

Paint and Materials Capping in the United States

Prepared by



Society of Collision Repair Specialists

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TABLE OF CONTENTS

Preface.....	4
Historical Overview.....	4
The 1996 Study	4
The 2003 Study	5
Real World Scenarios	5
Additional Remarks.....	7
Paint and Materials Capping Summary	8
Concluding Remarks.....	11
Appendix I: Letter to Insurance Companies	13
Appendix II: Letter to Insurance Departments.....	14

PREFACE

HISTORICAL OVERVIEW

The Society of Collision Repair Specialists (SCRS) first conducted research on paint and materials capping in 1996, the practice of *capping* being the setting of arbitrary limits on what an insurer will allow as reimbursement for paint and materials.

The most widely accepted means of calculating paint and materials on an estimate is multiplying the number of refinish hours on an estimate by a specified hourly rate. Insurers will use this formula, or something similar in scope, to determine how much they will reimburse the repair facility until a *threshold* – the cap – is reached. Once the threshold is reached, the insurer will not reimburse any additional amount.

Collision repair professionals have long believed that such thresholds are at best a non-scientific method of controlling paint and materials expenses. They maintain that such controls bear little relation to the true cost of business and are believed to be illegal when a consumer has an actual cash value (ACV) automotive insurance policy.

Up until 1996, collision repairers for the most part tried to live with the practice. There was little hard data available to refute the use of paint and material caps. Understanding the negative repercussions of such limits on the collision repair industry – and the questionable legality of this practice – SCRS initiated their first round of research on paint and materials capping.

THE 1996 STUDY

Under the direction of the SCRS Board of Directors, then SCRS Executive Director John Loftus began an aggressive correspondence campaign with major insurance companies and the insurance departments of all 50 states. The goal was to get each office to describe their policy on paint and materials capping and submit it *in writing*.

Through determined persistence over the course of several years, SCRS managed to get responses from the majority of those surveyed. Twelve out of sixteen insurance companies responded with descriptions of their policies, which stated they would consider additional payment for paint materials if the collision repair facility documented their costs.

Of the Departments of Insurance polled, 34 replied that arbitrary capping of paint and material by insurance companies was a violation of their policy and regulations.

These *documented* findings provided collision repairers proof that, in many cases, they were not obligated to accept paint and materials thresholds – provided they could produce supporting documentation to the insurer. This knowledge proved invaluable

to repairers and induced insurance companies to conduct their own research to define reasonable compensation for paint and materials. Several computerized information providers, stimulated by the publicity surrounding the SCRS study, modified their software to make documenting paint and materials costs more convenient.

THE 2003 STUDY

Policies and procedures are fluid, changing as the dynamics of the marketplace change. Understanding this, SCRS concluded in early 2002, that a reassessment of capping policies and procedures was appropriate. In April of that year, the association again began the arduous task of polling insurance departments and insurance companies in 50 states, initiated with letters from Executive Director Dan Risley (see Appendices I and II). At the request of the State Insurance Departments, a follow-up letter containing a number of specific "real-world" scenarios (see section immediately following) was sent out to provide hypothetical situations for consideration.

Real World Scenarios

Letters sent out as part of the 2003 paint cap and materials survey described four hypothetical repair scenarios in which capping was invoked, and requested a *written* response from Departments of Insurance regarding the legality of each. SCRS advised that such an interpretation should be made independent of any contractual agreement the repair facility had with a particular insurance company including Direct Repair Programs (DRPs). The letter stated SCRS' recognition of the fact that collision repairers often agree to participate in these programs and agree to specific concessions in return for being listed as a preferred shop in their network. Therefore, the Insurance Department was asked *not* to consider these types of circumstances when formulating a response.

The scenarios given are as follows:

Scenario #1

The collision repair facility writes an estimate to repair a vehicle. The estimated dollars for paint and materials is \$416 based upon the standard practice of multiplying the number of refinish hours times the market rate for paint and materials.

In this scenario, Mrs. Jones has 16 hours of refinish time on the estimate. The market rate for paint and materials is \$26 per hour: $\$26 \times 16 = \416 . When Mrs. Jones drops her vehicle off to be repaired, she informs the repair facility that she has XYZ Insurance Company. Upon completion of the repairs, the repair facility submits a bill to XYZ Insurance Company for the full amount of the repair including the \$416 in paint and materials cost. XYZ Insurance Company calls the repair facility to inform them that they only pay up to \$300 for paint and materials. The

Paint and Materials Capping in the United States

repair facility informs the insurance company that they can justify the expense by providing a detailed invoice of the costs. XYZ Insurance still refuses and reduces the check sent to the repair facility by \$116.

Scenario #2

Mrs. Jones is in a collision. XYZ insurance company contacts her and informs her that an independent appraiser will be out to estimate the damage. The appraiser writes the estimate according to the guidelines that XYZ Insurance provides. Mrs. Jones then receives a check in the mail from XYZ for the total amount of the estimate less any deductible.

XYZ's guidelines for the appraiser specify that the maximum amount of money allowed for paint and materials is \$300. The estimate contains 15 hours of refinish time. The market rate for paint and materials in this example is \$26 per hour: $\$26 \times 15 = \390 . Thus, the estimate is written with a cap of \$300 such that the appraiser is within the guidelines supplied to him/her by XYZ.

Mrs. Jones drops her vehicle off for repairs and leaves a copy of the estimate provided by the independent appraiser. The repair facility immediately contacts the appraiser to inform him/her that a supplement would need to be written to cover the \$90 in paint and materials lost by virtue of the cap. The independent appraiser informs the repair facility that the amount is all XYZ will pay for.

The repair facility offers to fax an invoice of all the paint and materials needed once the repairs were completed. The appraiser insists that XYZ will not pay for it. The repair facility contacts the insurance company to receive payment for the additional paint and materials and they receive the same response. They will not pay for any additional paint and material expense.

Scenario #3

The collision repair facility writes an estimate to repair a vehicle. The estimated dollars for paint and materials is \$442 based upon the standard practice of multiplying the number of refinish hours times the market rate for paint and materials.

In this scenario, Mrs. Jones has 17 hours of refinish time on the estimate. The market rate for paint and materials in this example is \$26 per hour: $\$26 \times 17 = \442 . When Mrs. Jones drops her vehicle off to be repaired, she informs the repair facility that she has XYZ Insurance Company. Upon completion of the repairs, the repair facility submits a bill to XYZ Insurance Company for the full amount of the repair including an invoice of \$442 for paint and materials cost. The repair facility utilized the Mitchell Materials Estimating Guide, a nationally accepted standard for calculating paint and material.

XYZ Insurance Company calls the repair facility to inform them that they only pay up to \$300 for paint and materials. The repair facility informs the insurance company that they are under no obligation to agree to a paint cap/threshold. Furthermore, they justified the expense with the invoice of the cost. XYZ Insurance

still refuses and reduces the check sent to the repair facility by \$142.

Scenario #4

The collision repair facility writes an estimate to repair a vehicle. The estimated dollars for paint and materials is \$390 based upon the standard practice of multiplying the number of refinish hours times the market rate for paint and materials.

In this scenario, Mrs. Jones has 15 hours of refinish time on the estimate. The market rate for paint and materials in this example is \$26 per hour: $\$26 \times 15 = \390 . When Mrs. Jones drops her vehicle off to be repaired, she informs the repair facility that she has XYZ Insurance Company. Upon completion of the repairs, the repair facility submits a bill to XYZ Insurance Company for the full amount of the repair including an invoice of \$463 for paint and materials cost. The repair facility utilized the Mitchell Materials Estimating Guide, a nationally accepted standard for calculating paint and material.

XYZ Insurance Company calls the repair facility to inform them that they only pay up to \$300 for paint and materials. The repair facility informs the insurance company that they are under no obligation to agree to a paint cap/threshold. Furthermore, they justified the expense with the invoice of the cost. XYZ Insurance still refuses and offers to increase the hourly rate from \$26 to \$28 while informing the repair facility that would be the maximum they could offer. XYZ reduces the check to the repair facility by \$43.

ADDITIONAL REMARKS

Information from insurance companies is not complete at this time. However, enough data has been compiled from the individual State Departments of Insurance to provide the following report. A table summarizing SCRS' findings follows in the next section with concluding remarks in the section after that.

PAINT AND MATERIALS CAPPING SUMMARY

The following table describes SCRS' last documented contact with each state insurance department regarding paint and materials capping, along with comments directly quoting their response, clarifying or elaborating upon their position.

State	Date Last Update	Excerpted from Correspondence
Alabama	March 1997	"We would not expect an insurance company to artificially, arbitrarily and without notice to the policyholder, limit payment to their insureds."
Alaska	August 2003	". . . an insurer may not place dollar specific caps or specific limits on coverage provided by a policy unless [they] are specifically set out in the contract."
Arizona	June 2003	"In the event of a repair, the insurer has a duty to make the policyholder whole and should paint the vehicle so that the paint is the same quality before the accident regardless of the price of the paint job."
Arkansas	April 2002	". . . the level of repair of the insured's vehicle is controlled by the policy language."
California	May 2002	"The department's position [regarding paint caps or limits] is that the practice is illegal."
Colorado	July 2002	"Each claim must be considered on its own limits."
Connecticut	April 2002	". . . insurance companies also are expected to adjust claims in accordance with the provisions of the insurance contract."
Delaware	August 2002	"Auto physical damage policies written in Delaware do not contain a cap for the cost of paint or materials."
District of Columbia	March 1997 (faxed inquiry 8/4/03)	"If the arbitrary caps . . . are 'inequitable', section 27 of the Casualty Act authorizes the Commissioner to disapprove any insurance policy that explicitly contains them . . ."
Florida	August 2002	"We have not allowed any language in the physical damage section of policies for arbitrary capping of paint and materials that I can think of."
Georgia	August 2002	". . . stated paint caps without flexibility may not be proper, however, your method of determining those costs may be just as arbitrary as the caps since your method does not necessarily represent the actual cost involved either."
Hawaii	May 2003	"The Insurance Division finds it possible to develop scenarios where paint capping may, in some instances, be legal and may, in other instances, be illegal."
Idaho	April 2002	"If . . . we found that the insurer was 'arbitrarily' capping such claims without giving us some acceptable basis for their decision, we would disallow the capping and make them pay the claim in full."
Illinois	April 2002	"Please be advised that 215 ILCS 5/154.6(j) is still in effect, making it unfair claims practice to impose 'unreasonable caps or limits on paint or material when estimating vehicle repairs'."

Paint and Materials Capping in the United States

Indiana	April 2003	" . . . the Department has not taken a position on whether an insurer can or cannot set material caps or limitations on actual cash value auto policies. However, the department would assume a position if material cap or limitation contradicted the terms of the auto policy."
Iowa	April 2002	"It is the position of the Division that, absent policy language that sets forth and discloses to an insured that a cap or coverage limit exists, the use or institution of such a cap or limit would be considered an unfair claim practice."
Kansas	May 2003	"The practice of paint capping violates insurance statutes dating back to 1974."
Kentucky	May 2003	"Insurance companies have an obligation to restore the vehicle to pre-crash conditions . . . [and] the insurer has a right to negotiate and adjust claims."
Louisiana	May 1996 Left message 8/4/2003	" . . . an arbitrary paint cap would not be in compliance with the Louisiana Insurance Code."
Maine	June 2002	"There is nothing in Maine law addressing [arbitrary paint capping]."
Maryland	March 2003	"Maryland law does not prohibit insurance companies from establishing and using guidelines for controlling their costs associated with painting and repairing vehicles, as long as the guidelines or methodology used is not arbitrary or capricious."
Massachusetts	August 2002	"Based on our conversation of August 9, 2002, I am of the opinion that under the laws and regulations of the Commonwealth of Massachusetts arbitrary paint capping is not allowed."
Michigan	April 2002	"I am hesitant to comment of the practice of paint capping . . . as each insurance company must make its own decisions about how to most efficiently honor its commitment to the policyholder."
Minnesota	May 2003	"An insurer may not impair the contractual or statutory requirements by implementing this practice."
Mississippi	June 2002	" . . . the Mississippi Insurance Department has not taken a position on this matter."
Missouri	June 2002	"Paint capping is not directly addressed in any regulation as being allowed or disallowed."
Montana	August 2003	If an insurer sets an unreasonable cap on the amount allowed for paint and materials, the owner of the vehicle or the body shop should report that company to our office."
Nebraska	June 2002	"If such arbitrary capping results in the insured not receiving a like kind and quality repair, the insurer has not provided the coverage it promised to provide in the policy".
Nevada	May 2002	"If the insured has an actual cash value policy, the insurer may limit the amount of money it will reimburse for paint and materials. This limit cannot be arbitrary, however."
New Hampshire	May 2003	" . . . our Department has not received any complaints. Should we receive one, we would investigate same for potential violations."
New Jersey	May 2003	"The Department does not have any regulations which address the capping of paint and material."

Paint and Materials Capping in the United States

New Mexico	July 1996 Left message 8/4/2003	"The simple answer to your question is 'no.'"
New York	July 2002	". . . an insurer may not place an arbitrary cap on the costs of paint or materials in its adjustment of claims."
North Carolina	April 2002	"To my knowledge, the office has not received complaints from our North Carolina citizens concerning the issue of paint capping."
North Dakota	September 2002	"We prefer to look at each claim or complaint on a cases by case basis . . ."
Ohio	May 2002	"Unless there is a limit on paint and materials stated within the policy, placing a cap is not permitted and may be a violation of OAC 3901-1-54, Unfair Property and Casualty Claims Settlement Practices."
Oklahoma	May 2003	"The Department's position is that any coverage limitations need to be addressed in the policy"
Oregon	April 2002	"It is this department's position that the practice of 'arbitrary paint-capping' is a violation of Oregon Revised Statute {ORS 746.230(d)(f)} and Oregon Administrative Rule {OAR 836-080-0240(9)}.."
Pennsylvania	May 2002	". . . certain price-capping regarding paintwork is not a per se violation . . ."
Rhode Island	August 2002	". . . arbitrary paint capping could be found to be a violation of our unfair claims settlement practices act if the insurer does not allow for the motor vehicle to be repaired to its condition prior to the loss."
South Carolina	May 2003	"We do not have a position at this time as we have not received a complaint."
South Dakota	April 2002	"An artificially capped amount will inevitably, in some cases, not meet that standard [of returning the vehicle to its pre-loss condition]."
Tennessee	November 2002	"The state of Tennessee does not have a specific statute relating to the issue of paint capping. However, the language of an insureds policy governs the practices to be followed by an insurance company. . . ."
Texas	April 2002	". . . placing a cap or limitation on paint could preclude repairing with like kind and quality."
Utah	April 2002	"The issue of arbitrary paint capping is one that we are not aware of in our state. It is our opinion, however, that such a practice would be in violation of the automobile insurance contract."
Vermont	May 2003	"This type of capping would have to be in the policy from our endorsed to an insurance policy and we presently do not allow that kind of restriction in Vermont"
Virginia	April 2002	". . . insurance companies may not arbitrarily limit the amount of money they reimburse for paint and materials."
Washington	June 2002	"I am not aware of any policy forms submissions that included this kind of language."
West Virginia	May 2002	"West Virginia has no specific statutes or regulations regarding arbitrary paint capping."
Wisconsin	April 2002	". . . the use of a paint cap can be appropriate in some situations and inappropriate in others."
Wyoming	July 2002	"Wyoming does not have a statute or regulation that addresses this issue."

CONCLUDING REMARKS

The results of the new study show more across the board ambiguity than the original study. In the 1996 study, State Departments of Insurance provided an overwhelmingly black and white response to the issue of caps, as evidenced by the 34 that cited an "illegal" response.

SCRS believes that the extensive use and exposure of the 1996 study by collision repairers has caused many Departments of Insurance to respond ambiguously. By providing a definitive "yes" or "no" response, they left little room for insurers to negotiate. After years of having nothing to support them in their effort to be reimbursed for their expenses, many collision repairers took a hard line stance against insurers.

What is confirmed by the responses provided here is that everyone has learned the issues surrounding paint and materials capping are not black and white. There are often gray areas, and it is up to the collision repairer and insurance company to negotiate what is a fair and reasonable reimbursement for the paint and materials used on a particular repair. Unless the Department of Insurance has stated that it is *legal* to arbitrarily cap paint and materials, it is up to the shop to provide the necessary documentation to support their case and then proceed negotiating with the insurance company. Simply put: if you do not ask for it or you are not entitled to it, you will not receive it.

Collision repair professionals need to educate their customers, provide supporting documentation of expenses and negotiate with the insurance company. If efforts are initially unsuccessful, the repairer should re-start the process with the supervisor or manager of the insurance company representative and continue up the ladder. If this proves unsuccessful, the following options remain for the collision repairer:

- Absorb the expense.
- Charge the vehicle owner for the difference.
- File a complaint with the Department of Insurance (the SCRS Website – www.scrs.com – includes links to all 50 states).

SCRS does not recommend filing a complaint until all other options have been exhausted. Many repairers across the country are receiving full reimbursement for their paint and materials expenses, due in part to several factors:

- a. Perseverance to pursue what is right.
- b. Properly documenting their expenses.
- c. Providing supporting documentation from published reports such as this one.
- d. Negotiating in a non-confrontational manner with the insurance carrier.

Paint and Materials Capping in the United States

As evidenced by the responses SCRS has received from Departments of Insurance, it does not appear that paint and material capping is legal in most states. Even so, documenting your costs is critical. You are likely destined to lose any negotiation with the insurance company based upon what you “believe” are your costs.

SCRS members can obtain a copy of the complete response from their respective state by contacting the SCRS Administrative office at (877) 841-0660 or by submitting an online request at www.scrs.com.

SCRS is confident that the research and information we have provided will be of use to collision repairers across the country as they seek reimbursement for their costs. It is our hope that this report and the supporting documentation from each state will enable repairers and insurers to successfully negotiate what is fair and reasonable without conflict.

SCRS maintains that, “Working Together Is The Most Important Work We Do.”

APPENDIX I: LETTER TO INSURANCE COMPANIES

Dear Insurance Company:

My name is Dan Risley and I am the Executive Director for the Society of Collision Repair Specialists (SCRS). SCRS is the largest national trade association in the United States that solely represents collision repair shops. We currently enjoy over 4,000 members.

Several years ago, then SCRS' Executive Director John Loftus did an extensive research project on arbitrary paint capping. Paint capping is a practice instituted to limit the amount of money reimbursed for paint and materials on an estimate. This is an issue because insured's with an actual cash value policy (ACV) must be notified by a declaration of the limit in the original policy if an arbitrary limit on anything is to exist.

Due to Mr. Loftus' perseverance, 16 insurance companies responded with a statement. 4 wouldn't state their position. The remaining 12 said they would consider additional payment for paint and materials beyond the cap/limit amount if the shop documented those costs.

As a result, collision repair shop owners have been able to amicably resolve arbitrary paint capping with the independent adjusters and insurance companies as the situation arises. It is also worth noting that a vast majority of the time, they have been successful without having to involve other entities such as the Department of Insurance.

The data and reports that Mr. Loftus successfully obtained are quickly becoming outdated. We respectfully request your position on arbitrary paint capping with regards to your companies policy. Your time and consideration are greatly appreciated. If you should have any questions, please don't hesitate to call me.

Best Regards,

Dan Risley
SCRS Executive Director

APPENDIX II: LETTER TO INSURANCE DEPARTMENTS

Dear Insurance Commissioner,

My name is Dan Risley and I am the Executive Director for the Society of Collision Repair Specialists (SCRS). SCRS is the largest national trade association in the United States that solely represents collision repair shops. We currently enjoy over 4,000 members.

Several years ago, then SCRS' Executive Director John Loftus did an extensive research project on arbitrary paint capping. Paint capping is a practice some insurance companies instituted to limit the amount of money they reimburse for paint and materials on an estimate. This is an issue because insured's with an actual cash value policy (ACV) must be notified by a declaration of the limit in the original policy if an arbitrary limit on anything is to exist.

Due to Mr. Loftus' perseverance, 34 insurance departments responded with a statement that said arbitrary paint capping was a violation of the policy and department regulations. 11 stated that maybe it was illegal. 4 said they never received a complaint. 1 never responded.

As a result, collision repair shop owners have been able to amicably resolve arbitrary paint capping with the independent adjusters and insurance companies as the situation arises. It is also worth noting that a vast majority of the time, they have been successful without having to involve other entities such as the Department of Insurance.

The data and reports that Mr. Loftus successfully obtained are quickly becoming outdated. We respectfully request your position on arbitrary paint capping in your state. Your time and consideration are greatly appreciated. If you should have any questions, please don't hesitate to call me.

Best Regards,

Dan Risley
SCRS Executive Director