



*Collision Repair
Association of California*

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Transmitted via Electronic and U.S. Mail

Mr. Peter Conlin
Counsel to the Commissioner
California Department of Insurance
300 Capitol Mall Suite 1700
Sacramento, CA. 95814

Dear Mr. Conlin

Thank you for responding to our prior letters to Commissioner Poizner. We assume that the information presented is representative of the Commissioner's position.

Our industry operates with an understanding that laws and regulations are to be followed and if not regulatory intervention occurs. Our perception is that though there are laws

and regulations that govern the insurance claims process they are virtually ignored by insurers and from our perspective, unenforced. We are encouraged to hear that the Commissioner considers issues affecting consumer safety to be among the Department's highest regulatory responsibilities. Though this is encouraging we are troubled that your response does not seem to indicate an application of regulatory responsibility.

On February 2, 2010 the Collision Repair Association of California (CRA) first brought the issue of non-compliant parts to your attention. After not hearing from the Commissioner, we followed up on February 17th with a second letter. Our most recent letter of April 12th was to reinforce our concerns with the commissioner and solicit the department's intervention on behalf of insured Californians. Now it is late April and your department is researching laws and regulations that have been in place for years, while the use of non-compliant parts continues with a potential to affect thousands of California claimants each day.

You have asked for clarification of statements contained in our letter. We appreciate your interest and will attempt to clarify our position and respond to issues you have raised. The issues you have raised are bulleted below with our responses.

- Is it the CRA position that a repair shop would face no civil liability for knowingly installing a substandard part ?

The collision repair industry when utilizing parts specified by insurers is doing so with a reliance on the existence of stated requirements that insurers must warrant the parts to be at least equal if they require or specify the usage of non original equipment manufacturer crash parts. This warranty is issued at the time of specification and prior to repair. Basing settlement on substandard parts is the corner stone of this issue. Liability is clearly that of the insurers. As you stated CDI regulations could not impose liability on auto repair shops. The requirements to warrant parts is part of the claims settlement process. The statutes are in place to insure that when insurers offer settlement, that the parts used as a basis for the offers are at least equal to OEM. If the offer of settlement is based on like parts then the settlement offer should be sufficient to allow a workman like repair. If cheap non compliant parts are used as the basis for settlement the claim is paid short. The repair shop and consumer are now left to try and repair the vehicle properly with insufficient compensation.. Unenforced regulatory language has created a false sense of protection for the consumer, a protection as deficient as the parts themselves.

Your inquiry regarding repair shop liability, appears to be rather threatening and we trust this was not the intent. As a trade association are simply trying to do what is right for consumers in California. Noticeably absent in your letter is any reference to liability, of insurers that continue to specify the usage of these parts in settlement offers and continue to fail to comply with tracking and identification requirements. The closest the CDI is to a prospect of intervention is to advise that various departments are researching issues raised and developing

policy, consistent with legal authority. It appears that CDI did not have policy established to address non-compliant activity, even though the laws and regulations have been in effect for years. To develop enforcement policy after violations have occurred, would appear to be less than forward thinking, but more like driving, by looking in the rear view mirror.

As previously stated, settlements based upon non-compliant non original equipment manufacturer aftermarket parts result in consumers being short changed during the claims process and does not provide adequate compensation for repair to be performed in a workmanlike manner. (ref 2695.8(f) California Code of Regulations).

CDI's failure to regulate has created a liability for all involved, possibly even for your department. One insurer has never specified the usage of these type parts and a small number of insurers when presented with this information announced that they were no longer going to specify usage of aftermarket bumper reinforcements, bumper brackets, energy absorbers and radiator supports . Their actions are commendable. At least a portion of the insurance industry has recognized the issue and responded appropriately.

- Is it the CRA position that the Uniform Commercial Code and its implied warranty of merchantability does not apply to repair shops.

There has been ongoing debate over how the Uniform Commercial Code applies to repair services as opposed to goods or products . If the insurers fulfilled their mandate and the parts were at least equal as required, there would be no need for such a reference. Statutes and regulations are clear if insurers require or specify these parts, they the insurer must warrant the parts are at least equal to OEM. This is a requirement of the claims process and occurs prior to repair. (ref 2698.5(g) C.C.R.). We are concerned about liability however if insurers complied with the requirements of law and statute they would settle claims in a manner that would allow a workman like repair. It is for this reason we have raised this issue. We take exception to any attempt to pass thru an issue of wrong doing to the repairer when the responsibility to perform is the insurers as mandated in the claims process.

- You reference a lack of a broad based process for parts testing and parts tracing and that this represents a significant defect in public policy.

We contend that adequate public policy exists in current law and regulation . We are unable to grasp a significant defect in public policy. The legislature identified an issue with basing claim settlement on non original equipment aftermarket parts and enacted Section 9875 and 9875.1. of the Business and Professions Code. These sections call for the disclosure of the usage of such parts, a disclosure that these parts are not covered by the original manufacturer warranty and that the insurance document shall clearly identify each part with the_name of its non-original equipment manufacturer or distributor. The CDI promulgated regulations contained

in Section 2695.8 (g) C.C.R. , that added further restriction on the usage of the parts . These regulations state no insurer shall require the usage of non-original equipment crash parts unless; the parts are at least equal to original equipment, insurers specifying the usage of non -original parts warrant the parts are of like kind quality, safety, fit and performance and that the parts shall carry permanent non removable identification so as to identify the manufacturer. The burden of proof is with the insurer that requires or specifies the usage of such parts. The insurer that does not use these parts has no mandate to warrant parts. The insurer is free to develop their own criteria, however the bottom line is the parts must be equal , identified , invoiced -- this liability is vested with the insurer.

The issue of a lack of policy regarding tracing also appears to be covered in existing statutes and regulation. Insurers must insure the parts have permanent identification and their estimates must identify each part with the name of the non-original equipment manufacturer or distributor. It is well known that the insurance industry and the repair industry utilize common estimating systems. These sophisticated systems currently facilitate part tracking. An insurers failure to record the information as required is a compliance issue not one of ability or technology. Insurers have had these systems programmed to automatically specify usage of aftermarket parts. Recently, when some insurers decided to stop using the aftermarket parts, they changed the estimating systems to block the entry of such parts. The system providers data warehouses are filled with this information. A study is not needed just a desire or requirement to be compliant.

- You asked our association to forward specific identifying information on any aftermarket bumper reinforcements it believes are substandard, including the name of the manufacturer and model and lot number as well as information on parts distributors that supply these products to repair shops.

Your request ignores the responsibility placed upon insurers by statutes and regulations to warrant the parts to be at least equal. This request should be directed to the insurers you regulate. We complied with a similar request from your department and provided lengthy reports that related to consumer complaints and related questionable insurance practices. This information was forwarded over a year ago and to date we have received no response as promised. The departments failure to perform hardly invokes a willingness on our part to expend our time and resources to participate in a similar process . However we, would like to make the following suggestion.

CDI's first order of business should be to issue a cease and desist order to stop insurers from basing costs in settlement offers on non-original equipment manufacturer aftermarket crash parts that are not compliant, in settlement offers .Your next request of insurers, not collision repair providers, should be to provide you with specific information identifying aftermarket parts, that **they** have determined, are at least equal in terms of kind, quality, safety, fit and performance. Having made the determination that the parts are equal, **they** could then provide

the name of the manufacturer, distributor and record non-removable identification on their estimates/settlement offers. The list of compliant parts will be shorter than the list of parts that do not comply . Proactive enforcement and investigation on the part of your agency would seem well suited to addressing these important consumer safety and claims settlement issues. It is our contention that oversight has failed the public policy. If insurers do not wish to perform to the requirements related to specifying the usage of these parts there is a simple solution, don't specify their usage, **problem solved!**

In addition to insurers that stopped using these type of non-original equipment aftermarket crash parts , it was recently reported that the Auto Body Parts Association, the Taiwan Auto Body Parts Association and the Board of Directors of both associations independently advised members to stop selling and manufacturing these type parts. They got the message.

Today's modern vehicles are designed to provide high levels of occupant safety during a collision. The vehicles are engineered to direct crash forces around the passenger area and work in concert with supplemental restraint systems. In California the repair industry is required to repair vehicles per manufacturer specifications and procedures. Re-engineering of the vehicle should not occur as part of the claims process. Claim payment should be based on parts and procedures that allow a proper repair. We hope that this important point is not lost. Considering the liability to all parties.

We fail to see any defect in public policy only a failure to regulate. New laws are not needed just enforcement of those that exist. It is common knowledge that the only person that can require compliance and enforce the legal requirements of the business of insurance is the Commissioner. Neither our association nor a private citizen can file suit when laws and regulations relating to the claims process are not followed. This is not the time for a study of tracking or testing it is a time to insure consumers safety and financial interests are protected .

We asked the Commissioner to lead, ironically the first steps have already been taken by some insurers and manufacturers. The Commissioners intervention and leadership is required to, facilitate compliance of insurers who continue to violate code. This will insure fair claims settlement is afforded all Californians. Insurers should not be above regulation. Show us that consumer safety and a fair claims settlement process is truly your departments highest priority. It is time to regulate not vacillate!

Sincerely

Allen Wood

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