The Conduct of Motor Vehicle Physical Damage Appraisers

§38a-790-1 Definitions

As used in Sections 39a-790-2 to 38a-790-8, inclusive: (1) "Appraiser" means a motor vehicle physical damage appraiser licensed under the provisions of Section 38a-790 of the 1969 supplement to the general statutes; (2) "repair shop" means any location licensed by the motor vehicle department under Section 14-52 of said supplement except a "limited repairer".

History – Eff. 4-28-70.

§38a-790-2 Display of License

Each appraiser while engaged in appraisal duties, shall carry the licenser 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.

History – Eff. 4-28-70.

§38a-790-3 Agreement on repair price

An appraiser may agree on a price for repairing a damaged motor vehicle only with a repair shop, as so defined, unless the damaged vehicle is located and will be repaired outside of the State of Connecticut.

History—Eff. 4-28-70.

§38a-790-4 Copy of appraisal left with repair shop

The appraiser shall leave a legible copy of his appraisal with the repair shop selected to make the repairs, which appraisal shall contain the name of the insurance company ordering it, if any, the insurance file number, the number of the appraiser's license and the proper identification number of the vehicle being inspected. All unrelated or old damage should be clearly indicated on the appraisal.

History - Eff. 4-28-70.

§ 38a-790-5 Competitive estimates

If the appraiser and the repair shop fail to agree on a price for repairs, the appraiser shall not obtain a competitive estimate from another repair shop unless the owner of such other shop, or his authorized agent, has inspected the vehicle. No such competitive estimate shall be obtained by the use of photographs, telephone calls or in any manner other than a personal inspection.

History - Eff. 4-28-70.

§38a·790-6 Appraiser not to request specified shop

No appraiser shall request that appraisals or repairs be made in a specific repair shop or shops.

History - Eff. 4-28-70.

§38a-790-7 Reinspection on request for supplementary allowances

Every appraiser shall reinspect damaged vehicles when supplementary allowances are requested by repair shops.

History - Eff. 4-28-70.

§38a-790-8 Code of ethics

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 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. No appraiser shall: (A) 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; (B) traffic in automobile salvage if such salvage is obtained in any way as a result of appraisal service rendered by him.

History - Eff. 4-28-70.

ABAC
THE AUTO BODY ASSOCIATION OF CONNECTICUT

Auto Body Association of Connecticut

Appraiser Held Personally Liable for Short-Paying Claim

On September 10, 2010, a Manchester Connecticut Small Claims Court ruled that John Kolesnikoff, an independently licensed staff appraiser for Hanover could be, and indeed was, personally responsible for failing to comply with the Code of Ethics and for negligently performing his duties. While previous Small Claims lawsuits have sought to hold insurers and negligent drivers responsible for short-pay claims, rarely or ever has a repairer sued the appraiser directly. The repairer's claims were premised on Kolesnikoff's refusal to negotiate labor rate charges, refusal to pay for OEM parts, and arbitrary cap on paint and materials. The total damages amounted to $1,055.10.

Attorney John Parese of Buckley & Wynne represented the repair facility. Attorney Parese said the suit was brought under the legal theories of Professional Negligence and Negligence Per Se based on violations of the Appraiser Code of Ethics. After a hearing and testimony, the Court ruled in favor of the repair shop and against Kolesnikoff. The Court ordered the appraiser to pay the shop all of its damages ($1,055.10) plus $75 for reimbursement of the court filing fee.

According to Attorney Parese, this case sends two important messages to appraisers: "First, you are not above the law, and second, you can and will be sued for refusing to comply with the Code of Ethics or other laws."

A popular misconception is that appraisers cannot be held personally responsible under the law because they are simply following the directive of their employer, the insurance company. Regulations § 38a-790-8, however, requires appraisers to approach the appraisal without favoritism toward the insurance company; and to disregard any efforts on the part of the insurance company to influence his judgment; and to prepare and independent appraisal of damage.

Appraisers, insurers and repairers, just as any other licensed professional, have basic obligations to be in compliance with applicable laws and regulations. If and when an appraiser fails to follow the law and thus causes money damages, the appraiser can and should be held personally responsible for those losses. "It's not a valid legal defense to argue that the insurance company makes me do it. That would be like blaming Domino's Pizza when its driver speeds through a stop sign in order to get the pizza delivered on time. It doesn't matter what your boss says, you still have to stop at the stop sign," Parese said.

STATE OF CONNECTICUT

INSURANCE DEPARTMENT

BULLETIN CL-1-07
July 20, 2007

TO: COMPANIES LICENSED IN THE STATE OF CONNECTICUT TO WRITE AUTO LIABILITY INSURANCE

RE: LOSS OF USE PAYMENTS UNDER CONN. AGENCIES REGS. SECTION 38a-334-1, ET SEQ.

In order to clarify Connecticut law regarding "loss of use" payments in third party auto claims, Bulletin CL-1 issued March 17, 1987 is hereby withdrawn and this Bulletin is issued in its place.

An insurer's obligation to undertake to pay loss of use when adjusting third party automobile property damage claims in which liability has become reasonably clear is found in Connecticut's insurance regulations, specifically Conn. Agencies Regs. Section 38a-334-1, et seq. (the "Minimum Provisions Regulations") as well as case law from the Connecticut Supreme Court.

"Property damage" is defined in the Minimum Provisions Regulations as "injury to or destruction of tangible property, *including loss of use thereof.*" (Emphasis added.) In addition, the Minimum Provisions Regulations require that "[t]he insurer shall *undertake* to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages because of bodily injury or property damage caused by accident, and arising out of the ownership, maintenance and use of a motor vehicle owned or long-term leased by the named insured . . ." (Emphasis added.) As defined in the Minimum Provisions Regulations, loss of use is an inherent part of property damage and the regulations require liability insurers to "undertake" to pay such damage. It should be noted that "undertake" is defined in Webster's II New Riverside Dictionary (1988) as "to take upon oneself; decide or agree to do." Thus, the Minimum Provisions Regulations require that insurance companies take it upon themselves to pay loss of use payments on behalf of their insureds.

In addition, Connecticut law by regulation and case law requires that loss of use payments are to be made even if the claimant has not actually incurred expenses such as rental costs. Specifically, Conn. Agencies Regs. Section 38a-10-2(f) defines loss of use as "the amount representing the reasonable value to the claimant for the deprivation of the use of the claimant's vehicle during the period reasonably required to make repairs or replace the vehicle, regardless of whether the claimant has incurred expenses." That regulation would apply if a dispute concerning the value of loss of use was arbitrated pursuant to Conn. Agencies Regs. Section 38a-10-1, et seq. Also, the Connecticut Supreme Court in Anderson v. Gengras Motors, Inc., 141 Conn. 688 (1954) held that loss of use payments for the period of necessary deprivation of use are to be paid even if there is no rental.

The Department periodically has received questions on the loss of use requirement. To answer some of those questions:

- The regulations do not require loss of use payments where liability for property damage does not exist or where a loss of use payment has been offered but refused.
- The regulations do not require loss of use payments when in fact there is no loss of use, such as when the vehicle is not taken to a shop to be repaired and continues to be driveable.
- In accordance with Anderson v. Gengras, supra., and the language of applicable regulations, merely offering to pay for rental or simply discussing loss of use is not sufficient to comply; the Minimum Provisions Regulation requires that the insurer "undertake to pay" for loss of use.
- The Insurance Department does not have the legal authority to establish a precise value of loss of use on a case by case basis. In the event regulatory action by the Department is required, the Department would look at rental costs for similar vehicles in the claimant's approximate geographic area.

- If a reasonably equivalent rental vehicle is offered and accepted by the claimant for the reasonable period of time in which the claimant's vehicle is being repaired or replaced, it is the Department's position that the obligation to pay for loss of use has been satisfied.

Thomas R. Sullivan
Insurance Commissioner