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May 5, 2019

Sent via US Mail and email to gyngers@oic.wa.gov

Gynger Steele
Office of the Insurance Commissioner
PO Box 40258
Olympia, WA 98504-0258

Re: Petition to Amend WAC 284-30-390(4)

Dear Ms. Steele:

The purpose of this letter is to propose, explain, and advocate for an amendment to WAC 284-30-390(4) to harmonize the regulation with the principle of indemnity that forms the foundation of a first-party insurance contract; protect a vehicle owner's right to choose the repair facility with which they are comfortable performing collision repairs without the risk of unreasonable adverse economic consequences; and protect the right of "independent" collision repair facilities to conduct business operations without a regulation that, as drafted, encourages carriers to "steer" policyholders to collision repair facilities within the carrier's "preferred" or "direct repair" network.

Precise statement of the Proposed Amendment

As presently drafted, WAC 284-30-390 presently reads:

In addition to the unfair claims settlement practices specified in this regulation, the following acts or practices of the insurer are hereby defined as unfair methods of competition and unfair or deceptive acts or practices in the business of insurance, specifically applicable to the settlement of motor vehicle claims . . . .

(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.

(a) If the insurer prepares the estimate, it must provide a copy of the estimate to the claimant.

(b) If a claimant provides the estimate and the insurer, after evaluation of the claimant's estimate, determines it owes an amount that differs from the estimate the claimant provided, the insurer must fully disclose the reason or reasons for the difference to the claimant, and must thoroughly document the circumstances in the claim file.

(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.

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We propose revising WAC 284-30-390 to eliminate subsections (a), (b), and (c) of subsection (4) and read as follows:

In addition to the unfair claims settlement practices specified in this regulation, the following acts or practices of the insurer are hereby defined as unfair methods of competition and unfair or deceptive acts or practices in the business of insurance, specifically applicable to the settlement of motor vehicle claims . . . .

(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.

Factors and Analysis Promoting the Amendment

RCW 34.05.330 provides several factors that an agency must address in adopting or rejecting a petition to change a regulation. We will address each factor in turn.

Whether the Rule is Authorized

The Office of the Insurance Commissioner has statutory authority to promulgate and revise rules effectuating any provision of Title 48 RCW. RCW 48.02.060(3)(a). The Office has specific authority to define unfair claims settlement practices, particularly with regard to first-party claims. RCW 48.30.010(2). The Office relied on the same statutory authority to promulgate WAC 284-30-390 as originally drafted in 1978 and to amend it in 1984, 1987, 2003, and 2009. The same authority would support the Office's amending the regulation.

We acknowledge that the Court of Appeals, in *Horan v. Marquardt*, 29 Wn. App. 801, 630 P.2d 947 (1981), approved the Commissioner's authority to draft regulations consistent with subsections (a), (b), and (c). However, as the Commissioner is aware, a Court's approving authority to draft a particular regulation does not prove the converse to be false, i.e., that the Commissioner would have no authority to change the regulation if the change promoted appropriate public policy interests. The *Horan* petitioners alleged that the regulation promoted "illegal price-fixing agreements," "boycotts" of repair shops that do not participate in "direct repair" relationships, and "mandate by force of law that the insurer's judgment regarding appropriate repair shops supersedes the judgment of choice of the claimant." *Horan*, 29 Wn. App. at 806. This petition does not make such violent accusations; rather, we are basing our petition on public policy - the tendency in practice toward those restraints on trade and consumer choice (rather than an alleged *prima facie* mandate), and the practical adverse effect that tendency has for consumers and the principle of indemnity the Commissioner is fundamentally and primarily charged with promoting.

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Whether the Rule is Needed

The proposed amendment is necessary to unambiguously harmonize the regulation with the principle of indemnity that Washington law imposes on auto physical damage insurers. Our Courts have described the principle as follows: "payments made by an insurer generally are limited to an amount that does not exceed what is required to restore the insured to a condition relatively equivalent to that which existed before the loss occurred." *Gossett v. Farmers Ins. Co. of Washington*, 133 Wn.2d 954, 968, 948 P.2d 1264 (1997).

With regard to collision repairs, a vehicle often cannot be restored to its "true" pre-loss condition. *Moeller v. Farmers Ins. Co. of Washington*, 155 Wn. App. 133, 229 P.3d 857 (2010), *aff'd* 169 Wn.2d 2001, 234 P.3d 1172 (2011). We are not suggesting that the principle of indemnity requires a "true" pre-loss condition repair or that any coverage mandate statute requires carriers to provide no-fault coverage for diminished value. However, *Gossett* "condition relatively equivalent" clause requires payment of benefits necessary to perform a pre-loss condition repair, as nearly as possible in the after-market.

There are several components of a pre-loss condition repair, as nearly as possible in the after-market:

- The insurer should pay the repair facility sum sufficient to permit it to follow OEM repair procedures, where applicable;

- The insurer should pay the repair facility a sum sufficient to reflect the tooling and training requirements to follow those OEM repair procedures, where applicable - that sum may be greater for a repair facility with specialized training and equipment than for one without the same;

- The insurer should pay to install OEM parts on damaged vehicles where the manufacturer guidelines suggest that after-market (imitation or recycled/reconditioned) parts will not provide a pre-loss condition repair, as nearly as possible in the after-market;

Subsections (a), (b), and (c) of WAC 284-30-390(4) are superfluous in harmonizing -390(4) with the principle of indemnity. Therefore, to the extent that those subsections permit carriers to pay benefits lower than indemnity, they are inappropriate.

Those subsections encourage insurance carriers to form "direct repair" or "preferred network" relationships with repair facilities using contracts that routinely expressly provide

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labor rate, parts procurement, and repair process guidelines below OEM and pre-loss condition standards. We are familiar with dozens of examples, but three are illustrative:

- [redacted] Allstate Claim No [redacted]. [redacted] brought his Cadillac to an Allstate network facility, Exotic Motors, for structural repairs. Exotic Motors performed such an improper repair that Allstate paid Haury's Lake City Collision $15,589.09 to undo and re-do the repair. Even though Allstate paid to cure the improper repair, [redacted] suffered more damages for diminished value because of the more extensive repair and more loss of use damages for the second repair, neither of which were compensable under the no-fault coverage of his auto policy or Allstate's "Good Hands" guarantee, than he would have suffered if the facility had performed a proper repair in the first place.

- [redacted], Safeco Claim No [redacted]. [redacted] brought his Tesla Model X to Service King, a Safeco network facility, for structural repairs. During the repair Service King sent [redacted] photos demonstrating that it was not following Tesla structural repair guidelines (rather than securing the vehicle to an OEM-approved frame bench the facility had secured it to a less expensive bench and used pieces of 2x4 timber to roughly align it) or aluminum repair guidelines (the bare aluminum was exposed to the same environment as the repair shop used to perform steel grinding and welding). Safeco eventually declared the vehicle a total loss and Tesla decertified the facility for structural repairs (but only that facility, not the other Service King facilities that retain OEM certification). The severity of the damage would not have justified Safeco's paying over $120,000 to purchase the loss vehicle except for the repair facilities' carelessness.

- [redacted], Farmers Claim No. [redacted]. [redacted] brought his 2010 Camaro to Gerber Collision and Glass in Stanwood for structural repairs. The work was so poorly performed that Farmers paid Accurate Lines Collision $10,216.85 to undo and re-do the work. Even though Farmers paid to cure the improper repair, [redacted] suffered more damages for diminished value because of the more extensive repair and more loss of use damages for the second repair, neither of which were compensable under the no-fault coverage of his auto policy or Farmers "Circle of Dependability" guarantee, than he would have suffered if the facility had performed a proper repair in the first place.

The sheer volume of improper repairs our office has identified during the normal course of investigating a client's third-party diminished value claims suggest that these improper

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repairs are not "outliers" that occasionally occur because of repair facility negligence but rather arise from the structure the carriers' direct repair or "network" relationships with repair facilities. The first step in any diminished value appraisal is a post-repair inspection. Our appraisers identify inadequate repairs in roughly 80% of inspections after "network" body shop repairs and almost never from OEM-certified repair facilities that do not have "network" relationships, e.g., Porsche repairs from Queen City Auto Rebuild, Mercedes repairs from Metro Auto Rebuild, or Lamborghini repairs from Bel-Red Auto Rebuild.

The express guidelines of most carriers' "direct repair" agreement help explain why "network" body shops tend to perform substandard repairs, but the carriers' performance metrics and associated referral behavior reinforce the tendency. Carriers track repair facility "cycle time" and penalize body shops that produce longer rental durations with fewer referrals. The same penalty applies to body shops that use too few after-market parts and generally have higher claim severity statistics. Rushing through a repair job promotes cutting corners, and so does charging less than the "shop down the street" for a job with a known physical damage severity. "You get what you pay for," we know what carriers "pay for," and the outcome matches what we know policyholders "get."

Generally, a carrier's first response when a vehicle owner identifies dissatisfaction with repairs is to instruct him or her to return to the original repair facility. However, hiding a large problem is much easier than fixing it, particularly when the original facility has to perform the corrections for free under its warranty. Even in circumstances where the carrier agrees to pay another body shop to repair the car, e.g., based on GEICO's "Express Service" guarantee or Safeco's "President's Guarantee," it often short-pays the second repair with arguments about paying only the "prevailing" labor rate - the same rate that compelled the original facility to cut corners in the first place, e.g., [redacted], GEICO Claim No [redacted] (appraisal pending); and [redacted], 21 Century Claim No [redacted] (vehicle owner prevailed in appraisal). State Farm has a "Select Service" network, but unlike every other major auto carrier, it does not provide its own warranty for repairs its "Select Service" "preferred" body shops perform.

The insurer should not use the repair facility's warranty as a shield from its duty to indemnify the policyholder - where any repair facility fails to perform a pre-loss condition repair, as nearly as possible in the after-market, the repair facility has an obligation under its warranty to correct the repair and the carrier has its own obligation to fulfill its duty to indemnify the policyholder, even if that means paying another repair facility to perform corrective repairs in exchange for a subrogation interest against the original repair facility.

Nearly every insurer, in practice, limits collision repair payments to the amounts it would pay the repairs shops in its "network," even for shops that are not "preferred." Other carriers have express limits of liability in the policy. State Farm and Safeco, for example, both have

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policy language limiting the labor rate they will pay to the "competitive prevailing rate" as they determine it. Every other carrier, even without such language, writes estimates using the same standard - the exceptions, for most repairs, include Pemco, Amica, and Chubb. The carriers' behavior is circular: well over half of the body shops in our area are "network" shops, so the carriers have negotiated a reduced labor rate in exchange for referrals that maintain a shop's repair volume necessary to be profitable at a lower margin, and that negotiated labor rate becomes the "prevailing" rate. The bottom line is that carriers pay every shop the lowest rates they can negotiate with their largest "preferred" shops. Safeco further expressly includes in its policy an option to use after-market parts on every vehicle with no exception for cases where an after-market part would expressly violate OEM repair guidelines or make the vehicle less safe after repairs.

Ergo, WAC 284-30-390(4) must clearly and unambiguously require insurers to pay policyholders physical damage benefits necessary to purchase a pre-loss condition repair, as nearly as possible in the after-market, to satisfy the fundamental principle of indemnity, and the regulation, as currently drafted, fails to do so.

Subsections (a), (b), and (c) of the regulation are the primary reason WAC 284-30-390(4) promotes claim payments for less than proper indemnity.

- Subsection (a) permits insurance companies to write their own repair estimates even though they are not collision repair professionals, and those estimates are based on their claims handling guidelines, not necessarily by OEM or I-Car repair guidelines (except by coincidence). The estimates generally have a "bottom line" price consistent with the price a "preferred network" shop would accept.

- Subsection (b) then requires (not permits, but requires) insurers to provide policyholders with the names of body shops that will perform repairs with no risk of out of pocket expense - the "direct repair" network.

- Subsection (c) requires (not permits, but requires) insurers to warn policyholders that if they use their repair facility of choice, they pay out-of-pocket for a portion of the repair. That subsection does not permit insurers to pay less than what is reasonable - policyholders still have a contract right of appraisal - but its wording suggests exactly that permission. In practice, no consumers have any intention of paying (and often no ability to pay) more than their deductible for repairs, to they must choose either to do so and exercise an expensive, time-consuming remedy for reimbursement or abandon their shop of choice.

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The three subsections, taken together, produce a dynamic that promotes payments for less than the indemnity standard and improper repairs. They harm the consumer's right to choose their own shop. And they harm the rights of "independent" shops to run their businesses without participating in "direct repair" relationships with insurance companies.

For the reasons set forth above, the Office should strike subsections (a), (b), and (c) from WAC 284-30-330(4).

Whether the Rule Conflicts with or Duplicates other Federal, State, or Local Laws

The amendment we are proposing to WAC 284-30-330(4) is more consistent with other pertinent and analogous rules than the current version of the regulation.

Consider the compensation principles in a third-party claim for negligence. Under Washington law. The purpose of tort law has long been established: "the amount of compensation awarded should put the successful plaintiff in the position he or she would have been had the tortious action not been committed." *Livingstone v Rawyards Coal Co*, 5 App. Cas. 25, 39 (1880); *Barr v. Interbay Citizen's Bank*, 96 Wn.2d 692, 700, 635 P.2d 441 (1981) (citing *Spokane Truck & Dray Co., v. Hoefer*, 2 Wash. 45, 52-53, 25 P. 1072 (1891)).

This principle mirrors, almost verbatim, the principle of indemnity as the Court expressed it in *Gossett v. Farmers*.

With regard to collision repair, the measure of damages in a tort action for property not totally destroyed is, among other things, the "reasonable cost of repairs to restore it to its former condition." RCW 4.56.250(1)(a), *King Logging Co. v. Scalzo*, 16 Wn. App. 918, 926, 561 P.2d 206 (1977); WPI 30.12. A similar measure applies to other damages, e.g., "the reasonable value of necessary past and future collision-related health care and treatment." RCW 4.56.250(1)(a); *Hellman v. Sacred Heart Hospital*, 62 Wn.2d 136, 151, 381 P.2d 605 (1963); *Doyle v. Nor'west*, 23 Wn. App. 1, 7, 594 P.2d 938 (1979).

Egro, a plain statement in WAC 284-30-390(4) that an insurer owes benefits for the reasonable cost of necessary repairs to "restore the loss vehicle to its condition prior to the loss" perfectly harmonizes the insurance code with Washington tort law and the principle of indemnity. Any manner in which subsections (a), (b), and (c) reduce a policyholder's benefits below that level are inconsistent with Washington's core compensation principles.

Eliminating subsections (a), (b), and (c) would further harmonize the regulation with WAC 284-30-395, an analogous regulation concerning Personal Injury Protection that the Commissioner promulgated under the same authority as WAC 284-30-390. WAC 284-30-395 requires insurers to pay PIP benefits for the reasonable cost of necessary collision-

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related medical care. The regulation does not permit insurers to pay a fixed reimbursement rate, as determined by them, for medical care, i.e., no insurer may refuse to pay an Emergency Department bill from Swedish merely because Virginia Mason or Kaiser probably would have charged less, to short-pay a $140 massage therapy bill merely because other massage therapists charge $120 for the same service even where $140 is within the reasonable range of charges in the region, or to limit a non-participating provider's reimbursement to the rate the carrier would pay a provider who voluntarily participates in a "preferred provider" network. Any of those practices would permit providers to "balance bill" patients and therefore violate the principle of indemnity. To limit payment the carrier, not the policyholder, has the burden of proving that a charge is unreasonable - not simply that it is greater than the lowest rate in the market for a service, but that it is outside the reasonable range of charges for that service. For collision repairs, carriers do not accept a range of reasonable charges, parts decisions, and repair procedure decisions, and the regulation imposes on the policyholder the burden of proving, in an expensive appraisal process, that their loss is the amount their body shop charged. There is no analytical justification for treating policyholders with medical bills requiring payment differently from policyholders with collision repair bills requiring payment.

The proposed amendment to WAC 284-30-390(4) would not violate the Automotive Repair Act or give body shops *carte blanche* to charge exorbitant prices in a manner that harms the public interest. Under WAC 284-30-395, an insurance company can, if it believes a health care provider's charges are outside the reasonable range of charges, produce proof of the same and limit payment. The proposed amended WAC 284-30-390(4) would give insurers the same opportunity. However, it would appropriately establish that there is in the market a range of reasonable costs to repair damaged vehicles and it would appropriately put the burden of proof on the insurers to raise over-pricing as a defense to payment after policyholders make the *prima facie* proof of loss (the actual cost of repairs at the shop of their choosing using parts of their choosing and OEM repair procedures).

Whether Alternatives to the Rule Exist that Will Serve the Same Purpose at Less Cost

There are no regulatory alternatives to WAC 284-30-390(4).

The only option for policyholders in addressing a repair cost underpayment is to exercise their contract right to appraisal. Each party bears their own appraisal costs and half the cost of an umpire if one is necessary. These costs are often several times the amount in controversy. For all but the most egregious underpayments, appraisal is essentially, "paying $10 to solve a $3 problem" and therefore economically irrational.

The only remedy available if a policyholder prevails in appraisal and needs to recover the cost of the appraisal to make the victory less than pyrrhic is an action for extra-contractual

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damages (the tort of bad faith, the Consumer Protection Act, or the Insurance Fair Conduct Act). WAC 284-30-330(7) seems on its face to give policyholders a smooth path to winning such a lawsuit if they prevail in appraisal. But our courts, in *Perez-Crisantos v. State Farm Fire and Casualty Company*, 187 Wn.2d 669, 389 P.3d 476 (2017) and *Keller v. Allstate Ins. Co.*, 81 Wn. App. 624, 915 P.2d 1140 (1996) have unambiguously held that WAC 284-30-330(7) does not simply permit a Court or jury to compare the appraisal outcome to the pre-appraisal offer and determine the case in the policyholder's favor if there is a substantial difference between the two. Instead, the policyholder must provide evidence that the carrier's conduct, investigation, or claims practices were unreasonable. Subsections (a), (b), and (c) of WAC 284-30-390(4) provide carriers with a nearly iron-clad defense to an action for extra-contractual damages to recover the cost of the appraisal even where the carrier's repair underpayment was arguably made "arbitrarily and without reasonable justification." The Commissioner, in those subsections, provides carriers with a blueprint for "the reasonable process to follow" to underpay a collision repair. In contrast, WAC 284-30-395 provides no such blueprint except for hiring a consulting physician to provide an opinion justifying the denial of payment of benefits - a blueprint that appropriately puts the burden of defending the underpayment on the insurance carrier.

Ergo, amending WAC 284-30-330(4) to remove the blueprint for repair underpayments is the only solution to make the only remedy for a violation of the section - appraisal - effective and economical in practice.

Whether the Rule Applies Differently to Public and Private Entities

WAC 284-30-390 does not apply to public entities. Such entities are not insurance companies. None of the insurance regulations apply to them with or without our proposed amendments to subsection (4).

Whether the Rule Serves the Purposes for Which it was Adopted

We have set forth above why our proposed amendment better serves the purposes for which WAC 284-30-390 was adopted than the regulation serves them as presently drafted.

Whether the Costs Imposed by the Rule are Unreasonable

The proposed amendments to WAC 284-30-394 would likely impose no greater administrative or enforcement costs on the Office than the rule as presently crafted. The Office generally does not intercede in public complaints involving "reasonableness."

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Our proposal would likely require insurance companies to pay more for collision repairs than they currently pay and to pay for longer rental durations than they currently pay. These additional costs are not unreasonable for several reasons.

First, the additional loss and loss adjustment expenses would be, under our proposal, "reasonable" on their face. Our proposal does not ask an insurance company to pay anything more than the "reasonable" amount of a policyholder's collision repair loss.

To the extent carriers pay additional loss and loss adjustment expenses in the aggregate, they would only do so because the aggregate payments are presently discounted off what a "reasonable" aggregate would be.

The rule could potentially reduce the amount carriers pay in the aggregate. We have given five examples of carriers' paying for necessary corrective repairs after an initial collision repair attempt at a "network" repair facility. Allowing policyholders access to their repair facility of choice without the economic risk of paying out of pocket for a portion of their repairs because an OEM-certified shop charges more than a "network" shop could limit the number of necessary "re-repairs" (or total losses as in the Donhoff claim above).

The carriers would respond that the number of claimants who engage a second body shop to undertake necessary "re-repairs" under a "Circle of Dependability" guarantee (Farmers) or a "Dreams Restored Program" (American Family brilliantly coopted the "DRP" acronym otherwise associated with "Direct Repair Program") is low, and therefore limiting payments for corrective repairs would not substantially limit loss and loss adjustment expenses.

If that is the case, then the Commissioner must not simply account for the "hard" costs associated with loss and loss adjustment expenses, but economic externalities associated with unresolved casualty losses. Our community promotes insurance because a casualty is an economic externality that disproportionately harms the property owner and, if unresolved, harms the entire community. A vehicle on the road with a less-than-pre-loss-condition repair is a less valuable asset to the community's market value than a properly repaired vehicle. The externality does not simply affect the vehicle owner and, vaguely, the community at large: some other member of the public will likely eventually purchase that vehicle, and the unresolved casualty with it.

The loss expenses, if they rise in the aggregate, would still mirror the payments we expect carriers to make under a policyholder's Personal Injury Protection coverage, and we do not consider those payment levels unreasonable.

Additional loss adjustment expenses, e.g., the cost of proving by a preponderance of the evidence that a collision repair facility's charges are outside the reasonable range, are

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reasonable expenses to expect an insurance company to bear. Where a policyholder makes a *prima facie* showing of the amount of loss, the burden should shift to the carrier to justify paying a lower amount. This is consistent with what we expect from PIP claims.

The present rule, which in practice shifts the loss adjustment expenses to the policyholder to prove, through appraisal, that their actual loss was reasonable, is inappropriate for the reasons set forth above about the practical economic barrier to exercising a right to appraisal for a small- to mid-size repair underpayment. Appraisal itself is a waste of money for both the claimant and the carrier if the appraisal is unnecessary. Ergo, to the extent that our proposed amendments make appraisal less necessary because the amendment produces full payment for proper repairs at a reasonable price, the amendment eliminates that waste.

Whether the Rule is Clearly and Simply Stated

We are proposing a perfectly clear and simple rule requiring payment for the reasonable cost for a pre-loss condition repair at a consumer's shop of choice, which is exactly what insurance consumers expect. Nothing in our proposed amendment prevents an insurer from raising a defense that the repair facility's charges exceed the reasonable range of charges for similar services.

Our proposed amendment would be more clearly and simply stated than the present regulation. Specifically, subsection (c) is ambiguous about a policyholder's rights and an insurance company's duties. That section requires an insurance company to warn a policyholder that he or she "may" pay out-of-pocket for a portion of the repair if the shop of choice charges more than the carrier will pay based on the probable price from the "shop down the street" likely in its "preferred network" or willing to accept "preferred network" pricing to avoid losing business from customers that fear paying out-of-pocket. The section does not give insurance companies permission to pay less, but in practice every insurance company reads the section as doing exactly that, and so do most consumers, and so do most jurors in actions for extra-contractual damages.

Whether the Rule is Different than a Federal Law Applicable to the Same Activity or Subject Matter without Adequate Justification

Regulating Property and Casualty insurance carriers is generally a state responsibility. We know of no federal counterpart to WAC 284-30-390.

In particular, unlike the *Horan v. Marquardt* petitioners, we are not appealing to the Office to amend WAC 284-30-390 based on violations of federal anti-trust laws or other federal laws applicable to the subject matter. The practical effect of WAC 284-30-390(4) as drafted leans toward price fixing and steering consumers from independent to "captive" repair facilities,

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but we are not alleging that the regulation does so on its face or that it requires rather than promotes practices contrary to the public interest.

Whether the Rule was Adopted According to All Applicable Provisions of Law

Our analysis suggests that the current version of WAC 284-30-390 was adopted in a manner consistent with applicable provisions of law and also (a) that our amended version would be substantively more consistent with Washington law than the current version and (b) that our amended version would be procedurally consistent with Washington law so long as the Office followed the requirements set forth in Title 35 RCW.

Conclusion

Washington policyholders should have the right to make a first-party claim for full payment of proper repairs at their shop of choice using OEM procedures and parts, where required, so long as the cost of the repairs falls within the reasonable range of costs for similar services. The burden of proving unreasonableness should fall on the insurance carrier. Washington's insurance regulations promote similar principles in every coverage except no-fault auto physical damage.

The regulation governing no-fault auto physical damage loss payments, WAC 284-30-390, and particularly subsections (4)(a), (b), and (c), promote, in practice, underpayments for proper repairs and require insurance companies to tell policyholders that unless they use a "preferred network" repair shop or a shop that accepts "preferred network" prices, they may pay out-of-pocket for a portion of their repairs unless they can later prove, in an economically irrational appraisal, that they are owed benefits consistent with their actual loss. The carriers' present practice, often written into the policy itself, to pay no more than the "competitive prevailing price," gives those carriers permission to pay the lowest rate they can negotiate with "preferred network" facilities in exchange for referrals to those facilities because so many body shops are "network" shops, and so many shops outside the "network" accept "network" rates to avoid losing business that negotiated "network" rates become the "competitive prevailing price" with regard to labor rates, parts decisions, and repair procedure decisions. The result is loss adjustment based on the an economically artificial market.

Our solution is to eliminate subsections (a), (b), and (c) of WAC 284-30-390(4) to leave a regulation that simply and clearly requires payment of benefits to "restore the loss vehicle to its condition prior to the loss" unless the carrier demonstrates that the benefits requested are unreasonable. This amendment would promote the principle of indemnity, promote a consumer's right to choose a repair facility, reduce the risk that repair facilities that choose not to participate in "preferred network" programs will lose customers to facilities that are "preferred," minimize unresolved casualty losses associated with improper repairs, reduce the need for appraisal of large disputes, and reduce the burden on policyholders with disputes too small to justify appraisal.

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Please contact me if you have any questions about this correspondence, or if you otherwise wish to discuss our proposed rulemaking. Thank you for your professional attention to this matter.

Sincerely,

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Paul M. Veillon, JD, CPCU
Attorney at Law

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