



STATE OF MAINE
DEPARTMENT OF PROFESSIONAL
AND FINANCIAL REGULATION
BUREAU OF INSURANCE
34 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0034

Paul R. LePage
GOVERNOR

Eric A. Cioppa
Superintendent

June 27, 2018

Aaron Schulenburg, Executive Director
Society of Collision Repair Specialists
P.O. Box 909
Prosser, WA 99350

Re: June 21, 2018 Questions

Dear Mr. Schulenburg:

Superintendent Cioppa asked me to respond to your questions about the Maine Bureau of Insurance and Maine law concerning claims settlement practices.

1. Is your department charged with consumer protection and the entity who serves as the regulatory agency to govern and supervise the business of insurance in your state?

Answer: The mission of the Maine Bureau of Insurance is to regulate the insurance industry to protect and to serve the public. The Superintendent of Insurance is the official charged with administering and enforcing Maine's insurance laws and regulations.

2. Are claims settlement practices a part of that regulatory oversight?

Answer: Maine has enacted unfair claims settlement statutes at 24-A M.R.S. § 2164-D and § 2436-A. The former law applies to first- and third-party claimants, and subsection 3 describes various prohibited acts. The latter law applies to first-party claimants, and gives them the right to sue their insurers for the violations set out in subsection 1 of the statute.

3. In many cases, vehicle manufacturers provide specific instructions and documented procedures on how repair and replacement operations are to be performed to produce a safe and proper repair. As evidenced in the SEEBACHAN v. JOHN EAGLE COLLISION CTR case in TX, failure of the facility performing the repair to follow these procedures can result in catastrophic loss, and incur avoidable liability that negatively impacts garage insurers. Many state laws relevant to insurer claims settlement rely on subjective terms such as "reasonable" as a means of satisfying their obligations.

Answer: This item does not appear to require an answer.

4. Is there anything that holds insurers and insurance policies sold in your state accountable to recognize manufacturer documented procedures as a basis for settling claims and loss indemnification?

Answer: The Maine Insurance Code does not specifically answer this question. The claims practices laws cited above speak generally in terms of what is reasonable. The answer to this question would depend on the facts of each case, including what the policy in question says and what the procedure is. We are not aware of any case law in Maine

that deals with the failure to use original equipment manufacturer parts or to comply with manufacturer documented procedures in the context of an insurance claim repair.

5. Would your department consider it a "reasonable" expectation that if an OEM repair procedure or instruction existed, that the claim should cover the associated costs?

Answer: Please see the answer to Question 4.

6. Would your department expect consumers to be clearly notified through exclusions in the policy where costs associated with documented OEM procedures would not be covered; otherwise, allowing a consumer to reasonably assume they would be?

Answer: Many policies say that the insurer is obligated to cover the lesser of the cost to repair or replace the property or part with other of like kind and quality. If an insurer submitted a policy form for the Bureau's approval that excluded OEM parts or procedures, we would require the insurer to justify the exclusion.

7. If there is a dispute between a consumer and their insurance carrier over the cost to restore their vehicle to preloss condition in accordance with manufacturer documented procedures, is your department the correct one to address those issues and provide consumer protection?

- a. If yes, please explain?

Answer: Consumers may submit complaints about insurers, including those related to repairs. Bureau staff investigate complaints for violations of state insurance law and attempt to resolve complaints where we think violations have occurred.

- b. If no, who is the appropriate consumer protection body to do so?

Please contact me if you have other questions. Thank you.

Sincerely,



Frank J. Kimball, Property & Casualty Division Director

Cc: Eric A. Cioppa, Superintendent