

# **COLLISION INDUSTRY GUIDE**

## **PART TWO**

**REVISED SEPTEMBER 2018**

THIS SEGMENT OF THE COLLISION INDUSTRY GUIDE WILL DEAL WITH THE RELATIONSHIP BETWEEN THE AUTO BODY REPAIR SHOP, THE CUSTOMER, AND THEIR INSURANCE COMPANY. THE INFORMATION CONTAINED IN THIS SEGMENT IS TO BE USED FOR EDUCATION AND INFORMATION ONLY. GENERALLY, YOU ARE NOT REQUIRED TO TAKE ACTION ON ISSUES DISCUSSED IN THIS SEGMENT. IF THERE IS SOMETHING THAT REQUIRES A SPECIFIC ACTION, IT WILL BE SO NOTED. THE KNOWLEDGE CONTAINED IN THIS SEGMENT WILL MAKE IT POSSIBLE FOR YOU TO MAKE MORE INFORMED BUSINESS DECISIONS WHEN DEALING WITH INSURANCE COMPANIES THEIR AGENTS, ADJUSTERS AND YOUR CUSTOMERS.

**ATTENTION: THIS DOCUMENT IS GENERAL IN NATURE AND DEALS WITH VARIOUS LAWS AND REGULATIONS. IT SHOULD NOT BE CONSIDERED LEGAL ADVICE. IT IS RECOMMENDED THAT YOU SEEK THE ADVICE OF AN ATTORNEY SPECIALIZING IN THIS AREA OF THE LAW IF YOU ENCOUNTER A PROBLEM.**

SECTION 2695.6 OF THE CA.INSURANCE CODE REQUIRES ALL INSURANCE COMPANIES TO CERTIFY ANNUALLY, IN WRITING, THAT THEIR CLAIMS ADJUSTING MANUALS CONTAIN THE REGULATIONS THAT WILL BE CITED IN THIS DOCUMENT.

SECTION 2695.6 OF THE CA. INSURANCE CODE ALSO REQUIRES ANNUAL CERTIFICATION THAT THE INSURANCE COMPANIES PROVIDED CLEAR WRITTEN INSTRUCTIONS TO its CLAIM AGENTS REGARDING THE PROCEDURES TO BE FOLLOWED TO EFFECT PROPER COMPLIANCE WITH THE REGULATIONS THAT WILL BE CITED IN THIS DOCUMENT.

SECTION 2695.6 OF THE CA. INSURANCE CODE REQUIRES THE INSURANCE COMPANIES TO ANNUALLY CERTIFY, IN WRITING, THAT THEY HAVE PROVIDED TRAINING TO ANY INDEPENDENT ADJUSTERS THEY RETAIN OR ALTERNATELY, THE INDEPENDENT ADJUSTER MAY ANNUALLY CERTIFY IN WRITING THAT HE / SHE UNDERSTANDS THE REGULATIONS THAT WILL BE CITED IN THIS DOCUMENT.

THIS IS IMPORTANT BECAUSE EVERYTHING WE COVER IN THIS DOCUMENT IS PART OF THE INSURANCE CODE THAT EVERY STAFF ADJUSTER, INDEPENDENT ADJUSTER, INSURANCE AGENT, AND

INSURANCE COMPANY CLAIM MANAGER IS REQUIRED, BY REGULATION, TO KNOW. WHEN THESE “FAIR CLAIMS SETTLEMENT PRACTICES” ARE KNOWINGLY VIOLATED ON A SINGLE OCCASION, OR PERFORMED WITH SUCH FREQUENCY AS TO INDICATE A GENERAL BUSINESS PRACTICE, IT IS CONSIDERED TO BE AN “UNFAIR CLAIMS SETTLEMENT PRACTICE” AND PROHIBITED BY THIS INSURANCE CODE.

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(1) Q. DOES THE AUTO BODY REPAIR SHOP HAVE ANY DIRECT OBLIGATION TO THE CUSTOMER’S INSURANCE COMPANY?

A. NO! YOUR CUSTOMER HAS A CONTRACT WITH THEIR INSURANCE COMPANY. YOU HAVE AN AGREEMENT WITH THE CUSTOMER TO REPAIR THEIR VEHICLE. YOU CANNOT HAVE AN AGREEMENT WITH A CUSTOMER OR AN INSURANCE COMPANY THAT ALLOWS THE INSURANCE COMPANY TO ACT AS A REPRESENTATIVE OF THE CUSTOMER. EVEN IF YOU ENTER INTO A DIRECT REPAIR AGREEMENT WITH AN INSURANCE COMPANY, YOU MUST DEAL WITH THE CUSTOMER OR HIS / HER PROPERLY DESIGNATED REPRESENTATIVE. [9884.9 B&P CODE, 3303-J & 3353 CA. CODE OF REGS.]

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(2) Q. THE CLAIM ADJUSTER SAID HIS COMPANY HAS A \$350.00 “THRESHOLD” ON PAINT AND THAT IS ALL THEY WILL PAY. IF I WANT MORE, THE CUSTOMER WILL HAVE TO PAY THE DIFFERENCE. I DON’T WANT TO ALIENATE MY CUSTOMER, WHAT CAN I DO?

A. THE QUICK AND EASY WAY TO SOLVE THIS PROBLEM WOULD BE TO AGREE TO THE \$350.00 PAINT LIMIT IF YOU BELIEVE YOU CAN PAINT THE DAMAGED PORTION OF THE CUSTOMER’S VEHICLE FOR THAT AMOUNT.

IF THE ADJUSTER CONTINUES TO INSIST ON THE “THRESHOLD” AMOUNT, YOU SHOULD REMIND THE ADJUSTER THAT WHAT HE / SHE IS DOING IS A VIOLATION OF THE LAW. SECTION 758.6 OF THE INSURANCE CODE THAT STATES “INSURERS SHALL NOT ENGAGE IN “CAPPING”. FOR THE PURPOSES OF THIS SECTION, “CAPPING” MEANS OFFERING OR PAYING AN AMOUNT THAT IS UNRELATED TO A METHODOLOGY USED IN DETERMINING PAINT AND MATERIALS CHARGES THAT IS ACCEPTED BY AUTO REPAIR SHOPS AND INSURERS.”

THIS LAW DOES NOT PREVENT INSURERS AND SHOPS FROM ENTERING INTO SEPARATE PAINT CHARGE AGREEMENTS.

IF THE ADJUSTER CONTINUES TO INSIST IN APPLYING THE “THRESHOLD”, YOUR CUSTOMER WILL HAVE TO CONTACT THE INSURANCE CO. REPRESENTATIVE TO GET THEM TO PAY FOR THE ENTIRE COST OF THE REPAIR. THIS MUST BE DONE BY THE CUSTOMER BECAUSE HE / SHE OWNS THE CONTRACT OF INSURANCE. OF COURSE YOU MAY ADVISE THE

CUSTOMER ON WHAT SECTIONS OF THE INSURANCE CODE APPLIES AND WHAT IT SAYS. IN ADDITION TO SECTION 758.6, SECTION 2695.8 F AND SECTION 2695.7B-1 APPLY. \*\*THE FULL TEXT OF SECTION 2695.7B-1 IS INCLUDED BELOW

THE ADJUSTER MAY NOT KNOW IT, BUT HE / SHE IS MAKING A PARTIAL DENIAL OF THE CLAIM. WHEN YOUR CUSTOMER GIVES YOUR REPAIR ESTIMATE TO THE INSURANCE COMPANY, OR WHEN THE CUSTOMER SIGNS YOUR WORK ORDER AUTHORIZATING YOU TO REPAIR THEIR VEHICLE BASED ON THAT ESTIMATE, THE ESTIMATE BECOMES THE "PROOF OF CLAIM" OR "CLAIM". WHEN AN INSURER OR its CLAIM AGENT MAKES A PARTIAL DENIAL, IT MUST BE DONE IN WRITING CITING THE SPECIFIC POLICY PROVISION, CONDITION, OR EXCLUSION THEY ARE USING AND HOW THEY ARE APPLYING IT.

AN INSURER CAN ONLY APPLY A LIMITATION OF THIS TYPE IF THERE IS A PROVISION, CONDITION, OR EXCLUSION IN THE POLICY THAT GIVES THEM THE RIGHT TO SET SPECIFIC LIMITS. MOST AUTO INSURANCE POLICIES ARE POLICIES OF "ADHESION" MEANING IF AN EXCLUSION, CONDITION, OR LIMITATION ISN'T CLEARLY WRITTEN IN THE POLICY, THE INSURANCE COMPANY CANNOT ENFORCE THE CONDITION, LIMIT, OR EXCLUSION.

WHAT'S NEXT IF THE CUSTOMER FAILS TO GET THE INSURANCE COMPANY TO YIELD? YOU HAVE SOME OPTIONS.

- BOTH YOU AND THE CUSTOMER MAY FILE SEPARATE COMPLAINTS WITH THE DEPARTMENT OF INSURANCE. YOU SHOULD USE THE AUTOBODY COMPLAINT FORM, AND YOUR CUSTOMER SHOULD USE THE STANDARD CONSUMER COMPLAINT FORM.
- YOU MAY MAKE A BUSINESS DECISION. CAN YOU AFFORD TO GIVE THE ADDITIONAL COST OF THE PAINT TO THE CUSTOMER, OR, DO YOU WANT TO? IF THE ANSWER IS NO, THEN CHARGE THE CUSTOMER FOR THE ADDITIONAL PAINT MATERIAL COST.
- IF YOU DECIDE TO CHARGE THE CUSTOMER FOR THE PAINT, YOU MAY WANT CONSIDER HELPING THE CUSTOMER PREPARE THEIR SMALL CLAIM ACTION AGAINST THE INSURANCE COMPANY.

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(3) Q.THE CLAIM ADJUSTER SAID THE PREVAILING HOURLY LABOR RATE SET BY HIS COMPANY IS ALL HE WILL PAY. IF I CHARGE A HIGHER HOURLY RATE, THE CUSTOMER WILL HAVE TO PAY THE DIFFERENCE. WHAT CAN I DO?

A. SECTION 758-C OF THE INSURANCE CODE ALLOWS AN INSURER TO DETERMINE AND SET A PREVAILING LABOR RATE IF THE INSURER DOES A LABOR RATE SURVEY IN THAT SPECIFIC GEOGRAPHIC AREA AND SUBMITS THAT SURVEY TO THE DEPARTMENT OF INSURANCE.

MOST INSURERS SURVEYS THAT HAVE BEEN SUBMITTED TO THE DEPARTMENT OF INSURANCE ARE SEVERAL YEARS OLD. A COMPELLING ARGUMENT CAN BE MADE THAT THOSE SURVEYS NO LONGER REPRESENT THE TRUE LABOR RATES BEING CHARGED IN THE MARKET AND THEREFORE SHOULD NOT BE USED TO SUPPORT THE "REASONABLENESS OF AN INSURERS ADJUSTMENT". ALSO, SECTION 2695.7B-1 OF THE CA. FAIR CLAIM SETTLEMENT PRACTICES INSURANCE CODE WOULD APPLY IF THE INSURERS SURVEY IS CONSIDERED NON-REPRESENTATIVE OF THE MARKET OR IF THE INSURER DID NOT DO A SURVEY. \*\*A FULL TEXT OF 2695.7B-1 IS INCLUDED BELOW.

IF THE LABOR RATE SET BY THE INSURER IS UN-ACCEPTABLE AND THE INSURER HAS NOT SUBMITTED A RECENT SURVEY, OR THE INSURER HAS NOT DONE A SURVEY, YOU MAY WANT TO CONSIDER FILING A COMPLAINT WITH THE DEPARTMENT OF INSURANCE ON THE BODY SHOP COMPLAINT FORM. YOU WOULD CONTEND THAT THE LABOR RATE SURVEY BEING USED BY THE INSURER IS "UNFAIR" AND STATE THE REASON(S) IT IS UNFAIR. GENERALLY THERE ARE MANY. IN A LETTER DATED OCTOBER 6, 2004 TO JACK MOLODANOF ATTORNEY/LOBBYIST FOR THE CAA FROM TONY CIGNARALE, CHIEF OF THE CONSUMER SERVICES DIVISION OF THE CALIFORNIA DEPARTMENT OF INSURANCE STATES "WHEN AN INSURER HAS NOT CONDUCTED ANY SURVEY, IT HAS NO BASIS UPON WHICH TO ADJUST AN ESTIMATE FROM THE CLAIMANT'S CHOSEN SHOP AND MUST PAY THE SHOP'S RATE".

(4) Q. THE INSURANCE ADJUSTER SAID HIS COMPANY DOES NOT PAY FOR BLOCKING AND PRIMING REPAIRED PANELS, COLOR SAND AND BUFF, COLOR TINT, OR COLOR MATCH PROCEDURES EVEN THOUGH THIS WORK MUST BE DONE. IF I WANT TO GET PAID FOR THIS WORK, THE CUSTOMER WILL HAVE TO PAY THE DIFFERENCE. WHAT CAN I DO?

A. THE SECTION OF THE INSURANCE CODE THAT APPLIES TO THIS IS SECTION 2695.8[F] OF THE CA. FAIR CLAIM SETTLEMENT PRACTICES REGULATIONS. IT STATES:  
"AN INSURER SHALL NOT PREPARE AN ESTIMATE THAT DEVIATES FROM THE STANDARDS, COSTS, AND/OR GUIDELINES PROVIDED BY THE THIRD-PARTY AUTOMOBILE COLLISION REPAIR ESTIMATING SOFTWARE USED BY THE INSURER TO PREPARE THE ESTIMATE, IF SUCH DEVIATION WOULD RESULT IN AN ESTIMATE THAT WOULD NOT ALLOW FOR REPAIRS TO BE MADE IN ACCORDANCE WITH ACCEPTED TRADE STANDARDS FOR GOOD

AND WORKMANLIKE AUTOMOTIVE REPAIRS BY AN AUTOBODY REPAIR SHOP”

SECTION 2695.7B-1 OF THE CA FAIR CLAIMS SETTLEMENT PRACTICES ALSO APPLIES IN THIS CASE. \*\*A FULL TEXT OF 2695.7B-1 IS INCLUDED BELOW.

THIS MEANS THAT THE INSURER CANNOT ARBITRARILY DECIDE WHICH AREAS OF AN ESTIMATING SYSTEM THEY WISH TO USE AND WHICH THEY WISH TO IGNORE. WHEN THIS OCCURS, YOU MAY WANT TO CONSIDER FILING A COMPLAINT WITH THE DEPARTMENT OF INSURANCE ON THE BODY SHOP COMPLAINT FORM. YOU WOULD INCLUDE ALL THE DATA BASE INFORMATION THAT APPLIES. THIS WOULD ALSO INCLUDE ANY REPAIR METHODS THAT ARE SPECIFIED BY THE VEHICLE MANUFACTURER THAT ARE NECESSARY TO REPAIR THE VEHICLE IN A GOOD AND WORKMAN LIKE MANNER.

(5) Q. ONE INSURANCE ADJUSTER SAYS THE COMPANY DOES NOT PAY FOR TOXIC WASTE REMOVAL, ANOTHER SAYS THE COMPANY ONLY AUTHORIZES PAYING \$1.00 FOR TOXIC WASTE DISPOSAL. IF I CHARGE MORE, THE CUSTOMER WILL HAVE TO PAY THE DIFFERENCE. WHAT CAN I DO?

A. THIS IS ANOTHER OF THOSE ARBITRARY DECISIONS MADE BY AN INSURER. WHILE IT IS A SMALL AMOUNT OF MONEY, IT IS A LEGITIMATE CHARGE THAT MUST BE PAID BY THE INSURER. SECTIONS 2695.7[B-1] AND 2695.8[F-3] APPLY. IF YOU ARE FILING COMPLAINTS WITH THE DEPARTMENT OF INSURANCE ON OTHER ITEMS, YOU MAY WANT TO INCLUDE THIS ONE ALSO. \*\* A FULL TEXT OF 2695.7B-1 IS INCLUDED BELOW.

(6) THE ADJUSTER TOLD MY CUSTOMER THAT HE / SHE CAN AVOID PAYING ANY ADDITIONAL CHARGES BEYOND THEIR DEDUCTIBLE IF HE / SHE MOVED THE VEHICLE TO THE INSURANCE COMPANY RECOMMENDED DIRECT REPAIR FACILITY. WHAT CAN I DO?

A. YOU AND YOUR CUSTOMER MAY WANT TO CONSIDER FILING COMPLAINTS WITH THE DEPARTMENT OF INSURANCE. THERE ARE TWO SECTIONS OF THE CA. FAIR CLAIM SETTLEMENT PRACTICES THAT APPLY IN THIS CASE. SECTION 2695.8[F-2] SAYS THAT AN INSURER MAY RECOMMEND THE NAME OF A REPAIRER THAT WILL REPAIR THE VEHICLE FOR THE AMOUNT OF THE INSURERS ESTIMATE **ONLY IF THE CLAIMANT FIRST REQUESTS THE NAME OF A SHOP THAT WILL DO THE REPAIRS FOR THE INSURERS ESTIMATED AMOUNT.**

THE SECOND CODE THAT APPLIES IS SECTION 758.5 OF THE INSURANCE CODE. THIS SECTION PROHIBITS AN INSURER FROM COMMUNICATING FALSE, DECEPTIVE, OR MISLEADING INFORMATION TO THE CLAIMANT ABOUT THE CLAIMANT'S CHOICE OF AUTO REPAIR SHOP.

THE THIRD INSURANCE CODE THAT APPLIES IS SECTION 2695.8-E-1, 2, &3 OF THE CA FAIR CLAIM SETTLEMENT PRACTICES. IT REINFORCES THE PREVIOUS SECTIONS OF THE ANTI-STEERING REGULATIONS.

STEERING COMPLAINTS ARE DIFFICULT FOR THE DEPARTMENT OF INSURANCE TO HANDLE BECAUSE THERE IS USUALLY NO PROOF OF WHAT WAS SAID AND HOW IT WAS SAID.

(7) Q. I HAVE AN ESTIMATE ON MY CUSTOMERS VEHICLE. THE ADJUSTER REFUSES TO LOOK AT MY ESTIMATE. I CANNOT USE THE ADJUSTERS ESTIMATE TO REPAIR THE VEHICLE BECAUSE THE REPAIR METHOD THE ADJUSTER WANTS TO USE IS NOT RECOMMENDED BY THE VEHICLE MANUFACTURER ALSO, THE ADJUSTER IS NOT PAYING FOR ALL REQUIRED OPERATIONS SAYING "WE DON'T PAY FOR THAT". DO I HAVE TO ACCEPT THIS?

A.NO! HERE IS WHAT SECTION 2695.8F OF THE CA FAIR CLAIM SETTLEMENT PRACTICES REQUIRES OF INSURERS. IF THE CLAIMANT OR THE CLAIMANT'S REPAIR SHOP CONTENDS THAT THE NECESSARY REPAIRS WILL EXCEED THE ESTIMATE PREPARED BY OR FOR THE INSURER. THE INSURER SHALL:

[1] PAY THE DIFFERENCE BETWEEN THE INSURER ESTIMATE AND THE CLAIMANT'S SHOP ESTIMATE; OR,

[2] IF REQUESTED BY THE CLAIMANT, PROVIDE THE NAME OF A SHOP THAT WILL REPAIR THE VEHICLE FOR THE INSURERS ESTIMATE; OR,

[3] REASONABLY ADJUST ANY WRITTEN ESTIMATES PREPARED BY THE REPAIR SHOP OF THE CLAIMANT'S CHOICE AND PROVIDE A COPY OF THE ADJUSTED ESTIMATE TO THE CLAIMANT AND THE CLAIMANT'S REPAIR SHOP. THE ADJUSTED ESTIMATE PROVIDED TO THE CLAIMANT AND REPAIR SHOP SHALL BE AN **EDITED COPY OF THE CLAIMANT'S REPAIR SHOP ESTIMATE** OR A SUPPLEMENTAL ESTIMATE **BASED ON THE ITIMIZED COPY OF THE CLAIMANT'S REPAIR SHOP ESTIMATE**. IN ADDITION, THE ADJUSTED ESTIMATE SHALL IDENTIFY THE SPECIFIC ADJUSTMENT MADE TO EACH ITEM AND THE COST ASSOCIATED WITH EACH ADJUSTMENT MADE TO THE CLAIMANT'S SHOP ESTIMATE.

SECTION 2695.7B-1 ALSO APPLIES IN THIS SITUATION. \*\*SECTION 2695.7B-1 IS INCLUDED BELOW.

IF THE ADJUSTER OR SUPERVISOR REFUSES TO CHANGE THEIR POSITION, YOU AND YOUR CUSTOMER MAY WANT TO CONSIDER FILING A COMPLAINT WITH THE DEPARTMENT OF INSURANCE. YOU SHOULD FILE YOUR COMPLAINT ON THE BODY SHOP COMPLAINT FORM AND INCLUDE ALL DOUMENTATION NEEDED TO PROVE YOUR POSITION SUSH AS, P-PAGES, MFG. REPAIR PROCEDURES, PAINT MFG. PROCEDURES ETC.

\*\* SECTION 2695.7B-1 OF THE CA. FAIR CLAIM SETTLEMENT PRACTICES REGULATIONS IS IMPORTANT TO THE WAY AN INSURER ADJUSTS AND PAYS CLAIMS. THEREFORE WE HAVE INCLUDED THE FULL TEXT OF THIS CODE.

WHAT THE ADJUSTERS ARE DOING IN THE ABOVE GROUP OF QUESTIONS IS A PARTIAL DENIAL OF A CLAIM. YOUR ESTIMATE, INCLUDING THE SCOPE OF REPAIR, LABOR RATE, PAINT, AND ALL OTHER CHARGES THAT ARE NECESSARY IN ORDER TO REPAIR THE VEHICLE PROPERLY BECOMES THE "CLAIM".

SECTION 2695.7 [B] [1] STATES:

"WHERE AN INSURER DENIES OR REJECTS A FIRST PARTY CLAIM, IN WHOLE OR IN PART, IT SHALL DO SO IN WRITING AND SHALL PROVIDE TO THE CLAIMANT A STATEMENT LISTING ALL BASIS FOR SUCH REJECTION OR DENIAL AND THE FACTUAL AND LEGAL BASIS FOR EACH REASON GIVEN FOR SUCH REJECTION OR DENIAL WHICH IS THEN WITHIN THE INSURER'S KNOWLEDGE. WHERE AN INSURER'S DENIAL OF A FIRST PARTY CLAIM, IN WHOLE OR IN PART, IS BASED ON A SPECIFIC STATUTE, APPLICABLE LAW OR POLICY PROVISION, CONDITION OR EXCLUSION, THE WRITTEN DENIAL SHALL INCLUDE REFERENCE THERETO AND PROVIDE AN EXPLANATION OF THE APPLICATION OF THE STATUTE, APPLICABLE LAW OR PROVISION, CONDITION OR EXCLUSION TO THE CLAIM. EVERY INSURER THAT REJECTS A THIRD PARTY CLAIM, IN WHOLE OR IN PART, OR DISPUTES LIABILITY OR DAMAGES SHALL DO SO IN WRITING."

THE ADJUSTER WILL TELL YOU, THE BODY SHOP OWNER / MANAGER WHAT HE / SHE, OR THE INSURANCE COMPANY DOESN'T PAY FOR. BUT GENERALLY, THEY DON'T KNOW THAT THEY ARE REQUIRED TO COMMUNICATE THIS PARTIAL DENIAL TO THE CUSTOMER AND DO IT IN WRITING. THIS IS WHEN YOU GET THE CUSTOMER INVOLVED.

WHAT ELSE CAN I DO IF THE ADJUSTER IGNORES THE REGULATIONS?

HERE ARE SOME OPTIONS FOR YOU TO CONSIDER:

\*YOU SHOULD HAVE THE CUSTOMER INSPECT THE VEHICLE WITH YOU TO COMPARE THE ESTIMATES SO YOU CAN SHOW YOUR CUSTOMER WHAT THE ADJUSTER MISSED. THE CUSTOMER WILL HAVE TO DEAL WITH THE ADJUSTER OR HIS / HER SUPERVISOR TO GET THE ESTIMATE CORRECTED.

\* YOU MAY CONSIDER CALLING THE ADJUSTER'S SUPERVISOR AND EXPLAIN THE INSURANCE CODE VIOLATIONS THE ADJUSTER COMMITTED AND REQUEST THE SUPERVISOR TO INSTRUCT THE ADJUSTER TO CORRECT THE ESTIMATE.

\*AS STATED PREVIOUSLY, IF YOU AND THE CUSTOMER ARE UNSUCCESSFUL WITH THE SUPERVISOR, THE CUSTOMER COULD FILE A COMPLAINT WITH THE DEPT. OF INSURANCE FOR AN IMPROPER DENIAL AND YOU SHOULD CONSIDER FILING A DEPT. OF INSURANCE COMPLAINT ON THE BODY SHOP FORM. IF YOU DON'T COMPLAIN, NOTHING WILL CHANGE BECAUSE THE DEPARTMENT OF INSURANCE WILL NOT KNOW OF THE VIOLATIONS

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(8) Q. THE INSURANCE ADJUSTER SAYS THE COMPANY WILL ONLY PAY FOR AFTERMARKET EXTERIOR SHEET METAL AND PLASTIC PARTS ON THEIR INSURED AND CLAIMANT CUSTOMERS VEHICLES. IF THE CUSTOMER WANTS O.E.M. PARTS, THEY WILL HAVE TO PAY THE DIFFERENCE. WHAT CAN I DO? I DON'T LIKE TO USE NON O.E.M. PARTS.

A. SECTION 2695.8 OF THE CA FAIR CLAIM SETTLEMENT PRACTICES REGULATIONS OVERAPS ALL THESE ISSUES SO THE ANSWERS GIVEN TO PREVIOUS QUESTIONS WHERE 2695.8 WAS CITED WILL APPLY HERE ALSO. WE'RE GOING TO LOOK AT SECTION 2695.8[G 1 THROUGH 8] FOR THE AUTHORITY ON THIS. THE CUSTOMER MUST TAKE THE LEAD ON THIS SO YOU SHOULD EDUCATE YOUR CUSTOMER ON HIS / HER RIGHTS, BUT YOU THE REPAIRER ALSO HAVE A PART TO PLAY IN THIS.

MOST INSURANCE POLICIES WILL HAVE WORDING SIMILAR TO THIS: "OUR LIMIT OF LIABILITY IS THE LEAST OF:

1] THE ACTUAL CASH VALUE OF THE PROPERTY OR DAMAGED PART OF THE PROPERTY AT THE TIME OF THE LOSS, WHICH MAY INCLUDE A DEDUCTION FOR DEPRECIATION; OR

2] THE COST TO REPAIR OR REPLACE THE PROPERTY OR PART TO IT'S PHYSICAL CONDITION AT THE TIME OF LOSS USING PARTS PRODUCED BY OR FOR THE VEHICLE'S MANUFACTURER, OR PARTS FROM OTHER SOURCES, INCLUDING, BUT NOT LIMITED TO, NON-ORIGINAL EQUIPMENT MANUFACTURERS, SUBJECT TO APPLICABLE STATE LAWS AND REGULATIONS.



SECTION NUMBER TWO OPENS THE DOOR FOR THE INSURANCE COMPANY TO ALL KIND OF OPTIONS LIKE USED PARTS, AND NON- OEM “REPLACEMENT” SHEETMETAL AND PLASTIC PARTS. EXCEPT WHERE THE INSURANCE CODE INTERVENES. THIS IS WHERE THE CUSTOMER, WITH YOUR ASSISTANCE, HAS THE LEVERAGE TO CHANGE THE INSURER’S DECISION TO USE “REPLACEMENT CRASH PARTS”.

SECTION 2695.2-U DEFINES A “REPLACEMENT CRASH PART” AS A REPLACEMENT FOR ANY OF THE NON – MECHANICAL SHEET METAL OR PLASTIC PARTS WHICH GENERALLY CONSTITUTE THE EXTERIOR OF A MOTOR VEHICLE, INCLUDING INNER AND OUTER PANELS.

SECTION 2695.8-G 1 THROUGH 8 OF THE INSURANCE CODE SPECIFIES WHAT AN INSURER MUST DO IF IT SPECIFIES NON- O.E.M. REPLACEMENT CRASH PARTS TO REPAIR A CUSTOMER’S VEHICLE. NOTE THAT "NO INSURER SHALL REQUIRE THE USE OF NON-ORIGINAL EQUIPMENT MANUFACTURER REPLACEMENT CRASH PARTS IN THE REPAIR OF AN AUTOMOBILE UNLESS ALL THE FOLLOWING CONDITIONS ARE MET"

1] THE PARTS MUST BE AT LEAST EQUAL TO O.E.M. PARTS IN TERMS OF KIND, QUALITY, SAFETY, FIT, AND PERFORMANCE. THE INSURER MUST WARRANT THIS. SAFETY IS THE BIG QUALIFIER HERE. MANY NON- O.E.M. PARTS DO NOT HAVE THE SAME NUMBER OF WELDS, PROPER PLACEMENT OF CRUSH ZONES, LIGHT REFRACTION, ETC.

2] INSURERS SPECIFYING THE USE OF NON-O.E.M. PARTS MUST PAY THE COST OF ANY MODIFICATION OF THE PART TO EFFECT THE REPAIR.

4] ALL O.E.M. AND NON O.E.M. PARTS SHALL CARRY SUFFICIENT PERMANENT, NON-REMOVABLE IDENTIFICATION SO AS TO IDENTIFY THE MANUFACTURER. SUCH IDENTIFICATION SHALL BE ACCESSIBLE TO THE GREATEST EXTENT AS POSSIBLE AFTER INSTALLATION. LOOK CLOSELY FOR THE MANUFACTURERS STAMP. IF IT’S NOT STAMPED, YOU MAY WANT TO CONSIDER REJECTING THE PART.

IF NO AFTERMARKET PARTS ARE AVAILABLE WITH THE PROPER MFG. STAMP, YOU MAY WANT TO CONSIDER CONTACTING THE ADJUSTER AND ADVISING HIM / HER THAT NO QUALIFING AFTERMARKET PARTS ARE AVAILABLE AND THE INSURER SHOULD PAY TO INSTALL O.E.M. PARTS. IF THE ADJUSTER REFUSES TO AGREE TO O.E.M. PARTS, YOU SHOULD EDUCATE THE CUSTOMER ON HIS / HER RIGHTS SO THE CUSTOMER CAN ARGUE HIS / HER POSWITION WITH THE ADJUSTER AND FILE A D.O.I. COMPLAINT IF NECESSARY.

THIS SAME CODE REQUIRES THAT IF AN INSURER HAS KNOWLEDGE THAT A PART IS NOT EQUAL TO THE O.E.M. PART IN TERMS OF KIND, QUALITY,

SAFETY, FIT, AND PERFORMANCE, OR DOES NOT OTHERWISE COMPLY WITH THIS SECTION [MEANING YOU TOLD THEM THE PART IS NON-COMPLIANT], THE INSURER IS REQUIRED TO IMMEDIATELY CEASE REQUIRING THE USE OF THE PART AND WITHIN 30 DAYS NOTIFY THE DISTRIBUTOR OF THE NON-COMPLIANT ASPECT OF THE PART.

SECTION [7] & [8] OF THIS CODE ALSO REQUIRES THE INSURER TO PAY ALL COSTS ASSOCIATED WITH ORDERING, RETURNING, REMOVAL AND REPLACEMENT OF A NON-COMPLIANT AFTERMARKET PART. THE INSURER CANNOT SHIFT THIS RESPONSIBILITY TO THE PART'S DISTRIBUTER.

AN INSURER CANNOT FORCE A THIRD PARTY CLAIMANT TO ACCEPT THE USE OF AFTERMARKET PARTS IN THE REPAIR OF THEIR VEHICLE. A THIRD PARTY CLAIMANT DOES NOT HAVE A CONTRACT WITH THAT INSURER.

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(9) Q. THE INSURANCE COMPANY IS STEERING MY CUSTOMERS TO THEIR DIRECT REPAIR SHOP BY TELLING THEM THAT IF THEY LEAVE THEIR VEHICLE AT MY SHOP FOR REPAIR, IT COULD TAKE AS MUCH AS TEN DAYS FOR THEM TO GET AN ADJUSTER TO MY SHOP TO INSPECT THE VEHICLE. THEY INSIST NO REPAIRS CAN BE DONE UNTIL THEY INSPECT THE VEHICLE AND GIVE THEIR AUTHORIZATION FOR REPAIR. BUT, IF THE CUSTOMER MOVES THE VEHICLE TO THEIR DIRECT REPAIR SHOP, REPAIRS CAN START IMMEDIATELY. THIS IS PERSUASIVE BECAUSE OF RENTAL CAR EXPENSES. ALSO, ALONG THE SAME LINE, MOST INSURANCE COMPANIES SAY THEY WON'T PAY FOR SUPPLEMENTS UNLESS THEY INSPECT AND OR APPROVE THEM. IN MOST CASES IT TAKES THE ADJUSTER MANY DAYS JUST TO RETURN OUR CALL. ACTUAL INSPECTION TAKES LONGER.

A. THERE IS NO LAW THAT REQUIRES AN AUTO REPAIR DEALER TO WAIT FOR AN INSURANCE COMPANY INSPECTION OR AUTHORIZATION BEFORE STARTING REPAIRS AFTER THE AUTO REPAIR DEALER HAS OBTAINED THE APPROPRIATE AUTHORIZATION TO REPAIR FROM THE CUSTOMER. THIS APPLIES TO SUPPLEMENTS ALSO. HOWEVER SECTION 2695.8[E] OF THE CA. FAIR CLAIM SETTLEMENT PRACTICES REGULATIONS DOES PLACE SOME TIME LIMITS ON INSURERS WITH REGARD TO INITIAL AND SUPPLEMENT INSPECTIONS. TO REDUCE THIS REGULATION TO ITS SIMPLEST TERMS, IF AN INSURER CHOOSES TO INSPECT A NEW CLAIM OR SUPPLEMENT, THE INSURER MUST MAKE THAT INSPECTION WITHIN SIX (6) BUSINESS DAYS OF BEING NOTIFIED OF THE CLAIM OR SUPPLEMENT.

HOWEVER, NOTHING IS EVER QUITE THAT SIMPLE IS IT? THERE ARE SOME CAVEATS THAT MAY AFFECT YOUR CUSTOMER SO WE NEED TO MAKE SURE WE PROTECT THEM. WE ARE GOING TO USE SOME GENERIC POLICY

WORDING AND SECTIONS OF THE INSURANCE CODE TO FORMULATE OUR ANSWER.

MOST AUTOMOBILE INSURANCE POLICIES HAVE A PROVISION THAT GIVES THE INSURER THE RIGHT TO INSPECT THE DAMAGED PROPERTY. THE WORDING OF THIS PROVISION IS VERY SIMPLE IN SOME POLICIES AND VERY DETAILED IN OTHERS. ONE THING IS CLEAR, THE INSURANCE COMPANY HAS THE RIGHT TO INSPECT THE DAMAGED PROPERTY BUT, DOES THAT GIVE THEM THE RIGHT TO DELAY THE PROCESSING OF A CLAIM? DOES THAT MEAN THEY CAN MAKE A CUSTOMER WAIT TO START REPAIRS WHILE THEIR ADJUSTER TAKES HIS / HER TIME GETTING OUT TO THE SHOP?

**NO THEY CANNOT.** SECTION 2695.1 [A2] OF THE CA FAIR CLAIM SETTLEMENT PRACTICES REGULATIONS STATE THAT THE PURPOSE OF THE FAIR CLAIM SETTLEMENT PRACTICES ACT IS TO “PROMOTE THE **GOOD FAITH, PROMPT, EFFICIENT AND EQUITABLE** SETTLEMENT OF CLAIMS ON A COST EFFECTIVE BASIS”. ANYTHING AN INSURANCE COMPANY DOES THAT WOULD INCREASE THE COST OR UNDULY DELAY A SETTLEMENT WOULD VIOLATE THIS REGULATION.

SECTION 2695.4 [C] STATES “NO INSURER SHALL DENY A CLAIM ON THE BASIS OF THE CLAIMANT’S FAILURE TO EXHIBIT PROPERTY, UNLESS THERE IS DOCUMENTATION IN THE FILE [1] OF DEMAND BY THE INSURER, AND THE UNFOUNDED REFUSAL OF THE CLAIMANT, TO EXHIBIT THE PROPERTY, OR [2] OF THE BREACH OF ANY POLICY PROVISION OF THE POLICY PROVISION PROVIDING FOR THE EXHIBITION OF THE PROPERTY.” THE REASON THIS IS INCLUDED IN THE ANSWER IS TO AFFIRM WHAT THE CUSTOMER’S POLICY SAYS. QUITE SIMPLY, THE POLICY AND THE CODE SAY THE CUSTOMER MUST MAKE THE PROPERTY AVAILABLE FOR INSPECTION, BUT NEITHER STATE THAT THE PROPERTY CANNOT BE UNDER REPAIR WHEN THE INSURANCE COMPANY INSPECTS THE PROPERTY.

A GOOD AND REASONABLE BUSINESS PRACTICE WOULD BE TO WAIT THE SIX (6) BUSINESS DAYS AFTER THE CUSTOMER REPORTS THEIR CLAIM FOR THE INSURANCE COMPANY TO MAKE THEIR INSPECTION. IF THE INSURANCE COMPANY DOES NOT MAKE THEIR INSPECTION BY THEN, YOU MAY CONSIDER TAKING PHOTOS OF THE DAMAGE, STARTING REPAIRS AND SAVING THE PARTS. IT WOULD BE ALMOST IMPOSSIBLE FOR THE INSURER TO ARGUE THAT THE CUSTOMER JEOPARDIZED THEIR RIGHTS IF YOU DID THIS.

IN THE CASE OF SUPPLEMENTS, GET THE APPROPRIATE AUTHORIZATION FROM THE CUSTOMER, AND ADVISE THE CUSTOMER TO INFORM HIS / HER INSURANCE COMPANY OF THE SUPPLEMENT. YOU MAY WANT TO CONSIDER MAKING A COURTESY CALL TO THE INSURANCE CO. OF THE

SUPPLEMENT AND SEND THE SUPPLEMENT AND PHOTOS OF THE ADDITIONAL DAMAGE, AND CONTINUE ON WITH THE REPAIRS. THIS BUSINESS PRACTICE WOULD APPLY TO THIRD PARTY SITUATIONS ALSO. THEY DON'T HAVE A CONTRACT WITH THE INSURANCE COMPANY BUT THE INSURANCE COMPANY HAS A RIGHT TO INSPECT THE DAMAGED VEHICLE.

(10) Q. IS THERE ANY WAY TO AVOID THE CONTINUAL DISPUTES WITH INSURANCE ADJUSTERS OVER ISSUES LIKE REPAIR PROCESSES, NEW VS AFTERMARKET PARTS, NEW VS USED ETC. WITH INSURERS THAT I DO NOT HAVE A DIRECT REPAIR RELATIONSHIP?

A. THERE ARE WAYS TO POSITION THE CLAIM THAT WILL GIVE THE CUSTOMER AND YOU LEVERAGE. HOWEVER, IT MAY REQUIRE YOU TO CHANGE SOME OF YOUR PROCESSES AND, IT WILL REQUIRE THE ADJUSTER TO BE FAMILIAR WITH THE INSURANCE CODE.

THE CHANGES YOU MAY HAVE TO MAKE IN YOUR PROCESSES WILL ONLY MAKE YOU COMPLIANT WITH THE CALIF CODE OF REGULATIONS. THESE CHANGES HAVE TO DO WITH THE WAY THE ORIGINAL ESTIMATE IS HANDLED WITH RESPECT TO THE CUSTOMER.

LET'S START BY UNDERSTANDING THAT YOU DO NOT HAVE A CONTRACTUAL AGREEMENT WITH YOUR CUSTOMER'S INSURANCE COMPANY. THEREFORE, YOU ARE NOT BOUND BY THEIR POLICIES OR RULES. HOWEVER, THE INSURANCE COMPANY DOES HAVE A CONTRACT WITH THE CUSTOMER. ALL POLICIES AND RULES APPLY TO THE CUSTOMER. THE INSURANCE CODE IS VERY SPECIFIC ON HOW AN INSURANCE COMPANY MUST HANDLE DIFFERENCES WITH THEIR CUSTOMER. EVERYTHING CHANGES WHEN THE BODY SHOP GETS IN THE MIDDLE OF THE PROCESS IN AN ATTEMPT TO MAKE THINGS EASIER FOR THE CUSTOMER.

**COMMUNICATION WITH YOUR CUSTOMER IS THE KEY TO THIS PROCESS. THE CUSTOMER MUST KNOW WHY YOU ARE DOING THINGS THIS WAY.**

WHEN YOU WRITE ESTIMATES ON DRIVEABLE VEHICLES, THE ESTIMATE IS USUALLY GIVEN TO THE CUSTOMER FOR HIM / HER TO SUBMIT TO THE INSURER [NON D.R.P.]. PROBLEMS ARISE WITH THE PROCESS MANY SHOPS USE WHEN A VEHICLE IS NOT DRIVEABLE.

IN MOST SHOPS, THE PROCESS GOES SOMETHING LIKE THIS:

THE VEHICLE IS TOWED INTO THE SHOP. THE CUSTOMER COMES INTO THE SHOP AND SIGNS AN AUTHORIZATION TO REPAIR AND THE SHOP WAITS FOR THE ADJUSTER TO SHOW UP [HE / SHE WILL WRITE HIS/HER OWN ESTIMATE ANYWAY]. OR, THE SHOP WRITES AN ESTIMATE, CALLS THE CUSTOMER WITH AN AMOUNT GETS AUTHORIZATION TO REPAIR AND WAITS FOR THE ADJUSTER. THERE IS A B.A.R. VIOLATION IN BOTH SITUATIONS.

WHAT IS THE VIOLATION? SECTION 3353[B] STATES: “EVERY DEALER, WHEN DOING AUTO BODY OR COLLISION REPAIRS, SHALL GIVE TO EACH CUSTOMER A WRITTEN ESTIMATED PRICE FOR PARTS AND LABOR FOR A SPECIFIC JOB”. THIS IS NOT THE ENTIRE SECTION. IN ADDITION, THE B.A.R. RECOMMENDS THAT THE ORIGINAL AUTHORIZATION BE BY SIGNATURE EXCEPT WHEN “UNUSUAL CIRCUMSTANCES” EXIST [3353-F].

IT IS IMPORTANT THAT YOU DON’T WAIT FOR AN ADJUSTER. PREPARE YOUR ESTIMATE QUICKLY AND GET IT INTO THE HANDS OF YOUR CUSTOMER, SO YOUR CUSTOMER CAN IMMEDIATELY SUBMIT THE ESTIMATE TO THEIR INSURER AS THEIR “PROOF OF CLAIM”. [YOU CAN ALSO SEND A COPY TO THE INSURER] HERE’S WHY:

SECTION 2695.2-S OF THE INSURANCE CODE DEFINES “PROOF OF CLAIM” AS “ANY DOCUMENTATION IN THE CLAIMANT’S POSSESSION SUBMITTED TO THE INSURER WHICH PROVIDES ANY EVIDENCE OF THE CLAIM AND SUPPORTS THE MAGNITUDE OR THE AMOUNT OF THE CLAIMED LOSS”.

SECTION 2695.7-B OF THE INSURANCE CODE STATES “UPON RECEIVING PROOF OF CLAIM, EVERY INSURER SHALL IMMEDIATELY, BUT IN NO EVENT MORE THAN FORTY [40] CALENDAR DAYS LATER, ACCEPT OR DENY THE CLAIM IN WHOLE OR IN PART. THE AMOUNTS ACCEPTED OR DENIED SHALL BE CLEARLY DOCUMENTED IN THE CLAIM FILE UNLESS THE CLAIM HAS BEEN DENIED IN ITS ENTIRETY”.

I WILL REFER TO THE ESTIMATE AS THE “PROOF OF CLAIM” FROM THIS POINT ON.

SECTION 2695.7-B-1 OF THE INSURANCE CODE FURTHER OUTLINES THE INSURERS RESPONSIBILITIES WHEN MAKING A FULL OR PARTIAL DENIAL. SEE THE THIRD QUESTION IN THIS DOCUMENT FOR THE FULL TEXT OF THIS SECTION OF THE INSURANCE CODE.

HANDLING ESTIMATES IN THIS MANNER COMPLETELY CHANGES THE DYNAMICS OF THE CLAIM ADJUSTMENT PROCESS. WHEN THE CUSTOMER AND YOU SET THE CLAIM UP IN THIS FASHION, IT FORCES THE INSURANCE COMPANY TO RESPOND TO THE CUSTOMER IN WRITING WHEN THE ADJUSTER ATTEMPTS TO CHANGE THE “PROOF OF CLAIM” ESTIMATE.

ALSO, THE ADJUSTER MUST BE SPECIFIC ABOUT WHERE, IN THE POLICY, THE INSURER GETS THE AUTHORITY TO MAKE CHANGES TO THE “PROOF OF CLAIM”.

AN EXAMPLE OF A SITUATION WHERE AN INSURER MAY BE ABLE TO CITE, IN THEIR LETTER TO THE CUSTOMER, A POLICY PROVISION THAT WOULD ALLOW THEM TO CHANGE A “PROOF OF CLAIM” WOULD BE WHEN THE INSURANCE POLICY STATES AFTERMARKET PARTS MAY BE INSTALLED INSTEAD OF O.E.M. PARTS.

AN EXAMPLE OF A SITUATION WHERE AN INSURER MAY NOT CHANGE A “PROOF OF CLAIM” IS WHEN THE INSURER ATTEMPTS TO PUT A LIMIT ON PAINT. THE INSURANCE POLICY DOES NOT ALLOW THE INSURER TO APPLY THIS TYPE LIMIT.

A “BY THE NUMBERS” PROCESS MIGHT LOOK LIKE THIS:

- 1- WITH NON DRIVEABLE VEHICLES, GET AUTHORIZATION TO TEAR DOWN [DISMANTLE], ANALYZE THE DAMAGE [MEASURE], AND ESTIMATE THE REPAIR COST.
  - 2- PREPARE THE ESTIMATE IMMEDIATELY. GIVE THE CUSTOMER A COPY OF THE ESTIMATE , GO OVER THE DAMAGE WITH YOUR CUSTOMER, EXPLAIN THE REASONS WHY YOU PLAN TO REPAIR HIS / HER VEHICLE IN THE MANNER YOU HAVE CHOSEN, ASK FOR FEEDBACK, EXPLAIN THE INSURANCE CLAIM PROCESS, HAVE THE CUSTOMER SIGN A REPAIR AUTHORIZATION, SEND BY E-MAIL OR FAX THE ESTIMATE AND PHOTOS TO THE INSURANCE COMPANY.
  - 3- IF THE ADJUSTER ATTEMPTS TO CHANGE THE “SCOPE” OF REPAIR ON YOUR ESTIMATE, REFER THE ADJUSTER TO SECTIONS 9880.1-J, 9884.9D OF THE BUSINESS AND PROFESSIONS CODE AND 3303-J OF THE CA. CODE OF REGULATIONS [THEY ALL EXCLUDE THE INSURANCE COMPANY AS A "CUSTOMER"]. CALL THE CUSTOMER AND ALERT HIM / HER THAT THE ADJUSTER WILL BE CALLING AND WHY. ALSO REMIND THE CUSTOMER OF HIS / HER RIGHTS AGAIN.
- Q. IF THE ADJUSTER OR CLAIM MANAGER REFUSES TO COMPLY, YOU AND THE CUSTOMER SHOULD CONSIDER FILING COMPLAINTS WITH THE DEPT. OF INSURANCE.

(11) Q.WHAT IMPACT DO SECTIONS OF THE BUSINESS AND PROFESSIONS AND CA CODE OF REGULATIONS HAVE ON MY D.R.P. CUSTOMER?

- A. MOST TRUE DIRECT REPAIR PROGRAMS HAVE AGREEMENTS MADE IN ADVANCE. THEREFORE, THE CHANCES OF THIS TYPE OF PROBLEM ARE MINIMIZED BUT NOT ELIMINATED. IF YOU WRITE A DIRECT REPAIR ESTIMATE AND THE CUSTOMER HAS SPECIFIC REQUESTS SUCH AS A NEW PANEL VS. REPAIR AND THE CUSTOMER AUTHORIZES THE REPAIR BASED ON THAT ESTIMATE AND THE INSURANCE COMPANY REINSPECTOR ATTEMPTS TO CHANGE THE “SCOPE” OF REPAIR, THE REINSPECTOR MUST NOTIFY THE CUSTOMER OF THE CHANGES IN WRITING AND THE CUSTOMER MUST AUTHORIZE YOU TO MAKE THE CHANGES ON THE REPAIR INVOICE.
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(12)Q. WHY CAN'T I JUST CALL THE CUSTOMER AND TELL HIM / HER WHAT THE INSURANCE ADJUSTER CHANGED ON THE ESTIMATE THE CUSTOMER AUTHORIZED IF I AGREE THAT I CAN REPAIR THE VEHICLE BASED ON THE ADJUSTER'S ESTIMATE?

- A. BECAUSE YOU DO NOT HAVE THE AUTHORITY TO NEGOTIATE WITH THE ADJUSTER ON BEHALF OF THE CUSTOMER. YOU CANNOT BE A REPRESENTATIVE OF THE CUSTOMER [9880.1-J, 9884.9-D BUSINESS AND PROFESSIONS CODE & 3303-J CA. CODE OF REGS.]
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(13) Q. FREQUENTLY I WILL SUBMIT AN APPROVED SUPPLEMENT TO AN INSURER FOR PAYMENT. THE ADJUSTER WILL ASK ME TO RELEASE THE VEHICLE, WHICH I USUALLY DO. THEN I WAIT FOR WEEKS, SOMETIMES MONTHS TO GET PAID. WHEN I DO GET PAID, THE CHECK IS FOR MUCH LESS THAN THE SUPPLEMENT BILL I SUBMITTED. ALSO, THE CHECK IS MADE OUT TO ME AND THE CUSTOMER SO I HAVE TO HAVE THE CUSTOMER COME IN TO SIGN THE CHECK. LATELY, SOME INSURERS ARE SENDING THE CHECKS TO THE CUSTOMER. THIS HAPPENS ON BOTH INSURED AND CLAIMANT CUSTOMERS. HOW CAN I STOP THIS?

- A. FIRST, DON'T RELEASE THE VEHICLE UNTIL PAYMENT HAS BEEN MADE IN FULL. THIS IS ESPECIALLY IMPORTANT WHEN YOUR CUSTOMER IS A THIRD PARTY CLAIMANT WITH THE INSURANCE COMPANY. THE INSURER IN THIRD PARTY CLAIMS USUALLY NEVER INCLUDE A SHOP NAME. SECTION 560 OF THE INSURANCE CODE DOES NOT PROTECT THE BODY SHOP ON THIRD PARTY CLAIMS.

WHAT OTHER BUSINESS LETS THE CUSTOMER TAKE THEIR PRODUCT OR WORK WITHOUT PAYMENT OR SIGNING A LEGALLY BINDING AGREEMENT TO MAKE PAYMENTS?

SECOND, SUBMIT YOUR SUPPLEMENTS AS THEY OCCUR. YOU REALLY SHOULD NOT BE CONCERNED WHETHER AN ADJUSTER LIKES IT. YOUR CONCERN IS GETTING PAID THE PROPER AMOUNT IN A TIMELY MANNER.

WHEN SUBMITTING A SUPPLEMENT ON FIRST PARTY CLAIMS [INSUREDS] YOU MAY WANT TO CONSIDER DEVELOPING A FORM LETTER TO BE SENT TO THE INSURANCE COMPANY WITH THE SUPPLEMENT. IT SHOULD STATE THE SUPPLEMENT FOR THE DOLLAR AMOUNT REQUESTED WAS APPROVED BY [ADJUSTER NAME] AND [DATE] AND AUTHORIZED BY THE CUSTOMER [NAME] AND [DATE] AND YOU EXPECT THE INSURANCE COMPANY TO PAY THE SUPPLEMENT IN FULL IN ACCORDANCE WITH SECTION 560 OF THE CALIFORNIA INSURANCE CODE. STATE WHEN THE VEHICLE IS SCHEDULED TO BE READY FOR DELIVERY. IF THE SUPPLEMENT PAYMENT IS NOT MADE IN FULL BY THAT DATE, THE VEHICLE WILL NOT BE RELEASED. IF YOUR REPAIR AUTHORIZATION FORM HAS LANGUAGE THAT ALLOWS STORAGE TO BE CHARGED, STATE WHEN STORAGE WILL BE CHARGED AND THE DAILY RATE. A COPY OF THAT LETTER SHOULD BE SENT TO YOUR CUSTOMER ALSO SO YOUR CUSTOMER WILL NOT BE SURPRISED IF THE VEHICLE DOES NOT GET DELIVERED ON SCHEDULE.

TO PREVENT AN INSURER FROM UNFAIRLY AUDITING A SUPPLEMENT WITHOUT YOUR AGREEMENT, YOU MAY WANT TO CONSIDER ADDING A STATEMENT IN YOUR LETTER THAT WILL LET THE INSURER KNOW THAT ANY UNPAID BALANCE WILL BE CHARGED TO THE CUSTOMER.

ALSO, ON FIRST PARTY CLAIMS, YOU SHOULD ALSO INCLUDE A COPY OF SECTION 560 OF THE INSURANCE CODE WITH YOUR LETTER.

SECTION 560 OF THE INS. CODE READS AS FOLLOWS:

“EVERY INSURER ISSUING AN AUTOMOBILE COLLISION POLICY, AS DEFINED IN SUBDIVISION [D] OF SECTION 660, OR A POLICY FOR COMPREHENSIVE COVERAGE FOR A MOTOR VEHICLE, AS DEFINED IN SECTION 11580.07, SHALL, IN EVENT OF DAMAGE TO A COVERED AUTOMOBILE BY COLLISION OR OTHERWISE AND THE ELECTION OF THE INSURER TO HAVE SUCH AUTOMOBILE REPAIRED BY THE REPAIRER, MAKE PAYMENT BY CHECK OR DRAFT, PAYABLE TO THE REPAIRER OR TO THE NAMED INSURED AND THE REPAIRER, JOINTLY, NOT LATER THAN 10 DAYS SUBSEQUENT TO RECEIPT OF AN ITEMIZED BILL OR INVOICE COVERING REPAIRS AUTHORIZED BY THE INSURER WHICH HAVE BEEN SATISFACTORILY COMPLETED.



THE PROVISIONS OF THIS SECTION SHALL INCLUDE ALL CASES WHERE THE INSURED HAS RECEIVED ACTUAL NOTICE THAT THE REPAIRER IS DOING WORK PURSUANT TO A CONTRACT APPROVED BY THE INSURANCE COMPANY IN WHICH CASE THE PAYMENT SHALL INCLUDE THE NAME OF THE REPAIRER.”

AGAIN, AS STATED PREVIOUSLY, THIS LAW DOES NOT PROTECT THE SHOP ON THIRD PARTY CLAIMS.