PETITION FOR ADOPTION, AMENDMENT, OR REPEAL OF A STATE ADMINISTRATIVE RULE

Print Form

In accordance with RCW 34.05.330, the Office of Financial Management (OFM) created this form for individuals or groups who wish to petition a state agency or institution of higher education to adopt, amend, or repeal an administrative rule. You may use this form to submit your request. You also may contact agencies using other formats, such as a letter or email.

The agency or institution will give full consideration to your petition and will respond to you within 60 days of receiving your petition. For more information on the rule petition process, see Chapter 82-05 of the Washington Administrative Code (WAC) at http://apps.leg.wa.gov/wac/default.aspx?cite=82-05.

CONTACT INFORMATION *(please type or print)*

Petitioner's Name Steve Kirby

Name of Organization Washington State House of Representitives

Mailing Address [redacted]

City Tacoma State WA Zip Code 98444

Telephone [redacted] Email [redacted]

COMPLETING AND SENDING PETITION FORM

- Check all of the boxes that apply.
- Provide relevant examples.
- Include suggested language for a rule, if possible.
- Attach additional pages, if needed.
- Send your petition to the agency with authority to adopt or administer the rule. Here is a list of agencies and their rules coordinators: http://www.leg.wa.gov/CodeReviser/Documents/RClist.htm.

INFORMATION ON RULE PETITION

Agency responsible for adopting or administering the rule: Office of Insurance Commissioner

☑ **1. NEW RULE - I am requesting the agency to adopt a new rule.**

☑ The subject (or purpose) of this rule is: Automobile property damage claims settlement practices

☑ The rule is needed because: Some insurers are engaged in unfair and deceptive claims settlement practice steering of consumers to insurance "preferred or approved" shops, price fixing bid rigging, short paying of claims, unreasonable denial of benefits, unsafe vehicle repairs being performed

☑ The new rule would affect the following people or groups: Auto insurers and consumers

☑ **2. AMEND RULE - I am requesting the agency to change an existing rule.**

List rule number (WAC), if known: WAC 284.30.330 & 390

☑ I am requesting the following change: Provided with this petition are proposed and amended regulations along with examples of insurer bad faith conduct and documentation of consumers being short paid and driving unsafe vehicles.

☑ This change is needed because: NHTSA has strict requirements for manufacturing safe vehicles however no such requirements exist regarding repairing these safe vehicles.

☐ The effect of this rule change will be: _____

☐ The rule is not clearly or simply stated: _____

☑ **3. REPEAL RULE - I am requesting the agency to eliminate an existing rule.**

List rule number (WAC), if known: Sections of WAC 284.30.390

(Check one or more boxes)

☑ It does not do what it was intended to do.

☐ It is no longer needed because: _____

☐ It imposes unreasonable costs: _____

☐ The agency has no authority to make this rule: _____

☐ It is applied differently to public and private parties: _____

☐ It conflicts with another federal, state, or local law or rule. List conflicting law or rule, if known: _____

☐ It duplicates another federal, state or local law or rule. List duplicate law or rule, if known: _____

☑ Other (please explain): See examples provided

Proposed Revisions, Repeals, and Additions to WAC 284.30

- **Changes to several sections and subsections are proposed in this document, each on its own page.**

- **Supporting documentation is included following the proposed changes.**

In addition to the supporting documents provided herein, there is substantially more documentation that will be provided to your office, as well as many consumers are standing by to testify about the interactions with their insurance company or the insurance company of the at-fault driver including:

- **Steering to a "network" or "DRP" repair shop**

- **Misrepresentation of terms and conditions under the policy of insurance and Washington Law**

- **Unsafe repairs many consumers have received at insurance preferred shops**

- **Refusal of an insurer to honor their guarantee or warranty for faulty workmanship, poor repairs and other issues after a consumer obtained repairs at an insurance referral repair shop**

- **Artificially fixing and/or controlling prices charged for parts and labor with regards to repairing collision damaged vehicles**

Current regulation:

WAC 284.30.390 (1) ~~Failing to make a good faith effort to communicate with the repair facility chosen by the claimant.~~

Repeal.

- **This code is vague and unenforceable.**

- **This code suggests a repair shop should act as a public adjuster or independent insurance adjuster which is prohibited under RCW 48.17.010.**

Current regulation:

WAC 284.30.390(2)

~~(a) Arbitrarily denying a claimant's estimate for repairs.~~

(b) ~~A denial of the claimant's estimate for repairs to be completed at the chosen repair facility based solely on the repair facility's hourly rate is considered arbitrary~~ ~~*if the rate does not result in a higher overall cost of repairs.*~~

REPEAL:

- **This code suggests that estimates provide by an insurer or a designated appraiser are accurate, fair and reasonable. The evidence shows that a majority of insurers initial estimates are massively deficient and written deliberately short. These deficient estimates are used as tools to STEER CONSUMERS to insurer "preferred" or "recommended" shops.**

- **There is no single price or rate to be the standard of comparison in this rule (see Exhibit 5), *nor should there be.* The prices charged by auto repair shops doing business in Washington State are a range of prices for labor charges depending on the location, size, equipment, training and certifications of technicians, quality of workmanship and other factors for repair facilities.**

- **This regulation allows price fixing and bid rigging and is regularly used as such by insurers. (……*if the rate does not result in a higher overall cost of repairs*). This language is utilized by insurers to mean the insurer dictates the cost of repair.**

- **There is currently NO OVERSITE that verifies insurers are playing fairly**

- **These codes were instigated in the late 70's by the insurance commissioner's office and challenged in court. (see** Horan *v.* Marquardt, 630 P.2d 947 (Wash. Ct. App. 1981)**. We have had nearly 40 years to see how these regulations don't work.**

- **WASHINGTONIANS DESERVE REAL COSUMER PROTECTION!**

Proposed revision of 284.30.390(1&2):

WAC 284.30.390(1) Consumer choice of shop must be honored. An insurer must tell a claimant both orally and in writing they have the right to choose to have the loss vehicle repaired at a repair shop of their choice and that the insurer must pay the reasonable cost of necessary repairs to restore the loss vehicle to its condition prior to the loss.

(a) When a consumer chooses their own repair facility to restore the loss vehicle to its condition prior to the loss an insurer shall not:

1) Unfairly discriminate against the claimant for choosing their own repair facility and/or using a public adjuster.
2) Arbitrarily deny the claimant's estimate for repairs.
3) Unreasonably delay inspections or response to notices about damage and/or repairs. For the purpose of this section, reasonable time is considered to be not more than 3 business days.
4) Fail to reasonably investigate the damaged property and consider all loss-related damage. For the purpose of this section, an insurer may not shift the burden of claims investigation, documentation and adjusting to other parties.
5) Fail to provide payment for a replacement rental vehicle and/or loss of use for the duration of insurer-caused delays, such as inspections and/or investigations required by an insurer that, due to the insurers delay(s) ultimately create a financial impact to the claimant. This is required whether or not rental coverage is provided for in the applicable policy. This rule applies to both insureds and 3rd party claimants.
6) Require a vehicle owner/repair facility to use a specific vendor or process for the procurement of parts or other materials necessary for the repair of a loss vehicle.
7) Provide false, misleading or incomplete information to the claimant for the purpose of (including but not limited to) steering the claimant to a specific repair facility, limiting payment on a claim, fixing prices or other violations of WAC 284.30 and RCW 48.30.010.
8) Limit payment based on rates or charges from a specific repair other than where the loss vehicle is being repaired. Charges from other repair facilities are a factor, but not dispositive, concerning reasonableness and costs when a different repair facility performs repairs.
9) Inhibit the claimants ability to document the claims adjusting process including but not limiting to recording by audio/video.

Violations of this subsection:

a) The commissioner may order such person to cease and desist therefrom. The commissioner shall deliver such order to such person or entity direct or mail it to the person or entity by registered mail with return receipt requested. If the person violates the order after expiration of ten days after the cease and desist order has been received by him or her, he or she may be fined by the commissioner a sum not to exceed five hundred dollars for each violation committed thereafter.

b) A violation of this section is a violation of RCW 48.30.015 The Insurance Fair Conduct Act

Adopt new language:

- **Insurers should not be able to discriminate, steer and bully consumers in to choosing repair shops where the insurance company controls the cost and scope of repairs and type(s) of parts while having NO LIABILITY for the repairs. (See Exhibit 1, an example statement used in the past by State Farm that would fulfill this purpose.)**

- **The insurance commissioner in California recently passed regulations addressing similar steering issues and limitations based on artificially created labor rates. (See Exhibit 2, California Commissioner Dave Jones press release)**

Current regulation:

WAC 284-30-390(4): ~~Failing to prepare or accept an estimate provided by the claimant that will restore the loss vehicle to its condition prior to the loss.~~

Revise:

- **This code is unclear, vague and hard to enforce.**

- **Insurers are mandating repairs that <u>are not consistent</u> with vehicle manufacturers' repair criteria that keep consumers safe in a subsequent collision.**

- **There are no protections for consumers in third party liability situations. Consumers should have their vehicles safely repaired and an insurer should pay for the reasonable and necessary costs that follow the manufacturers repair criteria.**

Proposed revision:

WAC 284-30-390(4): Failing to prepare or accept an estimate provided by the claimant that will restore the loss vehicle to its condition prior to the loss. **<u>Repair procedures/instructions/mandates specified by a vehicle manufacturer shall be required and considered reasonable and part of restoring the loss vehicle to its condition prior to the loss. Violation of this section in the context of a third-party property damage claim constitutes a violation of RCW 19.86.020 and provides a private right of action for damages and remedies under Washington's Consumer Protection Act.</u>**

Violations of this subsection:

a) The commissioner may order such person to cease and desist therefrom. The commissioner shall deliver such order to such person or entity direct or mail it to the person or entity by registered mail with return receipt requested. If the person violates the order after expiration of ten days after the cease and desist order has been received by him or her, he or she may be fined by the commissioner a sum not to exceed five hundred dollars for each violation committed thereafter.

b) A violation of this section is a violation of RCW 48.30.015 The Insurance Fair Conduct Act

Current regulation:

WAC 284-30-390(4)(c): ~~If the claimant chooses to take the loss vehicle to a repair facility where the overall cost to restore the loss vehicle to its condition prior to the loss exceeds the insurer's estimate, the claimant must be advised that he or she may be responsible for any additional amount above the insurer's estimate~~

Revise:

- ***Insurers are not expert vehicle repairpersons*, *Insurers are not liable for a deficient estimate they prepare nor the repairs the insurer is not performing*. This code allows insurers to engage in steering consumers to specific shops and price fixing.**

- **Testimony from insurers at the stake holder's meetings for WAC 284.30 in 2009 was, "we don't know what it is going to cost to repair a vehicle until the repairs are complete". In other words, initial estimates are just estimates and not complete statements of repair costs however insurer estimate are.**

- **Insurers should pay the reasonable value of necessary repairs and inform the policy holder of all benefits under the policy.**

- **There are many consumers standing by to testify regarding insurance company Steering tactics, intimidation, misrepresentations, and short payment of repairs.**

Proposed revision:

WAC 284-30-390(4)(c): If the claimant chooses to take the loss vehicle to a repair facility where the overall cost to restore the loss vehicle to its condition prior to the loss exceeds the insurer's estimate, the claimant must be advised that he or she may be responsible for any additional amount above the insurer's estimate **and that the insurer must pay the reasonable cost of necessary repairs to restore the loss vehicle to pre-loss condition at the claimant's shop of choice. The first party claimant must be advised both orally and in writing of their right to appraisal in the applicable insurance policy.**

Violations of this subsection:

a) The commissioner may order such person to cease and desist therefrom. The commissioner shall deliver such order to such person or entity direct or mail it to the person or entity by registered mail with return receipt requested. If the person violates the order after expiration of ten days after the cease and desist order has been received by him or her, he or she may be fined by the commissioner a sum not to exceed five hundred dollars for each violation committed thereafter.

b) Violation of this section is a violation of RCW 48.30.015 The Insurance Fair Conduct Act

Proposed regulation:

WAC 284.30.390(4)(d) When a vehicle has a manufacturer warranty and/or requirements specified in a lease in place at the time of the loss, an insurer must honor all requirements to keep such warranty and/or lease stipulations in place.

Adopt new language:

- **Consumers deserve repairs that maintain the safety and performance their vehicle came with and should be able to retain as much value as possible after repairs.**

- **The federal government through the NHTSA mandate safe vehicles be built, and regulate such manufacturing – consumers win with safer vehicles. However, there are no standards for *repairing* these safe vehicles in the regulations today, leaving consumers in harm's way. Vehicle manufacturers know how the vehicles they manufacture should be repaired, and these standards should be upheld. The repair of collision-damaged vehicles should follow the manufacturers' repair instructions.**

- **See Exhibit 10 regarding NHTSA's response to the defective Takata airbags, and Exhibit 9 for an example of a manufacturer's repair requirement that is regularly denied by insurers.**

Violations of this subsection:

c) The commissioner may order such person to cease and desist therefrom. The commissioner shall deliver such order to such person or entity direct or mail it to the person or entity by registered mail with return receipt requested. If the person violates the order after expiration of ten days after the cease and desist order has been received by him or her, he or she may be fined by the commissioner a sum not to exceed five hundred dollars for each violation committed thereafter.

d) A violation of this section is a violation of RCW 48.30.015 The Insurance Fair Conduct Act

Current regulation:

WAC 284-30-390(5): ~~If requested by the claimant and if the insurer prepares the estimate, failing to provide a list of repair facilities within a reasonable distance of the claimant's principally garaged area that will complete the vehicle repairs for the estimated cost of the insurer prepared estimate.~~

Revise:

- **Insurers are heavily steering consumers to their preferred shops where the insurer controls the prices. The insurer then uses these artificially created prices to bolster their profits all the while manipulating/fixing market prices.**

- **These regulations do not insure that auto repair shops will actually perform safe, high quality repairs consistent with vehicle manufacturers repair criteria, rather just the opposite. Consumer are told that auto repair shops should *"negotiate the repair on behalf of the vehicle owner"* HOWEVER Auto repair shops have no ability to dispute a short cut estimate or payment from an insurer.**

- **These low repair costs have turned in to a recipe for shortcuts and repair shops are frequently performing short cut repairs that inconsistent with manufacturers' requirements, leaving consumers driving unsafe vehicles. See Exhibit 7 for examples of poor repairs resulting from such steering.**

Proposed regulation:

WAC 284-30-390(5): **Only** If requested by the claimant and if the insurer prepares ~~the~~ **an** estimate, failing to provide a list of repair facilities within a reasonable distance of the claimant's principally garaged area that will complete the vehicle repairs for the estimated cost of the insurer prepared estimate. **In this circumstance, when the claimant chooses the shop referred by the insurer, the insurer provide the referral in writing and must provide a written warranty independent of the repair facility's warranty that the repair will restore the vehicle to pre-loss condition as well as written notice that the insurer will, upon request, pay the reasonable cost of a post-repair inspection at the consumer's choice of repair facility. The insurer shall not require the vehicle owner to utilize any specific repair facility to have any corrective repairs completed under the insurer's independent warranty.**

Violations of this subsection:

e) The commissioner may order such person to cease and desist therefrom. The commissioner shall deliver such order to such person or entity direct or mail it to the person or entity by registered mail with return receipt requested. If the person violates the order after expiration of ten days after the cease and desist order has

been received by him or her, he or she may be fined by the commissioner a sum not to exceed five hundred dollars for each violation committed thereafter.

f) A violation of this section is a violation of RCW 48.30.015 The Insurance Fair Conduct Act

~~**WAC 284-30-390** (6) Failing to consider any additional loss related damage the repair facility discovers during the repairs to the loss vehicle.~~

Remove this now unnecessary/redundant code.

Proposed regulation:

WAC 284-30-390(10) Recommending that claimants make a claim under the liability coverage of the at fault party to avoid paying claims under the collision coverage of the insurance policy.

Adopt new language:

An insurer must honor the terms and conditions under the policy and not attempt to steer a policy holder to the at fault party's insurer where there is no enforceable standard of good faith, fair dealings and equal consideration.

Proposed regulation:

WAC 284-30-390(11) Failing to provide a replacement vehicle in 3rd party liability claims.

In vehicle property damage liability claims in which liability is reasonably clear, the insurer will negotiate the reasonable and necessary costs in direct proportion to the extent of its liability for the rental of another vehicle and may not require a claimant to rent a vehicle to actually cover these costs.

[Statutory Authority: RCW 48.02.060, 48.30.010. 03-14-092 (Matter No. R 2002-06).

Adopt this prior language:

- **Re-instate this prior regulation**
- **This code was repealed in 2009 *without* being discussed in public at the stakeholders' meeting.**
- **Washington case law on the loss of use of property is clear and the public should be informed about their rights after a collision (See Exhibit 11, Holmes vs. Raffo and Stracka trucking).**

Current regulation:

WAC 284-30-330(6): ~~Not attempting in good faith to effectuate prompt, fair and equitable settlements of claims in which liability has become reasonably clear. In particular, this includes an obligation to promptly pay property damage claims to innocent third parties in clear liability situations. If two or more insurers share liability, they should arrange to make appropriate payment, leaving to themselves the burden of apportioning liability.~~

Revise:

- **This code is unenforceable in a 3rd party context.**

- **An insurer paying a third party property damage loss has no duty of good faith, fair dealings and equal consideration to the claimant.**

- **There is no private right of action regarding this code protecting third party claimants to hold insurers accountable.**

Proposed regulation:

WAC 284-30-330(6): Not attempting in good faith to effectuate prompt, fair and equitable settlements of claims in which liability has become reasonably clear. In particular, this includes an obligation to promptly pay property damage claims to innocent third parties in clear liability situations. If two or more insurers share liability, they should arrange to make appropriate payment, leaving to themselves the burden of apportioning liability. **Violation of this section in the context of a third-party property damage claim constitutes a violation of RCW 19.86.020 and provides a private right of action for damages and remedies under Washington's Consumer Protection Act.**

Proposed regulation:

WAC 284-30-330(6)(a) prompt payment of a claim includes payment of the undisputed portion of the property damage loss. Prompt is to mean 5 days.

Adopt new language:

- **Insurers should not be able to withhold the undisputed amount of the loss in order to force a lower settlement by starving out the claimant in need of the settlement.**

Proposed regulation:

WAC 284-30-330(6)(b) No insurer shall stop payment for a replacement rental vehicle prior to issuing payment for the undisputed portion of the loss and include reasonable time for the claimant to receive payment. Reasonable time is considered to be 5 days.

Adopt new language:

- **Consumers are harmed when an insurer stops payment for a replacement vehicle prior to the consumer receiving payment for the undisputed amount of the loss.**

- **Currently, insurers will cancel the rental coverage immediately following an offer to settle. How can an injured party replace their vehicle prior to the insurer providing them payment? Current regulation allowes an insurer to make a low ball offer and then force the consumer out of a rental vehicle in order to accept their low offer.**

Current regulation:

WAC 284-30-330(18): ~~Failing to make a good faith effort to settle a claim before exercising a contract right to an appraisal.~~

Revise: (See Exhibit 11, Oregon's appraisal law.)

- **Consumers are at a large disadvantage when facing their insurance company who has nearly unlimited resources and is intimately familiar with the legal process.**
- **The State of Oregon has consumer protection law for consumers that are forced to invoke appraisal to dispute a short payment of their claim.**

Proposed regulation:

WAC 284-30-330(18): Failing to make a good faith effort to settle a claim before exercising a contract right to an appraisal. **When a policy holder demands appraisal due to a dispute of the amount of their property damage claim including a total loss or repair of the damaged property, the insurer shall reimburse the insured for the reasonable appraisal costs *when* the final appraisal decision is greater than the amount of the insurers last offer prior to the demand for appraisal. Appraisal costs shall include attorneys fees and costs if the policy holder is required to retain an attorney for the appraisal process.**

Adopt new language:

- **Level the playing field for consumers against their insurance company**

Violations of this subsection:

a)The commissioner may order such person to cease and desist therefrom. The commissioner shall deliver such order to such person or entity direct or mail it to the person or entity by registered mail with return receipt requested. If the person violates the order after expiration of ten days after the cease and desist order has been received by him or her, he or she may be fined by the commissioner a sum not to exceed five hundred dollars for each violation committed thereafter.

b)A violation of this section is a violation of RCW 48.30.015 The Insurance Fair Conduct Act

Proposed regulation:

WAC 284-20-015

Standard auto policies.

(1) This regulation is promulgated pursuant to RCW 48.18.120(1) to define and effect reasonable uniformity in all basic contracts of auto insurance.
(2) All policies which include coverage for automotive property damage are hereby defined to be basic contracts of auto insurance.
(3) No company shall issue any basic contract of auto insurance covering property or interest therein in this state that does not include a provision for the right to appraisal. The intent of this subsection is to create a consumer protection standard equal to any rights an insured would have under the 1943 New York Standard Fire Insurance Policy with regards to the right of appraisal.
(4) All auto policy's must contain the following language:
    (a) In case the insured and this Company shall fail to agree as to the actual cash value or the amount of loss, then, on the written demand of either, each shall select a competent and disinterested appraiser and notify the other of the appraiser selected within twenty days of such demand. The appraisers shall first select a competent and dis-interested umpire; and failing for fifteen days to agree upon such umpire, then, on request of the insured or this Company, such umpire shall be selected by a judge of a court of record in the state in which the property covered is located. The appraisers shall then appraise the loss, stating separately actual cash value and loss to each item; and, failing to agree, shall submit their differences, only, to the umpire. An award in writing, so itemized, of any two when filed with this Company shall determine the amount of actual cash value and loss. Each appraiser shall be paid by the party selecting him and the expenses of appraisal and umpire shall be paid by the parties equally.

Adopt new language:

- **Washington State provides this consumer protection standard for home owners "fire and casualty" policy's.**

- **Currently, there is no requirement for an insurance company to provide a copy of the insurance policy prior to or at the time of purchasing the policy. In other words, consumers cannot see what they are buying before they buy it.**

- **Consumers should have protections so no insurer can leverage their massive economic advantage over their policy holder.**

SUPPORTING DOCUMENTS

This section contains all Exhibits referenced in the preceding proposed regulatory changes, as well as additional documents which demonstrate the need for the proposed changes.

Exhibit Index:

1. **California law requires insurers to disclose consumer choice. See statement used by State Farm regarding shop choice**
2. **Press release from California Insurance Commissioner Dave Jones**
3. **A news article about one policyholders six year legal battle with State Farm**
4. **News article about a policy holders 16 year legal battle against Nationwide Insurance**
5. **A letter from former judge Irv Berteig detailing his difficulties and mistreatment during his own insurance claim**
6. **Arbitration award for consumer against an insurer regarding short payment of repairs on labor rates**
7. **An example e-mail from Geico illustrating blatant misrepresentation of the law**
8. **Example post-repair inspection report showing repairs that result from insurance-preferred "DRP" shops and their extreme cost-containment model**
9. **Example of a manufacturer's repair requirement that is often denied by insurers**
10. **NHTSA's exhaustive response to the airbag inflator proble**
11. **ORS 742.466, Oregon State's regulation regarding independent appraisal provisions**
12. **Holmes vs. Raffo and Straka Trucking v. Peterson, Washington case law regarding collectible loss of use**
13. **The 1963 Consent Decree detailing how these unfair and deceptive practices have been prevalent for 50+ years**
14. **A list of links to local news station articles and videos documenting how wide spread the problems of insurer unfair and deceptive claims settlement practices are across the country**

Exhibit 1:

California regulation requiring State Farm to inform consumer's regarding shop choice

Main regulation requiring all insurers to notify claimants they have the right to choose their own repair shop and the insurers must pay the reasonable and necessary costs

Washington State should have regulations that clearly define consumer rights and choice and don't allow insurers to mislead claimants

Providing Insurance and Financial Services
Home Office, Bloomington, IL

State Farm®

February 01, 2014

[redacted]
Seattle WA 98144-4213

State Farm Claims
P O Box 52250
Phoenix AZ 85072-2250

RE: Claim Number: 47-400[redacted]
Date of Loss: [redacted] 2014
Our Insured: [redacted]

Dear [redacted]

At your request, we recently provided you with information about an auto repair facility or facilities that can repair your vehicle. Insurance Code Section 758.5(2) requires us to provide you with the following notice:

"WE ARE PROHIBITED BY LAW FROM REQUIRING THAT REPAIRS BE DONE AT A SPECIFIC AUTOMOTIVE REPAIR DEALER. YOU ARE ENTITLED TO SELECT THE AUTO BODY REPAIR SHOP TO REPAIR DAMAGE COVERED BY US. WE HAVE RECOMMENDED AN AUTOMOTIVE REPAIR DEALER THAT WILL REPAIR YOUR DAMAGED VEHICLE. WE RECOMMEND YOU CONTACT ANY OTHER AUTOMOTIVE REPAIR DEALER YOU ARE CONSIDERING TO CLARIFY ANY QUESTIONS YOU MAY HAVE REGARDING SERVICES AND BENEFITS. IF YOU AGREE TO USE OUR RECOMMENDED AUTOMOTIVE REPAIR DEALER, WE WILL CAUSE THE DAMAGED VEHICLE TO BE RESTORED TO ITS CONDITION PRIOR TO THE LOSS AT NO ADDITIONAL COST TO YOU OTHER THAN AS STATED IN THE INSURANCE POLICY OR AS OTHERWISE ALLOWED BY LAW. IF YOU EXPERIENCE A PROBLEM WITH THE REPAIR OF YOUR VEHICLE, PLEASE CONTACT US IMMEDIATELY FOR ASSISTANCE."

State Farm® does not require that you use any specific repair facility to repair your vehicle. You have the right to select any auto repair facility to repair your vehicle.

If you have any questions, please contact us.

A domestic or foreign insurer or its agent or employee may not recommend the use of a particular motor vehicle repair service or network of repair services without informing the claimant that the claimant is under no obligation to use the recommended repair service or network of repair services. If a domestic or foreign insurer or its agent or employee recommends the use of a particular motor vehicle repair service or network of repair services, the following advisory must be made to the insured or claimant at the time a claim for motor vehicle collision damage is reported:

"You have the legal right to choose a motor vehicle collision repair shop to fix your vehicle. Your policy will cover the reasonable costs of repairing your vehicle to its pre-accident condition no matter where you have repairs made."'

Exhibit 2

December 13th 2016 press release regarding new regulations from California Insurance Commissioner Dave Jones

- **Illegal practice of insurance companies steering consumers to specific shops still a problem**

- **Consumers should not be misled by their insurance company**

- **Price fixing of labor rates is a problem. Consumers shouldn't have to pay out of pocket for proper and safe repairs**

New anti-steering regulations issued to protect consumers

News: 2016 Press Release
For Release: December 13, 2016
Media Calls Only: 916-492-3566

New anti-steering regulations issued to protect consumers
New rules prevent illegal steering and ensure unfettered consumer choice of repair shops and more timely damage inspections

SACRAMENTO, Calif. — Insurance Commissioner Dave Jones today issued new Anti-Steering in Auto Body Repair regulations that increase consumer protections to prevent consumers from being misled or claims delayed when a collision-damaged vehicle needs to be repaired.

The new rules prohibit insurers from making untruthful, deceptive, or misleading statements to consumers that unreasonably influence a consumer's right to select the repair facility. These new regulations complement existing state consumer protection laws that prohibit insurance companies from requiring that repairs be done in an insurance company-chosen shop and guarantee that consumers have the absolute right to select where they have their vehicles repaired. The new rules also provide guidelines for reasonable timeframes for insurers to inspect damaged vehicles and identify what constitutes unreasonable distances in cases where an insurer requires the consumer to travel to obtain a repair estimate or have a vehicle repaired.

"Consumers who suffer from collision damage should not be misled by insurance companies or forced to wait weeks for an inspection in order to steer them away from their chosen shop and into insurer-contracted repair shops just so the insurance company can save money at the expense of proper and safe repairs," said Commissioner Jones.

These new regulations follow the recently approved Auto Collision Repair Labor Rate Survey regulations, which set forth standards for insurers, which, if followed, will ensure that auto body repair labor rate surveys are accurate and reliable so that insurers pay the reasonable and proper amount and consumers are therefore not paying out-of-pocket for collision repairs.

The Office of Administrative Law (OAL), which independently reviews all new regulations, approved the Commissioner's regulation yesterday. The regulation goes into effect by operation of law on January 1, 2017. However, these newly adopted regulations are part of the Fair Claims Settlement Practices Regulations, which contain a delayed compliance date in order to give insurers additional time to comply. The compliance date for the Anti-Steering in Auto Body Repair regulations is March 12, 2017.

Exhibit 3:

January 2017 news article about one policyholders six year legal battle with State Farm

- **State Farm appealed this case to the supreme court. The verdict was upheld for the consumer**

- **It is unreasonable for a consumer to be forced to take a case to the Supreme Court just to get their car fixed**

- **State Farm's claims settlement practices in Washington are similar to this article.**

- **There are consumers waiting to testify about their experience with State Farm and other insurers.**

Georgia Policyholder Wins Breach of Contract and Bad Faith Case Against State Farm

Body Shop Business Staff Writers,

Attorney Eugene C. Brooks, founder of the Brooks Law Office, announced that the Georgia Supreme Court has refused to hear State Farm's appeal of a 2014 verdict in a breach of contract and insurance bad faith case (case no. STCV1200617 filed in the State Court of Chatham County) against State Farm involving the owner of a Honda Accord who had insured under a State Farm policy in 2011.

That year, a vandal broke her windows, flattened her tires and scratched her paint. Court documents further state that the plaintiff selected Hernandez Collision Center (HCC) to repair her car, but State Farm refused to pay for towing costs, full car rental and full costs of repair, all of which were covered by the policy.

State Farm's estimators testified that the plaintiff's car could be repaired in Savannah, Ga., for $5,045. However, court documents state that HCC's repair estimate was $9,589, over $4,000 more than the State Farm estimate. Shop managers from HCC appeared and testified at the trial.

“The evidence showed that State Farm applied a different method of determining its payment obligations than those described in the policy,” said Brooks. “State Farm applied an internal method based on its determination of what was a ‘competitive’ rate based on a survey that was not described in the policy. Under Georgia law, any ambiguity in the policy written by State Farm had to be interpreted in favor of our client, the policyholder.”

Court documents further state that State Farm’s refusal to pay full repair costs left the plaintiff owing HCC a balance of $4,297 for her car repairs, and that she paid $1,125 for her rental car. The jury returned a verdict favoring the plaintiff for all damages she sought, plus $5,000, the maximum penalty allowed under Georgia insurance bad faith statute. The jury also awarded her $30,000 in attorney fees.

State Farm appealed the jury verdict to the Georgia Court of Appeals on numerous issues, alleging that the trial court should have dismissed the case, had improperly instructed the jury and had admitted testimony that State Farm believed to be unduly prejudicial. The Court of Appeals affirmed the verdict without opinion and State Farm then filed the petition to the Georgia Supreme Court that was denied, allowing the plaintiff to execute on the judgement in her favor.

Exhibit 4:

January 2014 news article about one policyholders sixteen-year legal battle with Nationwide Insurance over bad car repairs

- **Consumer fought Nationwide Insurance for 16 years over bad repairs, drove an unsafe car when the car should have been declared a total loss from the beginning**

- **"For 12 years, Nationwide would not produce any evidence no matter the number of court orders filed for evidence," the Judge said.**

- **The Judge's statements about Nationwide's actions in his brief are shocking:**

Judge Sprecher takes a moment to chastise Nationwide and similar companies that **used their nearly unlimited resources to take on citizens**.

"Its message is 1) that it is a defense minded carrier, 2) do not mess with us if you know what is good for you, 3) you cannot run with the big dogs, 4) there is no level playing field to be had in your case, 5) you cannot afford it and what client will pay thousands of dollars to fight the battle, 6) so we can get away with anything we want to and 7) you cannot stop us ... (Nationwide) applied extensive examples of bad faith in failing and refusing to disclose vital information ..."

The Mercury (http://www.pottsmerc.com)

Berks County family awarded $18M in suit against Nationwide Insurance

By Caroline Sweeney, The Mercury

Friday, July 11, 2014

READING — After 16 years of court proceedings, a Berks County family is looking for a light at the end of the tunnel after a ruling awarded them $18 million for punitive damages from Nationwide Insurance.

The lawsuit involved a lengthy proceeding to get the insurer to pay for replacement of a Berks County woman's car that was damaged in a wreck.

Sadly, the case took so many years winding through the court system that the plaintiff died of cancer unrelated to the case before the settlement.

The judge in the case was so struck by the insurer's actions in the dispute that he included remarks in his ruling characterizing big companies as uncaring and arrogant toward the average consumer.

The story

The saga started on Sept. 4, 1996 when Sherri Berg, of Mohnton, was involved in a non-injury crash while driving her 1996 Jeep Grand Cherokee.

Berg, and her husband Dan, were insured with Nationwide Mutual Insurance Co. at the time.

"The ensuing litigation marathon," as described in the recent opinion written by Berks County Judge Jeffrey Sprecher, spawned from a dispute over the amount of damage done to Berg's car and the quality of the resulting repairs.

"We are grateful to the legal system which prevailed, at each appellate level, so that our trial judge could render justice after 16 years of intense litigation," said the family's attorney Ben Mayerson, of Lower Pottsgrove.

The ruling in favor of the Bergs occurred in the civil division of the Berks County Court of Common Pleas.

Despite the possible end to the case, the length of time it has taken to reach this point has not been lost on Dan Berg.

"The years are clicking by," he said. "It's been crazy."

The case

Six days after the 1996 collision, a representative from Nationwide, "concluded that (the Berg's) car should be totalled."

At that time, the SUV was valued at $25,000.

However, on Sept. 20, 10 days after the original assessment was made, Nationwide entered a second estimate.

That estimate, according to the courts, "saved (Nationwide) approximately half of the $25,000 expense to replace the Jeep."

"(Nationwide's) position to repair rather than total and replace the Jeep, never changed until the expiration of the lease in December 1998, 28 months after the collision," Sprecher wrote.

During that time, the Bergs continued to make regular payments toward the lease of the damaged vehicle and "were forced to drive, what they claim, is a defectively repaired Jeep," as Sprecher presented in the ruling.

Nationwide, according to court documents, partnered with Lindgren Chrysler Plymouth to appraise the damage on the Jeep.

Doug Joffred, the manager of the shop at the time, declared the Jeep should be totalled for the first estimate and also issued the revised estimate in 1996.

Several attempts to contact Lindgren Chrysler Plymouth and Joffred were unsuccessful. But in his testimony, Joffred told the court that it is not unusual to originally consider a car a total loss and then reassess once a more through examination has been done.

About a year after the car was repaired, David Wert, a former employee at the shop, reached out to the Bergs and told them he had concerns about the quality of the work done.

That call propelled Berg to get in touch with Mayerson.

Ben Mayerson, and his father Hy who were the attorneys on the case from the beginning, were contacted by the Bergs in 1997. Mayerson said a lawsuit was filed against the insurance company in May 1998.

"It put the fear of God in me," Berg said about getting the call from Wert. He said since repairing cars isn't his area of expertise, he took Wert's word that the car was repaired poorly.

However, a footnote in the Findings of Fact questioned the reliability of Wert's testimony.

"Wert ... offered vague testimony that Nationwide personnel visited Lindgren during the repair process. Wert could not identify the specific personnel, dates, or nature of the visits," the paperwork said.

Attempts to contact Wert also proved unsuccessful.

Even after Wert's testimony was questioned in court, Berg said he believed Wert was right about the condition of the car.

"(Wert) told us that if we were in an accident, there was a potential that the air bags wouldn't open," he said.

But the Bergs were left without a choice. They were a "young family without a lot of money."

"We continued to drive the Jeep because the second car was unsafe," Berg said. He owned a work van but it did not have any seats in the back.

So the Bergs felt their only option was to continue to pay for the Jeep. The value of the SUV depreciated to the point that Nationwide paid $18,000 for it in December, 1998.

"We were just stuck. I had to work and we had to do our things," Berg said.

"It's like telling a little white lie," he said, of the defendants in the case. "You have to tell another one to cover the first one up then you're in a rabbit hole you can't get out of. I think that is what happened in this case."

The legal work

Despite the complexity of the case and the dozens of years' work to reach a proposed settlement, Sprecher quickly summed up the issue in his recent decision.

"The bottom line," Sprecher wrote, "is that (Nationwide) would have paid several thousand dollars more if the Jeep had been totalled ... but by repairing the Jeep at $12,300 (Nationwide) saved nearly $13,000."

The court concluded the car was not repaired "adequately."

But the main proponent that kept the dispute over a $25,000 collision-repair case brewing for so long was, according to Mayerson, Nationwide's failure to provide the proper documents.

"For 12 years, Nationwide would not produce any evidence no matter the number of court orders filed for evidence," he said.

The case is complex with intricate details that fill a 16-year time line from the beginning to the potential end of the "bad faith claim," against Nationwide.

"I think," Berg said, "(Nationwide) doesn't really want a bad faith verdict in the books for people to reference in the future. That is a really big deal in all of this."

This case, which is an example of citizens taking on a multi-billion dollar, national company, also allowed a judge to raise questions about the way insurance cases are handled.

Toward the end of his decision, Sprecher takes a moment to chastise Nationwide and similar companies that used their nearly unlimited resources to take on citizens.

Sprecher mused about the messages sent by companies in these kinds of cases: "Its message is 1) that it is a defense minded carrier, 2) do not mess with us if you know what is good for you, 3) you cannot run with the big dogs, 4) there is no level playing field to be had in your case, 5) you cannot afford it and what client will pay thousands of dollars to fight the battle, 6) so we can get away with anything we want to and 7) you cannot stop us ... (Nationwide) applied extensive examples of bad faith in failing and refusing to disclose vital information ..."

What's next

Although Mayerson using previous court rulings was able to secure the multi-million dollar award from the multi-billion dollar company, Nationwide can still appeal the ruling, which means the dispute may continue.

"Nationwide certainly hasn't contacted us as to how they will pay," Mayerson said.

According to Mayerson, post-trial motions were due on Friday.

Nationwide may fight the ruling in order to keep from paying the large punitive award, Mayerson said, noting the figure falls well within a ratio precedent set in a 1996 case.

"The way the figure of $18 million arose goes back to BMW v. Gore," Mayerson said.

The decision in that case set a precedent that presumed damage awards could not exceed a single digit ratio to harm or a 9-to-1 ratio.

When Mayerson investigated the amount that Nationwide was paying its attorneys, he discovered the fee reached more than $3 million.

In the end, the award, although it can be considered a victory, is bittersweet for the Berg family.

Sherri Berg died at her home on April 25 of this year.

Mayerson, who spent nearly 20 years working with the Bergs, described her as "a beautiful woman."

Nationwide issued a statement about the ruling, saying the company has a strong record of fairness in cases like the Bergs'.

"Nationwide has a strong record of fairness in dealing with its policyholders' claims without resorting to litigation. While Nationwide fully respects the judge's ruling, we deny that the company engaged in bad faith on the Berg claim. We look forward to setting the record straight. The many delays that occurred in this litigation cannot be completely attributed to the company and were beyond our control," said director of public relations Eric Hardgrove.

URL: http://www.pottsmerc.com/general-news/20140711/berks-county-family-awarded-18m-in-suit-against-nationwide-insurance

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Exhibit 5

Letter from King County
Judge Irv Berteig

- **Judge Berteig had to argue with his own insurance company Farmers Insurance and throw the law at them before they would pay his claim.**

- **What is a consumer to do when an insurance company won't pay in full if they are not a Judge that can write a legal brief and use their clout to get their own claim paid?**

[redacted]

[redacted]
Farmers Insurance

RE: Claim #[redacted]

Our vehicle was struck from behind while we were stopped at a red light, behind two other cars, on February 10, 2005 at 6:30 pm. The insured came from our behind-right side (we were in the center lane) and crossed to reach the left turn lane. He struck the rear left corner of our vehicle. The insured, a [redacted], apologized and admitted fault. There was no question regarding liability.

Our vehicle is a 1988 Range Rover Classic in perfect condition at the time of impact. Previous owners and we are members of the Pacific Coast Rover Club [PCRC] and the vehicle has been shown in the annual All British Car Meets, and maintained in immaculate condition. Land Rovers and Range Rovers are recognized for their durability. One main characteristic is the use of body parts that are bolted together rather than welded. Consequently, the proper method of repair is replacement of individual body panels—all readily available and reasonably priced.

The assigned Farmers claims adjuster was [redacted] While pleasant, she did not understand or acknowledge the structural system of the Range Rover. Her minimal assessment suggested only repair (with body filler) of the damaged corner panel and replacement of the missing bumper corner unit, at a cost of $527.

- She failed to identify a buckled side panel, dislodged by the blow to the corner panel or bumper corner—thus breaking the seal under the rear side window and caused the side panel to protrude out from the door, such that air and moisture would be scooped into the car body.

- She failed to recognize the special hardened paint used on this Range Rover—rather prescribing an inferior product.

- She implied that her estimate was a starting point and that high-end vehicles, such as Range Rovers and Mercedes, often cost double to repair. She then referred me to Bernard Import Bodyworks.

- Bernard was not certain about the body structure and also proposed grinding and body filler. To their credit, they did recognize the buckled side panel—but not the solution. They also recognized the paint error. The solution to the buckled panel is to remove the corner and side body panels to reconnect and seal.

- Our club has nearly 300 members and at least two major Rover garages specializing in mechanical repair and restoration. I queried all via our email list server in order to obtain advice from people/experts that I trust. [Note: I am an administrative-law judge—not an auto body specialist.] Local recommendations for a body shop was Haury's Lake City Collision in Lake City. Our club president (who has a major Land Rover garage in Portland specializing in repair and restoration) strongly recommended that the panel be replaced—and "*No body filler!*"

- Haury's understood the structure of the Range Rover and had no difficulty in obtaining the replacement body panel—the proper method of repair.

- Meanwhile, Bernard called to tell me that [redacted] refused to consider revising her assessment.

- I also called the Washington State Office of Insurance Commissioner for advice. They advised that I contact the manager of claims adjusters, and gave me the phone number: [redacted] The person answering referred me to a [redacted] described as the person over claims adjusters for Washington. When [redacted] returned my call, she suggested that I select the body shop of my choice and schedule. They, in turn, would contact the claims adjuster—emphasizing the previously unidentified damage—and they would work out the difference.

- [redacted]at Haury's received the same unyielding response from [redacted] I followed by calling [redacted]gain, this time getting [redacted] who in turn recommend that I speak or email you as the Manager of Seattle Claims Office for Farmers Insurance.

While I am now waiting for some resolution, I am doing what I know best—the law.

Regarding the law applying to insurance:

As you are well aware, the law applying to insurance is complex and wrought with jargon. I have reviewed Title 48 RCW, Chapter 19.86 RCW and Chapter 284-30 WAC, as well searching applicable case law. Some important principles are evident:

RCW 48.01.030 Public Interest. The legislature has declared that the business of insurance requires good faith, abstain from deception, and practice honesty. Washington courts are consistent in recognizing the responsibilities of the insurers. As recently as 2001, the Washington Supreme Court recognized a bad faith act as an insurer's position that is "unreasonable, frivolous or untenable".[1] The concept of "reasonable" is a criterion in law that I face frequently in my cases.[2]

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[1] Liberty Mutual Insurance Company v. Gordon Tripp, 144 Wn.2d 1, 22; 25 P.3d 997 (2001); citing Kirk v. Mount Airy Inc. Co., 134 Wn.3d 558, 951 P.2d 1124 (1998). See also, Olds-Olympic, Inc. v. Commercial Union Insurance Co., 129 Wn.2d 464, 918 P.2d 288 (1997).

[2] For instance, Blacks Law Dictionary defines "*reasonable*" as "*fair, proper, just, moderate, suitable under the circumstances.*"

The courts have also applied this public interest to hold that an insurer's breach of its duty of good faith constitutes a *per se* violation of the Consumer Protection Act [CPA]. The remedy in the CPA includes costs, attorney fees and treble damages.[3]

RCW 19.86.020. Unfair competition, practices, declared unlawful. Reasonable justification is a requirement, and unfair or deceptive acts or practices are unlawful and against public policy.[4] Moreover, the legislature has declared the Consumer Protection Act must be "*liberally construed that its beneficial purposes may be served.*"[5] It is a fundamental principle in law that all applicable provisions must be read together to ascertain the full meaning.[6]

UNFAIR CLAIMS SETTLEMENT PRACTICES.

RCW 48.30.010 authorizes the Insurance Commissioner to define methods of competition and acts and practices in the conduct of the business of insurance which are unfair or deceptive. The purpose of this regulation contained in the Washington Administrative Code (WAC 284-30-300 through 284-30-410) is to define certain minimum standards which, if violated with such frequency as to indicate a general business practice, will be deemed to constitute unfair claims settlement practices.

WAC 284-30-330. Specific unfair claims settlement practices defined. The following criteria listed in WAC 284-30-330 are applicable in the instant case and annotated as follows:

(1) Misrepresenting pertinent facts or insurance policy provisions.

The initial contact by Farmers Insurance agents made it clear that the insured and Farmers accepted liability. Both the claims adjuster and subsequently [redacted] described the process in a reasonable way. The claims adjuster actions that followed were dramatically different. When the events were explained to the Insurance Commissioner Office, the response was: "Sounds like the claims adjuster made a "lowball" estimate." If [redacted]'s instructions represented the proper procedure, she was undercut by the claims adjuster.

(2) Failing to acknowledge and act reasonably promptly upon communications with respect to claims arising under insurance policies.

Nearly a month has passed.

(4) Refusing to pay claims without conducting a reasonable investigation.

Both the claims adjuster's recommended body shop and the PCRC recommended shop identified damage overlooked or ignored by the claims adjuster. The claims adjuster has refused to consider her errors.

---

[3] Gingrich v. Unigard Security Insurance Company, 57 Wn. App. 424, 788 P.2d 1096 (1990)

[4] Whistman v. West American of the Ohio Casualty Group of Insurance Companies, 38 Wn. App. 580, 584; 686 P.2d 1086; (1984)

[5] Salois v. Mutual of Omaha Insurance Company, 90 Wn.2d 355, 358; 581 P.2d 1349, (1978)

[6] Tommy P. v. Board of County Comm'rs, 97 Wn.2d 385, 391, 645 P.2d 697 (1982).

(5) Failing to affirm or deny coverage of claims within a reasonable time after proof of loss statements have been completed.

Liability has never been in question. The nature of the loss has been documented in two sets of estimates, also documented by photographs.

(6) Not attempting in good faith to effectuate prompt, fair and equitable settlements of claims in which liability has become reasonably clear. In particular, this includes an obligation to effectuate prompt payment of property damage claims to innocent third parties in clear liability situations. If two or more insurers are involved, they should arrange to make such payment, leaving to themselves the burden of apportioning it.

The actions of the claims adjuster clearly has been in bad faith. Liability is not in question. An equitable settlement was offered by me in my conversation with [redacted] by waiving the use of a rental car. I don't know the cost of a rental car from Hertz, but nearly a week has passed.

(7) Compelling insureds to institute or submit to litigation, arbitration, or appraisal to recover amounts due under an insurance policy by offering substantially less than the amounts ultimately recovered in such actions or proceedings.

The arbitrary and capricious acts of the claims adjuster by offering substantially less than the amount reasonably due become **compelling** to take the next step of litigation.

(8) Attempting to settle a claim for less than the amount to which a reasonable man would have believed he was entitled by reference to written or printed advertising material accompanying or made part of an application.

The "*reasonable man*" criterion is one of the most significant, and one that I must apply in many of the appeal cases that I hear. The situation is not difficult for a reasonable man to evaluate. A totally innocent victim was struck from behind while stopped at a red light. Liability was not in question. My vehicle was in perfect condition. A reasonable man would assume that the vehicle would be restored to its previous condition. A reasonable man would assume that a special vehicle, such as a Range Rover or Mercedes, would be restored in the manner that the vehicle was designed. Anything less leaves me with a vehicle of lesser value. The "lowball" estimate must be considered for what it is—a ploy to make actual costs appear too high. When a reasonable man views all of the facts, the arbitrary acts of the adjuster become obvious.

NEXT STEPS:

It amazes me how—at a time when corporate America is held in such low esteem—that Farmers Insurance would condone this action. Hopefully, you will redirect the actions to pay the claim in full. We have acted responsibly and reasonably. I expect no less from Farmers Insurance.

Meanwhile, I must consider my future options:

1. As you can see by this letter, I have reviewed the applicable statutes. The legislature has declared that the business of insurance requires good faith, abstain from deception, and practice honesty. The Office of the Insurance Commissioner [OIC] has the next responsibility to apply the law. OIC published statistics identify Farmers Insurance as part of Zurich Financial SWA had the highest number of complaints filed in 2003—not a comforting statistic. Note also that "lowballing" has been prevalent enough to be addressed as an unfair claims settlement practice. My next logical action will be to file a formal complaint.

2. As a public official for the last 45 years, I respect others in intensive positions. Consequently, I have not talked with Rob McKenna about this situation. However, there are parallels between the OIC and the AGO which should be explored.

REQUESTED REMEDY:

Please intervene to cause the complete payment of the claim.

Actual cost to repair:	$1,287.23
Less lowball payment:	$527.18
Remaining amount due:	$760.05

Thank you for your immediate attention.

Sincerely,

[redacted]

Irv B[redacted]

ib

Exhibit 6:

Letter from Farmers insurance warning policy holder of circumstances *not actually stated in the insurance policy*

- ***Vehicle owner had their car fixed at a Farmers "COD" shop (Circle of Dependability). The shop appears to have committed fraud, left remaining damage they charged for but didn't repair.***

- ***Vehicle owner made a claim under the Farmers COD warranty but Farmers under paid the repairs at the vehicle owners choice of shop.***

- ***Letter to policy holder: "if the shop charges more than what is customary in the local market you will be responsible for these costs. This includes labor rates, refinish rates and any other cost not consistent with the local market."***

- **The Policy holder had a lawyer who invoked the appraisal clause in the policy to dispute the underpayment of their repair costs by Farmers Insurance.**

- **Appraisal award is for consumer.**

- **Costs of appraisal are nearly that of the award, ultimately making it unreasonable for a consumer to dispute a claim.**

- **There are many more of these appraisal awards that will be provided.**

- **Current Washington regulations allow insurers to under pay claims with little exposure or recourse.**

21st Century insurance

Toll Free: (888) 244-6163
Email: myclaim@21st.com
National Document Center
P.O. Box 26899-i
Oklahoma City, OK 73126-899-i
Fax: (877) 217-1389

03 02 019752 0SRDA1T721 CB07 19P2 03 | 019752

July 19, 2016

GALLILEO LAW
1218 3RD AVE STE 1000
SEATTLE WA 98101-3290

RECEIVED
JUL 25 2016
GALILEO LAW PLLC

RE: Claim Unit Number: [redacted]
Insured: Alison [redacted]
Policy Number: [redacted]
Loss Date: 04/21/2016
Subject: Claim Outcome Letter

Dear [redacted]

We appreciate the opportunity to serve your insurance needs and we are here to help you through the claims process as efficiently as possible. This letter is a follow-up to the conversation you had with me regarding the repairs to your client's vehicle. As an insurance company, we are responsible for repairs that are reasonable and customary to your client's damaged vehicle. You are entitled to take your vehicle to any repair facility you choose. However, if the shop charges more than what is customary in the local market, you will be responsible for these costs. This includes labor rates, refinish rates, and any other cost not consistent with the local market. If this is a concern to you, I have enclosed a list of local body shops near your residence that are able to complete repairs within the hourly labor rate reflected on our estimate. They include:

Hammer Auto Rebuild
1209 S. Bailey St.
Seattle, WA 98108
(206) 767-4929

Metro Auto Rebuild
2218 Airport Way S
Seattle, WA 98134
(206) 623-6336

It is your responsibility to pick up the vehicle from the repair facility as soon as the repairs are completed. You are also responsible for additional charges if the vehicle is not picked up from the repair facility when the repairs are completed.

Furthermore, it is your responsibility to pick up the vehicle from the repair facility even if there is a dispute as to the proper cost of repairs, and even if the amount paid by Farmers Insurance Group is less than the amount charged by the repair facility.

Please contact me as soon as the repairs have been completed and confirm that you have picked up the vehicle from the repair facility.

We encourage you to visit www.hpcs.com to learn more about our self-service options available to you; including the ability to view your claim status, upload documents and photos and find local service providers.

If you have any questions or concerns, call me at (206) 510-9076. My scheduled office hours are Monday through Friday from 8:00 a.m. to 5:00 p.m. Pacific Time.

Thank you.

Sincerely,
21st Century Premier Insurance Company

Robie Hall
Field Claims Representative
robie.1.hall@farmersinsurance.com
(206) 510-9076

03 03 019752 0SRDA1T721 CB0719P2 03 [ ] 019752

Appraiser's Award

Insured: Alison [redacted] Insurer: 21st Century Premier Insurance Co.

We, the undersigned, pursuant to the foregoing agreement, have fulfilled our assigned duties to the best of our judgment, skill, and ability, in an impartial manner, and have found the following to be a true assessment of the actual cash value and amount of loss in the subject claim. This decision was based upon, but not limited, estimates by Allstate Insurance, estimate by 21st Century, final invoice from Haurys for re-repair, review of the loss, and documentation of the claim.

We did not consider any other issues.

We, the undersigned, having completed the appraisal process, hereby render an Award of the Loss in the amount of $ $2,350.00 *represents the difference between the final from Haury's & the estimate from 21st Century. For clarification, the full amount of the award as determined by the appraisers is $9,389.48

This award amount does not include offset for amounts previously paid.

The above award is to be paid within fifteen (15) calendar days from the date signed by the umpire. After 15 days the unpaid balance will accrue interest at 12% per annum.

Smith DS

Accepted on this 23rd day of November, 2016 by:

Umpire: N/A

Appraiser for Insurance Co. David A. Smith

Appraiser for Insured: [signature] Darrell M. Harber

Rappaward

Exhibit 7:

The following email from GEICO is blatant misrepresentation of the law, attempt to steer consumers from shop of choice

- **There are many more circumstance like the email below that will be provided.**

- **There are many harmed consumers that will testify to GEICO's unfair claims settlement practices**

---------- Forwarded message ----------
From: "[redacted]
Date: Jul 5, 2016 12:55 PM
Subject: RE: Repairs at ******
To: "Daniel ****"
Cc:

Hi Daniel,

We are required by law to pay all body and paint labor the same to every shop. (your chosen shop) labor rate for paint and body is higher than the rate we can pay. Due to this, there could be out of pocket expenses on your behalf. I have included the document in your policy that states this. If you want to move your car to a shop that will accept our rates, we can pay the storage of your vehicle through **today** and pay to tow it to another shop. Let me know your thoughts. You can certainly keep the vehicle at (your chosen shop) if you choose. Just want you to be aware that the potential for out of pocket charges is there.

[redacted]
Auto Damage Adjuster
Seattle, WA
[redacted]

It is my goal to provide Excellent customer service. Please let me know if there is anything else I can do ensure you have that Excellent experience.

From: Daniel S****
Sent: Tuesday, July 05, 2016 12:49 PM
To: [redacted]
Subject: Re: Repairs at *******

Jay, I received your e-mail and don't understand why I am to pay out of my pocket when I pick up my car. GEICO is supposed to do that, not me. The damage is more than what you said so why didn't you pay more after looking at my car at the shop. Also what do you mean about the storage and moving my vehicle. How much is that? I'll be back later in the week so let me know.
On Jul 1, 2016 3:32 PM, "[redacted]@geico.com> wrote:
Hi there,

I received a supplement from *****. I went to look at it and wanted to speak with you. There is a possibility of some out of pocket expenses when you pick your car up. (Your chosen shop) does not accept our labor rate nor do they negotiate. We have to pay all of the shops the same labor and paint rate per state law. We can pay the storage and move your vehicle to a shop of your choice if you choose to. Give me a call to discuss further. My office hours are M-F 8-4:30. We are off on Monday for the 4th of July. I hope this message finds you well!

[redacted]
Auto Damage Adjuster
Seattle, WA
[redacted]

It is my goal to provide Excellent customer service. Please let me know if there is anything else I can do ensure you have that Excellent experience.

Exhibit 8:

- **Two post collision repair inspection reports showing UNSAFE REPAIRS that result from insurance "approved" shops and their extreme cost-containment model**

- **This is one of *many* such post-repair inspections. Additional reports will be provided.**

- **Also shown is the Nationwide & GEICO "guarantee" for work performed at their preferred shops. Despite this guarantee, many consumers have had to get a lawyer for GEICO, Nationwide, State Farm and other insurers to make good on their guarantee.**

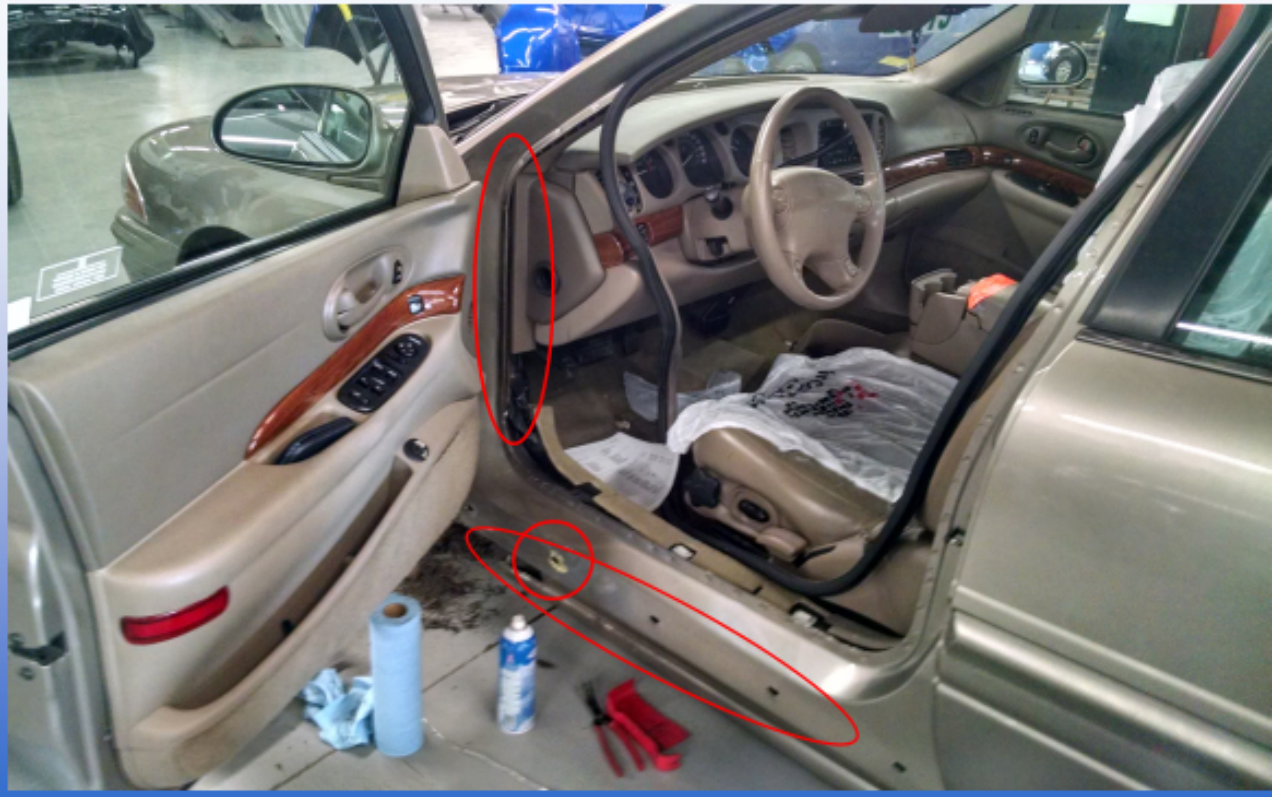
2003 Buick LeSabre Custom

Forensic Post-Repair Inspection

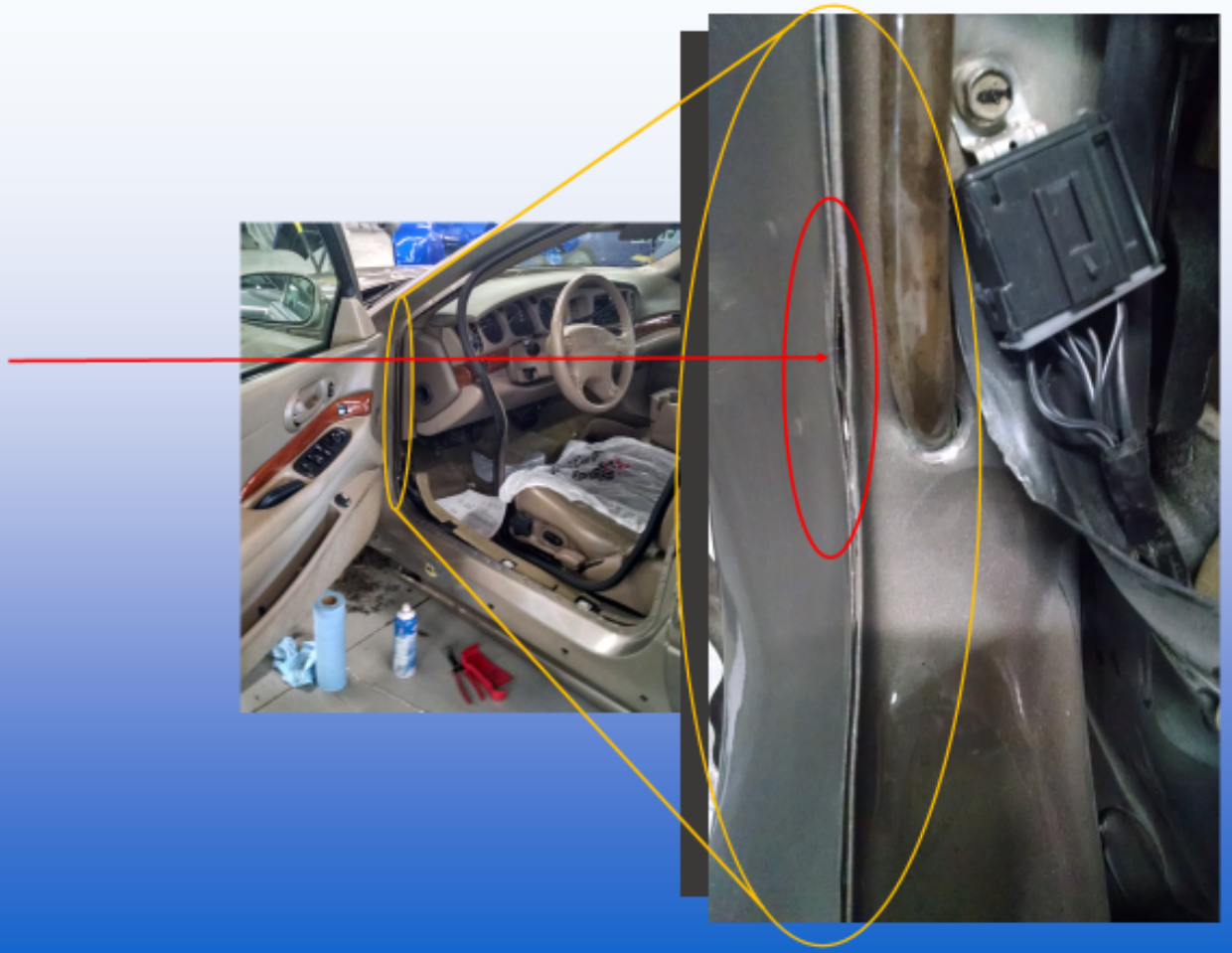
Viewed from the exterior prior to disassembly, there is no immediately obvious remaining [redacted]e to Ms. Peha's vehicle.

With the door opened and weatherstrips and moldings removed, remaining damage became visible.

Circled in the photo at right are areas where remaining damage was noted. The next several slides will show this damage in detail.

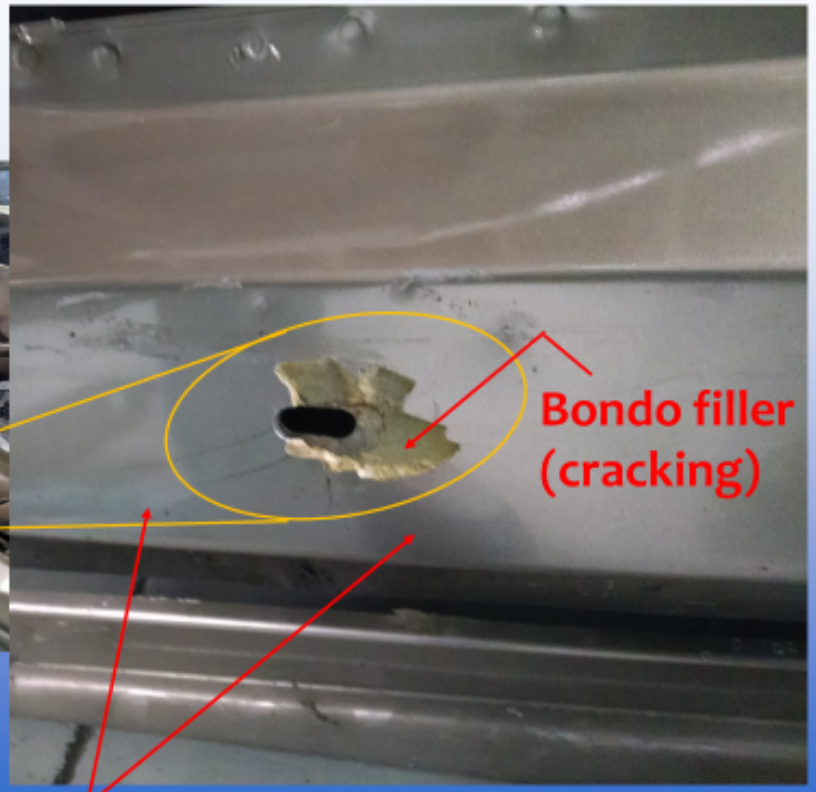


The driver's side A pillar is still buckled after frame straightening and repairs.

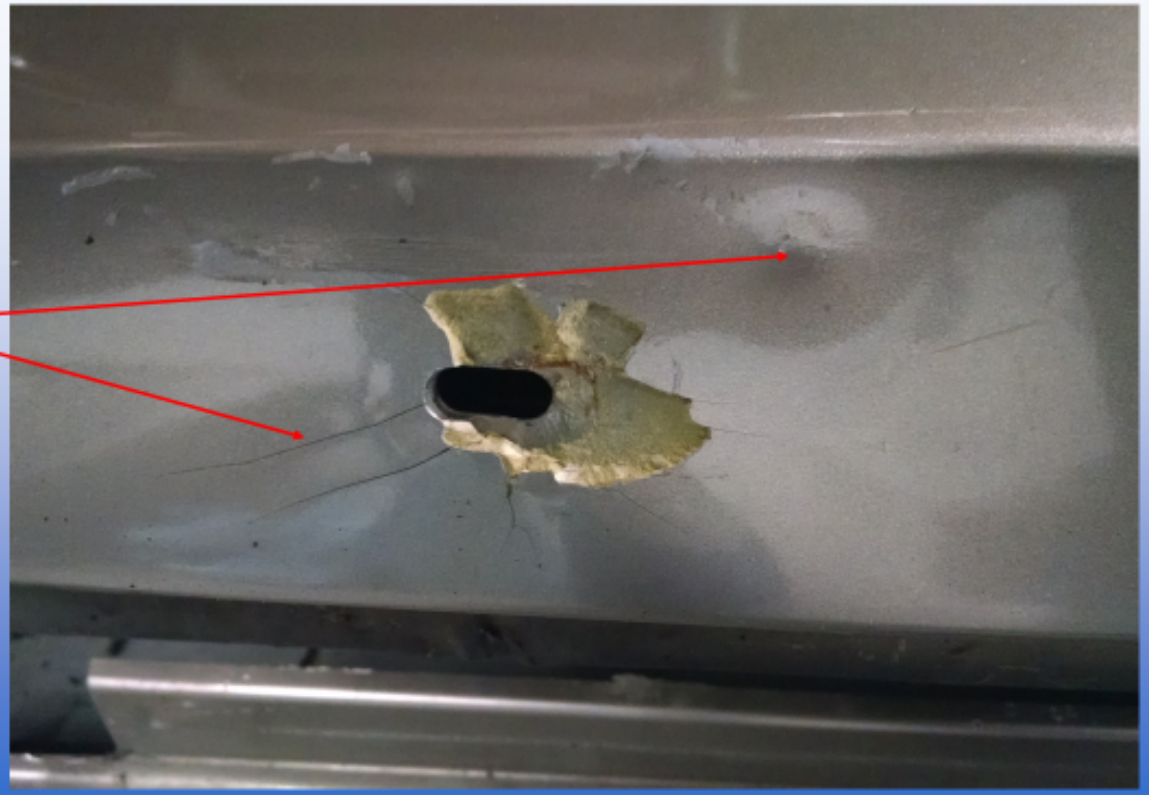


The inner structure of the A pillar is buckled. This hole should be round. Notice how it is heavily distorted.

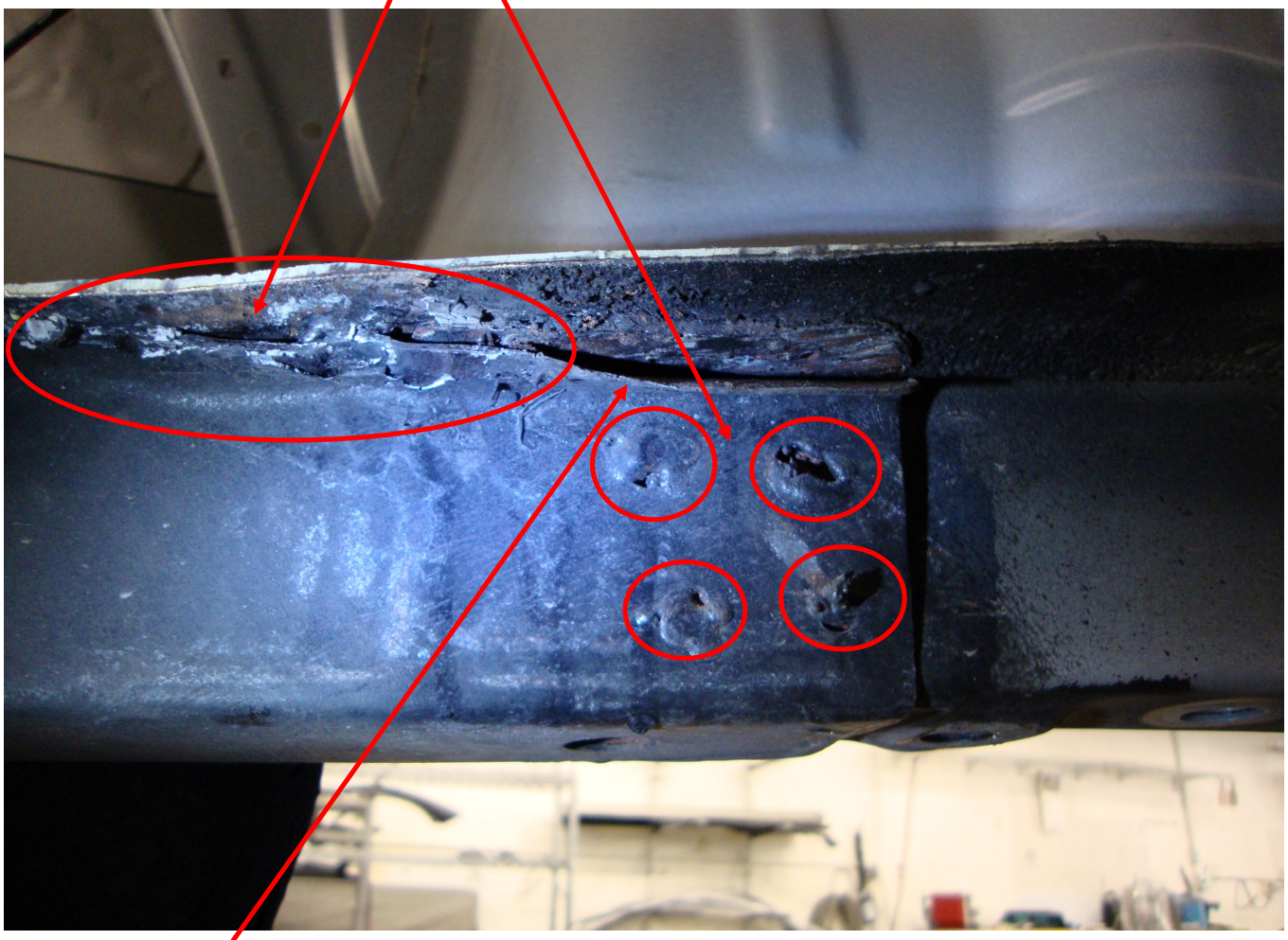
The steel rocker panel is heavily warped and contorted, and has been filled with Bondo (a plastic filler) rather than being replaced.



Viewed more closely, the rocker panel is noticeably cracked, bent, and dented. This panel should be smooth and straight with no bends or contours.



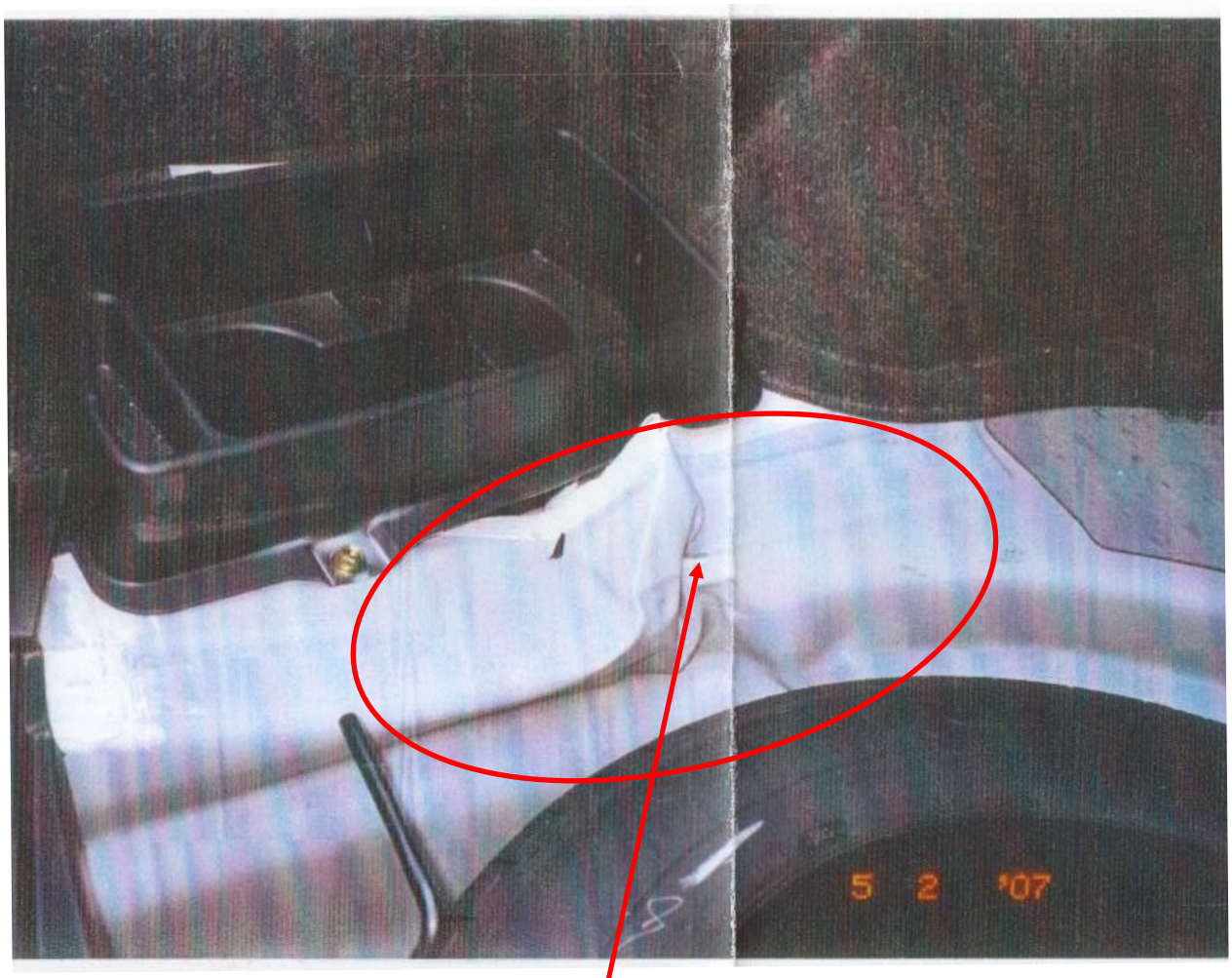
Poor and incomplete welds lacking fusion.
Note holes in the "welds," rust, and poor workmanship.
THIS IS A SAFETY ISSUE.



Gap between frame and floor due to remaining damage

These repairs were performed by an Allied Insurance "approved" shop.

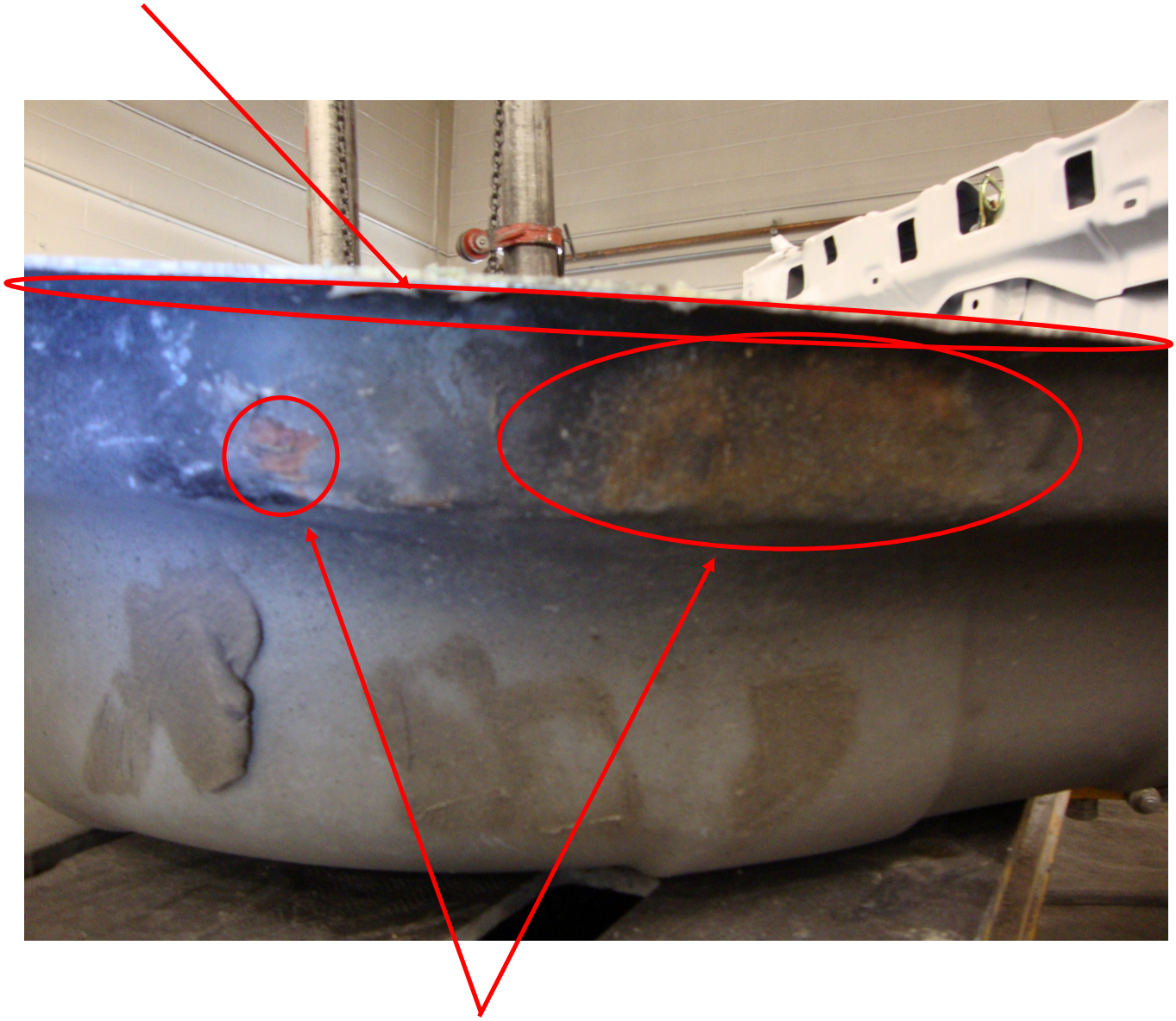
Photo of the damage to the floor pan (trunk floor, spare tire well area) on the inside of Mary's vehicle.



Note the crumpled metal.
To correctly repair this vehicle, <u>this part should be replaced.</u>

The same section of the floor pan as it was being recreated from Bondo (a plastic filler material)

Mary brought her vehicle to Haury's for a post-repair inspection, and they found that it had been repaired unsafely. This photo shows the completed repair of a portion of the floor pan where the frame attaches (shown in progress on the previous page). The top portion of the floor was recreated entirely out of Bondo rather than being replaced .



Rusty floor pan outer section.
The shop used a blow torch to heat and straighten the damage, which burned off the outer finish!

You may be called to participate in a Customer Satisfaction Survey.

I want to be a "10"

My goal is to exceed your expectations If I have failed to do so, please tell me how I may serve you better.

Nationwide On Your Side™

Nationwide Insurance
Allied Insurance
Nationwide Agribusiness
Titan Insurance
Victoria Insurance

G-9666-1

With Blue Ribbon Repair Service, you'll receive:

- a thorough appraisal of the damage to your vehicle
- an easy-to-understand explanation of all your repair options
- a detailed description of any charges
- a complete and precise repair for your vehicle
- a promise to repair any defects in alternative parts and workmanship on the appraised and completed repairs for as long as you own or lease the vehicle we repair

Blue Ribbon Repair Service Guarantee

Since the repair by the Blue Ribbon shop was under warranty—see the guarantee in red—Mary contacted Allied Nationwide about her dissatisfaction with the poor repairs.

Blue Ribbon Certified Repair Center
R & R Custom and Collision

Vehicle Owner/Lessee
Mary [redacted]

Vehicle Make/Model
2005 Toyota Camry LE

Vehicle Identification Number
[redacted]

Claim Number
46A [redacted]

Authorized Signature
Carol Allen

Date
8.3.07

This guarantee is applicable only to the claim referenced above and identified in the attached appraisal, and is not transferable or assignable to any subsequent owner/lessee of the repaired vehicle.

© 2006 Nationwide Mutual Insurance Company and Affiliated Companies, Home Office: Columbus, Ohio. Subject to underwriting guidelines, review and approval. Products and discounts not available to all persons in all states. Nationwide, the Nationwide framemark and On Your Side are federally registered service marks of Nationwide Mutual Insurance Company.

Nationwide® On Your Side

Since the repairs were under warranty, Mary contacted Allied Nationwide about the poor repairs.
Nationwide downplayed the severity of the repair deficiencies and wrote an estimate for $1,300 to remedy them.
Allied's approach would require welding a *metal* frame rail to the *plastic* filler (Bondo) that was used to repair the floor pan!

Allied Insurance
a Nationwide® company
On Your Side™

January 23, 2009

Mary K[redacted]
[redacted]
[redacted]

Our Insured: Mary K[redacted]
Our Claim Number: [redacted]
Date of Loss [redacted]

Dear Mary K[redacted]

This will confirm our phone conversation today about the damage to your 2005 Toyota Camry.
Please find a copy of our appraisal to repair your vehicle as a result of the repairs completed by [redacted]. We agree that a weld on the front portion of the left rail was not properly completed and the best correction is to have the rail replaced. Other corrections to the prior repairs and additional damages are listed in the enclosed appraisal.

This appraisal is written using industry approved repair standards. The appraisal provided allows for all reasonable and necessary repairs to your vehicle.

If any additional repairs are completed that we feel are unnecessary or unrelated to this loss or prior repairs completed by [redacted], you may be responsible for payment of any such items.

Note that Nationwide concedes only to a *single weld* executed poorly. Compare this to the more than 50 shoddy welds found when this vehicle was

Welding the frame to a floor pan made out of Bondo is not even POSSIBLE,

These are scare tactics used by insurance companies to push customers to use their

More scare

Please understand that we aim to serve your claim needs by properly paying for the associated damages of every covered claim. Any work preformed that would be unreasonable or unnecessary or damages that exceed the appraisal amount may become your responsibility.

Your claims service and Blue Ribbon Guarantee provides for payment of damage repairs performed in accordance within accepted collision repair industry guidelines. For that reason we urge you to choose an auto body collision repair facility carefully. We can also offer the use of any other of our Blue Ribbon shops in the area if you choose.

Their guarantee (see page ___) does not say

Per our conversation, if you would like to use another Blue Ribbon shop we now have [redacted] in Marysville. The manager there is [redacted] Please advise me if you would like to use [redacted] and I will meet you at the shop and go over the issues of your vehicle with you and the shop.

Based on our inspections and investigation of the prior repair issues, we feel your vehicle is safe to drive. I have enclosed a copy of our appraisal for your records.

Mary's vehicle was NOT SAFE

This letter will also confirm that I advised you that we will cover your rental from 1/21/2009 through 1/23/2009 per the conditions of your policy. We will also cover your rental for an additional 3 days during the repair process.
It there is any storage charges we will also only cover them from 1/21/2009 through 1/23/2009.

If you have any questions or concerns, please feel free to contact me.

Sincerely,

Steve [redacted]
Blue Ribbon Manager
[redacted]

Summary

- ***Allied Nationwide's Blue Ribbon manager concedes to one aspect of the improper repair, but maintains that the vehicle is safe to drive.***
- ***They try to persuade her to bring her vehicle to another Blue Ribbon shop.***
- ***Allied warns Mary that other actions will result in out-of-pocket expenses.***

GEICO Repair Xpress

GUARANTEE

____ and GEICO guarantee that the work performed will be free from defects in materials and workmanship for as long as you own the vehicle described below. This guarantee will apply to all items as originally estimated, as well as additional repairs found to be related to this loss.*

All repairs completed as a result of the loss noted below will conform to generally accepted industry standards in use at the time time the repairs are completed.

Should you have any concerns with the quality of the repairs that were completed to your vehicle as a result of your covered loss, your vehicle will be inspected and the repairs will be corrected free of charge. Corrective repairs will be completed at the original Repair Express facility if practical, but may also be covered at any one of our nationwide Repair Express facilities. In the unlikely event that a Repair Express facility cannot correct the repair to generally accepted industry standards, GEICO will pay another repair facility reasonable costs to correct the covered repairs. If you have any questions concerning this guarantee, or if an adjustment is needed, call your claim representative listed below.

Customer _____ Claim # _____

Make _____ VIN _____

GEICO Representative _____ Repairer Name _____

Repairer Address _____ Repairer Phone # _____

* Exclusions to the this Guarantee are listed on the reverse side of this form

C-526A-PRC (5/10)

Exhibit 9:

Example of a manufacturer's repair requirement that is regularly denied by insurers

- **Allstate, State Farm, GEICO, American Family and other insurers regularly deny payment for scanning vehicles because *"there are no dash lights on so the vehicle doesn't need to be scanned".***

- **Honda clearly states "Dashboard indicators are intended for drivers notification, not vehicle diagnostics. Therefore, the presence or absence of dashboard indicators/warning lights is NOT an acceptable method to determine if post collision diagnostic scans are necessary."**

- **Post collision system faults that remain uncorrected can prevent an air bag from deploying or deploy the air bag in an unintended manner that could injure or kill the occupant.**

American Honda Position Statement

HONDA

Issued: July 2016

SUBJECT: POST-COLLISION DIAGNOSTIC SCAN AND CALIBRATION REQUIREMENTS FOR HONDA AND ACURA VEHICLES

It is the position of American Honda that **all** vehicles involved in a collision* **must** have the following minimum diagnostic scans, inspections, and/or calibrations done to avoid improper repair:

- A preliminary diagnostic scan during the repair estimation phase to determine what Diagnostic Trouble Codes DTCs may be present, so proper repairs may be included. See Background On Scan Requirements paragraph for more information.
- A post repair diagnostic scan to confirm that no DTCs remain.
  - Any repair that requires disconnection of electrical components in order to perform the repair will require a post-repair diagnostic scan to confirm if the component is reconnected properly and functioning.
  - Damage that requires body parts replacement will always require a post-repair diagnostic scan.
- Some safety and driver assistive systems will require inspections, calibration, and/or aiming after collision or other body repairs. See page 2 for additional information.

*A collision is defined as damage that exceeds minor outer panel cosmetic distortion.

Background On Scan Requirements

Honda and Acura vehicles include numerous electronic control systems, including those that operate safety and driver assist systems. Most of these systems include onboard self-diagnostics that monitor the state of health and/or rationality of input and output circuits. When monitored circuit values fall outside predetermined thresholds, DTCs may be set in one or more electronic control unit (ECU).

The mechanical forces encountered in a collision can damage electrical circuits and components in ways that are not easily diagnosed with visual inspection methods. Here are some other electronic control system self-diagnostic facts:

- The proliferation of electronic control systems has increased the number of potential DTCs beyond the point where a dashboard indicator can be installed and/or illuminated for every DTC. Dashboard indicators are intended for driver notification, not vehicle diagnostics.
- Therefore, the presence or absence of dashboard indicators/warning lights is **not** an acceptable method to determine if post collision diagnostic scans are necessary.
- Many DTCs **do not** illuminate **any** dashboard indicators, but an electronic control system may still operate improperly or be completely inoperative.
- Because of the complexities of serial data networking, dashboard indicators that do illuminate may appear unrelated to the actual vehicle problem.
- Some self-diagnostics require multiple failures, or other criteria such as a number of drive cycles, to be met before illuminating any indicators.
- Low battery voltage and/or repair procedures may inadvertently set multiple DTCs. Clear the DTCs and determine which ones reset after battery voltage is stabilized.

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Diagnostic Recommendations

The **recommended** way to accurately determine the post-collision status of all Honda and Acura vehicle electronic control systems is with the i-HDS.

- The i-HDS has an "All DTC Check" feature that will scan available electronic control systems for DTCs in one operation.
- American Honda does not test other scan tools and cannot comment on their capabilities or accuracy.

NOTE: Not all electronic control systems can be scanned using the i-HDS. For example, Honda LaneWatch™ and earlier model air conditioning and climate control systems have self-contained diagnostics that are not accessible using the i-HDS. For systems such as these, refer to the published diagnostic procedures in the appropriate service information available on the Honda Independent Repair/ServiceExpress website: (techinfo.honda.com).

Inspection/Calibration/Aiming Requirements

Safety and driver assistive systems that will require inspections, calibration, and/or aiming after collision or other body repairs include, but are not limited to the following:

After reconnecting the 12-volt battery:

After collision repairs are complete and the battery is reconnected, some electrical systems may not operate properly. These may include, but are not limited to the following:

- Navigation systems
- Engine idle speed learn
- Power window, power tailgate, moonroof, power sliding door position and/or pinch detection
- Keyless access and immobilizer/security systems

Since the reset procedures vary by vehicle and system, enter the vehicle information into ServiceExpress and search the keyword "Reset". This search will retrieve a list of reset procedures required after parts replacement and/or a battery disconnect. Some reset procedures can be done without special tools. Others may require scan tool software.

Front passenger's seat weight sensor - Inspections and calibration:

These sensors control passenger's front airbag operation and the PASSENGER AIRBAG OFF indicator based on the occupant's weight. Like any scale, weight sensors are a precision device.

- The service information may refer to these sensors as the seat weight sensor (SWS) system or occupant detection system (ODS) depending on model and year.
- This inspection requires a scan tool to fully check the seat weight sensor's operation using the following criteria:
  - Empty front passenger seat weight to confirm the sensors can detect this condition
  - Seat weight with a known calibration weight amount if necessary
- This check **must** be done after **any** collision, regardless of damage even if no airbags deployed.
- The check confirms sensor operation and that no binding or damage exists in the relationship between the seat frame, weight sensors, and floor pan.
- Weight sensor calibration is also required when front passenger seat components have been removed or replaced. Refer to the service information for procedures.

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Driver assistive system aiming:
Some models use one or more of the following camera and/or radar based driver support systems that require software-based aiming and/or calibration to ensure proper operation after certain components have been removed and/or replaced:

- Adaptive Cruise Control (ACC)
- Collision Mitigation Braking System™ (CMBS™)
- Forward Collision Warning (FCW)
- Lane Departure Warning (LDW)
- Lane Keeping Assist System (LKAS)
- Road Departure Mitigation (RDM)
- Blind Spot Information (BSI)
- LaneWatch™ (Honda Only)
- Multi-View Camera System (MVCS - Acura Only)

NOTE: Rearview (backup) cameras do not require any aiming procedures after removal or replacement unless the vehicle is also equipped with the Multi-View Camera System (MVCS).

These procedures may require special tools and/or the i-HDS to complete. Refer to the service information for specific information.

The chart below shows damage areas where driver assistive system components may be located in close proximity. Collision damage in these areas should be given particular attention because certain repairs and/or parts replacement may require aiming procedures to be done.

Collision Damage Area	Driver Assistive System Components Affected
Front Bumper and Grille Area	Millimeter Wave Radar Unit Front Camera (w/Multi-View Camera System)
Windshield Area	Multipurpose Camera Unit
Front Passenger's Door/Mirror Area	LaneWatch™ Camera (Honda Only) Right Side Camera (w/Multi-View Camera System)
Driver's Front Door/Mirror Area	Left Side Camera (w/Multi-View Camera System)
Rear Bumper Area	Blind Spot Information System Radar Units Rear Camera (w/Multi-View Camera System)

How To Obtain Service Information, i-HDS Dignostic Software and Interface Hardware
i-HDS software, as well as other service information, is available to independent repair facilities and others for use on laptop or desktop computer hardware. These may be purchased in three time intervals: 1 day, 30 days, and 365 days.
NOTE: The i-HDS software requires the use of a Bosch MVCI or Denso DST-i vehicle communications interface (VCI) device between the vehicle and your computer, which must be purchased separately.
To purchase i-HDS diagnostic software and/or a vehicle interface device do the following:

1. Access the Honda Independent Repair/ServiceExpress website: (techinfo.honda.com).
2. Click the link under the "Diagnostic Tools" heading (near middle of page).
3. Confirm your computer meets the system requirements and/or purchase a VCI device by clicking the link(s) under "Hardware".
4. Click the link under "Software" to purchase i-HDS software and follow the directions.

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Exhibit 9:

The federal government protects the public regarding vehicle safety through the National Highway Transportation Safety Administration by vehicle manufacturing regulations.

- **There are currently NO PROTECTIONS FOR CONSUMERS with regards to repairing modern safe vehicles like the federal requirements for manufacturing motor vehicles as mandated by the NHTSA**

- **There are many consumers including an automotive engineer standing by to testify regarding their insurance company's denial of payment of this issue**

Consumer Advisory: Vehicle Owners with Defective Airbags Urged to Take Immediate Action

Additional Resources **Use your VIN to search a manufacturer's database to see if your recalled vehicle still needs to be repaired** Wednesday, October 22, 2014
Media-only contact: Karen Aldana, 202-366-9550, Public.Affairs@dot.gov
(Note: Corrects vehicle list provided with advisories of Oct. 20-21)

Vehicle owners can call our Safety Hotline: 1-888-327-4236

WASHINGTON, D.C. - The National Highway Traffic Safety Administration urges owners of certain Toyota, Honda, Mazda, BMW, Nissan, Mitsubishi, Subaru, Chrysler, Ford and General Motors vehicles to act immediately on recall notices to replace defective Takata airbags. Over seven million vehicles are involved in these recalls, which have occurred as far back as 18 months ago and as recently as Monday. The message comes with urgency, especially for owners of vehicles affected by regional recalls in the following areas: Florida, Puerto Rico, limited areas near the Gulf of Mexico in Texas, Alabama, Mississippi, Georgia, and Louisiana, as well as Guam, Saipan, American Samoa, Virgin Islands and Hawaii.

"Responding to these recalls, whether old or new, is essential to personal safety and it will help aid our ongoing investigation into Takata airbags and what appears to be a problem related to extended exposure to consistently high humidity and temperatures. However, we're leaving no stone unturned in our aggressive pursuit to track down the full geographic scope of this issue," said NHTSA Deputy Administrator David Friedman.

Consumers that are uncertain whether their vehicle is impacted by the Takata recalls, or any other recall, can contact their manufacturer's website to search, by their vehicle identification number (VIN) to confirm whether their individual vehicle has an open recall that needs to be addressed. Owners that have been contacted by their manufacturer should contact their dealer's service department and make arrangements for the repair. In addition, consumers can sign up for NHTSA recall alerts, which go out before recall letters are mailed by the manufacturers to the affected owners.

7.8 Million Affected U.S. Vehicles, by Manufacturer, Impacted by CY 2013 and 2014 Recalls Involving Takata Airbags

Note: The list below corrects the list that accompanied our October 20 advisory, which incorrectly included certain vehicles. The numbers cited for potentially affected vehicles below are subject to change and adjustment because there may be cases of vehicles being counted more than once. Owners should check their VIN periodically as manufacturers continue to add VINs to the database. Once owner recall notices are available, owners can retrieve a copy from SaferCar.gov, or will receive one by U.S. mail and are advised to carefully follow the enclosed instructions.

Exhibit 10

ORS 742.466, Oregon State's regulation for independent appraisal provisions

- **Current Washington State regulations protect insurance companies, not consumers!**

- **When a policy holder invokes the appraisal clause in their policy over a disagreement, an insurer with its nearly unlimited resources has the upper hand and makes the process of appraisal too expensive to use.**

- **Washington State should adapt Oregon regulations to protect consumers and hold insurers accountable.**

ORS 742.466[1]

Disputes over coverage for physical damage

- independent appraisal
- rules

(1) In the event of a dispute between the insurer and insured under a motor vehicle liability policy concerning coverage for physical damage, if the policy contains a provision authorizing the insured to obtain an independent appraisal by a competent and disinterested person of the physical damage, that provision shall apply. An independent appraisal conducted under this section shall be performed by a person who has been issued a vehicle appraiser certificate under ORS **819.480 (Vehicle appraiser certificate)** or a person who has been issued a vehicle appraiser certificate or license by another state or government body.

(2) When a motor vehicle liability policy contains a provision for resolving a dispute through appraisal of a motor vehicle insured under the policy, the insurer shall reimburse the insured for the reasonable appraisal costs if the final appraisal decision under the policy provision is greater than the amount of the insurers last offer prior to the incurrence of the appraisal costs.

(3) If a motor vehicle liability policy does not contain a provision described in subsection (1) of this section, then notwithstanding any other provision of the policy, any resolution of the dispute shall be subject to rules adopted by the Director of the Department of Consumer and Business Services. [Formerly **743.840**; 2009 c.65 §4; 2011 c.134 §1]

Exhibit 11:
Holmes vs. Raffo (1962)
and
Straka Trucking, Inc. v. Estate of Peterson (1999)

Washington case law regarding collectible loss of use

Insurers are avoiding paying what they owe under the law.

Holmes v. Raffo

60 Wn.2d 421 (1962)

374 P.2d 536

FRANK S. HOLMES et al., Appellants, v. CARL RAFFO et al., Respondents.[*]

No. 35774.

The Supreme Court of Washington, En Banc.

August 30, 1962.

Roehl & Dalquest, for appellants.

Livesey, Kingsbury & Livesey, for respondents.

HUNTER, J.

This is an action by the plaintiffs, Frank S. Holmes and Neva A. Holmes, his wife, to recover damages from the defendant, Karl Raffo, a minor, and from the defendant's parents, Carl Raffo and his wife, for injuries resulting from an automobile collision.

Mrs. Holmes' version of the accident was as follows: On *423 the morning of August 20, 1959, she was driving her 1956 Ford automobile in a westerly direction on Smith Road, in Whatcom County, en route to the Whatcom County fair. She observed a Packard car, driven by the defendant minor, approximately 500 feet in the distance and approaching in an easterly direction at a speed of about 45 miles per hour. At that time, she noticed the other car begin to cross the center line into her lane of travel, whereupon she honked her horn and decreased her speed. The approaching car continued to pull over into her lane without giving any signal. Mrs. Holmes then drove her car as far as possible to the right toward a ditch and was off the roadway when she was struck with terrific force by the Raffo car.

The plaintiffs claimed damages for personal injuries sustained by Mrs. Holmes; for expenses incurred and to be incurred for her medical, hospital and nursing care; for her loss of earnings; for damages to the automobile, and for loss of use thereof.

The defendant minor's explanation of the accident was that he was momentarily blinded by the morning sun, and the collision occurred while he was adjusting his sun visor. His defense was that of unavoidable accident on his part and contributory negligence of Mrs. Holmes who, he alleged, failed to keep a proper lookout. The defendant parents interposed the defense that their son was emancipated at the time of the accident, that the Packard car was owned solely by him, because payments for the car were to be made from his earnings, and that it was not operated for their benefit or in their behalf. They also alleged the contributory negligence of Mrs. Holmes.

The case was submitted to the jury on all issues except on the issue of damages for loss of use of the plaintiffs' automobile. The jury returned a verdict in favor of the defendant parents and against the defendant minor, awarding the plaintiffs judgment for damages in the sum of $3,000. The plaintiffs moved for a new trial and filed an alternative motion for an increase in the verdict. The motions were denied, and the trial court entered judgment in accordance with the verdict. The plaintiffs appeal.

*424 The plaintiffs (appellants) first contend the trial court erred in denying their offer of proof as to the necessity of obtaining someone to care for Mrs. Holmes and to do her housework after her discharge from the hospital. Either Mrs. Holmes or her husband would have testified that it was necessary for this care to be furnished and for work to be performed from September 5th to April 1st, and would have testified as to who was employed, the type of help employed, and the type of work done.

[1] The defendants (respondents) argue that if this was error it was not prejudicial for the reason that the testimony was cumulative, since Mrs. Holmes had already testified as to these matters. We have examined the record and find that Mrs. Holmes had testified substantially to the same matters contained in the offer of proof as follows:

"Q Mrs. Holmes, you have told us that you spent about a month in bed at home after you were discharged from St. Joseph's. A Yes. Q Would you tell us how you progressed after that with regard to getting up and doing housework and that sort of thing? A Oh, I was not allowed to do anything. I could make no decisions. I had to have all my housework done. Q Have you started now to do your housework? A Yes, I have, with the help of my daughter. Q Since when, Mrs. Holmes, have you been undertaking to do your housework? A Oh, about the last couple of months...."

The record discloses that the period of time referred to was between early September until April, or the latter part of March.

Mrs. Holmes' testimony in support of the proof offered would have been repetitious. The testimony of the husband as to the same matters would have been cumulative and as a party to the action would have added little to the credibility of her testimony. Moreover, the testimony was not disputed.

The plaintiffs were not denied a fair consideration by the jury as to the extent of Mrs. Holmes' injuries by a denial of their offer of proof. Assuming the court erred, it was not prejudicial.

*425 The plaintiffs assign error to the failure of the trial court to give the following instruction:

"You are instructed that the emancipation of a minor will not be presumed, but must be proved, and that the burden of proof is on the defendants.

"Emancipation must be proved by evidence that is clear, cogent, and convincing. This is a higher degree of proof than is required on the other issues in the case. The words `clear, cogent, and convincing,' mean something more than a mere preponderance of the evidence."

[2] The degree of proof required to establish the emancipation of a minor child, and the reason therefor, was stated in American Products Co. v. Villwock, 7 Wn. (2d) 246, 109 P. (2d) 570, 132 A.L.R. 1010 (1941):

"... The right, as well as the duty, to exercise parental control and to provide parental care and support, is of such paramount importance and necessity, and is so thoroughly recognized in law and by society in general, that any divesture of that right and that duty must be proved by evidence that is clear, cogent, and convincing." (Italics ours.)

Also, see DeLay v. DeLay, 54 Wn. (2d) 63, 337 P. (2d) 1057 (1959); Foran v. Kallio, 56 Wn. (2d) 769, 355 P. (2d) 544 (1960); 39 Am. Jur., Parent and Child § 64.

The plaintiffs contend that instruction No. 20, given by the court, was insufficient without giving their proposed instruction to advise the jury of the burden that was placed upon the defendants to sustain their defense of emancipation.

In considering this contention, it is necessary to examine the trial court's instructions in their entirety as to the proof required by the defendants to establish that their minor son was emancipated at the time of the accident.

The court's instruction No. 5 defined "fair preponderance of the evidence" and "burden of proof" as follows:

"The term `fair preponderance of the evidence' means the greater weight of credible evidence in the case. It does not necessarily mean the evidence of the greater number of witnesses, but means that evidence which carries the greater convincing power to your minds.

*426 "The term `burden of proof' means the burden of producing evidence which fairly preponderates over the opposing evidence."

The court's instruction No. 6 on burden of proof stated:

"The burden of proof is on the plaintiff to establish, by a fair preponderance of the evidence, the material allegations of his complaint that are denied by the defendants in their answer.

"Likewise, the burden of proof is on the defendants to establish, by a fair preponderance of the evidence, the material allegations of their affirmative defense." (Italics ours.)

The court's instruction No. 20, relative to the issue of emancipation, states:

"... The emancipation of a minor is not to be presumed; it must be proved by the party asserting it, and by evidence that is clear, cogent and convincing."

[3, 4] We have held that the words "clear, cogent and convincing" mean something more than a mere preponderance of the evidence. Lewis Pacific Dairymen's Ass'n v. Turner, 50 Wn. (2d) 762, 314 P. (2d) 625 (1957); Cheesman v. Sathre, 45 Wn. (2d) 193, 273 P. (2d) 500 (1954). In the absence of an instruction advising the jury that "clear, cogent and convincing" proof is a higher degree of proof than a "preponderance of the evidence," the jury may well have been confused and assumed there was no distinction between these types of proof referred to, in

light of the instructions given. Therefore, the plaintiffs were prejudiced by the jury's consideration of the issue of the defendant minor's emancipation without the benefit of the further instructions setting forth this distinction in the degree of proof required of the defendants, as proposed by the plaintiffs. This constituted reversible error.

The plaintiffs assign error to the trial court's failure to grant a new trial on the ground that the damages awarded were so inadequate as unmistakably to indicate the verdict must have been the result of passion or prejudice. The plaintiffs argue that the claimed special damages are beyond dispute and, alone, exceed the jury's award of $3,000.

*427 The defendants contend this argument is unsound for the reason that a part of the alleged special damages is not beyond dispute.

[5] An examination of the plaintiffs' claims for damages and the evidence in the record relating thereto discloses that the claims for medical and hospital expenses incurred and the cost of repairing the automobile, in the amount of $1,495.53, are established beyond dispute. Hence, we find that the jury must have awarded the remaining sum of $1,504.47 for some or all of the other alleged items of damages submitted for its consideration. These items consisted of loss of earnings, permanent bodily injury, pain and suffering and future medical and hospital expenses.

The evidence relating to future medical and hospital expenses and permanent bodily injury was in sharp dispute. The defendants' expert medical witness testified at the trial that, on the basis of his examination of the plaintiff Neva Holmes five days prior to the trial, she, at that time, did not have any apparent abnormalities or physical disabilities as a result of the collision. In view of this evidence, it is quite conceivable that the jury may not have allowed any amount for future expenses or permanent bodily injuries.

We next come to the items of pain and suffering and loss of earnings. With regard to the latter, the material evidence consisted of the following: Prior to the accident, Mrs. Holmes had worked full-time with her husband in their retail and wholesale meatcutting business. She testified that the union wage scale for meatcutters with her qualifications was $110 per week at the time of the accident and during the period of time that she was allegedly disabled. Mrs. Holmes testified that after the accident she was required to be in a hospital for a period of ten days, and for approximately one month after returning from the hospital the pain and injuries compelled her to remain in bed. This testimony was uncontroverted. She also testified that, at the time of trial, nine months after the accident, she was only able to return to work for one or two hours *428 per day and was not able to perform the ordinary duties of her work.

To corroborate this testimony, the plaintiffs produced two expert medical witnesses. Dr. Austin testified that his examinations after the accident revealed that Mrs. Holmes, as a result of the accident, sustained a sprain in the back region and injuries to ligaments in the vertebrae and to attendant nerve roots. Upon her release from the hospital, Dr. Austin directed that she wear a cervical collar for a two-month period, and also directed her to give up working in the plaintiffs' meat business for at least a two-month period. This testimony with regard to her injuries was corroborated by the plaintiffs' second medical witness, Dr. Keyes.

The evidence offered by the defendants which tended to refute the nature and extent of Mrs. Holmes' injuries was the testimony of the defendants' expert medical witness that, at the time of the trial, he found no existing appreciable disabilities resulting from the accident.

The medical testimony favorable to the plaintiff Mrs. Holmes established, at the most, that she was incapacitated for two and one-half months. The period of time following that was supported only by the word of Mrs. Holmes. Also, the claim of damages for the item of pain and suffering was largely based upon her testimony, and the jury was not bound by her testimony. Inasmuch as the jury may well have allowed nothing for permanent injuries and for future medical and hospital expenses, we cannot say, in view of this record, that a verdict of $1,504.47 for loss of earnings and pain and suffering is so inadequate as unmistakably to indicate that it was the result of passion and prejudice. The trial court did not err in refusing to grant a new trial on this ground contained in this assignment of error.

The plaintiffs next assign error to the trial court's failure to submit to the jury the issue of damages for the loss of use of the plaintiffs' automobile during the period of its repairs. The following testimony from the record represents the only evidence offered by the plaintiffs on this matter of damages:

*429 "Q Mrs. Holmes, were you folks without the use of your automobile for any period of time while it was being repaired? A Yes. Q Can you tell us for how long? A A little over a month. Q You have asked in that connection for an item of damages because of the loss of use of the automobile? A Yes. Q Would you tell us what that is? A The amount? Q Yes, please. A $300. Q And would you tell us upon what you base that figure, please? A Well, if we would have rented a car, it would have been is that what you want? Q Yes, please. A $200.00 plus 10 cents mileage. We drove our car approximately 2,000 miles a month. The rental company paid the gasoline. Q And that is your computation of what it would cost you to replace your automobile during that period, is that correct? A Yes. Q Now, Mrs. Holmes, did you folks in fact rent an automobile? A We did not. Q Previously for what purpose had your car been used? A Well, partially for business, coming into town. Q You say partially for pleasure? A Yes. Q During that period that the car was being repaired, you did without, largely? A Yes."

It further appears that the automobile in question was used for both business and pleasure; however, the plaintiffs did not offer any evidence relating to pecuniary losses suffered by reason of being deprived of their automobile in the family business.

The plaintiffs argue that Norris v. Hadfield, 124 Wash. 198, 213 Pac. 934, 216 Pac. 846 (1923), is direct authority which supports their contention that the trial court erred in refusing to submit the issue to the jury, since evidence of rental value of a substitute automobile was admitted at the trial. We do not read the Norris case as a holding that where a pleasure car is negligently injured and must undergo a period of repairs, the rental value of another automobile, which would serve the same purposes, is the measure of damages for loss of use in such a case. At most, the language in the Norris case is dictum since there was no proof whatsoever as to the use value of the automobile in that case.

[6] The rule with respect to loss of use of an automobile is that the owner may recover, as general damages, the use value of which he is deprived because of the defendant's *430 wrongful act. Stubbs v. Molberget, 108 Wash. 89, 182 Pac. 936, 6 A.L.R. 318 (1919); Jellum v. Grays Harbor Fuel Co., 160 Wash. 585, 295 Pac. 939 (1931); Norris v. Hadfield, supra;

Western Mach. Exch. v. Northern Pac. R. Co., 142 Wash. 675, 254 Pac. 248 (1927). Damages to compensate for this loss may only take into account the reasonable time in which the automobile should have been repaired. 5 Berry, Law of Automobiles § 5.233 (1935); Madden v. Nippon Auto Co., 119 Wash. 618, 206 Pac. 569 (1922).

Although there is not complete unanimity in the case law of all jurisdictions, the majority of the cases recognize the plaintiff's right to recover for loss of use whether the automobile which has been injured has been used by its owner for business, for family purposes or simply for pleasure. Norris v. Hadfield, supra; Cook v. Packard Motor Car Co. of New York, 88 Conn. 590, 92 Atl. 413 (1914); Johnson v. Scholz, 93 N.Y.S. (2d) 334, 276 App. Div. 163 (1949); Eschinger v. United Mut. Fire Ins. Co. (Mun. Ct. App., D.C.), 61 A. (2d) 725 (1948); Malinson v. Black, 83 Cal. App. (2d) 375, 188 P. (2d) 788 (1948).

A definitive statement of the guiding principle involved in cases of this nature appears in a concurring opinion to the decision in Cook v. Packard Motor Car Co. of New York, supra:

"Since compensation for injury to personal property is the cardinal rule for the measure of the damage, there would seem to be no room for affording a recovery for a deprivation of the use of an automobile devoted to business, and denying it to one devoted to pleasure uses. The value of the use of personal property is not the mere value of its intended use but of its present use. The value of an article to its owner, as Sedgwick points out, lies in his right to use, enjoy and dispose of it. These are the rights of property which ownership vests in him, and whether he, in fact, avails himself of his right of use does not in the least affect the value of his use. 1 Sedgwick on Damages (9th Ed.) § 243a. His right to the use of his property is not diminished by the use the owner makes of it. His right of user, whether for business or pleasure, is absolute, and whoever injures *431 him in the exercise of that right renders himself liable for consequent damage...."

The matter which creates the difficulty in such cases and which is the point at issue in relation to this assignment of error is that of proof of damages. It is on this that some courts of other jurisdictions take divergent views. The perplexing problem of proof is presented more in the case of pleasure automobiles than business automobiles because of the increased difficulty of placing a monetary value upon the use value to the owner.

[7] It follows from the principle set forth in the above quote that the right to compensation for loss of use is not dependent upon the owner having hired a substitute automobile during the period when his automobile was being repaired. As stated in Pittari v. Madison Ave. Coach Co., 188 Misc. 614, 68 N.Y.S. (2d) 741 (1947),

"The general rule is that damages for loss of use of an automobile may be allowed against one who negligently injures it, although the owner uses it only for pleasure and despite the failure of the owner to hire another automobile to take the place of the injured vehicle...."

We are in agreement with this rule. If we were to hold that a plaintiff who has lost the use of his pleasure automobile, which itself does not have a market rental value or pecuniary value to a business, but which does have a usable value to the plaintiff, cannot be compensated because he has not hired a substitute automobile, we would be placing upon recovery a condition of financial ability to hire another automobile to take the place of the injured automobile. The law cannot condone such a condition. He would be denied compensation for

his inconvenience resulting from the defendant's wrongful act. Pittari v. Madison Ave. Coach Co., supra; Naughton Mulgrew Motor Car Co. v. Westchester Fish Co., 105 Misc. 595, 173 N.Y.S. 437 (1918).

We now hold that, where, as here, a plaintiff has not rented a substitute automobile, he is nevertheless entitled to receive, as general damages in the event liability is established, such sum as will compensate him for his inconvenience. *432 Proof of what it reasonably would have cost to hire a substitute automobile is sufficient evidence to carry this item of damages to the jury, but is not the measure of such damages. It is relevant evidence in determining the general damages for inconvenience resulting from loss of use of an automobile. The Vanadis, 250 Fed. 1010 (N.Y.D.C. 1918); Cook v. Packard Motor Car Co. of New York, supra; Stephens v. Foster, 46 Ariz. 391, 51 P. (2d) 248 (1935); Meyers v. Bradford, 54 Cal. App. 157, 201 Pac. 471 (1921); McCormick, Damages § 124, 472 (1935).

The plaintiffs were entitled to have this issue submitted to the jury under appropriate instructions.

The plaintiffs assign error to the court's refusal, in this regard, to give the following requested instruction:

"If your verdict is in favor of plaintiffs, Frank S. Holmes and Neva A. Holmes, then in assessing the amount of recovery you will award them such sum as will reasonably compensate them for being deprived of the use of their automobile during the time necessarily consumed in repairing the damage proximately resulting from the accident. That sum is the reasonable rental or use value of the automobile for the period of time just mentioned." (Italics ours.)

This constitutes an instruction for special damages. The court did not err in refusing to give the requested instruction, for the reason that a substitute automobile was not rented. Had the last sentence of the instruction been deleted, the remainder could properly have been given as it applied to general damages. Stephens v. Foster, supra. This would constitute appropriate language in a general damage instruction upon the remand for a new trial on this issue.

[8] The plaintiffs further contend, however, that the trial court erred in submitting the issues of unavoidable accident and contributory negligence to the jury for the reason these issues were not supported by evidence in the record. It is argued that the improper consideration of these issues could have resulted in a compromise verdict on the damages allowed in view of the small award. Assuming, arguendo, the issues of unavoidable accident and *433 contributory negligence were improperly submitted we find nothing in the record to indicate a compromise verdict in the jury's award. The error, if any, in the submission of these issues, was cured by the verdict.

In view of our disposition of this case, it is unnecessary for us to consider any further assignments of error.

The judgment of the trial court entered upon the verdict in favor of the plaintiffs against the minor defendant is affirmed as to the minor's liability, and is remanded for a new trial solely on the issue of general damages sustained by the plaintiffs for loss of use of the automobile. The

judgment upon the verdict in favor of the defendants Carl Raffo and wife is reversed and remanded for a new trial on the question of their vicarious liability. The items of damages which were submitted to the jury in the first trial are fixed by the verdict, and should be awarded against the defendants Carl Raffo and wife together with additional damages for loss of use of the automobile, if any, in the event the jury finds them liable to the plaintiffs for their minor son's negligence.

Cost of this appeal will abide the final result of the cause.

ALL CONCUR.

NOTES

[*] Reported in 374 P. (2d) 536.

Court of Appeals of Washington,Division 2.

STRAKA TRUCKING, INC., Appellant, v. The ESTATE OF August Jade PETERSON, et al., Respondents.

No. 22920-0-II.

Decided: December 10, 1999

Charles Scott Sage, Valdez & Sage Atty. at Law, Ocean Shores, WA, for Appellant. Thomas Avery Brown, Brown, Lewis, Janhunen & Spencer, Aberdeen, WA, for Respondents.

The plaintiff's commercial logging truck was totally destroyed in an accident caused by the defendant's negligence. The plaintiff claimed damages for loss of use, beginning with the date of the accident and ending with the date on which the tortfeasor paid for the truck.[1] The trial court granted the defendant's motion for summary judgment. We reverse and remand.

On March 12, 1996, a car driven by August Jade Peterson crossed the center line and collided with a commercial logging truck owned by Straka Trucking, Inc. (hereafter "Straka"). Peterson was killed, and the logging truck was destroyed.

On March 27, 1996, a representative of Straka met with a representative of Peterson's estate (hereafter "Peterson"). Peterson offered $17,750 for the truck, plus $2,618 for loss of use from March 12, 1996, to April 1, 1996. Straka refused the offer, saying it would cost more than that to replace the truck.

On June 12, 1996, after further negotiations, Peterson paid $22,000 for the truck, plus $2,618 for loss of use from March 12, 1996 to April 1, 1996. Straka expressly reserved its right to litigate a claim for loss of use attributable to the remainder of the period from accident to payment of the value of the truck (April 1, 1996 to June 12, 1996).

On March 25, 1997, Straka sued on the claim it had reserved. Peterson responded with a motion for summary judgment, arguing that Straka could not recover loss of use because the truck had been destroyed rather than damaged. On January 26, 1998, the trial court granted Peterson's motion. Straka then filed this appeal.

If we apply general tort principles, we cannot hold as a matter of law that Straka is not entitled to loss of use from April 1, 1996 to June 12, 1996. The elements of a negligence claim are duty, breach, proximate cause and damages.[2] Neither party disputes that Peterson owed Straka a duty of reasonable care, and that Peterson breached that duty when she crossed the center line. Neither party disputes that Peterson's breach of duty

proximately caused the destruction of the truck. Neither party has shown that Straka had the means to replace the truck before Peterson paid for it, or that in the exercise of reasonable care he should have replaced the truck earlier than he did. Neither party has shown that Straka did not lose income that the truck otherwise would have produced.[3]

Modern authorities confirm our application of these general tort principles.[4] A well known text summarizes as follows:

In general, the plaintiff can almost always recover some measure of damages for a reasonable period of lost use. Loss of use claims are appropriate in the case of private chattels, such as the family car or the pleasure boat. They are also appropriate in the case of commercial animals and equipment of all kinds.

Loss of use may be measured by (1) lost profit, (2) cost of renting a substitute chattel, (3) rental value of the plaintiff's own chattel, or (4) interest.[5]

Moreover:

The owner who uses a chattel in the production of income is always entitled to claim profits lost when the chattel is unavailable during a reasonable period for repair or replacement as a result of tortious destruction, damage, or conversion. The claim may be that inability to use the chattel reduced the plaintiff's income or that it increased his expenses, either way reducing his net profit, which is recoverable if the proof is adequate.[[[[6]

Any such claim is subject to normal requirements on special damages,[7] duplication of damages,[8] and mitigation of damages.[9]

Peterson relies heavily on McCurdy v. Union Pacific Railroad.[10] That case, she says, "absolutely control[s]" [11]damages for loss of use and bars all such damages whenever property is totally destroyed (rather than merely damaged). We disagree.

In McCurdy, a private railroad car was "seriously damage[d]" through the negligence of the Union Pacific Railroad.[12] The evidence did not show whether the car had been totally destroyed. Speaking to that possibility, the Supreme Court said:

If [on retrial] the jury should find that the car was totally destroyed, then respondent cannot recover for the loss of use, as the measure of damage in such a case is the value of the property destroyed. Adams v. Bell Motors, Inc., 9 La.App. 441, 121 So. 345; Helin v. Egger, 121 Neb. 727, 238 N.W. 364; Skinner v. Scott, 238 La. 868, 116 So.2d 696.[13] The reason for this rule is that in the recovery of the full value of the vehicle, as of the date of its destruction, the owner has been made whole.[[[[14]

Speaking to the alternative possibility (i.e., that the private railroad car had been damaged but not destroyed), the Supreme Court said, "If the jury should find that the car could reasonably be repaired, then the owner may recover compensation for the loss of use of the car while the repairs are in progress." [15]

McCurdy is distinguishable from this case. Although the McCurdy court stated that the owner of totally destroyed property may not recover for loss of use, it also stated that "[t]he reason for this rule is that in the recovery of the full value of the vehicle e, as of the date of its destruction, the owner has been made whole." [16] It appears, then, that the McCurdy court focused on the period after the tortfeasor's payment; during that period loss of use damages accrue when property is merely damaged, but not when property is totally destroyed.[17] In this case, we are concerned with loss of use before the tortfeasor pays, or, in alternative terms, with loss of use from the date of the accident to the date on which the tortfeasor pays (or tenders) the full value of the destroyed property.

We conclude that McCurdy does not control; that general tort principles do; and that the trial court erred by dismissing, as a matter of law, Straka's loss of use claim. On remand, Straka has the burden of proving the reasonableness of the period of time for which it claims loss of use.[18]

Reversed and remanded.

FOOTNOTES

1. In a negotiated partial settlement, the defendant agreed to pay loss of use for the first 19 days after the accident, and the plaintiff reserved its right to claim loss of use for the remainder of the 92 days between accident and payment. For all intents and purposes, then, the claim here is for loss of use from the date of accident to the date of the defendant's payment, with the defendant being entitled to credit for 19 days already paid.

2. Hertog v. City of Seattle, 138 Wash.2d 265, 275, 979 P.2d 400, 406 (1999); see also Degel v. Majestic Mobile Manor, Inc., 129 Wash.2d 43, 48, 914 P.2d 728 (1996); Hutchins v. 1001 Fourth Avenue Associates, 116 Wash.2d 217, 220, 802 P.2d 1360 (1991).

3. See Young v. Key Pharmaceuticals, 112 Wash.2d 216, 225, 770 P.2d 182 (1989) (party who moves for summary judgment "bears the initial burden of showing the absence of an issue of material fact").

4. C.C. Marvel, Annotation, Recovery for Loss of Use of Motor Vehicle Damaged or Destroyed, 18 A.L.R.3d 497 (1968). See also, restatement (Second) of Torts S S § 927 (1979).

5. Dan B. Dobbs, Law of Remedies § 5.15(1), at 875 (2d ed.1993) (citations omitted).

6. Dan B. Dobbs, Law of Remedies § 5.15(2), at 876 (2d ed.1993) (emphasis added).

7. Dobbs, supra, § 5.15, at 877-78.

8. Dobbs, supra, § 5.15, at 878.

9. Dobbs, supra, § 5.15, at 878.

10. McCurdy v. Union Pac. R.R., 68 Wash.2d 457, 413 P.2d 617 (1966).

11. Respondent's Brief at 4.

12. McCurdy, 68 Wash.2d at 461, 413 P.2d 617.

13. When McCurdy was decided, Louisiana law provided that "[o]ne who recovers the full value of a chattel destroyed through the negligence of another cannot recover for the value of the use thereof after same was destroyed." Skinner, 116 So.2d at 699; Adams, 121 So. at 347. Since then, Louisiana law has changed. Today, it provides that "where a wrecked vehicle is totally destroyed or repair is not economically feasible, damages for the loss of use of the vehicle are recoverable, but only for a reasonable period of time, i.e., that period in which the owner should become aware of the situation and secure a replacement." Bunkie Funeral Home, Inc. v. McNutt, 414 So.2d 1263, 1270 (La.App.1982); see also Reynaud v. Leonard, 430 So.2d 314, 317 (La.App.1983).Similarly, when McCurdy was decided, Nebraska law provided that " '[w]hen [an] automobile is totally destroyed, the measure of damages is its reasonable market value immediately before its destruction.' " Helin, 238 N.W. at 365 (citation omitted). Since then, Nebraska law has changed. Today, it provides that "[w]here the damage to personal property is such that it cannot be repaired and the property thereby restored to substantially its condition immediately before the damage occurred, or when the reasonable cost of repair exceeds the difference in market value of the property immediately before and immediately after the injury, the measure of damages is the lost market value plus the reasonable value of the loss of use of the property for the reasonable amount of time required to obtain a suitable replacement." Chlopek v. Schmall, 224 Neb. 78, 396 N.W.2d 103, 110 (1986).

14. McCurdy, 68 Wash.2d at 469, 413 P.2d 617.

15. McCurdy, 68 Wash.2d at 470, 413 P.2d 617.

16. McCurdy, 68 Wash.2d at 469, 413 P.2d 617 (citation omitted) (emphasis added).

17. This seems to make sense, at least for the typical case. Once paid, the owner of totally destroyed property can replace it quickly. Once paid, the owner of merely damaged property still needs additional time within which to effect repairs.

18. See McCurdy, 68 Wash.2d at 470, 413 P.2d 617 ("[t]he reasonableness of the time for which loss of use is to be compensated is as it would appear to an ordinary prudent man under all the circumstances").

MORGAN, J.

BRIDGEWATER, C.J., and HUNT, J., concur.

Exhibit 12:
The 1963 Consent Decree

United States Department of Justice investigation uncovered a conspiracy to fix prices/anti-trust violations with insurance company claims settlement practices in automotive property damage claims

Federal Court orders Insurers to cease and desist price fixing auto repairs

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

CIVIL ACTION No. 63 Civ. 3106

1963 CONSENT DECREE

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK Civil No. 3106 Filed: October 23 1963 UNITED STATES OF AMERICA Plaintiff, v. ASSOCIATION OF CASUALTY AND SURETY COMPANIES; AMERICAN MUTUAL INSURANCE ALLIANCE; and NATIONAL ASSOCIATION OF MUTUAL CASUALTY COMPANIES, Defendants. COMPLAINT The United States of America, by its attorneys, acting under the direction of the Attorney General of the United States, brings this civil action to obtain equitable relief against the above named defendants, and complains and alleges as follows:

I. JURISDICTION AND VENUE

1. This complaint is filed and these proceedings are instituted under Section 4 of the Act of Congress of July 2, 1890, c. 647, 26 Stat. 209 (15 U.S.C. 4), as amended, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," commonly known as the Sherman Act, in order to prevent and restrain continuing violations by the defendants, as hereinafter alleged, of Sections 1 and 3 of the Sherman Act.
2. The defendant Association of Casualty and Surety Companies transacts business and is found within the Southern District of New York.

II. DEFINITIONS

3. As used herein: (a) "Member Companies" shall be deemed to mean member companies of any of the defendant association; (b) "Automobile" shall be deemed to mean a self-propelled vehicle used for the transportation of persons or property on the highway; c) "Automobile property damage liability insurance" shall be deemed to mean insurance against loss arising out of the insured's legal liability for damages to the property of others resulting from the ownership, maintenance or use of an automobile; (d) "Automobile physical damage insurance" shall be deemed to mean insurance covering damages or loss to the automobile of the insured resulting from collision, fire, theft, and other perils; (e) "Automobile property insurance" shall be deemed to mean automobile property damage liability insurance and automobile physical damage insurance; (f) "Direct premiums earned" shall be deemed to mean that part of the premiums applicable to the expired part of the policy; (g) "Direct losses incurred" shall be deemed to mean the amount of loss paid and outstanding; (h) "Insured" shall be deemed to mean the party to whom or on behalf of whom the insurer agrees to pay losses under the insurance contract; (I) "Insurer" shall be deemed to mean the party to the insurance contract who promises to pay losses; (j) "Adjustment" shall be deemed to mean the process to determine the amount payable by the insurer to an insured or other claimant under the insurance contract, and the rights and obligations incident thereto; (k) "Settlement" shall be deemed to mean the discharge of an obligation of an insurer to an insured or other claimant under an insurance contract as determined by adjustment of a claim; (l) "Adjuster" shall be deemed to mean a person or firm who represents the insurer in the adjustment and settlement of claims with insureds or other claimants; (m) "Automobile material damage" shall be deemed to mean any damage to an automobile resulting from collision, fire, or other perils for which automobile property insurance is available; (n) "Repair Shop" shall be deemed to mean a person or firm engaged in automobile material damage repair; (o) "Agreed price" shall be deemed to mean a commitment by a repair shop to undertake to complete and guarantee automobile material damage repairs in consideration of the amount of an appraiser's estimate.

III. DEFENDANTS

4. Associations of Casualty and Surety Companies (hereinafter referred to as "ACSC"), which maintains its principal office at 110 William Street, New York, New York, is made a defendant herein. ASCS in an unincorporated trade association whose membership is composed of 133 stock insurance companies doing business in the United States.
5. American Mutual Insurance Alliance (hereinafter referred to "AMIA"), a corporation organized and existing under the laws of the State of Illinois, with its principal office at 20 North Wacker Drive, Chicago, Illinois, is made a defendant herein. AMIA is a trade association whose

membership is composed of 106 mutual insurance companies doing business in the United States.

6. National Association of Mutual Casualty Companies (hereinafter referred to as "NAMCC"), a corporation organized and existing under the laws of the State of Illinois, with its principal office at 20 North Wacker Drive, Chicago, Illinois, is made a defendant herein. NAMCC is a trade association whose membership is composed of 26 mutual insurance companies doing business in the United States. All members of the NAMCC which write automobile property insurance are members also of AMIA.

IV. CO-CONSPIRATORS

7. Various other persons, firms, organizations and corporations, including but not limited to member companies, sponsored appraisers, and repair shops, not made defendants herein have participated as co-conspirators with the defendants in the offense hereinafter charged and performed acts and have made statements in furtherance thereof.

V. NATURE OF TRADE AND COMMERCE

8. An important branch of the insurance industry is automobile property insurance, which provides coverage for property losses arising out of the ownership or use of automobiles. This coverage is provided by two types of insurance: Automobile property damage liability insurance and automobile physical damage insurance.
9. Total direct premiums earned in the United States by all insurance companies in 1960 for automobile property insurance amounted to approximately $3,327,815,566. Of the total direct premiums earned in 1960, member companies accounted for approximately 35.5 percent, or approximately $1,183,642,376. Total direct losses incurred in the United States in 1960 by all insurance companies under automobile property insurance amounted to approximately $1,787,276,826. Of the total direct losses incurred in 1960, member companies accounted for approximately 35.2 percent, or $627,948,160.
10. Automobile property insurance is sold by insurance companies, including member companies, throughout the United States, and in the District of Columbia, by the issuance of an insurance contract, commonly called a policy, in exchange for an amount of money, commonly called premiums. The automobile property insurance business involves a continuous and indivisible stream of intercourse among states composed of collections of premiums, payment of policy obligations, and documents and communications essential to the negotiation and execution of policy contracts and the adjustment and settlement of claims.
11. A vital phase of the automobile property insurance business is the adjustment and settlement of claims. A great majority of the claims under automobile property insurance policies are for automobile material damage. It is the general practice for member companies to employ a claim representative, commonly known as a claim manager, to supervise and be responsible for the adjustment and settlement of claims, including those under automobile property insurance, arising in the territory assigned to him. An integral part of the process of adjustment and settlement of claims arising under automobile property insurance is determining the cost of repairing the damaged automobiles. One way of accomplishing this is for the claim manager or adjuster to engage an appraiser to prepare an estimate of the repair cost.
12. An appraiser operates by examining the damaged automobile to determine the damage covered by automobile property insurance, the repairs that must be made, the time it will take to make them and thereafter securing an agreed price from a repair shop. The agreed price is transmitted by the appraiser to the claim manager or adjuster, and is used as a basis for adjusting and settling the claim. The process of adjustment and settlement of claims includes a continual transmission to and from and between home offices of insurance companies, claim managers, adjusters, appraisers, and claimants located in different states of the United States and the District of Columbia of claim forms, statements, reports, directives, checks and drafts, documents and communications of various kinds, all of which are essential to the adjustment and settlement of claims.
13. A major part of direct losses incurred under automobile property insurance is attributable to automobile material damage repair cost; and a major part of the automobile material damage repair business is the repair of automobile damage covered by automobile property

insurance. The automobile material damage repair business consists of the repair and replacement of automobile parts and is engaged in by repair shops located in all states of the United States and District of Columbia. The price charged by repair shops for automobile material damage repairs consists of a labor charge, which is an hourly rate applied to the time taken to repair or replace parts, and a parts charge for any parts which are used to replace damaged parts on the automobile. Automobile parts are manufactured by automobile manufacturers and others in plants located in various states of the United States and are sold and shipped by them to jobbers, wholesalers and dealers located in the District of Columbia and states other than the states in which they were manufactured for resale to repair shops for sale and use in the repair of damaged automobiles.

VI. BACKGROUND OF THE CONSPIRACY

14. The ACSC has had for many years a committee known as the Advisory Committee of the Claims Bureau, sometimes referred to as the Claims Bureau Advisory Committee, which is composed of approximately 18 claims executives of member companies. The NAMCC has had for many years a committee known as the Claims Executive Committee which is composed of approximately 8 claims executives of member companies. It was and is the function of these committees to consider on behalf of their respective associations policies and programs relating to claims administration. An additional function of the Advisory Committee of the Claims Bureau of the ACSC is to supervise the operations of and formulate policies for the Claims Bureau, a department of the ACSC. The Claims Bureau, which has a large administrative staff, maintains its headquarters at 110 William Street, New York, New York, and also has several regional offices located throughout the United States. The function of the Claims Bureau is to aid in claims administration.
15. Beginning in or about 1940, the Advisory Committee of the Claims Bureau of the ACSC and the Claims Executive Committee of the NAMCC began to hold joint meetings. These meetings were soon formalized into regular joint sessions and the group became known as the Joint Claims Committee and later the Combined Claims Committee (hereinafter referred to as "CCC"). These two committees were designated by their respective defendant associations to represent the interest of member companies on the CCC. The purpose and function of the CCC was and is to provide a common forum to consider policies and programs relating to claims administration. In 1962, by resolution of the governing boards of the defendants, the Claims Executive Committee of the NAMCC was designated to represent AMIA on the CCC.
16. On March 12, 1942 the CCC passed a resolution which provided for the organization of Casualty Insurance Claim Managers' Councils (hereinafter referred to as "Councils") in various areas of the United States to act as sub-committees of and under the direction and control of the CCC, then known as the Joint Claims Committee. These Councils are each chartered by the CCC. Each Council's membership is composed of those member companies which have a full time, salaried claim representative in the area under the Council's jurisdiction. The primary purpose and function of the Councils are to permit field claim managers of member companies to consider local problems of claims administration, including those arising under automobile property insurance. At the present time there are approximately 80 Councils located throughout the United States, including the District of Columbia.
17. In the Fall of 1946, the Pittsburgh, Pennsylvania Council met to consider what collective action might be taken by its members to depress and control automobile material damage repair costs in the Pittsburgh area. In March 1947, the Pittsburgh Council adopted a program subsequently known as the Independent Appraisal Plan (hereinafter referred to as the "Plan"), intended to depress and control automobile material damage repair cost.
    The CCC in December 1948 and again in July 1949 formally adopted the Plan and since that time has sponsored it and actively promoted its expansion and use. Since its inception the Plan, under the supervision and direction of the CCC, and administered by the Claims Bureau of the ACSC and the Councils, has become a nationwide operation. By the end of 1961, it was in effect in 177 localities throughout the United States, including the District of Columbia. The CCC requires uniformity in the operation of the Plan throughout the United States.
18. Under the Plan, a Council in collaboration with the CCC, selects and sponsors an individual or partnership to act as appraiser to make determinations of automobile material damage costs for use in the adjustment and settlement of claims. Prior to the selection of a sponsored appraiser, Council members are instructed to submit to the Council the volume of business they anticipate

giving the appraiser in the area for which he is to be sponsored. The sponsored appraiser is required to employ sufficient personnel to handle any volume of appraisal business in his territory. Most such appraisers have several employees. The sponsored appraiser is required to confine his operations to the territory for which he is sponsored by the council or CCC. The fees which the sponsoring appraiser charges are subject to the approval of the sponsoring Council or CCC. The sponsored appraiser is required to conform his operations to the principles of the Plan and to assure his compliance, his operations are supervised and controlled by the sponsoring Council and the Claims Bureau on behalf of the CCC. The Plan calls for exclusive use of the sponsored appraisers by member companies and the sponsored appraiser is urged to solicit business from others in order to increase the effectiveness of the Plan.

19. Included among the means used under the Plan to control and depress automobile material damage repair costs are the following: (1) to repair rather than replace damaged parts; (2) to replaced damaged parts by used rather than new parts; (3) to obtain discounts on new replacement parts; (4) to establish strict labor time allowances by the sponsored appraisers; and (5) to obtain the lowest possible hourly labor rate.

20. The Plan calls for the sponsored appraiser to arrange for a number of repair shops to agree to make automobile material damage repairs based upon his estimate without the repair shop first examining the damaged automobile. In those situations in which the damaged automobile is not already in the possession of a repair shop, the sponsored appraiser will recommend any of these repair shops to the adjuster or claim manager. In those instances where a particular repair shop in which the damaged automobile is located will not agree to make repairs based upon the sponsored appraiser's estimate, the Plan provides that the sponsored appraiser shall inform the adjuster or claim manager of the names of those repair shops which will accept his estimate and that the adjuster or claim manager will then, when possible, have the damaged automobile repaired by one of the repair shops which have agreed to accept the sponsored appraiser's estimate. It is seldom that a claim is settled at a higher figure than the sponsored appraiser's estimate.

21. The nationwide application of the Plan involves a continuous intercourse among the states composed of memoranda, correspondence, directives and other communications to and from and between the CCC, defendants, Claims Bureau, member companies, Councils and sponsored appraisers.

VII. OFFENSES CHARGED

22. Beginning in or about 1947, and continuing up to and including the date of the filing of this complaint, the defendants and co-conspirators have engaged in a combination and conspiracy in unreasonable restraint of the aforesaid trade and commerce in the adjustment and settlement of automobile property insurance claims, the automobile material damage appraisal business and the automobile damage repair business, in violation of Sections 1 and 3 of the Sherman Act. Defendants are continuing and will continue said offenses unless the relief herein prayed for is granted.

23. The aforesaid combination and conspiracy has consisted of a continuing agreement and concert of action among the defendants and co-conspirators to eliminate competition among member companies in the adjustment and settlement of automobile property insurance claims, among appraisers and among repair shops, in order to control and depress automobile material damage repair costs through boycott, coercion and intimidation of repair shops.

24. Pursuant to and in effectuation of the aforesaid combination and conspiracy the defendants and co-conspirators did those things which, as hereinbefore alleged, they agreed to do and, among others, did the following things: (a) Refused to recognize or sponsor more than one appraiser in a territory designated by a Council or the CCC; (b) Coerced sponsored appraisers to operate only in the territories in which they are sponsored; (c Induced member companies to channel their automobile material damage appraisal business to the sponsored appraiser and boycott other business to the sponsored appraiser and boycott other automobile material damage appraisal businesses; (d) Encouraged the use of sponsored appraisers by others to increase the effectiveness of the Plan; (e) Required sponsored appraisers to conform their operations to the Plan and withdrew or threatened to withdraw the sponsorship of appraisers who failed to do so; (f) Required fees charged by sponsored appraisers to be approved by Councils or the CCC; (g) Induced member companies to refuse to settle a claim for an amount greater than a sponsored appraiser's estimate of the automobile material damage repair costs; and (h) Induced member

companies to channel automobile material damage repair business to those repair shops which will, and boycott those repair shops which will not: (1) Accept the sponsored appraiser's estimate as to the cost of repairs; (2) Give a price discount on replacement parts; (3) Maintain hourly labor rates at a figure which is considered the lowest possible rate in the area; and (4) Accede to the sponsored appraiser's determination of time allowances.

VIII. EFFECTS

25. The aforesaid offenses have had, among others, the following effects: (a) Elimination of competition in the adjustment and settlement of automobile property insurance claims, in the automobile material damage appraisal business and in the automobile material damage repair business; (b) Non-sponsored appraisers engaged in or desiring to engage in the automobile material damage appraisal business have been foreclosed from a substantial segment of the business; (c Repair shops which refuse to accept the sponsored appraisers' estimate have been foreclosed from a substantial segment of the automobile material damage repair business; and (d) Prices charged by repair shops have been subjected to collective control and supervision by defendants and co-conspirators. PRAYER WHEREFORE, the plaintiff prays: 1. That the aforesaid combination and conspiracy be adjudged and decreed to be in violation of Sections 1 and 3 of the Sherman Act. 2. That each of the defendants, their officers, directors, agents, and employees, and all committees or persons acting or claiming to act on behalf of the defendants or any of them, be perpetually enjoined from continuing to carry out, directly or indirectly, the aforesaid combination and conspiracy to restrain interstate trade and commerce in the adjustment and settlement of automobile property insurance claims, the automobile material damage appraisal business and the automobile material damage repair business; and that they be perpetually enjoined from engaging in or participating in practices, contracts, agreements, or understandings, or claiming any rights thereunder, having the purpose or effect of continuing, reviving, or renewing the aforesaid offense or any offenses similar thereto. 3. That each of the defendants be enjoined from, either individually or in concert with others: (1) sponsoring or preferentially dealing with any appraiser; (2) boycotting any appraiser; (3) exercising any control over or influence upon the activities of any appraiser; (4) channeling or attempting to channel automobile material damage repair business to any repair shop or type of repair shop; (5) boycotting any repair shop or type of repair shop; or (6) coercing any repair shop to conform to its prices for repair work or parts to the estimates of any appraiser or otherwise influencing the prices for repair work or parts. 4. That each of the defendants be ordered to amend its by-laws to require each of its member companies to refrain from acting in concert with any other companies in: (1) sponsoring or preferentially dealing with any appraiser; (2) boycotting any appraiser; (3) exercising any control over or influence upon the activities of any appraiser; (4) channeling or attempting to channel automobile material damage repair business to any repair shop or type of repair shop; (5) boycotting any repair shop or type of repair shop; (6) coercing any repair shop to conform its prices for repair work or parts to the estimates of any appraiser or otherwise influencing the prices for repair work on parts; and to make compliance with such requirements a condition of membership. 5. That pursuant to Section 5 of the Sherman Act on order be made and entered herein requiring defendants AMIA and NAMCC to be brought before the Court in this proceeding and directing the Marshal of the Northern District of Illinois to serve summons upon AMIA and NAMCC. 6. That the plaintiff have such other and further relief as the nature of the case may require and the Court may deem just and proper. 7. That the Plaintiff recover the costs of this suit. Dated: New York, New York October 22nd 1963 signed by: Robert F. Kennedy Attorney General William H. Orrick, Jr. Assistant Attorney General Baddia J. Rashid Attorney, Department of Justice John H. Waters Attorney, Department of Justice William H. Rowan Attorney, Department of Justice

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

CIVIL ACTION No. 63 Civ. 3106 ENTERED: November 27,1963 UNITED STATES OF AMERICA, Plaintiff v. ASSOCIATION OF CASUALTY AND SURETY COMPANIES, AMERICAN MUTUAL INSURANCE ALLIANCE and the NATIONAL ASSOCIATION OF MUTUAL CASUALTY COMPANIES, Defendants

FINAL JUDGMENT

Plaintiff, United States of America, having filed its complaint herein on October 23, 1963, and the plaintiff and the defendants, by their respective attorneys, having consented to the entry of this Final Judgment without admission by any party with respect to any issue herein; NOW, THEREFORE, before the taking of any testimony herein, without trial or adjudication of any issue, and upon such consent, as aforesaid, it is hereby ORDERED, ADJUDGED AND DECREED as follows:

I. This Court has jurisdiction of the subject matter hereof and the parties hereto and the complaint states a claim upon which relief can be granted under Sections 1 and 3 of the Act of Congress of July 2, 1890, commonly known as the Sherman Act, as amended.

II. The provisions of this Final Judgment shall be binding upon each defendant and upon its officers, directors, agents, servants, employees, committees, successors and assigns, and upon all other persons in active concert or participation with any defendant who shall have received actual notice of this Final Judgment by personal service or otherwise.

III. (A) Each defendant is ordered and directed within ninety (90) days from the entry of this Final Judgment to terminate, cancel and abandon the Independent Appraisal Plan, sometimes known as the Automotive Damage Appraisal Plan, which the defendants have established and are now administering, and each defendant is enjoined from reviving, renewing or again placing into effect that plan. (B) Defendants are ordered and directed within ninety (90) days from the entry of this Final Judgment to send written notice, in the form attached hereto as an exhibit, stating that all defendants have terminated, canceled and abandoned the Independent Appraisal Plan (1) to each appraiser sponsored under the Plan, (2) to each member company, and (3) to each Local Casualty Insurance Claims Managers' Council.

IV. (A) Each defendant is enjoined from placing into effect any plan, program or practice which has the purpose or effect of: (1) sponsoring, endorsing or otherwise recommending any appraiser of damage to automobile vehicles: (2) directing, advising or otherwise suggesting that any person or firm do business or refuse to do business with (a) any appraiser of damage to automobile vehicles with respect to the appraisal of such damage, or (b) any independent or dealer franchised automotive repair shop with respect to the repair of damage to automobile vehicles; (3) exercising any control over the activities of any appraiser of damage to automotive vehicles; (4) allocating or dividing customers, territories, markets or business among any appraisers of damage to automotive vehicles; or (5) fixing, establishing, maintaining or otherwise controlling the prices to be paid for the appraisal of damage to automotive vehicles, or to be charged by independent or dealer franchised automotive repair shops for the repair of damage to automotive vehicles or for replacement parts or labor in connection therewith, whether by coercion, boycott or intimidation or by the use of flat rate or parts manuals or otherwise.
(B) Nothing in Subsection (A) above shall be deemed to prohibit the furnishing to any person or firm of any information indicating corrupt, fraudulent or unlawful practices on the part of any appraiser of damage to automotive vehicles or any independent or dealer franchised automotive repair shop, so long as the furnishing of such information is not part of a plan, program or practice enjoined in paragraphs (1) through (5) of Subsection (A) above. Each defendant shall include in any report of such information an affirmative statement that such report is not a recommendation and that the person or firm to whom such report is furnished should independently determine whether to do business with any appraiser or automotive repair shop to which the report relates.

V. Defendants are ordered and directed within ninety (90) days from the entry of this Final Judgment to cause the character of each Local Casualty Insurance Claims Managers' Council to be amended so as to incorporate therein a declaration of policy that the Council shall not engage in any activity prohibited by Section IV of this Final Judgment.

VI. Nothing in Section IV of this Final Judgment shall be deemed to determine or constitute a waiver of any rights or immunities that defendants may have under the Act of Congress of March 9, 1945, commonly known as the McCarran-Ferguson Act.

VII. (A) For the purpose of determining and securing compliance with this Final Judgment and subject to any legally recognized privilege, duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General, or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to any defendant made to its principal office, be permitted (1) access during the office hours of such defendant to all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of such defendant relating to any of the matters contained in this Final Judgment during which time counsel for such defendant may be present; and (2) subject to the reasonable convenience of such defendant and without restraint or interference from it to interview officers or employees of such defendant, who may have counsel present, regarding any such matters. (B) Any defendant, on written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, shall submit within a reasonable time such

reports in writing, under oath if requested, with respect to any matters contained in this Final Judgment as may be reasonably necessary for the purpose of the enforcement of this Final Judgment. (C) No information obtained by the means provided in this Section VII shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch, except in the course of legal proceedings to which the United States of America is a party for the purpose of securing compliance with this Final Judgment or as otherwise required by law.

VIII. Jurisdiction is retained for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment or for the modification or termination of any of the provisions thereof, and for the enforcement of compliance therewith and punishment of violations thereof. Dated: November 27, 1963 /s/ Edward C. McLean United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

CIVIL ACTION No. 63 Civ. 3106

Filed October 23,1963 UNITED STATES OF AMERICA, Plaintiff v. ASSOCIATION OF CASUALTY AND SURETY COMPANIES, AMERICAN MUTUAL INSURANCE

ALLIANCE and the NATIONAL ASSOCIATION OF MUTUAL CASUALTY COMPANIES, Defendants. STIPULATION. It is stipulated by and between the undersigned parties, by their respective attorneys, that: (1) The parties consent that a Final Judgment in the form hereto attached may be filed and entered by the Court at any time after the expiration of thirty (30) days following the date of filing of this Stipulation without further notice to any party or other proceedings, either upon the motion of any party or upon the Court's own motion, provided that plaintiff has not withdrawn its consent as provided herein; (2) The plaintiff may withdraw its consent hereto at any time within said period of thirty (30) days by serving notice thereof upon the other parties hereto and filing said notice with the Court; (3) In the event plaintiff withdraws its consent hereto, this Stipulation shall be of no effect whatever in this or any other proceeding and the making of this Stipulation shall not in any manner prejudice any consenting party in any subsequent proceedings. Dated: October 23, 1963. For the Plaintiff: WILLIAM H. ORRICK, JR. Assistant Attorney General JOHN H. WATERS WILLIAM D. KILGORE, JR. WILLIAM H. ROWAN BADDIA J. RASHID CHARLES F. B. McALEER Attorneys, Department of Justice For the Defendant Association of Casualty and Surety Companies: ROBERT MacCRATE For the Defendants American Mutual Insurance Alliance and the National Association of Mutual Casualty Companies: HUGH B. COX

Exhibit 13:

This list of links to news stories and articles around the country regarding unsafe vehicle repairs at insurance "preferred" shops

- **Louisiana Attorney General sues State Farm insurance for unfair and deceptive acts and practices in auto claims.**

- **CNN's Anderson Cooper investigates insurance scams with body shops**

CNN Anderson Cooper reports on Auto Insurance Scam with body shops
https://www.youtube.com/watch?v=Drds6pLzruw

Louisiana Attorney General sues State Farm insurance for unfair and deceptive acts and practices:
https://www.ag.state.la.us/Shared/ViewDoc.aspx?Type=3&Doc=402

Local news station reports on GEICO/ABRA unsafe repairs
https://www.youtube.com/watch?v=xaLHgR-JSg8

Fraud and Unsafe repairs uncovered, Marks Body Shop
https://www.youtube.com/watch?v=jE1nAGqFOnc

Marks body shop uncovers unsafe repairs
https://www.youtube.com/watch?v=4SZyPT14Wbs

Marks Body Shop
https://www.youtube.com/watch?v=4SZyPT14Wbs

Jesse Jones local investigation of unsafe repairs performed by State Farm body shops:
http://jessejones.com/story/can-you-count-on-your-car-insurance-in-a-collision/

Jesse Jones local investigation of unsafe repairs performed by State Farm body shops:
http://bcove.me/twgv4ec0

K&M Collision finds unsafe repairs and fraud:
https://www.youtube.com/watch?v=XvyTpP2tCSc

http://kandmcollision.com/post-repair-inspection/

Collision Safety Consultants finds unsafe repairs:
https://www.youtube.com/watch?v=xDxUKxRY9sg

https://www.youtube.com/watch?v=SieKpdSZGkE

https://www.youtube.com/watch?v=6J1eJg2IAh4

https://www.youtube.com/watch?v=6EZBuHnDso8

https://www.youtube.com/watch?v=E3SaZWzxj0Q

Misc links:

Angieslist article about Insurance DRP body shops vs independent body shops
http://www.angieslist.com/articles/auto-repair-shop-choice-vs-insurance-company-drp.htm

http://www.wsoctv.com/news/special-reports/9-investigates-insurance-companies-cutting-corners/52843337

http://wlos.com/news/news-13-investigates/unsafe-fixes-what39s-lurking-behind-your-bumper-may-not-be-safe#.VrsqCEU8KJJ

News station reports on Progressive insurance "concierge claims center" poor and unsafe repairs. We have one of these centers in Lynnwood and my examination of those repairs are exactly that same as this story.
https://www.youtube.com/watch?v=tJ4rugklWxg

In a letter to U.S. Attorney General Eric Holder, Senator Blumenthal, D-Conn., wrote: “I write to bring your attention to troubling new evidence that our nation’s top auto insurers continue to engage in anti-competitive and possibly illegal tactics to pressure consumers into repairing their vehicles at insurance-preferred repair shops.” He cited a special investigation shown on Anderson Cooper 360 recently.
http://www.nhregister.com/general-n...o-insurers-engage-in-anti-competitive-tactics

www.collision.honda.com
Great consumer source about collision repair

http://www.fenderbender.com/core/pagetools.php?pageid=23618&url=%2FFenderBender%2FJune-2016%2FAre-You-On-Board-with-Vehicle-Diagnostics%2Findex.php&mode=print#

http://www.repairerdrivennews.com/2015/02/24/va-collision-repairer-warns-nbc12-viewers-about-aftermarket-parts/

http://www.repairerdrivennews.com/2015/03/02/blumenthal-criticizes-car-insurers-at-conn-auto-body-shop/

http://www.repairerdrivennews.com/2015/03/16/dallas-morning-news-auto-body-shops-slam-insurers-use-of-aftermarket-parts-lower-labor-rates/

http://www.repairerdrivennews.com/2015/03/05/wtae-penn-auto-body-shop-owner-warns-of-used-aftermarket-parts-from-insurers/

http://www.repairerdrivennews.com/2015/03/12/indiana-auto-body-industry-blasts-car-insurers-in-wxin-report/

http://www.repairerdrivennews.com/2015/12/17/i-car-guest-column-collision-repair-diagnostics-the-next-essential-collision-repair-process/

http://www.repairerdrivennews.com/2015/11/25/scrs-sema-panel-audience-members-share-tips-woes-on-getting-reimbursed-for-scans/

http://www.repairerdrivennews.com/2015/11/20/we-gotta-quit-relying-on-the-dashboard-light-why-scans-are-more-important-than-ever-for-collision-repair/

http://www.repairerdrivennews.com/2015/06/18/debating-need-for-sensor-scans-calibration-with-insurer-heres-some-oem-expert-guidelines/