

# **Crawford's AUTO CENTER, INC.**

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September 20, 1999

Executive Director Robert E. Nyce  
Independent Regulatory Review Commission  
333 Market Street  
14<sup>th</sup> Floor  
Harrisburg, PA 17101

Original: 2001  
Harbison  
cc: Smith  
Wilmarth  
Sandusky  
Legal  
All Commission  
Nyce

INDEPENDENT REGULATORY  
REVIEW COMMISSION

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RECEIVED

Dear Mr. Nyce,

I am writing this letter for the sole purpose of consumer protection. Yes, I am a collision repair professional and yes, the regulatory changes we have been discussing the past several months will effect my business. However, my concerns are in favor of the consumer's safety and how we repair the damaged automobile not the amount collision repair facilities receive in respect to the compensation of the repair process. This newly amended terminology "pre-damaged" is wrong. I wish the Commission would allow me a few minutes in person to forecast the future from a collision repairer's point of view as one who has had to deal with this "function and appearance" language on a day by day basis. Trust me when I tell you this terminology will not enhance the definition of condition prior to the loss. The only safeguard we have today is to demand that the consumer's damaged vehicle be repaired to the policy's contractual language of pre-accident pre-loss condition. In conjunction with our Commonwealth's current regulation which states the appraiser's requirement is to repair to a "condition prior to it's loss" our ability to provide safe accurate collision repairs for our consumers is achievable. What is taking place with this newly amended "pre-damage" definition is a weakening of both the Commonwealth's Regulation and Pennsylvania's ability to protect its citizens.

It is my belief that upon the anniversary date of current automobile policies written in Pennsylvania, individual insurance companies will begin to change the existing contractual agreement from pre-accident / pre-loss to the newly amended "pre-damaged" language. Once this change takes place citizens of the Commonwealth will be forced to except what the insurance company dictates as a 'pre-damaged repair". Consumers, their body shops and their attorneys will be powerless to intercede. Permitting this final form regulation to become Law is irresponsible on the part of Pennsylvania Government.



Please do not think I am accusing the Independent Regulatory Review Commission of an anti/consumer approach to what is happening. It is my opinion that issues surrounding this regulatory change are immense and people easily become misled as new language is introduced. The hurried pace at which this regulatory change is moving is entirely too fast for proper analysis and research. For the sake of innocent citizens who are relying on the commission's judgment, please re-evaluate this regulatory change. Another month or two will not effect the overall administrative responsibility of the Department of Insurance. However, the significant impact upon the consumers of the Commonwealth will be felt forever.

Please find enclosed my testimony presented to the Senate Banking and Insurance Committee on September 13, 1999. If you have any questions regarding this matter, please do not hesitate to give me a call.

Sincerely,

A handwritten signature in black ink that reads "Stephen E. Behmdt Pres." The signature is written in a cursive, flowing style.

Stephen E. Behmdt, President

Member: Pennsylvania Collision Trade Guild



Testimony Senate Banking and Insurance Committee Sept 13, 1999

Good Morning, Chairman Holl, Chairman Costa and respected members of the Senate Banking and Insurance Committee.

My name is Stephen Behrndt, President of Crawford's Auto Center, Inc., Downingtown, Chester County and a member of the Pennsylvania Collision Trade Guild.

I would like to thank the Committee for the opportunity to discuss the Motor Vehicle Physical Damage Appraiser Act and it's Regulation.

For those of you who are not familiar with the Pennsylvania Collision Trade Guild, I would like to give you a short explanation of the purpose for our existence.

We believe in the God given right of individual business owners to operate an honest ethical and responsible business using general accounting principles, which include the need for necessary profit.

We believe that our consumers are entitled to the best service possible and that the restoration of our consumer's vehicle to pre-accident condition using original equipment manufacturer parts and manufacturer recommended procedures is the best means for achieving accurate results.

We believe that any attempt by a third party payee to subordinate these standards or deny sufficient budget as to obtain these objectives to be both a violation and direct threat to our ability to fulfill our commitment to our consumers, ourselves and our employees.

We acknowledge "restriction of trade" or any practices related to be unlawful and as such we will refuse to participate.

The above is a reference to our mission statement which we have enclosed.

The Pennsylvania Collision Trade Guild believes it is most important for us to identify this Act and its corresponding Regulation as "Consumer Protection Law". The original purpose of this Legislation in 1972 was to protect the consumers of our Commonwealth from the abusive manipulations of the insurance industry. Today consumers are still being abused by the insurance companies; as the States' Administrative Department in charge of protecting Pennsylvania Consumers refuses to enforce the current Law and Regulation. In addition, they are asking you to look the other way as they attempt to weaken a very consumer oriented Regulation.

We have all heard of the Task Force the Insurance Department established to centralize the complaints filed by consumers and body shops. What you have not heard

was why the Task Force was needed in the first place. On **April 15, 1996** members of our organization arranged a meeting with then Commissioner Kaiser to ask why the Department was not enforcing the Law, its Regulation and Bulletin 53. The Department's position prior to this meeting was that complaints from body shops were not accepted as valid consumer complaints. Newly appointed Deputy Commissioner Leblanc was present at this meeting, she listened to our concerns and suggested the Task Force as a method of investigating our problems. However, as we continued to send in our consumer's complaints it became obvious that:

- The Department of Insurance does not understand the collision repair business.
- The individuals assigned to the Task Force do not have the knowledge or background regarding the necessary procedures needed to repair consumer's damaged vehicles.
- They do not understand the deceptive tactics used by insurance company representatives and appraisers.
- It became obvious that individuals who had been appointed to the Task Force became lost when they were asked to investigate and understand how an appraisal or estimate was prepared.

Early attempts to educate these Task Force individuals were promising but our consumers' complaints became forfeited in the learning process. It is important for you to know these issues since the Department has used the Task Force conclusions to allege that nothing is wrong.

Recent letters from the Department of Insurance to Legislators has acknowledged that out of 556 complaints filed with the Department over a 2-1/2 year period only 4% were found to include violations of the Law. The Pennsylvania Collision Trade Guild challenges these statistics as inaccurate and would propose to the Senate Banking and Insurance Committee that an independent investigation be made prior to any amended Regulation change that uses the Department's findings as reason to revise the Commonwealth's Regulation of Act 367.

Our Guild's members and our consumers recommend that an independent panel comprised of a Representative from this committee, a representative from the House Insurance Committee, a member from the Insurance Department Task Force, a member from the Pennsylvania Collision Trade Guild, a member from the Automotive Service Professionals of Pennsylvania and a member from the Independent Regulatory Review Commission investigate these findings. We also recommend a designated consumer to participate in the research as well. It will be the responsibility of this committee to select at random 10% of the 556 consumer complaints representing a cross section over the 2½-year period. The committee will then investigate these 55 consumer complaints by reviewing the contents of the Department files, contacting the consumers whose vehicle was appraised and discussing the claims with the repair facility and the insurance appraiser. Upon completion this independent committee will

submit their report for review to their respected committee members which then will be able to examine the enforcement responsibilities of the Department of Insurance and make a determination as to the proper method of handling Consumer Complaints.

I have been given the task to explain to you (committee members) what is troubling our Guild's membership regarding this newly amended Regulation. It will not be an easy job. Unless you are a collision repair professional who is confronted with the insurance appraiser on a daily basis this terminology becomes difficult to understand. How many of you can truly say that you understand the aftermarket / imitation parts dilemma? Unless you live it on a day by day basis or have had a vehicle repaired using these parts the terminology makes no sense to you.

Please refer to the enclosed Consumer Reports and Smart Money Magazine segments.

Here we have nationally recognized consumer magazines explaining the pitfalls of allowing the Insurance Industry to repair your damaged vehicle. Please read this information. These articles are not just identifying problems in Pennsylvania it is happening across our nation.

Now our Department of Insurance feels the need to amend our current regulation into what we feel is an anti-consumer / anti-collision repair / pro-insurance Regulation. Let us explore some of their amended regulatory recommendations.

We have provided you with our report, which includes the current Law & Regulation versus the originally proposed version versus the newly amended "Final Form" version. Due to the confusion, we have color-coded the individual examples, which apply to the changes in question.

Color Codes:

MVPDA Act No. 367 "Law"

MVPDA PA Code Title 31, Chapter 62 "Regulation"

Unfair Insurance Practices Chapter 146 "Regulation"

MVPDA PA Code Title 31, Chapter 62 "Proposed" Jan 1999

MVPDA PA Code Title 31, Chapter 62 "Amended" Aug 1999

The most significant change from our current Regulation is a deceptive definition by the Insurance Department. This definition has to do with their terminology of "predamaged condition". Our current regulation § 62.3 (e)(1) explains the standard for appraisal it reads:

31§62.3(e)(1)      An appraisal for the repair of the motor vehicle will be made in the amount necessary to return the motor vehicle to its same condition just prior to the damage in question being incurred.





Our current Unfair Insurance Practices Regulation § 146.8 (f) reads:

- 146.8 (f) When the insurer elects to repair in a first-party claim, the insurer shall cause the damaged automobile to be restored to its condition prior to the loss at no additional cost to the claimant other than as stated in the policy and within a reasonable period of time.

The newly amended Regulation will read:

***Predamaged condition - the function and appearance of the motor vehicle just prior to when the damage in question was sustained.***

When one hears the terminology "predamaged" you would automatically think "what's the difference" >> pre-accident / pre-loss / pre-damaged / condition prior to the loss ... When we received the original proposed Regulation in January of this year, this "predamaged" terminology concerned our Guild tremendously. It made no sense to change these words. That's what a consumer expects, that's why a consumer buys insurance in the first place. When one has an accident, your expectations are that your car will be returned to you in a condition prior to your loss. It was our position that the "pre-accident / pre-loss" terminology stay the same. However, the Department of Insurance was very clever, they led us to believe that "predamaged" would be synonymous to "condition prior to the loss". During PCTG's meeting with the Independent Regulatory Review Board the amended Regulation included a definition that read:

"predamaged condition" equals the condition of the motor vehicle just prior to the damage in question incurred.

Our request to eliminate the Department's "predamaged condition" terminology became ignored ...

The amended regulation provides for a brand new definition for "predamaged condition" which reflects "the function and appearance of the motor vehicle immediately prior to when the damage in question was incurred."

Now the "predamaged" terminology change that originally had everyone stumped showed its true anti-consumer meaningfulness.

Function and Appearance in the Collision Repair Industry has a significantly different meaning than "the condition of the motor vehicle just prior to its loss". Function and Appearance comes right out of the training manuals of many insurance companies. Ask any collision repair professional what Function and Appearance means to them and you'll get the answer >> Aftermarket Parts > Non-Quality Repair > State Farm Insurance .....



We have included a copy of State Farm's Repair Facility Criteria Survey Form. Please refer to Criteria #2:

2. The repairer agrees to perform repairs which serve to restore the damaged vehicle to its preloss condition relative to safety, function and appearance and further agrees to warrant workmanship, including refinishing, in writing, for a period of not less than one year from date of completion of repairs.

We have also included a copy of State Farm's Service First Agreement. Please refer to Bullet # 5:

- The repairer agrees to include in the estimate the cost of competitively priced parts which serve to restore the vehicle as nearly as possible to its pre-loss condition relative to safety, function and appearance. If the prices are based on other than new original equipment manufacturer parts, those parts will be clearly identified on the estimate (e.g., new non-OEM, recycled, rebuilt, remanufactured, etc.)

Function and Appearance will never equal pre/loss – pre/accident condition.

If we permit the Insurance Department to use the definition of "predamaged condition" that reads "the function and appearance of the motor vehicle immediately prior to when the damage in question was incurred" it will open the door for all insurance companies and their appraisers to prepare their damage report utilizing parts that "function and appear" the same as the original manufactured parts but are nothing more than imitations that will diminish the value of the consumer's investment.

The Preamble of this amended Regulation states:

"The Insurance Federation, State Farm and the Independent Regulatory Review Commission recommended that the definition of "predamaged condition" be changed to reflect "the function and appearance of the motor vehicle immediately prior to when the damage in question was incurred".

"The Department upon review and consideration agreed that the term should be used consistently throughout the regulation and agreed to add "function and appearance" to enhance the definition. The Department has made these changes accordingly."

Did the Insurance Federation and State Farm Insurance point the Independent Regulatory Review Commission in an Anti-Consumer direction?

I guess that depends on whether we want to follow guidelines that are written by Pennsylvania Legislators or guidelines taken off the sheets of State Farm's Repair Facility Criteria Survey Form & Service First Agreements. The proof is in front of you, please read the enclosed copies:



**Criteria # 2:**

The repairer agrees to perform repairs which serve to restore the damaged vehicle to its preloss condition relative to safety, function and appearance and further agrees to warrant workmanship, including refinishing, in writing, for a period of not less than one year from date of completion of repairs.

**Service First Bullet #5:**

The repairer agrees to include in the estimate the cost of competitively priced parts which serve to restore the vehicle as nearly as possible to its pre-loss condition relative to safety, function and appearance. If the prices are based on other than new original equipment manufacturer parts, those parts will be clearly identified on the estimate (e.g., new non-OEM, recycled, rebuilt, remanufactured, etc.)

We believe the Independent Regulatory Review Commission was misled. There is no way a consumer oriented review board would allow for this change in terminology. We can only assume that the members of the Independent Regulatory Review Board are innocent participants in this decision.

Last Wednesday the House Insurance Committee and those present heard testimony from Insurance Commissioner Koken that the Department believes this new definition will enhance our State's Regulation. How can the State do any better for their consumers than the Current Regulation which requires that the damaged vehicle be returned to a condition prior to its loss?

146.8 (f)            When the insurer elects to repair in a first-party claim, the insurer shall cause the damaged automobile to be restored to its condition prior to the loss at no additional cost to the claimant other than as stated in the policy and within a reasonable period of time.

For the last 26 years the standard for Collision Repair and the Physical Damage Appraiser was to repair consumer's damaged vehicles to a condition prior to its loss "pre-accident / pre-loss".

However, over the past 10 years the insurance industry has done everything possible to economically depress and control the Collision Repair Industry. They force our businesses to subsidize the repairs of our customer / consumer's vehicles. They continue to arbitrarily cap materials and procedures even though the Attorney General's Office advised us that it was illegal. The Department of Insurance has permitted the Insurance Companies to set up contracted relationships called Direct Repair Programs. These Direct Repair Programs are arrangements where Body Shops are contracted to operate as Managed Car Care Facilities following the guidelines and policies of individual insurance carriers much like the Managed Health Care Programs that has invaded our Commonwealth's Health Care System. This is why the members of our Pennsylvania Collision Trade Guild joined together and asked our government for proper enforcement of the law in the first place. Now, the Department is asking to change the Regulation!



We cannot be so naïve as to assume that the reason for a new definition is to provide something better for our consumers when the Current Law and Regulation is considered to be one of the stronger Consumer Protection Laws in the Country.

What has happened here is totally Anti-Consumer. The Insurance Department totally agrees with the Insurance Federation and State Farm Insurance Company that no longer will insurance companies be held accountable to repair a car to its condition prior to the accident but **only** meet the "function and appearance" requirements of the amended Regulation. In addition the Department weakens the amended Regulation by using this "predamaged" terminology many times throughout the Regulation.

§ 62.3 (b)(5)      **A description of repairs, known at the time of appraisal, necessary to return the vehicle to its predamaged condition, including labor involved, cost of all parts, necessary painting or refinishing, and all sublet work to be done.**

This change weakens the current Regulation drastically! What currently reads:

31§62.3(b)(1)      Items necessary to return the vehicle to its condition prior to the damage in question, including, but not necessarily limited to labor involved; necessary painting or refinishing, and all sublet work to be done. Furthermore, there shall be a specification of charges relating to towing, protective care, custody, storage, depreciation, including but not limited to new battery and tire replacement, applicable sales tax payable on the total dollar amount of the appraisal, and all other matter incidental to repair of the incurred damage.

now falls pray to this amended "predamaged" weakening of the Regulation. Items necessary to return the car to pre-loss condition changes to a description of repairs necessary to return the vehicle to its "predamaged" condition.

Items necessary is much stronger it's "Pro-Consumer" then a description of repairs which is "Anti-Consumer".

Items necessary to return the vehicle to its condition prior to the damage in question versus a description of repairs necessary to return the vehicle to its "predamaged" condition or function and appearance. This description to include the cost of all part necessary painting, refinishing and sublet work.

How can the Department of Insurance expect a "description of repairs" to replace "items necessary" when the Act states:

Act 367§11(b)      The appraiser shall leave a legible copy of his appraisal with that of the repair shop selected by the consumer to make the repairs and also furnish a copy to the owner of the vehicle. This appraisal shall contain the name of the insurance company ordering it, if any, the insurance file





number, the number of the appraiser's license and the proper identification number of the vehicle being inspected. All unrelated or old damage should be clearly indicated on the appraisal which shall include an itemized listing of all damages, specifying those parts to be replace or repaired. Because an appraiser is charged with a high degree of regard for the public safety, the operational safety of the vehicle shall be paramount in considering the specification of new parts. This consideration is vitally important where the parts involved pertain to the drive train, steering gear, suspension units, brake system or tires.

- 31§62.3(b)(1) Items necessary to return the vehicle to its condition prior to the damage in question, including, but not necessarily limited to labor involved; necessary painting or refinishing, and all sublet work to be done. Furthermore, there shall be a specification of charges relating to towing, protective care, custody, storage, depreciation, including but not limited to new battery and tire replacement, applicable sales tax payable on the total dollar amount of the appraisal, and all other matter incidental to repair of the incurred damage.
- 31§62.3(b)(2) A clear indication of the cost or dollar amount value of specified items.
- 31§62.3(b)(3) A clear indication of unrelated or old damage.

62.3(c) becomes even more complex as we examine the Insurance Department's request to utilize this "pre-damaged condition" terminology. As we read 62.3(c) we must remember that "predamaged" terminology does **NOT** represent condition prior to ones loss but only what **APPEARS** to be the same:

- § 62.3 (c) An appraisal for the repair of the motor vehicle **shall** be made in the amount necessary to return the motor vehicle to its **predamaged condition**. **If the consumer wishes to repair the motor vehicle to a condition better than the predamaged condition, the appraisal need only specify the cost of repairing the vehicle to its predamaged condition.**

An appraisal for the repair of the motor vehicle **shall** be made in the amount necessary to return the motor vehicle to its predamaged condition. Does this mean the Physical Damage Appraiser **must** meet its function and appearance requirements? Does this section of the Law **demand** the appraiser to seek out parts other than original manufactured parts? We believe this is the direction they want us to follow.

"If the consumer wishes to repair the motor vehicle to a condition better than the predamaged condition, the appraisal need only specify the cost of repairing the vehicle to its predamaged condition." This statement tells us that if the consumer wishes to repair his vehicle to the condition prior to the loss, the appraiser will only have to provide an estimate that identifies parts that meet the criteria of function and appearance and the consumer will be penalized financially for asking to have his vehicle



repaired to the manufacturer's recommended specifications. This is in direct violation of 146.8(f):

146.8 (f) When the insurer elects to repair in a first-party claim, the insurer shall cause the damaged automobile to be restored to its condition prior to the loss at no additional cost to the claimant other than as stated in the policy and within a reasonable period of time.

§ 62.3 (a) The appraisal shall:

§ 62.3 (a)(1) **Be signed by the appraiser before the appraisal is submitted to the insurer, the consumer, or another involved party. The appraiser may utilize an electronic signature.**

Act 367§11(c) No appraiser shall secure or use repair estimates that have been obtained by the use of photographs, telephone calls or in any manner other than a personal inspections.

31§62.3(a)(2) An appraisal shall be signed by the appraiser before the appraisal is submitted to the insurer, the consumer or another involved party.

31§62.3(g)(11)(i) An appraiser may not secure or use repair estimates that have been obtained by the use of photographs, telephone calls or in a manner other than personal inspection.

"The appraiser may utilize an electronic signature" is a misunderstanding of why an appraiser's signature is required in the first place. An appraiser's responsibility is to personally inspect. Collision Repair Facilities require appraisers to sign the appraisal once an agreement has been agreed upon. This signature is a physical, hand written signature and should continue in this manner to avoid the *hit-and-run* appraiser who stops by, takes photos and prepares the appraisal back at the office. The hand written signature assures the consumer and their representative that the Physical Damage Appraiser has followed the guidelines of the Law. The handwritten signature will also safeguard the appraisal from being audited or re-written by another appraiser or supervisor who authorizes a change by merely pushing the button on the computer's keyboard and creates the original "electronic signature".

We need to clarify why insurance companies are required by Law to provide **disclosure statements** that identify to the consumer their rights.

§ 62.3 (b) **In addition to the requirements in the act, the appraisal shall contain a written disclosure which includes the following:**

If we are talking about the average consumer that walks into our facilities, this terminology will do nothing but confuse them. By the way, as we explore disclosure



statements, why is it ... the Insurance Department is compelled to include disclosure in this amended Regulation but shies away from the responsibility of providing the necessary word tracking to protect the Commonwealth's consumers. It is our position that the Department of Insurance has no authority to include statements of disclosure within the Regulation when it was never addressed in the Act.

However, who or what department is going to monitor how disclosure is written? Does every insurance company utilize the identical disclosure statement? Or will some insurance companies use more disclosure than other insurance companies? We must realize what will happen if the Department of Insurance permits individual insurance companies to write their own disclosure statements.

We have included samples of insurance company prepared documents to their policyholders. Remember as we explore these documents, insurance company contractual policy **can not supercede** Pennsylvania State Law. Our first example is a Pennsylvania Motor Vehicle Policy from the Progressive Insurance Company. We will reference the Limits of Liability Section 3(e):

3. Payments for loss covered under Collision, Comprehensive, and Custom Parts or Equipment are subject to the following provisions:
  - e. in determining the amount necessary to repair damaged property to its pre-loss condition, our estimate will be based on:
    - i. the prevailing competitive labor rates charged in the area where the property is to be repaired, as reasonably determined by us; and
    - ii. the cost of repair or replacement parts and equipment which may be new, refurbished, restored, or used, including, but not limited to:
      - (a) original manufacturer parts or equipment; and
      - (b) nonoriginal manufacturer parts or equipment; and

Please recognize the policy's reference to "our" estimate. This insurance company is telling its insured that they will only pay what they feel the cost of repairs should be.

As we examine the terms in this insurance company's policy we see that it refers to an estimate that is based on Progressive Insurance Company's figures not an independently written appraisal as per Pennsylvania State Law, Act 367 Section 11 (f)(2),(3)&(4).

- Act 367§11(f) Every appraiser shall:
- Act 367§11(f)(2) Approach the appraisal of damaged property without prejudice against, or favoritism toward, any party involved in order to make fair and impartial appraisals.
- Act 367§11(f)(3) Disregard any efforts on the part of others to influence his judgement in the interest of the parties involved.



Act 367§11(f)(4) Prepare an independent appraisal of damage.

The policy provisions also identify "Prevailing Competitive labor rates" as reasonably determined by "us" .... Our question is who is **us**, the insurance company appraiser assigned to the claim? Isn't he supposed to be independent? No where in our State's law or regulation is there a reference to what the insurance company refers to as 'Prevailing Rates' however, the policy refers to this terminology. This policy also refers to non-original manufactured parts or equipment. How can this insurance company offer a policy in the State of Pennsylvania with this type restrictions?

Our next example is a form Nationwide Insurance hands out during their appraisal process. We will reference Nationwide's Blue Ribbon Appraisal Guarantee:

The vehicle owner is guaranteed that the Blue Ribbon Repair Appraisal:

- ◆ Is fairly priced and includes all damage related to the accident that was evident when the vehicle was appraised; and
- ◆ Will also include in the repairs and settlement any hidden or missed damage caused by the accident; and
- ◆ Is based on repair procedures intended to restore the vehicle to pre-accident functional condition.

In addition, your assigned Nationwide Blue Ribbon Representative will be available to assist in resolving any concerns the customer has about the quality of repairs.

Nationwide will replace any defective parts according to the following schedule:

- ◆ Like Kind and Quality (Used Parts) up to 1yr. or remainder of Original Equipment Manufacturer warranty, whichever is longer.
- ◆ After-Market Parts (Non-OEM) – As long as owner named below owns the vehicle.

How did pre-accident functional condition get past the Administrative Office in charge of protecting the consumers? Please remember the standard of our current Regulation is "condition prior to its loss". How did this insurance company add the word "functional condition" to pre-accident? Let's compare these two statements. State Law tells us we are required to repair the vehicle to its condition prior to its loss. The insurance company tells their policyholders that their agreement is to repair the vehicle based on repair procedures intended to restore the vehicle to a pre-accident functional condition. What is that? Is it pre-accident or a functional condition?

As we compare this document to the proposed "Disclosure Statement" you will realize what our concerns are. Here this insurance company freely writes its contractual language to whatever it offers in the marketplace, **not** using the Commonwealth's "condition prior to its loss" regulatory guidelines. In addition to this confusion of terms, how does the Department of Insurance regulate the insurance company when the policy language over rides the intent of Pennsylvania's Regulation?

These are only two examples why the insurance companies cannot be permitted to author their own disclosure statements. We can provide you many additional examples however, for the sake of time we must move forward to other concerns.

§ 62.3 (b) **In addition to the requirements in the act, the appraisal shall contain a written disclosure which includes the following:**

§ 62.3 (b)(2) **A statement that costs above the appraised amount may be the responsibility of the vehicle owner.**

§ 62.3 (e) **The appraised value of the loss shall be the replacement value of the motor vehicle if the cost of repairing a motor vehicle exceeds its appraised value less salvage value, or the motor vehicle cannot be repaired to its predamaged condition.**

This disclosure statement that costs above the appraised amount may be the responsibility of the vehicle owner is extremely important in respect to the Department's predamaged definition.

§ 62.3 (b)(10) **If the appraisal includes aftermarket crash parts, a statement that the appraisal has been prepared based on the use of aftermarket crash parts, and that if the use of an aftermarket crash part voids the existing warranty on the part being replaced or any other part, the aftermarket crash part shall have a warranty equal to or better than the remainder of the existing warranty.**

§ 62.3 (b)(11) **Identification of all aftermarket crash parts and a definition of aftermarket crash parts consistent with section 62.1 (relating to definitions), if such parts are used.**

***Aftermarket Crash Part* – a nonoriginal equipment manufacturer (Non-OEM) replacement part, either new or used, for any of the nonmechanical parts that generally constitute the exterior of the motor vehicle, including inner and outer panels.**

As you read the amended section 62.3 (b)(10) & (b)(11) it states: "If" the appraisal includes aftermarket crash parts, does this statement allow the insurance industry to use aftermarket crash parts? We think it does. Does the Act give the Department of Insurance the authority to permit Aftermarket Crash parts? NO!

Does the Department of Insurance have the Legislative authority to write new Law? They are not expanding or interpreting previously written Legislation. This is far beyond the intent of Act 367 and whether you include a disclosure statement or not, it is the Pennsylvania Collision Trade Guild's position that the Department of Insurance has over stepped their regulatory authority.



Another question regarding this section > Does the manufacturer's warranty become void if a lesser part with a warranty equal to or better than is responsible for the failure of an adjacent manufacturer's part or the entire vehicle?

The narrow mindedness of our Department of Insurance becomes obvious here as they attempt to address the warranty concerns. However, common sense prevails as we are told that the Department's own personnel have trouble accepting this section as an area of compliance.

**§ 62.3 (b)(4) A statement informing the consumer that information regarding repair facilities which will be able to repair the vehicle for the appraised amount is available from the insurer. If the consumer receives information from the insurer, such information shall include disclosure that there is no requirement to use any specified repair shop.**

62.3 (b)(4) is nothing more than a way for the insurance company's contracted repair facilities (D.R.P's) to receive repairs that are steered to their locations. Today, this steering and directing is done by verbal recommendation. This disclosure statement permits the insurance representative to provide a list of shops that abide by insurance company's policies and guidelines. Yes, there is disclosure but there is no requirement to use any specified repair shop. However, from a shop owner's point of view he must comply with the appraiser's appraised amount or his shop will be removed from "the list".

**§ 62.3 (f)(4) Not mention the name of any repair shop, unless the appraiser includes disclosure that there is no requirement to use any specified repair shop.**

Once this appraiser follows the disclosure rules and hands a disclosed list of repair facilities to the consumer, his disclosure statement now allows for the verbal recommendation which includes, of course, a disclosure statement that says he can not recommend unless he discloses his disclosure first! Whatever happened to the current Regulations' Consumer Protection statement "upon the unsolicited request"?

31§62.3(g)(12)(iii) Upon the unsolicited request of the consumer, an appraiser shall provide the names and addresses of auto body shops, garages or repair shops within a reasonable distance of where the motor vehicle is located and where work will be done in accord with the written appraisal.

These words "unsolicited request" were written to protect the consumer from over ambitious appraisers who felt obligated to ....

31§62.3(g)(9) An appraiser may not have a direct or indirect conflict of interest in the making of an appraisal. This chapter and the act, and this section in particular, shall be strictly interpreted to protect the interest of the consumer

and place the burden upon the appraiser to fully eliminate conflict of interest in the making of an appraisal. Unless as otherwise specified in this chapter or act, a licensed appraiser may not attempt to directly or indirectly coerce, persuade, induce or advise the consumer that appraised motor vehicle physical damage must be, should be or could be repaired at a particular locations or by a particular individual or business.

We find it interesting to point out that this strong Consumer Protection section of the Current Regulation has been removed in favor of the Amended Disclosure Statements.

**§ 62.3 (f)(1)** **Not have** a conflict of interest in the making of an appraisal. This chapter and the act, and this section in particular, shall be strictly interpreted to protect the interest of the consumer and place the burden upon the appraiser to eliminate any conflict of interest in the making of an appraisal.

This section identifies that the Physical Damage Appraiser can not have a conflict of interest as he goes about his duties of appraising consumer's vehicles. Contrary to the opinion of the Department of Insurance, our members believe that for an individual to be employed or contracted with an insurance company raises the issue of a conflict of interest. The Department of Insurance has placed the burden on the appraiser to eliminate any conflict of interest in the making of his appraisal. How can this be? His employment creates the conflict. The Physical Damage Appraiser's Act 367 states "that every appraiser shall prepare an independent appraisal damage". He must disregard any efforts on the part of others to influence his judgement in the interest of parties involved. He must approach the appraisal of damaged property without prejudice against, or favoritism towards, any party involved in order to make fair and impartial appraisals.

Act 367§11(f) Every appraiser shall:  
Act 367§11(f)(1) Conduct himself in such a manner as to inspire public confidence by fair and honorable dealings.  
Act 367§11(f)(2) Approach the appraisal of damaged property without prejudice against, or favoritism toward, any party involved in order to make fair and impartial appraisals.  
Act 367§11(f)(3) Disregard any efforts on the part of others to influence his judgement in the interest of the parties involved.  
Act 367§11(f)(4) Prepare an independent appraisal of damage.

This conflict of interest segment of the Amended Regulation is a perfect example of what is WRONG with the Insurance Department's entire interpretation of Consumer Protection. It is the Pennsylvania Collision Trade Guild's position that this Amended Regulation is BAD for the consumers of the Commonwealth and has to be stopped. As we bring this testimony to its end the last and probably one of the more significant issues is the removal of the Proposed Regulation's process for dispute resolution in 31§62.3(b)(4):

31§62.3(b)(4) *a description of repairs necessary to return the vehicle to its pre-damaged condition including, but not necessarily limited to labor involved, cost of all parts necessary painting or refinishing, and all sublet work to be done. If there is a dispute regarding the cost of repairs to an insured's vehicle, the insured or the insurer may seek resolution through the invocation of the appraisal clause provision or other similar provision which provides a process for dispute resolution in the policy contract:*

**Why has the Department of Insurance, after recommending a process for dispute resolution, removed this consumer friendly segment from the Final Form Version of the Regulation? What has changed their minds? They say they have no authority to provide for dispute resolution, however, they can provide for disclosure and non-OEM parts!**

**Most insurance company's policies include a provision for a "dispute resolution" it is called the "third party appraisal" or "third party arbitration". In the event the consumer and his insurance company cannot agree on a proper settlement they can utilize this provision called "third party appraisal". However we find it ironic that two of the major contributors to the changes we address today, State Farm Insurance and Nationwide Insurance have removed this consumer protection from their respected policies. When the Department of Insurance recommended this type of consumer protection across the board it was quickly withdrawn. How does eliminating a "dispute resolution" protect the consumers of Pennsylvania?**

**We are asking that the Senate Banking and Insurance Committee to agree with our recommendation and stop this Regulatory Process. Vote in favor of the consumers of our Commonwealth. Please provide the consumer protection that is so desperately needed. Please let us take the time necessary to properly research and evaluate an effective method to safeguard the citizens of Pennsylvania.**

**Thank you very much.**

# **P.C.T.G.**

## **Pennsylvania Collision Trade Guild**

### **Our Mission**

We believe in the God given right of individual business owners to operate a honest ethical and responsible business using general accounting principles which includes the need for necessary profit.

We believe that our clients (consumers) are entitled to the best service possible and that the restoration of the consumer's vehicle to pre-accident condition using O.E.M.(original equipment manufacturer) parts and manufacturer recommended procedures is the best means for achieving accurate results.

We believe that any attempt by a third party payee to subordinate these standards or deny sufficient budget as to obtain these objectives to be both a violation and direct threat to our ability to fulfill our commitment to our consumers, ourselves and our employees.

We acknowledge "restriction of trade" or any practices related to same to be unlawful and as such we will refuse to participate in same.

We pledge ourselves to the pursuit of excellence.

# STATE FARM'S REPAIR FACILITY CRITERIA SURVEY FORM

As part of State Farm's Auto Damage Claim Policy, the Repair Facility Criteria are:

1. The repairer agrees to follow ethical and professional practices in its business conduct with State Farm representatives and our mutual customers.
2. The repairer agrees to perform repairs which serve to restore the damaged vehicle to its preloss condition relative to safety, function and appearance and further agrees to warrant workmanship, including refinishing, in writing, for a period of not less than one year from date of completion of repairs.
3. The repairer agrees to perform all repairs according to the itemized repair estimate or as subsequently approved by the vehicle owner. The repairer agrees to notify State Farm of any proposed deviation prior to repairs as to the technique to be utilized and as to costs to be incurred.

*NOTE:* This applies in cases when our payment is or will be made to the repairer, i.e., either by a co-payable draft to the repair facility and the vehicle owner, or under a Direction to Pay requiring State Farm to pay the repair facility only.

4. The repairer agrees to charge only for repairs when and as performed.
5. The repairer agrees that charges including, but not limited to, towing, storage, tear down and sublet repairs will follow those that are usual and customary in the market area.
6. The repairer agrees that if non-OEM, used, rebuilt or reconditioned parts are used in repairs, such parts will meet the following criteria:
  - a. Used, rebuilt or reconditioned parts will be of sufficient quality to restore the vehicle to its preloss condition.
  - b. New non-original equipment parts will be CAPA certified if the parts are subject to CAPA certification.
  - c. New non-original equipment manufacturer outer sheet metal parts will be backed by a written limited warranty against perforation rust-through for as long as the part is owned by the first retail user. New non-original equipment manufacturer parts other than outer sheet metal will be backed by a written limited warranty which provides protection which is not less than the vehicle owner would receive with a new original equipment manufacturer's part.
7. The repairer agrees to allow a representative of State Farm to inspect vehicles involved in State Farm claims on the repairer's premises during normal business hours for the purpose of writing estimates and to confirm that repairs are completed according to the estimate.
8. The repairer agrees that all disagreements as to repair cost, techniques, methods, parts or materials will first be brought to the attention of, and a sincere effort made by the repairer to resolve with, the local State Farm management person in charge of the claim file.
9. The repairer has the following operable equipment/capability:
  - a. A measuring device suitable for symmetrical or asymmetrical structural dimensions.
  - b. Electrical or hydraulic equipment needed to perform multiple repair pulls on frame and unibody vehicles.
  - c. A gas metal arc welder (GMAW) which will be used in appropriate repair situations.
10. The repairer agrees that all sublet repairs will be performed in accordance with the repair facility criteria.

**I certify that my repair facility meets and I agree to State Farm's criteria.**

Repair Facility Name \_\_\_\_\_ Phone number \_\_\_\_\_

Address \_\_\_\_\_

\_\_\_\_\_  
Signature of Repair Facility Representative (Owner/Manager)

\_\_\_\_\_  
Date



## STATE FARM SERVICE FIRST AGREEMENT

If an estimate has not been written by State Farm Mutual Automobile Insurance Company, for itself and its subsidiaries and affiliates (collectively, "State Farm") and the vehicle owner notifies us that your facility has been selected to make repairs, State Farm will authorize you to inspect and photograph the vehicle damage and prepare a computerized estimate itemizing the cost to repair the vehicle.

- The repairer agrees to obtain the vehicle owner's authorization prior to dismantling the vehicle or undertaking repairs.
- The repairer and State Farm agree that estimated repair costs will be based on prices agreed to by the repairer and by State Farm.
- The repairer and State Farm agree that the repair of vehicle collision damage is an inexact science and the actual time for repair or replacement operations may vary relative to the estimated time. The repairer will use the time it should take an average qualified technician to do the work as the basis for preparing the estimate and for billing purposes.
- The repairer agrees to promptly notify State Farm at such time the vehicle appears to be an economic total loss.
- The repairer agrees to include in the estimate the cost of competitively priced parts which serve to restore the vehicle as nearly as possible to its pre-loss condition relative to safety, function and appearance. If the prices are based on other than new original equipment manufacturer parts, those parts will be clearly identified on the estimate (e.g., new non-OEM, recycled, rebuilt, remanufactured, etc.).
- The repairer agrees to identify items on the estimate subject to betterment, appearance allowances, and unrelated damage.
- The repairer agrees to promptly provide a copy of the initial and final automated repair estimate to the vehicle owner and State Farm, and to document their delivery to the vehicle owner. Initial photographs of the damage are to be promptly provided to State Farm.
- The repairer agrees to complete repairs promptly upon receiving the vehicle owner's authorization. Any delays in repairs will be reported promptly to the vehicle owner and State Farm.
- The repairer agrees to take and retain "four corner" photographs and any additional photographs needed to document the completed repairs.
- The repairer agrees to collect any deductible amount and depreciation/betterment charges along with any amounts due to "owner request" repairs and provide State Farm with a final automated repair estimate of the amount we owe.
- The repairer agrees to obtain, and retain, the vehicle owner's direction to pay authorization.
- State Farm agrees to accept the final automated repair estimate as the basis for prompt payment directly to the repairer. State Farm reserves the right to audit the repair bill at any time following payment.
- The repairer agrees to maintain electronic data interchange capability in accordance with Exhibit 1.
- The repairer agrees to refrain from using the State Farm or Service First name or logo on any advertising or other material.
- The repairer and State Farm agree that neither party will be liable to the other for any special, circumstantial, indirect, or incidental damages.

This agreement is not effective or binding until accepted by State Farm. This agreement can be terminated by notice and confirmation in writing at any time by either party for any reason.

This agreement is contingent upon continued compliance with the State Farm Repair Facility Criteria and the State Farm Service First Criteria.

# Sample Copy





"9606 797 37"



**PROGRESSIVE**®

## **PENNSYLVANIA MOTOR VEHICLE POLICY**

This policy, the declarations page, and any applicable endorsements contain the terms of the contract of insurance between us and the policyholder.

**NOTICE: IF YOU BUY COLLISION COVERAGE, IT DOES NOT APPLY TO VEHICLES RENTED FOR BUSINESS USE OR FOR 6 MONTHS OR MORE.**

Progressive Northern Insurance Company  
Madison, Wisconsin

Form No. 9606 (07/97) PA

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10. to a **covered vehicle, non-owned vehicle, or trailer**, that is due and confined to:
  - a. wear and tear;
  - b. freezing;
  - c. mechanical or electrical breakdown or failure; or
  - d. road damage to tires.

This exclusion does not apply if the damage results from the total theft of a **covered vehicle, non-owned vehicle, or trailer**;
11. due to theft or conversion of a **covered vehicle, non-owned vehicle, or trailer**:
  - a. by you, a relative, or any resident of your household;
  - b. prior to its delivery to you or a relative; or
  - c. while in the care, custody, or control of anyone engaged in the **business** of selling the **vehicle or trailer**;
12. to tapes, compact discs, cassettes, and other recording or recorded media;
13. to any case or other container designed for use in storing or carrying tapes, compact discs, cassettes, or other recording or recorded media;
14. to any device used for the detection or location of radar, laser, or other speed measuring equipment or its transmissions;
15. to **custom parts or equipment** in excess of the applicable Limit of Liability; or
16. to a **covered vehicle, non-owned vehicle, or trailer**, for diminution of value.

#### LIMITS OF LIABILITY

1. The Limit of Liability for **loss** to a **covered vehicle, non-owned vehicle, or trailer** will be the lowest of:
  - a. the actual cash value of the stolen or damaged property at the time of the **loss**, reduced by the applicable deductible shown on the **Declarations Page**, and by its salvage value if you retain the salvage;
  - b. the amount necessary to repair or replace the stolen or damaged property, reduced by the applicable deductible shown on the **Declarations Page**; or

- c. any applicable Limit of Liability or Stated Amount Vehicle Coverage elected by you, reduced by its salvage value if you retain the salvage.

However, if the **loss** is to a **trailer**, the applicable Limit of Liability will be \$500.

2. Subject to Section 3 below, the Limit of Liability for **loss** to **custom parts or equipment** is the combined total of \$1,000, unless you pay a premium for Additional Custom Parts Or Equipment Coverage, and it is shown on the **Declarations Page**.

Coverage for **custom parts or equipment** shall not cause any Limit of Liability under this Part IV to be increased to an amount in excess of the actual cash value of any stolen or damaged **vehicle**.

3. Payments for **loss** covered under Collision, Comprehensive, and Custom Parts Or Equipment are subject to the following provisions:
  - a. no more than one (1) deductible shall be applied to any one (1) covered **loss**;
  - b. if coverage applies to a **non-owned vehicle**, the highest deductible on any **covered vehicle** shall apply;
  - c. if Stated Amount Vehicle Coverage is elected by you, that stated Limit of Liability will be the total Limit of Liability applicable for **loss** to a **covered vehicle** or **non-owned vehicle**, including its **custom parts or equipment**;
  - d. an adjustment for depreciation and physical condition will be made in determining the Limit of Liability at the time of **loss**;
  - e. in determining the amount necessary to repair damaged property to its pre-**loss** condition, our estimate will be based on:
    - i. the prevailing competitive labor rates charged in the area where the property is to be repaired, as reasonably determined by us; and
    - ii. the cost of repair or replacement parts and equipment which may be new, refurbished, restored, or used, including, but not limited to:
      - (a) original manufacturer parts or equipment; and
      - (b) nonoriginal manufacturer parts or equipment; and

4. If more than one (1) **vehicle** is shown on your **Declarations Page**, coverage will be provided as specified on the **Declarations Page** as to each **vehicle**.
  - f. the actual cash value is determined by the market value, age and condition of the **vehicle** at the time the **loss** occurs.

#### INSURING AGREEMENT - ADDITIONAL CUSTOM PARTS OR EQUIPMENT COVERAGE

If you pay a premium for Additional Custom Parts Or Equipment Coverage, the Limit of Liability for **loss** to **custom parts or equipment** for this additional coverage will be the lowest of:

1. the actual cash value of such **custom parts or equipment**;
2. the declared value of such **custom parts or equipment**; or
3. the amount necessary to repair or replace such **custom parts or equipment**; reduced by the applicable deductible.

Coverage for **custom parts or equipment** shall not cause any Limit of Liability under this Part IV to be increased to an amount in excess of the actual cash value of any stolen or damaged **vehicle**.

Any deductible amount will apply separately to each **loss**.

#### INSURING AGREEMENT - EMERGENCY TOWING AND LABOR

If you pay a premium for Emergency Towing And Labor coverage, we will pay for towing and labor costs incurred by you as a result of the disablement of a **covered vehicle** or **non-owned vehicle**, subject to the Limit of Liability shown on the **Declarations Page**, provided that:

1. the labor is performed at the place of disablement; and





## Nationwide's Blue Ribbon Appraisal Guarantee

The vehicle owner is guaranteed that the Blue Ribbon  
Repair Appraisal:

- Is fairly priced and includes all damage related to the accident that was evident when the vehicle was appraised; and
- Will also include in the repairs and settlement any hidden or missed damage caused by the accident; and
- Is based on repair procedures intended to restore the vehicle to pre-accident functional condition.

In addition, your assigned Nationwide Blue Ribbon Representative will be available to assist in resolving any concerns the customer has about the quality of repairs.

Nationwide will replace any defective parts according to the following schedule:

- Like Kind and Quality (Used Parts) up to 1 yr. or remainder of Original Equipment Manufacturer warranty, whichever is longer.
- After-Market Parts (Non-OEM) - As long as owner named below owns the vehicle.

This is limited to repairs and parts specified on the attached appraisal on behalf of:

KENNY SENFT

Vehicle Owner

58 370 003031 03209801

Claim #

This is not transferable or assignable to any subsequent owner of the repaired vehicle.

To report a Blue Ribbon Repair Service claim for this appraisal, please contact your assigned claims representative.

3-24-98

Date of Issue

John Conliscu JR

Signature





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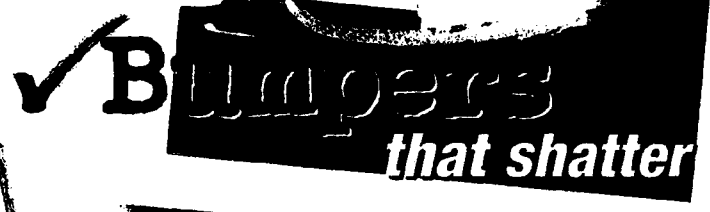
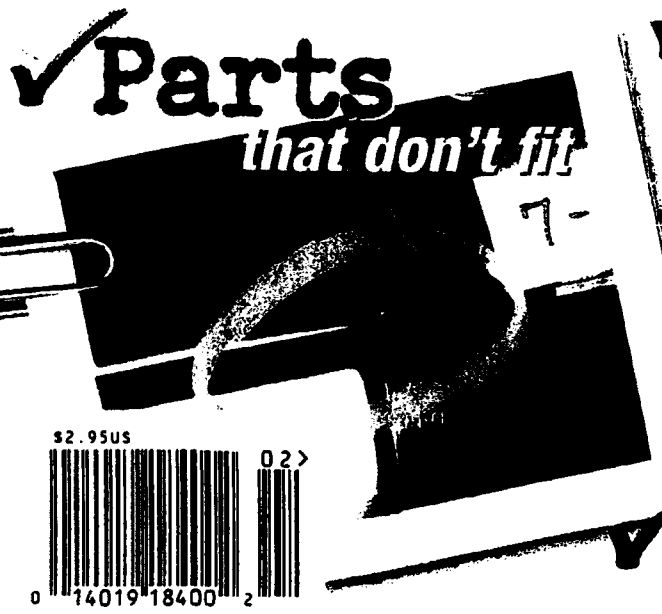
FEBRUARY  
1999

# Consumer Reports

*Exclusive*

# Shoddy Auto Parts

*How to beat car repair rip-offs*



\$2.95US  
0 14019 18400 2

# Cheap car parts can cost you a bundle

Auto insurers are pushing shoddy collision-repair parts, and consumers may not know it.

One January morning last year, Daniel Della Rova was passing another car at about 55 mph on Route 222 near Kutztown, Pa. Suddenly the hood of his 1988 Honda Accord flew up, fractured the windshield, and wrapped itself around the



roof. Unable to see ahead, Della Rova gripped the wheel tightly and managed to steer to the side of the road. "Luckily," he says, "I didn't hit anything." But the insurance company declared the car a total loss.

According to Charlie Barone, a vehicle damage appraiser in Malverne, Pa., who has examined the car, the cause of the mishap was what collision repairers disparagingly call offshore "tin"—a cheap imitation hood made by a Taiwan manufacturer. It's one of many, mostly Asian-made imitations of automakers' OEM (original equipment manufacturer) parts.

Barone, an outspoken critic of imitation parts, says they're cheaper than OEM for a reason: "They're inferior

to original manufacturer parts."

He adds that the previous owner of Della Rova's Honda, who had damaged the original hood in a minor accident, probably paid \$100 less for the imitation hood than the \$225 the Honda OEM part would have cost. But the real cost could have been catastrophic.

An auto-repair problem similar to Della Rova's may be parked in your driveway right now. If your car was ever in an accident, the repair shop may have installed cheap imitation parts, perhaps without your even knowing it.

Crash parts are a big business. Each year, U.S. drivers have an estimated 35 million automobile accidents cost-

## Our test cars

For our bumper-basher tests and our checks of fit, we bought two four-door sedans—a 1993 Ford Taurus and a 1993 Honda Accord. We picked these cars for several reasons: They were top-selling models, and their body panels remained basically unchanged through long production runs—so we were assured of a wide selection of substitute body parts. Also, when new, both models fared very well in our bumper-basher tests, so they provided a tough benchmark for comparisons with imitation bumpers. Both cars were in good condition when we started our tests.

Ford Taurus GL

Honda Accord LX

### Ford Taurus



After a 168-hour cyclic salt-spray test, the scratched Ford OEM fender (above left) showed some white corrosion; an imitation Ford fender (above right), heavy red rust.

### Honda Accord

The scratched Honda OEM fender (above left) showed nearly no corrosion; an imitation (above right), heavy red rust.

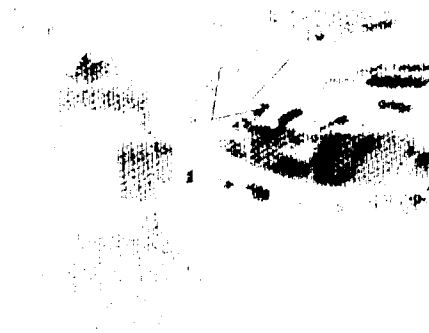


Our hydraulic basher delivered a series of 3-mph angular and 5-mph head-on and offset impacts to simulate the thumps that might occur in a parking lot. Our videotape shows that the Ford OEM (original equipment manufacturer) bumper (near right) survived the test with only minor cosmetic damage. The worst imitation Ford bumper (far right) shattered and allowed the basher to cause an estimated \$1,350 worth of damage to the car's front end. The Honda OEM bumper (below left) also suffered only minor cosmetic damage. The worst imitation Honda bumper (below right) allowed an estimated \$1,797 in damage to the Honda's front end.

### Ford OEM



### Ford imitation



### Honda OEM



### Honda imitation



Appearances can be deceiving. The imitation bumper assembly (shown below) looked OK while mounted on our Honda. The plastic outside cover—the only visible part of the three-piece assembly—remained intact after a 5-mph thump from our basher. But when we removed the bumper, we found that the bar that reinforces the bumper assembly had broken into three pieces.



These unpainted OEM Ford and Honda fenders (top, near and far right) matched the car's contours nicely and formed a narrow, even gap with the door. They didn't require reshaping, shimming, or drilling for a neat fit. But two unpainted imitation fenders (bottom, near and far right) looked sloppy when bolted on without extensive metal work. The Ford imitation didn't follow the contour of the original door; the top of the fender (near the windshield) bent too far inward. The Honda imitation didn't line up with the top of the door and left a large gap near the windshield pillar.

### Ford OEM



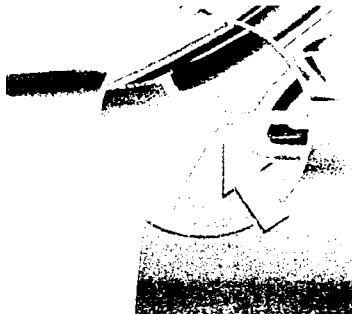
### Ford imitation



### Honda OEM



### Honda imitation



ing some \$9 billion in crash parts. The most frequently replaced parts are bumpers and fenders.

Not all imitation parts are bad. Various brand-name replacement batteries, filters, spark plugs, and shock absorbers can provide quality along with competitive pricing. Some body-part copies are OK, too, but others are junk.

Several consumer groups have supported imitation crash parts, and for good reason: These parts provide competition, forcing automakers to reduce prices. That's good for consumers—but only if quality doesn't suffer. Unfortunately, the quality of imitation crash parts can vary widely.

Many collision repairers complain that imitation parts generally don't have the same fit and quality as OEM parts. "Approximately 75 percent of the time, you have to make modifications or tweak the sheet metal to

make aftermarket body parts fit," says Phillip Bradshaw, owner of Bradshaw Collision Centers in Madison, Tenn. "And even then, it's often impossible to get the alignment and fit right."

In an effort to assure the quality of imitation body parts, the insurance industry established the nonprofit Certified Automotive Parts Association in 1987. To date, CAPA's certification program covers a small percentage of imitation body parts.

Because of the controversy over the price and quality of collision-repair parts, we decided to conduct our own tests on fenders and bumpers to learn about their quality firsthand. All the non-OEM fenders that CONSUMER REPORTS tested were CAPA-certified. (CAPA doesn't certify bumpers.)

We also investigated the claims and counterclaims about the benefits of aftermarket parts. Our tests and investigation uncovered two key findings:

- Most auto insurers endorse imitation parts because they can be 20 percent to 65 percent less expensive than OEM. But the companies we surveyed provided no evidence that those savings are being passed on to policyholders.

- The imitation bumpers and fenders we tested were inferior to OEM parts. The bumpers fit badly and gave poor low-speed crash protection. Most of the fenders also fit worse than OEM fenders, and they rusted more quickly when scratched to bare metal.

### The price vs. quality debate

Some insurers acknowledge there's a quality problem. That's why the Interinsurance Exchange of the Automobile Club of Southern California uses only OEM metal body parts. "We have found significant problems in the quality and specifications of non-OEM sheet metal," says spokeswoman Carol Thorp.

## SAFETY

### A hole in the safety net?

Are replacement body parts unsafe? That's a question no one has really addressed.

The National Highway Traffic Safety Administration crash-tests new cars. Although NHTSA official Kenneth Weinstein agrees that there's "clearly a potential for diminished safety" with imitation doors in a side impact, his agency's standards don't apply to replacement doors. He adds that NHTSA hasn't been getting complaints about the safety of replacement parts. If it did, and if the complaints seemed "reasonable," NHTSA would investigate. (NHTSA's tollfree safety hotline is 888 327-4236.)

The Insurance Institute for Highway Safety (IIHS) also crash-tests new cars. The only replacement part it tested was one imitation hood 11 years ago. It concluded that "there's no reason to believe . . . that [crash] parts significantly influence car crashworthiness."

Safety testing of replacement parts—both OEM and non-OEM—is a particularly thorny problem. Crash-testing, the ultimate test of safety, is difficult or prohibitively expensive to do for all the many possible combinations of replacement parts and original cars. Yet some controlled safety study of these parts should be done to ensure that a car will be as crashworthy after a repair as it was before.

While there is little data on the safety of replacement parts, there is enough anecdotal evidence to raise concern. Three types of parts warrant special scrutiny:

**Bumpers.** When a bumper breaks, as some imitations did even in our low-speed tests, the car's safety may be compromised. At the least, headlights and other safety-related equipment may be damaged; at worst, the car may suffer

structural damage. Bumpers may also affect the way the energy of a crash sets off the car's air bags.

The IIHS hasn't studied whether claims are higher in subsequent crashes of cars repaired with imitation bumpers. Police who investigate an accident rarely do a part-by-part investigation of the car, especially if there are no fatalities.

**Doors.** In a 1991 memo, IIHS President Brian O'Neill notified the institute's sponsoring companies about allegations of knockoff door shells made without the guard beams required by federal regulations for protection during side impacts. Even doors that have the beams could be a safety problem if the welds aren't strong enough or if lighter-gauge steel is used.

**Hoods.** O'Neill says that when overseas manufacturers copy a hood, they also copy the "crush initiators" that allow the hood to fold up in a crash rather than slice through the windshield. This is an important safety feature. But apparently hardly any hoods have ever been tested. Volvo did crash-test one hood, as shown in a 1992 video, and found that it didn't crumple properly. It intruded into the windshield area, a violation of U.S. safety standards for new cars.

Daniel Della Rova's experience raises other concerns. The latch connection on his car's hood was more susceptible to failure than the factory latch connection, according to damage appraiser Charlie Barone. Repair shops have told us of other hood problems—weak welds, poor seams. However, one shop manager who was worried about liability refused to give us details on a hood whose top skin separated from its frame. Concern about legal liability may be another reason why potential safety problems rarely surface.

Raleigh Floyd, an Allstate spokesman, says that his company uses OEM parts—and imitation parts “whose quality has been certified” by CAPA. But our tests of some CAPA-certified fenders indicate that the CAPA seal of approval is no guarantee of quality comparable with that of an OEM part. (The CAPA seal was affixed to the hood on Della Rova’s Honda.)

Also, some consumers may not know what kind of parts they’re getting. They may simply assume their car will be restored to its precrash condition.

Besides fenders and hoods, CAPA certifies other sheet-metal and plastic parts. In the crash-parts market, CAPA parts account for 3 percent or less of the units sold. OEM parts account for 72 percent; salvage parts, 10 percent. Non-CAPA imitation parts make up the remaining 15 percent. CAPA looms large in the industry because it’s the only organization that sets quality standards for imitation replacement parts. Although its overall market share is small, CAPA is growing.

The debate over quality should heat up this summer as a \$10.4 billion class-action lawsuit, Snider vs. State Farm, goes to trial in Marion, Ill. The suit accuses State Farm of pressing shops and policyholders to use imitation parts that aren’t equal in quality to OEM parts. That’s “a breach of their promise to restore the vehicle to pre-loss condition,” says Thomas Thrash, an attorney for the plaintiffs.

State Farm firmly denies this. “We believe these [non-OEM] parts are of the same quality as the manufacturer parts,” says spokesman Dave Hurst.

Insurers haven’t always looked kindly on non-OEM crash parts. In the early 1980s, State Farm’s periodic repair reinspections revealed that many repair shops were charging for OEM parts but installing cheaper imitations and pocketing the difference.

“The shops were making a very long dollar,” says Stan Rodman, director of the Automotive Body Parts Association, which represents manufacturers and distributors of imitation parts—and which was briefly the predecessor of CAPA. “They were getting a non-OEM fender for 90 bucks that the insurance company was paying them \$400 for.”

By the mid-’80s, however, insurers began recommending imitation parts. Their repair estimates assured policy-

holders that the parts were as good as OEM parts.

The plaintiffs in the State Farm suit allege that the insurer knew better. In June and August 1986, for example, State Farm consultant Franklin Schoonover warned the company’s research department that a sampling of imitation crash parts tested earlier that year by the Detroit Testing Laboratory represented a “major risk for consumer usage when compared to the GM OEM parts.”

The lab found that some of the imitation parts weren’t as strong, were more likely to have problems with cracking and peeling paint, and showed weight differences, indicating a wide variation in quality control.

In 1987, Ford sued Keystone Automotive Industries, the largest distributor of non-OEM body parts in the U.S., for using the phrase “like kind and quality” to compare its imitation parts with OEM parts. In 1992, a U.S. District Court ruling found that Keystone’s claims were “false” and “made with the deliberate intention of misleading the public.” In a \$1.8 million settlement, Keystone agreed to allow Ford to state in its advertising, “Crash parts from Keystone do not meet Ford OEM quality.”

“We should not have made those statements,” says Charles Hogarty, president and CEO of Keystone, which now uses the term “functionally equivalent” to describe its products. Hogarty says that description is “probably loose enough to mean whatever you want it to mean . . . it’s not identical and there may be some minor, we’d say insignificant, differences.”

### The consumer connection

After it was established in 1987, CAPA compiled a manual that spells out quality controls, test procedures, and other steps required for manufacturers to get its seal.

In 1988, CAPA added consumer advocate Clarence M. Ditlow to its nine-member board. Ditlow is executive director of the Center for Auto Safety, a nonprofit watchdog group founded in 1970. (He is also on the board of directors of Con-

sumers Union, publisher of CONSUMER REPORTS. The center received funding from CU during its early years.)

In 1989, CAPA hired Jack Gillis as its executive director. Gillis is also director of public affairs for the Consumer Federation of America and the author of a long list of consumer-oriented books.

Ditlow says that CAPA parts are better quality than non-CAPA imitation parts “by virtue of the fact that you set a standard.” But when asked,



*To prevent removal and reuse, the CAPA certification sticker is designed to show a "red" message if it's peeled off a body panel.*

neither he nor Gillis provided compelling evidence to support that claim.

Gillis also says that CAPA parts are of “like kind and quality” to OEM parts. But CAPA’s quality-standards manual requires only “functionally equivalent” parts. Such a careful choice of words is significant: A Saturn may be functionally equivalent to a BMW, but the two are hardly equal.

A twice-a-year survey of 500 repair shops done for the auto industry by Industrial Marketing Research of Clarendon Hills, Ill., does suggest that CAPA parts are better than non-CAPA and that the quality of all imitation parts is improving. But according to the same study, only one-third of repair shops termed CAPA parts an acceptable substitute for OEM parts. Two-thirds judged the quality of CAPA parts “somewhat worse” or “much worse” than OEM parts.

In the IMR study, repairers also indicated that customers came back twice as often with complaints about imitation parts, and that shops often must absorb the cost of extra labor.

Last March, the Automotive Service Association (ASA), representing more than 12,500 repair shops, withdrew its support of CAPA because “CAPA has failed in its mission” and hasn’t assured imitation crash parts

that are equal in quality and consistency to OEM.

"ASA is no friend of the consumer," says Ditlow. "These are people who have an agenda, and that agenda is higher repair costs." But CAPA board member Clark Plucinski, who oversees a network of 30 repair shops, says that ASA has grown frustrated with the slowness of CAPA's progress, despite the fact that CAPA is improving the quality of all imitation parts.

Gillis says that CAPA has an "aggressive" program to solicit complaints from repair shops, but that last year it received only 1,055 complaint forms on some 2.3 million CAPA parts used. However, Plucinski says that hands-on collision-repair people are more likely to chew out

the parts supplier than to fill out a complaint form.

### One size fits none

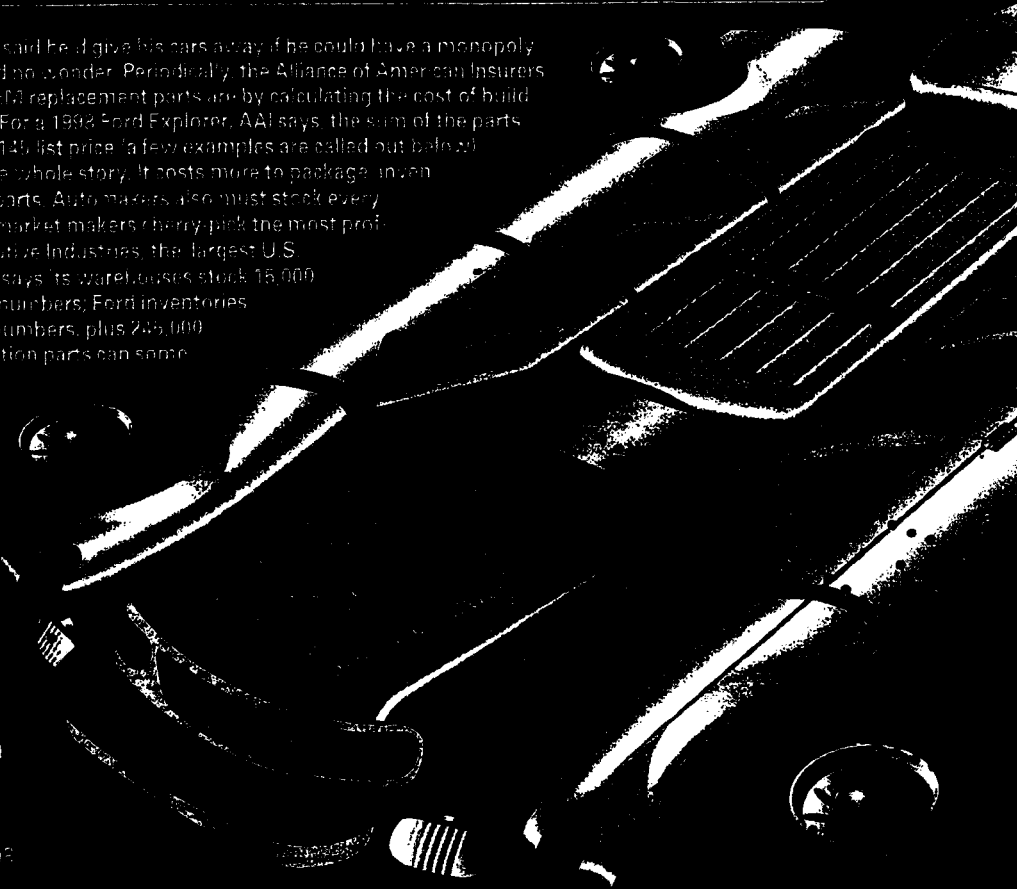
Collision repairers we talked to almost universally complained that too many imitation parts, whether CAPA-certified or not, leave noticeable gaps and don't always match the car's contours. They "fit like a sock on a rooster's foot," says a Scottsdale, Ariz., collision repairer who fixes almost 200 cars each month.

"Fifty to 70 percent of the time the darn things don't fit," says John Loftus, executive director of the 8,000-member Society of Collision Repair Specialists, a trade association.

Jerry Dalton, owner of the Craftsman Auto Body chain in Virginia,

says, "I like the idea of alternate parts other than OEM to keep pricing in line, and we try to use them as often as we can. But we still have to return a large percentage of them."

In a demonstration in Colorado Springs, Colo., last October by the Collision Industry Conference (CIC), a repair-shop education and training group, a CAPA hood and fender and a non-CAPA imitation headlight assembly didn't fit properly on an undamaged 1994 Toyota Camry, though a non-CAPA parking light and grille did fit. (Gillis, who was at the demonstration, says that the fender had been decertified just days earlier, and that he himself decertified the hood on the spot.) At another CIC demonstration in Dallas last Decem-



Henry Ford is reputed to have said he'd give his cars away if he could have a monopoly selling replacement parts—and no wonder. Periodically, the Alliance of American Insurers announces just how pricey OEM replacement parts are by calculating the cost of building a vehicle from such parts. For a 1993 Ford Explorer, AAI says, the sum of the parts is more than 2 1/2 times its \$27,145 list price (a few examples are called out below). That's high—but that's not the whole story. It costs more to package, inventory, ship, and sell individual parts. Auto makers also must stock every replacement part, while aftermarket makers cherry-pick the most profitable ones. Keystone Automotive Industries, the largest U.S. aftermarket parts distributor, says its warehouses stock 16,000 to 19,000 different crash part numbers, Ford inventories more than 35,000 crash part numbers, plus 245,000 other Ford parts. Still, if imitation parts can some day deliver high quality along with their already lower prices, the consumer can only benefit.

Engine assembly \$3,740

Headlight assembly \$179

Front bumper assembly \$671

Electrical system, battery, starter, alternator, etc. \$2,293

ber, all the CAPA and non-CAPA substitute parts fit well.

Of 160 repair shops surveyed last year by Frost & Sullivan, an independent international marketing consulting firm in Mountain View, Calif., 89 percent said that it takes about two hours longer to install an imitation part, costing \$60 to \$90 extra in labor.

### How CAPA tests

CAPA uses Entela Laboratories, an independent test lab in Grand Rapids, Mich., to verify adherence to its stan-

**"Fifty to 70 percent of the time the darn things don't fit."**

**John Loftus,  
Society of Collision  
Repair Specialists**

dards. Entela has industry-standard equipment and the capability for testing materials.

Reports provided by Entela detail various side-by-side tests of materials in parts being considered for CAPA certification and their OEM counterparts. Entela reports for the Honda and Ford fenders we evaluated in-

clude material thickness, chemical composition, tensile strength, and corrosion resistance. The imitation part must be within certain limits of the OEM part in order to be granted certification.

The other half of the certification process is inspection of fit, done at the factory. The Entela fender reports we read list measurements of gaps, flushness with mating parts, and size and location of holes and slots. Each report gives the range of dimensions that the CAPA part must fall within.

The Ford and Honda fenders like those we evaluated appeared to have fallen within CAPA limits in the reports, and they were certified. We did find inconsistencies in the number of holes and slots among the same CAPA-certified part made by different manufacturers.

There may be two reasons for the poor fit of CAPA parts that repair shops complain about. One is "reverse engineering"—where manufacturers make copies of OEM parts. Although Gillis didn't acknowledge problems of fit with CAPA parts, he blames OEM parts for being inconsistent.

But Greg Marshall, Entela's research and development manager, says the OEM parts variations are perhaps 0.060 inch. Even when magnified by the copying process, that shouldn't account for the fit problems we found in CAPA fenders.

The second problem is that CAPA sheet-metal parts are tested for fit on a jig rather than on a car. Gillis says CAPA is changing its standards to require that each part be designed and fit-tested to its intended vehicle as of April. If implemented, that should improve fit. But Gillis says that the requirement will be only for newly certified parts. Parts already certified aren't affected by this change unless CAPA receives at least five complaints about the part in one year.

Repair-shop owner Dalton, a CAPA adviser and a former member of its technical committee who has visited plants in Asia, raises another issue. He says that CAPA isn't able to exercise sufficient control over quality "because they don't buy or sell the parts, and CAPA is a voluntary program."

To assess the claims and counterclaims of the controversy, we installed a sampling of replacement fenders and bumpers on cars and simulated several real-world challenges.

### CR's test results: Fenders

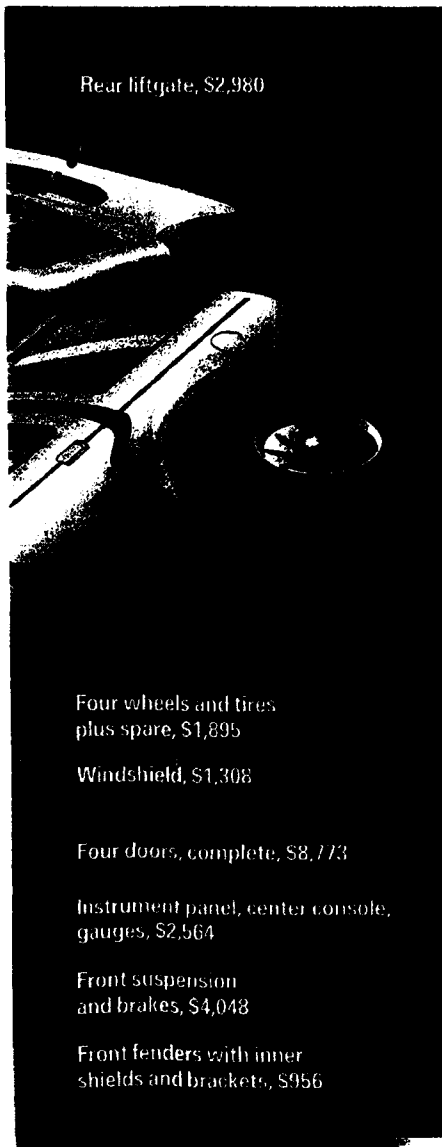
Our engineers mounted three OEM and six CAPA left fenders on each of two popular cars, a 1993 Honda Accord and a 1993 Ford Taurus. (Our shoppers, who bought the fenders in the New York area and in California, couldn't find non-CAPA fenders for these cars.) Without making the extensive modifications a professional shop might have to carry out, we judged their appearance.

Two of the Ford OEM fenders matched up nicely, while the third didn't fit as well. By contrast, we found fit problems with all six CAPA fenders for the Ford. Some would require widening the holes or using shims. The worst didn't match the contour of the car and would require significant reworking.

All three Honda OEM fenders fit well. Three of the CAPA fenders for the Honda also fit well, but the other three had problems similar to those for the Ford.

We then had a repair shop install one OEM fender and two CAPA fenders on each car, allowing the professionals to work the metal as they ordinarily would to make it fit. The shop found problems similar to the ones we found with the CAPA fenders. After working for an extra 30 to 60 minutes, the shop judged the resulting fit acceptable, though not as good as that of the OEM fenders.

**Rust resistance.** To simulate what rocks, vandals, or a shopping cart might do in the real world, we scratched a grid down to bare metal on four primed but unpainted fenders—two OEM and two CAPA-certified. We then hired a lab to put them through a cyclic 168-hour salt-spray fog test, in accordance with industry test standards. Both CAPA fenders showed heavy red rust by the end of



Rear liftgate, \$2,980

Four wheels and tires plus spare, \$1,895

Windshield, \$1,308

Four doors, complete, \$8,773

Instrument panel, center console, gauges, \$2,564

Front suspension and brakes, \$4,048

Front fenders with inner shields and brackets, \$956

Illustration by Trevor Johnston

the test. The Ford OEM fender showed only moderate white corrosion; the Honda OEM fender, nearly none.

The superior performance of the OEM fenders (and the telltale white corrosion) resulted from galvanization, in which a zinc coating is bonded to the steel. When the paint and primer are scratched, the zinc protects the steel by sacrificing itself, oxidizing into a white residue less damaging than rust. Most OEM parts are galvanized on both sides. The CAPA parts we tested aren't galvanized.

CAPA's corrosion test is different from ours. Entela engineers scratch an "X" in the primer and then expose the fender to a 500-hour salt-spray test. The parts get CAPA approval even when the X-ed area rusts, since the test is designed to evaluate the primer rather than the metal beneath. CAPA regards the results as problematic only if the rust spreads, making the primer blister or flake 3 mm beyond the "X," or if 10 percent of the entire fender shows red rust.

Gillis says galvanization is "not much of a value added because today's automotive paint processes are quite good." But Bruce Craig, a fellow of the National Association of Corrosion Engineers and author of the American Society of Metalurgists' Handbook of Corrosion Data, says, "It's kind of a slam dunk that galvanized is better. I'm perplexed why there would be a controversy."

That's a reason the Interinsurance Exchange of the Automobile Club of Southern California won't use imitation body parts: "You get bubbling, paint flaking off, premature rusting," says Gil Palmer, assistant group manager for physical damage claims.

Gillis told us that CAPA would begin requiring all sheet-metal parts manufactured starting January 1 to be galvanized to earn certification. That should be a major step toward equality with OEM parts. Meanwhile, distributors will continue to sell ungalvanized CAPA parts that are already in the sales pipeline.

**Strength.** We found the CAPA fenders comparable with OEM in one respect: Our tests for tensile strength uncovered no significant differences between CAPA and OEM fenders.

### **CR's test results: Bumpers**

CAPA doesn't certify bumpers. A repair shop under our engineers' su-

pervision installed a total of 4 OEM and 17 imitation bumpers, bought in the New York area and in California, on our Honda Accord and Ford Taurus. We saw startling deficiencies in the imitations.

**How they fit.** All the OEM bumpers fit nicely. But none of the imitations did, even after we redrilled or widened their holes as needed. All left large gaps or uneven surfaces.

**How they protect.** Our hydraulic bumper-basher simulated the thumps that might occur, say, in a parking lot—at 5 mph head-on, 5 mph offset, and 3 mph on the right corner. That's our standard test for new cars.

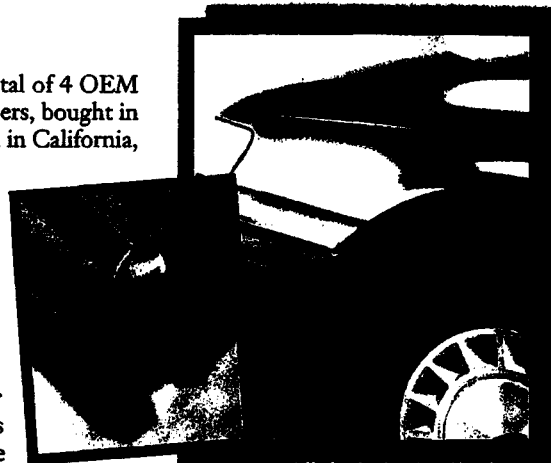
The OEM bumpers suffered only minor damage. Even so, repairing the scuffs and indentation on the Ford bumper would cost \$235, and replacing the Honda's scuffed bumper cover and underlying brackets would cost \$576. Those are pricey scuffs, but at least the OEM bumpers protected the cars themselves from damage.

In our 25 years of bashing hundreds of new-car bumpers, we've seen few perform as miserably as the imitations. Twelve of the 17 sustained so much damage in the first bash that we couldn't test them any further.

One imitation bumper shattered and allowed our basher to damage the Ford's headlight mounting panel, radiator support, and air-conditioner condenser. Repairs, using OEM parts, were estimated at \$1,350. Another imitation bumper allowed our basher to damage the Honda's radiator, air-conditioner condenser, radiator-support tie bar, and center lock support. Repairs, using OEM parts, were estimated at \$1,797.

### **Limited choices**

Most insurance adjusters don't clearly disclose that you're getting imitation parts of potentially lesser quality. ("Like kind and quality" or "LKQ" on the paperwork is a cryptic giveaway.) Some repair shops complain that they must follow the insurer's "recommendation" or risk losing customers from "direct repair programs"—the automotive equivalent of managed health care that most auto insurers use to cut costs.



*All the imitation Ford bumpers fit poorly. This one was typical. Even after adjustment, it was too wide and protruded past the line of the wheel well.*

The Automotive Service Association says that 33 states require repair shops to disclose the use of imitation parts to consumers. Six others—Arkansas, Indiana, Oregon, Rhode Island, West Virginia, and Wyoming—also require the consumer's written consent.

But disclosure and consent are meaningless if insurers promise higher quality than they deliver. The lawsuit against State Farm argues that the insurer did not restore damaged vehicles to pre-loss condition as promised.

Don Barrett, an attorney for the plaintiffs, says that cars repaired with "2/55 fenders"—an appraisers' disparaging term for fenders identifiable as imitations "from two miles away at 55 mph"—reduce appraised value by at least 10 percent.

John Donley, president of the Independent Automotive Damage Appraisers Association and a CAPA proponent, says that it's poor fit and poor corrosion resistance, not the mere fact that a part is an imitation, that hurts appraised value. Either way, that could be a problem not only at resale time but possibly at the end of a lease.

Industrial Marketing Research found that insurers call for imitation parts 59 percent of the time. We surveyed 19 of the nation's largest private auto insurers, who wrote 68 percent of the \$115 billion in policies in 1997, and asked if they require or recommend imitation body parts for covered repairs. Nine didn't respond (American Family, California State Auto Assn., CNA, GEICO, GMAC, Metropolitan, Progressive, Prudential, and Safeco). Of the ten that did, Allstate,

Erie, Farmers, State Farm, and USAA said they recommend but don't require imitation parts.

Allstate says that if a customer insists on OEM parts, it will pick up the bill. Erie, State Farm, and Travelers make the customer pay the difference.

The Hartford said it doesn't recommend imitations for safety-related parts but does allow them for noncritical applications. And Travelers Insurance doesn't recommend imitations for cars less than two years old or with less than 20,000 miles.

The Interinsurance Exchange of the Automobile Club of Southern California, which writes policies only in Arizona, California, New Mexico, and Texas, calls for imitation parts only for nonmetal trim items like bumper covers and moldings.

### Insurers and consumers

Many of the insurers maintain that imitation parts keep premiums down, but none provided hard data to prove it.

CAPA and auto insurers have spent

the last decade promoting imitation parts as purely pro-consumer. By breaking the automakers' "stranglehold monopoly" over crash parts, says one recent release from the Alliance of American Insurers, auto insurers protect consumers from high parts prices and high insurance premiums.

"There is absolutely no question the insurance industry is on the side of the angels on this issue," says Gillis.


But there is a question.

Buying imitation parts simply diverts money from the pockets of one big industry—automobile manufacturing—to the pockets of another big industry—auto insurance. The insurers won't earn their wings until they demonstrate that a fair share of the money they save ends up in the pockets of consumers.

And CAPA, whose executive director often accuses automakers and repair shops of having a financial interest in promoting OEM parts, has its own financial interests. Half of its \$3.9 million budget comes from in-

surance companies (the other half comes from the sale of CAPA seals to parts manufacturers). And six of the nine CAPA board members are insurance-industry executives.

The Center for Auto Safety—whose executive director, Clarence Ditlow, is a CAPA board member and a staunch advocate of CAPA parts—also receives funding from the insurance industry, though to a much lesser extent. In 1998, State Farm and Allstate contributed some \$50,000 to CAS, according to Ditlow. (He says that amounts to only five percent of annual revenues. He also says that CAS's insurance funding has steadily decreased since the mid-1970s.)

Where's the consumer in all this? For now, stuck in a bind between automakers that charge high prices for factory body parts and auto insurers that push less-expensive parts of questionable quality. Until things change, car owners—including used-car buyers who may inherit the inferior crash parts—are being ill served. 

## Recommendations

Consumers shouldn't have to worry about fragile, ill-fitting, and possibly dangerous replacement auto parts.

Ideally, Congress should direct the National Highway Traffic Safety Administration to establish safety standards for replacement parts and to require labeling so problem parts can be traced for recalls and liability. Congress should also authorize the Federal Trade Commission to require collision-repair shops to disclose the use of imitation body parts clearly to consumers and secure their consent. State legislatures or insurance commissioners should require auto insurers to disclose how much money they are saving from the use of imitation parts.

So far, CAPA's voluntary program is the only ongoing effort to improve aftermarket parts, and we support its goals. However, the program needs to improve. First, CAPA should make good on its promise to require galvanization for all the sheet-metal parts it certifies. Second, CAPA should test certified parts

for fit on actual cars, not mechanical jigs—another change that Gillis says is already planned. This important change should apply to all newly certified parts and, to the extent possible, to high-volume parts that are already certified. Finally, CAPA should certify imitation bumpers, which our tests showed to be very low in quality, as well as other structural components.

Until those steps are taken, here are three pieces of advice:

**Think about parts when buying auto insurance.** Whether an insurer gives you the choice of OEM parts could be a deciding factor, especially if the premiums on two companies' policies are similar. We found only one major insurer, the Interinsurance Exchange of the Automobile Club of Southern California, that uniformly uses OEM sheet-metal parts. It operates only in four Western states. The Hartford says it doesn't recommend safety-related imitation parts; Allstate says it will pay for OEM parts if you insist.

Overall, your best protection is to select a company that will make clear to you on a repair order what parts it would recommend being replaced by a non-OEM alternative.

**Think twice before using non-OEM body parts.** The availability of lower-cost aftermarket parts is clearly in the consumer interest. In fact, in 1990, Consumers Union successfully opposed legislation that would have allowed manufacturers to effectively copyright a wide variety of products, including auto parts, thereby blocking imitations. But until the quality of imitation parts can be demonstrated to be on a par with OEM parts, we cannot make a blanket recommendation to use them.

**Don't surrender your haggling rights.** Consider an insurer's recommendation of imitation parts to be only an opening gambit, not a done deal. According to an IMR survey of 1,100 consumers, 71 percent of those who requested OEM after the initial recommendation for imitation parts got OEM with little or no hassle. If OEM is your preference, it pays to ask. But if you still get no satisfaction, complain to your state insurance commissioner.





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**INSIDE:** An Industry in Turmoil • Why Most Funds Fail to Beat the Market • How Taxes and Expenses Are Eating Away at Your Returns • 7 Funds That Do Things Right

Partnr Tr 17.45	-0.31	-0.1	OHA Mun		
New Alt 27.75	-0.27	-13.5	PAMun		
VwCnf 15.21	-0.02	-11.9	VAMun		
VwCnf 15.21	-0.02	-11.9	Engl		
New Eng 10.17	-0.12	-1.5	Engl		
Balan A p 11.7	-0.13	-1.5	Engl		
Bdinc A p 12.27	-0.07	-0.3	Engl		
CA TF A p 7.27		+4.8	Engl		
CapGr		+17.7	Engl		
EqIn		-3.1	Engl		
GrOg		-14.7	Engl		
GvSa		+9.7	Engl		
HilIn		+21.2	Engl		
InfEq		-1.4	Engl		
LidUS		+0.1	Engl		
MA TP		+0.1	Engl		
MuInCA		+0.1	Engl		
ST Corp		+0.1	Engl		
Star A p		-0.39	Engl		
StarSC A p		-0.33	Engl		
StarWW A p		-0.34	Engl		
Strinc A p		-0.28	Engl		
Value A p		-0.3	Engl		
New England			Engl		
Balan 13.64			Engl		
Bdinc 12.61			Engl		
Bisey 1.32			Engl		
CapGr 1.50			Engl		
EqIn 1.77			Engl		
GrOg 1.87			Engl		
GvSa 10.14		-20.4	Engl		
HilIn 1.82		-2.3	Engl		
InfEq 13.85		-0.7	Engl		
LidUS 11.72		+0.1	Engl		
StarSC B 13.74		-0.32	Engl		
StarWW B 14.73		-0.24	Engl		
Strinc B 12.09		-0.08	Engl		
Value B 19.21		-0.18	Engl		
New England Fds CI C:			Engl		
Star C p 17.41		-0.38	Engl		
StarSC C p 13.74		-0.32	Engl		
StarWW C p 14.74		-0.24	Engl		
Strinc C p 12.08		-0.08	Engl		
New England Fds CI Y:			Engl		
BalanY 13.79		-0.14	Engl		
InfEqY 14.52		-0.07	Engl		
Star Y 18.42		-0.40	Engl		
Value Y 9.48		-0.19	Engl		
NewEngEq 19.52		-0.48	Engl		
Nicholas Applegate:			Engl		
BalGrC 16.81		-0.20	Engl		
ConvA 20.26		-0.35	Engl		
ConvC 19.03		-0.33	Engl		
Convl 18.33		-0.32	Engl		
EmgCtrA 11.92		-0.27	Engl		
EmgCtrB 12.13		-0.27	Engl		
EmgCtrC 11.68		-0.26	Engl		
EmgCtrI 11.90		-0.27	Engl		
EmgCtrQ 12.22		-0.27	Engl		
HIYldB p 11.57		-0.02	Engl		
IntlCorA p 16.38		-0.10	Engl		
IntlCorI 18.22		-0.11	Engl		
IntlSmG A p 18.34		-0.09	Engl		
IntlSmGI 18.40		-0.09	Engl		
MidCpGrA 15.17		-0.41	Engl		
MidCpGrB 17.95		-0.49	Engl		
MidCpGrC 14.10		-0.39	Engl		
MidCpGrI 14.56		-0.40	Engl		
MiniCpl 18.98		-0.38	Engl		
SmCpGrA 13.22		-0.44	Engl		
SmCpGrB 16.73		-0.55	Engl		
SmCpGrC 13.08		-0.44	Engl		
SmCpGrI 10.67		-0.35	Engl		
WWGrA 17.14		-0.30	Engl		
WWGrC 17.27		-0.31	Engl		
Nicholas Group:			Engl		
Nich 84.13		-1.80	Engl		
Nich II 37.19		-0.88	Engl		
NichEq 12.37		-0.13	Engl		
NichIn 3.51		-0.01	Engl		
NichLp 22.95		-0.39	Engl		
Tomur 10.19		-0.07	Engl		
North Am Fds:			Engl		
BalnCdB 11.54		-0.08	Engl		
BalnCdC 11.58		-0.08	Engl		
EqInCA 17.86		-0.19	Engl		
EqInCB 17.64		-0.19	Engl		
EqInCC 17.73		-0.19	Engl		
GIEqA 16.76		-0.17	Engl		
GIEqB 16.56		-0.17	Engl		
GIEqC 16.62		-0.17	Engl		
GrEqB 17.92		-0.44	Engl		
GrEqC 17.90		-0.44	Engl		
GrInCB 24.66		-0.51	Engl		
GrInCC 24.75		-0.52	Engl		
GroInCA 12.94		-0.52	Engl		
IntGIC 10.05		-0.10	Engl		
IntGIB 10.04		-0.11	Engl		

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MidCpGr 9.06	-0.24	NS	DiscOVA p	
selEq 20.48	-0.45	+20.6	DiscAllA	
SmCp 13.43	-0.22	-12.0	DiscVal	
StkIdx 15.58	-0.35	+18.6	EntrA p	
Yield 99.94	0.79	+68.4	EqInCA	

## Ten Things Your Auto Insurer Won't Tell You

### 1.

#### "You're paying too much."

CAN YOU GET a better deal on your auto insurance? If you have a good driving record, the odds are you can. After years of 5 percent rate increases, most major companies are either leveling out their prices or even rolling back rates. Why? Profits are on the upswing, and more significantly, accident rates are going down.

"You should shop the policy every year," says Brian Sullivan, editor of the *Auto Insurance Report*, an industry newsletter. A couple of services make that process easier: For \$12, Consumers Union (800-808-4912) will send you auto-insurance price information for 24 states. And Intuit's insurance Web site (*insuremarket.com*) offers free quotes for 25 of the most populous states.

If you now buy your insurance through an agent, consider one of the direct-response companies, such as Geico or Amica. They pay no sales commissions, which means cheaper policies for you.

### 2.

#### "Forget your driving record. We want your credit rating."

A LOT OF FACTORS are used to determine your premiums, including your driving record, age, the type of car you drive, marital status and, most important, your address. But increasingly, companies are using your credit history as an indicator of

how likely you are to file a claim.

A San Rafael, Calif., company called Fair Isaac sells a formula for your "credit score"—essentially your credit history boiled down to a single number—to credit agencies, which then provide it to auto insurers. Want to find out what your credit score is? You can't. Fair Isaac's formula is secret, as are the numbers that get assigned to specific consumers.

"You could have a spotless driving record, but maybe your business failed, or you have a serious medical condition in your family, or you have an error in your credit report," warns Rob Schneider, an attorney at Consumers Union's Austin, Tex., office. "That would make you unavailable for preferred insurance, and you'd pay a lot more in premiums."

Twelve states now have laws that limit the use of credit scores in auto insurance. In Hawaii, for example, the score can be used in the accept-or-deny decision but can't affect how much you pay in premiums. In Louisiana, auto insurers aren't allowed to include bankruptcies as a factor. But in the remaining 38 states, the use of credit scores is growing.



3.

**"We're pocketing your deductible."**

IF YOU'RE HIT and it's the other driver's fault, his insurer is supposed to pay for damages to your car. But if his insurer stalls, you can file a claim on your own collision policy and let the two companies fight it out later. If your insurer ultimately wins the claim, you should get your deductible back, right? "If there's clear fault, yes," says Brian Sullivan. Unfortunately, it doesn't always work that way.

Most states give insurance companies up to six months to go after the money owed by another company. After that, they're required to either give you the deductible or let you go after the other company on your own. If they win only a partial settlement, a whole new set of rules kicks in. Usually, the winnings are split between you and your insurer.

In 1996 State Farm paid out a \$22 million settlement in Texas for failing to refund deductibles. That case set off a chain of 22 additional settlements by major insurers for the same offense, including Geico, Allstate, Prudential, Liberty Mutual and Nationwide. In the end, nearly \$40 million was refunded to consumers in the state.

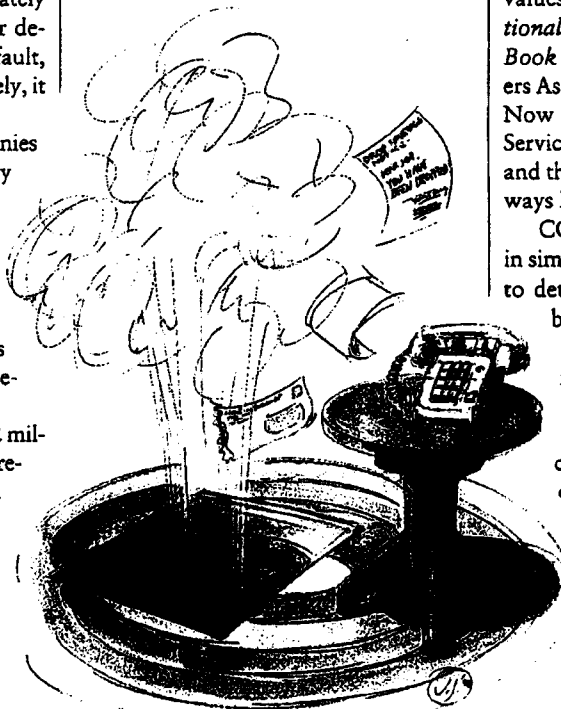
4.

**"We can dump you on a whim."**

THE FIRST 30 TO 60 DAYS after signing up for insurance is called the "binding period," and during that time the insurance companies can cancel your policy for just about any reason, often without explaining why. Maybe they'll discover something they don't like in your driving record or credit history. Or, if you file a claim, they might suddenly consider you a bad risk. After the binding period, state laws vary on when you can be dropped. In Arizona, using your personal car for business

is cause for an insurer to cancel your policy. Miss a premium payment by just 10 days in Ohio and you can be canned.

Even more common is "nonrenewal," when you're simply cut off after your policy expires. In Texas, two accidents in 12 months is enough for an insurance company to refuse renewal, even if neither accident was your fault. What happens if you get nonrenewed? You'll find yourself



is banished to the dreaded "high risk" category of auto insurance, along with drunk drivers and Corvette-driving teenagers. Your premiums will go up at least 20 percent, and you probably won't be able to get back to the standard category of insurance for three years, according to Ron Alford, an author who worked for more than 25 years as an insurance risk assessor.

If you want to find out *why* your policy wasn't renewed, good luck. The formulas that make decisions like these are proprietary, meaning that the insurance companies aren't required to divulge specific details.

5.

**"We'll stiff you if your car is totaled..."**

YOUR COLLISION POLICY entitles you to fair market value for your totaled car's worth. But the amount you actually get could leave you feeling shortchanged. Until the mid-1990s, insurers determined car values by averaging the prices in the *National Market Reports Automobile Red Book* and the National Automobile Dealers Association's *Official Used Car Guide*. Now companies like CCC Information Services in Chicago control the market—and the prices they give out are almost always lower than the book values.

CCC looks at cars for sale in your area in similar condition, along with local ads, to determine values. But where the old book listings used to provide a "list" price (what the car might be offered for on a used-car lot), the CCC number represents a "take" price (the absolute lowest price that a used-car dealer would accept for it). Of course, there's no guarantee that your insurer will pay you even CCC's figure. "Our customer is the insurance company," says CCC senior vice president Jack Rozint. "We don't provide the settlement amount."

What can you do to protect yourself? When your insurer hands you a CCC report, it usually lists the actual cars the company used for comparison. Jot down the vehicle identification numbers to make sure they actually exist and that there are no mistakes. Jim Bryant of Neptune City, N.J., totaled his 1994 Mercedes 500 SEL, and his insurance company quoted him a CCC value of \$9,500. On the report, an eight-cylinder diesel Mercedes was listed for comparison. Yet Mercedes has never made such a car. "They came back and gave us \$12,770," Bryant says.

"CCC has valued about 22 million vehicles," replies Rozint. "So you're probably going to get a couple of people who say that theirs wasn't done right."

**6.**

**"... and even if it isn't."**

EVER HEAR OF "diminished value"? The insurance companies are betting you haven't. Even if your car is repaired after an accident, there could be flaws in the repair process. Either way, your car's bound to be worth less in the resale market, and your insurance company is obligated to pay you the difference.

"By just raising the issue of diminished value before the car is repaired, consumers can get a much better deal," says James Lynas, president of Wreck Checks, a service that will examine your car after it's been repaired and tell you whether it's lost some of its value. If it has, you can file a supplemental claim to recover the difference. (The service is available in 34 states; call 770-956-8700. Fees range from \$75 to \$150.) Lynas says that while insurance companies may try to fight you on it, diminished-value claims have been paid out in every state and by every major insurance company.

When Jay Archer's Lexus had \$9,300 worth of repair work done after a hit-and-run accident, a Wreck Check assessor told him it had lost \$3,964 of its value. His insurer, Geico, denied the supplemental claim on 10 separate occasions, Archer says, but through pleas, demands and arguments—"I brought all my letters down to the Geico office in Dallas and had them stamp the date and who received it"—Geico ultimately backed down. In the end, it wrote him a check for the full amount.

**7.**

**"You need a lawyer."**

INSURANCE COMPANIES don't like to deal with lawyers, but few go to the lengths that Allstate does. Since 1993 the company has been sending brochures to its customers who've been in accidents, advising them that they don't need a lawyer. Allstate even tells this to people insured by other companies after they've been in an

accident with an Allstate customer. Fourteen states have complained about the brochures. The company claims it's a freedom of speech issue and still sends the brochures out in every state but Connecticut and Massachusetts.

Stacey Adkins of Parkersburg, W.V., had more than \$7,000 in medical bills following an accident in which the other driver was at fault. She didn't get a lawyer because Allstate (which insured both drivers) advised her not to. Its offer? Just \$1,000. Allstate also demanded access to her medical records and entered some of that information into a national database, where other insurers now have access to it.

Adkins hired an attorney who won her a settlement of \$12,000 for her injuries and is now suing Allstate for invasion of privacy, for lowballing on its initial offer and for unlawful practice of law. Allstate will not comment on specific cases.

**8.**

**"Our body shops work for us, not you."**

MOST INSURERS HAVE a list of body shops that they prefer to use through what's called a "direct-repair program." It's similar to managed care, in that you can take your car elsewhere but your insurance company might not pay the full cost of repairs if you do. The catch is that these direct-repair body shops get on the list by keeping their costs low—sometimes spending less time on repairs, using cheaper parts and overlooking damages that only an expert could spot. State Farm's Service First program even includes a gag clause that prevents shop owners from talking to customers about their cars until they've cleared it with State Farm first. And because the companies hold so much clout, many shops can't stay in business unless they stay on those preferred lists.

After a car ran into her 1995 Camaro, Kim Goodman of Greenup, Ky., wanted to take it to a garage she knew. But her insurer, Grange, wouldn't pay the estimate and told her to take it to Glockner's, a

nearby GM dealership on Grange's list of direct-repair shops. When Goodman picked up the car three months later, the hood color didn't match and the trunk leaked. Worse, she found out that Glockner's had put used parts on the car. One year later, she's taken it back to the dealership for follow-up work eight times and once to another shop. She's had more than \$20,000 worth of work done—all paid for by Grange. "That car had been babied," Goodman says. "It's a \$20,000 piece of junk right now." Both Glockner's and Grange declined to comment.

**9.**

**"We make money by sitting on your claims."**

WHEN LAVERNE HAYDEN, a retiree from Lafayette, Ind., was rear-ended in 1994 while driving her 1989 Oldsmobile Regency, the other driver's \$50,000 liability policy wasn't enough to cover her neck and spinal injuries. No problem, Hayden thought, because her Allstate policy included underinsured motorist coverage for situations just like that. Except that Allstate refused to pay her claim.

Hayden then hired a lawyer who filed for arbitration against Allstate and won \$110,000. Because her policy was capped at \$100,000, the lawyer offered to take only that much, but Allstate refused to pay any of it, demanding a trial. Her lawyer had to file suit in federal court before Allstate finally backed down and paid Hayden the full amount of her claim. Total time from accident to settlement? Nearly four years. Cases like hers are what led the Indiana insurance commission to slap a \$100,000 fine on Allstate for delayed claims payments last October. (Allstate is appealing the fine.)

The average claim takes nine months to settle, according to Bob Hunter, the director of insurance for the Consumer Federation of America in Washington, D.C. It's not entirely the industry's fault, since most experts say you shouldn't accept a final settlement until your doctor has cleared

## Ten Things

you of all possible injuries. That process can take months.

But insurance companies are in no rush to write checks. The typical auto-insurance business model, Hunter says, is to break even on premiums—that is, to pay out about the same amount that the firm takes in—but profit from investing the money while the company holds it.

### 10.

#### **“We own your state insurance commission.”**

THE INSURANCE INDUSTRY is regulated at the state level, unlike banking and securities, even though many of the 1,500 insurance companies do business in more than one state. The result is a patchwork of often underbudgeted state agencies, each trying to control its own small corner of a multibillion-dollar industry. “Most small states are pretty bad,” says Bob Hunter. “They don’t have the resources.”

In Florida, California and 10 other states, the insurance commissioners are elected officials, making them willing and often eager recipients of campaign donations from the companies they’re supposed to be regulating. In the remaining states, the position is a political plum, appointed by the government. No wonder so many former commissioners (and nine of the last 11 heads of the National Association of Insurance Commissioners, the central organizing body) left for private-sector insurance jobs, according to a story last year in *The Wall Street Journal*.

“Insurance departments serve a dual function: financial regulation and consumer protection,” says Nan Nases of the Illinois Department of Insurance. “It’s sometimes a fine line to walk.” If you file a complaint, don’t expect much. In some cases, the state may be able to get an inattentive insurance company to at least return your phone calls. But only in extreme situations will the insurance commission think about legal action. And if any money is collected in fines, it goes to the state’s coffers, not yours. **SM**



# SATURDAY - - OCTOBER 9

## 11:00 A.M.-11:45 A.M. - BUSINESS 2000

### SHOPWIDE CONNECTIVITY

- Networking your shop
- Shop profitability through computerization
- The paperless shop

#### PRESENTER, TODD PATTERSON

- Diagnostic Sales Coordinator for Snap-On Sun Technical Systems in Pittsburgh area



## \$500.00 SUPER PRIZE

### DRAWING SATURDAY AFTERNOON

## 12:30 P.M.-1:15 P.M. - ANSWERS TO ASIAN VEHICLE DRIVEABILITY PROBLEMS

- Problems related to Honda/Acura and Toyota/Lexus driveability
- Information services provided by Identifix

#### PRESENTER, JIM NEWKIRK

- Asian/European Service Specialist with Identifix (Automotive Information Systems)
- ASE Master Tech, ASE L-1
- Bosch Database Manager for AIS
- Fluent in Asian/European system diagnosis, applications and procedures



## 1:00 P.M.-2:00 P.M. - STRATEGIES TO COMBAT CONSUMER STEERING & SHOP RECOMMENDATIONS BY INSURERS

- How to prepare a proper written consumer complaint that will definitely get the Department of Insurance's attention
- The significance of Senate Resolution #35 and its impact on our businesses
- How do we stop the steering and directing of our customers? Consumer steering is one of the easiest enforceable violations of PA State Law. Learn what to do when your customer is steered and directed.



#### PRESENTERS

##### STEVE BEHRNDT

- Owner of Crawford's Auto Center, Inc. in Dowingtown
- Member of PA Collision Trade Guild

##### DICK FATKIN

- Owner of Dick's Auto Body in Fleetwood
- Member of the PA Collision Trade Guild



## 2:00 P.M.-2:45 P.M. - SCAN TOOL SHOOTOUT

### OTC - SPX

- Presenter, Steve Zack will demonstrate the Enhanced Monitor with Pathfinder 1999 & Tech II. Pathfinder 1999 is one piece of software with GM, Ford, Chrysler OBDII & Pathfinder coverage from 1992 to 1999. Tech II is the GM essential tool for GM dealerships.

## 2:15 P.M.-4:15 P.M. - LIVE FRAME PULL

- Instructors, Paul Williams and Mark Moffett will demonstrate JC Automotive training procedures and pulling techniques on a damaged full frame or sport utility vehicles.

### HOTEL ACCOMMODATIONS (ASP Group)

Holiday Inn - Ft. Washington  
215-643-3000

## 3:00 P.M.-3:45 P.M. - SCAN TOOL SHOOTOUT

### VETRONIX CORPORATION

- Presenter, James Appello will demonstrate the Mastertech multi-function tester. This is a 3 in 1 tool. It offers a patented Scan Test function featuring bi-directional control and graphic display. It has a built-in automotive oscilloscope and digital multimeter.

## 4:00 P.M.-4:30 P.M. - SECRETS OF FUEL INJECTION

- Performance - Enhance acceleration, HP, torque, at all engine RPM
- Control - Easily adjust for various conditions and environments
- Efficiency - Improve cylinder for cylinder air-fuel distribution, optimize inlet air stream, enhance fuel control and increase fuel economy, maximize thermal efficiency.

#### PRESENTER, HAROLD MARTIN

- Owner of Martin Motorsports
- Awarded 1997 Driver of the Year by the National Motorsports Association
- Leader and engineering genius in electronic fuel injection
- His racing team will be a serious contender in the 1999 IHRA and NSCA World Championships



## 4:45 P.M.-5:30 P.M. - MECHANICAL PANEL DISCUSSION

- Information access
- Brake system dynamics
- Driveability problems

#### DISCUSSION LEADER IS STAN STEPHENSON

- Sr. Contributing Editor of Automotive Journal



## FREE SEMINARS

## 4:45 P.M.-5:30 P.M. - COLLISION PANEL DISCUSSION

- Aftermarket parts
- Consolidators
- DRP shop profitability
- Material caps

#### DISCUSSION LEADER IS HERB WILEY

- Owner of Herb Wiley Motors in West Chester
- Past President of ASP-PA
- Panel will include leaders in the insurance and collision repair industry



## WHO SHOULD ATTEND? ALL PROFESSIONALS!

*If you own, operate or are employed in an automotive service business, you will benefit from attending.*

- |                              |                      |
|------------------------------|----------------------|
| ➤ Mechanical Repair          | ➤ Collision Repair   |
| ➤ Service Station Owner      | ➤ Towing             |
| ➤ Emission Diagnosis/Repair  | ➤ A/C Specialty Shop |
| ➤ Muffler/Exhaust Specialist | ➤ Fleet Maintenance  |
| ➤ Wheel & Tire Specialists   | ➤ Transmission Shop  |
| ➤ Alignment/Brake Specialist | ➤ Automotive Jobber  |
| ➤ Warehouse Distributor      |                      |

# AUTO-EXPO EXTRAVAGANZA

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Automotive Service Professionals  
of Pennsylvania

## THE BIG **E**VENT in the AUTOMOTIVE East

... STEPPING INTO THE 21ST CENTURY

FT. WASHINGTON EXPO CENTER

OCTOBER 8, 1999  
5:00 P.M. - 10:30 P.M.

OCTOBER 9, 1999  
9:30 A.M. - 4:30 P.M.

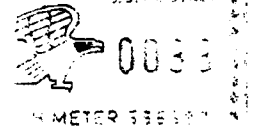
FREE SEMINARS + \$500.00 DRAWING  
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## THE BIG **E**VENT in the AUTOMOTIVE East

ASP/PA TRADE SHOW

OCTOBER 8-9, 1999

RECEIVED  
1999 SEP 20 PM 4:36  
DEPENDENT REGULATOR  
AND REVIEW COMMISSION

FREE SEMINARS





RECEIVED

1999 SEP 20 PM 1:30

**Dick's Auto Body**119 Memorial Hwy.  
Fleetwood, PA 19522

INDEPENDENT REGULATORY

~~REVIEW COMMISSION~~

Original: 2001

Harbison

cc: Smith 9/14/99

Wilmarth

Sandusky

Legal

John R. McGinley, Chairman  
IRRC  
14th floor, Harristown 2  
333 Market Street  
Harrisburg, PA 17101

Dear Chairman McGinley:

As a consumer and a small business owner in Pennsylvania, I am very concerned that the proposed regulations change to Title 31 Chapter 62, Motor Vehicle Physical Damage Appraisers Regulation, will remove the pre-existing consumer protection in the current regulations.

A conflict of interest already exists. When a consumer files a loss claim, the appraiser works for the insurance company paying the claim. Likewise, the Insurance Commissioner and her staff have all come from the insurance industry and in most cases, will return to the insurance industry (ex: Linda Kaiser, former PA Insurance Commissioner).

My concerns are many; loss of right of third appraisal, legal steering, and the use of untested aftermarket parts, to name a few. These are issues that should not be "fast-tracked" through legislation, but should be given proper investigation.

Thank you,

Richard C. Fatkin, Jr.  
Dick's Auto Body

cc Robert E Nyce  
Executive Director

PHONE: (610) 944-0555

FAX: (610) 944-3050

DICKSAB@PTD.NET

RECEIVED  
1999 SEP 20 PM 1:31  
INDEPENDENT REGULATOR  
REVIEW COMMISSION

AUTOMATIC COVER SHEET

DATE : SEP-21-99 01:03 PM

TO :

FAX #: 17177832664

FROM : DICK'S AUTO BODY

FAX #: 610 944 0555

2 PAGES WERE SENT

<INCLUDING THIS COVER SHEET>

**ENGLE'S FRAME & BODY SERVICE**

60 BETHANY ROAD -- EPHRATA, PENNSYLVANIA 17522

PHONE 717-733-6516

Original: 2001  
Harbison  
cc:

Smith

Wilmarth

Sandusky, Legal

Mr. Robert Nyce

Independent Regulatory Review Commission

333 Market Street-14th Floor

Harrisburg, Pa. 17101

September 1, 1999

Subject: Pennsylvania Code  
Chapter 62, Title 31

Gentlemen:

My March 1, 1999 letter about the referenced Regulation expressed fear that consumer interests were being subordinated to the wishes of the insurance industry. The revision filed on August 18, 1999 does so in two main areas:

1. It legitimatizes cheap imitation parts. If an insurance company is required to restore a vehicle to pre-loss condition, it must be made to pay to replace genuine parts with genuine parts. An insurance company should be permitted to pay for only a cheap imitation part if the damaged part on the vehicle was already an imitation part.
2. It removes all the prohibitions on steering motorists to particular repair shops. Because the present regulation has never been enforced in this regard, many motorists today believe that insurance companies do indeed have the right to select the repair shop. All of us know that the consumer suffers when the insurer selects the shop because then the shop will take short cuts to please the insurer, because the shop's primary loyalty will be to the insurer, rather than the vehicle owner. When the vehicle owner selects the shop, he receives the best work.

Yes, Act 367 only uses the word "require" but all Acts need Regulations to expand upon the intent of the legislation, which in this case is perfectly clear. Since the consumer has been so well conditioned by the insurance industry into believing that repair facility choice rests with the insurance company, it is indeed essential to retain all language prohibiting recommendations and suggestions. A gentle suggestion about using particular repair shops is viewed by most consumers as a "requirement."

Specific Comments:

- 62.3 (b) (4) "Upon the unsolicited request of the consumer" should be part of this paragraph, as in the current Regulation (62.3 (g) (12) (iii)).

(2)

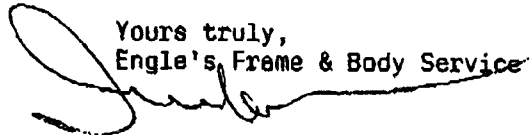
- 62.3 (b) (10) Imitation parts should be prohibited. The Insurance Department disregards the issue of safety and assumes that an equivalent warranty makes these knock-off parts equal. The Department should consider that lighter front end parts crush more rapidly and may, therefore, prevent air bags from inflating at the proper moment.

Futhermore, no imitation part vendor does provide a warranty covering damage to other vehicle parts affected by their part, which would be excluded as indirect, incidental, or consequential damages.

If the Insurance Department were sincere in protecting Pennsylvania consumers, they would require of imitation parts that:

1. they be manufactured from identical materials.
  2. they undergo and pass identical tests, including crash testing and corrosion testing.
  3. the insurer be liable for diminished vehicle value resulting from use of these parts, even if not realized until such time as the vehicle is sold.
- 62.3 (f) (1) Deleting "appraiser shall not, in any manner whatsoever, attempt to directly or indirectly coerce, persuade, induce, or advise the consumer that appraised motor vehicle physical damage must be, should be, or could be repaired at any particular location or by any particular individual or business" is unconscionable.
- 62.3 (f) (4) this hollow stipulation pertaining to mentioning repair shops should be deleted.

Yours truly,  
Engle's Frame & Body Service



P. Michael Riffert

PMR/vc

ENGLE'S FRAME & BODY SERVICE  
60 BETHANY ROAD  
EPHRATA, PA 17522

RECEIVED  
99 SEP -1 AM 10:55  
WALTER W. LEBSON

FAX COVER SHEET

MESSAGE BEING SENT TO: ROBERT NYCE  
ATTENTION: INDEPENDENT REVIEW COMMISSION  
This cover sheet is page 1 of 3 pages.  
DATE: 9/01/99 TIME: 11 A.M.

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\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Tele. (717) 733-6516  
Fax (717) 733-4757

Independent Regulatory Review Commission  
Public Comment  
September 23, 1999

Original: 2001  
Harbison  
Copies: Smith  
Wilmarth  
Sandusky  
Legal

My Name is Stephen Behrmdt, owner of Crawford's Auto Center, Inc. Downingtown, Chester County. I am also a member of the Pennsylvania Collision Trade Guild. I thank you for the opportunity to speak with you regarding these Final Form Regulations.

I am a third generation collision repair professional and considered an expert in the field of damaged automobiles. Our company's expertise is the management of collision damaged vehicles from the initial accident impact to the completed pre-accident repair or the total loss and salvaging of the vehicle.

My purpose in commenting on this "Final Form" regulation is to focus the Commission's attention towards Consumer Safety. I would like to know why an amended regulation considered by all interested parties as Consumer Protection does not address this simple, however, important word > **SAFETY**? I have read this document over and over and have yet identified terminology or language that declares the issue of safety to be paramount. In our current regulation the reference to Act 367 Section 11 (b) states >

Act 367 § 11(b) The appraiser shall leave a legible copy of his appraisal with that of the repair shop selected by the consumer to make the repairs and also furnish a copy to the owner of the vehicle. This appraisal shall contain the name of the insurance company ordering it, if any, the insurance file number, the number of the appraiser's license and the proper identification number of the vehicle being inspected. All unrelated or old damage should be clearly indicated on the appraisal which shall include an itemized listing of all damages, specifying those parts to be replace or repaired. **Because an appraiser is charged with a high degree of regard for the public safety, the operational safety of the vehicle shall be paramount** in considering the specification of new parts. This consideration is vitally important where the parts involved pertain to the drive train, steering gear, suspension units, brake system or tires.

However, the Department removed this language claiming that it was too redundant. I do understand why Government desires to be less repetitive however, the purpose of a regulation is to interpret the Law and what is more important then a proper interpretation of the Physical Damage Appraiser's regard for public safety?

I would like to provide an example where consumers must rely on their collision repair professionals to properly return their damaged vehicle to a condition prior to the loss.

Explanation: This is a driver's side seat belt assembly taken from a 1997 Ford Expedition. The vehicle rolled over and sustained heavy accident damage to its roof, front-end sheet metal as well as the inner structure and unibody rails. The amount of compensation needed to repair this Expedition is over \$10,000.

- This seat belt appears that it will work properly under normal driving conditions.
- This seat belt assembly looks to be in good working order, no rips or torn edges.
- The latch assembly attaches tightly.
- You can easily identify the function and appearance of this seat belt assembly to be in proper working order.
- However, what about the **Safety**, Function, and Appearance? This seat belt assembly has been through one accident already. Will it be able to protect the driver and hold the body securely in place a second time? Yes, it APPEARS it will FUNCTION properly BUT is it truly SAFE?
- The manufacturer, Ford Motor Company recommended procedures are as follows:  
*"If your vehicle has been involved in an accident have all safety belts and child seat anchoring brackets examined by a qualified technician. Failure to replace the safety belt assembly under the above conditions could result in severe personal injuries in the event of a collision."*

How many times can a seat belt do its job? Who wants to be the expert or qualified technician that makes this decision? Under this Final Form Regulation when the collision repairer follows the manufacturers guidelines and requests to replace the seat belt or other safety related parts and the Physical Damage Appraiser assigned to the claim refuses using this new Function and Appearance reasoning. Who accepts the liability? Who is responsible for Consumer Protection? We need to include the word "SAFETY".

- When Physical Damaged Appraisers are asked to compensate consumers for new seat belt assemblies > they balk at the cost of these items. On a regular basis we hear, "Show me what is wrong with it?" and "Just yank on it, if it stops it will be OK!"

In respect to the Preamble to this Final Form Regulation, the Insurance Federation and State Farm Insurance Company recommended that function and appearance terminology be added to the amended regulation. This language is taken directly from the State Farm's Criteria Survey and Service First Agreement.

State Farm's Repair Facility Criteria Survey Form > Criteria #2:

2. *The repairer agrees to perform repairs which serve to restore the damaged vehicle to its preloss condition relative to safety, function and appearance and further agrees to warrant workmanship, including refinishing, in writing, for a period of not less than one year from date of completion of repairs.*

State Farm's Service First Agreement > Bullet # 5:

- *The repairer agrees to include in the estimate the cost of competitively priced parts which serve to restore the vehicle as nearly as possible to its pre-loss condition relative to safety, function and appearance. If the prices are based on other than new original equipment manufacturer parts, those parts will be clearly identified on the estimate (e.g., new non-OEM, recycled, rebuilt, remanufactured, etc.)*

However, as one reads these words printed on their corporate documents and make comparisons to the Final Form Regulation the word **Safety** is missing. Why has the Department of Insurance embraced Function and Appearance and ignored **Safety**?

As I have previously discussed in recently committee meetings, the newly amended word Pre-damaged is not good for the consumers of Pennsylvania. The amended definition added to enhance will only diminish. If the Independent Regulatory Review Commission is truly an advocate for the citizens of Pennsylvania they will tell the Department of Insurance to further examine the language written in this Final Form Document. I understand that I am asking you to do something, which, is out of the ordinary. I have been advised that once a Final Form Regulation makes its way through the House Insurance Committee and the Senate Banking and Insurance Committee it will most likely be approved by the Independent Regulatory Review Commission. However, these issues have not been resolved. I am aware that many Legislators have sent letters asking for further review. I would also like to point out the many class action law suits that have been filed on the same subjects throughout our country. Currently a very prominent insurance company is defending its position in respect to several of the main topics that the Department of Insurance is attempting to solve here. A recommendation would be to monitor the progress of this trial and further investigate methods to safeguard the Citizens of Pennsylvania.

"Safety, Function and appearance" will never provide the same protection as "the condition of the motor vehicle prior to the loss". Under the current standards of pre-loss / pre-accident condition the original manufacturer's specifications cannot be compromised by an insurance company's contractual agreement.

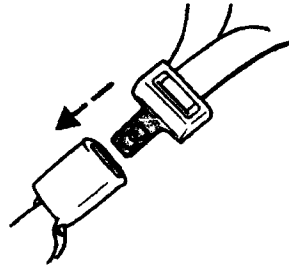
Thank you.



## Seating and safety restraints

To shorten the belt:

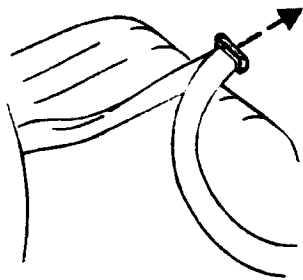
- Buckle the belt.
- Pull the loose end of the belt until snug.



To lengthen the belt:

- Tip and pull the tongue.

Do not wear the lap belt around your waist, keep it low around your hips.

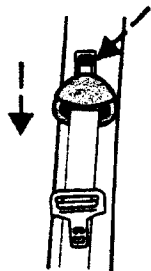


### Front seat safety belt height adjustment

Adjust the height of the shoulder belt so that the belt rests across the middle of your shoulder.

To lower the height of the shoulder belt:

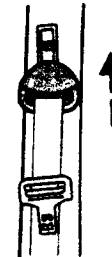
- Push the button down.
- Slide down.



## Seating and safety restraints

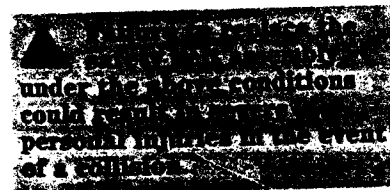
To raise the height of the shoulder belt:

- Slide up.
- Pull down on the height adjuster to make sure that it is locked in place.



### Safety belt maintenance

Check the safety belt systems periodically to make sure that they work properly and are not damaged. If your vehicle has been involved in an accident, have all the safety belts and child seat anchoring brackets (if equipped) examined by a qualified technician. Refer to *Cleaning and caring for your vehicle* in the *Maintenance and care* chapter for more information on maintaining your safety belts.



### Safety belt extension assembly

For some people, the safety belt may be too short even when it is fully extended. You can add about 20 cm (8 in.) to the belt length with a safety belt extension assembly (part # 611C22). Safety

## STATE FARM SERVICE FIRST AGREEMENT

If an estimate has not been written by State Farm Mutual Automobile Insurance Company, for itself and its subsidiaries and affiliates (collectively, "State Farm") and the vehicle owner notifies us that your facility has been selected to make repairs, State Farm will authorize you to inspect and photograph the vehicle damage and prepare a computerized estimate itemizing the cost to repair the vehicle.

- The repairer agrees to obtain the vehicle owner's authorization prior to dismantling the vehicle or undertaking repairs.
- The repairer and State Farm agree that estimated repair costs will be based on prices agreed to by the repairer and by State Farm.
- The repairer and State Farm agree that the repair of vehicle collision damage is an inexact science and the actual time for repair or replacement operations may vary relative to the estimated time. The repairer will use the time it should take an average qualified technician to do the work as the basis for preparing the estimate and for billing purposes.
- The repairer agrees to promptly notify State Farm at such time the vehicle appears to be an economic total loss.
- The repairer agrees to include in the estimate the cost of competitively priced parts which serve to restore the vehicle as nearly as possible to its pre-loss condition relative to safety, function and appearance. If the prices are based on other than new original equipment manufacturer parts, those parts will be clearly identified on the estimate (e.g., new non-OEM, recycled, rebuilt, remanufactured, etc.).
- The repairer agrees to identify items on the estimate subject to betterment, appearance allowances, and unrelated damage.
- The repairer agrees to promptly provide a copy of the initial and final automated repair estimate to the vehicle owner and State Farm, and to document their delivery to the vehicle owner. Initial photographs of the damage are to be promptly provided to State Farm.
- The repairer agrees to complete repairs promptly upon receiving the vehicle owner's authorization. Any delays in repairs will be reported promptly to the vehicle owner and State Farm.
- The repairer agrees to take and retain "four corner" photographs and any additional photographs needed to document the completed repairs.
- The repairer agrees to collect any deductible amount and depreciation/betterment charges along with any amounts due to "owner request" repairs and provide State Farm with a final automated repair estimate of the amount we owe.
- The repairer agrees to obtain, and retain, the vehicle owner's direction to pay authorization.
- State Farm agrees to accept the final automated repair estimate as the basis for prompt payment directly to the repairer. State Farm reserves the right to audit the repair bill at any time following payment.
- The repairer agrees to maintain electronic data interchange capability in accordance with Exhibit 1.
- The repairer agrees to refrain from using the State Farm or Service First name or logo on any advertising or other material.
- The repairer and State Farm agree that neither party will be liable to the other for any special, circumstantial, indirect, or incidental damages.

This agreement is not effective or binding until accepted by State Farm. This agreement can be terminated by notice and confirmation in writing at any time by either party for any reason.

This agreement is contingent upon continued compliance with the State Farm Repair Facility Criteria and the State Farm Service First Criteria.

# Sample Copy

# STATE FARM'S REPAIR FACILITY CRITERIA SURVEY FORM

As part of State Farm's Auto Damage Claim Policy, the Repair Facility Criteria are:

1. The repairer agrees to follow ethical and professional practices in its business conduct with State Farm representatives and our mutual customers.
2. The repairer agrees to perform repairs which serve to restore the damaged vehicle to its preloss condition relative to safety, function and appearance and further agrees to warrant workmanship, including refinishing, in writing, for a period of not less than one year from date of completion of repairs.
3. The repairer agrees to perform all repairs according to the itemized repair estimate or as subsequently approved by the vehicle owner. The repairer agrees to notify State Farm of any proposed deviation prior to repairs as to the technique to be utilized and as to costs to be incurred.

**NOTE:** This applies in cases when our payment is or will be made to the repairer, i.e., either by a co-payable draft to the repair facility and the vehicle owner, or under a Direction to Pay requiring State Farm to pay the repair facility only.

4. The repairer agrees to charge only for repairs when and as performed.
5. The repairer agrees that charges including, but not limited to, towing, storage, tear down and sublet repairs will follow those that are usual and customary in the market area.
6. The repairer agrees that if non-OEM, used, rebuilt or reconditioned parts are used in repairs, such parts will meet the following criteria:
  - a. Used, rebuilt or reconditioned parts will be of sufficient quality to restore the vehicle to its preloss condition.
  - b. New non-original equipment parts will be CAPA certified if the parts are subject to CAPA certification.
  - c. New non-original equipment manufacturer outer sheet metal parts will be backed by a written limited warranty against perforation rust-through for as long as the part is owned by the first retail user. New non-original equipment manufacturer parts other than outer sheet metal will be backed by a written limited warranty which provides protection which is not less than the vehicle owner would receive with a new original equipment manufacturer's part.
7. The repairer agrees to allow a representative of State Farm to inspect vehicles involved in State Farm claims on the repairer's premises during normal business hours for the purpose of writing estimates and to confirm that repairs are completed according to the estimate.
8. The repairer agrees that all disagreements as to repair cost, techniques, methods, parts or materials will first be brought to the attention of, and a sincere effort made by the repairer to resolve with, the local State Farm management person in charge of the claim file.
9. The repairer has the following operable equipment/capability:
  - a. A measuring device suitable for symmetrical or asymmetrical structural dimensions.
  - b. Electrical or hydraulic equipment needed to perform multiple repair pulls on frame and unibody vehicles.
  - c. A gas metal arc welder (GMAW) which will be used in appropriate repair situations.
10. The repairer agrees that all sublet repairs will be performed in accordance with the repair facility criteria.

I certify that my repair facility meets and I agree to State Farm's criteria.

Repair Facility Name \_\_\_\_\_ Phone number \_\_\_\_\_

Address \_\_\_\_\_

Signature of Repair Facility Representative (Owner/Manager)

Date

**The Insurance Federation of Pennsylvania, Inc.**

1600 Market Street  
Suite 1520  
Philadelphia, PA 19103  
Tel: (215) 665-0500 Fax: (215) 665-0540

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Original: 2001  
Harbison  
cc: Smith September 20, 1999  
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Honorable John R. McGinley, Jr., Chairman  
Independent Regulatory Review Commission  
14th Floor, Harristown 2  
333 Market Street  
Harrisburg, PA 17101

**Re: Motor Vehicle Physical Damage Appraisers -  
Regulation 11-149**

Dear Chairman McGinley:

The Insurance Federation supports the Insurance Department's final form regulation revising Chapter 62 of Title 31, the chapter that sets forth the Department's implementation of the Motor Vehicle Physical Damage Appraiser Act.

The Federation supports this regulation on behalf of its members and on behalf of its affiliated national trade associations, the Alliance of American Insurers, the American Insurance Association and the National Association of Independent Insurers.

We support this regulation for two reasons. First, it meets the requirements of Section 5(h) and (i) of the Regulatory Review Act: The regulation is within the Insurance Department's statutory authority, it is conforms with the Appraiser Act it intends to implement and it is in the public interest.

Second, the regulation revises an old regulation that goes well beyond the Appraiser Act, as the Insurance Department itself has noted. Absent the revisions in this regulation, the Department,

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appraisers, consumers, insurers and auto repair shops would continue to face the uncertainty and confusion that has resulted under the old regulation - uncertainty and confusion that has resulted in the lack of clear and consistent regulatory guidance and enforcement, to the detriment of all interested parties.

The House Insurance Committee and the Senate Banking and Insurance Committee held separate hearings on the regulation over the past two weeks. While neither committee took action on the proposed regulation, legislators on both committees raised three concerns that may be shared by members of the IRRC. The Insurance Commissioner answered those concerns at the hearings and will likely do so again for the IRRC. The Insurance Federation also testified at both hearings on these concerns, all of which involve conduct of insurers in the appraisal process, and the following summarizes the points from that testimony.

**1. The inclusion of non-OEM parts in the regulation**

Several legislators were concerned that the regulation goes beyond the Appraiser Act in expressly recognizing that "non-OEM" parts (those parts not made by the car's manufacturer) may be considered in an appraisal; they noted that the Appraiser Act itself does not refer to non-OEM parts. Some (and it truly is only some) repair shops raised the same concern, contending that the Appraiser Act should be read to prohibit consideration of non-OEM parts in an appraisal.

The truth is, the Appraiser Act makes no mention of who should be the manufacturer of the part being replaced - whether the original manufacturer of the car or another manufacturer. The only mention it makes related to this is with respect to "new" parts in Section 11(b) of the Act, where it states that the "operational safety" of the car "shall be paramount in considering the specification of new parts," a consideration of special importance "where the parts involved pertain to the drive train, steering gear, suspension units, brake system or tires."

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The truth is also that appraisers have been using, for a long time and on an open basis, non-OEM parts in making appraisals under the Appraiser Act and the existing regulation. Whatever the complaints about the use of non-OEM parts, they have never included - until the Department's proposal of this revised regulation - the contention that the Appraiser Act prohibits the use of non-OEM parts in appraisals.

In fact, it has been just the opposite. Legislators and repair shops, by their actions, have recognized that the Appraiser Act itself does not prohibit the use of non-OEM parts: In past sessions and this session, bills have been introduced to prohibit or limit the use of non-OEM parts.

The irony here is that this regulation actually limits the use of non-OEM parts beyond the old regulation and, arguably, beyond the Appraiser Act itself. Under this regulation, non-OEM parts may be used in an appraisal only when they are "non-mechanical parts that generally constitute the exterior of the motor vehicle." While the Appraiser Act calls for consideration of new parts, especially when dealing with the mechanical aspects of the car, it never limits those parts to new ones made only by the original manufacturer.

Whether the parts used in repairing a car should come only from the original manufacturer involves a myriad of issues unrelated to the appraisal process - as with whether the original manufacturers should have monopolies in pricing these parts.

The Insurance Department has recognized in this regulation that resolution of those issues was not the purpose of the Appraiser Act and should not be the purpose of this regulation. The Act was intended only to provide standards to ensure appraisals that fairly estimate the cost of repairing a car; this regulation correctly stays within that intended purpose. The broader issues - essentially a question of whether the Commonwealth should establish limits on non-OEM parts in calculating an insurance claim - entail a policy decision that can only be made by the General Assembly.

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## 2. The establishment of repair shop programs

Several legislators and some repair shops also expressed concern that the regulation allows insurers and appraisers to disclose to consumers repair shop networks and programs established by insurers. The concern is that this disclosure violates the prohibition in Section 11(d) of the Appraiser Act, which states that "No appraiser or his employer shall require that repairs be made in any specified repair shop."

The regulation reasonably implements this prohibition while balancing it with the right of insurers to establish repair shop programs and networks. The regulation requires that the prohibition be given to the consumer in writing as part of the appraisal. Further, it requires that this disclosure be given to the consumer in writing again if the insurer sends any information on particular repair shops to the consumer. Finally, it also requires that this disclosure be given to the consumer if the appraiser even mentions the name of a repair shop.

Notably, no legislator (and, as best I can determine, no repair shop) has suggested that the Appraiser Act prohibits insurers from establishing repair shop programs and networks. Instead, they contend that the unsolicited disclosure of these programs and networks by an appraiser - even when accompanied by the disclosure that the consumer need not have repairs made in a specific repair shop - defeats that prohibition.

The Insurance Department has made the determination that an appraiser may disclose information on repair shop programs and networks so long as the appraiser simultaneously and prominently discloses that the consumer need not go to a particular repair shop. That is a reasonable determination on its face, and it is consistent with the types of disclosures found in other lines of insurance coverage - most notably with managed care.

It is also reasonable based on the evidence before the Department: As with the use of non-OEM parts, the existence and disclosure of repair shop programs and

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networks is nothing new. The Department has thoroughly investigated them in the past, and it has found that - at least when accompanied by the disclosure that the consumer need not use a particular repair shop - unsolicited information about them does not interfere with the consumer's right or ability to select a repair shop.

### 3. The deletion of the "appraisal clause"

Several Senators (although no House members) questioned the Insurance Department's deletion of an "appraisal clause" requisite on insurers in its final form regulation; the requisite had been in its proposed regulation as a requirement that auto insurance policies provide for an undefined process to resolve disputes between insurers and insureds.

The Department acted properly - and consistent with the recommendations of the IRRC - in deleting the appraisal clause requisite. No such requisite is even hinted at in the Appraiser Act - and nor would one be expected, as the Act covers the licensing and conduct of appraisers, not contractual terms and obligations between insurers and insureds. Had the General Assembly wanted such a requisite, it would have done so in Title 75, covering auto policies, not the Appraiser Act.

The Insurance Federation detailed its objections to a regulatorily-imposed dispute resolution clause as part of auto policies in its March 8 comment letter on the Department's proposed regulation. The summary of those objections is that such a requirement must come from legislative action, not legislative comment.

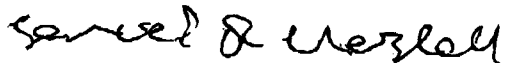
That observation goes to the heart of all three legislative concerns with the final form regulation: The merits of those concerns can be debated from many sides - but resolution of them will require legislative action, not legislative comment on this regulation.



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This regulation is a clear and reasonable implementation of the Appraiser Act. It deserves to be approved by the IRRC.

Sincerely,



Samuel R. Marshall

c: Honorable Edwin G. Holl, Chairman  
Senate Banking and Insurance Committee

Honorable Nicholas A. Micozzie, Chairman  
House Insurance Committee

Honorable M. Diane Koken  
Insurance Commissioner

# FAX

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**1600 MARKET STREET**  
**SUITE 1520**  
**PHILADELPHIA, PA 19103**

Date 9/21/99  
Number of pages including cover sheet 7

To: John McGinley

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CC \_\_\_\_\_

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**REMARKS:**

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