Friday, December 15, 2023

Sen. Javier Valdez

403 Legislative Building
PO Box 40446
Olympia, WA 98504

Rep. Gerry Pollet

10212 5th Ave NE
Suite 255
Seattle WA, 98125

Rep. Darya Farivar

JLOB 369
PO Box 40600
Olympia, WA 98504

Sen. Patricia Kuderer

223 John A. Cherberg Building
PO Box 40448
Olympia, WA 98504-0403

Rep. Strom Peterson

324 John L. O'Brien Building
PO Box 40600
Olympia, WA 98504

Re: Insurance Bad Faith Claims Practices and the Insurance Commissioners failure to hold insurers accountable and enforce the law

Dear Washington State Senators and Representatives:

My name is Jeff Butler. I own an auto body / collision repair facility in your district (11514 Lake City Way NE, Seattle WA) known as Haury's Collision & Vintage. Haury's Collision is an industry leader and is certified by 19 vehicle manufacturers as a "Factory Certified Collision Center." We have repaired approximately 30,000 vehicles since my ownership in 2000. The public entrusts us with their safety when we repair their collision damaged vehicles, and we take great pride and care to be worthy of their trust.

I am writing to you today to ask for your help. Insurers are flagrantly violating Washington law in the post Covid19 marketplace, and their actions are left unchecked by the very regulatory authority that is supposed to oversee the insurance industry and protect consumers and enforce the law. One of the major problems is that most insurers are trying to force photo estimating and virtual claims investigations as "the new standard" for settling claims. Damage analysis solely based upon photos creates a giant "loophole" for insurers to undervalue automobile, property damage claims.

Auto repair facilities, towing companies, and the consumers we serve are facing these Bad Faith Claims Settlement Practices from the insurance industry. The outcome from these practices includes massively undervalued settlements and illegally abandoned vehicles by insurers.

Exacerbating the problem, the current Insurance Commissioner is failing to enforce Washington regulations and laws to protect the public interest against these unfair and deceptive practices effectively giving insurers a license for bad faith claims handling.

This letter provides the following information:

- Overview of the problem
- An explanation for why this problem currently exists
- A real example of insurance bad faith claims handling where the insurer illegally abandoned a vehicle on property
- Necessary changes to Washington law to address the current marketplace issues
- Washington Administrative Code 284.30 Insurance Trade Practices

Overview of the problem:

Safeco / Liberty Mutual Insurance is refusing to settle auto claims following the unfair claims practice WAC 284.30 rules in a timely fashion, and then illegally abandoning vehicles at auto repair shops and tow yards for months or even years.

Safeco / Liberty Mutual Insurance and other insurers are engaged in a pattern and practice of violating Washington law, Washington Administrative Code (WAC 284.30) insurance trade practices and then are abandoning totaled vehicles (i.e. vehicles that they do not want repaired) at collision repair facilities and tow yards. While the insurer generally pays the consumer for their totaled vehicle (most settlements are initially undervalued, policy holders can invoke the appraisal clause in their policy to dispute the low offer), insurers do not want to pay the repair shop or tow yard for its services, including the storage costs for the weeks/months that the repair shop or tow yard stores the vehicle while the insurance company drags their feet investigating the claim.

Insurers are unreasonably denying the repair facilities expert opinion (repair estimate) in almost every case. Instead, insurers try to coerce repair shops to utilize the insurers low-ball "approved estimate" that fail to restore the vehicle to its condition prior to the loss. If the repair facility declines to accept the insurers low ball estimate, insurers will try to force the repair shop to eat the cost of the insurers delay tactics, store the car for free in their shop or on their lot taking up valuable space and then abandon the car (if it's a total loss) for the repair facility or tow yard to deal with the vehicle owner over the bill. This often leaves the consumer to fight with the repair facility or tow yard about expenses and the high costs that were caused by the insurance company' flagrant violations of the law and unreasonable delays.

THESE PROBLEMS WOULD NOT EXIST IF THE LAW WAS ENFORCED BY THE INSURANCE COMMISSIONER!

Why is this happening:

Since Covid, many insurers have switched their claims investigations and damage evaluation to a virtual process using remote photo estimating by claims adjuster who are not auto repair experts, as well as AI (artificial intelligence) estimates instead of in-person inspections to reduce their claims investigation expenses. This virtual investigation and damage analysis process allows insurers to write massively deficient, low-ball repair estimates on collision damaged vehicles and then blame "poor quality photos" as the reason for their low-ball settlement offer.

Many times, these lowball estimates are sent from no-reply email addresses. When a consumer actually takes their vehicle to a repair facility to be repaired (instead of cashing out the claim and not fixing the vehicle), the shops expert technicians inspect the vehicle in person, prepare an accurate damage analysis and repair plan for the vehicle owner and the insurer. In almost every case, the insurance company refuses to adhere to the insurance regulations found in the WAC 284.30.(310-394) regulations by 1) unreasonably denying the shops repair estimate, 2) refusing to provide the reason(s) for their denial of the shops estimate as required, 3) refusing to conduct a reasonable, in-person investigation of the damaged vehicle by sending a field inspector out to the shop or tow yard to view the damage (instead solely relying on photos for their investigation), 4) failing to provide reasonable payment so the vehicle can be restored to pre-loss condition. This process can go on for weeks or even months in some cases, until finely the insurer acknowledges enough of the damage to declare the vehicle a total loss as outlined in RCW 46.04.514 (Salvage vehicle definition). So, eventually insurers realize after weeks or months what used to be discovered in one in-person visit, that the vehicle cannot be repaired in an economic way.

These unreasonable claims investigation tactics cause significant delays and high claims investigation and storage costs that Safeco / Liberty Mutual then refuse to pay even though they caused these delays. While there are rules that requires insurers to provide reasonable advanced notice to the claimant before stopping payment for towing and storage costs (WAC 284.30.394), Liberty Mutual / Safeco does not adhere to this regulation.

Additionally, RCW 46.55.230 states that a person may not abandon salvage on property, Liberty Mutual / Safeco does not adhere to this law either.

Consumers have filed many complaints to the Insurance Commissioner however the OIC will not take action on individual circumstance. What is even more alarming is that I have personally witnessed insurers who misrepresent pertinent facts when responding to the Insurance Commissioner complaints filed by consumers.

At this point, please pause reading this brief and review the enclosed **WICRA survey results presented to the Office of Insurance Commissioner on July 17th, 2023.** This survey shows how inaccurate photo estimating, virtual claims handling and AI is. We believe photo estimating has become a tool for low balling claim values and causes significant delays to the detriment of consumers and local businesses.

The following is an actual total loss abandonment claim from Safeco / Liberty Mutual from 2022 (note: I have many more examples like this case):

The vehicle owner dropped off his vehicle for repairs after a collision that was covered by their Safeco insurance policy. Our repair facility inspected the vehicle and prepared an initial estimate and documented the vehicle likely had frame and structural damage and would need further diagnosis on a frame bench. Our shop sent the vehicle owner and Safeco our repair estimate, as well as a notice informing the parties of our business practices and charges, including charges for storing vehicles on premise. Like all repair facilities and tow yards, we charge for storing vehicles as we have limited parking/storage and are unable to receive more vehicle repairs when our space is taken up. Vehicles sitting around not being repaired drive up our overhead expenses and hurt our ability to conduct business significantly.

Safeco refused to honor our shops accurate repair estimate and instead wrote an estimate of its own that was deficient by thousands of dollars. Further, Safeco refused to provide the reasons for its denial of the shops estimate and just kept reiterating that its own estimate was all Safeco was going to pay and the policy holder would have out of pocket expenses if their vehicle was repaired at our repair facility. Safeco's actions violate Washington Insurance Regulations WAC 284.30.390 (2), (2b), (4), (4b), (5), & (6) as well as WAC 284.30.330 (1), (2), (3), (4), (6), (7) & (13).

The vehicle owner made seven (7) attempts to "invoke the appraisal clause" in their insurance policy to dispute Safeco's significantly low repair estimate.

As you probably know, the "appraisal clause" is the dispute resolution process provided in the insurance policy when there is a disagreement in the amount of the loss between the insurance company and the policy holder. (not all policies have this provision because Washington is silent on appraisal being a requirement in the policy unlike homeowners' insurance where appraisal is a requirement in the policy).

Instead of accepting their insured's demand for "appraisal", Safeco engaged in misrepresentation and misleading tactics to the policyholder by refusing to honor their policyholders demand to utilize the appraisal clause process.

After several months and (7) attempts demanding a 3rd party appraisal (which Safeco never did), the policyholder was forced to risk having significant out of pocket expense, and finally authorized the repair shop to begin repairs. To our customer's credit, they recognized Safeco was acting in bad faith and flagrantly violating the unfair claims practice rules.

Once the shop began repairs, the first thing it did was to place the vehicle on a frame bench and measure the structure of the vehicle to investigate for frame and structural damage as the shop had stated on its initial estimate. Structural damage was verified during the frame inspection and the shop updated its repair plan documenting this damage and submitted the inspection report to the vehicle owner and Safeco.

With frame damage documented (as initially predicted by our repair facility), Safeco declared the vehicle a total loss. This was after more than 3 months after the vehicle was dropped at the repair facility and Safeco insisting the car was repairable, NOT a total loss.

After declaring the vehicle a total loss, Safeco requested their insured sign paperwork to transfer the title to Safeco and sent them the required documents as is standard when a vehicle becomes a total loss. Safeco instructed their insured to call the shop and "release interest" in their vehicle so Safeco could remove it from the shop.

Then, Safeco did the unthinkable. Even though Safeco caused months of delays and significant costs for labor, diagnostics and storage charges, **Safeco tried to avoid paying for these costs and told their insured it was going to take those costs out of their insured's vehicle value settlement**. Even worse, Safeco tried to force their insured to "owner retain" their vehicle against their will and refused to have the vehicle removed from our shop leaving the vehicle owner to pay the costs for Safeco's bad faith claims handling and delays.

The vehicle owner went to a public adjuster and claims expert for help and after many months of arguing, finally got Safeco to pay the full value of their vehicle without deducting all the shop charges or the salvage value of their vehicle from their settlement, however, Safeco still hadn't removed the vehicle from the shop, therefore the vehicle was still accruing storage costs and was preventing our business from taking in new clients.

At this point, Safeco had transferred the title of the vehicle into its own name. Even though Safeco knew the circumstances surrounding the title and the lien against it when they acquired it, Safeco demanded our repair facility accept Safeco's offer for about $0.20 cents on the dollar or they would illegally abandon the vehicle on our property.

We declined to accept Safeco devaluing our professional time and our shops limited space due to its own negligence and bad faith claims handling therefore we rejected Safeco's offer to pay less than the value of our services. Our shop was prevented from taking in other vehicles and performing other repairs due to this vehicle taking up our resources.

Safeco then abandoned this vehicle on Haury's property in violation of Washington law. Safeco refused to pay the full costs of shops labor and storage invoice in which it was clearly advised of, in writing, more than 5 months prior.

Despite multiple letters from our attorney, Safeco refused to pay the 5 months of storage costs for our services that Safeco was responsible for from their violations of the WAC 284.30 rules. We have attempted to file a chattel lien on the vehicle and filed the correct paperwork with the Department of Licensing, but Safeco has refused to cooperate and has declined our requests for the title, so we are prevented from selling the vehicle to remove it from our lot. More than a year has passed with no resolution in sight.

Unfortunately, our only recourse is to file a lawsuit against our customer. We have no recourse against Safeco for bad faith claims handling as we are not a policy holder. The insured would then have to sue Safeco for bad faith claims handling. While we don't want to have to do this, we very well may be forced into it due to Safeco's refusal to pay the costs as well as provide the title for the vehicle.

I believe Safeco's actions go far beyond unfair and deceptive; they appear retaliatory and punitive in nature. The message Safeco is sending to repair shops appears to be that Safeco is above the law and that the repair shops are required to simply "take it or leave it".

Worse is that Safeco's message will likely be interpreted by some repair shops as, "*don't look too hard for more damage on a vehicle Safeco / Liberty Mutual insures because we will make those claims very difficult and your shop will lose a lot of money on those repairs*". The result could be "missed damage" and consumers driving unsafe or partially repaired vehicles.

We urgently request that the legislature immediately act to protect consumers and local auto repair and towing business from these bad faith claims practices being perpetrated by Safeco / Liberty Mutual and other bad actor insurance companies.

The following page lists out necessary changes to Washington law that will address the current marketplace issues:

Necessary changes to Washington law to address the current marketplace issues:

1. Demand the Insurance Commissioner fulfill their duty to protect consumers and enforce RCW 48.30.010 and WAC 284.30 insurance trade practices. The OIC must fine/sanction insurers who don't play by the rules. This must include individual claim circumstances, not just a large-scale pattern and practice.

2. Pass law updating the rules Washington currently has that came from the 1970's model claims act currently known as WAC 284.30:

    a. Give the Office of Insurance Commissioner authority to take enforcement action and levy fines on individual claims circumstances for specific WAC violations.

    b. Prevent insurer adjusters, who are NOT auto repair experts and have no liability for their deficient appraisals from acting like automotive repair experts. Insurance adjusters can't act like doctors and make medical decisions in Bodily Injury Claims, but Washington appears to allow this practice in auto claims. This is wrong and unsafe!

    c. Define minimum standards for a reasonable claims investigation and require insurers perform an in-person inspection of their insured's vehicle damages when the insured demands an in-person inspection.

3. Pass legislation that requires the Right to Appraisal Clause language be in all insurance policies like already existing Oregon law. Like the existing Oregon law, this language must require insurers to pay the reasonable costs of the appraisal process when the award from the appraisal process is greater than the insurers last loss adjusting offer.

4. Pass legislation that requires insurers to pay for vehicle manufacturer required repair procedures and processes. The National Highway Transportation and Safety Administration has for 50 years required vehicle manufactures produce safer and safer vehicles, yet there are no laws that clearly require these modern vehicles be safely repaired and that insurers will reasonably pay for those repairs.

I would appreciate an opportunity to speak with you all about this circumstance as well as the growing number of similar circumstances that are increasing daily.

Respectfully,

Jeff Butler
Haury's Collision & Vintage
P: (206)365-1565 | Jeff@hauryscollision.com
11514 Lake City Way NE, Seattle, WA 98125

RCW 46.55.230

Junk vehicles—Removal, disposal, sale—Penalties—Cleanup restitution payment.

(1)(a) Notwithstanding any other provision of law, any law enforcement officer having jurisdiction, or any employee or officer of a jurisdictional health department acting pursuant to *RCW 70.95.240, or any person authorized by the director shall inspect and may authorize the disposal of an abandoned junk vehicle. The person making the inspection shall record the make and vehicle identification number or license number of the vehicle if available, and shall also verify that the approximate value of the junk vehicle is equivalent only to the approximate value of the parts.

(b) A tow truck operator may authorize the disposal of an abandoned junk vehicle if the vehicle has been abandoned two or more times, the registered ownership information has not changed since the first abandonment, and the registered owner is also the legal owner.

(2) The law enforcement officer or department representative shall provide information on the vehicle's registered and legal owner to the landowner.

(3) Upon receiving information on the vehicle's registered and legal owner, the landowner shall mail a notice to the registered and legal owners shown on the records of the department. The notification shall describe the redemption procedure and the right to arrange for the removal of the vehicle.

(4) If the vehicle remains unclaimed more than fifteen days after the landowner has mailed notification to the registered and legal owner, the landowner may dispose of the vehicle or sign an affidavit of sale to be used as a title document.

(5) If no information on the vehicle's registered and legal owner is found in the records of the department, the landowner may immediately dispose of the vehicle or sign an affidavit of sale to be used as a title document.

(6) It is a gross misdemeanor for a person to abandon a junk vehicle on property. If a junk vehicle is abandoned, the vehicle's registered owner shall also pay a cleanup restitution payment equal to twice the costs incurred in the removal of the junk vehicle. The court shall distribute one-half of the restitution payment to the landowner of the property upon which the junk vehicle is located, and one-half of the restitution payment to the law enforcement agency or jurisdictional health department investigating the incident.

(7) For the purposes of this section, the term "landowner" includes a legal owner of private property, a person with possession or control of private property, or a public official having jurisdiction over public property.

(8) A person complying in good faith with the requirements of this section is immune from any liability arising out of an action taken or omission made in the compliance.

WAC 284-30-330

Specific unfair claims settlement practices defined.

The following are hereby defined as unfair methods of competition and unfair or deceptive acts or practices of the insurer in the business of insurance, specifically applicable to the settlement of claims:

(1) Misrepresenting pertinent facts or insurance policy provisions.

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

(3) Failing to adopt and implement reasonable standards for the prompt investigation of claims arising under insurance policies.

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

(5) Failing to affirm or deny coverage of claims within a reasonable time after fully completed proof of loss documentation has been submitted.

(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.

(7) Compelling a first party claimant to initiate 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.

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

(9) Making a claim payment to a first party claimant or beneficiary not accompanied by a statement setting forth the coverage under which the payment is made.

(10) Asserting to a first party claimant a policy of appealing arbitration awards in favor of insureds or first party claimants for the purpose of compelling them to accept settlements or compromises less than the amount awarded in arbitration.

(11) Delaying the investigation or payment of claims by requiring a first party claimant or his or her physician to submit a preliminary claim report and then requiring subsequent submissions which contain substantially the same information.

(12) Failing to promptly settle claims, where liability has become reasonably clear, under one portion of the insurance policy coverage in order to influence settlements under other portions of the insurance policy coverage.

(13) Failing to promptly provide a reasonable explanation of the basis in the insurance policy in relation to the facts or applicable law for denial of a claim or for the offer of a compromise settlement.

(14) Unfairly discriminating against claimants because they are represented by a public adjuster.

(15) Failing to expeditiously honor drafts given in settlement of claims. A failure to honor a draft within three working days after notice of receipt by the payor bank will constitute a violation of this provision. Dishonor of a draft for valid reasons related to the settlement of the claim will not constitute a violation of this provision.

(16) Failing to adopt and implement reasonable standards for the processing and payment of claims after the obligation to pay has been established. Except as to those instances where the time for payment is governed by statute or rule or is set forth in an applicable contract, procedures which are not designed to deliver a check or draft to the payee in payment of a settled claim within fifteen business days after receipt by the insurer or its attorney of properly executed releases or other settlement documents are not acceptable. Where the insurer is obligated to furnish an appropriate release or settlement document to a claimant, it must do so within twenty working days after a settlement has been reached.

(17) Delaying appraisals or adding to their cost under insurance policy appraisal provisions through the use of appraisers from outside of the loss area. The use of appraisers from outside the loss area is appropriate only where the unique nature of the loss or a lack of competent local appraisers make the use of out-of-area appraisers necessary.

(18) Failing to make a good faith effort to settle a claim before exercising a contract right to an appraisal.

(19) Negotiating or settling a claim directly with any claimant known to be represented by an attorney without the attorney's knowledge and consent. This does not prohibit routine inquiries to a first party claimant to identify the claimant or to obtain details concerning the claim.

WAC 284-30-390

Acts or practices considered unfair in the settlement of motor vehicle claims.

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:

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

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

(a) 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.

(b) If the insurer pays less than the amount of the estimate from the claimant's chosen repair facility, the insurer must fully disclose the reason or reasons it paid less than the claimant's estimate, and must thoroughly document the circumstances in its claim file.

(3) Requiring the claimant to travel unreasonably to:

(a) Obtain a repair estimate;

(b) Have the loss vehicle repaired at a specific repair facility; or

(c) Obtain a temporary rental or loaner vehicle.

(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.

(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.

(6) Failing to consider any additional loss related damage the repair facility discovers during the repairs to the loss vehicle.

(7) Failing to limit deductions for betterment and depreciation to parts normally subject to repair and replacement during the useful life of the loss vehicle. Deductions for betterment and depreciation are limited to the lesser of:

(a) An increase in the actual cash value of the loss vehicle caused by the replacement of the part; or

(b) An amount equal to the value of the expired life of the part to be repaired or replaced when compared to the normal useful life of that part.

(8) If provided for by the terms of the applicable insurance policy, and if the insurer elects to exercise its right to repair the loss vehicle at a specific repair facility, failing to prepare or accept an estimate that will restore the loss vehicle to its condition prior to the loss at no additional cost to the first party claimant other than as stated in the applicable policy of insurance.

(9) If liability and damages are reasonably clear, recommending that claimants make a claim under their own collision coverage solely to avoid paying claims under the liability insurance policy.