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October 30, 2018

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

RE: Your letter of June 21, 2018

Mr. Schulenburg:

Please accept this letter as a follow-up to our telephone conversation in June which was in response to the letter you forwarded to Commissioner Chaney, requesting responses to questions outlined in that letter. As I told you during our telephone conversation, it is difficult to completely and fully answer some of your questions due to the unique statutory laws in place in Mississippi which govern some of the issues which are subject to your inquiry. Based upon that information, please find our responses below.

1. QUESTION – 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 – Yes.

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

ANSWER – Yes.

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 COLLISON 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 – The Mississippi Insurance Department is aware of a judgment issued in Texas in the above mentioned case. The Mississippi Insurance Department has not read the pleadings nor the decision. To comment on the specifics of the case or to provide responses to the following questions which appear to be the context of the above case and specific to Texas laws, could be prejudicial to insurers or collision repair facilities operating in states other than Texas.

Responses to the following questions are provided outside the context of any statutory law or legal decisions rendered in any state other than Mississippi.

4. QUESTION – 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 – There is no statutory law that addresses or mandates that OEM recommended repair procedures be followed. Ms. Code 83-11-501 addresses, among other related matters (such as steering and repair costs), that the most an insurer shall pay is the “lowest amount that such vehicle or glass could be properly and fairly repaired or replaced by a contractor or repair shop within a reasonable geographic or trade area of the insured....”. Mississippi does not define **properly** or **fairly** in regard to vehicle repair methods or procedures.*

5. QUESTION – 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 – There is no statutory law that addresses or mandates that OEM recommended repair procedures be followed. However, if a vehicle manufacturer outlines a specific recommended repair procedure for a vehicle repair, the Mississippi Insurance Department does ask that insurers recognize that procedure as it relates to repair methods only, and not specifically as it relates to the use of specified OEM parts as Mississippi law currently allows for the use of non-OEM parts in the repair of the vehicle. See Ms. Code 6-27-1 to 63-27-7.

6. QUESTION – 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 – We expect insurance policies to be a contract between insurer and policyholder and since insurance related automobile repairs may be either first party or third party that the policy will in no way contradict any existing statutory or case law which may apply to

the obligations of the insurer to pay for repair of the vehicle. See answer to question 4 and 5 above.

7. QUESTION – If there is a dispute between a consumer and their insurance carrier over the cost to restore their vehicle to pre-loss condition in accordance with manufacturer documented procedures, is your department the correct one to address issues and provide consumer protection?
- a. If yes, please explain.
 - b. If no, who is the appropriate consumer protection body to do so?

ANSWER – If the dispute is regarding the actions of the insurer or the work of a Direct Repair Facility working on behalf of a vehicle owner/insurer, then this agency is the agency to handle that dispute. If the dispute is in regard to actions/work of a non-direct repair facility hired by the vehicle owner, then the Mississippi Office of Attorney General, Division of Consumer Protection will assist the consumer.

If you have any questions, please feel free to contact me.

Regards,



Andy Case
Director, Consumer Services Division

AC/scc