

MEMBER OF THE NATIONAL ASSOCIATION OF PROFESSIONAL APPRAISERS  
313 Massachusetts Avenue, N.E., Washington, D.C. 20002, (202) 543-1440, Fax (202) 5 575



**AUTOMOTIVE SERVICE ASSOCIATION®**

Street Address: 1901 Airport Freeway, Suite 100, Bedford, Texas 76021-5732

Mailing Address: P.O. Box 929, Bedford, Texas 76095-0929, (817) 283-6205, Metro 267-1376, FAX (817) 685-0225

March 31, 1999

ORIGINAL: 2001  
HARBISON  
COPIES: Tyrrell  
Wilmarth  
Sandusky  
Legal

RECEIVED  
INDEPENDENT REGULATORY REVIEW COMMISSION  
99 MAR 31 PM 4: 24  
PREPARED

Mr. Charles A. Tyrrell, Jr  
Independent Regulatory Review Commission  
333 Market Street  
Harrisburg, Pennsylvania 17101

Dear Chuck:

Thank you for meeting with us yesterday. We appreciate your interest in an issue that will severely impact collision repairers across Pennsylvania.

With regard to the personal inspection of the vehicle and appraiser ethical considerations, we did review the provisions in 63 Pa.S. 861 and 63 Pa.S. 856 and agree that this should be sufficient to assure personal inspections as well as a high degree of professionalism amongst appraisers.

ASA still has concerns with two key provisions in the proposed regulations. Specifically, the steering considerations in the revised Section 62.3(b)(3) and the weak replacement crash parts notice provision advocated in Section 62.3(b)(9). Without a written acknowledgement from the consumer, this provision will provide little.

I have enclosed a copy of our proposed consumer authorization form as agreed to by new car dealers, automobile manufacturers, recyclers and some aftermarket manufacturers. This acknowledgement form should not require legislative authority. It does not provide for a rejection of the parts. It also does not discriminate against any particular parts class.

Please let me know if we can do anything else to assist. Again, thanks for your time.

Sincerely,

Robert L. Redding, Jr.

313 Massachusetts Avenue, N.E. Washington, D.C. 20002, (202) 543-1440, Fax (202) 543



**AUTOMOTIVE SERVICE ASSOCIATION®**

Street Address: 1901 Airport Freeway, Suite 100, Bedford, Texas 76021-5732

Mailing Address: P.O. Box 929, Bedford, Texas 76095-0929, (817) 283-6205, Metro 267-1376, FAX (817) 685-0225

March 31, 1999

ORIGINAL: 2001

HARBISON

COPIES: Tyrrell  
Wilmarth  
Sandusky  
Legal

RECEIVED  
99 MAR 31 PM 4:24  
FEDERAL COMMISSION

Ms. Fiona E. Wilmarth  
Independent Regulatory Review Commission  
333 Market Street  
Harrisburg, Pennsylvania 17101

Dear Fiona:

Thank you for meeting with us yesterday. We appreciate your interest in an issue that will severely impact collision repairers across Pennsylvania.

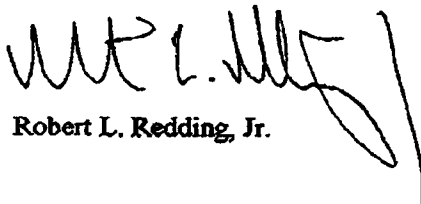
With regard to the personal inspection of the vehicle and appraiser ethical considerations, we did review the provisions in 63 Pa.S. 861 and 63 Pa.S. 856 and agree that this should be sufficient to assure personal inspections as well as a high degree of professionalism amongst appraisers.

ASA still has concerns with two key provisions in the proposed regulations. Specifically, the steering considerations in the revised Section 62.3(b)(3) and the weak replacement crash parts notice provision advocated in Section 62.3(b)(9). Without a written acknowledgement from the consumer, this provision will provide little.

I have enclosed a copy of our proposed consumer authorization form as agreed to by new car dealers, automobile manufacturers, recyclers and some aftermarket manufacturers. This acknowledgement form should not require legislative authority. It does not provide for a rejection of the parts. It also does not discriminate against any particular parts class.

Please let me know if we can do anything else to assist. Again, thanks for your time.

Sincerely,

  
Robert L. Redding, Jr.

Replacement Crash Parts Notice and Authorization Form

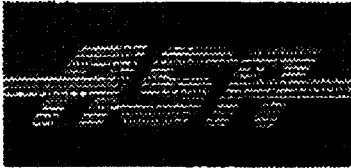
NOTICE TO CONSUMER:

1. "Replacement crash parts" are the parts typically replaced during the repair of a damaged vehicle. These parts include, but (are) not limited to exterior sheet metal and plastic components (such as fenders, hoods, doors, bumper systems and related structural components).
2. The type(s) of replacement crash parts listed on your estimate/repair order # \_\_\_\_\_ (copy attached) are from the categories checked below
3. Warranties for the type(s) of replacement crash parts listed below are provided by the Manufacturer or Distributor of the replacement parts. Warranty coverage varies. Ask your insurer or collision repair professional for specific, written warranty information. Additional warranties for replacement crash parts will be provided by \_\_\_\_\_.
4. Replacement Crash Parts Types:
  - New Original Equipment Manufacturer (OEM)  
Parts which are made by the vehicle manufacturer or one of its licensees and distributed through its normal channels. These parts maintain the OEM Vehicle Factory Warranty for the replaced part and any other adjoining or associated OEM part or systems.
  - NEW Aftermarket  
Parts which are made by companies other than the vehicle manufacturer or its licensees. All parts in this category are warranted by the distributor and/or manufacturer of these parts.
  - Recycled/Recyclable  
Used parts which have been removed from another vehicle. All parts in this category are warranted by the salvage vendor.
  - Remanufactured  
Parts which have been returned to like-new condition by repairing, remachining or re-building. All parts in this category are warranted by the remanufacturer of the part.

I understand that my vehicle will be repaired using the parts described above, and I authorize the repair facility to install those parts.

\_\_\_\_\_  
Customer Signature

\_\_\_\_\_  
Date



RECEIVED

99 MAR 31 PM 4:24

**Automotive Service Association®**

INDEPENDENT LABORATORY  
REVIEW OF DAMAGE

313 Massachusetts Avenue, N.E., Washington, D.C. 20002

Phone: 202/543-1440

Fax: 202/543-4575

## Facsimile Transmission

TO: Mr. Charles A. Tyrrell  
Ms. Fiona E. Wilmarth

CC:

FROM: Bob Redding

DATE: March 31, 1999

RE: Proposed Regulation: Motor Vehicle Physical Damage Appraisers

PAGES TO FOLLOW: 3

Comments:

LAW OFFICES

**OBERMAYER REBMANN MAXWELL & HIPPEL LLP**

204 STATE STREET  
HARRISBURG, PA 17101

(717) 234-9730  
FAX (717) 234-9734

ONE PENN CENTER  
19TH FLOOR  
1617 JOHN F. KENNEDY BLVD.  
PHILADELPHIA, PA 19103-1895  
(215) 665-3000  
FAX (215) 665-3165

USX TOWER 49TH FLOOR  
600 GRANT STREET  
PITTSBURGH, PA 15219  
(412) 566-1500  
FAX (412) 566-1508

TWO KINGS HIGHWAY WEST  
HADDONFIELD, NJ 08033  
(609) 795-3300  
FAX (609) 795-8843

ROLANDSTRASSE 11  
45128 ESSEN, GERMANY  
TEL. (0201) 238893  
FAX (0201) 238901

MICHAEL C. RICHMAN  
NINA B. STRYKER  
ANNA HOM  
BARBARA WEINBERG  
ELIZABETH A. LLOYD  
ROGER P. CAMERON\*  
GARY M. SAMMS  
CLARE M. DIEMER\*  
KIRSTEN HARE\*  
MICHAEL E. HESTON\*  
LORI A. ANDREOSKY\*  
ANDREW J. GIORGIONE  
DANIELLE TRIBUJANI  
KIMBERLY J. SCOTT\*  
PETER J. OBERKIRCHER\*  
JAMES L. RAY\*  
GARY C. ZEITZ\*  
CHRISTINE C. PROST\*  
DAVID A. NASATIR\*\*\*  
HILLARY J. MOONAY\*  
TODD J. GLASSMAN\*  
EDWARD B. ERTEL  
DONALD D. GAMBURG  
CHARLES PAVELITES

MICHAEL P. WEINSTEIN\*\*  
MARJORIE H. GORDON  
EDMOND M. GEORGE\*  
RICHARD R. TARANTINE  
STEVEN A. HABER\*  
KIMBERLY D. SUTTON\*  
JOHN V. O'HARA\*  
CATHIE PYUNE-MCELLOWNEY\*  
MICHAEL S. PEPPERMAN\*  
CYNTHIA A. TEDESCHI\*  
DANIEL F. SCHRANGHAMER\*  
LYNNE G. SECUNDA\*  
STEPHEN W.W. CHING, JR.\*  
WILLIAM K. PELOSI\*  
JASON E. REISMAN\*  
L. KEITH LIPMAN\*  
MARNIE E. SIMON\*\*\*  
MATHIEU J. SHAPIRO\*  
DENA B. TURCO\*  
JAMES T. ASALI\*  
THOMAS E. HANSON, JR.\*  
LORI M. EMRICK\*  
LORI E. HALBER\*

MARTIN WEINBERG  
PETER M. BREITLING  
ROBERT I. WHITELAW\*\*\*  
JEFFREY B. ROTWITT  
GREGORY D. SAPUTELLI\*  
THORLEY C. MILLS, JR.\*\*  
WARREN W. AYRES  
CHARLES M. GOLDEN  
THOMAS A. LEONARD  
ANN G. VERBER\*\*\*  
JOSEPH J. MCGOVERN\*\*\*  
JULIUS M. STEINER  
WALTER W. COHEN  
MARVIN S. LIEBER\*\*\*  
JEFFREY S. BATOFF\*\*  
SCOTT E. DENMAN  
ANASTASIOS EFSTRATIADIS\*  
JERALD S. BATOFF  
DANIEL P. FINEGAN\*  
J. ERIC RATHBURN  
RUTH RUDBARG WESSEL  
NICHOLAS PODUSLENKO\*  
VAHAN H. GUREGHIAN  
RICHARD P. LIMBURG

PAUL C. HEINTZ  
HUGH C. SUTHERLAND  
E. PARRY WARNER  
JAMES M. PENNY, JR.  
KENNETH L. OLIVER, JR.  
JOHN J. EHLINGER, JR.  
MARK A. LUBLIN\*  
JAMES W. BAUMBACH  
STEPHEN D. SCHRIER\*  
LOUIS B. KUPPERMAN  
JOSEPH P. DOUGHER  
PAUL S. DIAMOND  
JEROME N. KLINE  
LAWRENCE J. TABAS  
PAUL N. ALLEN  
VICTOR ALAN YOUNG  
CATHLEEN CURRAN MYERS  
CHARLES S. K. SCUDDER\*\*\*\*  
WILLIAM J. LEONARD  
JOHN E. RYAN  
CAROL BRAYSHAW LONGWELL  
JACQUELINE Z. SHULMAN\*  
LARRY BESNOFF  
JAMES R. THOMPSON\*

- \* ALSO MEMBER OF NEW JERSEY BAR
- \*\* ALSO MEMBER OF OHIO BAR
- \*\*\* ALSO MEMBER OF D.C. BAR
- + ALSO MEMBER OF N.J. AND D.C. BAR
- \*\* ALSO MEMBER OF N.J. & FLORIDA BAR
- \*\*\* ALSO MEMBER OF D.C. & MASSACHUSETTS BAR
- \*\*\*\* ALSO MEMBER OF NEW YORK BAR

OF COUNSEL:  
FRANK E. HAHN, JR.  
ALLEN WEINBERG  
WILLIAM G. SCHWARTZ  
JONATHAN H. NEWMAN\*\*\*  
CHARLES M. TAYLOR\*\*\*\*  
ROBERT N.C. NIX, III  
ROBERT M. DUBBS  
FREDERICK COHEN  
J. KURT STRAUB

\*\*\*\*HONORARY CONSUL GENERAL OF GERMANY

DIRECT DIAL: (717) 221-7920

March 24, 1999

**VIA HAND DELIVERY**

Robert E. Nyce, Executive Director  
Commonwealth of Pennsylvania,  
Independent Regulatory Review Commission  
333 Market Street, 14 th Floor  
Harrisburg, PA 17101

Re: **Comments of Pennsylvania Collision Trade Guild  
Proposed Regulation No. 11-149, Chapter 62, Title 31**

Dear Mr. Nyce:

As you know, on March 8, 1999, we submitted substantial Comments and Questions concerning the proposed regulatory changes referenced above to the Department of Insurance and the Independent Regulatory Review Commission. The purpose of this letter is to condense and summarize the position of the Pennsylvania Collision Trade Guild ("PCTG"), in opposition to the above-referenced proposed regulations, for the benefit of the members of the Commission.

The Guild's fundamental position is that the Department's proposed regulations are inconsistent with the Motor Vehicle Physical Damage Appraisers Act and the Unfair

ORIGINAL: 2001  
HARBISON  
Originals addressed to:  
Nyce  
Wilmarth  
Tyrrell  
Wyatte  
COPIES: Sandusky

RECEIVED  
99 MAR 24 PM 2:31  
RECEIVED

Mr. Nyce  
March 24, 1999  
Page 2

Insurance Practices Act and the regulations promulgated thereto. As support for its position, the Guild relies on the Appraisers Act, UIPA and existing regulations, and the intent and spirit of the Act as set forth in the original regulations and Bulletin No. 53 of 1977. These latter two enactments clearly demonstrate the original intent and import of the Appraisers Act, which was to protect a consumer's right to select the auto repair shop for repair of a damaged motor vehicle and to provide for efficient and effective repair. By these proposed regulations, the Department is easing the protections afforded consumers.

The Guild's paramount concerns embody four areas: (1) "steering"; (2) aftermarket parts; (3) conflict of interest; and (4) the content of appraisals.

**1. Steering**

Steering occurs when an appraiser or an insurer attempts to or is successful at directing a consumer to a particular auto repair shop, preferred by the appraiser or insurer, for the repair of a damaged motor vehicle.

The Appraisers Act states that "[N]o appraiser or his employer shall require that repairs be made in any specific repair shop." 63 P.S. §861(d). Bulletin No. 53, published shortly after enactment of the Act, echoed the clear intent of the law, stating that the Act "emphatically prohibits" direct referrals, unsolicited recommendations and solicitations for recommendations. Black's Law Dictionary defines "require" as to direct, instruct or request. Indeed, the Regulations and the UIPA have invariably provided that an appraiser or insurer may only recommend a particular shop upon the "unsolicited request" of the consumer.

In its proposed change, the Department seeks to eliminate the "require or recommend" language from the Regulations and to permit appraisers to list the names of two repair shops on the appraisal. By this change, the Department is undermining the clear intent of the Appraisers Act and over twenty years of consumer protection precedent. In its Comments, the Guild set forth the dangers to consumers who, unknowingly, are steered into "direct repair programs" operated by insurers. The Department's proposed change will provide appraisers and insurers with greater power to direct or steer consumers. For these reasons, the Guild suggests that the Regulations remain unchanged.

A full discussion of the Steering issue is set forth on pages 5 - 10 of the Guild's March 8, 1999 Comments.

Mr. Nyce  
March 24, 1999  
Page 3

## 2. Aftermarket Parts

Aftermarket crash parts or nonoriginal aftermarket crash parts are parts that are imitation parts, not made by the manufacturer of the vehicle. In its proposed change, the Department seeks to permit appraisers to prepare an estimate of damage using imitation parts.

Neither the Appraisers Act nor existing Regulations authorize or even discuss the use of such parts. Moreover, authorizing appraisers to write an appraisal and insurers to only pay a consumer for installation of imitation parts is inconsistent with the intent of the Act, which is to protect consumers. Finally, it is unclear why the Department is seeking to inject this issue into the regulatory process, when this is and should remain a matter of contract between consumers and insurers and appraisers.

The Appraisers Act and the existing Regulations provide that an appraiser must prepare an appraisal specifying the use of used parts only upon consideration of the "operational safety of the vehicle" and such used parts must be equivalent to or better than the condition of the damaged part. 63 P.S. §861(b) and 31 Pa. Code §62.3(c). An appraiser cannot fulfill its obligation concerning the operational safety and betterment of the vehicle, if regulatory authority is given for the use of imitations parts, which are not made by the manufacturer and crash tested and no Material Safety Data Sheets are available.

The issue becomes even more crucial when a consumer's vehicle is still protected by a manufacturer's warranty. Regardless of the Department's proposal that any "Non-OEM" part must come with a warranty, a consumer should not have to waive its rights under the manufacturer's warranty, so that an insurer can repair a vehicle with used, imitation parts. Bulletin No. 53 stated that the original intent of the Act was to prohibit the use of used parts when such will result in the disclaimer of the warranty.

The Guild proposes that, during the warranty period, the appraiser and insurer must repair the damages through the use of new parts and repair procedures authorized and approved by the manufacturer. Conversely, the Guild agrees that when a vehicle is no longer covered by manufacturer's warranty, appraisers and insurers may adjust the damage with used, *original equipment* manufacturer parts. Unless and until, Non-OEM parts are tested and approved by the manufacturer, neither the Department nor the General Assembly should authorize the use of such parts.

A full discussion of the Aftermarket Parts issue is set forth on pages 11 - 13 of the Guild's March 8, 1999 Comments.

Mr. Nyce  
March 24, 1999  
Page 4

**3. Conflict Of Interest**

The Appraisers Act and existing Regulations strictly prohibit any direct or indirect conflicts of interest by an appraiser when adjusting damage to a vehicle. The Act states that an appraiser *must* “inspire public confidence,” prepare an appraisal “without prejudice against, or favoritism towards, any party involved,” “disregard efforts ... to influence his judgment,” and “prepare an independent appraisal of damage,” and *must not* “receive directly or indirectly any gratuity or other consideration” for his services. 63 P.S. §§861(d)(1) - (4) and (g)(1) and 31 Pa. Code §62.3(g). Thus, the Act specifically states that nothing should influence an appraiser’s judgment, and an appraiser should not favor any party, when writing an *independent* appraisal of damage. As more fully discussed in the Guild’s Comments, insurers require shops participating in their direct repair programs to have appraisers on staff who will prepare appraisals consistent with the directives, criteria, rates and procedures set by the insurers.

Rather than seeking to strengthen and reinforce the conflict of interest provisions to protect consumers, without explanation the Department proposes to delete the conflict of interest provisions from the regulations. By suggesting the removal of this language, the Department is violating the clear language, intent and spirit of the Act. The Guild proposes that the Regulation be amended to prohibit the “comfortable” business relationship which currently exists between appraisers and insurers. The Guild believes that if an insurer appoints and pays for an appraisal, then the regulations should state that the appraiser may not favor the interest of the insurer by preparing an appraisal consistent with insurer’s guidelines and should not accept any reward or bonus for steering consumers or reducing the cost of repair.

A full discussion of the Conflict of Interest issue is set forth on pages 15 - 19 of the Guild’s March 8, 1999 Comments.

**4. Content Of An Appraisal**

The final paramount issue of the Guild concerns the content of appraisals. The Appraisers Act provides that the appraisal must contain “an itemized listing of all damages” necessary to repair a damaged vehicle. 62 P.S. §861(b). Moreover, the existing Regulation and Bulletin No. 53 provide that an appraisal must contain “all items necessary” to repair a vehicle. 31 Pa. Code §62.3(b)(1).

Currently, appraisers fail to prepare an appraisal with all the items listed in the appraisal and, instead, “bundle” parts, repairs and procedures, to avoid precedents of items of repair. Since the Department is seeking to amend the definition of “Appraisal”, the Guild believes the definition should include the language contained in the Act, for consistency.



Mr. Nyce  
March 24, 1999  
Page 5

A full discussion of the Content of an Appraisal issue is set forth on pages 20 - 22 of the Guild's March 8, 1999 Comments.

Please contact us if you have any questions concerning this letter or any of the other issues raised in the Guild's Comments and Questions submitted on March 8, 1999.

Sincerely,



Walter W. Cohen

c: Hon. Edwin G. Holl, Chair  
Senate Banking & Insurance Committee  
Hon. Nicholas A. Micozzie, Chair  
House Insurance Committee  
Mary S. Wyatte, Esquire  
Fiona E. Wilmarth, Regulatory Analyst  
Charles A. Tyrrell, Jr., Regulatory Analyst  
Independent Regulatory Review Commission  
Jack Aigner  
Steve Behrndt

**B & S AUTO BODY**  
RD#5 BOX 5395  
FLEETWOOD, PA 19522  
(610) 944-0898

ORIGINAL: 2001

HARBISON

COPIES: Tyrrell  
Wilmarth  
Sandusky  
Legal

RECEIVED

90 MAR 24 AM 9:14

PA  
FLEETWOOD  
PAVEMENT COMMISSION

Mr. John Mc Gunley Jr.  
Chairman I.R.P.C.

I am writing this letter to let you know of my opposition to the proposed changes to the appraiser's act. Most of these changes will harm our consumer. Some one has to look at these proposed changes with the best interests of our consumer in mind.

The appraiser's act as it was originally written is one of the best in the country, at protecting the rights of our consumer. The original act guarantees a vehicle will or should be returned to pre-loss condition. That is what most people want & deserve.

The proposed changes would further the illegal direct repair programs most insurance companies have in place. I feel these programs harm our consumers right to a Quality repair. These programs are the equivalent of the health care WMO & do not have the best interest of our consumer at heart.

Please let's do something for the average person living in the state of Pa. and reject the new proposals.

Sincerely  
Paul Brown  
owner B&S Auto Body

# Pennsylvania Collision Trade Guild

Statewide Broadcast Fax

March 22, 1999



RECEIVED

99 MAR 24 AM 9:15

[www.pctg.org](http://www.pctg.org)

INDEPENDENT REGULATORY  
REVIEW COMMISSION

➤ The Pennsylvania Department of Insurance has proposed revisions to Pennsylvania Code Title 31, Chapter 62 Motor Vehicle Physical Damage Appraiser, Regulation. The Department's responsibility to the Commonwealth is to administer and regulate insurance companies and their representatives operating in the State of Pennsylvania. It is also the responsibility of the Department of Insurance to provide consumer protection through enforcement and compliance of the regulatory process. After careful examination of the proposed revisions we have compiled opinions and guidelines on certain aspects of this considerable change. Please understand the proposed revisions are extensive. Your P.C.T.G. Legislative Committee has provided the Independent Regulatory Review Commission with over 250 pages of documentation. Examine and utilize the following segments as helpful guidelines as you discuss this issue with your local State Representative and Senator. You must take action now. Don't wait for someone else to do it. This is a grassroots movement, which depends on your individual determination!

ORIGINAL: 2001

HARBISON

COPIES: Tyrrell  
Wilmarth  
Sandusky  
Legal

➤ Proposed. Written Disclosure Statement

The Department has set forth criteria for a "written disclosure" that all appraisers must include with their independent, written appraisal of the repairs necessary to return a motor vehicle to it's pre-loss condition. It is the Guild's position that the written disclosure proposal is not authorized by the Appraisers Act and is beyond the scope of the power and duties of the Department of Insurance and is inconsistent with the Law and the intent of the Appraisers Act and the Unfair Insurance Practices Act.

➤ The appraiser may provide the consumer with the names of at least two repair shops able to perform the repair in accordance with the written appraisal. This proposed change is inconsistent with strict language and intent of the Appraisers Act, will adversely affect consumers and auto shops and is unreasonable. Insurance companies and their appraisers should only be permitted to provide suggestions for auto body shops that can effectuate the necessary repairs when they receive an "unsolicited request" from the consumer as set forth in current regulations 62.3(g)(12)(iii) and 146.1(d)

➤ **Aftermarket Crash Part - A replacement for any non-mechanical sheetmetal or plastic parts that generally constitute the exterior of the motor vehicle. Including the inner and outer panels. "Defination"**

➤ **Nonoriginal equipment manufacturer (Non-OEM) aftermarket crash part - an aftermarket crash part not made for or by the manufacturer of the motor vehicle. Neither the existing Regulations nor the Appraisers Act authorizes an appraiser to estimate the loss on a motor vehicle and write a monetary determination of the damage using Non-OEM or aftermarket crash parts. The Department's proposed changes are beyond the scope of and inconsistent with the Appraisers Act, will adversely affect consumers and auto repair shops and are unreasonable. Because an appraiser is charged with a high degree of regard for public safety, the operational safety of the vehicle shall be paramount in consideration of new parts. Since public safety must be highly regarded and paramount consideration must be given to the operational safety of the motor vehicle, it is inconsistent for the Department to authorize use of imitation parts, which have not been crash tested and for which no Material Safety Data Sheets are available.**

By virtue of the fact that aftermarket parts are not crash tested, the proposed regulation adversely affects the health, safety and welfare of consumers. Furthermore, regardless of the Department's consideration of warranties, consumers should not have to waive their rights to the manufacturer's warranty for the purpose of accepting imitation parts in repair of a motor vehicle.

- If there is a dispute regarding the cost of repairs to an insured's vehicle, the insured or insurer may seek resolution through the appraisal clause provision or similar provision, which provides a process for dispute resolution in the policy contract. The Department's proposal is ineffectual, not all insurance policies contain an appraisal clause which provides a dispute mechanism. As such, the Department should propose that the Regulation, first require an appraisal clause in all policies and second compel the invocation of the clause. The Department should amend the proposed regulations to provide that all insurers issuing policies in Pennsylvania must have an appraisal clause provision in their policies, which provides a process for dispute resolution. Further, the provision should state that upon invocation of the appraisal clause provision by an insured, the insurer shall promptly begin the process. Finally, the provision should be available to third-parties, through first-party insureds.
- Proposed Regulation > deletion of a portion of the conflict of interest provisions. The Department's proposed deletion of § 62.3(g)(1),(2),(3),(4),(6) and the last sentence of (9) is inconsistent with the Appraisers Act, will adversely affect consumers and auto repair shops and is unreasonable. Accordingly, deletion of the existing Regulations will adversely affect consumers and the auto repair industry. The existing regulation should remain since they protect consumers and auto repair shops. If any amendment should be made to existing regulations, the Department should enhance and strengthen the conflict of interest provisions.
- The DOI proposes that the written disclosure section of the proposed amendments in §62.3(b) provide a statement that any excess costs above the appraised amount may be the responsibility of the owner. Neither the existing Regulation nor the Appraisers Act authorize insurers to charge consumers with excessive cost. By virtue of this provision, insurers will be able to set rates and procedures consistent with direct repair programs, and refuse to pay charges they believe are in excess of the rates and procedures in their programs. The consumer's right to select the repair shop of its own choice will be mitigated by the right of appraisers and insurers to deny rates and procedures and charge the consumer for overages. As such, appraisers and insurers will be able to use their vast market powers to set rates and procedures in an area to the detriment of consumers and the repair industry.

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

ORIGINAL: 2001

1600 Market Street

HARBISON

Suite 1520

COPIES: Tyrrell

Philadelphia, PA 19103

Wilmarth Tel: (215) 665-0500 Fax: (215) 665-0540

Sandusky

Legal

March 18, 1999

**Robert E. Chappell**  
Chairman  
**Sarah H. Lawhorne**  
Vice Chairman  
**Henry G. Hager**  
President &  
Chief Executive Officer  
**Samuel R. Marshall**  
President Elect  
**John R. Doubman**  
Secretary & Counsel  
**Marybeth H. Dob**  
Treasurer  
**Birchard T. Clothier**  
Investment Officer &  
Assistant Treasurer  
**Jeffrey D. Sharp**  
Director of  
Government Affairs

To: **Mary S. Wyatte**  
Chief Counsel  
IRRC

From: **Samuel R. Marshall** *SRM*

Re: **Warranties and the Magnuson-Moss Warranty Act**

Enclosed are the Act and the FTC's interpretations on it. In the Act, the relevant section is Section 102(c); in the interpretations, the relevant section is Section 700.10.

I hope this helps. Frankly, I think the warranty issue is a "red herring." The real concern is that the use of any replacement part not put the consumer in a worse position as to the remaining time and terms on a warranty, regardless of who supplies the warranty - and that is what the Department's regulation (with our recommended clarifications) provides.

RECEIVED  
99 MAR 18 AM 9:03  
FEDERAL COMMISSION

**COMMONWEALTH OF PENNSYLVANIA  
INSURANCE DEPARTMENT  
and  
INDEPENDENT REGULATORY REVIEW COMMISSION**

RECEIVED  
99 MAR -9 AM 9:15  
INDEPENDENT REGULATORY REVIEW COMMISSION

**In re:** :  
**DEPARTMENT OF INSURANCE** :  
**REGULATION, MOTOR VEHICLE** : **No. 11-149**  
**PHYSICAL DAMAGE APPRAISERS** :

**ORIGINAL:** 2001  
**HARBISON**  
**COPIES:** Tyrrell  
Wilmarth  
Sandusky  
Legal

**COMMENTS AND QUESTIONS OF THE  
PENNSYLVANIA COLLISION TRADE GUILD, ALSO T/A  
COALITION FOR COLLISION REPAIR EQUALITY**

**I. INTRODUCTION**

The Pennsylvania Collision Trade Guild, also t/a the Coalition for Collision Repair Equality (the "Guild"), by and through their counsel Obermayer Rebmann Maxwell & Hippel LLP, hereby submit these comments and questions to the Commonwealth of Pennsylvania, Department of Insurance's ("Department") proposed regulations for the Motor Vehicle Physical Damage Appraisers Act, 63 P.S. §§851 *et seq.* ("Appraisers Act"), pursuant to the notice in the *Pennsylvania Bulletin* dated Saturday, February 6, 1999.

**II. BACKGROUND**

For decades, consumers and auto repair shops have been filing complaints with the Department concerning the manner in which insurance companies and appraisers are violating the Appraisers Act and the regulations promulgated thereto at 31 Pa. Code §§62.1 *et seq.* ("Regulations"), the Unfair Insurance Practice Act, 40 P.S. §§1171.1 *et seq.* ("UIPA") and the regulations promulgated thereto at 31 Pa. Code §§146.1 *et seq.*,

and Bulletin No. 53 of 1977<sup>1</sup> through the creation of “direct repair shops” and “direct repair and referral programs<sup>2</sup>.”

In 1996, the Guild was formed by individuals owning and operating auto repair shops that refuse to participate in direct repair programs because they violate the Appraisers Act and its Regulations and the UIPA and its regulations, and result in poor quality of work for their customers. The Guild decide to, *inter alia*, confront the seemingly unregulated and unfettered manner in which insurance companies and their appraisers process motor vehicle damage claims and address the lack of enforcement of the Appraisers Act and regulations by the Department. The mission of the Guild became to promote the lawful, permissible and efficient appraisal and repair of damaged motor vehicles consistent with the Appraisers Act and Regulations, and to seek enforcement of the Appraisers Act and Regulations by the Department.

---

<sup>1</sup> Bulletin No. 53 of 1977 was promulgated by the Insurance Department to provide, *inter alia*, interpretation of the Appraisers Act. The Bulletin directly addresses interpretation of the critical provisions of the Appraisers Act raised by the members of the Guild in their Complaints to the Insurance Department. The provisions addressed in the Bulletin included, *inter alia*, §§62.3(b)(1) and (4) and §§62.3(g)(8), (9), and (12), which are cited herein. After the Guild met with then-Insurance Commissioner Linda S. Kaiser in April 1996, concerning enforcement of the Appraisers Act and Bulletin No. 53, on July 20, 1996, Commissioner Kaiser repealed Bulletin No. 53. A true and correct copy of Bulletin No. 53 of 1977 is attached hereto, made a part hereof, and incorporated herein as if fully set forth in Exhibit “A.”

<sup>2</sup> “Direct repair and referral programs” are oral and written contractual arrangements negotiated between insurance companies and auto repair shops wherein the insurance companies agree to refer insured consumers and claimants to the auto repair shops for appraisal and repair of their damaged vehicles and, in exchange, the auto repair shops agree to appraise and repair damaged vehicles in accordance with the insurance company’s rates and procedures. The rates demanded by the insurance companies are below the rates charged by independent, non-participating, auto repair shops. The insurance companies also demand parts discounts and other concessions from their selected auto repair shops in exchange for the referral of business. Insurance companies are also providing financing to “consolidators” who purchase independent auto repair shops and convert them into participating direct repair shops. By contracting with selected auto repair shops and consolidating service, insurance companies are monopolizing the auto repair industry, which has negatively affected the quality of service throughout the industry and adversely impacted the rights of insured consumers. Since the members of the Guild believe the insurance companies’ direct repair and referral programs violate the Appraisers Act and the Regulations, and the UIPA, and result in poor quality of work for their customers, they refuse to participate in such programs and remain independent, non-participating, auto repair shops.

On January 20, 1998, members of the Guild and their counsel met with representatives of the insurance industry and Insurance Commissioner Diane Koken to discuss, *inter alia*, the interaction between insurers, consumers and auto repair shops, and the interpretation of the Department's Regulations. Thereafter, the Guild was informed that the Department was considering revisions to the Regulations consistent with the positions of the insurance industry. On February 9 and April 13, 1998, counsel to the Guild sent letters to Commissioner Koken requesting the ability to comment on any proposed changes to its Regulations. As of this date, the Department has not provided a written response to those February 9 and April 13, 1998 letters.

On September 28, 1998, members of the Guild and its counsel met with Deputy Commissioner Helfreid G. LeBlanc and were advised that the Department would not consider any of the Guild's proposed changes to the Regulations and no regulatory changes would be submitted for public comment while House Bill No. 1250 of 1996 was still pending.

Having received no cooperation from the Department with regard to their administrative complaints of violations of the Appraisers Act and Regulations and to their proposed changes to the Regulations, on October 2, 1998, the Guild and consumer Connie Principato filed a Petition for Issuance of a Declaratory Order with the Department at docket no. D0-98-10-002. A true and correct copy of the Guild's Petition is attached hereto, made a part hereof and incorporated herein as Exhibit "A." Rather than responding to the Petition, the Department sought and obtained extensions of time to draft proposed changes to the Regulations. The Guild requested, but was denied by the Department, review and input into the Regulations prior to publication. In February



1999, the Department published the Regulations and sought and obtained a stay of the Guild's Declaratory Judgment action.

Notwithstanding the Department's statements contained in the Notice of publication of the proposed regulations and Regulatory Analysis Form, at no time was the Guild "contacted regarding the issues arising out of the existing regulation," and invited to provide "responses" to the proposed regulations. Indeed, the Department specifically denied and ignored the Guild's requests to provide comment and input on the proposed regulations prior to publication. As such, for the first time, the Guild submits these comments and questions to the proposed regulations of the Department.

### **III. COMMENTS AND QUESTIONS**

#### **A. Summary Of The Position Of The Guild.**

The Department's proposed regulations are inconsistent with the law and intent of the Appraisers Act and the UIPA because they appear to authorize insurance companies and appraisers to:

- (1) *direct* insured Pennsylvania consumers and claimants to particular auto repair shops for appraisal and repair of their damaged motor vehicle;
- (2) provide an appraisal which *does not contain a list of all the items* necessary to repair a motor vehicle and return it to its *pre-loss condition* and the cost of those items necessary for repair;
- (3) provide an appraisal which contains the use of *after-market, non-warranty, nonoriginal equipment manufacturer parts*; and
- (4) *influence* the actions of appraisers in preparation of an independent appraisal of damage.

The Guild will demonstrate that the Department's proposed regulations are inconsistent with the purpose, intent and interpretation of the Act, through various statutory and regulatory provisions, including the original regulations, promulgated pursuant to the Appraisers Act in 1973.<sup>3</sup>

Furthermore, the proposed regulations will adversely affect the health, safety and welfare of Pennsylvania consumers, and the prices, products and competition in the auto body repair industry.

Finally, the proposed regulations are unreasonable in that they will authorize and approve the existing illegal actions of insurance companies and appraisers under the law and regulations, and provide additional unregulated and unfettered power to insurance companies and appraisers to promote unfair methods of competition to their competitive advantage.

For all these reasons, the Guild believes the Department should not proceed with its amendments to the Regulations. If the Department chooses to proceed, the Guild has suggested proposed language consistent with the provisions of the Appraisers Act for review.

**B. Specific Objections And Comments.**

**1. Proposed regulation §62.3(b)(3) and deletion of §62.3(f)(8) and portions of §62.3(f)(9) - Permitting appraisers to provide a consumer with names of repair shops able to perform the repair.**

**a. The proposed regulation.**

The Department proposes changing §62.3(b)(3) to provide:

---

<sup>3</sup> The 1973 regulations were published at 31 P.S. §1.1 *et seq.*

(b) In addition to the requirements in the Act, the appraisal shall contain a written disclosure<sup>4</sup> which includes the following:

(3) a statement that there is no requirement to use any specific repair shop. The appraiser may provide the consumer with the names of at least two repair shops able to perform the repair in accordance with the appraisal.

The Department also proposes deleting the following language from §62.3(f):

(8) An appraiser or his employer may not recommend or require that repairs be made at a particular place or by a particular individual.

(9) ... 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 location or by a particular individual or business.

**b. The existing Regulation.**

In addition to existing §62.3(f)(8) and (9) referenced above, the Regulations provide in §62.3(g)(12) that:

(iii) Upon the unsolicited request of the consumer, an appraiser shall provide 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.

**c. The Guild's comments to the Department's proposed amendments.**

The Department states in its Preamble that these changes are proposed to “conform to §11(d) of the Act, which only specifies that an appraiser shall not “require” that repairs be made in any specified shop.” This proposed change is inconsistent with

---

<sup>4</sup> In §62.3(b), the Department has set forth criteria for a “written disclosure” that all appraisers must include with their independent, written appraisal of the repairs necessary to return a motor vehicle to its pre-loss condition. It is the Guild’s position that the written disclosure proposal is not authorized by the Appraisers Act and is beyond the scope of power and duties of the Department. Without waiving this objection, should the Department proceed with this regulatory change, the Guild believes that for consistency in the industry and to avoid misinterpretations and abuses of what exactly should be contained in such disclosures, the Office of Consumer Advocate should be assigned the responsibility of drafting the legal requirements of the written disclosure to be included in every appraisal document.

strict language and intent of the Appraisers Act, will adversely affect consumers and auto repair shops and is unreasonable.

First, this proposed change is inconsistent with the language of the Appraisers Act. The Act provides in §11 that, “(d) No appraiser or his employer shall require that repairs be made in any specified repair shop.” Bulletin No. 53, published by the Department in 1977, stated that the “law emphatically prohibits: (a) direct referrals; (b) unrequested recommendations; (c) solicitation of a request from a claimant for such recommendations.”<sup>5</sup> Black’s Law Dictionary defines “require” as, “to direct, ... demand, instruct, ... compel, request, ...”. Thus, the Department’s proposed change, which will permit an appraiser to instruct and advise a consumer where to have the damaged vehicle repaired, is inconsistent with the strict language of the Act.

The current Regulations are consistent with the definition of the term “require” because appraisers are prohibited from requiring or recommending that repairs be made at a particular shop (See existing Regulation §62.3(f)(8)), and from directly or indirectly coercing, persuading, inducing or advising the consumer that appraised motor vehicle physical damage must be, should be or could be repaired at a particular shop (See existing Regulation §62.3(f)(9)).

This proposed change is also inconsistent with the intent and spirit of the Act. The intent and spirit of the Appraisers Act was to, *inter alia*, protect a consumer’s right to choose a repair facility. Under the original regulations promulgated in 1973, appraisers could not even “recommend or require that repairs be made at a particular place or by a

---

<sup>5</sup> Indeed, in Bulletin No. 53, the Department found that, “one of the most common complaints relates to the improper referral of claimants” by appraisers. Unfortunately, as discussed above, this continues to be one of the most common complaints of consumers and auto repair shops.

particular individual” (31 Pa. Code §1.1(B)(1)(c)(1)), and were only permitted to provide the names and addresses of repair shops where the work could be performed, “upon the unsolicited request of the consumer.” (31 Pa. Code §1.3(B)(5)(c)). In fact, as originally drafted, the consumer selected the appraiser. (31 Pa. Code §1.1(B)(2)(c)(1)).

The proposed changes are also inconsistent with the regulations promulgated pursuant to the UIPA. 31 Pa. Code §146.1 *et seq.* In §146.8(d), the regulations provide that, “The insurer shall give a copy of the appraisal to the claimant and may furnish to the claimant, *upon his unsolicited request*, the names of two or more conveniently located repair shops.” (Emphasis added). Thus, the Department’s proposed deletion of §62.3(g)(12)(iii) conflicts with §146.1(d).

Finally, the proposed change requested by the Department was previously considered by the House Insurance Committee and never submitted for vote to the full House. In House Bill No. 1394 of 1995, the insurance industry offered legislation for consideration by the General Assembly which would have permitted appraisers to refer or recommend particular shops to consumers. The Guild provided written and oral testimony before the Insurance Committee of the House in opposition to the Bill, and the Bill never made it out of that Committee. Thus, the Department is now attempting to accomplish by regulation what it was unable to accomplish by legislation.

Second, this propose change will adversely affect the health, safety and welfare of consumers. By permitting insurance companies and appraisers to refer or recommend particular shops, insurance companies and appraisers will be able to continue to advance their existing and illegal direct repair programs to the detriment of consumers. If this amendment is approved: (1) consumers will continue to be illegally steered or directed

into these repair programs and to shops where insurance companies and appraisers will utilize their vast market powers to set repair rates, procedures and costs far below market rates; (2) auto repair shops participating in direct repair programs will continue to be forced to reduce labor hours and costs, ignore necessary procedures and use substandard parts to increase profit, such that poor workmanship results; and (3) consumers will be left with unsafe, diminished value vehicles. Accordingly, the ultimate goal of the Appraisers Act - to protect the consumer's right to safe, reliable repairs from a shop of their choice - will be compromised for the insurers' ability to maximize profits.

As set forth in the numerous complaints, petitions and documents submitted to the Department, insurance companies and appraisers are currently "steering" and "directing" consumers into their direct repair shops in violation of the Act and Regulations. Indeed, even though this change is only a proposed regulation, insurance companies and appraisers have already begun writing the names and addresses of auto repair shops on their appraisals. Consumers are losing their right to choose a shop to repair their vehicle, and to have all damaged items repaired in a workmanlike manner. By these proposed changes, insurance companies and appraisers will have greater power to steer and direct consumers, in direct conflict with the purpose and intent of the Appraisers Act.

Finally, this proposed change will adversely affect competition in the auto repair industry and is unreasonable. The members of the Guild are forced to engage in constant disputes with insurance companies and appraisers over repairs to their customers' vehicles, and have lost vast market share to direct repair shops who "cut corners" and agree to appraise and repair vehicles to the insurer's rates, procedures and specifications, and not the consumers'.

Accordingly, the changes proposed by the Department, which will permit insurers and appraisers to recommend or refer consumers to particular shops, is inconsistent with law, harmful to consumers and auto repair shops and unreasonable.

**d. The Guild's proposal.**

The Guild suggests that the Department forego its proposed changes and deletions to §§62.3(b) and (f) in this regard. Insurance companies and appraisers should only be permitted to provide suggestions for auto body shops that can effectuate the necessary repairs when they receive an "unsolicited request" from the consumer as set forth in current regulation §62.3(g)(12)(iii) and §146.1(d). If the Department insists on proceeding with the disclosure statement set forth in proposed regulation §62.3(b), the Guild suggests that the Department delete the second full sentence in §62.3(b)(3), which permits the appraiser to provide the names of at least two repair shops, even when not asked by the consumer.

**2. Proposed regulation §62.1 and §62.3(b)(9) - permitting the use of nonoriginal equipment manufacturer and aftermarket crash parts.**

**a. The proposed regulation.**

The Department proposes adding the following definitions:

*Aftermarket crash part* - a replacement for any of the non-mechanical sheet metal or plastic parts that generally constitute the exterior of the motor vehicle, including the inner and outer panels.

*Nonoriginal equipment manufacturer ("Non-OEM") aftermarket crash part* - an aftermarket crash part not made for or by the manufacturer of the motor vehicle.

Furthermore, the Department proposes amending §62.3(b) to provide:

(9) if the appraisal includes Non-OEM aftermarket crash parts, a statement that the appraisal has been prepared based on the use of aftermarket crash parts supplied by a

source other than the manufacturer of the motor vehicle, and that if the use of an aftermarket crash part voids the warranty on the original part, the aftermarket crash part shall have a warranty equal to or better than the warranty on the original part.

**b. The existing Regulation.**

Neither the existing Regulations nor the Appraisers Act authorizes an appraiser to estimate the loss on a motor vehicle and write a monetary determination of damage using Non-OEM or aftermarket crash parts. Conversely, §62.3 currently provides:

(c) In the specification of new or used parts, the following standards shall be used for the appraisal statement:

(1) The operational safety of the motor vehicle shall be paramount especially when the parts involved pertain to the drive train, steering gear, suspension units, brake system, or tires.

(2) If used parts are specified in the appraisal, the appraiser shall have certain knowledge of one or more relatively convenient locations where the particular used parts are actually and reasonably available in usable condition equivalent to or better than the condition of the damaged parts prior to the accident. The appraiser shall specify the locations where such used parts are in fact available.

**c. The Guild's comments to the Department's proposed amendments.**

The Department's proposed changes are beyond the scope of and inconsistent with the Appraisers Act, will adversely affect consumers and auto repair shops and are unreasonable.

As stated above, no authority exists in the Appraisers Act which permits an appraiser to write an appraisal of monetary damage to a vehicle using Non-OEM or aftermarket, imitation, crash parts. The Department's proposal is beyond the scope of its authority to infuse, what amounts to, statutory changes into the regulatory process. Thus, unless the General Assembly amends the Appraisers Act to permit the use of imitation parts, the Department is powerless to authorize the same.



The Department's proposed changes are also inconsistent with the clear language of the Appraisers Act. The Appraisers Act provides that, "... 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...". 63 P.S. §861(b). Since public safety must be highly regarded and paramount consideration must be given to the operational safety of the motor vehicle, it is inconsistent for the Department to authorize use of imitation parts, which have not been crash tested and for which no Material Safety Data Sheets<sup>6</sup> are available.

By virtue of the fact that aftermarket parts are not crash tested, the proposed regulation adversely affects the health, safety and welfare of consumers. Furthermore, regardless of the Department's consideration of warranties, consumers should not have to waive their rights to the manufacturer's warranty for the purpose of accepting imitation parts in repair of a motor vehicle.

Furthermore, in Bulletin No. 53, the Department stated that restoration of automobiles to pre-crash condition, "is especially important in repair of new cars which are still under factory warranty. In most instances, new car warranties require replacement with new parts manufactured by the manufacturer of the automobile. Accordingly, *used parts should never be recommended when their use would result in a disclaimer by the manufacturer of the manufacturer's warranty, or would result in accelerated depreciation of the vehicle. The same applies to repair procedures.* (Emphasis added.) Clearly, the intent of the Act, as buttressed by the Department in

---

<sup>6</sup> "Material Safety Data Sheets" are documents that provide detailed information on chemical substances.

Bulletin No. 53, is to preserve the waiver of warranties through the use of used and after-market parts.

Finally, the proposed regulation will adversely affect auto repair shops. If an appraiser requires the use of aftermarket parts and the parts malfunction or fail, the repair shop may be held liable for installing the malfunctioning, imitation part. With new or used original equipment manufacturer parts, the repair shop is protected by the manufacturer's warranty and the empirical data existing, which supports the safety and specifications of the parts.

**d. The Guild's proposal.**

The Guild suggests that the Department forego its proposed regulatory changes, and, in order to address the issues raised by the Department, consistent with the Appraisers Act, the Guild suggests that existing §62.3(c) be amended as follows:

(c) In the specification of new or used original equipment manufacturer parts, the following standards shall be used for the appraisal statement:

(1) During the period where a motor vehicle is covered by a manufacturers' warranty, the appraiser shall prepare an estimate of damages to repair a motor vehicle and return it to its pre-loss condition which is based on the use of new parts manufactured and repair procedures authorized and approved by the manufacturer of the motor vehicle to prevent accelerated depreciation of the motor vehicle.

(2) Where the motor vehicle is no longer covered by a manufacturers' warranty, the operational safety of the motor vehicle shall be paramount especially when the damages involved pertain to the uni-body, structure or its attachments, drive train, steering gear, suspension units, brake system or tires. Where the motor vehicle is no longer covered by a manufacturers' warranty, the appraiser may adjust the damage using used original equipment manufacturer parts, and the appraiser shall have certain knowledge of one or more relatively convenient locations where the particular used original equipment manufacturer parts are actually and reasonably available in usable condition equivalent to or better than the condition of the damaged parts prior to the accident. The appraiser shall specify the locations where such used original equipment manufacturer parts are in fact available.

**3. Proposed regulation §62.3(b)(4) - providing that an insured or insurer may seek resolution of any dispute regarding the cost to repair through the appraisal clause provision of the policy.**

**a. The proposed regulation.**

The Department proposes adding the following amendment to §62.3(b):

(4) ... 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.

**b. The existing Regulation.**

Neither the existing Regulations nor the Appraisers Act provide for the invocation of the appraisal clause dispute mechanism. However, this amendment is important because it provides a mechanism for resolution of disputes between appraisers and insurers and consumers and their selected repair shops.

**c. The Guild's comments to the Department's proposed amendments.**

The Department's proposal is ineffectual for several reasons.

First, not all insurance policies contain an appraisal clause which provides a dispute mechanism. As such, the Department should propose that the regulation, first, require an appraisal clause in all policies, and, second, compel the invocation of the clause. Second, even insurance companies that have such appraisal clause provisions regularly refuse the requests of consumers, or auto repair shops on behalf of their consumers, to invoke the clause to resolve the dispute. Finally, the appraisal clause is not available to third-party claimants. Although a third-party has no rights under the policy, the appraisal clause should be available to third-parties, through the insured, when the insured is responsible for the repairs.

**d. The Guild's proposal.**

The Department should amend the proposed regulations to provide that all insurer issuing policies in Pennsylvania must have an appraisal clause provision in their policies, which provides a process for dispute resolution. Further, the provision should state that, upon invocation of the appraisal clause provision by an insured, the insurer shall promptly begin the process. Finally, the provision should be available to third-parties, through first-party insureds.

Consistent with these suggestions, the Guild proposes the following language for 62.3(b):

(4) ... All motor vehicle policy contracts shall contain an appraisal clause provision or provide for dispute resolution process, which shall be made available to the insured or insurer or their designated representatives for resolution of disputes under the policy contract. If there is a dispute regarding the cost of repairs to a motor vehicle, the insured or insurer or their designated representatives, may seek resolution of the dispute through the appraisal clause provision or dispute resolution process. Resolution of the dispute through the appraisal clause provision or dispute resolution process shall begin within three (3) business days after notice of the dispute by the invoking party.

**4. Proposed regulation §62.3(f)(1) - deletion of a portion of the conflict of interest provisions.**

**a. The proposed regulation.**

The Department proposes deleting the last sentence of §62.3(g)(9), and moving the remaining portion to §62.3(f)(1). The Department does not provide any explanation in the Preamble for this deletion.

**b. The existing Regulation.**

The existing §62.3(g), provides:

- (g) The general standards of behavior of an appraiser shall include the following:
  - (1) Conduct to inspire public confidence by fair and honorable dealings.

(2) Appraisals of damaged property done without prejudice against, or favoritism toward, any party involved.

(3) Disregard of attempts of others to influence his judgment in the interest of the parties involved.

(4) Preparation of an independent appraisal of damage.

\* \* \*

(6) An appraiser may not receive directly or indirectly a gratuity or other consideration in connection with his appraisal services from a person except his employer or, if self-employed, his customer.

\* \* \*

(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 location or by a particular individual or business.*

**c. The Guild's comments to the Department's proposed changes.**

The Department's proposed deletion of §§62.3(g)(1), (2), (3), (4), (6) and the last sentence of (9) is inconsistent with the Appraisers Act, will adversely affect consumers and auto repair shops and is unreasonable.

In several subsections of 11(d), the Appraisers Act addresses the issue of "conflict of interests" for appraisers. 63 P.S. §861(d). Section 11(d) provides:

(f) Every appraiser shall:

(1) Conduct himself in such a manner as to inspire public confidence by fair and honorable dealings.

(2) Approach the appraisal of damaged property without prejudice against, or favoritism towards, any party involved in order to make fair and impartial appraisals.

(3) Disregard any efforts on the part of others to influence his judgment in the interest of the parties involved.

(4) Prepare an independent appraisal of damage.

\* \* \*

(g) No appraiser shall:

(1) Receive directly or indirectly any gratuity or other consideration in connection with his appraisal services from any person except his employer, or, if self employed, his customer.

The existing Regulations comport with the Appraisers Act, expanding and clarifying the aforementioned conflict of interest provisions of the Act, and are only partially redundant. More importantly, the existing Regulations were drafted to protect consumers and auto repairs shops from any conflict of interest that may arise between an appraiser and an insurer with regard to the cost, scope and manner of repairs. In its 1973 regulations, the Department defined conflict of interest as an association between an appraiser and *any* auto repair shop. (31 Pa. Code §1.3(B)(2)(a)). The problem for consumers and the independent auto repair industry is, notwithstanding these provisions, it is standard industry practice for appraisers to favor the interests of insurers when preparing appraisals.

With regard to the direct repair programs, insurance companies require auto repair shops participating in their programs to have a licensed appraiser on their staff, who is an employee of the auto repair shop, and who will prepare appraisals consistent with the directives, criteria, rates and procedures set forth in the insurers' manuals for appraisal and repair of a damaged motor vehicle.<sup>7</sup> Moreover, appraisers prepare appraisals of

---

<sup>7</sup> Black's Law Dictionary defines "Conflict of Interest" as a situation "in which regard for one duty tends to lead to disregard of another." If an appraiser is charged with the duty to prepare an independent

damage based on the type of damages and repairs insurers will agree to pay for, rather than writing an appraisal listing all the repairs that are necessary to return the damaged vehicle to its pre-loss condition. Finally, insurance companies provide incentives and bonuses to appraisers and participating direct repair shops: (1) to prepare appraisals which reduce the costs of repair to insurance companies; (2) to ensure that repairs to a damaged motor vehicle are made at an auto repair shop participating in their direct repair and referral programs; and (3) to write appraisals at reduced labor rates and which omit necessary costly procedures and provide for use of after-market, rather than original equipment manufacturer parts.

Accordingly, deletion of the existing Regulations will adversely affect consumers and the auto repair shop industry. The existing Regulations should remain since they protect consumers and auto repair shops. If any amendment should be made to the existing Regulations, the Department should enhance and strengthen the conflict of interest provisions.

**d. The Guilds proposal.**

The Department should not delete the provisions of existing §62.3(f). Furthermore, in order to reinforce the prohibition against conflicts of interest, the Guild suggests that the Department amend §62.3(f)(9) by adding the following language to the end of the existing paragraph:

(9) ... A direct or indirect conflict of interest shall exist when:

---

appraisal of damage, it is a direct conflict of interest for an appraiser to prepare that appraisal dependent on or with any reference to directives, criteria, rates and procedures set forth by the insurer.

(i) The appraiser assigned to prepare an independent appraisal of damage to a motor vehicle is employed by or in any way associated with the insurer, insured or any auto body repair shop<sup>8</sup>;

(ii) An appraiser prepares an independent appraisal of damage which is based on, *inter alia*, directives, criteria, rates and/or procedures set by an insurer for appraisal and repair of a damaged motor vehicle;

(iii) An appraiser agrees to or accepts a reward, gratuity or bonus from an insurer or an auto repair shop participating in a direct repair or referral program for preparing appraisals which reduce the costs of repair to the insurer, ensure that repairs to a damaged motor vehicle are made at an auto repair shop participating in their direct repair and referral programs, reduce labor rates, omit necessary costly procedures and/or provide for use of after-market, rather than original equipment manufacturer parts.

**5. Proposed regulation §62.1 - definitions of “*Appraisal*” and “*Pre-damaged condition*.”**

**a. The proposed regulation.**

The Department proposes including an amended definition for the term “*Appraisal*” and a new definition for the term “*pre-damaged condition*,” which will read as follows:

*Appraisal* - A written monetary determination of damage incurred to a motor vehicle when the making of such a determination is assigned in order to return the vehicle to its condition prior to the damage in question. Appraisals include determinations made by the insurer, its employees, its agents or related entities or other individuals or entities assigned to make a determination.

*Pre-damaged condition* - Condition of the motor vehicle just prior to the damage in question incurred.

---

<sup>8</sup> The original regulations specifically stated that a conflict of interest may not exist between an appraiser and any auto repair shop. (See 31 P.S. §1.3(B)(2)(a)).



The Department uses the term Appraisal throughout the proposed regulations and has inserted the term or the definition of Pre-damaged condition into its proposed regulation at §62.1(definition of *Appraisal*), §62.3(b), §62.3(c) and §62.3(e).

**b. The existing Regulation.**

The existing definitions provide,

*Appraisal* - A monetary determination of damage incurred by a motor vehicle when the making of such a determination is assigned in order to fix the value of insurance claims. Appraisals shall include a determination whether made by the insurer, its employees, its agents or related entities or made by another individual or entity otherwise assigned to make a determination.

Further, the existing Regulation in §62.3(b)(1) provides that the appraisal statement shall contain, “All items necessary to return the vehicle to its condition prior to the damage in question...”

Finally, the Appraisers Act requires an appraisal to contain an itemized listing of all damages. 62 P.S. §861(d).

**c. The Guild’s comments to the Department’s proposed amendments.**

The amendments proposed by the Department are inconsistent with Appraisers Act and existing regulation. In Bulletin No. 53, the Department stated that, “... in §62.3(b)(1) of the act a prime objective of the law is to insure the restoration of automobiles to pre-crash condition. This is the purpose for which the consumer pays his insurance premium. This should be the standard upon which all appraisals are made.”

As discussed more fully above, the Guild believes that the Regulations need to be strengthened, consistent with the Act, to provide that the appraisal shall include *all* items necessary to return a vehicle to its *pre-loss* condition. The intent of the Appraisers Act,

as set forth in the original regulations in 1973, was to require that an appraisal statement contain “all items necessary to return the vehicle to its condition prior to the damage in question ...”, (See 31 P.S. §1.3(A)(2)(a)), and an indication of the “cost or dollar amount of the value of all specified items.” (See 31 P.S. §1.3(A)(2)(b)).

**d. The Guild’s proposal.**

In order to strengthen the language of the proposed definitional changes consistent with the Appraisers Act, the Guild suggests that the Department amend the proposed language as follows:

*Appraisal* - An independently written, monetary determination of damage assigned<sup>9</sup> to and made by an appraiser at the request of an insurer, or its employees, agents or related entities. A written appraisal shall contain all the items necessary to return a motor vehicle to its pre-loss condition, including incidental charges provided for and required to be included in the policy contract.

*Pre-loss condition* - condition of the motor vehicle prior to the damage in question being incurred.

**6. Proposed regulation §62.3(b)(2) - requiring disclosure that an insured may be responsible for excess cost.**

**a. The proposed regulation**

The Department proposes that the written disclosure section of the proposed amendments in §62.3(b) provide:

(2) a statement that any excess costs above the appraised amount may be the responsibility of the vehicle owner.

---

<sup>9</sup> The use of the term “assigned” was a critical provision of the regulations when initially drafted in 1973. 31 Pa. Code §1.1(b)(1).

**b. The existing Regulation.**

Neither the existing Regulation nor the Appraisers Act authorize insurers to charge consumers with excessive costs. Indeed, §11(b) of the Appraisers Act provides that, "... the appraisal, which shall include an itemized listing of all damages, specifying those parts to be replaced and repaired."... Moreover, §146.8 of the regulations promulgated pursuant to the UIPA provides:

(d) If an insurer prepares an appraisal of the cost of automobile repairs, the appraisal shall be in an amount for which it may be reasonably expected the damage can be satisfactorily repaired....

\* \* \*

(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.

**c. The Guild's comments to the Department's proposed amendment.**

The Department's proposed regulation which will require disclosure that an insured may be responsible for costs above the appraisal amount is inconsistent with law, will adversely affect consumers an auto repair shops and is unreasonable.

The Department's proposed regulation is inconsistent with the Appraisers Act and UIPA. The Appraisers Act requires an appraiser to prepare an independent appraisal which includes an *itemized listing of all damages*. 63 P.S. §861(b). The regulations promulgated pursuant to the UIPA require an insurer to appraise the damage in an amount that the damage can be satisfactorily repaired and to restore it to *its condition prior to loss at no additional cost to the claimant*. 31 Pa. Code §146.8(d) and (f). As such, if all damages must be appraised such that no additional cost will be incurred by an insured, the Department's proposed change is inconsistent with the law.

Furthermore, in Bulletin No. 53, the Department stated that, “[C]learly, it is the *intent* of the law that the appraiser make an attempt to reconcile fairly any discrepancy between his own appraisal and a selected repair shop’s estimate. A number of *complaints* have been received by this Department involving appraisers assuming a “take it or leave it” attitude.” (Emphasis added.)

The proposed regulation will also adversely affect consumers and auto repair shops. By virtue of this provision, insurers will be able to set rates and procedures, consistent with their direct repair programs, and refuse to pay charges they believe are in excess of the rates and procedures in their programs. The consumer’s right to select the repair shop of its own choice will be mitigated by the right of appraisers and insurers to deny rates and procedures and charge the consumer for overages. As such, appraisers and insurers will be able to use their vast market powers to set the rates and procedures in an area to the detriment of consumers and the auto repair industry.

**d. The Guild’s proposal.**

Since the Department’s proposal is inconsistent with the Appraisers Act and existing Regulations, the Guild suggests that the amendment be stricken.

**B. Questions of the Guild.**

The Guild has the following questions concerning the Department’s proposed regulations.

1. What is the Department’s understanding of the difference between an “after-market crash part” and a “nonoriginal equipment manufacturer after-market crash part” for purposes of the definitions?

2. Is it the intention of the Department that the definition of “*pre-damaged condition*” requires an appraiser to write an appraisal which includes “... an itemized listing of all damages ...”?
3. Is it the intention of the Department that “*pre-damaged condition*” includes the entire loss in question, including but not limited to, car rental, glass, safety inspections, painting/refinishing, suspension alignment, tires, property damage, employment loss and any other consequential losses pertaining to the damage?
4. Is it the intention of the Department to permit the use of Non-OEM parts in the repair of the crash management system of a damaged vehicle?
5. Is it the intention of the Department to permit appraisers to persuade or induce consumers where their motor vehicle must, should or could be repaired at a particular location or by a particular individual?
6. Is it the intention of the Department to require consumers to pay for repairs or excess amounts not contained in the appraisal?
7. Is it the intention of the Department to permit appraisers to “bundle” or “group” items for repair in an appraisal, rather than providing an appraisal containing an itemized list of damages?
8. How does the Department intend to monitor appraisers’ use and warranty of “*after-market crash parts*”?
9. How does the Department intend to monitor the process whereby total loss evaluations are made by the automated data services?
10. Is it the intention of the Department that consumers will be able to arbitrate the amount offered by an appraiser for a total loss evaluation?

11. Is it the intention of the Department that consumers will be able to choose the Guide Source Method which best provides for their needs with regard to replacement vehicle evaluations?

12. Why has the Department removed the “unsolicited request” language from the regulations?

13. Is it the Department’s position that appraisers can prepare an independent appraisal of damage when employed by an insurer or auto repair shop?

14. Is it the Department’s position that insurers do not influence the judgment of appraisers even though they are employed by the insurers or auto repair shops?

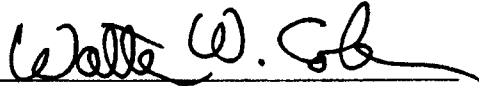
15. Is it the Department’s position that appraisers do not show prejudice against or favoritism towards any party even though they are employed by insurers or auto repair shops?

## **VI. CONCLUSION**

For all these reasons, the Guild respectfully requests that the Department should not proceed with its regulatory changes. If the Department chooses to proceed, the Guild requests that the Department hold public hearings for the purpose of reconsidering the proposed changes discussed above, and to consider adoption of the changes suggest by the Guild.

Respectfully submitted,

OBERMAYER REBMANN MAXWELL &  
HIPPEL LLP

By:   
Walter W. Cohen, Esquire  
Andrew J. Giorgione, Esquire  
204 State Street  
Harrisburg, PA 17101

Attorneys for the Pennsylvania Collision  
Trade Guild

Date: March 8, 1999

**EXHIBIT A**



RECEIVED  
PA INSURANCE DEPARTMENT  
98 OCT -2 PM 3:45  
ADMIN HEARINGS OFFICE

**BEFORE THE  
COMMONWEALTH OF PENNSYLVANIA  
INSURANCE DEPARTMENT**

**In re:** :  
**CONNIE PRINCIPATO and** :  
**PENNSYLVANIA COLLISION** : **No.**  
**TRADE GUILD, also t/a** :  
**COALITION FOR COLLISION** :  
**REPAIR EQUALITY** :

**PETITION FOR THE ISSUANCE OF A DECLARATORY ORDER  
TO TERMINATE A CONTROVERSY OR REMOVE UNCERTAINTY**

The Petitioners Connie Principato ("Mrs. Principato") and the Pennsylvania Collision Trade Guild also t/a Coalition for Collision Repair Equality (the "Guild"), by and through their counsel Obermayer Rebmann Maxwell & Hippel LLP, hereby file this Petition for the Issuance of a Declaratory Order to Terminate a Controversy or Remove Uncertainty pursuant to § 35.19 of the Rules of Administrative Practice and Procedure. 1 Pa. Code § 35.19. In support of their Petition, Mrs. Principato and the Guild aver as follows:

**I. INTRODUCTION**

1. Mrs. Principato, an adult individual with a principal residence of 33 Rockville Road, Holland, Pennsylvania, is the owner of a motor vehicle registered in and an insured consumer of the Commonwealth of Pennsylvania.

2. The Guild, which was founded in 1996 and has a current membership in excess of 200 auto repair shops, including independent, non-participating and direct auto repair shops throughout Pennsylvania, is a Pennsylvania association with a principal place of business at 906 Rhawn Street, Philadelphia, PA 19111.

3. The mission of the Guild is to promote the lawful, permissible and efficient appraisal and repair of damaged motor vehicles consistent with the Motor Vehicle Physical Damage Appraisers Act and rules and regulations promulgated thereunder by the Commonwealth of Pennsylvania Insurance Department ("Department"), and to seek enforcement of the Appraisers Act and implementing rules and regulations by the Department.

4. Generally, Mrs. Principato and the Guild have filed this Petition requesting a declaratory order from the Department whether certain insurance companies and their appraisers have violated and continue in a course of conduct that violates the Motor Vehicle Physical Damage Appraisers Act, 63 P.S. §§ 851 *et seq.* ("Appraisers Act"), Unfair Insurance Practices Act, 40 P.S. §§ 1171.1 *et seq.* ("UIPA") and the rules and regulations of the Department promulgated at 31 Pa. Code §§ 62.1 *et seq.* and §§ 146.1 *et seq.* ("Regulations"), by:

- a. Directing insured Pennsylvania consumers and claimants to particular appraisers and auto repair shops for appraisal and repair of their damaged motor vehicles;
- b. Failing to list specifically in a factual appraisal all the items necessary to repair a motor vehicle and return it to its condition prior to damage and to list the cost or dollar amount of those items necessary for repair; and
- c. Providing consideration to and directing the actions of appraisers and other representatives employed by insurance companies or direct repair shops to prepare an independent appraisal of damage.

## **II. BACKGROUND**

### **A. Mrs. Principato**

5. Mrs. Principato is the owner of a 1994 Mitsubishi Diamonte which was involved in an accident in December 1994.

6. Mrs. Principato's insurance company directed her to take her damaged motor vehicle to one of its participating direct repair shops for appraisal and repair of her vehicle.

7. An appraisal was prepared by an appraiser writing the appraisal consistent with the insurance company's guidelines.

8. The appraisal document did not specify all the repairs necessary to adequately and safely repair the vehicle and return it to its pre-loss condition.

9. The repair of Mrs. Principato's vehicle was never properly performed; therefore, after several years of complaining to the direct repair shop, she took her vehicle to an independent, non-participating, auto repair shop for repair.

10. The independent, non-participating, auto repair shop compared the repairs performed by the direct repair shop against the repairs which were necessary and repairs which were listed in the partial appraisal and found that necessary procedures and repairs were not listed in the appraisal and, therefore, not performed.

11. The independent, non-participating, auto repair shop further found that some repairs that were listed in the appraisal were not performed.

12. The improperly written appraisal and failure to perform all the necessary repairs threatened the safety of Mrs. Principato and rendered unavailing the warranty on and performance of the vehicle.

**B. The Guild**

13. Since early 1995, several auto repair shops in Southeastern Pennsylvania have been sending complaints to the Insurance Department that insurance companies and their appraisers are violating the Appraisers Act and the Regulations, the UIPA and Bulletin No. 53 of 1977<sup>1</sup> through the creation of "direct repair shops" and "direct repair and referral programs<sup>2</sup>."

14. In their complaints, the auto repair shops assert that through direct repair and referral programs, insurance companies and their appraisers have been directing and/or referring their insured consumers to particular auto repair shops for repair of their damaged vehicles and are refusing to pay the actual cost to return a damaged vehicle to

---

<sup>1</sup> Bulletin No. 53 of 1977 was promulgated by the Insurance Department to provide, *inter alia*, interpretation of the Appraisers Act. The Bulletin directly addressed interpretation of the critical provisions of the Appraisers Act raised by the members of the Guild in their Complaints to the Insurance Department. The provisions addressed in the Bulletin included, *inter alia*, §§ 62.3(b)(1) and (4) and §§ 62.3(g)(8), (9), and (12), which are cited herein. A true and correct copy of Bulletin No. 53 of 1977 is attached hereto, made a part hereof, and incorporated herein as if fully set forth in Exhibit "A."

<sup>2</sup> "Direct repair and referral programs" are oral and written contractual arrangements negotiated between insurance companies and auto repair shops wherein the insurance companies agree to refer insured consumers and claimants to the auto repair shops for appraisal and repair of their damaged vehicles and, in exchange, the auto repair shops agree to appraise and repair damaged vehicles in accordance with the insurance company's rates and procedures. The rates demanded by the insurance companies are below the rates charged by independent, non-participating, auto repair shops. The insurance companies also demand parts discounts and other concessions from their selected auto repair shops in exchange for the referral of business. Insurance companies are also providing financing to "consolidators" who purchase independent auto repair shops and convert them into participating direct repair shops. By contracting with selected auto repair shops and consolidating service, insurance companies are monopolizing the auto repair industry, which has negatively affected the quality of service throughout the industry and adversely impacted the rights of insured consumers. Since the members of the Guild believe the insurance companies' direct repair and referral programs violate the Appraisers Act and the Regulations, and the UIPA, and result in poor quality of work for their customers, they refuse to participate in such programs and remain independent, non-participating, auto repair shops.

pre-accident condition; instead, offering to repair only a portion of the damage consistent with their definition of "prevailing market procedures" and to pay only a "prevailing market rate."

15. In April 1995, House Bill No. 1394 of 1995, was introduced and referred to the Insurance Committee at the request of the insurance industry. House Bill No. 1394 would have permitted insurance companies to refer or recommend auto repair shops to their policy holders and claimants for repair of a motor vehicle and would have provided that insurance companies "shall be under no obligation" to pay more than the "prevailing market price" for repair of a motor vehicle<sup>3</sup>.

16. The Guild was formally founded in 1996 in order to: (i) confront the seemingly unregulated and unfettered manner in which insurance companies and their appraisers process motor vehicle damage claims; (ii) address the lack of enforcement of the Appraisers Act; and (iii) respond to the then-proposed changes to the UIPA offered by the insurance industry through House Bill No. 1394.

17. The Guild was advised by the Insurance Department that in April 1996 the Department established a task force to investigate and evaluate the numerous complaints received from the Guild, insured consumers and other auto repair shops concerning the handling of motor vehicle damage claims by insurance companies and their appraisers. A true and correct copy of a letter from Helfried G. LeBlanc, Deputy Insurance

---

<sup>3</sup> This was not the first request by the insurance industry and their appraisers to seek legislative authority for their direct repair shops and direct repair programs. For instance, in 1989, the insurance industry supported House Bill No. 431 of 1989, in which they sought legislation authorizing "preferred provider body shops." This legislation was never enacted.

Commissioner, is attached hereto, made a part hereof, and incorporated herein as if fully set forth in Exhibit "B."

18. In May 1996, the Guild supported House Bill No. 1250 of 1996, which was introduced and referred to the Insurance Committee. The purposes of House Bill No. 1250 were to, *inter alia*: (1) affirmatively prohibit insurance companies and their appraisers from (i) requiring that appraisals be made at particular locations and (ii) referring or recommending that repairs be made at specific auto repair shops selected by insurance companies and their appraisers; (2) provide for preparation of independent appraisals of damage which would (i) ensure that the actual cost of repair was adequately covered, (ii) prohibit the use of "after-market" parts and prohibit insurance companies from denying the performance of necessary repair procedures; and (3) provide for enforcement of the Appraisers Act by the Office of Attorney General.

19. After the Guild met with Insurance Commissioner Linda S. Kaiser in April 1996, concerning enforcement of the Appraisers Act and Bulletin No. 53, on July 20, 1996, Insurance Commissioner Kaiser repealed Bulletin No. 53 on the basis that it was "no longer necessary for the proper regulation of the insurance industry in the Commonwealth." A true and correct copy of Bulletin No. 36 of 1996 is attached hereto, made a part hereof, and incorporated herein as if fully set forth in Exhibit "C."

20. On August 13, 1996, members of the Guild testified before the Pennsylvania House of Representatives in opposition to House Bill No. 1394 of 1995. A true and correct copy of the testimony of the Guild is attached hereto, made a part hereof, and incorporated herein as if fully set forth in Exhibit "D."

21. From and after August 13, 1996, the Guild testified before the Pennsylvania House of Representatives on several additional occasions across the Commonwealth in support of House Bill No. 1250 of 1996.

22. Notwithstanding the fact that members of the Guild, insured consumers and claimants and other independent, non-participating auto repair shops have filed a substantial amount of complaints with the Insurance Department against insurance companies and appraisers under the Appraisers Act and Regulations, the Insurance Department has failed to recognize the overwhelmingly obvious violations by insurance companies and appraisers and to take action against insurance companies and/or their appraisers under the Appraisers Act and/or the Regulations to prohibit violations in the future.

23. On several occasions, the Insurance Department suggested to the members of the Guild that it could file a petition for a declaratory order to terminate a controversy in order to resolve the conflict between it and the Insurance Department over the Department's interpretation of the Appraisers Act and enforcement of the Appraiser Act against insurance companies and their appraisers. A true and correct copy of a letter from Deputy Commissioner Helfreid G. LeBlanc is attached hereto, made a part hereof, and incorporated herein as if fully set forth in Exhibit "E."

24. On January 20, 1998, members of the Guild and their counsel met with representatives of the insurance industry and Insurance Commissioner Diane Koken to discuss, *inter alia*, the interaction between the insurance industry and independent, non-participating auto repair shops and the interpretation of the Department's regulations.

25. At that January 20<sup>th</sup> meeting, the Guild was informed that the Department was considering revisions to its regulations.

26. On February 9 and April 13, 1998, counsel to the Guild sent letters to Commissioner Koken requesting the ability to comment on any proposed changes to its regulations. A true and correct copy of the letters to Commissioner Koken are attached hereto, made a part hereof, and incorporated herein as if fully set forth in Exhibit "F."

27. As of this date, Commissioner Koken has not provided a written response to those February 9<sup>th</sup> and April 13<sup>th</sup> letters.

28. Pursuant to subsequent telephone conversations between Deputy Commissioner LeBlanc and counsel for the Guild, a meeting occurred on September 28, 1998 at which the Guild representatives were informed that no regulatory changes would be submitted for public comment until State Representative Nicholas Micozzie, Chairman of the House Insurance Committee, had indicated to the Department that his Committee's efforts at legislative change had been concluded.

29. Since over two (2) years have passed in which neither regulatory nor legislative change has taken place to address the Guild's concerns, the Guild is filing this Petition to seek administrative clarification and enforcement of existing and applicable Department regulations.

### **III. BASIS FOR PETITION**

30. The Guild hereby requests that the Insurance Department declare that insurance companies and appraisers are violating the Appraisers Act and Regulations and the UIPA by (1) directing insured Pennsylvania consumers and claimants to particular appraisers and auto repair shops for appraisal and repair of their damaged motor vehicle;



(2) failing to list in a factual appraisal all the items necessary to repair a motor vehicle and return it to its condition prior to the damage and to list the cost or dollar amount of those items necessary for repair; and (3) providing consideration to and directing the acts of appraisers and representatives employed by insurance companies or auto repair shops in the preparation of an independent appraisal of damage.

**A. Insurance Companies And Appraisers Violate The Appraisers Act And The Regulations And The UIPA When They Direct Insured Consumers To Particular Auto Repair Shops For Repair Of Their Damaged Motor Vehicle.**

---

**1. The Appraisers Act and the Regulations**

31. The Appraisers Act provides that “no appraiser or his employer shall require that repairs be made in any specified repair shop.” 63 P.S. § 861(d).

32. The Regulations provide that,

(g) The general standards of behavior of an appraiser *shall* include the following:

\* \* \*

(8) An appraiser or his employer *may not recommend or require* that repairs be made at a particular place or by a particular individual.

(9) ... 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 location or by a particular individual or business.

31 Pa. Code § 62.3(g)(8) and (9), (emphasis added).

33. The Regulations further provide that “Insurers may not require a claimant ... to obtain a repair estimate or to have the automobile repaired at specific repair shops.”

31 Pa. Code § 146.8(b).

34. Contrary to the Appraisers Act and Regulations, insurance companies and their appraisers consistently and illegally make unsolicited recommendations to their

insured consumers and claimants that they have their damaged motor vehicles appraised and repaired at a specific auto repair shop and attempt to dissuade their insured consumers, through intimidation and fear of economic loss, from having their damaged motor vehicles repaired at an independent auto repair shop of their choice.

35. Upon receiving a notice of claim from their insured consumers and claimants, insurance companies and their appraisers consistently and illegally advise their insured consumers of their direct repair and referral programs, and direct or recommend to their insured consumers that the damage to their motor vehicle be appraised and repaired at an auto repair shop participating in their direct repair and referral programs.

36. Insurance companies and their appraisers directly coerce, persuade, induce and advise their insured customers and claimants through fear and intimidation that damage to their motor vehicles must, should or could be repaired at an auto repair shop participating in their direct repair and referral programs.

37. Insurance companies and their appraisers directly coerce, persuade, induce and advise their insured customers and claimants through conversations, advertisements, literature, and “negative referral letters<sup>4</sup>” that damage to their motor vehicles must, should or could be repaired at participating direct repair shops by advising them that:

- a. Their motor vehicle will be appraised more quickly;
- b. Their motor vehicle will be repaired more quickly;

---

<sup>4</sup> “Negative referral letters” are correspondence sent by insurance companies to their insured consumers and claimants which state that if they have their damaged vehicle repaired at an independent, non-participating, auto repair shop of their choice they are choosing a non-selected, non-preferred shop, whose quality the insurance company cannot guarantee and whose service the insurance company does not recommend.

- c. The insurance company can only insure the quality of workmanship at direct repair shops;
- d. Independent auto repair shops charge in excess of the “prevailing market rate” to repair a motor vehicle; and/or
- e. The insurance company will pay money towards the deductible if the insured consumer or claimant’s damaged vehicle is repaired at direct repair shops.

38. Insurance companies and their appraisers indirectly coerce, persuade, and induce their insured customers and claimants that damage to their motor vehicles must, should or could be repaired at an auto repair shop participating in their direct repair programs by:

- a. Assigning their appraisers and preparing an appraisal of damage giving priority to those insured customers and claimants who have their damaged motor vehicle taken to an auto repair shop participating in their direct repair and referral programs, and, conversely, delaying the appraisal and repair process if their insured consumers or claimants have their vehicle taken to an independent, non-participating, auto repair shop;
- b. Processing claim checks giving priority to those insured customers and claimants who have their damaged motor vehicle taken to an auto repair shop participating in their direct repair and referral programs; and

- c. Refusing to pay for towing service, where necessary, from the participating auto repair shop where insured consumers or claimants were directed to have their damaged vehicle appraised, to an independent, non-participating, auto repair shop selected by the insured consumer or claimant for repair of their damaged motor vehicle.

## 2. The UIPA

39. The UIPA provides that,

(1) "Unfair methods of competition" and "unfair or deceptive acts or practices" in the business of insurance means ... (i) making, publishing ... any ... estimate, ... statement, ... which misrepresents the benefits, advantages, conditions or terms of any insurance policy.

40 P.S. § 1171.5(a)(1)(i).

40. Insurance companies engage in unfair methods of competition and unfair or deceptive acts or practices by issuing automobile insurance policies, and directing advertisements, brochures and letters to their insured consumers and claimants which misrepresent the benefits and conditions of their insurance policies by offering insured consumers and claimants the right to select the auto repair shop of their choice, when it is the intent of insurance companies to have their insured consumers and claimants' damaged vehicles appraised and repaired at their direct repair shops.

**B. Insurance Companies And Their Appraisers Consistently Refuse And Fail To List In Their Appraisals All The Items Necessary To Repair A Motor Vehicle And Return It To Its Condition Prior To The Damage And To List The Cost Of Those Items Necessary For Repair.**

**1. The Appraisers Act and the Regulations**

41. The Appraisers Act provides that "... appraisal ... shall include an itemized listing of all damages, specifying those parts to be replaced or repaired." 63 P.S. § 861(b).

42. The Regulations provide that,

(b) The appraisal statement shall contain the following:

(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 matters incidental to repair of the incurred damage. 31 Pa. Code § 62.3(b)(1).

(2) A clear indication of the cost or dollar amount value of specified items. 31 Pa. Code § 62.3(b)(2).

\* \* \*

(4) If there is a date after which an insurer will not be responsible for a related towing services or storage charges, or both, and after which the charges will be the responsibility of the consumer, the appraisal shall clearly indicate the date. 31 Pa. Code § 62.3(b)(4).

\* \* \*

31 Pa. Code §§ 62.3(b)(1), (2) & (4).

43. Insurance companies and their appraisers consistently refuse and fail to provide an itemized list in their appraisals which sets forth the items necessary to return a vehicle to its condition prior to the damage.

44. Instead, insurance companies and their appraisers will list a portion of the repairs they will agree to provide compensation for to the independent, non-participating, auto repair shop, and will then “bundle<sup>5</sup>” any remaining items in a “miscellaneous” category and assign a dollar amount which will partially pay for this “bundle” of damage.

45. The Regulations provide that,

(e) The following standards shall be used regarding the betterment of the vehicle:

(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.

\* \* \*

31 Pa. Code § 62.3(e)(1).

46. The Regulations also provide that “... 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.” 31 Pa. Code § 146.8(f).

47. Insurance companies and their appraisers consistently refuse and fail to prepare factual appraisals which set forth the items and amounts necessary to return a vehicle to its condition prior to the damage in question being incurred in order to avoid paying for all the items necessary to repair a damaged motor vehicle.

48. Insurance companies and their appraisers consistently refuse and fail to prepare factual appraisals which set forth the items and amounts necessary to return a

---

<sup>5</sup> “Bundling” is the practice by insurance companies and their appraisers of pricing several related products and/or services together to provide a competitive pricing advantage and to avoid an itemized list of repairs that would establish a pattern of procedures insurance companies and their appraisers will agree to pay.

vehicle to its condition prior to the damage in question being incurred in order to avoid setting a precedent for paying for particular damages to an independent, non-participating, auto repair shop which they have previously refused to pay to auto repair shops participating in their direct repair and referral programs.

49. Instead, insurance companies and their appraisers will not agree to provide compensation to the independent, non-participating, auto repair shop for the amount necessary to return a vehicle to its condition prior to damage, and will refuse to list such amounts regardless of the necessity, resulting in economic discrimination against the independent, non-participating, auto repair shop.

50. The Regulations provide that,

(g) The general standards of behavior of an appraiser shall include the following:

(12) The responsibility of the appraiser shall include delivery and explanation of the appraisal as follows:

(i) ... The appraiser shall discuss the appraisal with the selected repair shop owner, its authorized representative or any other parties as is reasonably necessary to insure that the actual costs of repairs are adequately covered in the appraisal.

\* \* \*

31 Pa. Code § 62.3(g)(12)(i).

51. Insurance companies and their appraisers consistently refuse and fail to discuss the preparation of appraisals which set forth the items necessary to insure that the actual costs of repairs are adequately covered in the appraisal as more fully discussed above.

**2. The UIPA**

52. The UIPA provides that,

(4) "Unfair methods of competition" and "unfair or deceptive acts or practices" in the business of insurance means ... entering into any agreement to commit, or by any concerted action committing, any act or boycott, coercion or intimidation resulting in or tending to result in unreasonable restraint of, or monopoly in, the business of insurance.

40 P.S. § 1171.5(a)(4).

53. By entering into agreements with selected auto repair shops and appraisers and supporting the purchase and consolidation of independent auto repair shops, insurance companies are engaging in the concerted action of boycotting resulting in the unreasonable restraint of, or monopoly in, the business of insurance, including the appraisal and repair of damaged motor vehicles.

**C. It Is A Conflict Of Interest For Insurance Companies To Direct The Methods And Manner In Which Appraisals Are Written.**

**1. The Appraisers Act and the Regulations**

54. The Appraisers Act provides that,

(f) Every appraiser shall:

\* \* \*

(2) Approach the appraisal of damaged property without prejudice against, or favoritism toward, any party involved in order to make fair and impartial appraisals.

(3) Disregard any efforts on the part of others to influence his judgment in the interest of the parties involved.

(4) Prepare an independent appraisal of damage.

\* \* \*



63 P.S. §§ 861(f)(2) - (4).

55. The Regulations provide that,

(g) The general standards of behavior of an appraiser shall include the following:

(1) Conduct to inspire public confidence by fair and honorable dealings.

(2) Appraisals of damaged property done without prejudice against, or favoritism toward, any party involved.

(3) Disregard of attempts of others to influence his judgment in the interest of the parties involved.

(4) Preparation of an independent appraisal of damage.

\* \* \*

(6) An appraiser may not receive directly or indirectly a gratuity or other consideration in connection with his appraisal services from a person except his employer or, if self-employed, his customer.

\* \* \*

(8) An appraiser or his employer may not recommend or require that repairs be made at a particular place or by a particular individual.

(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 location or by a particular individual or business.

\* \* \*

31 Pa. Code §§ 62.3(g)(1)-(4), (6), (8) and (9).

56. Insurance companies require auto repair shops participating in their direct repair and referral programs to have a licensed appraiser on their staff, who is an employee of the auto repair shop, and who will prepare appraisals consistent with the directives, criteria and procedures set forth in the insurance companies' manuals for appraisal and repair of a damaged motor vehicle.

57. By requiring the participating direct repair shop to engage a licensed appraiser that must prepare an appraisal of damages consistent with the insurance companies' directives, criteria and procedures, insurance companies and appraisers are violating the conflict of interest provisions of the Appraisers Act.

58. Appraisers cannot prepare independent appraisals of damage when they must prepare appraisals consistent with procedural manuals prepared by the insurance companies.

59. By providing appraisers with procedure manuals, insurance companies are influencing the judgment of appraisers.

60. Insurance companies and appraisers prepare appraisals of damage based on the type of damages and necessary repairs that their participating auto repair shops will charge the insurance companies for, rather than writing an appraisal listing the repairs that are necessary to return the damaged vehicle to its pre-loss condition.

61. Insurance companies provide incentives to appraisers and participating direct repair shops to prepare appraisals which reduce the costs of repair to insurance companies.

62. Insurance companies provide incentives to appraisers and participating direct repair shops to ensure that repairs to a damaged motor vehicle are made at an auto repair shop participating in their direct repair and referral programs.

63. Insurance companies provide incentives to appraisers and participating direct repair shops by providing bonuses to direct repair shops and appraisers who write appraisals at reduced labor rates and which omit necessary costly procedures and provide for use of after-market, rather than new, parts.

## 2. The UIPA

64. The UIPA provides that,

(10) Any of the following acts if committed or performed with such frequency as to indicate a business practice shall constitute unfair claim settlement or compromise practices ... (iv) refusing to pay claims without conducting a reasonable investigation based on all available information ... (viii) attempting to settle a claim for less than the amount to which a reasonable man would have believed he was entitled ... .

40 P.S. § 1171.5(a)(10)(iv) and (viii).

65. Insurance companies engage in unfair claim settlement or compromise practices by consistently refusing to pay the actual cost to return a vehicle to its condition prior to loss based on a full investigation and appraisal.

66. Insurance companies engage in unfair claim settlement or compromise practices by consistently attempting to settle claims with independent auto repair shops for less than the amount contained in the appraisal prepared by the independent, non-participating, auto repair shop to the satisfaction of the insured customer.

WHEREFORE, Mrs. Principato and the Guild respectfully request that the Insurance Department issue an order declaring that:

1. Insurance companies and their appraisers licensed to business in Pennsylvania are violating the Appraisers Act and the Regulations by:

- a. Referring or making unsolicited recommendations to their insured consumers to auto repair shops participating in their direct repair and referral programs;
- b. Failing to list in an appraisal all the items necessary to repair a motor vehicle and return it to its condition prior to damage and to list the cost or dollar amount of those items necessary for repair; and
- c. Providing consideration to and directing the actions of appraisers and representatives employed by insurance companies or direct repair shops to prepare an independent appraisal of damage.

2. Mrs. Principato and the Guild also respectfully request that the Insurance Department issue an order declaring that insurance companies are violating the UIPA by:

- a. Engaging in unfair methods of competition and unfair or deceptive acts or practices by misrepresenting the benefits, conditions and terms of their insurance policies;
- b. Entering into agreements with selected direct repair shops and appraisers and supporting the purchase and consolidation of independent auto repair shops, in a concerted action of boycotting

resulting in the unreasonable restraint of, or monopoly in, the business of insurance.


- c. Engaging in unfair claim settlement or compromise practices by consistently refusing to pay the actual cost to return a vehicle to its condition prior to loss based on a full investigation and appraisal and by consistently attempting to settle claims with independent, non-participating, auto repair shops for less than the amount contained in the appraisal prepared by the independent, non-participating, auto repair shop to the satisfaction of the insured customer.
- d. Boycotting certain independent, non-participating, auto repair shops which are members of the Guild, by targeting these shops for transmission of negative referral letters to their insured customers and claimants.

3. Mrs. Principato and the Guild also respectfully request that the Insurance Department issue an order declaring that there is no provision in any law, act, regulation, order or other governmental decree which permits insurance companies and appraisers to only pay for "prevailing market procedures" and only at the "prevailing market rate" to repair damage to a motor vehicle.

Mrs. Principato and the Guild further respectfully request that the Insurance Department issue an order requiring insurance companies and appraisers in Pennsylvania to immediately cease and desist from any of the actions set forth above which are in violation of law.

Respectfully submitted,

OBERMAYER REBMANN MAXWELL  
& HIPPEL, LLP

By: 

Walter W. Cohen, Esquire

Attorney I.D. No. 12097

Andrew J. Giorgione, Esquire

Attorney I.D. No. 66276

204 State Street

Harrisburg, PA 17101

(717) 234-9730

Attorneys for Petitioners Connie Principato  
and the Pennsylvania Collision Trade Guild  
t/a the Coalition for Collision Repair  
Equality

Dated: October 2, 1998

**EXHIBIT A**

All claim matters for the Medical Professional Liability Catastrophe Loss Fund will be handled from that office.

William K. Myrtetus,  
Director, Medical Professional  
Liability Catastrophe Loss Fund

Bulletin No. 53

Proper Interpretation of Motor Vehicle Physical  
Damage Appraiser Act and Regulation Thereunder

September 9, 1977

During recent months, the Insurance Department has received a number of allegations of potential violations of the Motor Vehicle Physical Damage Appraiser Act, act of December 29, 1972 (P. L. 1713, No. 367), or 75 P. S. § 3001, *et seq.*, and of the Department's rules and regulations pursuant thereof which are found at 31 Pa. Code, § 62.1 *et seq.* This notice is being published in view of the possibility that a number of licensees are misinterpreting certain key provisions of the law.

(1) **Improper referrals** — One of the most common complaints relates to the improper referral of claimants to firms engaged in motor vehicle physical damage repair. The regulation reads:

§ 62.3(g)(8) — “No appraiser shall recommend, or require that repairs be made at any particular place or by a particular individual.”

§ 62.3(g)(9) — “\*\*\*a licensed appraiser shall not, in any manner whatsoever, attempt to directly or indirectly coerce, persuade, induce or advise the customer 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 ”

§ 62.3(g)(12)(iii) — “Upon the unsolicited request of the customer, an appraiser shall provide 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 accordance with the written appraisal.”

Plainly stated, the law emphatically prohibits:

- (a) direct referral;
  - (b) unrequested recommendations;
  - (c) solicitation of a request from a claimant for such recommendations.
- (2) Failure to discuss an appraisal and/or a rendered estimate with a



**selected repair shop owner — Another prevalent complaint concerns the failure of the appraiser to discuss his appraisal with a selected repair shop owner, as well as with the owner of the vehicle. The regulation reads:**

**§62.3(g)(12)(ii) — “\*\*\*the appraiser shall discuss the appraisal with the selected repair shop owner, its authorized representative or any other parties as is reasonably necessary to insure that the actual cost of repairs is adequately covered in the appraisal.”**

**Clearly, it is the intent of the law that the appraiser make an attempt to reconcile fairly any discrepancy between his own appraisal and a selected repair shop's estimate. A number of complaints have been received by this Department involving appraisers assuming a “take it or leave it” attitude.**

**(3) Failure to explain an appraisal and/or a rendered estimate to a claimant — It is further the intent of the law that the appraiser discuss and explain any discrepancies between his own appraisal and a rendered estimate with the claimant at the claimant's request.**

**Confusion frequently arises with the claimant because the appraiser has failed to explain appraisal factors such as those relating to depreciation or discounting for new parts. The law specifies that such factors be thoroughly disclosed on the appraisal form. The regulation reads:**

**§62.3(b)(1) — “\*\*\* there shall be a specification [in the appraisal statement] of any 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 matters incidental to repair of the incurred damage.”**

**It is also the clearly stated intent of the law that the appraisal statement plainly disclose to the claimant any dollar amount that he or she will be required to pay.**

**(4) Failure to reappraise when supplementary allowances are requested by repair shops -- Closely related to the failure to discuss discrepancies with a selected repair shop is the failure to provide a prompt reappraisal when supplementary allowances are requested by the repair shop. The regulation states:**

**§62.3(g)(13) — “An appraiser shall promptly reinspect damaged vehicle prior to the repairs in question when supplementary allowances are requested by repair shops and/or the amount of damage is in dispute.”**

**(5) Failure to make a personal inspection of damages — The law provides that all appraisals are to be based upon personal inspection of the damages. It also provides that all repair estimates used or secured by an appraiser must be based on personal inspection. The regulation reads:**

**§62.3(g)(11) — “Personal inspection of damaged property by the appraiser is required \*\*\***

**“(i) No appraiser shall secure or use repair estimates that have been obtained by use of photographs, telephone calls, or in any manner other than personal inspection.”**

(6) **Failure to base appraisal upon full restoration to prior condition —** As stated in §62.3(b)(1) of the act a prime objective of the law is to insure the restoration of automobiles to pre-crash condition. This is the purpose for which the consumer pays his insurance premium. This should be the standard upon which all appraisals are made. This factor should be kept very much in mind when considering the use of new parts as against used parts. This is especially important in repair of new cars which are still under factory warranty. In most instances, new car warranties require replacement with new parts manufactured by the manufacturer of the automobile. Accordingly, used parts should never be recommended when their use would result in a disclaimer by the manufacturer of the manufacturer's warranty, or would result in accelerated depreciation of the vehicle. The same applies to repair procedures.

In consideration of used parts, the law requires that the operational safety of the motor vehicle shall be paramount. Also, the law requires that when used parts are specified, the appraiser shall have certain knowledge of convenient locations where these parts are available and must specify these locations when requested to do so. The regulation reads:

§62.3(c) — "In the specification of new or used parts, the following standards shall be used for the appraisal statement:

"(1) The operational safety of the motor vehicle shall be paramount especially when the parts involved pertain to the drive train, steering gear, suspension units, brake system, or tires.

"(2) If used parts are specified in the appraisal, the appraiser shall have certain knowledge of one or more relatively convenient locations where the particular used parts are actually and reasonably available in usable condition equivalent to or better than the condition of the damaged parts prior to the accident. On request, the appraiser shall specify the locations where such used parts are in fact available."

(7) **Compelling Claimants to secure appraisal at a specified location —** While it is understood that certain carriers have found it more efficient to provide so-called "drive-in claims service," the operational safety of the motor vehicle is a vital factor in determining whether or not a claimant should avail himself of such a service. Therefore, the law is clear that no person shall request a consumer to drive his motor vehicle to any location for inspection or appraisal without first being satisfied through inquiry or otherwise, that said motor vehicle is safe for operation on the public highways and meets the requirements of the Pennsylvania Motor Vehicle Code. If the owner of such vehicle, or his representative, states a belief that such vehicle may not meet the foregoing criteria, the appraiser shall arrange for inspection and appraisal at the location where the vehicle then is, or, in the alternative, shall make a suitable agreement for towing said vehicle to another location. The law is clear that even in such cases, inspection and appraisal shall be executed within a reasonable time period.

(8) **Needless or improper delay in assignment and/or execution of inspection and appraisal** — While the law requires that inspection of a vehicle shall be made within six working days of an assignment to an appraiser, no time is specified in which an assignment of appraisal must be made after notice of loss is received. While no time is specified, it is the thrust of the law to provide speedy redress to the consumer. The regulations should, therefore, be read to mean that an appraisal should be assigned promptly and within a reasonable time after a loss is reported. A common complaint is that appraisals are not promptly assigned but rather await assignment for several days, sometimes as much as a month. This is clearly contrary to the intent of the law.

(9) **Penalties** — Violators of the Motor Vehicle Physical Damage Appraisers Act are subject to loss of license, fine and/or imprisonment. The legislature has also deemed violations of the act to be criminal offenses, and the perpetrators of such violations to be further subject to arrest, prosecution and conviction in a court of law.

William J. Sheppard  
Insurance Commissioner

**EXHIBIT B**



EXECUTIVE OFFICES

**COMMONWEALTH OF PENNSYLVANIA  
INSURANCE DEPARTMENT**

**STRAWBERRY SQUARE  
HARRISBURG, PA. 17120**

Phone (717) 787-8174  
Fax (717) 787-8888

March 31, 1998

Mr. Jack Aigner  
Master Craft Collision Center  
P.O. Box 7178  
1841 West Lincoln Highway  
Pennel, PA 19047-7178

Dear Mr. Aigner:

Commissioner Koken and I would like to thank you and members of P.C.T.G. for the information you shared with us during our meeting on January 20, 1998. We are pleased to hear that you found the meeting informative. At this point, I would like to elaborate on the items you have presented in your letter of February 20, 1998.

First, you have requested information regarding our collision repair complaint handling process. As you know, in April 1996, the Department established a task force and centralized the handling of complaints from the collision repair industry at the Harrisburg Regional Office. The task force was charged with focusing on the issues raised by the collision repair industry and with determining the validity of the allegations of widespread insurer violations. To this end, the task force representatives from the Bureau of Consumer Services and Enforcement have been, and will continue to thoroughly review and investigate each complaint brought to our attention.

Contrary to the statements you have provided in your letter, insurance companies are required to document their compliance with the applicable statutes and regulations. However, you must recognize that many of the activities criticized by the collision repair industry are not addressed in the Motor Vehicle Physical Damage Appraisers Act or any other statute. Consequently, upon investigation our conclusion has to be that no laws were violated.

You have highlighted your concerns regarding Mr. D'Amico's statement in his letter dated October 2, 1997. While you challenge that Mr. D'Amico is not providing a possible consumer solution, we'd like to point out such solutions are common in resolving insurer payment disputes. For example, consumers who are aggrieved by their property settlements must pursue the appraisal clause offered in their policy or initiate a private action through a district magistrate or court of competent jurisdiction. Additionally, consumers who are aggrieved by decisions made by their health care insurers often must pursue the grievance procedure offered by their respective plan or initiate a private action as mentioned above. In each of these examples, the

Department offers its assistance by determining insurer compliance with the applicable statutes and/or regulations; however, we do not have the authority to arbitrate a settlement.

With regard to insurer payment disputes submitted by collision repair facilities, the Motor Vehicle Physical Damage Appraisers Act requires the appraiser to know where the vehicle can be repaired for the appraised amount. To the extent that the appraiser or his employer can provide this information to the Department, and such information can be confirmed, there is no violation of the Act. Consequently, any aggrieved consumer may look to their policy to pursue a remedy or exercise their right to pursue a private action.

Second, you have stated in your letter that the collision repair shops file complaints on behalf of their consumers who have entrusted their vehicle repairs to your facilities. When contacting individual consumers, however, we find: that the consumers do not have any complaints; are satisfied with the insurance company's handling of their claim; and do not allege to have been harmed. Since the Department's primary goal is to assist the consumer, we must consider the comments provided by consumers during our investigation and evaluation of complaints.

Finally, with regard to the Department's repeal of Bulletin No. 53, this document was one of 292 Department Bulletins, Notices and Statement of Policy the Department repealed in accordance with the Governor's Executive Order in 1996. We have shared this information with you previously.

As I have promised almost two years ago, each and every complaint will be reviewed and investigated. The Department has been and will continue to enforce the provisions of the Motor Vehicle Physical Damage Appraisers Act. Those insurers and appraisers found to be involved in the violation of the Act will continue to be appropriately sanctioned by the Department. Consequently, the Department's position on the various concerns of the collision repair industry has been communicated in hundreds of letters and numerous meetings since the inception of the task force. Should you have a specific issue, which has not been addressed previously by the Department, I suggest that you submit your documents evidencing company violations to us and we will thoroughly investigate the matter.

I trust that the above is responsive to your concerns.

Sincerely yours,



Helfred G. LeBlanc  
Deputy Insurance Commissioner  
Office of Consumer Services and Enforcement

HGL:EB:ffb  
0331.DOC

**EXHIBIT C**

<i>Plan Area</i>	<i>Percentage Increase</i>
Blue Cross of Northeastern PA	7.052%
Blue Cross of Western PA	0.000%
Capital Blue Cross	8.442%
Independence Blue Cross	7.412%

This rate increase will generate an additional annual income of about \$11.7 million and will affect approximately 422,000 policy holders.

Copies of the filing are available for public inspection during normal working hours, by appointment, at the Insurance Department's offices in Harrisburg, Philadelphia, Pittsburgh and Erie.

Interested parties are invited to submit written comments, suggestions or objections, to Bharat Patel, Actuary, Insurance Department, Office of Rate and Policy Regulation, Bureau of Accident and Health Insurance, 1311 Strawberry Square, Harrisburg, PA 17120, within 30 days of publication of this notice in the *Pennsylvania Bulletin*.

LINDA S. KAISER,  
*Insurance Commissioner*

(Pa.B. Doc. No. 96-1499. Filed for public inspection September 6, 1996, 9:00 a.m.)

### **Pennsylvania Blue Shield; Rate Reduction for Special Care (A Nongroup Medical/Surgical Product); Filing No. 96160000**

By filing no. 96160000, Pennsylvania Blue Shield requests approval of a reduction to its non-group Special Care product rates. The filing requests an average 4.5% reduction, varying by Blue Cross Plan area. The request is to implement the new rates effective November 1, 1996. This will affect approximately 38,500 policy holders.

Copies of the filing are available for public inspection during normal working hours, by appointment, at the Insurance Department's offices in Harrisburg, Philadelphia, Pittsburgh and Erie.

Interested parties are invited to submit written comments, suggestions or objections, to Bharat Patel, Actuary, Insurance Department, Office of Rate and Policy Regulation, Bureau of Accident and Health Insurance, 1311 Strawberry Square, Harrisburg, PA 17120, within 30 days of publication of this notice in the *Pennsylvania Bulletin*.

LINDA S. KAISER,  
*Insurance Commissioner*

(Pa.B. Doc. No. 96-1500. Filed for public inspection September 6, 1996, 9:00 a.m.)

### **Repeal of Outdated Bulletins, Notices and Statements of Policy; Notice No. 1996-15**

The Insurance Commissioner proposed to repeal the Bulletins, Notices and Statements of Policy as published at 26 Pa.B. 3496 (July 20, 1996). No comments were received. However, during the Insurance Department's review, it was determined that the following bulletins had been inadvertently omitted from the list previously published. Therefore, the Commissioner hereby repeals all of the notices published at 26 Pa.B. 3496 and the following bulletins:

<i>No.</i>	<i>Date</i>	<i>Description</i>
	4/15/70	Premium Taxes
	12/13/75	Medical Professional Liability Insurance; Notice by Insurers to Policyholders
	1/24/76	Medical Professional Liability Insurance; Coverage Limits
	12/3/77	Medical Professional Liability Catastrophe Loss Fund 1978 Surcharge
	5/9/81	Withdrawal of Previously Published Notice (Surcharge for Persons on ARD)
	9/19/81	Medical Professional Liability Catastrophe Loss Fund 1982 Surcharge
	4/30/82	Insurance Carriers Writing Medical Malpractice Insurance Basic Limits as of 1983
	7/17/82	Medical Professional Liability Catastrophe Loss Fund 1983 Surcharge
	9/24/82	Medical Professional Liability Catastrophe Loss Fund 1983 Surcharge
	7/1/83	Medical Professional Liability Catastrophe Loss Fund 1984 Surcharge
	10/29/83	Medical Professional Liability Catastrophe Loss Fund 1984 Surcharge
1995-15	12/29/95	Guidelines for Records Retention

Questions regarding the repeal of these notices may be addressed to Patricia R. Seif, Senior Advisor to the Commissioner, Program Services Office, 1326 Strawberry Square, Harrisburg, PA 17120, telephone (717) 787-4298.

LINDA S. KAISER,  
*Insurance Commissioner*

(Pa.B. Doc. No. 96-1501. Filed for public inspection September 6, 1996, 9:00 a.m.)



1311 Strawberry Square, Harrisburg, PA 17120, within 30 days of publication of this notice in the *Pennsylvania Bulletin*.

LINDA S. KAISER,  
Insurance Commissioner

[Pa. B. Doc. No. 96-1186 Filed for public inspection July 19, 1996, 9:00 a.m.]

the anticipated decrease in expenses for researching the status of the law relating to rating, marketing and underwriting issues.

*Public Comment*

Questions or comments regarding this proposal may be addressed to Patricia R. Seif, Senior Advisor to the Commissioner, Program Services Office, 1326 Strawberry Square, Harrisburg, PA 17120, telephone (717) 787-4298, within 30 days following publication of this notice in the *Pennsylvania Bulletin*.

*Effective Date*

The proposal will become effective after the expiration of the public comment period and upon final publication in the *Pennsylvania Bulletin*.

LINDA S. KAISER,  
Insurance Commissioner

(*Editor's Note:* Documents on the list below have not been printed previously under the category "Statements of Policy" in the *Pennsylvania Bulletin*.)

Annex A

INSURANCE DEPARTMENT

BULLETIN NOTICES AND STATEMENTS OF  
POLICY PROPOSED TO BE REPEALED

No. <sup>1</sup>	Date	Description
	6/10/63	Credit life and credit accident and health insurance (charge on small loans)
	2/28/66	Credit life and credit accident and health insurance (dismemberment premiums; experience filings)
	3/1/66	Licensing of surplus lines agents
	7/12/67	Accident and health insurance, notice of insured's right to examine policy for 10 days
	6/4/68	Title insurance policies; mortgage title insurance; owner title insurance
	6/4/68	Title insurance; rules applicable to rebate sections of The Insurance Company Law of 1921, and The Insurance Department Act of 1921
	8/29/68	Revolving charge accounts and consumer credit insurance
	1/19/70	Certificates of Insurance evidencing insurance coverage
	1/28/70	Notice required to cancel under PA FAIR Plan
	2/16/70	Auto collision "ACV" loss settlement practices
	5/5/70	Auto collision "ACV" loss settlement practices
	6/12/70	Liberalization and stabilization of the homeowners insurance market
	8/21/70	FAIR Plan, 30 day notice of cancellation
	9/30/70	Credit accident and health insurance - collecting and remitting premiums
	2/8/71	Supplementary information to be supplied with rate filings

<sup>1</sup> The Bulletin numbers listed after 1991 indicated the number system assigned by the Insurance Department.

*heads down see page 3498.*  
Repeal of Outdated Bulletins, Notices and Statements of Policy; Notice No. 1996-10

The Insurance Commissioner proposes to formally repeal the Bulletins, Notices and Statements of Policy listed in Annex A (collectively notices). Under Governor Tom Ridge's Executive Order 1996-1 of February 16, 1996, the Insurance Department reviewed its regulatory requirements to identify those mandates that are outdated, conflict with existing law, or are otherwise irrelevant. Those notices listed in Annex A are no longer necessary for the proper regulation of the insurance industry in the Commonwealth.

Many of the notices proposed for repeal were issued to provide guidance in advance of the promulgation of a regulation. Other notices announced a change in the law or Insurance Department practice, or announced a surcharge that was applicable in the upcoming year. Still others related to statutes that subsequently were repealed or modified.

The notices have continued in existence because they contained no formal expiration date. Insurance industry representatives who received these notices over the years have never received notification that the notices are no longer current or effective. In addition, the Department attempted to previously repeal some of these notices, yet publishers of law books and research materials continue to reproduce these notices and hold them out as statements of current and official Department policy.

For these reasons, the Insurance Department proposes to formally announce its repeal of those notices listed in Annex A.

*Fiscal Impact*

*State Government*

The adoption of the proposal will have no fiscal impact on State government.

*Political Subdivisions*

The proposal will have no impact on costs to political subdivisions.

*General Public*

The general public will benefit to the extent that the cost savings realized by the insurance industry from this proposal will be passed along to Pennsylvania consumers in the form of lower premium rates.

*Private Sector*

The rescission of the Bulletins, Notices and Statements of Policy will result in a cost savings for insurers and other entities regulated by the Insurance Department. The insurance industry will benefit through the elimination of time-consuming research of outdated material. By eliminating this unnecessary material, the insurance industry should realize an aggregate savings of approximately \$7 million per year. This cost savings is based on

No. 1	Date	Description	No. 1	Date	Description
	8/2/71	Disapproval of deposit term policies		1/12/74	Regular convention form to replace short form annual statement <sup>1</sup>
	8/9/71	Annual report on loss prevention activity, unsafe products; establishment of consumer affairs program; advertising practices		1/18/74	Forms to be used in writing policies of title insurance
	8/9/71	Capital requirements—foreign life insurance companies		1/19/74	Discrimination on the basis of sex in insurance rates/ discrimination on the basis of normal pregnancy in insurance
	8/9/71	Implementation of deductible program		2/15/74	Use of Medical Information Bureau by insurers
	8/10/71	Requirement of self-addressed stamped envelopes; individual company mailing to be discontinued		3/1/74	Endorsement of change in existing rates due to energy conservation measurers uncertainty
	8/19/71	PA FAIR Plan—amendment to Plan of Operation		5/3/74	Use of Medical Information Bureau by life insurance companies
	9/22/71	Information concerning agent's and brokers' examinations		5/10/74	Preparation of more readable auto insurance policy, composition and printing
	9/22/71	Registration of insurers which are members of insurance holding company systems		5/10/74	Refunds upon termination of credit life and accident and health insurance prior to scheduled maturity date
	10/10/71	Loss prevention activity and unsafe products—clarification		7/12/74	Clarification of requirements of 31 Pa. Code § 112.1 et seq.
	11/10/71	Insurance policy requirements under Act 78 of 1981		7/26/74	Statement of Policy pertaining to required disclosures in the solicitation of life insurance
	11/16/71	Notice required to cancel under PA FAIR Plan		8/31/74	Use of the Medical Information Bureau by life insurance companies
	11/16/71	Implementation of deductible program		9/6/74	Time period limitations on recovery of accidental death benefits
	12/30/71	Guaranty Associations, appointment of members		10/11/74	Filing requirement for Pennsylvania No-fault Motor Vehicle Insurance Act
	3/24/73	Publication of Citations and Notices of hearing pertaining to alleged violations of the insurance laws of Pennsylvania		11/1/74	Deadline extended on filing of forms which discriminate by sex
	4/14/73	Civil disorder loading		11/1/74	Nonprofit insurance plans to file list of forms and policies which discriminate by sex
	5/12/73	Educational prerequisites for agents license		1/17/75	Formation of Assigned Claims Plan
	6/2/73	Changes in financial requirements		3/8/75	Time Period Limitation on recovery of accidental death benefits
	6/9/73	Misrepresentation and replacement of life insurance policies in reference to Equity Funding Life Insurance Company		4/4/75	Notice of cancellation or nonrenewal of medical malpractice insurance
	6/30/73	Form of Acceptance of Trust to be filed by directors or trustees of insurance companies		4/19/75	No-fault filings; alternate class plan
	7/21/73	Clarification of notice on Form of Acceptance of Trust to be filed by directors or trustees of insurance companies		6/20/75	Endorsements excluding named individuals from auto insurance coverage unenforceable
	9/22/73	Late or improper filings of financial statements		7/18/75	Average daily rate for semi-private hospital room and board
	10/27/73	Statement of Policy re foreign reinsurance companies owned or controlled by PA creditors, insurance agents or insurance brokers		8/8/75	Formal action to be taken on failure to meet requirements of Section 6 of the Model Act for Regulation of Credit Life Insurance and Credit Accident and Health Insurance
	12/29/73	Insurance carriers requested to avoid abetting illegal employment discrimination		8/15/75	Act 81 of 1975 requires certain coverages for newborn children
	1/1/74	Order exempting certain insurance forms from filing requirements—rescinded			
	1/5/74	Changes in exiting rates due to the energy conservation measures			
	1/11/74	Requirements for filing list of all forms and policies which discriminate by sex			

<sup>1</sup>The Bulletin numbers listed after 1991 indicated the number system assigned by the Insurance Department.

No. <sup>1</sup>	Date	Description	No. <sup>1</sup>	Date	Description
	8/30/75	Deadline extended for approval of forms required under 31 Pa. Code Chs. 59 and 61		5/7/77	Creation of PA insurance industry advisory committee on product liability placement
	9/20/75	Presently approved private passenger auto insurance policy forms subject to readability requirements		6/11/77	Proficiency in variable annuities
	10/11/75	Requirements eased to expedite handling of total loss motor vehicle physical damage claims due to 1975 Eloise storm		6/11/77	Credit insurance—refunds of unearned premiums
	10/17/75	Non-duplication of benefits provided by no fault benefits in auto policies		7/2/77	Credit insurance—transaction affected by Act 284 of 1974
	10/18/75	Deadline set for approval of forms required under 31 Pa. Code Chs. 59 and 61		7/13/77	Guidelines for life, accident and health insurance; additional requirements for fraternal benefit societies
	10/25/75	Licensing of sales force as a variable annuity agent		7/15/77	Computation of maximum amount payable for work loss under No-fault Motor Vehicle Insurance Act
	11/1/75	Call for information on obligations of NY held by PA insurers		7/15/77	Average daily rate for semi-private hospital room and board under No-fault Motor Vehicle Insurance Act
	1/24/76	Deadline for revision of forms to meet readability standards		7/15/77	No-fault average annual gross income of a production worker in the private nonfarm economy
	5/15/76	Discontinuance of the filing of life and a&h rate books		7/16/77	Medical loss coverage option for PIP
	7/17/76	Amnesty for points under former Vehicle Code		7/30/77	Total loss motor vehicle physical damage claims due to storm of July 19 and 20, 1977
	7/17/76	Actuarial examination for certification of actuaries (2 bulletins)		7/30/77	Medical Professional Liability Catastrophe Loss Fund; address for sending claims
	9/11/76	Organizations to furnish their own annual and other statement blanks		9/9/77	Interpretation of Motor Vehicle Physical Damage Appraiser Act and regulation
	9/18/76	Credit insurance—"right to examine" endorsement		9/23/77	Amendment of charter at annual meeting of shareholders
	10/23/76	Partial rescission of notice relating to annual and other statement blanks		10/8/77	Recommendation that reasons for cancellation or refusal to renewal be stated in initial notice to an insured
	11/19/76	Foreign fire insurance companies; premium taxes		12/3/77	Professional liability insurers; final date for approval of revised policy or amendatory rider
	11/27/76	Request for rate adjustment filed by Penn Health Plan, Inc.		2/25/78	Enforcement of penalty provision for late filing of financial statements
	11/27/76	Request for rate adjustment non subscribers under the merit-rating program filed by Blue Cross of Northeastern PA		5/27/78	Installment payment plan or finance charges as part of premium
	11/27/76	Insurance agent's and brokers examinations		6/24/78	Rounding rates in ISO personal auto manual
	12/18/76	Investment annuities to be treated as a separate account		7/7/78	No-fault average annual gross income of a production worker in the private nonfarm economy
	12/25/76	Guidance standards for review and approval of an institutional plan of risk management		7/22/78	Average daily rate for semi-private room and board under No-Fault Motor Vehicle Insurance Act
	1/8/77	Not-fault insurance; verification of self-certifications		7/22/78	Computation of maximum amount payable for work loss under No-fault Motor Vehicle Insurance Act
	1/28/77	No-fault ID cards, company code numbers		9/2/78	A&H insurance contracts offering maternity coverage
	2/11/77	Universal Money Order Company		12/9/78	Criteria for filing experience data for individual A&H policies
	2/11/77	Notification of agency terminations		12/23/78	Criteria for filing experience data for individual A&H policies
	3/25/77	Semi-annual report of cancellations and refusals to write or renew policies of auto insurance			

<sup>1</sup>The Bulletin numbers listed after 1991 indicated the number system assigned by the Insurance Department.

No. <sup>1</sup>	Date	Description	No. <sup>1</sup>	Date	Description
	1/13/79	Listing of resident PA agents countersigning policies		5/1/81	Per diem charges for Insurance Department examinations
	1/20/79	NAIC program for state implementation of President Carter's anti-inflation program		5/9/81	Examination fees and registration
	2/3/79	Experience data for certain individual accident and sickness policies		7/25/81	Insurance Department fee revisions
	2/10/79	PA individual insurance agents and brokers license information pamphlet		10/3/81	Reorganization of the Insurance Department
	3/3/79	NAIC program for state implementation of President Carter's anti-inflation program		11/14/81	No-fault average annual gross income of a production worker in the private nonfarm economy
	3/24/79	Per diem charges for Insurance Department examiners		11/21/81	Computation of maximum amount payable for work loss under No-fault Motor Vehicle Insurance Act
	7/14/79	Requirements for licensing insurance agents		12/5/81	Average daily rate for semi-private room and board under No-fault Motor Vehicle Insurance Act
	8/11/79	No-fault average annual gross income of a production worker in the private nonfarm economy		3/5/82	Securities held under custodial agreements
	8/11/79	Average daily rate for semi-private room and board under No-fault Motor Vehicle Insurance Act		5/15/82	NAIC model products and completed operations liability questionnaire
	10/5/79	No-fault insurers; discounts		5/22/82	Unfair Insurance Practices
	12/22/79	Computation of maximum amount payable for work loss under No-fault Motor Vehicle Insurance Act		7/82	Agents and brokers licensing information
	12/29/79	Fraternal benefit societies; extension of order		7/23/82	List of names of qualified unlicensed reinsurers
	2/23/80	PA Auto Insurance Plan; rules change		9/18/82	Computation of maximum amount payable for work loss under No-fault Motor Vehicle Insurance Act
	3/21/80	Availability of Federal Floor Insurance		9/18/82	No-fault average annual gross income of a production worker in the private non-farm economy
	4/12/80	Withdrawal of exemption for insurance agent's and broker's examination		9/25/82	Average daily rate for semi-private room and board under No-fault Motor Vehicle Insurance Act
	4/19/80	NAIC program for state implementation of President Carter's anti-inflation program		10/1/82	PA Professional Liability JUA: notice of filing
	5/17/80	Credit for 1/2 of fee for agent's license canceled during first year		3/25/83	Auto Insurance Plans Service Office; self-contained rule and rate manual
	6/18/80	Motor vehicle physical damage appraisers, used parts location information and total loss replacement value		3/25/83	Individual Medicare Supplement claim experience
	7/26/80	Qualification of domiciled PA insurers to write WC in NJ		9/9/83	List of names of qualified unlicensed reinsurers
	10/10/80	Average daily rate for semi-private room and board under No-fault Motor Vehicle Insurance Act		9/10/83	PA Professional Liability JUA; notice of filing
	10/10/80	No-fault average annual gross income of a production worker in the private nonfarm economy		9/23/83	Anti-arson application law
	10/25/80	Computation of maximum amount payable for work loss under No-fault Motor Vehicle Insurance Act		10/15/83	Medical Professional Liability Catastrophe Loss Fund, increased limits factor
	1/1/81	Sex discrimination in auto insurance rates		10/15/83	No-fault average annual gross income of a production worker in the private non-farm economy
	4/4/81	Single premium credit life insurance rules		10/21/83	Computation of maximum amount payable for work loss under No-fault Motor Vehicle insurance Act
	4/25/81	Withdrawal of reporting requirements under COWPS		11/12/83	Average daily rate for semi-private room and board under No-fault Motor Vehicle Insurance Act

<sup>1</sup>The Bulletin numbers listed after 1991 indicated the number system assigned by the Insurance Department

<i>No.<sup>1</sup></i>	<i>Date</i>	<i>Description</i>	<i>No.<sup>1</sup></i>	<i>Date</i>	<i>Description</i>
	1/19/85	No-fault average annual gross income of a production worker in the private nonfarm economy		8/18/90	Fraud Index Bureau
	1/26/85	Per diem charges for Insurance Department examinations		8/25/90	Collision damage to rental vehicles
	4/5/85	Average daily rate for semi-private room and board under No-fault Motor Vehicle Insurance Act		9/15/90	List of Approved Peer Review Organizations (2 bulletins)
	12/13/85	Workmen's Compensation Security Fund		9/29/90	List of Approved Peer Review Organizations
	3/14/86	Per diem charges for Insurance Department examinations		10/6/90	List of Approved Peer Review Organizations
	2/7/87	Worker's Compensation Security Fund, 1986 assessments		10/12/90	Worker's Compensation Security Fund, 1990 assessments
	3/7/87	Per diem charges for Insurance Department examinations		10/13/90	List of Approved Peer Review Organizations
	7/10/87	Insurance Payment to registered nurses		11/3/90	List of Approved Peer Review Organizations
	1/9/88	Worker's Compensation Security Fund, 1987 assessments		11/24/90	List of Approved Peer Review Organizations
	8/27/88	Implementation of Act 97 of 1988		12/8/90	List of Approved Peer Review Organizations
	9/3/88	Genderless automobile insurance rates		12/15/90	List of Approved Peer Review Organizations
	12/24/88	Catastrophic Loss Trust Fund (Auto CAT Fund)		12/15/90	List of approved unlicensed reinsurers
	1/21/89	Worker's Compensation Security Fund, 1988 assessments		1/3/91	Credit insurance—compensation limits compliance
	2/11/89	Signatures on financial statements		2/2/91	List of Approved Peer Review Organizations
	2/11/89	Per diem charges for Insurance Department examinations		3/9/91	List of Approved Peer Review Organizations
	7/21/89	List of names of approved unlicensed reinsurers	92-1	11/23/91	List of approved unlicensed reinsurers
	9/9/89	Licensed insurance company annual statement diskette filing requirements	92-3	11/30/91	Auto Insurance Plans Service Office, proposed rate revision
	10/28/89	Worker's Compensation Security Fund, 1989 assessments	92-2A	2/27/92	Auto policies; notice of cancellation issued within the first 60 days
	12/23/89	ISO, private passenger auto rate revision	92-5	3/23/92	Suspected fraud indicators
	12/23/89	List of names of approved unlicensed reinsurers	92-6	5/1/92	Joint State/Federal statement on regulation of MEWAs
	4/28/90	List of Approved Peer Review Organizations		6/22/92	Amendments to regulations regarding HMOs
	5/12/90	List of Approved Peer Review Organizations	92-9	6/22/92	New procedures for deposit and withdrawal of securities held by the Commonwealth in trust and on behalf of policyholders
	5/19/90	List of Approved Peer Review Organizations	92-4	7/1/92	Truncated credit life and credit A&H insurance
	5/26/90	List of Approved Peer Review Organizations	92-11	7/2/92	Childhood Immunization Insurance Act
	6/9/90	List of Approved Peer Review Organizations		7/24/92	HB 1955 of 1990, notice of coverage of collision coverage for rental vehicles
	6/23/90	List of Approved Peer Review Organizations	92-12	8/25/92	Remittance of interest payments on book entry securities
	6/30/90	List of Approved Peer Review Organizations	92-16	9/11/92	Implementation of Act 98 of 1992
	7/14/90	List of Approved Peer Review Organizations (2 bulletins)	92-13A	9/17/92	Nonforfeiture and valuation—statutory interest rates
	7/21/90	List of Approved Peer Review Organizations	92-17	9/17/92	Deregulation of certain A&H forms under 40 P.S. § 477b
	8/4/90	List of Approved Peer Review Organizations	92-19	10/23/92	Qualified actuary
	8/18/90	List of Approved Peer Review Organizations	92-20	10/23/92	Request for exemption from filing the statement of actuarial opinion
				11/7/92	Workmen's Compensation Security Fund, 1992 assessment
				12/1/92	Annual financial statement filing requirements

<sup>1</sup>The Bulletin numbers listed after 1991 indicated the number system assigned by the Insurance Department.

	Date	Description	No. <sup>1</sup>	Date	Description
	12/7/92	Private passenger automobile rules	94-4	3/14/94	Recently enacted legislation (2 bulletins)
	1/2/93	List of approved unlicensed reinsurers		3/19/94	PA Compensation Rating Bureau, WC proposed revisions
1	1/27/93	Private passenger automobile, proper use of rating tiers	94-5	4/29/94	Filing of credit life and credit A&H insurance experience reports
	2/27/93	Requirements for agent license for accident and health insurance products	94-6	5/16/94	Act 20 of 1994; new mandated benefits
	3/13/93	PA Compensation Rating Bureau proposed revisions	94-10	7/1/94	Continuing care retirement communities offering a group long-term care policy
-2					
-3	3/17/93	PA Risk Retention Act	94-7		
-4	3/17/93	Increase in surety bond requirements	94-8	7/7/94	Health and accident contract and unearned premium reserve standards
3-9	4/7/93	New surplus lines law			
3-8	4/12/93	Insurer solvency legislation			
3-5	4/13/93	Licensing of reinsurance intermediaries	94-16	10/25/94	Qualified actuary
3-6	4/13/93	Managing General Agents	94-17	10/25/94	Request for exemption from filing the statement of actuarial opinion
3-10	4/23/93	Insurance fraud reporting to the federal government			
3-12	7/1/93	Limit on amount of risk assumed per policy	94-19	11/15/94	Broker controlled P&C insurers
	7/3/93	Per diem charges for examinations	95-2	2/2/95	Implementation of Act 98 of 1992
	7/17/93	Deadline for submission of year-end transaction filings	95-3	5/5/95	Workers' Compensation large deductible programs allocated loss adjustment expense
3-7	8/9/93	Notice of changes in Medicare and your Medicare Supplement coverage	95-4	5/15/95	Annual report on ceded reinsurance
33-13	9/2/93	Required contract provisions—broker controlled P&C insurers	95-5	5/19/95	Insurance fraud warning notices
33-14	10/5/93	Truncated credit insurance in connection with first real estate mortgage indebtedness	95-6	6/15/95	Certificate of salvage
			95-8	8/23/95	Approval of CCC Information Services as a replacement value data provider
93-17	10/27/93	Qualified actuary	95-10	8/23/95	Notice of increase in premium
93-18	10/27/93	Request for exemption from filing the statement of actuarial opinion	95-11	9/27/95	Agent compensation by premium finance companies
93-20	11/24/93	Valuation of health and accident reserves—valuation data standards	95-12	10/4/95	Approval of replacement value data providers
93-21	12/1/93	Annual financial statement filing requirements	95-13	10/17/95	Qualified actuary
93-15	12/20/93	Notice of the requirements of Act of December 6, 1972, P.L. 1339, concerning adopted children	95-14	10/17/95	Request for exemption from filing the statement of actuarial opinion
93-16	12/20/93	Act 1992-114	95-16	12/29/95	Broker controlled property and casualty insurers bulletin.
93-17	12/25/93	Children's Health Insurance Program; prenotification of grantee solicitation			
	12/25/93	Uniform health insurance claim form, additional information request			
	1/22/94	Suspension or nonrenewal of agent and broker licenses in response to court orders issued for failure to pay child support			
	2/12/94	Uniform Health Insurance Claim form, request to redefine or modify fields on the HCFA-1500 form for billing Medical Assistance			
94-2	2/24/94	Valuation of health and accident reserves—valuation data standards			
94-3					

(Pa. B. Doc. No. 96-1189 Filed for public inspection July 19, 1996, 9:00 a.m.)

## LEGISLATIVE REFERENCE BUREAU

### Documents Filed But Not Published

The Legislative Reference Bureau accepted the following documents during the preceding calendar month for filing without publication under 1 Pa. Code § 3.13(b) (relating to contents of Bulletin). The Bureau will continue to publish on a monthly basis either a summary table identifying the documents accepted during the preceding calendar month under this subsection or a statement that no such documents have been received.

<sup>1</sup>The Bulletin numbers listed after 1991 indicated the number system assigned by the Insurance Department.

**EXHIBIT D**

**PUBLIC HEARING**  
**before the**  
**PENNSYLVANIA HOUSE OF REPRESENTATIVES**  
**INSURANCE COMMITTEE**

**Harrisburg, Pennsylvania**  
**August 13, 1996**  
**10:00 a.m.**

Written Testimony on behalf of the Coalition for Collision Repair Equality - Eastern Division.

I. **Introduction**

Before the Committee on Insurance this date is House Bill No. 1394 of 1995 ("Bill"), a proposed amendment to the Unfair Insurance Practices Act, 40 P.S. 1171.1 et seq. ("Act"). This proposed amendment has been referred to this Committee on two prior occasions, during prior Sessions, but has not been approved and forwarded to the full House for consideration.

The purported purpose of the Bill is to amend the Act to prohibit insurance companies and their agents, adjusters and employees from, inter alia, requiring that repairs be made to a motor vehicle at a particular shop or with a particular company, and from engaging in intimidation, coercion or threats to direct the place for repair. However, the Bill permits insurance companies to refer or recommend particular places or shops or particular companies for repair of a motor vehicle. Furthermore, the Bill mandatorily provides that an insurer "shall be under no obligation" to pay more than the "prevailing market price" for repair. For the reasons set forth below, the Coalition for Collision



Repair Equality - Eastern Division ("CCREED") believes the proposed amendment is both duplicative and inconsistent with current law, and unnecessary, and inappropriately provides insurers with statutory authority to take advantage of their overwhelming market power to the detriment of consumers and the auto repair shop industry.

## II. **Discussion**

The proposed amendment for the most part is both duplicative and inconsistent with current law and unnecessary. The Motor Vehicle Physical Damage Appraiser Act, 63 P.S. § 851 *et seq.*, PL 1713, No. 367, Jan. 1, 1973 ("Appraisers Act"), currently provides that no appraiser shall require that repairs be made in any specified repair shop. 63 P.S. § 861. Moreover, appraisers are required to conduct their business without favoritism towards any party - insurer or insured. 63 P.S. § 861(f) (2)-(3). Clearly, it is the appraiser, on behalf of the insurer, who has direct contact with the insured, and prepares the estimate and approves the repairs. Any action by an appraiser, by his own violation and/or through an insurer, to abrogate the aforementioned mandatory duties contained in § 861, is illegal and the Insurance Commissioner is charged with the duty to enforce. 63 P.S. § 860. The proposed amendment duplicates and affirms the language contained in the Appraisers Act that forbids the insurance industry from requiring that repairs be made at a particular repair shop. However, the amendment is also inconsistent with current law in that it provides that the insurance industry may refer or recommend to its insured a particular repair shop. The dangers inherent in granting the insurance industry such power will abrogate current law and ostensibly provide a mechanism for the insurance industry to direct repairs to a particular repair shop.

In September 1977, the Insurance Department, in response to complaints in the industry, reaffirmed the prohibition that no appraiser shall require or recommend that repairs be made at a particular auto repair shop. See, Bulletin No. 53, September 9, 1977. The Insurance Department further instructed that appraisers shall discuss the appraisal with the selected repair shop owner to insure that the actual cost of repairs is adequately covered in the appraisal.

Finally, under Pennsylvania and federal law, it is unlawful for an insurer to take any action to direct that repairs be made at a particular shop through misfeasance, interference with business contract or concerted action which produces anticompetitive effects. Any action by an insurer to direct that repairs be made at a repair shop in which the insurer has a particular arrangement may violate the Pennsylvania Unfair Trade Practices and Consumer Protection Law, 73 P.S. § 201-1 et seq., and may constitute the common law tort of intentional interference with contractual relations. Moreover, any concerted action by the insurer which produces anticompetitive effects may violate the Sherman Antitrust Act, 15 U.S.C. § 1 et seq. In 1963, the United States Department of Justice charged that the insurance industry, their appraisers and certain repair shops were conspiring to restrain trade by, inter alia, boycotting or coercing repair shops to conform prices for work to the benefit of the insurance industry. See U.S. v. Association of Casualty and Security Companies, 1963 Trade case. (SDNY Nov. 27, 1963) ("Consent Decree").

In sum, various state and federal laws, when enforced, protect the consumer and the auto repair shop industry from any actions on behalf of the insurer to abrogate the consumer's right to choose the repair shop which will repair a damaged vehicle. Thus,

the proposed prohibitive language contained in the Bill is both duplicative and inconsistent with current law, and unnecessary.

The proposed Bill also attempts to provide the insurance industry with the unregulated ability to establish "prevailing market prices" in a geographic area. This proposed language not only contradicts the overall intent of the Bill, but also contradicts the clear mandate from the Insurance Department that the insurer pay the actual cost of the selected repair shop to repair the vehicle.

Sections 5.1 (a) and (b) of the proposed amendment protect a consumer's right to choose a repair shop to repair his or her damaged vehicle. However, the mandatory language contained in the last sentence of proposed § 5.1 (b), grants the insurance industry vast, unregulated market powers. If approved, this language would provide the insurer with the right to establish a "ceiling" price for parts and repairs in a geographic area. As such, if a consumer selects a repair shop the does not adhere to the price established by the insurer, the insurer will apparently have the authority to deny the repairs, charge the insured for any additional cost or recommend that the insured remove the vehicle to a shop whose prices are approved by the insurer, regardless of the quality of the work.

An insurer's ability to establish price would effectively accomplish what the remainder of the Bill, the Appraisers Act, Bulletin No. 53 and current state and federal law prohibits - directing where and how repairs are made to a damaged vehicle. Notwithstanding the legal implications, an insured, by virtue of the premiums paid on his or her policy, should be permitted to have a motor vehicle repaired at the shop of his or

her choice. The inherent danger in this amendment is that the insurance industry would have unfettered discretion to establish the prevailing market rate.

Since the Consent Decree in 1963, the insurance industry has continually sought to accomplish what it agreed not to do in resolving that matter. The insurance industry has attempted to and been successful in establishing the prevailing market price strategy sanctioned by this proposed amendment. However, it is how the price is established and the practical result of this pricing strategy that harms consumers.

The proposed amendment does not regulate how the insurers must establish the prevailing market price, ostensibly providing carte blanche to the insurers to create the same. Internal documents of the industry that have been made available to this Committee demonstrates that, in establishing its prices and policies through auto shop surveys, the insurers currently exclude shops which do not provide acceptable responses. As stated, “repairers who do not initially agree to repair facility criteria . . . will not be considered in determining the prevailing competitive prices.” As such, it is the insurers who are selecting the auto repair shops with their own industry-defined criteria, without the input of the consumer. Moreover, the insurer may use the criteria to exclude auto repair shops who charge higher prices, thereby skewing the survey in establishing a market-based price.

If the insurers are permitted to establish a prevailing market price, then they will be avoiding their legal duty to pay the actual cost of repair at the consumer’s selected auto repair shop. Bulletin No. 63 specifically requires the insurers to pay the actual cost of repair. In their internally generated documents, the insurers only acknowledge a duty to pay the reasonable cost of repairs. Admittedly, insurers should not be required to pay

any cost; however, they should not be permitted to utilize their market power to reduce the cost to such a level that the consumer does not have the ability to seek and secure his or her own auto shop for the repairs.

The practical result of allowing insurance companies to utilize their market powers to reduce costs is that the consumer suffers from poor workmanship. The insurers have reduced prices for labor and parts to the point that, in order to make a profit, the auto repair shops are forced to reduce labor hours and utilize substandard parts, thereby reducing the motor vehicle's value. The motor vehicle is not returned to its pre-loss condition. Accordingly, the ultimate goal of the law - to protect the consumer's right to safe, reliable repairs - may be compromised for the insurers' ability to maximize profits. No empirical data suggests that by establishing competitive prices insurers have passed the reduced cost onto the consumer in the form of reduced premiums.

III. **Conclusion**

For all the foregoing reason, CRREED respectfully requests that the Insurance Committee take no action to amend the Act.

Respectfully submitted,  
OBERMAYER REBMANN MAXWELL &  
HIPPEL LLP

Walter W. Cohen /ajc  
Walter W. Cohen, Esquire  
Andrew J. Giorgione, Esquire

Attorneys for Coalition for the  
Collision Repair Equality -  
Eastern Division

**EXHIBIT E**



EXECUTIVE OFFICES

**COMMONWEALTH OF PENNSYLVANIA  
INSURANCE DEPARTMENT****STRAWBERRY SQUARE  
HARRISBURG, PA. 17120**Phone (717) 787-4174  
Fax (717) 787-8385

January 24, 1997

Mr. Ross DiBono, Executive Director  
Pennsylvania Gas Retailers Association and Allied Trades  
906 Rhawn Street  
Philadelphia, Pennsylvania 19111

Dear Mr. DiBono:

I am writing to reply to your November 26 letter, wherein you raise several questions and concerns regarding the Insurance Department's handling of complaints related to the Motor Vehicle Physical Damage Appraisers Act. Thank you for the opportunity to carefully consider and respond to the issues you have brought to our attention.

Your primary concern seems to be what you perceive as a lack of technical knowledge on the part of Insurance Department personnel who are investigating body shop allegations. Specifically, you believe that, to be a fair arbiter of complaints asserting improper damage appraisals, the Insurance Department must make determinations, based on collision repair industry standards, as to whether or not an appraisal is accurate and reflective of all necessary repairs. Please keep in mind that the Insurance Department is not in the business of auto repair; we do not regulate collision repair shops, nor are we charged with that responsibility as regulator of appraisers. Our authority under the Appraisers Act is to ensure that licensed appraisers conduct their business in accordance with Commonwealth laws and regulations, so that consumers are not harmed. I would fully expect that any policyholder who is unhappy with an appraisal and believes that an appraiser has not included all items to repair his vehicle to pre-loss condition would convey that unhappiness with his insurer to the Insurance Department. To date, this is not a concern expressed to us by policyholders.

You also question how we have been handling complaints pertaining to the lack of payment or underpayment for repairs on the part of insurance appraisers. As you are probably aware, we have convened a task force, composed of Department consumer services and enforcement staff, to handle all complaints submitted by the collision repair industry or their customers. These select personnel were already thoroughly familiar with the laws and regulations which apply to physical damage appraisers and, as you can imagine, they have become even more familiar with the details of the many appraisals submitted for our review. An appraiser has an obligation to

Ross DiBono, Executive Director  
Pennsylvania Gas Retailers Association and Allied Trades  
January 24, 1997  
Page 2

ensure that an appraisal contains all items necessary to restore the vehicle to its pre-accident condition. Additionally, that appraiser has the obligation to be aware of multiple shops in any given area that will perform the necessary repairs in accordance with the prepared appraisal. When the Department reviews allegations of underpayment, we focus on whether the above obligations have been met. Quite frankly, our function is not to dictate the amount of the appraisal; rather, it is to ensure that appraisals are prepared according to the standards outlined in the law and regulations.

In closing, allow me to say that the Insurance Department takes very seriously the concerns your association and individual body shops have raised. We have devoted an extraordinary amount of time to investigating written complaints, speaking with body shop owners on the phone, and, most recently, participating in meetings convened by the Legislature. We have endeavored at all times to provide you with the level of quality service we strive to afford all Pennsylvania consumers.

In addition to relying upon our efforts on an individual complaint basis, you might consider pursuing alternative methods of resolving these issues.

One avenue you may wish to consider is filing a petition with the Insurance Commissioner for a declaratory order. The General Rules of Administrative Practice and Procedure (1 Pa Code, Section 35.19, copy attached) provide an opportunity for an individual or organization to present a petition to a Commonwealth agency in order to "terminate a controversy or remove uncertainty" regarding a specific provision of statute. In this case, your association could state your concerns in a concise, formal letter to the Commissioner, citing the statutory provision(s) of the Motor Vehicle Physical Damage Appraisers Act in dispute, and including on what grounds you are presenting your petition. The Commissioner would then consider your petition and issue a declaratory judgment on the arguments presented.

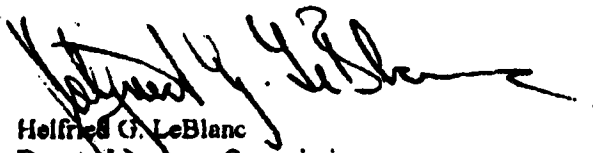
This method would provide an expeditious means of obtaining a legal ruling on the issues you raise. In addition, such ruling would be reviewable by the courts.



Ross DiBono, Executive Director  
Pennsylvania Gas Retailers Association and Allied Trades  
January 24, 1997  
Page 3

I trust this letter sufficiently answers your inquiry.

Sincerely,



Helfried G. LeBlanc  
Deputy Insurance Commissioner  
Office of Consumer Services and Enforcement

HGL:bj  
Enclosure  
02401

- c: Governor Thomas Ridge
- Senator Roy C. Afferbach
- Senator Clarence D. Bell
- Senator Vincent J. Fumo
- Senator Steward J. Greenleaf
- Senator David Heckler
- Representative Mario J. Civora Jr.
- Representative Lita Indzel Cohon
- Representative Walter Conti, Jr.
- Representative Gene DiGirolamo
- Representative Robert W. Godshall
- Representative Babette Josephs
- Representative Nicholas Micozzie
- Representative Dante Santoni, Jr
- Representative Elinor Z. Taylor
- Representative David J. Stell
- Lance Flaver, CEPA

- Senator Edwin Holt
- Senator E. Joseph Loeper
- Senator Frank A. Salvatore
- Senator Christine Tartaglione
- Senator Robert M. Tomlinson
- Senator Joseph Ullana
- Senator Noah W. Wenger
- Representative Andrew J. Carn
- Representative Paul J. Clymer
- Representative Nicholas Colafella
- Representative Anthony Coluzzo
- Representative Thomas Druce
- Representative Joseph M. Gladeck
- Representative Dennis E. Leh
- Representative Samuel Kohrer
- Representative Matthew N. Wright

1 §35.18

RULES OF PROCEDURE

Pt. II

Cross References

This section cited in 28 Pa. Code § 301.7 (relating to fair hearing); 34 Pa. Code § 111.11 (relating to content and form); 34 Pa. Code § 111.21 (relating to form/content); 34 Pa. Code § 111.32 (relating to form/content); 34 Pa. Code § 111.33 (relating to specific petitions/requirements); 34 Pa. Code § 131.21 (relating to petitions); 34 Pa. Code § 321.3 (relating to hearings); 37 Pa. Code § 171.44 (relating to supporting legal authority); 37 Pa. Code § 197.11a (relating to motions and petitions); and 52 Pa. Code § 5.41 (relating to petitions generally).

§35.18. Petitions for issuance, amendment, waiver or repeal of regulations.

A petition to an agency for the issuance, amendment, waiver or repeal of a regulation shall set forth clearly and concisely the interest of the petitioner in the subject matter, the specific regulation, amendment, waiver or repeal requested, and shall cite by appropriate reference the statutory provision or other authority therefor. The petition shall set forth the purpose of, and the facts claimed to constitute the grounds requiring, the regulation, amendment, waiver or repeal. Petitions for the issuance or amendment of a regulation shall incorporate the proposed regulation or amendment.

Notes of Decisions

Where Department of Public Welfare had created confusion regarding whether or not Department of Health approval was required for certain Medical Assistance Program health-care providers' facilities, and where DPW had suo sponte waived the approval requirement for a short period of time, DPW abused its discretion in refusing to extend the waiver to encompass the full period of time necessary for the providers to obtain DOH approval. *Eye and Ear Hospital v. Department of Public Welfare*, 514 A.2d 976, 979 (Pa. Commw. 1986).

Cross References

This section cited in 1 Pa. Code § 31.6 (relating to amendments to rules); 1 Pa. Code § 33.6 (relating to applications for waiver of formal requirements); 32 Pa. Code § 351.1 (relating to purpose and scope); 34 Pa. Code § 81.93 (relating to requests for exemptions); 34 Pa. Code § 111.2 (relating to applicability of general rules); and 52 Pa. Code § 5.43 (relating to petitions for issuance, amendment, waiver or repeal of regulations).

§35.19. Petitions for declaratory orders.

Petitions for the issuance, in the discretion of an agency, of a declaratory order to terminate a controversy or remove uncertainty, shall state clearly and concisely the controversy or uncertainty which is the subject of the petition, shall cite the statutory provision or other authority involved, shall include a complete statement of the facts and grounds prompting the petition, together with a full disclosure of the interest of the petitioner.

**Notes of Decisions**

Under this section it would appear that there is no bar to the grant of declaratory relief by the Board of Property. *Kaiser Energy v. Department of Environmental Resources*, 535 A.2d 1255, 1257 (Pa. Commw. 1988).

It was within the powers of the Board of Property to review an action for declaratory judgment regarding title to real property between private parties and the Commonwealth. *Kaiser Energy, Inc. v. Department of Environmental Resources*, 535 A.2d 1255, 1257 (Pa. Commw. 1988).

**Cross References**

This section cited in 22 Pa. Code § 351.1 (relating to purpose and scope); 34 Pa. Code § 111.2 (relating to applicability of general rules); and 52 Pa. Code § 5.42 (relating to petitions for declaratory orders).

**§35.20. Appeals from actions of the staff.**

Actions taken by a subordinate officer under authority delegated by the agency head may be appealed to the agency head by filing a petition within 10 days after service of notice of the action.

**Notes of Decisions**

A facility which desires to be recognized as a hospital-based nursing facility under the exception criteria of 55 Pa. Code § 9424.6(b) (relating to skilled nursing facility participation requirements) has 10 days to appeal the denial of HBNF status. *Renovo Hospital Association v. Department of Public Welfare*, 83 Pa. Commw. 355, 359, 480 A.2d 1260, 1263 (1984).

**Cross References**

This section cited in 7 Pa. Code § 131.21 (relating to appeals); 22 Pa. Code § 121.7 (relating to notice of denial and preliminary review procedures); 22 Pa. Code § 121.34 (relating to institutional appeals and hearings); 22 Pa. Code § 351.1 (relating to purpose and scope); 34 Pa. Code § 111.2 (relating to applicability of general rules); 52 Pa. Code § 5.44 (relating to petitions for appeal from actions of the staff); and 58 Pa. Code § 51.44 (relating to appeals).

**PROTESTS**

**§35.23. Protest generally.**

A person objecting to the approval of an application, petition, motion or other matter which is, or will be, under consideration by an agency may file a protest. No particular form of protest is required but the letter or writing should contain the name and address of the protestant, the proceeding or matter to which the protest is addressed and a concise statement of the protest. Only one copy of a protest need be filed. Service need not be effected upon the parties.

8056

4195

**EXHIBIT F**

## LAW OFFICES

## OBERMAYER REBMANN MAXWELL &amp; HIPPEL LLP

ONE PENN CENTER

19TH FLOOR

1617 JOHN F. KENNEDY BLVD.  
PHILADELPHIA, PA 19103-1895(215) 665-3000  
FAX (215) 665-3165204 STATE STREET  
HARRISBURG, PA 17101(717) 234-9730  
FAX (717) 234-9734USX TOWER SUITE 4440  
600 GRANT STREET

PITTSBURGH, PA 15219

(412) 566-1500  
FAX (412) 566-1508TWO KINGS HIGHWAY WEST  
HADDONFIELD, NJ 08033

(609) 795-3300

FAX (609) 795-8843

ROLANDSTRASSE 11  
45128 ESSEN GERMANY

TEL (0201) 238893

FAX (0201) 238901

MICHAEL C RICHMAN  
CLAUDIA M BECKER  
MARJORIE H GORDON  
EDMOND M GEORGE  
RICHARD R TARANTINE  
STEVEN A HABER  
JOHN F REILLY  
JOHN V O'HARA  
CATHIE PYUNE-MCELDOWNEY  
ALAN W LESSO  
CYNTHIA A TEDESCHI  
M SEAN MARAVICH  
ANDREW J GIORGIONE  
MICHAEL B DUBIN  
KIMBERLY J SCOTT  
JASON E REISMAN  
L KEITH LIPMAN  
ELIZABETH J FEENEY  
AYANNA S PARMAN  
DENA B TURCO  
JAMES T ASALI  
THOMAS E HANSON JR  
ALISON T SMITHMICHAEL P WEINSTEIN  
NINA B STRYKER  
RONNIE L BLOOM  
BARBARA WEINBERG  
ELIZABETH A LLOYD  
ROGER P CAMERON  
KIMBERLY D SUTTON  
CLARE M DIEMER  
KIRSTEN WELTGE HARE  
DAVID C SHUTER  
LORI A ANDREOSKY  
DANIEL F SCHRANGHAMEP  
STEPHEN W W CHING JR  
WILLIAM K PELOS  
PETER J OBERKIRCHER  
JAMES L RAY  
KRISTIN B MAYHEW  
MATHIEU J SHAPIRO  
DAVID A NASATIR  
HILLARY J GRUDER  
TODD J GLASSMAN  
SUSAN J RAYOF COUNSEL:  
FRANK E. HAHN, JR.  
ALLEN WEINBERG  
WILLIAM G. SCHWARTZ  
JONATHAN H. NEWMAN  
CHARLES M. TAYLOR  
ROBERT N.C. NIX, III  
ROBERT M. DUBBS  
FREDERICK COHEN

\*\*\*\*HONORARY CONSUL GENERAL OF GERMANY

DIRECT DIAL: (717) 234-5315

MARTIN WEINBERG  
PETER M BREITLING  
ROBERT J WHITELAW  
JEFFREY B ROTWITT  
GREGORY D SAPUTELLI  
THORLEY C MILLS, JR  
WARREN W AYRES  
CHARLES M GOLDEN  
THOMAS A LEONARD  
ANN G VERBER  
JOSEPH J MCGOVERN  
JULIUS M STEINER  
WALTER W COHEN  
MARVIN S LIEBER  
JEFFREY S BATOFF  
PAUL N ALLEN  
VICTOR ALAN YOUNG  
CATHLEEN CURRAN MYERS  
CHARLES S K SCUDDER  
WILLIAM J LEONARD  
JOHN E RYAN  
CAROL BRAYSHAW LONGWELL  
JACQUELINE Z SHULMAN  
LARRY BESNOFF  
JAMES R THOMPSONPAUL C HEINTZ  
HUGH C SUTHERLAND  
E PARRY WARNER  
JAMES M PENNY, JR  
KENNETH L OLIVER, JR  
JOHN J ENLINGER, JR  
MARK A LUBLIN  
JAMES W BAUMBACH  
STEPHEND SCHRIER  
LOUIS B KUPPERMAN  
JOSEPH P DOUGHER  
PAUL S DIAMOND  
JEROME N KLINE  
LAWRENCE J TABAS  
MAUREEN H MCCULLOUGH  
SCOTT E DENMAN  
ANASTASIUS EFSTRATIADES  
JERALD S BATOFF  
DANIEL P FINEGAN  
ERIC RATHBURN  
RUTH RUDBARG WESSEL  
NICHOLAS PODUSLENKO  
VAHAN H GUREGHIAN  
RICHARD P LIMBURG\* ALSO MEMBER N.J. BAR  
\*\* ALSO MEMBER OHIO BAR  
\*\*\* ALSO MEMBER D.C. BAR  
\* ALSO MEMBER N.J. & D.C. BAR  
\*\* ALSO MEMBER N.J. & FLORIDA BAR  
\*\*\* ALSO MEMBER D.C. & MA. BAR  
\*\*\*\* ALSO MEMBER N.Y. BAR

February 9, 1998

VIA FACSIMILE AND REGULAR MAILThe Honorable M. Diane Koken  
Insurance Commissioner  
Pennsylvania Department of Insurance  
1326 Strawberry Square  
Harrisburg, PA 17120Re: Motor Vehicle Damage Appraisers Act and Regulations

Dear Commissioner Koken:

Thank you for meeting with the principal members of the Pennsylvania Collision Trade Guild on January 20, 1998, in the offices of House Insurance Committee Chairman Nicholas A. Micozzie. The members of the Guild appreciated the opportunity to present their perspective on how the insurance industry relates to auto repair shops and their insureds.

As a result of the extensive discussion with you and Deputy Commissioner Helfried LeBlanc, we believe that it was agreed that an ongoing dialogue would occur between your office and the Guild. Foremost, it was agreed that the Guild would participate in any regulatory review process initiated to amend the Motor Vehicle Physical Damage Appraisers Act, 63 P.S. § 851 *et seq.* (the "Act") or any of the regulations related thereto which govern insurance agencies and their agents, appraisers and adjusters.

Commissioner Koken  
February 9, 1998  
Page 2

We have now been advised that the Insurance Federation of Pennsylvania has requested that the Insurance Department make amendments to the regulations governing the Act at 31 Pa. Code § 62.1 *et seq.* ("Regulations"). Specifically, we believe the Insurance Federation has requested that the Insurance Department amend the regulations at 31 Pa. Code § 62.3 *et seq.* to remove any prohibition against an insurance appraiser's recommending or requiring that repairs be made at a particular auto repair shop or by a particular individual. 31 Pa. Code § 62.3(g)(8). Furthermore, we believe the Insurance Federation has requested that the conflict of interest provisions be removed. *Id.* at § 62.3(g)(9).

These suggested changes offered by the Insurance Federation, if transmitted for regulatory review, affect the critical sections of the Regulations that the Guild advised you are not being properly enforced by the Insurance Department. These sections must be strengthened, not weakened or eliminated, by additional regulations or amendments to the Act. The following background will demonstrate that the changes proposed by the Insurance Federation, and current actions of insurers and appraisers, are anticompetitive and should not be sanctioned by the Insurance Department.

In 1963, the United States Department of Justice charged that the insurance industry, their appraisers and certain repair shops were conspiring to restrain trade. The Department of Justice found that the insurance industry and their appraisers were overtly boycotting repair shops ("steering") and coercing repair shops to conform prices for work to the benefit of the insurance industry ("price fixing"). Led by then-U. S. Attorney General Robert F. Kennedy, the matter was settled on a national scope when in November 1963, a Consent Decree was entered with the Association of Casualty and Security Companies to prohibit these illegal acts. *See U.S. v. Association of Casualty and Security Companies*, 1963 Trade Case (SDNY November 27, 1963).

Thereafter, Pennsylvania, and many other states, enacted state laws enjoining the acts contained in the Consent Decree as anticompetitive and illegal. In addition to the Act and Regulations passed in Pennsylvania, in September 1977, the Insurance Department, in response to complaints, reaffirmed the prohibition that no appraiser shall require or recommend that repairs be made at a particular auto repair shop. *See Bulletin No. 53*, September 9, 1977. The Insurance Department further provided that appraisers must discuss their appraisal with the selected repair shop owner to insure that the actual cost to repair is adequately covered in the appraisal. Unbeknownst to the Guild, on July 20, 1996, the Insurance Department repealed Bulletin No. 53, one month prior to its testimony before the House on Bill No. 1394 of 1995. House Bill No. 1394 of 1995 was a proposed law which would have permitted insurers to steer clients and set prices. That Bill died at the conclusion of the Legislative Session, never even being reported out of the Insurance Committee.

Commissioner Koken  
February 9, 1998  
Page 3

The Guild believes that current programs like "Direct Repair Programs" or "DRPs," created by insurance companies, are merely a mechanism to permit appraisers and insurers to act in a manner that is contrary to law and anticompetitive. Since the Consent Decree was signed in 1963, some in the insurance industry have continually sought to accomplish what the industry agreed not to do in resolving that matter. DRPs, and programs like it, allow insurance companies to utilize their vast market powers to reduce their costs at the expense of consumers who are stripped of their power to independently choose an auto repair shop to repair their vehicle. Moreover, through DRPs, insurers are creating an artificial price ceiling that has resulted in poor workmanship for the consumer, without a concomitant reduction in premiums. In short, through DRPs, insurers are steering consumers and setting prices, with the knowledge and consent of your Department, to the detriment of consumers and the auto repair shop industry.

At least twenty states have anti-steering laws similar to Pennsylvania's Act. Some states, like New York and Montana, have recently passed amendments to their anti-steering laws to specifically prohibit DRPs. It is time for Pennsylvania and the Insurance Department to begin to enforce the Act, which specifically prohibits steering and price fixing. Moreover, the Insurance Department should not consent to amend its Regulations, as may have been requested by the Insurance Federation, to remove these provisions.

We would ask you to review this matter and advise us whether changes to the Insurance Department Regulations are being requested by the Insurance Federation, or any other entity or organization, along the lines outlined in this letter. Meanwhile, we reaffirm our commitment to participate responsibly in any regulatory review process relative to such changes. We will provide to you any information discussed above that might help you evaluate these matters and are available for further discussion at your convenience.

We very much appreciate your interest in and concern for these issues which are of such great importance to the Pennsylvania Collision Trade Guild.

Sincerely,



Walter W. Cohen

c: The Honorable Nicholas A. Micozzie  
The Honorable Nicholas Colafella  
The Honorable Matthew N. Wright  
Jack Aigner

LAW OFFICES

OBERMAYER REBMANN MAXWELL & HIPPEL LLP

204 STATE STREET

HARRISBURG, PA 17101

(717) 234-9730

FAX (717) 234-9734

WALTER W. COHEN

April 13, 1998

The Honorable M. Diane Koken  
Insurance Commissioner  
Pennsylvania Department of Insurance  
1326 Strawberry Square  
Harrisburg, PA 17120

Re: Motor Vehicle Damage Appraisers Act and Regulations

Dear Commissioner Koken:

Over two months ago, on February 9, 1998, I sent you the enclosed letter. As of today's date, I have not received a response.

The members of the Pennsylvania Collision Trade Guild with whom you met on January 20, 1998, in the offices of House Insurance Committee Chairman Nicholas A. Micozzie believed that session was a productive one. They also believed that it was agreed that an ongoing dialogue would occur between your office and the Guild.

I wrote to you out of the Guild's concern that the Insurance Department was in the process of considering amendments to its Regulations regarding, *inter alia*, steering to selected repair shops and conflict of interest provisions.

If there is any effort underway to revise the Department's Regulations that implement the Motor Vehicle Damage Appraisers Act, then the Guild believed it would be participating in that regulatory review process.

We would very much appreciate a response to my letter of February 9, 1998. If in fact there is no regulatory review underway, then we would appreciate being informed to that effect.



The Honorable M. Diane Koken  
Insurance Commissioner  
April 13, 1998  
Page 2

Otherwise, we would appreciate being informed if and when the Guild will be involved in that process.

Sincerely,

A handwritten signature in black ink, appearing to read "Walter W. Cohen", with a long horizontal flourish extending to the right.

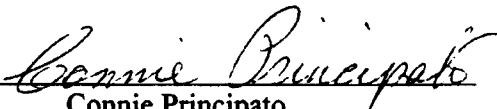
Walter W. Cohen

WWC:dhs  
Enclosure

cc: The Honorable Nicholas A. Micozzie  
The Honorable Nicholas Colafella  
The Honorable Matthew N. Wright  
Jack Aigner

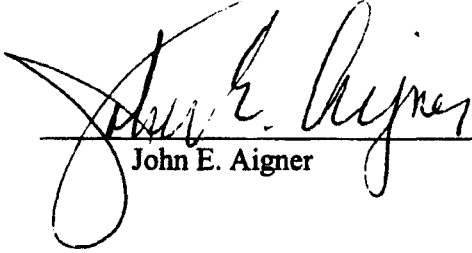
**VERIFICATION**

I, Connie Principato, hereby swear and affirm that the facts set forth in this Petition are true and correct to the best of my knowledge, information and belief, subject to the penalties set forth in 18 Pa. C.S. §4904, relating to unsworn falsification to authorities.

  
\_\_\_\_\_  
Connie Principato

**VERIFICATION**

I, John E. Aigner, of the Pennsylvania Collision Trade Guild, hereby swear and affirm that the facts set forth in this Petition are true and correct to the best of my knowledge, information and belief, subject to the penalties set forth in 18 Pa. C.S. §4904, relating to unsworn falsification to authorities.

  
\_\_\_\_\_  
John E. Aigner

**about  
the competition  
in auto  
replacement parts.**

RECEIVED

99 MAR 16 AM 9:30

INDEPENDENT REGULATORY  
REVIEW COMMISSION

ORIGINAL: 2001  
HARBISON  
COPIES: Tyrrell  
Wilmarth  
Sandusky, Legal

**Let's stop  
the  
nonsense...**



P.O. Box 632, Columbus, OH 43216

AUTO-8966



There's a lot of misinformation floating around about the safety and quality of auto replacement parts. For instance:

**"The installation of imitation parts ... could place your vehicle in non-compliance with Federal Safety Standards."**

**Toyota Brochure**

Sorry. That's just not true.

The fact is, there are *no* Federal Safety Standards for replacement crash parts (bumpers, fenders, hoods, etc.) except for head light assemblies.

It's one example of the kind of "myths" being perpetuated by the auto industry for the sake of protecting their replacement parts business.

The real issue in auto replacement parts isn't safety. It's competition, and choice. Your choice.

And the automakers don't seem to like that.

### **Who's kidding whom?**

The automakers would like you to believe that unless you purchase their brand name replacement parts you're taking away from your car's safety and quality. In every case.

Instead of innuendo, why don't we deal with facts? Such as:

#### **Fact #1:**

"Crash" parts are not critical to vehicle and driving safety. According to the Insurance Institute for Highway Safety, "The source of cosmetic parts used to repair cars has little to do with the possibility of injury in those cars after they've been repaired."

In recommending competitive parts, are the insurance companies in any way jeopardizing the safety of repaired cars? It would hardly make sense to approve any repairs that threatened your car's safety.

After all, an insurance company is going to insure your car *after* it's been repaired. An unsafe vehicle could make your insurance company liable for paying even greater damages later on, and no company could survive doing business like that.

#### **Fact #2:**

Competition in the replacement parts business is not a new idea. Competitive replacement parts from sources other than the automakers have been used successfully for over 50 years, with vital parts such as brakes, suspensions, batteries, spark plugs, and oil filters — all replaced without compromising quality or safety.

#### **Fact #3:**

Actually, competition has, in some cases, resulted in higher quality in replacement parts and warranties. For example, automakers did not provide anti-corrosion warranties except in response to the growing challenge of replacement parts manufacturers.

#### **Fact #4:**

Consumers *are* saving money thanks to parts competition. Repair costs have been reduced by 25 to 40 percent, depending on the type of repair involved. And that's helped keep auto insurance premiums as low as possible.

	1983	1984	1985	1986
Aries Fender				
Manufacturer	\$221	\$180	\$87	\$87
<b>Competitor</b>	<b>none</b>	<b>\$140</b>	<b>\$86</b>	<b>\$79</b>
Omni 1983 Fender				
Manufacturer	\$165	\$140	\$76	\$79
<b>Competitor</b>	<b>none</b>	<b>\$120</b>	<b>\$74</b>	<b>\$67</b>
Corolla 1981 Fender				
Manufacturer	\$117	\$117	\$79	\$61
<b>Competitor</b>	<b>none</b>	<b>\$ 78</b>	<b>\$79</b>	<b>\$61</b>

Sources for parts prices are: Mitchell International, Inc. *Collision Estimating Guides*, San Diego, California (quarterly); Hearst Corporation, *Motor Crash Estimating Guides*, New York, New York (bimonthly); and Keystone manuals.

Notice the effect of competition on one "crash" part. In 1983, when there was no comparable competitive part, the price of a Dodge Aries fender was \$221. By 1987, the manufacturer's price for the same part was \$87, *less than half the 1983 price*. Notice that the competitive part price also went down after 1984 as a result of the manufacturer lowering his price.

This price stabilization has been typical whenever competitive replacement parts become available. Healthy competition in "crash" parts is one of the best ways to control auto repair costs — and insurance premiums.

### **The real issue in auto parts ... is competition.**

So the next time you hear any automaker talk about "genuine" replacement parts, ask yourself whose interests they're really looking out for.

When it comes to making a decision regarding auto "crash" parts, the fact is ... competition is good for all of us.

And when it comes to analyzing what you read or hear about replacement part safety, the facts ... speak for themselves.

Pennsylvania Code Title 31  
Chapter 62. Motor Vehicle Physical Damage Appraisers  
“Regulation”

Current Regulation

vs.

Revised Regulation

vs.

Current Regulation Deletions

Included are History References toward:

The Pennsylvania Code Title 31, Chapter 1 –  
Motor Vehicle Physical Damage Appraisers “Regulation” from 1973

Bulletin No. 53 – Proper Interpretation of Motor Vehicle Physical Damage Appraiser Act  
and Regulation Thereunder from 1977

- The Current Regulation is the terminology that is presently in effect.
- The Revised Regulation is what the Department of Insurance is proposing to replace the Current Regulation. All changes, any additional wording added to the Current Regulation is “*italicized*” under sections labeled: *Revised Regulation*.  
*Within this section there are personal opinions posted referencing their proposed changes.*
- Current Regulation Deletions is whatever the Department of Insurance is proposing to delete / remove from the Current Regulation.  
Under sections labeled: **Regulation Deletions**: you will find the Current Regulation with words in “**BOLD**” print which represent regulatory issues the Department of Insurance is proposing to delete!

ORIGINAL: 2001  
HARBISON  
COPIES: Tyrrell  
Wilmarth  
Sandusky  
Legal

RECEIVED  
SEP 18 8 44 58 AM '07  
INSURANCE COMMISSION

## CHAPTER 62. MOTOR VEHICLE PHYSICAL DAMAGE APPRAISERS

### Current Regulation:

31§62.1

#### Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

Act- The Motor Vehicle Physical Damage Appraiser Act (63 P.S. §§ 851-863)

Appraisal- A monetary determination of damage incurred by a motor vehicle when the making of such a determination is assigned in order to fix the value of insurance claims. Appraisals shall include a determination whether made by the insurer, its employes, its agents or related entities or made by another individual or entity otherwise assigned to make a determination.

Appraiser- A natural person in this Commonwealth who makes appraisals of motor vehicle physical damage.

Commissioner- The Insurance Commissioner of the Commonwealth.

Consumer- The owner of the motor vehicle which has incurred damage or the owner's representative.

Dealer- An individual licensed, active and knowledgeable in the sale of used motor vehicles similar to the being appraised.

Insurer- Companies, associations and exchanges engaged in the insurance business of insurance companies and self-insurers.

Motor vehicle- A device in, upon or by which a person or property is or may be transported or drawn upon a public highway.

### Revised Regulation:

31§62.1

#### Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

Act- The Motor Vehicle Physical Damage Appraiser Act (63 P.S. §§ 851-863)

Aftermarket- *crash part- a replacement for any of the non-mechanical sheet metal or plastic parts that generally constitute the exterior of the motor vehicle, including inner and outer panels*

> *Conflict of Law v. Proposed Regulation @ [UIPA §146.8(f)] " the insurer shall cause the damaged automobile to be restored to its condition prior to the loss"*

*\*Aftermarket – This term does not follow the "high degree of regard for public safety, the operational safety of the vehicle shall be paramount in considering the specification of new parts". [367 sec 11(b)]*

#### *Proper Definition Needed:*

*\*Aftermarket – Crash parts, The existence of aftermarket Crash parts is not limited to sheetmetal, this definition if used will have to include mechanical and parts relative to*

*the vehicle's Crash Management System. Non-mechanical alone will not incorporate the entire spectrum of parts available to the appraiser ex. Electrical, Brakes, Suspension and steering-gear parts, Glass, Windshields, side-glass, Airbag, Restraint Systems, Composite Headlamp assemblies, Tail-lamp assemblies, Wheels, Brake parts, Radiators, Condensers, etc*

*\*Aftermarket Crash Parts are in direct violation of the Unfair Insurance Practices Act Chapter 146 Subchapter Unfair Claims Settlement [§ 146.8(f)] "the insurer shall cause the damaged automobile to be restored to its condition prior to the loss"*

Appraisal- A written monetary determination of damage incurred to a motor vehicle when the making of such a determination is assigned in order to return the vehicle to its condition prior to the damage in question.

Appraisals determinations made by the insurer, its employees, its agents or related entities or other individuals or entities assigned to make a determination.

Appraiser- A natural person in this Commonwealth who makes appraisals of motor vehicle physical damage.

Consumer- The owner of the motor vehicle which has incurred damage or the owner's representative.

Dealer- An individual licensed, active and knowledgeable in the sale of used motor vehicles similar to the being appraised.

Motor vehicle- A motorized device including any trailer attached thereto, in, upon or by which a person or property is or may be transported or drawn upon a public highway.

Nonoriginal equipment manufacturer ("Non-OEM") aftermarket crash part- an aftermarket crash part not made for or by the manufacturer of the motor vehicle.

Pre-damaged condition- Condition of the motor vehicle just prior to the damage in question incurred.

**\*\*\* Opinion:**

*Pre-damaged condition vs. Pre-loss condition. A pre-damaged description will limit the consumer to an amount of compensation reflective of the existing State Law and Regulation. Pre-damaged will only identify "exact damage" versus an amount of the entire loss or continuous accident exposure. Damage being part of the loss or accident. A portion of a condition prior to the loss in question, but not entirely.*

*Contradictory Language: This language contradicts ones understanding of a loss [31§ 146.8(f)] "the insurer shall cause the damaged vehicle to be restored to it's condition prior to the loss"*

*Definition Needed: Salvor – A person engaged in the business of acquiring abandoned vehicles for the purpose of taking apart, junking, selling, rebuilding or exchanging the vehicles for parts thereof.*



*Salvager: A proper definition for salvager will have to be established within the proposed regulation.*

**Regulation Deletions:**

31§62.1

Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

Act- The Motor Vehicle Physical Damage Appraiser Act (63 P.S. §§ 851-863)

Appraisal- A monetary determination of damage incurred by a motor vehicle when the making of such a determination is assigned in order to **fix the value of insurance claims**. Appraisals **shall include a determination whether** made by the insurer, its employees, its agents or related entities or **made by another** individual or **entity otherwise** assigned to make a determination.

Appraiser- A natural person in this Commonwealth who makes appraisals of motor vehicle physical damage.

Commissioner- **The Insurance Commissioner of the Commonwealth.**

Consumer- The owner of the motor vehicle which has incurred damage or the owner's representative.

Dealer- An individual licensed, active and knowledgeable in the sale of used motor vehicles similar to the being appraised.

Insurer- **Companies, associations and exchanges engaged in the insurance business of insurance companies and self-insurers.**

Motor vehicle- A device in, upon or by which a person or property is or may be transported or drawn upon a public highway.

Current Regulation:

- 31§62.2. Licensing requirements.
- 31§62.2(a) A person may not directly or indirectly act or hold himself out as an appraiser unless the person has first secured a license from the Commissioner in accordance with the provisions of the act and this chapter.
- 31§62.2(b) The fee to be paid to the Commissioner by an applicant for an appraiser's license shall be \$ 10 at the time the application is made and \$10 annually for the renewal thereof. In the event of failure to pass the examination, the fee of \$10 will not be returnable.
- 31§62.2(c) Each appraiser, while engaged in appraisal duties, shall carry the license issued to him by the Department and shall display it, upon request, to an owner whose vehicle is being inspected, to the repair shop representative involved or to an authorized representative of the Department.
- 31§62.2(d) Except as otherwise provided in the act and this chapter, a person may not be granted an appraiser's license unless he first establishes his qualifications therefor and takes and passes an examination for appraisers.
- 31§62.2(e) An applicant for the examination shall be at least 18 years of age; shall be a resident of this Commonwealth, or a resident of another state or country which permits residents of this Commonwealth to act as appraisers in that state or country; shall be trustworthy.
- 31§62.2(f) In order to qualify for the examination, an applicant shall establish his competency to fulfill the responsibility of being an appraiser. This may be done by showing either a minimum of 6 months continuous experience at an occupation directly involving the estimation of physical damage to motor vehicles, such as a body repairman; or by providing written documentation of successful completion of special education or training related to appraising motor vehicle physical damage and acceptable to the Commissioner as assuring minimum standards of competency.
- 31§62.2(g) Applications for an examination as appraiser shall be made to the Commissioner upon forms prescribed and furnished by him and shall be accompanied by the proper fee. Information required on forms must be completed or the application will not be processed.
- 31§62.2(h) The examination for licensure which shall be given under the supervision of the Commissioner shall consist of a written examination that shall include the act of appraising one or more damaged motor vehicles and shall be supplemented by an oral examination. At the discretion of the Commissioner an oral examination in lieu of the aforesaid written examination may be given but only for reason of an applicant's physical handicap. An oral examination shall include the act of appraising one or more damaged motor vehicles.
- 31§62.2(i) Examinations shall be given at reasonable times and places within the Commonwealth. An applicant who fails to pass the examination is not eligible to retake an examination for 30 days from the date of the failure.
- 31§62.2(j) Upon proper application and the payment of a fee of \$10 a person who has been employed or engaged for a period of not less than 2 years prior to the submission of the application in the appraising of physical damages to motor vehicles and is currently so engaged shall be licensed without examination as an appraiser if the application is made on or before July 1, 1973, and the applicant possesses the qualifications required of applicants as provided in

- section 3 of the act (63 P.S. § 853) and subsections (d)-(i).
- 31§62.2(k) An appraiser's license shall expire annually at midnight of June 30<sup>th</sup> next following the date of issuance.
- 31§62.2(l) Subject to the right of the Commissioner to suspend, revoke or refuse to renew an appraiser's license, the license may be renewed for another annual period commencing the first day of July and expiring at midnight of June 30<sup>th</sup> next following by filing with the Commissioner on or before the expiration date a written request, by or on behalf of the licensee, for the renewal, accompanied by payment of the renewal fee.
- 31§62.2(m) If the request and fee for renewal of the license is filed with the Commissioner prior to the expiration of the existing license, the licensee may continue to act under the license, unless sooner revoked or suspended, until the issuance of renewal license or until the expiration of 5 days after the Commissioner has refused to renew the license and has mailed notice of the refusal to the licensee. A request for renewal not so filed until after the day of expiration may be considered by the Commissioner as an application for a new license.

Revised Regulation:

*Sections 62.2(a),(b),(c),(d),(e),(f),(g),(h),(i),(j),(k),(l) & (m) have been deleted and replaced with the following:*

- 31§62.2 Licensing requirements.
- 31§62.2(a) *In addition to the requirements set forth in sections 3,4,8,11 of the Act. to qualify to take the examination required for appraisers, an applicant must establish his or her competency to fulfill the responsibility of being an appraiser. Competency may be demonstrated by providing written documentation of:*
- 31§62.2(a)(1) *a minimum of six months continuous experience within the last three (3) years at an occupation such as body repair, that directly involves the estimation of physical damage to motor vehicles; or*
- 31§62.2(a)(2) *successful completion of education or training related to appraising motor vehicle physical damage taken within the last three (3) years.*
- The Applicant shall provide to the Commissioner or her designee upon request any additional information on experience, education or training.*
- 31§62.2(b) *An application for licensing may be denied for any of the following:*
- 31§62.2(b)(1) *The applicant has provided incorrect, misleading or incomplete answers to interrogatories on forms incidental to the application for a license.*
- 31§62.2(b)(2) *The applicant has been denied a license by the Department or has had an existing license revoked, suspended or not renewed by an insurance regulatory authority in another state, territory or possession of the United States or in the District of Columbia or the Canadian provinces.*
- 31§62.2(b)(3) *The applicant does not possess the professional competence and trustworthiness required to engage in conducting motor vehicle appraisals. Such determination will be made by the Department.*
- 31§62.2(b)(4) *A showing that within 5 years prior to applying for a license under the Act an*

*applicant has pleaded guilty, entered a plea of nolo contendere or has been found guilty of a felony in a court of competent jurisdiction, or has pleaded guilty, entered a plea of nolo contendere, or been found guilty of criminal conduct which relates to the applicant's suitability to conduct motor vehicle appraisals. If applicable, applicants must also comply with the insurance – related provisions of the Violent Crime Control and Law Enforcement Act of 1994, 19U.S.C. §§ 1033, 1034.*

- 31§62.2(b)(4)(i) *Examples of criminal violations which the Department may consider related to the applicant's suitability to engage in the business of an appraiser include unlawful practices, embezzlement, obtaining money under false pretenses, conspiracy to defraud, bribery or corrupt influence, perjury or false swearing, unlicensed activity or a criminal offense involving moral turpitude or harm to another.*
- 31§62.2(b)(4)(ii) *Examples of violations or incidents which the Department will not consider related to the applicant's suitability to engage in the business of an appraiser are all summary offenses, records of arrests if there is no conviction of a crime based on the arrest, convictions which have been annulled or expunged or convictions for which the applicant has received a pardon from the Governor.*
- 31§62.2(b)(5) *The applicant has unpaid and overdue amounts, including, but not limited to, fees and civil penalties, owing to the Department.*

**Regulation Deletions:**

- 31§62.2. Licensing requirements.**
- 31§62.2(a) A person may not directly or indirectly act or hold himself out as an appraiser unless the person has first secured a license from the Commissioner in accordance with the provisions of the act and this chapter.**
- 31§62.2(b) The fee to be paid to the Commissioner by an applicant for an appraiser's license shall be \$ 10 at the time the application is made and \$10 annually for the renewal thereof. In the event of failure to pass the examination, the fee of \$10 will not be returnable.**
- 31§62.2(c) Each appraiser, while engaged in appraisal duties, shall carry the license issued to him by the Department and shall display it, upon request, to an owner whose vehicle is being inspected, to the repair shop representative involved or to an authorized representative of the Department.**
- 31§62.2(d) Except as otherwise provided in the act and this chapter, a person may not be granted an appraiser's license unless he first establishes his qualifications therefor and takes and passes an examination for appraisers.**
- 31§62.2(e) An applicant for the examination shall be at least 18 years of age; shall be a resident of this Commonwealth, or a resident of another state or country which permits residents of this Commonwealth to act as appraisers in that state or country; shall be trustworthy.**
- 31§62.2(f) In order to qualify for the examination, an applicant shall establish his competency to fulfill the responsibility of being an appraiser. This may**

be done by showing either a minimum of 6 months continuous experience at an occupation directly involving the estimation of physical damage to motor vehicles, such as a body repairman; or by providing written documentation of successful completion of special education or training related to appraising motor vehicle physical damage and acceptable to the Commissioner as assuring minimum standards of competency.

- 31§62.2(g) Applications for an examination as appraiser shall be made to the Commissioner upon forms prescribed and furnished by him and shall be accompanied by the proper fee. Information required on forms must be completed or the application will not be processed.
- 31§62.2(h) The examination for licensure which shall be given under the supervision of the Commissioner shall consist of a written examination that shall include the act of appraising one or more damaged motor vehicles and shall be supplemented by an oral examination. At the discretion of the Commissioner an oral examination in lieu of the aforesaid written examination may be given but only for reason of an applicant's physical handicap. An oral examination shall include the act of appraising one or more damaged motor vehicles.
- 31§62.2(i) Examinations shall be given at reasonable times and places within the Commonwealth. An applicant who fails to pass the examination is not eligible to retake an examination for 30 days from the date of the failure.
- 31§62.2(j) Upon proper application and the payment of a fee of \$10 a person who has been employed or engaged for a period of not less than 2 years prior to the submission of the application in the appraising of physical damages to motor vehicles and is currently so engaged shall be licensed without examination as an appraiser if the application is made on or before July 1, 1973, and the applicant possesses the qualifications required of applicants as provided in section 3 of the act (63 P.S. § 853) and subsections (d)-(i).
- 31§62.2(k) An appraiser's license shall expire annually at midnight of June 30<sup>th</sup> next following the date of issuance.
- 31§62.2(l) Subject to the right of the Commissioner to suspend, revoke or refuse to renew an appraiser's license, the license may be renewed for another annual period commencing the first day of July and expiring at midnight of June 30<sup>th</sup> next following by filing with the Commissioner on or before the expiration date a written request, by or on behalf of the licensee, for the renewal, accompanied by payment of the renewal fee.
- 31§62.2(m) If the request and fee for renewal of the license is filed with the Commissioner prior to the expiration of the existing license, the licensee may continue to act under the license, unless sooner revoked or suspended, until the issuance of renewal license or until the expiration of 5 days after the Commissioner has refused to renew the license and has mailed notice of the refusal to the licensee. A request for renewal not so filed until after the day of expiration may be considered by the Commissioner as an application for a new license.

Current Regulation:

- 31§62.3. Applicable standards for appraisal.  
31§62.3(a) The appraisal statement shall adhere to the following form:  
31§62.3(a)(1) An appraisal shall state the name of the insurance company, the insurance file number, the number of the appraiser's license and the proper identification number of the vehicle being inspected.  
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(a)(3) An appraisal may not make use of abbreviations or symbols to describe work to be done or parts to be repaired or replaced unless an explanation of the abbreviations and symbols is included.

Revised Regulation:

- 31§62.3. Applicable standards for appraisal.  
31§62.3(a) The appraisal shall *be signed by the appraiser before the appraisal is submitted to the insurer, the consumer or any other involved party.*

*\*"The appraisal statement shall adhere to the following" is a necessary terminology in which it provides a directive to the licensed appraiser, an order of the law. This language reinforces the intentions of the State.*

*Section 62.3(a)(1) & (3) has been deleted*

**\*\*\* Opinion:**

*An appraisal may not make use of abbreviations or symbols to describe work to be done or parts to be repaired unless an explanation of the abbreviations and symbols is included. This segment is not to be removed enabling the consumer a better understanding of industry terminology and procedures necessary to repair damaged vehicle to a condition prior to the loss in question. The importance of printed explanations is more significant today than ever before. Computerized appraisals take advantage of persons untrained in each individual software program. The insurance industry's use of five different estimating-software programs decreases the collision repair professional's ability to comprehend. It is a recommendation that Physical Damage Appraiser's secure an appraisal utilizing the estimating program employed by the repair facility. This will eliminate the confusion that transpires as collision repair professionals work in the best interest of the consumer.*

Regulation Deletions:

- 31§62.3(a) **The appraisal statement shall adhere to the following form:**  
31§62.3(a)(1) **An appraisal shall state the name of the insurance company, the insurance file number, the number of the appraiser's license and the proper identification number of the vehicle being inspected.**  
31§62.3(a)(3) **An appraisal may not make use of abbreviations or symbols to describe work to be done or parts to be repaired or replaced unless an explanation of the abbreviations and symbols is included.**

Current Regulation:

- 31§62.3(b) The appraisal statement shall contain the following:
- 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.
- 31§62.3(b)(4) If there is a date after which an insurer will not be responsible for a related towing services or storage charges, or both, and after which the charges will be the responsibility of the consumer, the appraisal shall clearly indicate that date.

Revised Regulation:

- 31§62.3(b) *In addition to the requirements in the Act, the appraiser shall contain a written disclosure which includes the following:*

*\* A disclosure statement (written or verbal) is not consistent with the current State Law and Regulation.*

*\* The administration purpose of a Regulation is to expand upon an act. Disclosure is not intended by Act 367 or UIPA 146.8*

*\* To add a disclosure statement is in violation of current Laws and Regulations.*

**\*\*\* Opinion:**

*Any disclosure would need to be drafted by the Consumers Affairs Committee of the Senate and the Consumer Protection committee of the House of Representatives. These committees shall also select a "Consumer's Advocate" position to monitor the proper enforcement of the regulations.*

- 31§62.3(b)(1) *the dollar amount of the appraisal:*

**\*\*\* Opinion:**

*If disclosure is utilized, then this amount shown on the initial appraisal will need to be identified as a "preliminary amount" which most likely will change as the repairs transpire. 95% of all damaged vehicles repaired in today's collision repair environment go through a supplemental process, not just once, but a supplemental process can increase the amount several times.*

History 1977 - Bulletin No. 53 stated:

(1) Failure to explain an appraisal and/or a rendered estimate to a claimant – It is further the intent of the law that the appraiser discuss and explain any discrepancies between his own appraisal and a rendered estimate with the claimant at the claimant's request.

Confusion frequently arises with the claimant because the appraiser has failed to explain appraisal factors such as those relating to depreciation or discounting for new parts. The law specifies that such factors be thoroughly disclosed on the appraisal form. The regulation reads:

31§62.3(b)(1) \*\*\*\* there shall be a specification [in the appraisal statement] of any 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 matters incidental to repair of the incurred damage."

It is also the clearly stated intent of the law that the appraisal statement plainly disclose to the claimant any dollar amount that he or she will be required to pay.

31§62.3(b)(2) a statement that any excess costs above the appraised amount may be the responsibility of the vehicle owner:

**\*\*\* Opinion:**

*"Excess cost above the appraised amount" needs to be identified as loss related or non-loss related. Any cost - expense, expenditure. Outlay of funds related to the repair process of a consumer's damaged vehicle shall be paid in compliance with State Law and Regulation.*

*\*Conflict of State Law v. Proposed Reg. [UIPA 146.8(d)(f)]*

31§146.8(d) *If an insurer prepares an appraisal of the cost of automobile repairs, the appraisal shall be in an amount for which it may be reasonably expected the damage can be satisfactorily repaired.*

31§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.*

31§62.3(b)(3) *a statement that there is no requirement to use any specific repair shop. The appraiser may provide the consumer with the names of at least two repair shops able to perform the repair in accordance with the appraisal:*

*History 1973 – Original Regulation:*

31§1.3(B)(1)(c) *No appraiser or his employer shall:*

31§1.3(B)(1)(c)(1) *Recommend or require that repairs be made at a particular place or by a particular individual.*

*History 1977 – Bulletin No. 53 stated:*

2) *Improper referrals – One of the most common complaints relates to the improper referral of claimants to firms engaged in motor vehicle physical damage repair. The regulation reads:*



- |                     |   |
|---------------------|---|
| 31§62.3(g)(8)       | "No appraiser shall recommend, or require that repairs be made at any particular place or by a particular individual."  |
| 31§62.3(g)(9)       | "*** a licensed appraiser shall not, in any manner whatsoever, attempt to directly or indirectly coerce, persuade, induce or advise the customer 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." |
| 31§62.3(g)(12)(iii) | "Upon the unsolicited request of the customer, an appraiser shall provide 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 accordance with the written appraisal."                             |

Plainly stated, the law emphatically prohibits:

- a. direct referral;
- b. unrequested recommendations;
- c. solicitation of a request from a claimant for such recommendations.

**\*\*\* Opinion:**

*The current and existing regulation grants the physical damage appraiser an option to provide 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. However, this is only after the consumer issues an "Unsolicited Request". The unsolicited request terminology is used to protect the consumer from being pressured, coerced, persuaded, induced, or advised.*

*> "a statement that there is no requirement to use any specific repair shop" is not explicit as to the necessary wording to be used on the appraisal. If a disclosure statement is to used then the exact wording must be developed through the Consumer's Advocate's post in the Attorney General's office. To allow each insurance company the autonomy of preparing such a statement will create an unnecessary administrative process for the Department of Insurance. Insurance companies have already demonstrated their inability to protect consumers through non-compliance of current State law and regulation. The goal is to provide consumer protection in addition to safeguarding the consumer's right to choose.*

**\*Conflict of State Law v. Proposed Reg. [UIPA 146.8(b)(d)]**

*31§146.8(b) Insurers may not require a claimant to travel unreasonably either to inspect a replacement automobile, to obtain a repair estimate or to have the automobile repaired a specific repair shops.*

*31§146.8(d) ... The insurer shall give a copy of the appraisal to the claimant and may furnish to the claimant, upon his unsolicited request, the names of two or more conveniently located repair shops.*

**\*Conflict of State Law v. Proposed Reg. [Act 367 – 11(c)(d)]**

*Section 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 personal inspections.*

**Section 11.(d)** *No appraiser or his employer shall require that repairs be made in any specified repair shop.*

*\*Eliminates 31§ 62.3 (g)(8) – Consumer Protection*

**31§62.3(g)(8)** *An appraiser or his employer may not recommend or require that repairs be made at a particular place or by a particular individual.*

*\*Eliminates 31§ 62.3 (g)(9) – Consumer Protection*

**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.*

*\*Eliminates 31§ 62.3 (g)(12)(iii) – Consumer Protection > "Unsolicited Request" is critical terminology which enables the consumer an inquiry of assistance if necessary which permits an appraiser to help choose a repair facility. The importance of this wording is "Upon the unsolicited request of the consumer" or not to compromise the "Consumer's Right to Choose" > Compliance of current law is an appraiser is to keep silent.*

**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***

**31§62.3(b)(4)** *a description of repairs necessary to return the vehicle to its pre-damaged*

*History 1973 – Original Regulation:*

**31§1.3(A)(2)** *Required contents of appraisal statement.*

**31§1.3(A)(2)(a)** *An appraisal statement shall specify all 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. Also, there must 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 matters incidental to repair of the incurred damage.*

*\* Conflict of State Law v. Proposed Reg. [Act 376 Sec. 11(b)]*

*"the appraisal shall include an itemized listing of all damages, specifying those parts to be replaced or to be repaired."*

*\*A "description of repairs" is not inclusive of the necessary details and analysis needed to repair a damaged vehicle to a condition prior to its loss. This terminology is general in nature, regarding the necessary "factual" explanation required in the appraisal process.*

*\*Eliminates 31§ 62.3 (b) >The appraisal statement shall adhere to the following:  
"Items necessary to return the vehicle to a condition prior to the damage in question".*

*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:*

*\*\*\* Opinion:*

*Resolutions through the "appraisal clause" provisions are deceptive in reference to providing Consumer Protection.*

- 1) These provisions are not included in every (policy) contractual agreement.*
- 2) These provisions have no significance regarding third party claims.*
- 3) The Insurance Department has a regulatory responsibility to provide the consumer with an environment in which the citizens of the Commonwealth are safeguarded. Non-compliance of State Law is the reason this protection is necessary. This provision is nothing more than permitting the "Fox to watch the hen house". It is the task of the Insurance Department to review contractual agreements (policies) prior to placement within the marketplace. Is there an invocation provision guideline for all policy agreements in Pennsylvania?*

*\*\*\* Opinion:*

*A "description of repairs" is not inclusive of the necessary details and analysis to return a damaged vehicle to a condition prior to its loss in question. The terminology "description of Repairs" lends itself to the process of "bundling" whereas an appraiser may elect to add several parts or procedures into one single line item and compensate the consumer a "bundled" settlement. As one investigates the economic nomenclature of "bundling" it is explained as, "to loose". The existing regulations utilizes "Items necessary" A copy of Pennsylvania's original regulation written in 1973 reads...  
"An appraisal statement shall specify all items necessary" As one compares our highly technical vehicles in today's society to the more simplistic mechanical vehicles of 1973 we have to wonder why the Department of Insurance has relaxed the requirement to specify all items. On October 24, 1996 the Pennsylvania Collision Trade Guild received a letter from the Department of Insurance, Known as the "Aigner Letter". (copy enclosed) Mr. Leonard D'Amico, Manager of the Harrisburg office responded to a request from PCTG member Jack Aigner to interpret the Regulation in an easy to understand format. Here again, the Department explained the purpose of 31 §62.3(b)(1) as "The appraiser must identify all items, expenses and work necessary to return the damage vehicle to*

*it's condition prior to the accident or incident..." Mr. D'Amico also states that said appraisal must be "factual as to the repair of the vehicle" To Change (revise) the existing interpretation from "all items" and "factual" to "description of repairs" will eradicate the original intentions of the regulation and limit the insurance appraiser's obligation to the consumer.*

*History 1973 – Original Regulation:*

*31§1.3(A)(2) Required contents of appraisal statement.*

*31§1.3(A)(2)(a) An appraisal statement shall specify all 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. Also, there must 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 matters incidental to repair of the incurred damage.*

*31§1.3(A)(2)(b) An appraisal statement shall clearly indicate of the cost or dollar amount value of all specified items.*

**\*\*\* Opinion:**

*Pre-damaged needs to be re-evaluated and changed to pre-loss or pre-accident which will protect the consumer's investment as per State Law.*

**\*\*\* Opinion:**

*Regarding the possibility of a dispute between the consumer and the insurance company. The ability of a consumer seeking resolution through an appraisal clause or policy contract can only affect the insured whose contractual relationship with said carrier is protected through the policy provisions. In the event of a third party claim the claimant has no course of action other than to litigate any misrepresentation or underpayment of the loss. To seek resolution through an invocation process is only practical when an authoritative, regulatory arm of the government is available to intercede and guarantee the citizens of the Commonwealth regulatory protection. The enforcement action under current law and regulation have been insignificant at best. To suggest that an invocation process will provide a better method of consumer protection is nothing more than allowing the insurance companies a process in which to manipulate consumer claims.*

*31§62.3(b)(5) incidental charges including towing, protective care, custody, storage, battery and tire replacement:*

*31§62.3(b)(6) applicable sales tax payable on the total dollar amount of the appraisal:*

*31§62.3(b)(7) the date, if any, after which an insurer will not be responsible for any related towing services or storage charges and after which such charges will be the responsibility of the consumer*

*31§62.3(b)(8) the location where the listed parts are available in a condition equivalent to or better than, the condition of the replaced parts prior to the accident; and*

*31§62.3(b)(9) if the appraisal includes Non-OEM aftermarket crash parts, a statement that the appraisal has been prepared based on the use of aftermarket crash parts supplied by a source other than the manufacturer of the motor vehicle, and .*

*that if the use of an aftermarket crash part voids the warranty on the original part, the aftermarket crash part shall have a warranty equal to or better than the warranty on the original part*

*\*Conflict of State Law v. Proposed Reg. [Act 367 Sec. 11 (b)]*

*Section 11.(b) ... 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.*

*\*\*\* Opinion:*

*An appraisal which includes NON-OEM aftermarket crash parts is not consistent with the spirit of the act. " Because an appraiser is charged with a high degree of regard for the public safety, the operational safety of the vehicle shall be paramount" The operational safety – "public safety" and "paramount" phraseology empowers the consumer to anticipate nothing less than Original Equipment specified by the manufacturer.*

*"Condition prior to the loss in question" identifies an accurately repaired vehicle which follows guidelines and specifications recommended by the manufacturer.*

*"Unless all of same elements are found in exactly same situation and are united in the same way to perform identical function in a prior art reference there is no "anticipation" which will invalidate that patent. [Black's Law, Sixth Edition]*

*\*\*\* Opinion:*

*To rationalize that an aftermarket part may have a warranty that is equal to or better than an Original Equipment Part represents a wanton disregard for our Consumer's Protection. The manufacturer's warranty is a fundamental component of the consumer's investment. This investment is inclusive of the entire, undiminished, undamaged vehicle. It is the obligation and responsibility of the manufacturer to comply with the product's written warranty. In the event of parts replacement or repair it becomes the purchaser's (consumer's) responsibility to follow the manufacturer's recommended procedures and guidelines to assure that said repairs are in accordance with the manufacturer's written warranty. When an insurance company accepts responsibility to compensate the cost of repairing a consumer's damaged vehicle it also becomes that insurance company's obligation to act on behalf of the consumer and follow the same manufacturer's recommended specifications to repair said vehicle to a condition prior to its loss.*

**Regulation Deletions:**

**31§62.3(b)**

**The appraisal statement shall contain the following:**

**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.**

**31§62.3(b)(4)**

**If there is a date after which an insurer will not be responsible for a related towing services or storage charges, or both, and after which the charges will be the responsibility of the consumer, the appraisal shall clearly indicate that date.**

Current Regulation:

- 31§62.3(c) In the specification of new or used parts, the following standards shall be used for the appraisal statement:
- 31§62.3(c)(1) The operational safety of the motor vehicle shall be paramount especially when the parts involved pertain to the drive train, steering gear, suspension units, brake system or tires.
- 31§62.3(c)(2) If used parts are specified in the appraisal, the appraiser shall have certain knowledge of one or more relatively convenient locations where the particular used parts are actually and reasonably available in usable condition equivalent to or better than the condition of the damaged parts prior to the accident. The appraiser shall specify the locations where such used parts are in fact available.

Revised Regulation:

*Section 62.3(c)(1),(2) has been deleted*

*History 1973 – Original Regulation:*

- 31§1.3(A)(3)(a) *Specification of new or used parts.*
- 31§1.3(A)(3)(a)(1) *The operational safety of the motor vehicle shall be paramount in considering the specification of new parts, especially when the parts involved pertain to the drive train, steering gear, suspension units, brake system or tires.*

*History 1977 - Bulletin No. 53 stated::*

*6) Failure to base appraisal upon full restoration to prior condition – As stated in §62.3(b)(1) of the act a prime objective of the law is to insure the restoration of automobiles to pre-crash condition. This is the purpose for which the consumer pays his insurance premium. This should be the standard upon which all appraisals are made. This factor should be kept very much in mind when considering the use of new parts as against used parts. This is especially important in repair of new cars which are still under factory warranty. In most instances, new car warranties require replacement with new parts manufactured by the manufacturer of the automobile. Accordingly, used parts should never be recommended when their use would result in a disclaimer by the manufacturer of the manufacturer's warranty, or would result in accelerated depreciation of the vehicle. The same applies to repair procedures.*

*In consideration of used parts, the law requires that the operational safety of the motor vehicle shall be paramount. Also, the law requires that when used parts are specified, the appraiser shall have certain knowledge of convenient locations where these parts are available and must specify these locations when requested to do so. The regulation reads:*

- 31§62.3(c) *“In the specification of new or used parts, the following standards shall be used for the appraisal statement:*

**31§62.3(c)(1)** *"The operational safety of the motor vehicle shall be paramount especially when the parts involved pertain to the drive train, steering gear, suspension units, brake system or tires.*

**31§62.3(c)(2)** *"If used parts are specified in the appraisal, the appraiser shall have certain knowledge of one or more relatively convenient locations where the particular used parts are actually and reasonably available in usable condition equivalent to or better than the condition of the damaged parts prior to the accident. On request, the appraiser shall specify the locations where such used parts are in fact available.*

**Regulation Deletions:**

**31§62.3(c)** **In the specification of new or used parts, the following standards shall be used for the appraisal statement:**

**31§62.3(c)(1)** **The operational safety of the motor vehicle shall be paramount especially when the parts involved pertain to the drive train, steering gear, suspension units, brake system or tires.**

**31§62.3(c)(2)** **If used parts are specified in the appraisal, the appraiser shall have certain knowledge of one or more relatively convenient locations where the particular used parts are actually and reasonably available in usable condition equivalent to or better than the condition of the damaged parts prior to the accident. The appraiser shall specify the locations where such used parts are in fact available.**



Current Regulation:

- 31§62.3(d) In the appraisal of salvage value, the following standards shall be used:
- 31§62.3(d)(1) If the salvage value of the vehicle being appraised is known or could reasonable be found out, the appraiser shall inform the consumer of the salvage value and additional charges for towing services or storage chargeable against the motor vehicle as of the date of the appraisal.
- 31§62.3(d)(2) For any salvage value listed, the appraiser shall inform the consumer of name and address of salvage buyer, and the amount and expiration date of each salvage bid known.
- 31§62.3(d)(3) If the ownership and possession of the damaged motor vehicle is not retained by the owner or his representative, this subsection dealing with salvage value need not be complied with.

Revised Regulation:

- 31§62.3(c) In the appraisal of salvage value, the following standard shall be used:
- 31§62.3(c)(1) If the salvage value of the vehicle being appraised is known or could reasonable be *determined*, the appraiser shall *advise* the consumer *in writing* of the salvage value and additional charges for towing services or storage chargeable against the motor vehicle as of the date of the appraisal.
- 31§62.3(c)(2) *If the salvage value is* listed, the appraiser shall *advise* the consumer *in writing of the* name and address of *each salvage bidder*, and the amount and expiration date of each salvage bid known.
- 31§62.3(c)(3) If the ownership and possession of the damaged motor vehicle is not retained by the owner or *the owner's* representative, this subsection dealing with salvage value *is inapplicable*.

Regulation Deletions:

- 31§62.3(d) In the appraisal of salvage value, the following standards shall be used:
- 31§62.3(d)(1) If the salvage value of the vehicle being appraised is known or could reasonable be **found out**, the appraiser shall **inform** the consumer of the salvage value and additional charges for towing services or storage chargeable against the motor vehicle as of the date of the appraisal.
- 31§62.3(d)(2) **For any** salvage value listed, the appraiser shall **inform** the consumer of name and address of salvage **buyer**, and the amount and expiration date of each salvage bid known.
- 31§62.3(d)(3) If the ownership and possession of the damaged motor vehicle is not retained by the owner or **his** representative, this subsection dealing with salvage value **need not be complied with**.

Current Regulation:

- 31§62.3(e) The following standards shall be used regarding the betterment of the vehicle:
- 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.
- 31§62.3(e)(2) If the consumer is insistent upon the use of new parts rather than repair, or otherwise wished to repair the motor vehicle to a condition better than that existing prior to the damage incurred, the appraisal need only specify the cost of repairing the vehicle to is condition just prior to the time the damage was incurred.

Revised Regulation:

- 31§62.3(d) An appraisal for the repair of the motor vehicle *shall* be made in the amount necessary to return the motor vehicle to its *pre-damaged condition*. If the consumer *requests* the use of parts *other than those listed on the appraisal*, or otherwise wished to repair the motor vehicle to a condition better than that existing prior to the damage incurred, the appraisal need only specify the cost of repairing the vehicle to its *pre-damaged* condition.

**\*\*\* Opinion:**

***Betterment: The following standards shall be used regarding the betterment of the vehicle:***

***Betterment language > Betterment needs to be identified, as is has the opposite purpose of diminution or a value that has been diminished.***

***\*Diminution – Incompleteness. Act or process of diminishing, taking away or lessening. (Black's Law 6<sup>th</sup> Edition)***

***\*Diminished Value > is the loss in a damaged vehicle's market value after the repairs have been completed.***

***>Insurance related diminished value, applies when an insurance company did not allow for needed repair procedures or when they required substandard parts to be used in the repair process.***

***>Repair related diminished value applies when a repair shop was paid to perform needed repairs but did not do them correctly.***

***An appraisal for the repairs of the motor vehicle shall be made in the amount necessary to return the motor vehicle to it's condition prior to it's loss in question. [31§62.3(e)(1)]***

***A conflict of Law v. Reg. (UIPA 146.8)(e))***

***"When the amount claimed is reduced because of betterment or depreciation information for the reduction shall be contained in the claim file. The deductions shall***

*be itemized and specified as to dollar amount and shall be appropriate for the amount of deductions.”*

**\*Diminished Value Language**

*The Department of Insurance is swift to remove the betterment terminology as it directs the consumer towards the penalty (additional cost) for an improvement to the damaged vehicle. However, the opposite of an improvement is a loss to the vehicle value (diminution in value) If this regulation is truly a consumer oriented change in which it is to further protect the rights of Pennsylvania citizens, then a subsection which recognizes and addresses the diminution (diminish value) should be added and enforced.*

**Regulation Deletions:**

- 31§62.3(e)           **The following standards shall be used regarding the betterment of the vehicle:**
- 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.**
- 31§62.3(e)(2)       If the consumer is **insistent upon** the use of new parts **rather than repair**, or otherwise wished to repair the motor vehicle to a condition better than that existing prior to the damage incurred, the appraisal need only specify the cost of repairing the vehicle to is condition just **prior to the time the damage was incurred.**

Current Regulation:

- 31§62.3(f) The following standards shall be used to determine replacement value under policy provisions covering the total loss of a motor vehicle including an uncovered motor vehicle:
- 31§62.3(f)(1) If the costs of repair of a motor vehicle exceed its appraised value, less salvage value or the motor vehicle cannot be satisfactorily or reasonably repaired to its condition just prior to the damage in question being incurred, the appraised value of the loss shall be the replacement value of the motor vehicle.

Revised Regulation:

- 31§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 exceed its appraised value less salvage value, or the motor vehicle cannot be satisfactorily or reasonably repaired to its condition just prior to the damage in question being incurred.*

**\*\*\* Opinion:**

*The appraised value of the motor vehicle must be compensated separately from the entire "loss" in question. This to insure the consumer is protected and fully compensated with a replacement vehicle of "like, kind and condition". Limiting the loss to the appraised value of the vehicle will not be inclusive of the entire claim. There needs to be a specification in which this section of the Regulation refers to the "total loss" of one investment (vehicle).*

Regulation Deletions:

- 31§62.3(f) The following standards shall be used to determine replacement value under policy provisions covering the total loss of a motor vehicle including an uncovered motor vehicle:**
- 31§62.3(f)(1) If the costs of repair of a motor vehicle exceed its appraised value, less salvage value or the motor vehicle cannot be satisfactorily or reasonably repaired to its condition just prior to the damage in question being incurred, the appraised value of the loss shall be the replacement value of the motor vehicle.**

Current Regulation:

- 31§62.3(f)(2) The replacement value of a motor vehicle shall be calculated by use of the one of the following methods:
- 31§62.3(f)(2)(i) Guide source method. The appraiser shall calculate the average of two figures reflecting the retail book value of a vehicle of like kind and condition, as stated in the corrected edition of the *Red Book* (National Market Reports, Inc., Circulation Department, 300 West Adams Street, Chicago, Illinois 60606, telephone (800) 671-9907), the *NADA Book* (Subscription Department, Post Office Box 7800, Costa Mesa, California 92628, telephone (800) 622-6232), or any similar source of information approved by the Commissioner, adjusted for equipment and mileage, less the cost of repair of damage which preexisted the accident in question. There may be no other deductions except for salvage and then only if the owner elects to retain the vehicle.
- 31§62.3(f)(2)(ii) Actual cost method. The appraiser shall determine the actual cost of purchase of an available motor vehicle of like kind and quality in condition similar to or better than the motor vehicle being appraised just prior to the damage in question being incurred.
- 31§62.3(f)(2)(iii) Dealer quotation method. The appraiser shall consult with dealers or other persons knowledgeable in the field to secure quotations as to the value of the motor vehicle being appraised. As least two quotations shall be secured. The figures thus secured shall be averaged.

Revised Regulation:

- 31§62.3(e)(1) *Under paragraph (e) above, replacement value under the policy provisions covering the total loss of a motor vehicle including an unrecoverable motor vehicle shall be determined by one of the following methods:*

***Pennsylvania Bulletin – 1995:***

***Revisions to § 62.3(f) Pennsylvania Bulletin Vol.25, No. 29, July 22, 1995 clarifies that other vendors, with the approval of the Insurance Commissioner. May be utilized for calculating replacement value.***

***Purpose:***

***The purpose of amending this section is to memorialize the Department's interpretation of § 62.3(f) to allow utilization of qualified replacement value data service vendors other than the Red Book and the NADA book.***

***Affected Parties***

***Amending § 62.3 expands the ability of other qualified vendors of replacement value data services to offer their services in this Commonwealth without disturbing the ability of the Red Book or NADA Book to continue to do business.***

**\*\*\* Opinion:**

*The above mentioned amendment will require revisions.*

*This amendment was never brought to the attention of the general public. The purpose of this segment is to appropriately compensate consumers for a loss of their investment. However, the "other vendors" who have been given permission through this amended change are primarily automated data base companies who are not required to provide or publish the process in which they gather these important statistics. Pennsylvania consumers are not given a choice as to how evaluations are obtained for their "totaled loss" vehicles. Insurance companies regularly force consumers to accept low evaluations using the "Guide Source" methods. Citizens of the Commonwealth have no course of action in regards to arbitrating an insurance companies evaluation terms. A "take it or leave it" approach has frustrated consumers for years. Consumers who are desperately in need of transportation are more likely to accept a lessor offer.*

*Historically: The Department of Insurance has permitted insurance companies to evaluate the consumer's total loss evaluation using the following language > "if the cost of repairing a motor vehicle exceed its appraised value less salvage value".*

*Salvage Value, What does "salvage value" represent to the consumer?*

*Salvage value is the amount of compensation received from the sale of a vehicle that has been deemed a total loss. This value is obtained through the sale of said salvage. The selling of salvage is typically done after the settlement of the claim.*

*The anticipation of the consumer is to receive a settlement in which the loss is compensated in full prior to relinquishing ownership of the property. Should Salvage value affect the true, actual compensation of a consumer's loss? Insurance companies use an 80% total loss threshold to determine the amount of risk they are willing to invest into the re-manufacturing repairing of a damaged vehicle.*

*It is their contention that to invest more than 80% of the average retail value in the repair process of the damaged vehicle could expose them to a disbursement amount greater than the average retail value of the loss in question. The 20% figure represents an amount the insurance industry speculates a vehicle will return at the salvage market. It is interesting to note as the salvage speculation becomes greater on certain higher end vehicles the insurance company will lower the total loss threshold hoping to attract a high return on the salvage. A significant concern here is what negative effect this practice has on the consumer's loss. When an insurance company excepts the responsibility to compensate a consumer's loss they should not be attracted to the salvage value prior to settling the claim, especially forcing the consumer into a totaled loss scenario where one's investment over time is lost . Permitting the insurance company to capitalize on a consumer's loss at the expense of said consumer is not the purpose of the Pennsylvania Motors Vehicle Physical Damage Appraisers Act and Regulation. However, this scenario happens everyday of the week.*

- 31§62.3(e)(1)(i) Guide source method. The appraiser shall calculate the average of two figures reflecting the retail book value of a vehicle of like kind and condition, as provided by guide sources approved by the Commissioner. *A listing of approved guide sources shall be published once a year in the Pennsylvania Bulletin. The appraised value shall be adjusted for equipment and mileage, less the cost of repair of damage which preexisted the accident in question. No other deductions may be taken except for salvage and then only if the owner elects to retain the vehicle.*
- 31§62.3(e)(1)(ii) Actual cost method. The appraiser shall determine the actual cost of purchase of an available motor vehicle of like kind and quality in condition similar to or better than the motor vehicle being appraised just prior to the damage in question being incurred. *The appraiser must specify, in writing, the location of said vehicle of like kind and quality.*
- 31§62.3(e)(1)(iii) Dealer quotation method. The appraiser shall consult with dealers or other persons knowledgeable in the field to secure quotations as to the value of the motor vehicle being appraised. As least two quotations shall be secured. The figures thus secured shall be averaged.

**Regulation Deletions:**

- 31§62.3(f)(2) The replacement value of a motor vehicle shall be calculated by use of the one of the following methods:
- 31§62.3(f)(2)(i) Guide source method. The appraiser shall calculate the average of two figures reflecting the retail book value of a vehicle of like kind and condition, as stated in the corrected edition of the **Red Book (National Market Reports, Inc., Circulation Department, 300 West Adams Street, Chicago, Illinois 60606, telephone (800) 671-9907), the NADA Book (Subscription Department, Post Office Box 7800, Costa Mesa, California 92628, telephone (800) 622-6232), or any similar source of information** approved by the Commissioner, adjusted for equipment and mileage, less the cost of repair of damage which preexisted the accident in question. **There may be no** other deductions except for salvage and then only if the owner elects to retain the vehicle.
- 31§62.3(f)(2)(ii) Actual cost method. The appraiser shall determine the actual cost of purchase of an available motor vehicle of like kind and quality in condition similar to or better than the motor vehicle being appraised just prior to the damage in question being incurred.
- 31§62.3(f)(2)(iii) Dealer quotation method. The appraiser shall consult with dealers or other persons knowledgeable in the field to secure quotations as to the value of the motor vehicle being appraised. As least two quotations shall be secured. The figures thus secured shall be averaged.

Current Regulation:

31§62.3(f)(3) If the motor vehicle is listed in any two of the sources authorized by paragraph (2)(i), including older car publications, the replacement value shall be calculated by the guide source method or by the actual cost method, as described in paragraph (2). If the actual cost method is used, and the owner of the damaged vehicle shows that the replacement vehicle is not of the same kind and quality, both calculations reference in this paragraph shall be made, and the higher of the values obtained shall be offered in settlement.

Revised Regulation:

31§62.3(e)(2) If the motor vehicle is listed in *at least two guide sources approved by the Commissioner*, the replacement value shall be calculated by the guide source method or by the actual cost method, as described in paragraph (1)(i), (1)(ii). If the actual cost method is used, and the owner of the damaged vehicle shows that the replacement vehicle is not of the same kind and quality, both calculations reference in this paragraph shall be made, and the higher of the values obtained shall be offered in settlement.

Regulation Deletions:

31§62.3(f)(3) If the motor vehicle is listed in **any two of the sources authorized by paragraph (2)(i), including older car publications**, the replacement value shall be calculated by the guide source method or by the actual cost method, as described in paragraph (2). If the actual cost method is used, and the owner of the damaged vehicle shows that the replacement vehicle is not of the same kind and quality, both calculations reference in this paragraph shall be made, and the higher of the values obtained shall be offered in settlement.



Current Regulation:

31§62.3(f)(4) If the motor vehicle is not listed in any two of the sources authorized by paragraph (2)(i), including older car publications, or if the vehicle differs materially from the average vehicle because of factors not considered in guide sources, for example, antique or classic cars, vehicle no longer manufactured and unique vehicles, the replacement value shall be calculated by the actual cost method or by the dealer quotation method, as described in paragraph (2). If the dealer quotation method is used, both calculations referenced in this paragraph shall be made, and the higher of the values obtained shall be offered in settlement.

Revised Regulation:

31§62.3(e)(3) If the motor vehicle is not listed in *at least* two of the sources authorized by paragraph (1)(i), or if the vehicle differs materially from the average vehicle because of factors not considered in *the* guide sources, for example, antique or classic cars, vehicle no longer manufactured and unique vehicles, the replacement value shall be calculated by the actual cost method or by the dealer quotation method, as described in paragraph (1)(i), (1)(ii). If the dealer quotation method is used, both calculations referenced in this paragraph shall be made, and the higher of the values obtained shall be offered in settlement.

Regulation Deletions:

31§62.3(f)(4) If the motor vehicle is not listed in **any** two of the sources authorized by paragraph (2)(i), **including older car publications**, or if the vehicle differs materially from the average vehicle because of factors not considered in guide sources, for example, antique or classic cars, vehicle no longer manufactured and unique vehicles, the replacement value shall be calculated by the actual cost method or by the dealer quotation method, as described in paragraph (2). If the dealer quotation method is used, both calculations referenced in this paragraph shall be made, and the higher of the values obtained shall be offered in settlement.

Current Regulation:

31§62.3(f)(5) Applicable sales tax on the replacement cost of a motor vehicle shall be included as part of the replacement value

Revised Regulation:

31§62.3(e)(4) Applicable sales tax on the replacement cost of a motor vehicle shall be included as part of the replacement value

Regulation Deletions:

No deletions

**Current Regulation:**

31§62.3(f)(6) The licensed appraiser's Total Loss Evaluation Report shall contain the names and addresses of those persons from whom quotations were secured, the date secured, and whether or not a similar vehicle was available.

**Revised Regulation:**

31§62.3(e)(5) The licensed appraiser's *total loss evaluation report* shall contain the names and addresses of those persons from whom quotations were secured, the date secured, and whether or not a similar vehicle was available.

**Regulation Deletions:**

31§62.3(f)(6) The licensed appraiser's **Total Loss Evaluation Report** shall contain the names and addresses of those persons from whom quotations were secured, the date secured, and whether or not a similar vehicle was available.

**Current Regulation:**

31§62.3(f)(7) The licensed appraiser's file shall show the method used to determine the more accurate replacement value in a given locality.

**Revised Regulation:**

31§62.3(e)(6) The licensed appraiser's file shall show the method used to determine the replacement value in a given locality.

**Regulation Deletions:**

31§62.3(f)(7) The licensed appraiser's file shall show the method used to determine the **more accurate** replacement value in a given locality.

**Current Regulation:**

31§62.3(f)(8) A copy of the total loss evaluation sheet shall be given to the consumer by the appraiser or by the insurer within 5 working days after the appraisal is completed. If an offer of settlement is made before the consumer receives the total loss evaluation sheet, the consumer shall be verbally advised of the contents thereof and of his right to receive a copy within 5 days after its completion.

**Revised Regulation:**

31§62.3(e)(7) *The appraiser is responsible for ensuring that a copy of the total loss evaluation report be sent within five (5) working days to the consumer by the appraiser after the appraisal is completed. If a settlement offer is extended before the consumer receives the total loss evaluation report, the consumer shall be advised of the total loss evaluation report's contents and of the consumer's right to receive a copy within 5 days after its completion.*

**Regulation Deletions:**

31§62.3(f)(8) A copy of the total loss evaluation sheet shall be given to the consumer by the appraiser or by the insurer within 5 working days after the appraisal is completed. If an offer of settlement is made before the consumer receives the total loss evaluation sheet, the consumer shall be verbally advised of the contents thereof and of his right to receive a copy within 5 days after its completion.

Current Regulation:

- 31§62.3(g) The general standards of behavior of an appraiser shall include the following:
- 31§62.3(g)(1) Conduct to inspire public confidence by fair and honorable dealings.
- 31§62.3(g)(2) Appraisals of damaged property done without prejudice against, or favoritism toward, any party involved.
- 31§62.3(g)(3) Disregard of attempts of others to influence his judgement in the interest of he parties involved.
- 31§62.3(g)(4) Preparation of an independent appraisal of damage.
- 31§62.3(g)(5) Inspection of a vehicle within 6 working days of assignment to the appraiser unless intervening circumstances (for example catastrophe, death, failure of the parties to cooperate) render the inspection impossible.
- 31§62.3(g)(6) An appraiser may not receive directly or indirectly a gratuity or other consideration in connection with his appraisal services from a person except his employer or, if self-employed, his customer.
- 31§62.3(g)(7) An appraiser may not traffic in automobile salvage if the salvage is obtained as a result of appraisal services rendered by him for his own benefit.
- 31§62.3(g)(8) An appraiser or his employer may not recommend or require that repairs be made at a particular place or by a particular individual.

Revised Regulation:

- 31§62.3(f) *In addition to the requirements set forth in section 11 of the Act, an appraiser shall:*

*section 62.3(g)(1),(2)(3),(4),(5),(6),(7) & (8) have been deleted*

*History 1997 - Bulletin No. 53 stated:*

*1) Improper referrals – One of the most common complaints relates to the improper referral of claimants to firms engaged in motor vehicle physical damage repair. Plainly stated, the law emphatically prohibits:*

- a. direct referral;*
- b. unrequested recommendations;*
- c. solicitation of a request from a claimant for such recommendations*

**\*\*\* Opinion:**

*The general standards of behavior need to be preserved within the Regulation as well as the Act. One can debate that the current regulation is redundant however, until enforcement of both the Act and Regulation is taken seriously within the Department of Insurance and the individuals in charge of Consumer Services handle Consumer complaints with exacting compliance, general standards of behavior are to be repeated.*

*History 1997 – Bulletin No. 53 stated:*

*7) Compelling Claimants to secure appraisal at a specified location – While it is understood that certain carriers have found it more efficient to provide so-called “drive-in claims service,” the operational safety of the motor vehicle is a vital factor in determining whether or not a claimant should avail himself of such a service. Therefore, the law is clear that no person shall request a consumer to drive his motor vehicle to any location for*

*inspection or appraisal without first being satisfied through inquiry or otherwise, that said motor vehicle is safe for operation on the public highways and meets the requirements of the Pennsylvania Motor Vehicle Code. If the owner of such vehicle, or his representative, states a belief that such vehicle may not meet the foregoing criteria, the appraiser shall arrange for inspection and appraisal at the location where the vehicle then is, or, in the alternative, shall make a suitable agreement for towing said vehicle to another location. The law is clear that even in such cases, inspection and appraisal shall be executed within a reasonable time period.*

*8) Needless or improper delay in assignment and/or execution of inspection and appraisal – While the law requires that inspection of a vehicle shall be made within six working days of an assignment to an appraiser, no time is specified in which an assignment of appraisal must be made after notice of loss is received. While not time is specified, it is the thrust of the law to provide speedy redress to the consumer. The regulations should, therefore, be read to mean that an appraisal should be assigned promptly and within a reasonable time after a loss is reported. A common complaint is that appraisals are not promptly assigned but rather await assignment for several days, sometimes as much as a month. This is clearly contrary to the intent of the law.*

**Regulation Deletions:**

- 31§62.3(g)** The general standards of behavior of an appraiser shall include the following:
- 31§62.3(g)(1)** Conduct to inspire public confidence by fair and honorable dealings.
- 31§62.3(g)(2)** Appraisals of damaged property done without prejudice against, or favoritism toward, any party involved.
- 31§62.3(g)(3)** Disregard of attempts of others to influence his judgement in the interest of he parties involved.
- 31§62.3(g)(4)** Preparation of an independent appraisal of damage.
- 31§62.3(g)(5)** Inspection of a vehicle within 6 working days of assignment to the appraiser unless intervening circumstances (for example catastrophe, death, failure of the parties to cooperate) render the inspection impossible.
- 31§62.3(g)(6)** An appraiser may not receive directly or indirectly a gratuity or other consideration in connection with his appraisal services from a person except his employer or, if self-employed, his customer.
- 31§62.3(g)(7)** An appraiser may not traffic in automobile salvage if the salvage is obtained as a result of appraisal services rendered by him for his own benefit.
- 31§62.3(g)(8)** An appraiser or his employer may not recommend or require that repairs be made at a particular place or by a particular individual.

Current Regulation:

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.

Revised Regulation

31§62.3(f)(1) *not have* any direct or indirect conflict of interest in the making of an appraisal. Provisions of 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 conflict of interest in the making of an appraisal.

**\*\*\* Opinion / Fact:**

*This section of the 31§ 62.3(g)(9) (current regulation) is exclusively written to safeguard the citizens of the Commonwealth of Pennsylvania. The purpose of this regulation is to expand upon the Act and further provide Consumer Protection. In 1973 this equivalent regulation read that " An appraiser shall not have any possible direct or indirect conflict of interest in the making of an appraisal. A conflict of interest for an appraiser includes but is not limited to, association with any body shop, garage repair shop." What has changed?*

*History 1973 – Original Regulation:*

31§1.3(B)(2) *Conflict of interest.*

31§1.3(B)(2)(a) *An appraiser shall not have any possible direct or indirect conflict of interest in the making of an appraisal. A conflict of interest for an appraiser includes, but is not limited to, association with any auto body shop, garage repair shop, auto dealer salesman, or salvage shop.*

**No. 367, Section 11(f)(1),(2),(3),(4)  
Title 31, Chapter 62 (g)(1),(2),(3),(4),(6),(8),(9)  
Title 31, Chapter 146 (8)**

***\*Direct Repair Programs and their effect on the Collision Repair Marketplace.***

*Direct Repair Programs are contractual arrangements between collision repair facilities and Insurance Companies. A primary goal of these programs is to direct insurance company policy holders and claimants to repair facilities that have agreed to repair damaged vehicles in accordance to the insurance company's contracted rates and*

*procedures. An insurance company administers this program through a very unethical process in respect to controlling the contracted repair facilities that exist within this system. Compliance to the guidelines and policies set by the insurance company, as to how a facility repairs a consumer's damaged vehicle is vital to the existence and longevity of participating in the partnership. In other words, if a contracted repair shop owner/manager disagrees with the controlling insurance company the contractual relationship will be jeopardized.*

*These relationships cannot be, they are in direct violation of state law written to protect our commonwealth's consumers.*

- No. 367, Sec. 11      Every appraiser shall:*  
*No. 367, Sec. 11(f)(1)    Conduct himself in such a manner as to inspire public confidence by fair and honorable dealings.*  
*No. 367, Sec. 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.*  
*No. 367, Sec. 11(f)(3)    Disregard any efforts on the part of others to influence his judgement in the interest of the parties involved.*  
*No. 367, Sec. 11(f)(4)    Prepare an independent appraisal of damage.*

*A prerequisite of a majority of these programs is to have a state licensed appraiser on the repair facilities' staff. This individual is an employee of the repair facility and as an employee / appraiser / estimator receives compensation as a wage earner and should not be sanctioned to participate in the interest of the insurance company. This position of a body shop appraiser working as a insurance company "estimating agent" within the employment of the contracted collision repair facility is an absolute conflict of interest.*

- 31§62.3(g)            The general standards of behavior of an appraiser shall include the following:*  
*31§62.3(g)(1)        Conduct to inspire public confidence by fair and honorable dealings.*  
*31§62.3(g)(2)        Appraisals of damaged property done without prejudice against, or favoritism toward, any party involved.*  
*31§62.3(g)(3)        Disregard of attempts of others to influence his judgement in the interest of the parties involved.*  
*31§62.3(g)(4)        Preparation of an independent appraisal of damage.*  
*31§62.3(g)(6)        An appraiser may not receive directly or indirectly a gratuity or other consideration in connection with his appraisal services from a person except his employer or, if self-employed, his customer.*  
*31§62.3(g)(8)        An appraiser or his employer may not recommend or require that repairs be made at a particular place or by a particular individual.*  
*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.*

*How can this individual prepare an independent appraisal of damages? Not only does this estimator / appraiser have to worry in regard to employment security but the written appraisal will have to be prepared in accordance to the policies and guidelines of the contracted Insurance Company to avoid endangering the partner relationship.*

*"Insurance company policy cannot supersede Pennsylvania State Law"*

*The Pennsylvania Vehicle Physical Damage Appraiser Act of 1972, P.L.1713, No. 367 and regulation were written to protect the consumers of our commonwealth. The purpose of this legislation is indisputable, an appraiser may not have a direct or indirect conflict of interest in the making of an appraisal. 31§ 62.3 (g)(9).*

*To permit insurance companies the opportunity to promote their Direct Repair Program as contractual obligations to consumers is in blatant disregard of the above laws and regulations. The foundation of this direct repair arrangement solicits the individuals preparing the damage reports to violate the rules and regulations written to control the behavior of themselves. The insurance companies have introduced a concept that is nothing more than a manipulation of Pennsylvania's consumer protection laws.*

#### **"CONFLICT OF INTEREST"**

*Black's Law Dictionary, Sixth Edition:*

**Conflict of Interest.** *Term used in connection with public officials and fiduciaries and their relationship to matters of private interest or gain to them. Ethical problems connected therewith are covered by statutes in most jurisdictions and by federal statutes on the federal level. The Code of Professional Responsibility and Model Rules of Professional Conduct set forth standards for actual or potential conflicts of interest between attorney and client. Generally, when used to suggest disqualification of a public official from performing his sworn duty, term "conflict of interest" refers to a clash between public interest and the private pecuniary interest of the individual concerned. Gardner v. Nashville Housing Authority of Metropolitan Government of Nashville and Davison County, Tenn., C.A.Tenn., 514 F.2d 38, 41. A situation in which regard for one duty tends to lead to disregard of another. U.S. v. Miller, C.A.Mass., 463 F.2d 600, 602.*

*A conflict of interest arises when a government employee's personal or financial interest conflicts or appears to conflict with his official responsibility. 18 U.S.C.A. § 203 et seq.*



*The purpose of examining The "Direct Repair Programs" is to request that Pennsylvania's Independent Regulatory Review Commission needs to investigate the allegations described. Insurance Company's are using the Direct Repair Programs to direct customers / consumers away from collision repair facilities that choose not to participate in their unlawful partnership arrangement. Is it not an act of misfeasance to promote claim settlements in this manner, especially if it is solely for the benefit of this insurance company without consideration for the consumer and their rights under the law of the commonwealth?*

*The Pennsylvania Motor Vehicle Physical Damage Appraisal Act was written to protect the consumers of our commonwealth from the wanton misconduct and disregard of insurance companies and their representatives. The spirit and intent of this consumer protection act has been seriously undermined. Insurance Company's, through the application of "Reference" and "Direct Repair Programs" deliberately ignore Pennsylvania State Laws and Regulations. A cease and desist order requiring the insurance company's to dismantle these repair programs is crucial for the protection of citizens who rely on these insurance companies to safeguard their investments. Proper enforcement of current Laws and Regulations is more appropriate than the regulatory review process of this proposed regulation.*

**Regulation Deletions:**

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.**

Current Regulation:

- 31§62.3(g)(10) Before an appraiser authorizes the removal of a motor vehicle from one location to another, the consent of the consumer shall be obtained.
- 31§62.3(g)(10)(i) The need for consent of the consumer may not be necessary for initial removal of the motor vehicle from the scene of an accident.
- 31§62.3(g)(10)(ii) An appraiser authorizing removal of a motor vehicle to a salvage yard shall inform the salvor in writing that possession is merely for safekeeping purposes and that the salvor does not have an ownership right to the motor vehicle, its parts or accessories, until a certificate of title is received indicating that ownership has been transferred.

Revised Regulation

- 31§62.3(f)(2) *obtain the consent of the consumer before authorizing* the removal of a motor vehicle from one location to another.
- 31§62.3(f)(2)(i) The consent of the consumer may not be necessary for initial removal of the motor vehicle from the scene of an accident.
- 31§62.3(f)(2)(ii) An appraiser authorizing removal of a motor vehicle to a salvage yard shall inform the *salvager* in writing that possession is merely for safekeeping purposes and that the *salvager* does not have an ownership right to the motor vehicle, its parts or accessories, until a certificate of title is received indicating that ownership has been transferred.

*\*Salvor – A person engaged in the business of acquiring abandoned vehicles for the purpose of taking apart, junking, selling, rebuilding or exchanging the vehicles or parts thereof. Pennsylvania Consolidated Statutes Title 75 § 102*

*\*Salvager – In this segment has no definition and needs to be clarified*

Regulation Deletions:

- 31§62.3(g)(10) Before an **appraiser authorizes** the removal of a motor vehicle from one location to another, **the consent of the consumer shall be obtained**.
- 31§62.3(g)(10)(i) The **need for** consent of the consumer may not be necessary for initial removal of the motor vehicle from the scene of an accident.
- 31§62.3(g)(10)(ii) An appraiser authorizing removal of a motor vehicle to a salvage yard shall inform the **salvor** in writing that possession is merely for safekeeping purposes and that the **salvor** does not have an ownership right to the motor vehicle, its parts or accessories, until a certificate of title is received indicating that ownership has been transferred.

Current Regulation:

- 31§62.3(g)(11) Personal inspection of damaged property by the appraiser is required as follows:
- 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.
- 31§62.3(g)(11)(ii) If a damaged motor vehicle is in the custody of a repair shop, an appraiser may not take photographs of the damaged motor vehicle until after a legible copy of his appraisal is left with the repair shop although the appraisal may contain certain open items.

Revised Regulation

*sections 62.3(g)(11)(i) & (ii) have been deleted*

*History 1977 - Bulletin No. 53 read:*

*5) Failure to make a personal inspection of damages – The law provides that all appraisals are to be based upon personal inspection of the damages. It also provides that all repair estimates used or secured by an appraiser must be based on personal inspection. The regulation reads:*

*31§62.3(g)(11) “Personal inspection of damaged property by the appraiser is required\*\*\**

*31§62.3(g)(11)(i) “No appraiser shall secure or use repair estimates that have been obtained by use of photographs, telephone calls or in any manner other than personal inspection.”*

Regulation Deletions:

- 31§62.3(g)(11) Personal inspection of damaged property by the appraiser is required as follows:**
- 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.**
- 31§62.3(g)(11)(ii) If a damaged motor vehicle is in the custody of a repair shop, an appraiser may not take photographs of the damaged motor vehicle until after a legible copy of his appraisal is left with the repair shop although the appraisal may contain certain open items.**

Current Regulation:

- 31§62.3(g)(12) The responsibility of the appraiser shall include delivery and explanation of the appraisal as follows:
- 31§62.3(g)(12)(i) The appraiser shall provide a legible copy of the appraisal to the consumer.
- 31§62.3(g)(12)(ii) At the request of an involved party or as is otherwise necessary, the appraiser shall leave a copy of the appraisal with selected repair shop. The appraiser shall discuss the appraisal with the selected repair shop owner, its authorized representative or any other parties as is reasonably necessary to insure that the actual costs of repairs are adequately covered in the appraisal.
- 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.

Revised Regulation:

- 31§62.3(f)(3) discuss the appraisal with *an authorized representative of the repair shop, which shop is selected by the consumer, or any other party* as is reasonably necessary to *demonstrate* that the actual costs of repairs are adequately covered in the appraisal.

*Section 62.3(g)(12)(i) & (iii) has been deleted*

\*\*\* Opinion:

*\*Eliminates 31§ 62.3 (g)(12)(iii) – Consumer Protection > "Unsolicited Request" is critical terminology which enables the consumer an inquiry of assistance if necessary which permits an appraiser to help choose a repair facility. The importance of this wording is "Upon the unsolicited request of the consumer" or not to compromise the "Consumer's Right to Choose" > Compliance of current law is an appraiser is to keep silent.*

***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***

History 1977 - Bulletin No. 53 read:

*2) Failure to discuss an appraisal and/or a rendered estimate with a selected repair shop owner – Another prevalent complaint concerns the failure of the appraiser to discuss his appraisal with a selected repair shop owner, as well as with the owner of the vehicle. The regulation reads:*

*31§62.3(g)(12)(ii) "the appraiser shall discuss the appraisal with the selected repair shop owner, its authorized representative or any other parties as is reasonably necessary to insure that the actual cost or repairs is adequately covered in the appraisal."*

*Clearly, it is the intent of the law that the appraiser make an attempt to reconcile fairly any discrepancy between his own appraisal and a selected repair shop's estimate. A*

*number of complaints have been received by this Department involving appraisers assuming a "take it or leave it" attitude.*

**Regulation Deletions:**

- 31§62.3(g)(12) **The responsibility of the appraiser shall include delivery and explanation of the appraisal as follows:**
- 31§62.3(g)(12)(i) **The appraiser shall provide a legible copy of the appraisal to the consumer.**
- 31§62.3(g)(12)(ii) **At the request of an involved party or as is otherwise necessary, the appraiser shall leave a copy of the appraisal with selected repair shop. The appraiser shall discuss the appraisal with the selected repair shop owner, its authorized representative or any other parties as is reasonably necessary to insure that the actual costs of repairs are adequately covered in the appraisal.**
- 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.**

**Current Regulation:**

**31§62.3(g)(13)** An appraiser shall promptly reinspect damaged vehicles prior to the repairs in questions: when supplementary allowances are requested by repair shops or when the amount or extent of damages is in dispute, or both.

**Revised Regulation:**

*Section 62.3(g)(13) has been deleted*

*History 1977 - Bulletin No. 53 stated:*

*4) Failure to reappraise when supplementary allowances are requested by repair shops – Closely related to the failure to discuss discrepancies with a selected repair shop is the failure to provide a prompt reappraisal when supplementary allowances are requested by the repair shop. The regulation states:*

*31§62.3(g)(13) “An appraiser shall promptly reinspect damaged vehicle prior to the repairs in question when supplementary allowances are requested by repair shops and/or the amount of damage is in dispute.”*

**Regulation Deletions:**

**31§62.3(g)(13)** An appraiser shall promptly reinspect damaged vehicles prior to the repairs in questions: when supplementary allowances are requested by repair shops or when the amount or extent of damages is in dispute, or both.

**Current Regulation:**

31§62.3(g)(14) A provision of the act or this chapter may not be construed as intended to prohibit or limit the subsequent appraisal or reappraisal of damage by different licensed appraisers, if such is desired by any of the involved parties.

**Revised Regulation:**

*Section 62.3(g)(14) has been deleted*

31§62.3(g) *The penalties for violating provisions of the Act and its regulations are set forth in sections 5, 6, 7 and 9 of the Act*

**Regulation Deletions:**

**31§62.3(g)(14) A provision of the act or this chapter may not be construed as intended to prohibit or limit the subsequent appraisal or reappraisal of damage by different licensed appraisers, if such is desired by any of the involved parties.**

Current Regulation:

- 31§62.4. Sanctions for violation.
- 31§62.4(a) The Commissioner may deny initial issuance of, suspend, revoke or refuse to renew an appraiser's license for any cause specified in the act, or this chapter, or for any of the following reasons:
- 31§62.4(a)(1) For cause for which issuance of the license could have been refused had it been existent and been known to the Commissioner.
- 31§62.4(a)(2) If the licensee willfully violates, or fails to comply with or knowingly participates in the violation of or failure to comply with the act, or this chapter or another rule or regulation promulgated thereunder.
- 31§62.4(a)(3) If the licensee has obtained or attempted to obtain a license through willful misrepresentation or fraud, or has failed to pass an examination required under this act.
- 31§62.4(a)(4) If the licensee has, with intent to deceive, materially misrepresented the terms or effect of an insurance contract; or has engaged or is about to engage in a fraudulent transaction.
- 31§62.4(a)(5) If the licensee has been convicted, by final judgment, of a felony.
- 31§62.4(a)(6) If in the conduct of his affairs under the license, the licensee has shown himself to be, and is so deemed by the Commissioner, incompetent or untrustworthy, or a source of injury and loss to the public.
- 31§62.4(b) Every order suspending a license shall specify the period during which suspension will be effective, which may in no event exceed 12 months.
- 31§62.4(c) The holder of a license which has been revoked or suspended shall immediately surrender the license to the Commissioner at his request.
- 31§62.4(d) The Commissioner shall not reinstate the license or relicense a licensee or former licensee whose license has been suspended, revoked or renewal refused while the cause for the suspension, revocation or refusal of the license persists.
- 31§62.4(e) Except as otherwise provided in the act, actions of the Commissioner shall be taken subject to the right of notice, hearing and adjudication, and the right to appeal therefrom as provided by law.
- 31§62.4(f) The license of an individual found in violation of this Chapter or the Act may be suspended or revoked by the Commissioner. In addition, any person who violates any of the provisions of this Chapter or the Act may be guilty of a misdemeanor and upon conviction thereof, for each offense, may be sentenced to pay a fine not exceeding \$500, or to undergo imprisonment not exceeding 1 year, or both.

Revised Regulation:

31§62.4 *Reserved*

*Section 62.4(a)(1),(2)(3),(4),(5),(6)(b),(c),(d),(e) &(f) have been deleted*

*History 1977 – Bulletin No. 53 stated:*

*9) Penalties – Violators of the Motor Vehicle Physical Damage Appraisers Act are subject to loss of license, fine and/or imprisonment. The legislature has also deemed violations of the act to be criminal offenses, and the perpetrators of such violations to be further subject to arrest, prosecution and conviction in a court of law.*



**Regulation Deletions:**

- 31§62.4.** Sanctions for violation.
- 31§62.4(a)** The Commissioner may deny initial issuance of, suspend, revoke or refuse to renew an appraiser's license for any cause specified in the act, or this chapter, or for any of the following reasons:
- 31§62.4(a)(1)** For cause for which issuance of the license could have been refused had it been existent and been known to the Commissioner.
- 31§62.4(a)(2)** If the licensee willfully violates, or fails to comply with or knowingly participates in the violation of or failure to comply with the act, or this chapter or another rule or regulation promulgated thereunder.
- 31§62.4(a)(3)** If the licensee has obtained or attempted to obtain a license through willful misrepresentation or fraud, or has failed to pass an examination required under this act.
- 31§62.4(a)(4)** If the licensee has, with intent to deceive, materially misrepresented the terms or effect of an insurance contract; or has engaged or is about to engage in a fraudulent transaction.
- 31§62.4(a)(5)** If the licensee has been convicted, by final judgment, of a felony.
- 31§62.4(a)(6)** If in the conduct of his affairs under the license, the licensee has shown himself to be, and is so deemed by the Commissioner, incompetent or untrustworthy, or a source of injury and loss to the public.
- 31§62.4(b)** Every order suspending a license shall specify the period during which suspension will be effective, which may in no event exceed 12 months.
- 31§62.4(c)** The holder of a license which has been revoked or suspended shall immediately surrender the license to the Commissioner at his request.
- 31§62.4(d)** The Commissioner shall not reinstate the license or relicense a licensee or former licensee whose license has been suspended, revoked or renewal refuse while the cause for the suspension, revocation or refusal of the license persists.
- 31§62.4(e)** Except as otherwise provided in the act, actions of the Commissioner shall be taken subject to the right of notice, hearing and adjudication, and the right to appeal therefrom as provided by law.
- 31§62.4(f)** The license of an individual found in violation of this Chapter or the Act may be suspended or revoked by the Commissioner. In addition, any person who violates any of the provisions of this Chapter or the Act may be guilty of a misdemeanor and upon conviction thereof, for each offense, may be sentenced to pay a fine not exceeding \$500, or to undergo imprisonment not exceeding 1 year, or both.

**Title 31 – INSURANCE**  
**MOTOR VEHICLE PHYSICAL DAMAGE APPRAISERS**

ORIGINAL 2001 HARBISON

COPIES: Tyrrell, Wilmarth, Sandusky, Legal

RECEIVED  
59 MAR -8 AM 9:35  
INSURANCE COMMISSION  
LEGAL COUNSEL

**1973 Regulation:**

- 31§1.1 Definitions.**
- As used in this Regulation
- 31§1.1(A) **Act-** The Motor Vehicle Physical Appraisers Act ; Act 367 of 1972 approved December 29, 1972.
- 31§1.1(B) **Appraisal-**
- 31§1.1(B)(1) A monetary determination of damage incurred by a motor vehicle made by or on behalf of or otherwise assigned by an insurer. Appraisal shall include such a determination whether made by the insurer, its employees, its agents or related entities or made by any other individual or entity assigned by an insurer to make such a determination.
- 31§1.1(B)(2) An appraisal shall not include the following:
- 31§1.1(B)(2)(a) Instances where the total estimated damage done to the motor vehicle is less than \$250.
- 31§1.1(B)(2)(b) A preliminary monetary estimate of damage which, prior to submission to any party, is approved and signed by a licensed appraiser who is fully responsible for the appraisal.
- 31§1.1(B)(2)(c) Any one of two or more preliminary monetary estimates of the same damage, when each of the estimates is independently made by a separate individual and *each* of the following is true:
- 31§1.1(B)(2)(c)(1) The consumer independently selects the individuals who will make such estimates
- 31§1.1(B)(2)(c)(2) Each of these estimates is made by an individual who is no way related to or associated with the insured, the consumer, or any of the other individuals making estimates of the same physical damage.
- 31§1.1(C) **Appraiser-** Any natural person in state who make "appraisals" of motor vehicle physical damage.
- 31§1.1(D) **Commissioner-** The Insurance Commissioner of the Commonwealth of Pennsylvania.
- 31§1.1(E) **Consumer-** The owner of the motor vehicle which has incurred damage or his or her representative.
- 31§1.1(F) **Dealer-** An individual duly licensed, active and knowledgeable in the sale of used motor vehicles similar to the being appraised.
- 31§1.1(G) **Insurer-** All companies, associations and exchanges engaged in the insurance business of insurance companies and self-insurers.
- 31§1.1(H) **Motor vehicle-** Any device in, upon or by which any person or property is or may be transported or drawn upon a public highway.
- 31§1.2. Licensing requirements.**
- 31§1.2(A) **Licensing of appraisers required.**
- 31§1.2(A)(1) No person shall directly or indirectly act or hold himself out as an appraiser unless such person has first secured a license from the commissioner in accordance with the provisions of the Act and Regulation.
- 31§1.2(A)(2) The fee to be paid to the Commissioner by an applicant for an appraiser's license shall be \$ 10 at the time the application is made and \$10 annually for the renewal thereof. In the event of failure to pass the examination, the fee of \$10 shall not be returnable.
- 31§1.2(B) **Display of appraiser's license.**

- 31§1.2(B)(1) Each appraiser, while engaged in appraisal duties, shall carry the license issued to him by the Insurance Department and shall display it, upon request, to an owner whose vehicle is being inspected, to the repair shop representative involved or to any authorized representative of the Insurance Department.
- 31§1.2(C)  
31§1.2(C)(1) *Licensed by examination.*  
Except as otherwise provided in the Act and this Regulation, no person shall be granted an appraiser's license unless he shall first establish his qualifications therefor and shall take and pass an examination for appraisers.
- 31§1.2(C)(2) An applicant for such examination shall be at least 18 years of age; shall be a resident of the Commonwealth of Pennsylvania, or a resident of other state or country which permits residents of this Commonwealth to act as appraisers in such other state or country; shall be trustworthy.
- 31§1.2(C)(3) In order to qualify for the examination, an applicant must establish his or her competency to fulfill the responsibility of being an appraiser. This may be done by showing either a minimum of six months continuous experience at an occupation directly involving the estimation of physical damage to motor vehicles, such as a body repairman; or by providing written documentation of successful completion of special education or training related to appraising motor vehicle physical damage and acceptable to the Commissioner as assuring minimum standards of competency.
- 31§1.2(C)(4) Applications for an examination as appraiser shall be made to the commissioner upon forms prescribed and furnished by him and shall be accompanied by the proper fee. All information required on forms must be completed or the application will not be processed in any way.
- 31§1.2(C)(5) The examination for licensure which shall be given under the supervision of the commissioner shall consist of a written examination that shall include the act of appraising one or more damaged motor vehicles and shall be supplemented by an oral examination. At the discretion of the commissioner an oral examination in lieu of the aforesaid written examination may be given not only for reason of an applicant's physical handicap. An oral examination shall include the act of appraising one or more damaged motor vehicles.
- 31§1.2(C)(6) Examinations shall be given at reasonable times and places within the Commonwealth. Any applicant who fails to pass the examination shall not be eligible to retake an examination for thirty days from the date of such failure.
- 31§1.2(D)  
31§1.2(D)(1) *License without examination.*  
Upon proper application and the payment of a fee of \$10 a person who has been employed or engaged for a period of not less than two years prior to the submission of such application in the appraising of physical damages to motor vehicles and is currently so engaged shall be licensed without examination as an appraiser if the application is made on or before July 1, 1973, and the applicant possesses the qualifications required of applicants as provided in § 3 of the Act and § IIC of this Regulation.
- 31§1.2(E)  
31§1.2(E)(1) *Expiration; renewal of licenses.*  
An appraiser's license shall expire annually at midnight of June thirtieth next following the date of issuance.
- 31§1.2(E)(2) Subject to the right of the commissioner to suspend, revoke or refuse to renew an appraiser's license, any such license may be renewed for another annual period commencing the first day of July and expiring at midnight of June thirtieth next following by filing with the commissioner on or before the expiration date a written request, by or on behalf of the licensee, for such renewal,

- 31§1.2(E)(3) accompanied by payment of the renewal fee.  
If the request and fee for renewal of the license is filed with the commissioner prior to the expiration of the existing license, the licensee may continue to act under such license, unless sooner revoked or suspended, until the issuance of renewal license or until the expiration of five days after the commissioner has refused to renew the license and has mailed notice of the refusal to the licensee. Any request for renewal not so filed until after day of expiration may be considered by the commissioner as an application for a new license.
- 31§1.3** **Applicable standards for appraisal.**  
31§1.3(A) *Appraisal statement.*  
31§1.3(A)(1) Form of appraisal statement.  
31§1.3(A)(1)(a) An appraisal shall contain the name of the insurance company, the insurance file number, the number of the appraiser's license and the proper identification number of the vehicle being inspected.  
31§1.3(A)(1)(b) An appraisal shall be signed by the appraiser before the appraisal is submitted in any way to the insurer, the consumer or any other involved party.  
31§1.3(A)(1)(c) An appraisal shall not make use of abbreviations or symbols to describe work to be done or parts to be repaired or replaced unless an explanation of such abbreviations and symbols is included.  
31§1.3(A)(2) Required contents of appraisal statement.  
31§1.3(A)(2)(a) An appraisal statement shall specify all 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. Also, there must 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 matters incidental to repair of the incurred damage.  
31§1.3(A)(2)(b) An appraisal statement shall clearly indicate of the cost or dollar amount value of all specified items.  
31§1.3(A)(2)(c) All unrelated or old damage shall be clearly indicated on the appraisal.  
31§1.3(A)(2)(d) An appraisal statement shall clearly indicate the date after which an insurer shall not be responsible for any related towing services and/or storage charges and after which such charges shall be the responsibility of the consumer.  
31§1.3(A)(3) Standards for appraisal statement.  
31§1.3(A)(3)(a) Specification of new or used parts.  
31§1.3(A)(3)(a)(1) The operational safety of the motor vehicle shall be paramount in considering the specification of new parts, especially when the parts involved pertain to the drive train, steering gear, suspension units, brake system or tires.  
31§1.3(A)(3)(a)(2) When used parts are specified in the appraisal, on request the appraiser must be prepared to specify one or more locations where such parts are actually and reasonably available in usable condition equivalent to or better than the condition of the damaged parts prior to the accident  
31§1.3(A)(3)(b) Salvage value.  
31§1.3(A)(3)(b)(1) If the salvage value of the vehicle being appraised is known or could reasonably be found out, the appraiser shall inform the consumer of the salvage value and/or any additional charges for towing services and/or storage chargeable against the motor vehicle as of the date of the appraisal.  
31§1.3(A)(3)(b)(2) For any salvage value listed, the appraiser shall inform the consumer of name and address of salvage buyer; and the amount and expiration date of each salvage

- bid known.
- 31§1.3(A)(3)(b)(3) When the ownership and possession of the damaged motor vehicle is not retained by the owner or his representative, the above sub-section dealing with salvage value need not be complied with.
- 31§1.3(A)(3)(c) Betterment of vehicle.
- 31§1.3(A)(3)(c)(1) An appraisal for the repair of the motor vehicle be made in the amount necessary to return the motor vehicle to its same condition just prior to the damage in question being incurred.
- 31§1.3(A)(3)(c)(2) When the consumer is insistent upon the use of new parts rather than repair, or otherwise wishes to repair the motor vehicle to a condition better than that existing prior to the damage incurred, the appraisal need only specify the cost of repairing the vehicle to its condition just prior to the time the damage was incurred.
- 31§1.3(A)(3)(d) Replacement value.
- 31§1.3(A)(3)(d)(1) When the replacement value of a motor vehicle is less than or equal to the appraised costs or the motor vehicle cannot be satisfactorily or reasonably repaired to its condition just prior to the damage in question being incurred, the appraised value of the loss shall be the replacement value of the motor vehicle.
- 31§1.3(A)(3)(d)(2) The replacement value of motor vehicle shall be calculated as the mean average of the following three figures:
- 31§1.3(A)(3)(d)(2)(a) The retail book value of a motor vehicle of like kind and condition but for the damage incurred as stated in an approved retail dealers guidebook. An appropriate edition of the NADA Book, the Red Book, or any other published book approved by the Commissioner may be used. The appraiser must use the proper edition of the Book for the period of time covered.
- 31§1.3(A)(3)(d)(2)(b) One dealer's retail value quotation of the average reasonably expected cash replacement cost of a vehicle of like kind and condition but for the damage incurred.
- 31§1.3(A)(3)(d)(2)(c) One additional dealer's retail value quotation of the average reasonably expected cash replacement cost of the vehicle of like kind and condition but for the damage incurred.
- 31§1.3(A)(3)(d)(3) The appraiser shall be responsible for assuring that any estimate of replacement value received from a dealer is reasonable, unbiased, based on actual experience and knowledge of the dealer, and is representative of the average selling price in the local area for a vehicle of like kind and condition but for the damage incurred to that of the one being appraised.
- 31§1.3(A)(3)(d)(4) The appraisal shall indicate the name and business address of any dealer from whom a quotation of cash replacement value for a particular vehicle was obtained, the date the quotation was made, and whether or not a vehicle of like kind and condition is presently available from that dealer.
- 31§1.3(A)(3)(d)(5) Applicable sales tax on the replacement cost of a motor vehicle shall be included as part of the replacement value
- 31§1.3(A)(3)(d)(6) A copy of the total loss evaluation sheet shall be given to the consumer by the appraiser or by the insurer within five working days after the appraisal is completed
- 31§1.3(B) *Behavior of appraiser.*
- 31§1.3(B)(1) General standards of behavior of appraiser.
- 31§1.3(B)(1)(a) Every appraiser shall:
- 31§1.3(B)(1)(a)(1) Conduct himself in such a manner as to inspire public confidence by fair and honorable dealings.

- 31§1.3(B)(1)(a)(2) Approach the appraisal of damaged property without prejudice against, or favoritism toward, any party involved in order to make fair and impartial appraisals.
- 31§1.3(B)(1)(a)(3) Disregard any efforts on the part of others to influence his judgement in the interest of the parties involved.
- 31§1.3(B)(1)(a)(4) Prepare an independent appraisal of damage.
- 31§1.3(B)(1)(a)(5) Inspect a vehicle within six working days of assignment to the appraiser unless intervening circumstances (i.e. catastrophe, death, failure of the parties to cooperate) render the inspection impossible.
- 31§1.3(B)(1)(b) No appraiser shall:
- 31§1.3(B)(1)(b)(1) Receive directly or indirectly any gratuity or other consideration in connection with his appraisal services from any person except his employer or, if self-employed, his customer.
- 31§1.3(B)(1)(b)(2) Traffic in automobile salvage if such salvage is obtained in any way as a result of appraisal services rendered by him for his own benefit.
- 31§1.3(B)(1)(c) No appraiser or his employer shall:
- 31§1.3(B)(1)(c)(1) Recommend or require that repairs be made at a particular place or by a particular individual.
- 31§1.3(B)(2) Conflict of interest.
- 31§1.3(B)(2)(a) An appraiser shall not have any possible direct or indirect conflict of interest in the making of an appraisal. A conflict of interest for an appraiser includes, but is not limited to, association with any auto body shop, garage repair shop, auto dealer salesman, or salvage shop.
- 31§1.3(B)(3) Removal of motor vehicle.
- 31§1.3(B)(3)(a) Before an appraiser authorizes the removal of a motor vehicle from one location to another, the consent of the consumer must be obtained.
- 31§1.3(B)(3)(b) The need for consent of the consumer may not be necessary for initial removal of the motor vehicle from the scene of an accident.
- 31§1.3(B)(3)(c) Any appraiser authorizing removal of a motor vehicle to a salvage yard must inform the salvor in writing that possession is merely for safekeeping purposes and that the salvor does not have any ownership right to the motor vehicle, its parts or accessories, until a certificate of title is received duly indicating that ownership has been transferred.
- 31§1.3(B)(4) Personal inspection required.
- 31§1.3(B)(4)(a) No appraiser shall not secure or use repair estimates that have been obtained by the use of photographs, telephone calls or in any manner other than personal inspection.
- 31§1.3(B)(4)(b) If a damaged motor vehicle is in the custody of a repair shop, an appraiser shall not take photographs of the damaged motor vehicle until after a legible copy of his appraisal is left with such repair shop although the appraisal may contain certain open items.
- 31§1.3(B)(5) Delivery and explanation of appraisal.
- 31§1.3(B)(5)(a) The appraiser shall provide a legible copy of the appraisal to the consumer.
- 31§1.3(B)(5)(b) At the request of any involved party or as is otherwise necessary, the appraiser shall leave a copy of the appraisal with the selected repair shop and discuss the appraisal with the selected repair shop owner or his authorized representative so that the actual costs of repairs will be as were listed on the appraisal.
- 31§1.3(B)(5)(c) Upon the unsolicited request of the consumer, an appraiser must 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.

- 31§1.3(B)(6) Reinspection by appraiser  
 31§1.3(B)(6)(a) An appraiser shall promptly reinspect damaged vehicles prior to the repairs in question when supplementary allowances are requested by repair shops and/or the amount or extent of damages is in dispute.  
 31§1.3(B)(6)(b) No provision of the Act or this Regulation shall be construed as prohibiting or in any way limiting the appraisal or reappraisal of damage by any number of licensed appraisers as may be desired by the involved parties.
- 31§1.4**  
 31§1.4(A) *Denial, suspension, revocation of or refusal to renew license.*  
 31§1.4(A)(1) The commissioner may deny initial issuance of, suspend, revoke or refuse to renew any appraiser's license for any cause specified in any other provisions of the Act, or this Regulation, or for any of the following causes:  
 31§1.4(A)(1)(a) For any cause for which issuance of the license could have been refused had it been existent and been known to the commissioner.  
 31§1.4(A)(1)(b) If the licensee willfully violates, or fails to comply with or knowingly participates in the violation of or failure to comply with any provision of the Act, or this Regulation, or any other rule or regulation promulgated thereunder.  
 31§1.4(A)(1)(c) If the licensee has obtained or attempted to obtain any such license through willful misrepresentation or fraud, or has failed to pass any examination required under this act.  
 31§1.4(A)(1)(d) If the licensee has, with intent to deceive, materially misrepresented the terms or effect of an insurance contract; or has engaged or is about to engage in any fraudulent transaction.  
 31§1.4(A)(1)(e) If the licensee has been convicted, by final judgment, of a felony.  
 31§1.4(A)(1)(f) If in the conduct of his affairs under the license, the licensee has shown himself to be, and is so deemed by the commissioner, incompetent, or untrustworthy, or a source of injury and loss to the public.
- 31§1.4(B) *Suspension period; surrender of license and reinstatement or relicensing of licensee.*  
 31§1.4(B)(1) Every order suspending any such license shall specify the period during which suspension will be effective, which shall in no event exceed twelve months.  
 31§1.4(B)(2) The holder of any license which has been revoked or suspended shall immediately surrender the license to the commissioner at his request.  
 31§1.4(B)(3) The Commissioner shall not reinstate the license or relicense any licensee or former licensee whose license has been suspended, revoked or renewal refused while the cause for the suspension, revocation or refusal of such license persists.
- 31§1.4(C) *Notice; hearing; appeals.*  
 Except as otherwise provided in the Act, all actions of the commissioner shall be taken subject to the right of notice, hearing and adjudication, and the right to appeal therefrom as provided by law.
- 31§1.4(D) Penalties.  
 The license of any individual found in violation, of any of the provisions of this Regulation or the Act may, be suspended or revoked by the Commissioner. In addition, any person who violates any of the provisions of this Regulation or the Act may be guilty of a misdemeanor and upon conviction thereof, for each offense, may be sentenced to pay a fine not exceeding \$500., or to undergo imprisonment not exceeding one year, or both.
- 31§1.5**  
 31§1.5(A) **Severability.**  
 If any Section, provision or clause of this Regulation or the application thereof to any person, agent, servant, employee, corporation, firm, partnership or association or any insurance company, association or exchange or to any situation is held

invalid, such invalidity shall not affect any other Section, provision or clause or application of this Regulation which can be given effect without the invalid Section, provision, clause or application, and to this end the Sections, provisions and clauses of the Regulation are declared to be severable.

**31§1.6**  
31§1.6(A)

**Effective date.**

Effective date of this Regulation shall be thirty days after its publication in the *Pennsylvania Bulletin*.

[Pa. B. Doc. No. 73-2600. Filed December 28, 1973, 9:00 a.m.]