. Shortly after the Seiple's case settled, an independent contractor of AAA, Price's Lock Service ("Price's,") filed a class action lawsuit against AAA in the Court of Common Pleas, Philadelphia County.[7] Price's Third Amended Complaint alleged that

> sometime in the late 1990s, AAA began to directly compete with [Price's] by providing many of the same services to AAA members that were previously provided exclusively by [Price's....]
>
> The treatment [Price's] received from AAA is consistent with that received by other AAA contractors since 2002. The contract of at least one AAA contractor, Seiple's Collision & Restoration, Inc. ... was terminated because the contractor had its lawyer complain to AAA about the ... treatment the contractor was receiving....[8]

12. After the Seiple's lawsuit ended, but while the Price's class action suit was ongoing, AAA entered into Settlement Agreements and Releases with 36 members of the class. The Settlement Agreements and Releases stated:

> This Settlement Agreement and Release ... is made and entered between ... Contractor and AAA[]....
>
> Whereas on ... January 18, 2005, Seiple's ... suit against AAA[] ... which proceeded to a jury trial resulting in a verdict in favor of Seiple's ... in the amount of $123,000....
>
> Whereas following Seiple's litigation, a class action lawsuit styled as Price's Lock and Service v. AAA Mid-Atlantic, Inc.[9] was filed in the Court of Common Pleas, Philadelphia County ... and a copy of the Complaint therein has been provided to Contractor for review prior to execution of this agreement....
>
> Whereas AAA[] does not admit any wrongdoing or liability in

---

[7] Price's Lock Service v. AAA Mid-Atlantic, Inc., Case No. 0711-01621.

[8] Id. Third Amended Complaint filed April 11, 2008, ¶¶11, 15. The Price's case settled on November 23, 2009. Under the terms of the settlement, Price's received $90,000 and discontinued the lawsuit against AAA. Each party released the other from any claim arising out of their contractual relationship. See Settlement Agreement and Release, Hearing Exhibit 29 of defendant AAA.

[9] The Price's action was marked settled, discontinued and ended on January 26, 2010.

connection with either the Seiple's or Price's lawsuits;

> Whereas the Parties ... now seek to resolve any and all claims that Contractor may have against AAA[]...
>
> Now, Therefore, the Parties hereto, inconsideration of the covenants and conditions set forth herein and intending to be legally bound, stipulate and agree as follows....
>
> 2. Contractor ... does hereby fully and forever ... release ... AAA[] from any and all claims, actions ... and suits of every nature, kind, and description, at law or in equity....[10]

13. After the Seiple's lawsuit ended, AAA also sought to modify its existing contracts with a number of independent contractors.

14. In March 2007, AAA and a number of its independent contractors entered into amendments to their existing contracts. These amendments contained a forum selection clause conferring exclusive jurisdiction on the courts of New Castle County, Delaware. There was no mention in these amendments that AAA had been sued for shifting roadside service calls to Club Fleet from the independent contractors of AAA. Specifically, the pertinent portion of the forum selection clause merely stated:

> If any action is brought to enforce any term of this Agreement....
>
> The parties agree to any such action must be commenced in Delaware and be maintained in state of federal courts located in the County of New Castle, State of Delaware.[11]

15. In November 2007, AAA and a number of its independent contractors entered again into amendments to their existing contracts. Some of these contractors had already entered into the March 2007 Amendments, while others had not. The

---

[10] Settlement Agreement and Release, Joint Hearing Exhibit 37.

[11] Amendment to Roadside Assistance Service Provider Agreement dated March 1, 2007, Contract No. 3460, ¶ 6, Hearing Exhibit 38 of defendant AAA.

November 2007 Amendments contained a forum selection clause, a mandatory arbitration provision, and a class action preclusion clause. There was no mention in these amendments that AAA had been sued for shifting roadside service calls to Club Fleet from its independent contractors. Specifically, the pertinent portion of the November 2007 amendments stated:

> Amendment to Roadside Assistance Service Provider Agreement:
>
> Dispute Resolution....
>
> [T]he parties to Amendment hereby expressly waive any right to have any controversy decided in a court of law/and/or equity before a judge or jury, and instead accept the use of binding arbitration as their sole remedy.... The arbitration shall be conducted in Wilmington, Delaware....
>
> The foregoing paragraph shall specifically preclude the use of ... class action treatment as [a] mechanisms for the resolution of disputes between the parties.[12]

16. On February 26, 2008, Alfa and another plaintiff, Lou's Towing ("Lou's,") filed the instant lawsuit against AAA, on behalf of a proposed class of similarly situated ERCs.

17. In June 2008, AAA entered into new and separate contracts with a number of its independent contractors. Some of these contractors had already entered into the March or November 2007 amendments, while others had not. At the time AAA entered into these contracts, the Price's action, discussed in ¶ 11 above, was still under way. The new contracts of June 2008 contained forum selection clauses, mandatory arbitration provisions, and class action preclusion clauses. There was

[12] Amendment to Roadside Assistance Service Provider Agreement dated November 5, 2007, Contract No. 5942, Hearing Exhibit 39 of defendant AAA.

no mention in these contracts that AAA had been sued for shifting roadside service calls from its independent contractors to Club Fleet. Specifically, the pertinent portion of the June 2008 stated:

> XVI—Miscellaneous Provisions
>
> *A. Dispute Resolution.*
>
> [T]he parties hereby expressly waive any right to have any controversy decided in a court of law and/or equity before a judge or jury, and instead accept the use of binding arbitration as their sole remedy... the parties agree that this dispute resolution process shall be the sole and exclusive means for resolving any controversy, regardless of whether the issue or event which is the basis or cause of the controversy occurred before or after the effective date of this agreement....
>
> The arbitration shall be conducted in Wilmington, Delaware....
>
> The parties further agree that ... the foregoing paragraph shall specifically preclude the use of ... class action treatment as [a] mechanism[] For the resolution of disputes between the parties....[13]

18. On August 28, 2008, Lou's name was withdrawn from the instant action and a new party, Clark's Tire and Automotive Service Center, Inc. ("Clark's,") was named as plaintiff and proposed class representative. Eventually, plaintiffs filed a Second Amended Complaint.

19. On October 3, 2008, AAA filed preliminary objections asking the court to dismiss the Second Amended Complaint as to Plaintiff Clark's. The preliminary objections asserted that Clark's had entered with AAA into the contract amendments of March and November 2007, as well as the new contract of June

[13] Roadside Assistance Service Provider Agreement, Contract Number 3555, Exhibit 40 to AAA Mid—Atlantic Inc.'s Certification Hearing Exhibits.

2008. According to AAA's preliminary objections, Clark's Second Amended Complaint had to be dismissed because under the March and November 2007 amendments and the June 2008 contract, Clark's had agreed that any cause of action between the parties could be pursued only in New Castle County, in the State of Delaware.[14]

20. The Honorable Judge Albert W. Sheppard, Jr., overruled the preliminary objections. Judge Sheppard found that the March and November 2007 amendments, and the June 2008 contract, were all "amendments" to existing contracts, and were void for lack of new consideration. AAA filed an interlocutory appeal challenging Judge Sheppard's findings.

21. On appeal AAA raised the following three questions for review:

> Is the parties' **contract**, including the forum selection and arbitration provision contained therein, unenforceable on the ground that **it** was not supported by consideration?
>
> Apart from the issue of consideration, is the **contract's** forum selection clause valid and enforceable?
>
> Apart from the issue of consideration, are the **contract's** arbitration provisions valid and enforceable?[15]

22. On appeal the Pennsylvania Superior Court reversed and remanded, finding that Judge Sheppard had improperly characterized the June 2008 contract between AAA and Clark's as an amendment to its existing contract. The Superior Court found instead that the June 2008 agreement was a new, "independently executed contract sufficient on its face under the Pennsylvania Uniform Written Obligations Act."[16]

---

[14] AAA' preliminary objections to Clark's and Alfa's Second Amended Complaint, ¶¶ 48-65.
[15] Appellant's Brief filed with the Pennsylvania Superior Court on June 9, 2009 (emphasis supplied).
[16] Clark's Tire & Auto Service Center, Inc. and Alfa Auto World, Inc. v. AAA-Mid-Atlantic, Inc., No. 202

23. Although the Pennsylvania Superior Court reversed and remanded Judge Sheppard's Order overruling AAA's preliminary objections, it did not discuss whether the March and November 2007 amendments were unenforceable for lack of consideration. The Superior Court did not address this issue presumably because the question presented on appeal by AAA seemed to have focused exclusively on the June 2008 contract, as evidenced by the language employed by AAA in its appellate brief, quoted above at ¶ 21.[17] Indeed, the Superior Court's opinion discussed the 2007 amendments only by way of background information, and provided no analysis as to whether such amendments were unenforceable for lack of consideration.[18]

24. Subsequently, Clark's withdrew its name as plaintiff and proposed class representative, and Alfa, now the sole named plaintiff and class representative, filed a Third Amended Complaint. The Third Amended Complaint was filed before Judge Sheppard could rule on the preliminary objections which had been remanded by the Superior Court.

25. On December 6, 2010, Alfa filed its Third Amended Complaint. The Third

---

EDA 2009 , p. 5.

[17] [17] The issue as stated by the Pennsylvania Superior Court in its Non-precedential Opinion tracked almost *verbatim* the words employed by AAA to frame the issue in its appellate brief. Clark's Tire & Auto Service Center, Inc. and Alfa Auto World, Inc. v. AAA-Mid-Atlantic, Inc., No. 202 EDA 2009 , p. 4 (emphasis supplied).

[18] Id. Examination of two form agreements typifying the March and November 2007 contract amendments does not reveal whether any consideration was exchanged. See AAA's Hearing Exhibits nos. 38, 39. In this case, Judge Sheppard clearly stated that all three agreements were unenforceable for lack of consideration, while the Superior Court's Memorandum Opinion, which reversed Judge Sheppard's decision, focused only on the enforceability of the June 2008 without discussing whether the March and November 2007 amendments were unenforceable as lacking consideration. Since the filing of the Third Amended Complaint prevented Judge Sheppard from clarifying whether the March and November 2007 amendments were still unenforceable, this court concludes that Judge Sheppard's Order stands as the law-of-the-case as for the March and November 2007 amendments. Consequently, the March and November 2007 amendments are void and unenforceable for lack of consideration: any independent contractor who signed said amendments may opt to become a member of the class, unless such a contractor also signed the June 2008 contract which, requiring the parties to arbitrate exclusively in New Castle County, in the State of Delaware, prevents litigation in this venue.

Amended Complaint alleges that

> beginning sometime in the late 1990s and unbeknownst to [Alfa] and members of the Class, [AAA] began to directly compete with [Alfa] and members of the Class by providing many of the same services to [AAA] members that were previously provided exclusively by [Alfa] and members of the class....[19]

26. Alfa's Third Amended Complaint also alleges that AAA breached its contract with Alfa and the members of the class by

> — acquiring and/or maintaining a fleet of service vehicles and directly offering roadside assistance to [AAA's] members ... in frustration of the purpose and intent of the Contracts;
> — unilaterally reducing [Alfa] and the members of the Class' contractual territories; and
> — assigning emergency roadside assistance calls in [Alfa's] and the members of Class' contractual territories to [AAA,] and failing to assign these calls to [Alfa] and the members of the Class.[20]

27. On May 30, 2011, Alfa filed the instant Motion for Class Action Certification. In the motion, Alfa asks this court to certify the following class (the "Class,") pursuant to Pa. R.C.P. 1707:

> All Pennsylvania residents who were emergency road service contractors of Defendant [AAA] and who entered into Roadside Assistance Service Provider Agreements ("Contracts") to provide emergency roadside services including towing, push-outs, battery replacement, and jump starts to [AAA] and its members from 1990 through September 30, 2005 (the "Class Period.")

28. A hearing on the Motion for Class Action certification was held on June 13-14, 2012.

29. At the hearing, a current manager of AAA, who was traffic and dispatch manager between 2002 and 2006, testified that it was "not the[] primary function" of Club

---

[19] Third Amended Complaint, ¶ 21.
[20] Third Amended Complaint, ¶¶ 39, 41.

Fleet to "back up or take calls if contractors refused, but that the "primary function" of AAA's Club Fleet was "to handle their calls within the **assigned area .... Generally speaking [the] Center City area.**"[21]

30. At the hearing, counsel for Alfa conceded that the original request to certify the class for the period from 1990 through 30 September 2005 should be shortened. Specifically, counsel for Alfa stated:

> I do think that the class does not have to extend all the way back to 1990.... [A]s the evidence has unfolded, here it appears that most of the conduct occurred from 1998 until the end of the class period....[22]

31. Also at the hearing, counsel for Alfa conceded that the 36 independent contractors who had entered into the Settlement and Release Agreement with AAA could be kept out of the "potential class." [23]

32. Counsel for Alfa finally conceded that any independent contractor who signed the June 2008 contract was not a part of the class. Specifically, counsel for Alfa stated:

> The June 2008 contract, those contractors, it may be true, are not part of the punitive [*sic*] class, but the Court can certify the class, excluding those who signed the June 2008 contract.[24]

33. The parties filed under seal their respective Proposed Findings-of-Fact and Conclusions-of-Law.

---

[21] Transcript of Hearing dated June 13, 2012, pp. 104:20—25, 105:1—10, 137:8—25 (emphasis supplied).
[22] Transcript of Hearing dated June 14, 2012, p. 308:12—23.
[23] Transcript of Hearing dated June 14, 2012, p. 268:23—25, 269:1—4.
[24] Transcript of Hearing dated June 14, 2012, p. 269:18—22.

## Conclusions of Law

1. The class is so numerous that joinder of all members is impracticable.
2. There are questions of law and fact common to the class.
3. Plaintiff's claims and Defendant's defenses are typical to the class.
4. Plaintiff will adequately represent the class.
5. A class action is a fair representative method to adjudicate this controversy.

## Discussion

The purpose for class certification is to

> provide a means by which the claims of many individuals could be resolved at one time, thereby eliminating the possibility of repetitious litigation and providing small claimants with a method to seek compensation for claims that would otherwise be too small to litigate.[25]

Under Rule 1702 of the Pennsylvania Rules of Civil Procedure, five prerequisites must be met before a lawsuit may proceed as a class action:

> (1) the class is so numerous that joinder of all members is impracticable;
> (2) there are questions of law or fact common to the class;
> (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class;
> (4) the representative parties will fairly and adequately assert and protect the interests of the class under the criteria set forth in Rule 1709; and
> (5) a class action provides a fair and efficient method for adjudication of the controversy under the criteria set forth in Rule 1708.[26]

Rule 1708 of the Pennsylvania Rules of Civil Procedure states:

> In determining whether a class action is a fair and efficient method of adjudicating the controversy, the court shall consider among other matters the criteria set forth [below].

[25] Hanson v. Fed. Signal Corp., 451 Pa. Super. 260, 266; 679 A.2d 785, 788 (Pa. Super. 1996).
[26] Pa. R.C.P. 1702 (2012).

(a) Where monetary recovery alone is sought, the court shall consider

(1) whether common questions of law or fact predominate over any question affecting only individual members;

(2) the size of the class and the difficulties likely to be encountered in the management of the action as a class action;

(3) whether the prosecution of separate actions by or against individual members of the class would create a risk of

(i) inconsistent or varying adjudications with respect to individual members of the class which would confront the party opposing the class with incompatible standards of conduct;

(ii) adjudications with respect to individual members of the class which would as a practical matter be dispositive of the interests of other members not parties to the adjudications or substantially impair or impede their ability to protect their interests;

(4) the extent and nature of any litigation already commenced by or against members of the class involving any of the same issues;

(5) whether the particular forum is appropriate for the litigation of the claims of the entire class;

(6) whether in view of the complexities of the issues or the expenses of litigation the separate claims of individual class members are insufficient in amount to support separate actions;

(7) whether it is likely that the amount which may be recovered by individual class members will be so small in relation to the expense and effort of administering the action as not to justify a

class action....[27]

The moving party bears the initial burden of showing each element contained in Rule 1702 of the Pennsylvania Rules of Civil Procedure. "However, our courts do not require a strict burden of proof, but instead, observe the policy [according to which] ... decisions in favor of maintaining a class action should be liberally made. In essence, the burden on the class proponent is to establish the five requirements for class certification set forth in Pa. R.C.P. 1702."[28] "The proponent need only present evidence sufficient to make out a prima facie case from which the court can conclude that the five class certification requirements are met."[29]

Class certification is a mixed question of law and fact.[30] To determine whether a class should be certified, the court must consider all the relevant testimony, depositions, and other admissions, brought forth by the parties in the course of a mandatory class certification hearing.[31] "The hearing shall be confined only to a consideration of the class action allegations and is not concerned with the merits of the controversy.... Its only purpose is to decide whether the action shall continue as a class action or as an action with individual parties only."[32]

Within the framework provided by the standards above, the court turns to an examination of each prerequisite for class action certification.

## I. Numerosity.

Under the first prerequisite for class certification, a petitioning party must show

---

[27] Pa. R.C.P. No. 1708 (2012).
[28] Cavanaugh v. Allegheny Ludlum Steel Corp., 364 Pa. Super. 437, 442; 528 A.2d 236, 238 (Pa. Super. 1987).
[29] Debbs v. Chrysler Corp., 2002 Pa. Super 326, P50; 810 A.2d 137, 153-154 (Pa. Super. 2002).
[30] Samuel-Bassett v. Kia Motors Am., Inc., 34 A.3d 1, 15 (Pa. 2011).
[31] Pa. R.C.P. 1707(c) and Explanatory Comment—1977.
[32] Pa. R.C.P. 1707, Explanatory Comment—1977.

that joinder of all members is impracticable because "the class is so numerous"[33] "A class is sufficiently numerous when the number of potential individual plaintiffs would pose a grave imposition on the resources of the court and an unnecessary drain on the energies and resources of the litigants should plaintiffs sue individually.... [The petitioning party] need not plead or prove the actual number of class members, so long as he is able to define the class with some precision and provide sufficient indicia to the court that more members exist than it would be practicable to join."[34]

In this case, Plaintiff asserts that the class is composed of no fewer than 214 members.[35] More importantly, AAA does not dispute that the prerequisite of numerosity has been met,[36] even if the class should number fewer than 214 members. Accordingly, the court finds that the numerosity requirement of Pa. R.C.P. 1702(1) has been satisfied.

## II. **Commonality**.

Under the second prerequisite for class certification, one or more members of a class may sue on behalf of all members "if there are questions of law or fact common to the class."[37] This means that "the facts must be substantially the same so that proof as to one claimant would be proof as to all."[38]. In addition, the fair and efficient adjudication of a class action suit requires that common questions of law or fact must "predominate over any question affecting only individual members."[39]

In Pennsylvania

---

[33] Pa. R.C.P. 1702(1).
[34] Baldassari v. Suburban Cable TV Co., 2002 Pa. Super. 275, P14; 808 A.2d 184, 190 (Pa. Super. 2002).
[35] Alfa's Proposed Findings-of-Fact and Conclusions-of-Law, ¶ 61, p. 17.
[36] AAA's Proposed Findings-of-Fact and Conclusions-of-law, ¶ 128, p. 25.
[37] Pa. R.C.P. 1702(2).
[38] Liss & Marion, P.C. v. Recordex Acquisition Corp., 603 Pa. 198, 218; 983 A.2d 652, 665 (Pa. 2009).
[39] Samuel-Bassett v. Kia Motors Am., Inc., 34 A.3d 1, 16 (Pa. 2011) (discussing Pa. R.C.P. 1708(1)).

> Class actions may be maintained even when the claims of members of the class are based on different contracts so long as the relevant contractual provisions raise common questions of law and fact and do not differ materially.[40]

Review of the record shows that Alfa's claims satisfy the commonality requirement of Pa. R.C.P. 1702(a)(2). Specifically, Alfa seeks to redress an alleged contractual breach which is common to all members of the class. Indeed, the first issue of fact and law common to the class members is whether AAA improperly assigned to itself emergency roadside calls which AAA was contractually obligated to assign to Alfa and/or other members of the class. The second issue of fact and law common to the class members is whether AAA breached its contracts by unilaterally reducing the territories assigned to Alfa and to the other class members. This court finds that Alfa has met its burden of demonstrating the existence of common issues of law and fact that predominate over any other issues that may affect individual members.[41]

## III. **Typicality**.

Under the third prerequisite for class action certification, one or more members of a class may sue on behalf of all members if "the claims and defenses of the representative parties are typical of the claims or defenses of the class."[42] The purpose for this requirement is to

> ensure that the class representative's overall position on the common issues is sufficiently aligned with that of the absent class members to ensure that pursuit of [the representative's] interests will advance those of the proposed class members.

[40] Janicik v. Prudential Ins. Co., 305 Pa. Super. 120, 133; 451 A.2d 451, 547 (Pa. Super. 1982).
[41] In its Proposed Findings-of-Fact and Conclusions-of-Law, AAA asserts that commonality is defeated because the claims of a number of purported class members are barred under the statute of limitations. However, this is an issue of fact pursuant to the discovery rule which states that "If the injured party could not ascertain when he was injured and by what cause within the limitations period, despite the exercise of reasonable diligence, then the discovery rule is appropriate [to toll the statute of limitations].... Coleman v. Wyeth Pharms., Inc., 6 A.3d 502, 510 (Pa. Super. 2010) (recognizing that determining plaintiff's awareness of an injury is an issue of fact generally performed by the fact-finder.)
[42] Pa. R.C.P. 1702(3).

> Typicality exists if the class representative's claims arise out of the same course of conduct and involve the same legal theories as those of other members of the putative class. The requirement ensures that the legal theories of the representative and the class do not conflict, and that the interests of the absentee class members will be fairly represented. [However,] typicality does not require that the claims of the representative and the class be identical, and the requirement may be met despite the existence of factual distinctions between the claims of the named plaintiff and the claims of the proposed class.[43]

In this case, Alfa's claims are typical of the claims of the purported members of the class. Alfa and the members of the class entered into substantially similar contractual agreements with AAA. Invariably, the purpose of such contractual agreements was to provide distressed motorists insured by AAA with emergency roadside assistance. Alfa asserts that AAA improperly assigned emergency roadside calls to its own fleet instead of assigning them to Alfa and to the other members of the class. Even though the various contracts may have varied as to whether each roadside service provider enjoyed a "primary" or "auxiliary" status, or whether each contract contained differences in the size and boundaries of any assigned territory, the issue typical to all members of the class remains substantially the same –namely, whether AAA improperly assigned roadside emergency calls to itself instead of assigning them to Alfa and to the other members of the class. This court finds that Alfa has met its burden of showing the requirement of typicality.

## IV. Adequacy of Representation.

Under the fourth prerequisite for class certification, one or more members of a class may sue on behalf of all members of the class if "the representative [party] will fairly and adequately assert and protect the interests of the class under the criteria set

[43] Samuel-Bassett v. Kia Motors Am. Inc., 34 A. 3d at 30-31.

forth in Rule 1709."[44] Pursuant to Pa. R.C.P. 1709, the court shall consider—

(1) whether the attorney for the representative parties will adequately represent the interests of the class,
(2) whether the representative parties have a conflict of interests in the maintenance of the class action, and
(3) whether the representative parties have or can acquire adequate financial resources to assure that the interests of the class will not be harmed.[45]

In its Proposed Findings-of-Fact and Conclusions-of-Law, AAA does not challenge the ability of Alfa's counsel to adequately represent the members of the class, nor the ability of Alfa to obtain adequate financial resources to assure protection of the class members' interests. Therefore, the court accepts Alfa's representation as to its counsel's ability to adequately represent the class, and that Alfa will obtain adequate funds necessary to protect the interests of that class.

Nevertheless, AAA challenges the adequacy of Mr. Oleg A. Lukovsky, president of Alfa ("Mr. Lukovsky,") on account of his criminal convictions. AAA points to a Court Summary Sheet issued by the Court of Common Pleas, Philadelphia County, Criminal Division, which shows that in 1997 Mr. Lukovsky was found guilty of robbery and nine other related criminal offenses.[46] AAA concludes that Mr. Lukovsky's character makes him unfit to adequately represent the members of the purported class. [47]

"Evidence of dishonesty [or] bad character ... will ... weigh against the named party's adequacy as a representative."[48] However, "A class representative need not be the best of all possible representatives but rather one that will pursue a resolution of the

[44] Pa. R.C.P. 1702(4).
[45] Pa. R.C.P. 1709.
[46] Court Summary of Oleg A. Lukovsky, Hearing Records filed by AAA, Exhibit 30.
[47] See also AAA' Corrected Memorandum of Law in Opposition to Alfa's Motion for Class Action Certification, pp. 16-18, 59 62.
[48] Prudential Ins. Co., 305 Pa. Super. 120, 139-140 451 A.2d 451, 460(Pa. Super. 1982)

controversy with the requisite vigor and in the interest of the class."[49] Finally, trial courts in Pennsylvania "are vested with broad discretion" when ruling on a motion for class action certification.[50] In this case, AAA has not demonstrated that Alfa, as proposed class representative, is inadequate to represent the class merely because its president, Mr. Lukovsky, was found guilty of criminal charges in 1997.

In its Findings-of-Fact and Conclusions-of-Law, AAA also challenges Alfa's adequacy to represent the members of the class on grounds of conflict-of-interest. Specifically, AAA asserts that Alfa's assigned territories overlapped with those of other class members, and argues that competing businesses are unfit to adequately represent a class composed of members with competing interests.[51] The court finds that the issues common to the class members far outweigh any conflicting business interests that may exist among them. Indeed, AAA's argument fails because the alleged existence of a competitive environment among the purported members of the class merely shows that Alfa and the other class members were similarly situated in their contractual relationship with AAA, particularly in light of the allegation that AAA assigned to itself a number of roadside service calls which should have been assigned to any members of the class. For the above reasons, this court finds that Alfa has met its burden of demonstrating the requirement of adequacy, and no conflict of interests exists between Alfa and the other class members.

## V. Fair and Efficient Method of Adjudication.

Under the final requirement for class certification, one or more members of a class may sue on behalf of all members if the "class action provides a fair and efficient

---

[49] Id.
[50] Baldassari v. Suburban Cable Tv Co., 2002 Pa. Super 275, P10; 808 A.2d 184, 189 (Pa. Super. 2002).
[51] AAA' Findings-of-Fact and Conclusions-of-Law, ¶¶ 254-253 (Filed under seal). See also AAA's response in Opposition to Alfa's Motion for Class Action Certification, pp. 9-11, 55-56.

method for adjudication of the controversy under the criteria set forth in Rule 1708."[52] When, as here, only monetary damages are sought, a class action will provide a fair and efficient method for adjudication of the controversy if the seven elements contained in Pa. R.C.P. 1708(a) are satisfied. Thus, the court will discuss each of the seven elements contained in Pa. R.C.P. 1708(a).

(a) Under Pa. R.C.P. 1708(a)(1), the court is required to consider whether common questions of fact and law predominate over any question affecting only individual members. This court has already determined in Section II above that Plaintiff has met its burden of showing that common issues of law and fact predominate over issues affecting only individual members, and no further discussion is necessary as to this prerequisite.

(b) Under Pa. R.C.P. 1708(a)(2), the court is required to consider the size of the class and the difficulties likely to be encountered in the management of the action as a class action. Pennsylvania courts have allowed class actions where the number of class members exceeded 9,000.[53] "Problems of administration alone ... should not justify the denial of an otherwise appropriate class action, for to do so would contradict the policies underlying [the class action] device."[54] To properly manage any difficulties created by a numerous class, Pennsylvania courts have relied on the "ingenuity and aid of counsel and upon its plenary authority to control the action to solve whatever management problems the litigation may bring."[55]

In this case, Plaintiff asserts that the class will be composed of no more than 214 members, and any difficulty that could arise out of the size of this class can be

---

[52] Pa. R.C.P. 1702(5).
[53] Samuel-Bassett v. Kia Motors Am., Inc., 34 A. 3d 1, 45 (Pa. 2011).
[54] Janicik v. Prudential Ins. Co., 305 Pa. Super. 120, 143-144; 451 A. 2d 451, 462 (Pa. Super. 1982).
[55] Jainick v. Prudential Ins. Co. 305 Pa. Super. At 143-144; 451 A. 2d at 462.

managed with the aid of counsel and under the supervision of this court. For these reasons, the court sees no serious management difficulties arising out of the size of the proposed class.

(c) Under Pa. R.C.P. 1708(a)(3), the court is required to consider—

> Whether the prosecution of separate actions by or against individual members of the class would create a risk of
>
> (i) inconsistent or varying adjudications with respect to individual members of the class which would confront the party opposing the class with incompatible standards of conduct;
>
> (ii) adjudications with respect to individual members of the class which would as a practical matter be dispositive of the interests of other members not parties to the adjudications or substantially impede their ability to protect their interests.

"In determining fairness and efficiency, the court must balance the interests of the litigants, present and absent, and of the court system.[56] When as here, a class action defendant conducts its business statewide, and the proposed class action encompasses the same geographical boundaries, such a defendant "may ... be subject to inconsistent standards of conduct" if it had to separately litigate claims which arise out of "virtually identical contracts."[57] Likewise, a class action such as this would provide protection to the "class members, especially those with smaller claims [who] may be unable to afford the costs of protecting their interest" through separate actions.[58] For these reasons, the court finds that the class action would minimize any risk of inconsistency to the class action defendant, while protecting the interests of the class members, regardless of the

---

[56] Shaev v. Sidhu, 2009 Phila. Ct. Com. Pl. LEXIS 63 (Pa. C.P. 2009) (aff'd without opinion by Shadev v. Sidhu, 11 A. 3d 1016 (Pa. Super. 2010)).
[57] Janicik v. Prudential Ins. Co., 305 Pa. Super. 120, 143-144; 451 A.2d 451, 462(Pa. Super. 1982)
[58] Janicik v. Prudential Ins. Co., supra at 143, 462 (Pa. Super. 1982)

size of their claims.

(d) Under Pa. R.C.P. 1708(a)(4), the court is required to consider "the extent and nature of any litigation already commenced by or against members of the class involving any of the same issues." In this case, the Seiple's and Price's litigations, discussed *supra* at ¶¶ 9, 13 of the Section titled Findings-of-Fact, were resolved respectively by post-verdict settlement and by settlement alone. Neither Alfa nor AAA have pointed to any other litigation already commenced by or against members of the class which may involve any of the same issues; therefore, the court concludes that continuation of the instant action as a class action creates no problem.

(e) Under Pa. R.C.P. 1708(a)(5), the court is required to consider "whether the particular forum is appropriate for the litigation of the claims of the entire class."

In this Commonwealth, courts of common pleas have jurisdiction over class members who reside in Pennsylvania.[59] In this case, review of the record shows that the proposed class is comprised only of residents of Pennsylvania, and many of the facts giving rise to the cause of action occurred in Philadelphia County, as admitted by a former dispatch manager of AAA.[60] The court is satisfied that the Court of Common Pleas, Philadelphia County, is the appropriate forum for litigation of the class action.

(f) Under Pa. R.C.P. 1708(a)(6), the court is required to consider "whether in view of the complexities of the issues or the expenses of litigation, the separate claims of individual class members are insufficient in amount to support separate actions."

In this case, evidence thus far developed shows that during the class period, Alfa may have lost gross revenues in the amount of approximately $10,000 from

---

59 Shaev v. Sidhu, 2009 Phila. Ct. Com. Pl. LEXIS 63 (Pa. C.P. 2009) (aff'd without opinion by Shadev v. Sidhu, 11 A. 3d 1016 (Pa. Super. 2010)).
60 Transcript of Hearing dated June 13, 2012, p. 137:8—25

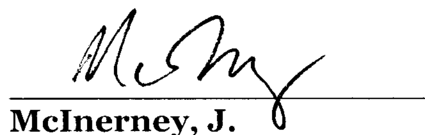
calls shifted to Club Fleet.[61] This relatively small amount shows that the claims of individual class members may be insufficient to support separate actions, and the court is satisfied that a class action is a fair and efficient method of adjudicating the instant controversy.

(g) Under Pa. R.C.P. 1708(a)(7), the court is required to consider "whether it is likely that the amount which may be recovered by individual class members will be so small in relation to the expenses and effort of administering the action as not to justify a class action."

In this case, stipulated evidence shows that Seiple's recovered $123,000 in an action involving similar facts and issues. The court is satisfied that the amounts potentially recoverable by individual class members could be sufficiently large as to justify the effort of administering a class action suit.

For the foregoing reasons, Alfa's Motion for Class Action Certification is granted. A simultaneous Order shall be issued consistent with these Findings-of-Fact and Conclusions-of-Law.

**By The Court,**



**McInerney, J.**

[61] Hearing Records, Plaintiff's Exhibit 13.