

ABAC NEWS

**JULY - AUGUST
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The Official Newsletter of the Auto Body Association of Connecticut



THE DOG DAYS OF SUMMER

There is a lot happening in the auto body industry. Let me see what I can do to briefly get you up to speed. As you know, we have a nearly \$14 million jury verdict in The Hartford class action lawsuit, which was recently endorsed by the trial court judge Alfred Jennings. This means the clock on The Hartford's appeal has officially started. In the meantime, a series of post-trial motions were filed by both sides. On May 24, 2013, Judge Jennings issued an important ruling. The judge ordered an injunction against The Hartford essentially prohibiting The Hartford from interfering with the independent judgment of its appraisers. Shortly after we received this landmark decision, The Hartford filed a motion for stay of that injunction, or put in other words: The Hartford wanted the injunction put on hold until after the appeal was resolved. Our attorneys objected, countering that: staying this injunctive relief would signal to The Hartford and its competitors that they may continue to unlawfully influence their appraisers, which will have an ongoing deleterious effect on the market. Unfortunately, Judge Jennings ordered a temporary stay of the injunction. He is expected to rule shortly on whether the injunction will be binding during the appeal period. Are you confused yet?! Long story short: there is no injunction in effect now, and we are hopeful that it will be back in full force soon.

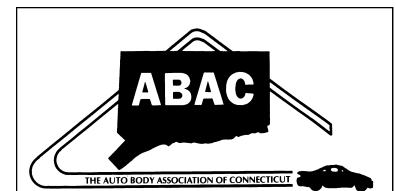
On June 5, 2013, Judge Jennings handed The Hartford another significant blow, awarding \$20 million in punitive damages. This may be the biggest punitive damage award in Connecticut history. Judge Jennings held that The Hartford's misconduct was not an isolated incident; it was repeated over a period of years, and it was intentional and not mere accident.

Did I mention that The Hartford is appealing the verdict? No surprises there.

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On July 16, 2013, our Insurance Commissioner issued a Commissioner's Bulletin (IC – 34). In this bulletin, he writes: "the appraiser does not have any authority, pursuant to his license, to establish a labor rate for auto body repair work. Appraisers do not have particular expertise in the economics and development of labor rates and those matters are not part of their licensing qualifications." Based on this bulletin, many appraisers are now refusing to negotiate labor rates, believing that pursuant to the Insurance Department, labor rates are to be set by insurance companies. This bulletin was, not surprisingly, used by The Hartford to bolster its claims and defenses – notably getting a stay of the injunction pending the appeal.

On July 23, 2013, our attorneys filed a motion with the court requesting that the court 1) disregard the insurance department's July 16, 2013 bulletin; 2) affirm that the bulletin has no value in this or any other proceeding; 3) deny defendant's motion for a stay; and 4) reaffirmed its injunction, which has never been more urgently needed given the intended confusion that has been created by the DOI's bulletin, and the manner in which it is being used by insurers and their appraisers to flout the court's orders and to continue to flagrantly violate the law.

So, in a nutshell, here's where we are. The verdict is under appeal and we are waiting for Judge Jennings to decide on the stay of the injunctive relief. This has been a ten-year journey. I can understand if you are frustrated. We all are. But don't give up. Not now. I have hope and faith and you should too. And we need your help. We need you to document any appraiser violations or incidents in which appraisers are refusing to negotiate in good faith or violating the code of ethics, or if an appraiser is citing DOI Bulletin IC – 34 as a basis for why he or she no longer has to negotiate or comply with the regulations. Send this documentation to the ABAC and we will forward the same to our class action attorneys. Information about The Hartford lawsuit and much more can be found on our website abaconn.com. And, as always, please feel free to call me personally if you would like to discuss anything: 203-269-2842. The ABAC will start membership meetings in September. Look for a busy agenda of ongoing information and education. Above all, have a great and safe summer.

Tony Ferraiolo

ABAC President

Connecticut Governor Signs Anti-Steering Bill into Law

A Connecticut bill designed to extend a ban on steering by third-party administrators and auto damage appraisers to specific repair shops, which includes auto glass repair, has been signed into law by Gov. Dannel O'Malley.

House Bill (HB) 5072 "requires initial communications between a glass claims representative or a third-party claims administrator of an insurance company doing business in Connecticut and the company's insured about automotive glass works or products to inform the insured about his or her right to choose where to have the work done."

Additionally, "The bill bars insurance companies or their representatives from steering an insured to a licensed glass shop owned by the company, claims administrator or their parent company, unless they provide the insured with the name of at least one other shop in the area where the glass work is to be performed," according to a summary of the bill from the Connecticut government website. The bill passed the House on May 7 and gained approval from the Senate May 22.



Insurance Commissioner Contradicts Law with New Bulletin

This is the first article in my new series wherein shop owners can e-mail me questions, which I will attempt to address for their benefit and the benefit of the Association. Allowing me the freedom to write whatever came to my head was apparently proving a bit too eccentric for the editorial board. This week, I will offer my opinions on what turned out to be an unnerving development in the industry. The questions I received from shop owners varied, but they essentially all revolved around the Insurance Commissioner's recent bulletin opining that insurance appraisers are no longer allowed to negotiate labor rates.

The document is known as Insurance Bulletin No. IC-34. In my opinion, the document contradicts existing law and over fifty years of business practice in the industry. Not to mention, the timing of this Bulletin suggests of an effort to undermine Judge Jennings's post trial decisions in The Hartford class action lawsuit and/or seeks to influence the appeal of the case.

In short, Bulletin No. IC-34 opines that appraisers are not required to negotiate labor rates, but instead, labor rates should be negotiated between the insurer and the body shop. This is completely inapposite and contrary to existing law. Regulations § 38a-790-3, for example, requires the price for repairs to be agreed upon between the appraiser and repair shop. There is no mention of the insurance company. Second, § 38a-790-5 likewise provides that "[i]f the appraiser and the repair shop fail to agree on a price for repairs" Third, § 38a-790-8(2) requires the appraiser to "approach the appraisal of damaged property without prejudice against or favoritism toward, any party involved." This obviously includes the insurer and our courts have stated as such. Fourth, § 38a-790-8(3) requires the appraiser to "disregard any efforts on the part of others to influence his judgment; and subsection (4) requires the appraiser to "prepare an independent appraisal of damage".

The law seems quite clear that independently licensed appraisers are legally required to negotiate the price for repairs, including the labor rate paid. Further, the appraiser must act independent of the insurer and cannot be bound by insurer mandates concerning the cost of repair or labor rates. Thus, the Insurance Commissioner's opinion that the independent appraiser should look to the insurer for instruction on labor rates is contrary to the law.

In a broader sense, the appraiser is seemingly the only one standing in the way of the insurance industry literally taking over the repair market. Insurer influence in repair decisions is already the worst problem facing the industry. This opinion Bulletin would only make things worse. All of this is detrimental to repair facilities and consumers. When the safety of one's family is on the line, the cheapest and fastest repair possible is clearly not generally the best or safest decision.

The class action verdict and legislative reforms over the past ten years have reflected an effort to take insurer influence out of the repair process in favor of safer better quality repairs with quality parts. Bulletin No. IC-34 contradicts the class action injunction and the aforementioned regulatory mandates in favor of consolidating power in the hands of the insurer. This is against consumer rights and safety and inconsistent with the legislative intent and traditional role of the independent appraiser.

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I am unaware of any legislative process, hearings or input from the auto body industry in enacting this Commissioner's Bulletin. Instead, this bulletin appears to be a completely misguided attempt to sidestep the legislative and judicial processes, both of which have already contradicted the opinions of this bulletin. If you experience a situation with an appraiser utilizing this opinion Bulletin as a basis for underpaying a claim, be sure to document that and pass it along to Anthony Ferraiolo or Attorney Slossberg.

John Parese

Buckley & Wynne - Attorneys at Law

Auto Body Association of Connecticut Supports Members' Concerns and Fights Unfair Legislation

Written by Chasidy Rae Sisk

Since 1968, the Auto Body Association of Connecticut (ABAC) has been fighting for the collision repair industry. While their focus has changed many times over the past 45 years, ABAC is still dedicated to preserving the integrity and independence of repair specialists throughout their state. Because there are currently so many important issues facing the industry, Tony Ferraiolo, President of ABAC, took time to share the association's goals and stances with *Autobody News* readers.

Regarding their mission, Ferraiolo states, "ABAC continuously strives to educate the motorists of Connecticut and to enhance the abilities and knowledge of its members, through education, to provide safe and dependable repairs to the public. Through proposing and monitoring legislation, the ABAC endeavors to protect the best interests of consumers, its members and the collision repair industry."

ABAC has many ongoing goals and projects in 2013. One of their primary focuses is on education. They strive to educate their members on industry-related issues and training, as well as promoting education on and protection of consumer rights. ABAC educates and trains their members on proper repair procedures, including the latest information from OEMs. Additionally, they protect the driving public with consumer advocacy groups which provide the necessary tools to allow the average driver to make informed decisions about their repair needs.

Another important goal for ABAC is related to legislation. In addition to supporting class action lawsuits when

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necessary, the association monitors current legislation, serving as a watchdog to expose insurers for violating fair trade practices and to combat legislation attempts seeking to limit the independence of collision repair facilities. Beyond education, ABAC's current projects focus on ongoing legislative reforms by maintaining and improving communications with local, state and federal officials. They are currently in the process of pushing two class-action lawsuits.

When asked about the biggest challenges facing the industry today and possible ways to overcome these issues, Ferraiolo lists "the influence that insurance companies have in the auto body industry. Actions to overcome these influences include lawsuits (class action and individual), legislative reforms, and consumer education." ABAC does not approve of the PARTS Act because "the OEMs should have the same protection that's given to any other parts manufacturer. We defer to the OEMs because it's the safest, best way to repair the vehicle. The research and development that is put into the OEM parts should not be undermined. The PARTS Act will hamper innovative new designs and cause costs to be amortized over a short period of time, driving costs up. Therefore, we reject the PARTS Act."

They also reject the Right to Repair. Ferraiolo notes, "We believe all information should be given out to everyone so as not to discriminate against any repairers. Information should be shared so that vehicles can be safely and properly repaired."

Ferraiolo also believes "PartsTrader is bad for our industry." In their press release on PartsTrader from September 2012, ABAC notes, "the endeavor is a wolf in sheep's clothing. It is bad for repairers, part manufacturers, and most importantly, consumers. The only two enterprises in place to profit- and profit handsomely- are State Farm Insurance and PartsTrader." It is clear that PartsTrader does not benefit repairers or consumers as PartsTrader's model shows insurers collecting more premiums only to find ways to pay less on claims, which "is fundamentally corrupting both industries," the press release continues.

Even worse, ABAC predicts that it is only a matter of time before other insurers institute similar programs to the detriment of the collision repair industry. This is the reason that ABAC refers to PartsTrader as "an embodiment of what's wrong with the auto body industry and a harbinger of what's to come," which is why they encourage their members (and collision repairers nationwide!) to become educated on the program and stand up for themselves. "In light of the long-term damage this program will likely cause our industry, we are respectfully encouraging those of you who have not yet weighed in on this debate, to carefully examine the pilot program and voice your opinions."

ABAC was formed in 1968 when around seven independent organizations joined together to form one association: the Auto Body Association of Connecticut. At that point, ABAC was comprised of two officers from each individual organization who gathered for monthly meetings, but each organization continued to operate separately as well until around 15 years ago when all of those individual organizations joined together to strengthen ABAC. According to Ferraiolo, "because individual groups consolidated and became one, the organization runs more efficiently. The locals were able to concentrate on committees and, therefore, accomplish more for the

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association. There is strength in numbers."

While keeping their busy repair members engaged in the forefront of the industry, by participating in the latest developments, is always a challenge, ABAC rises to the occasion repeatedly. Other benefits of membership include group discounts, educational meetings and quarter meetings which allow members to stay up-to-date on the latest trends to maintain national awareness. Though ABAC has over 400 members, including honorary members, shops and vendors, they still strive "to grow and strengthen our membership to create a stronger association."

Source: www.autobodynews.com

Maryland Body Shop Owner wins Short-Pay Lawsuit against GEICO on Behalf of a Customer

Mark Schaech, co-owner of Mark's Body Shop of Baltimore, filed the suit against GEICO due to the insurer's refusal to pay \$392.95 in repair costs on behalf of its policyholder. The underpayments included: degreasing vehicle prior to repair; feather, prime and block repaired panels; clean vehicle for delivery; clear OBD fault codes; reset electronics (recorded settings); mask for primer; and overhaul door handle for refinishing.

"We offer exceptional quality and service to our customers, and to continue to do so without being properly compensated is simply unreasonable and unsustainable," said Schaech. "While my father (partner) and I would rather avoid having to take such legal actions, something had to be done as the insurer's efforts to underpay our customers continued to increase. I felt like that guy in the movie Network where he stuck his head out the window and yelled, 'I'm mad as hell and I'm not taking this anymore!'"

"While Maryland does not allow the recovery of legal fees to the prevailing parties in such issues, we couldn't allow that to be a deterrent in our being able to properly serve our customers and our employees. Insurers have continued cutting their costs while our costs for labor, materials and overhead have steadily increased. The only way we could survive was to either concede to the underpayments and cut our quality of materials and labor...or push back. We found short-pay litigation necessary to stop the insurer's practice of underpaying our customers and to enable us to provide the quality repairs that earn our customers (and their referrals) for life."

Schaech credited a free legal seminar in Florida hosted by Barrett Smith of Auto Damage Experts, Ray Gunder of Gunder's Auto Center and Gunder's attorney, Brent Geohagan, with motivating him and giving him the information he needed to take action.

"That was a turning point for us. To hear Ray talk about how he knew that if he hadn't done something he would be out of business struck a chord in me, and I knew then that I, too, needed to do something or we would lose our business," Schaech said. "Ray gave much credit to his success in having a great support team in Barrett as his consultant and Brent as his legal counsel."

Source: www.autobodynews.com

Rhode Island Governor Signs Total Loss Bills

Rhode Island Governor Lincoln D. Chaffee signed H-5263 and S-465 into law on July 17. The bills, which took effect upon passage, require an insurance company to obtain the owner's consent before declaring a vehicle a total loss if the cost to repair the vehicle is less than 75 percent of its value.

The Auto Body Association of Rhode Island (ABARI) said in a statement, "We are grateful to the Governor and the Legislature for recognizing that consumer protection is the true purpose of this law. For too many years, consumers across this State, many at the lowest economic levels, have been subjected to the heavy hand of insurance companies that seek only to increase their profits.

"Many consumers have lost their second largest asset, because an insurance company could save more money if they totaled a safely repairable vehicle. This practice is now prohibited thanks to Governor Chaffee and the General Assembly," ABARI said.

"The new law also ensures that consumers receive the full value of their vehicle when it is lawfully determined a total loss; it requires insurers to value vehicles based upon publically available guides used in the automotive industry such as Kelly Blue Book and NADA. They are now prohibited from using their own cost-cutting programs that take advantage of those who do not have the means to fight such unfair claims practices," ABARI added.

Insurers had campaigned against the bill with online and radio advertisements and the Property Casualty Insurers Association of America (PCI) said they were "profoundly disappointed" that the Governor approved the legislation.

Frank O'Brien, Vice President State Government Relations for the Property Casualty Insurers Association of America (PCI) said, "By forcing vehicles that are badly damaged to be repaired rather than totaled, this law is designed to increase body shop revenues. But in the end it is the Rhode Island consumer who will pick up the tab. Over the years special interest groups such as ABARI have wielded significant influence in Providence and they have reaped the benefit of bill after bill being passed with the end result being repair costs growing at more than twice the national average and increased hassle and inconvenience for consumers. Unless someone provides a check and balance on body shop costs, this trend is likely to continue.

"We believe consumers, insurers and body shops should have the same goals - high quality repairs at reasonable costs. Although this new law falls short of the mark, the insurance industry remains committed to protecting the interests of consumers and putting safety first."

Source: www.collisionweek.com

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Legislative Director

The goal of the ABAC News is to provide a forum for the free expression of ideas. The opinions and ideas appearing in this publication are not necessarily representations of the ABAC and should not be construed as legal advice.



Mark Your Calendars!

Upcoming ABAC Meetings:

- September 10th, 2013
- November 12th, 2013

Both at The Country House Restaurant
Details to follow!



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