

**From:** [Biskupiak, Bob](#)  
**To:** [Aaron.Schulenburg](#)  
**Subject:** SCRS Survey  
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**Attachments:** [doc02345720181011083729.pdf](#)

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Aaron,

I apologize for the delay in responding to your inquiries of July 21<sup>st</sup> and August 29<sup>th</sup>. Here are the responses to the questions.

181. Yes, SAO is charged with consumer protection duties as they relate to insurance and securities and yes, we are the regulatory agency in Montana who supervises the business of insurance.

182. Yes, claim settlement practices are a part of our regulatory oversight.

183. I am not aware of any specific regulation that would require an insurer to comply with vehicle manufacturer instructions on repair procedures.

We have relied on Montana Court applications of "Made Whole" to require that insurers return insureds and claimants "as close as practicable"

to their pre-loss condition and to my knowledge this has included accepting that any CAPA certified replacement part or used reconditioned

part that can be guaranteed by the insurer to be in as good or better condition than the part that existed pre-loss would meet the criteria for

being "as close as practicable" to the pre-loss condition of the vehicle. While we acknowledge that an insurer cannot compel any insured or

claimant to put a "after-market" or "used" part on their vehicle, the insurer would be allowed to say that is all they would be required to pay for.

a. As above, I don't believe there is any specific statute, rule, or precedent that would require an insurer to recognize or adhere to

any specific manufacturer recommendation for repair. PHS has always relied on the repair facility to say if this is or is not an industry

"standard" or "accepted" method of repair.

184. Montana has, historically, held that CAPA certified after-market parts and used reconditioned parts are an acceptable, industry standard

method of repair. I don't know that use of OEM parts or procedures would or would not be considered "reasonable expectation".

185. I am not aware of any insurers that currently provide specific language in the insurance contract stating that they will or will not pay for OEM

parts or procedures. I believe that the more standard language states that the vehicle will be repaired or restored; for example:

Hartford - A. Our limit of liability will be the lesser of the: 1. Actual cash value of the stolen or damaged property; or 2. Amount

necessary to repair or replace the property with other property of like, kind & quality.

Progressive - Our limit of liability for loss shall not exceed the lesser of: 1. The actual cash value of the stolen or damaged property;

2. The amount necessary to repair or replace the property with other of like kind and quality, which may include new; reconditioned,

Aftermarket or used parts;

Safeco - A. Our limit of liability for loss will be the lesser of the: 1. Actual Cash Value of the stolen or damaged property; 2. Amount

Necessary to repair or replace the property; or 3. Limit of liability shown in the Declarations. Safeco then goes on to advise under

B. An adjustment for depreciation and physical condition will be made in determining actual cash value at the time of loss.

So, there is some uniformity in policy language between carriers and none of the policies I reviewed had language addressing or allowing for the

Use of OEM parts and repair procedures specifically. Although I am certain that this coverage is probably available by endorsement from some Insurers for additional premium.

186. Yes, we are the proper regulatory body to address such issues.

Yes, we have intervened in such disputes on a case by case basis. We have successfully argued that an insured or claimant is not "made whole"

when the use of "after-market" or used reconditioned parts will have a negative impact on the manufacturer's warranty for the vehicle if the

vehicle is still covered by warranty? We have also argued for use of OEM parts when it becomes clear that the after-market parts prescribed by

the insurer are inferior in quality and do not fit or function as the originals. But we have not upheld that the use of certain after-market or used,

reconditioned parts is prohibited by law or rule or that the use of these parts is somehow not compliant with the views of this agency.

If you have any specific questions, please let me know.



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