

ABAC NEWS

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The Official Newsletter of the Auto Body Association of Connecticut

Class-action suit against State Farm overturned

USE OF SUBSTANDARD AUTO REPAIR PARTS ALLEGED

Associated Press

SPRINGFIELD, Ill. - The Illinois Supreme Court on Thursday reversed a \$1 billion judgment against State Farm Insurance in a class-action lawsuit that alleges the company bought substandard parts to repair damaged cars.

The impact of the ruling could range far beyond State Farm, however. The case has been watched closely as an indicator of how the court will rule on an even larger class-action case -- a \$10 billion verdict against cigarette-maker Philip Morris.

And some say the ruling could restrict consumers' power to band together for class-action lawsuits.

State Farm customers accused the company of defrauding them by refusing to pay for top-of-the-line replacement parts -- including hoods, bumpers and doors -- on damaged cars. They argued that the parts that State Farm insisted on using were not as durable or safe as the ones made to factory specifications.

That violated the company's duty to restore cars to their condition before the accidents, the lawsuit argued on behalf of roughly 4.7 million policyholders.

But the court held that the lawsuit should never have been given class-action status. Differences in customers' insurance policies meant they did not share the same conditions necessary to sue as a group, justices found. It was also a mistake for an Illinois trial court to grant national class-action status when there was only one named plaintiff from Illinois and he failed to prove he had suffered actual damages, the Supreme Court found. "It is a total pity for the consumer that somehow the court system would find that State Farm's cheating isn't uniform enough to be actionable," said Patricia Murphy, one of the trial attorneys in the case. "It is a loss for the consumer, no doubt."

Bloomington, Ill.-based State Farm applauded the ruling as a victory for consumers. "Competition is good for consumers, and consumers now stand to benefit from a more competitive auto-parts market," spokesman Phil Supple said. Up to this point, State Farm had suspended the use of after-market parts. Supple said the company

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NCOIL Forms Special Subcommittee to Discuss Aftermarket Crash Parts Bill

After hearing testimony from more than a dozen witnesses representing aspects of the certified aftermarket crash parts debate, the National Conference of Insurance Legislators' (NCOIL) Property-Casualty Insurance Committee voted 22 to 7 to form a special subcommittee to further NCOIL's consideration of a draft model law that would support the use of certified aftermarket crash parts.

The controversial model act, sponsored by Committee Chair Rep. George Keiser (ND), would, in general, endorse certification of aftermarket crash parts by third-party organizations, such as the Certified Automotive Parts Association (CAPA); require disclosure as to the use of certified aftermarket crash parts; and provide that a person leasing or financing a vehicle could not be penalized for using a certified part. A substitute amendment to the original model act, also sponsored by Rep. Keiser, would make certain changes to the original version, including revising the purpose of the model so as to create a market incentive for the use of certified aftermarket crash parts; creating more specific criteria for qualifying as a third-party certifying entity; and including in an estimate recycled, salvaged, and independent manufacturer-supplied parts as possible parts used in a repair.

The committee voted that NCOIL President Rep. Craig Eiland (TX) should appoint legislators to the special subcommittee and that interested parties should be given 30 days to submit comments on specific changes to the draft model law. The subcommittee is charged with deliberating on the suggested revisions and reporting its proposals to the full committee at the 2005 NCOIL Annual Meeting in San Diego this November.

Those testifying on July 7 represented CAPA, Keystone Automotive, the Alliance of Automobile Manufacturers, the Association of International Automobile Manufacturers, the Texas Automobile Dealers Association, Vehicle Information Services, the American Insurance Association, the Association of Consumer Vehicle Lessors, the Massachusetts Auto Body Association, the Society of Collision Repair Specialists, Automotive Service Association, Cobb's Collision Center, and the Pennsylvania Collision Trade Guild. A representative of the Insurance Institute for Highway Safety provided an overview regarding crash part safety issues.

NCOIL is an organization of state legislators focused on insurance legislation and regulation. Many legislators active in NCOIL either chair or are members of the committee responsible for insurance legislation in their respective state houses across the country.

Copies of the original and substitute versions of the draft model act are available on the NCOIL Web site at www.ncoil.org.

AASP, ASA, SCRS Send Joint Letter to NCOIL on Crash Parts Legislation

The Alliance of Automotive Service Providers (AASP), the Automotive Service Association (ASA) and the Society of Collision Repair Specialists (SCRS) have sent a joint letter to the National Conference of Insurance Legislators (NCOIL) responding to its request for comments for further consideration of aftermarket crash parts certification.

On July 7, each of the organizations submitted written comments and/or testified in opposition to the Certified Aftermarket Crash Parts Model Act at NCOIL's summer meeting in Rhode Island.

The organizations, representing a majority of U.S. collision repairers, expressed their support for vehicle owners to be given notice as to the types of replacement crash parts being used in the repair of their vehicles, as well as consent to the use of those parts in writing.

Reporting in their written comments, "AASP, ASA and SCRS have, for the past several years, been working closely with the manufacturers of certified aftermarket parts to improve their quality and consistency. All three associations have sent representatives to Taiwan to meet with the manufacturers and government officials."

The organizations continued, "Collision repairers are unable to identify aftermarket manufacturers because certified aftermarket parts are sold as 'certified' and not by a specific manufacturer. This matter is further complicated because we feel the certification standards are incomplete, and are not consistently enforced by the current certification entities in place. This allows poorly manufactured parts to be certified and sold in the same market as the higher quality certified parts." "We applaud the efforts of NCOIL in their attempt to ensure the quality and safety of aftermarket parts. We believe that if this particular legislation were enacted, the industry would be left dealing with certification entities whose systems have proven to be flawed and have demonstrated their inability to monitor the production of high quality replacement crash parts acceptable to the marketplace on a consistent basis," stated Tom Moreland, SCRS chairman.

Nick Kostakis, AASP's immediate past president, said, "This NCOIL activity stands to have the opposite effect of its stated purpose of protecting consumers, and may actually hinder ongoing efforts to identify and resolve fundamental flaws in the current aftermarket parts certification model."

Darrell Amberson, AAM, ASA Collision Division director, added, "We want to continue to work with NCOIL and state legislatures around the country to improve the replacement crash parts marketplace. The certification proposal being considered is not the answer for our industry."

In Memoriam

We are deeply saddened to announce the passing of the following respected ABAC members:

Raymond Bonenfant passed away recently after battling a long illness. Ray had served for many years as ABAC vice president or board of director. He also served continuously as an officer of the Southern Fairfield County Body Shop Association. He will be remembered for his years of dedicated service and personal hours spent to help our industry.

Evan Cunningham, former owner of Cunningham Auto Body in Greenwich passed away recently. He was a life long member of the Southern Fairfield County Auto Body Association and ABAC. Our sympathies extend to his son Bruce Cunningham, current ABAC member, his family and friends.

Vincent J. Freccia Jr. died peacefully at the Rosenthal Hospice Residence on August 16, 2005 at the age of 74. Mr. Freccia owned and operated James Freccia Auto Body Works along with his brother Joe, after their father's death in 1953. Vinnie was recognized as a leader in our industry with a tremendous record of service. Mr Freccia served five terms as President of Southern Fairfield County Body Shop Association, three terms as President of the Auto Body Association of Connecticut, and was Vice President of the Auto Body Association of America. He will be remembered by many who called him a true friend, but most of all by his wife and grandsons, who will cherish his loving memory, devotion and commitment. Vinnie served on many executive boards of various civic related organizations. He enjoyed service and giving back to his community by helping children and those in need through these organizations and other endeavors. ABAC members who remember Vinnie would simply state the following: "*Vinnie was a gentleman, a leader, highly respected, and a class act to follow. He will be missed by all those whose lives he touched.*"

Albert J. Montesanto, former owner of Powsner Auto Metal Works in New Haven and Munson Auto Body in West Haven died earlier this year on February 14, 2005 at the age of 84. Montesanto was recognized in his active years in the industry as a shop owner who was gentle with customers, but relentless with insurance appraisers who refused to negotiate claims fairly in his shops. He was extremely well liked by everyone who knew him, being very active in various civic organizations in New Haven County, especially youth projects and charities. His two sons, A. Michael Montesanto and David M. Montesanto are the current owners of Powsner Auto Metal Works, continuing the tradition that their father started years ago.

We extend our deepest sympathies to the families and friends of these fine gentlemen.

Sincerely,

Tom Bivona

ABAC President

State Weighs Suit Against Maker of Air Bag Covers

Friday, August 19, 2005

By David Krechevsky

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State officials plan to take the air out of an Alabama company marketing replacement air bag covers -- without the air bags -- to auto body shops in Connecticut.

Attorney General Richard Blumenthal and Sen. Leonard A. Fasano, R-North Haven, announced Thursday the state is exploring legal action against Hicks Air Bag Covers of Laceys Spring, Ala., as well as considering legislation to outlaw the installation of replacement covers without the air bags.

Florida, New York, and other states have similar laws, they said. "Federal law prohibits (licensed) auto repairers or dealers from installing air bag covers without air bags in vehicles whose bags have deployed," Blumenthal said. "Individual non-professionals are not covered under current law." He added that selling the replacement covers "may be violating the Connecticut Unfair Trade Practices Act or other laws."

Tina Hicks, manager of the Alabama company and daughter of founder Lawrence G. Hicks, said Thursday her company never intended to deceive anyone. "This is the first time we've ever been told that there is some federal law or state regulation that we're in violation of," she said.

Lawrence Hicks pleaded guilty in federal court in 2003 to selling counterfeit General Motors air bag covers. Tina Hicks said that was a trademark infringement case. The covers now come without logos. Tina Hicks said covers come with a seven-page booklet that clearly states the covers are intended "only as a cosmetic replacement of a deployed factory airbag," and are not "approved for use as a safety device." It also includes a sticker to be placed in a prominent spot that says the replacement is only a cover, she said. She added her company was contacted Wednesday by the Federal Trade Commission to discuss ways of improving the covers' labeling. The FTC involvement appeared to be unrelated to the state's action.

The issue came to light when Bill Denya, owner of Denya's Auto Body Inc. in Meriden and a member of the board of directors of the Auto Body Association of Connecticut, received a brochure from Hicks touting its covers. "It must have been a mass mailing in Connecticut," he said. Previously unfamiliar with the covers, Denya ordered one and discovered "the darn thing fit pretty good." Then he contacted Fasano. "This is a major public safety concern, so I am hopeful that we can make Connecticut motorists aware of this dangerous practice," Fasano said. "Right now, there may be citizens driving around who unknowingly purchased a used car whose airbag was not properly replaced." Just how common that is in Connecticut or nationwide is not known. Dennis Jay, executive director of the Coalition Against Insurance Fraud in Washington, said Thursday his organization is in the middle of the first comprehensive study of the issue. He cited a smaller study a few years ago by the California Highway Alliance that found 1 in 25 previously damaged vehicles had fake airbags. "Our numbers haven't been anywhere near that," Jay said. "But if it's accurate, there are a hell of a lot of people out there driving without an airbag who think they have one."

The coalition also has previously said installing replacement covers without airbags is a potentially lucrative business for unscrupulous shops that could falsify repairs by filing a claim to install airbags and then only installing the cover. The covers cost \$75 to \$85, compared to the \$600 to \$700 cost for a new airbag.

New RI Law Requires Shops to Post Consumer Rights

A new law was recently passed in RI concerning steering. The following is a memo that was faxed to all RI body shops:

8-19-05

To all RI Body Shops:

Under the new Rhode Island Law all body shops must post a sign in a visible area to be seen by all customers with the following wording:

“Pursuant to RI Insurance law, an insurance company may not require that repairs be made to a motor vehicle by a particular person or repair shop.”

The letters for the sign must be 2” in size. This law is an effort to educate the public about their rights and curb steering by making it mandatory that this sign be posted in all Rhode Island licensed body shops. The Auto Body association of RI has had 50 of these signs printed at a 50% discount and can offer them to any shop interested for the price of \$25.00 each. If you would like to purchase one of these signs to be compliant with the new law please call our answering service at 401-467-7575 and let them know. We will have a board member closest to you make the necessary arrangements for purchase.

ABARI

P.O. Box 14124

East Providence, RI 02914

401-467-7575

IS IT WORTH IT TO SUE AN INSURANCE COMPANY?

Many shop owners who are fed up with hearing those famous words from insurance appraisers and adjusters; **“That’s all we pay per hour “(fictitious prevailing rate),** are fighting back in record numbers by charging their own individual labor rates and not accepting anything less. As is the case in other businesses, failure to pay the total bill for services results in **legal action!** That’s exactly what many owners are doing; **filing small claims lawsuits against insurers and with pretty good results!**

Recently a smart shop owner sued the Progressive Insurance Co. in small claims court because the insurer failed to settle a claim based on the shop’s posted labor rate, thus leaving a large balance due and a debt to collect! The attorney representing Progressive made legal motions to the judge contending that several thousand auto physical damage claims were settled with other shops in the market area all at Progressive’s prevailing rate with no problem. She proceeded to offer other motions in a effort to claim that the shop owner’s labor rate was extremely high and unreasonable. Guess what? **The judge denied all motions!** Now it was **the shop owners turn to present the real evidence with his attorney!** After talking to the judge in terms that represented **common sense,** the attorney and the shop owner explained that **the shop business posted labor rate was not made up out of thin air, but was based on the true cost of running his business which is reviewed by his accountant numerous times during the year.** The attorney also explained that his client had records to prove that his business rate was established and accepted by his customers in the market place. He then handed the judge an invoice showing the exact balance due on the claim and stated that they were here to collect a debt. **The judge wasted no time in making his decision granting a full award for the entire labor rate balance to the shop owner!**

Many other shop owners have had similar results reaching victory in small claims court on labor rate balances owed to them.

A lesson which may be learned from this story is elementary. If you’re are tired of agreeing to less money on insurance damage claims, the time for you to pursue may be right now!

ABAC Quarterly Meeting Doesn't Miss A Beat!

Education Remains the Focus

The Auto Body Association of Connecticut kicked off the fall season with a quarterly meeting at the Country House Restaurant in West Haven. The Country House has become quite famous (or infamous if you're trying to watch your weight) for their "appetizer room" not to mention the bountiful main courses that they serve!

Master of Ceremonies for the evening was Dave Fogarty. Dave introduced ABAC President Tom Bivona who took to the podium and thanked all members for their continued support and dedication. Tom reminded everyone that the many faxes that they receive can only be helpful if the shop owners follow through and fill out all the necessary information and fax it back to the ABAC as soon as they can. As everyone should know by now, documentation and follow through does make a difference!

Bivona then turned the podium back over to Fogarty and a discussion ensued on the rising cost of fuel and the effect that it could have in our industry. (See Page 7 of this issue for an article on this subject) Many vendors are now charging a fuel surcharge to their accounts. While the vendors appreciate the business that a customer gives them it has become necessary to institute these charges in order to maintain a profit and stay soluble.

Next up was Bill Romaniello, body shop manager for Richard Chevrolet. Bill stressed that shops need to pass on these fuel surcharges. "Don't call your vendor and beat up on him" says Romaniello, "pass it on to the insurance industry!" "Look at your booth fuel charges. Propane, etc – pass it on! Be relentless and don't give up. You will get paid!" Bill then handed out a list of insurance company hotline numbers for members to have at their disposal.

Fogarty thanked the sponsors for the evening:

Akzo Nobel – Dave Mastrianni & Scott Carney
Hertz – Carrie Tavares & Steve Dombrowiecki
JN Philips Auto Glass – Mark Bosse

Mark Bosse of JN Philips Auto Glass gave members a brief history of the advances in the glass industry. He reminded us to choose our glass supplier carefully. It could save a life.

Fogarty then recognized I-Car Chairman & Membership Chairman Tom Vicino of Superior Auto in Westbrook for the tremendous job he has done to increase membership in the ABAC. Tom has been relentless in his pursuit of strengthening the ABAC base with phone calls and contacts. In just the past 3-4 months Tom, along with the help of ABAC executive assistant Denise Banta, have added almost 40 new members! Great job indeed! If you would like to join the ABAC, please contact Tom at 860-399-9999 or call any one of the Officers or Directors listed on the back page of this newsletter.

Our next guest speaker for the evening was Larry Montanez of P&L Consultants. Larry spoke on I-Car and certification. He talked of industry trends, discussed the many different steels and alloys that car manufacturers are using today and the various methods of heating and cooling these particular items. Larry was a very animated speaker and used his humor to present several examples of structural repair and possible complicated procedures. He certainly kept the crowd's attention. We'd like to thank Larry for his time and input and for helping to educate our members. Larry reminded everyone that if you are interested in I-Car training you can call Tom Vicino at 860-399-9999.

A 50/50 raffle and a door prize raffle closed out the meeting for the evening.

We look forward to seeing everyone Tuesday, November 15, 2005 at the Country House Restaurant.

RIISING FUEL COSTS INSTITUTE INDUSTRY CHANGES

With fuel prices steadily increasing in the last two years, almost all companies that supply products and services to the collision repair industry have been severely affected. O.E.M. parts dealers, paint suppliers and equipment suppliers just to name a few have seen **net profits dip into the danger zone for one main reason, the cost of delivery!**

Some companies have already incorporated fuel surcharges with their parts and supply deliveries to body shops. **In the immediate future, many more suppliers may follow with those surcharges or be forced to stop delivering to automotive repair facilities and collision repair centers altogether!** The reason is very simple to understand. **If you cannot retain a minimum net profit in delivering wholesale parts or supplies, you stop delivering, period!**

Collision repair owners should not look down on the suppliers that have done nothing but give them great delivery service with a competitive price over the years if that supplier is forced to pass on a fuel charge to continue that level of service.

Almost all collision repairers when asked about the fuel charges that they are starting to see on invoices understand that it is a **business cost that must be passed on to insurance companies, (physical damage claims) and the consumer (retail business)**. As one shop owner stated, *“any insurance appraiser or adjuster who fails to pay a fuel surcharge on a parts invoice or paint & materials invoice (examples) will have a rude awakening. The appraiser will need to drive his own vehicle using his own gas to the parts dealership or paint supplier to pick up my products for that claim and deliver them back to me. If I have to pick up my parts order or paint & materials, I’m going to charge the appraiser a hell of a lot more than the minimal fuel charge that he refused to pay!”*

It is important that insurance companies realize that these costs must be passed on from body shops to them. **The alternative could be devastating to body shops, insurance companies, and consumers! If suppliers stop delivering, real costs incurred by body shops driving themselves to pick up parts and supplies for their business would destroy a major part of the efficiency of collision repair.**

Don’t be foolish in thinking that this will never happen, because it may! **“Cost of doing business”** is a phrase that body shop owners and insurance companies know well!

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