

# ABAC NEWS

July  
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2017

The Official Newsletter of the Auto Body Association of Connecticut



**\$1M+ Lawsuit: Texas Body Shop Disregard for Honda OEM Repair Procedures Caused Injuries in Fiery Crash!**

**Is Your Shop Following OEM Repair Procedures?**

**You COULD be Exposed to Business and Career Ending Liability**

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## ABAC President Tony Ferraiolo

### "An apple is not an orange"



### "An apple is not an orange"

I was all ready to write my presidents letter on a not industry related topic.

Being summer, vacation, dog days ,ect. I thought it was time to relax and take a break from the Auto Body Industry. Then I read the RDN article on what happened to a Texas shop, in repairing a Honda not using OEM procedures.

The testimony that was deposed of the repair shop manager made it impossible not to address.

This whole edition of ABAC News is dedicated to bring to light some very wrong business practices that are taking place everyday in shops everywhere. LIE, CHEAT and STEAL (LCS) as I'm going to refer to it as.

This has been taking place in our industry far too long.

Now I'm not referring to LCS as a criminal practice or that shops are breaking the law or committing fraud. For most shops I believe it's a way of collecting their bottom line on their repair invoices. The insurance industry created this practice of reimbursement a long time ago. By not compensating properly for labor rates, material costs parts mark ups, the list goes on and on. But yet this is how some shops are conducting business.

They feel it's the only way. In my opinion the complexity of on board systems, materials used in construction, education, training, certification and equipment needed to repair properly, will change the LCS practice. An apple is not an orange and we need to understand that our invoicing needs to follow exactly what we did to repair a vehicle and not doing so is wrong. You have to justify now more than ever what you are doing to repair a vehicle.

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You have only one master, and that is the vehicle owner. And now the manufacturer is in the picture as to how to properly repair their vehicle to OEM procedures and standards. **Even if you repaired a vehicle last week and you're repairing the same vehicle this week, the repair procedures may have changed. Making the same repair without research and justification, may put you in a world of trouble. If something goes wrong with that vehicle in a collision, or maybe not even in a collision, but something doesn't function properly because you didn't scan, calibrate properly or repair to OEM procedures and that vehicle causes an accident, you might be in serious trouble.**

The days are over, my friends, of repairing vehicles the way we have always done it or the way our fathers may have done it. This also means the days are over on how we need to invoice and collect for our services. If an insurer refuses to reimburse a customer for full and necessary charges performed by your shop, you need to put the customer on notice that they are responsible for all your charges. You can have customers sign an "assignment of proceeds" and step into their shoes to collect monies owed to them in regards to your repair. This works very well on third party losses.

First party losses are bound to the language in the insurance policy agreed to by insured and are more complicated. Don't think you should not pursue what is owed to you. Many shops are having to exercise this option with success.

Proper documentation, accurate final invoice and repairing vehicle to OEM procedures and standards is the key. When you're in the right its easy to justify why your owed additional monies.

Please read the testimony under deposition of the shop manager in Texas. If you believe the way he does, then it might be time to get out of this business.

Allow the shops that believe in research, education, training, equipment and proper invoicing to repair vehicles. Do something else or you may find yourself answering the same questions under deposition as the manager of John Eagle Collision Center. And maybe liable for a negligent repair. This should be a wake up call.

Please do not take this lightly, even get mad at me for suggesting you might be someone who is LCS. Then maybe you will realize that things have to change in this industry.

You are not the only one, and you are not alone. Lets change this industry for the better.

The ABAC is here to bring meetings and seminars to assist you on a better way of conducting business. Our membership meetings start in September. **Look in this edition, on Page 13 for dates and locations.**

Attend and learn. Enjoy the rest of your summer, see you in the fall.



**President**  
**Auto Body Association of Connecticut**



## \$1M+ lawsuit: Texas body shop's disregard for Honda repair procedures caused injuries in fiery crash

A collision repair deviating from Honda repair procedures and absence of a fuel tank cover led to a Texas couple being trapped inside a burning 2010 Fit, a lawsuit demanding more than \$1 million alleges.

John Eagle Collision Center's own manager said the company used structural adhesive to attach the roof in a 2012 hail repair instead of the welds demanded by OEM collision repair procedures. Plaintiff's engineer Neil Hannemann also reported the absence of the welds Honda says must be done. It was unclear who was responsible for the missing fuel tank cover, Hannemann wrote.

"Defendant John Eagle unilaterally chose—on its own—to purposefully ignore Honda's repair specifications," the lawsuit states. "Defendant John Eagle made a conscious and deliberate decision to place unsuspecting people in a vehicle that it knew or should have known could cause serious injury or harm if involved in an accident such as occurred in this case. Indeed, John Eagle knew that people could be killed or seriously injured, and deliberately chose to place the Seebachans in danger. "Such conduct (or lack of conduct) shows a total lack of regard for human life. It also shows a deliberate disregard by Defendants for the safety of persons who would ride in the vehicle at a later date."



The repair was done for the vehicle's prior owner, and Matthew and Marcia Seebachan were unaware when they bought the Fit that it had received such body work, according to the couple's counsel.

The law firm representing John Eagle Collision did not return a message seeking comment. In an answer to the initial version of the lawsuit, John Eagle Collision said some combination of the Seebachans, another party (presumably the other driver) or the accident itself were responsible for what happened. It also argued that the couple's pre-existing and subsequent conditions and failure to mitigate their situation could be to blame for the outcome.

John Eagle Collision was paid more than \$8,500 by State Farm for a July 2012 hail repair which included a roof replacement, according to the Tracy Law Firm. Honda OEM repair procedures dictate a shop tack-weld the front and rear corner edges of the new roof and then perform a combination of two- and three-plate spot welds and MIG plug welds.

"There was no way the Seebachans or anyone from Huffines Kia (which sold them the Fit) could see that the roof was glued rather than being welded because paint and shiny trim covered up a time bomb," attorney Todd Tracy said in a statement. "The testimony and facts in this defective repair lawsuit clearly show that John Eagle Collision Center used glue instead of the more expensive welding because it cares more about getting paid by the insurance company than they care about putting a vehicle out there on the road that's safe and reliable."

Asked about the insinuation, State Farm said it had nothing to share.

Body shop director Boyce Willis said in a July deposition that while he wasn't entirely sure, the shop probably used a 3M 8115 panel bonding adhesive in the 2012 repair. He said John Eagle Collision would have tack welded the roof on as well as part of the shop's SOP, though he didn't personally know if that'd been done. Hannemann's report states that he saw no roof welds at all.

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SCRS Education Committee Co-Chairman Toby Chess on Monday observed that structural adhesives have strong tensile strength but low shear strength, which refers to sliding force. He said that's why mechanical fasteners are often used with them. Asked who approved the body shop's use of the structural adhesive in 2012, Willis said the then-director of the body shop did.

"It is — it is a accepted repair alternative, based on our cars and insurance certifications," Willis said. He also said the I-CAR standard for roof replacements was bonding.



Willis appears to incorrectly describe I-CAR's standards. The organization's Uniform Procedures for Collision Repair, dated 1999, list separate procedures for welded roofs and bonded roofs. Both reference having vehicle-specific repair information on hand. Willis also said that 3M told the shop it was OK to use their adhesives for roofs, but then he acknowledges 3M documents noting that Honda forbids that practice and 3M instructions state to "make required welds on rear vertical seams, cosmetic joints, or where otherwise recommended by the directions for use or the OE manufacturer."

Willis insisted in the deposition that using structural adhesive was better than welding, while acknowledging that he has no testing to support that hypothesis other than observing cars in his shop and how other OEMs like Aston Martin say their vehicles should be replaced. "It's cleaner; it's less intrusive to the vehicle. Keep in mind, it's a — it's a panel. It's not a structural piece; it's a panel," Willis said, according to the transcript.

"John Eagle Collision Center repairs almost 5,000 vehicles a year in Dallas alone not counting their Houston Collision Center," Tracy said in a statement. "It is a billion dollar a year Texas car dealer giant that apparently is not following the manufacturer's repair recommendations. In this case, the insurance company paid John Eagle \$8500 to make a repair that was not up to manufacturer standards."

#### Crash performance

The roof is structural on the unibody Fit, according to Hannemann — a former chief engineer for the Ford GT who was responsible for its crash performance.

Hannemann said that in his expert opinion, the failure of the roof during the crash compromised the overall structure and collision energy management of the vehicle — contributing to Matthew and Marcia Seebachan being trapped inside and the subsequent fire. Both of the Fit's lower frame rails detached, one of them striking the fuel tank located under the driver and passenger, he wrote.

**"It can be seen that no welds are present," Hannemann wrote. "The (Z-)buckling of the cant rail is due to the lack of welding of the roof panel, which was designed to be welded on and acting as a shear panel for sharing crash loads."**

North Dakota State University Impact Biomechanical Laboratory director Mariusz Ziejewski concurred in an assessment evaluating how the crash resulted in injuries to the couple. The unibody car failed to properly distribute the energy around the couple, crushed their legs and trapped them inside the burning car, he wrote.

"Trapped behind the steering wheel, Matthew Seebachan remained conscious as flames fried his feet and lower legs before he was pulled from the wreckage by a motorist," Tracy Law Firm wrote in a news release. "Another motorist rescued his wife Marcia through the passenger window of the mangled car."

The 2010 Honda Fit has a "poor" Insurance Institute for Highway Safety 40 mph small-overlap crash test rating but a "good" 40 mph moderate-overlap crash-test rating.

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“The 2010 Honda Fit was originally designed to provide structural and fuel system crashworthiness protection, which would prevent serious injuries to occupants in this foreseeable accident,” Hannemann wrote. “In fact, the 2010 Honda Fit receives the highest rating from the IIHS for the moderate offset impact test, which is virtually identical in terms of crash forces to the subject accident.”

A 2010 Toyota Tundra had hydroplaned into the Seebachans’ oncoming Fit on a 75 mph stretch of road, and the Fit struck the right front quarter of the Tundra. Two of the Tundra’s occupants were uninjured, while the other was merely bruised. The Seebachans were seriously injured.

“This accident should have been survived with only minor injuries,” Hannemann wrote. “The occupants of the Toyota that had lost control and was stuck in the side by the Honda Fit survived with no injuries, or just a bruise in one case. In a ‘T-bone’ type of accident, the vehicle struck in the side typically has worse injuries than the vehicle that is impacted on the front. In this case, the reverse occurred. **This is an indication of the defective roof repair affected many of the safety systems of the Honda Fit.** The Seebachans would likely have had only minor injuries if not for the faulty repair. **One must remember that a vehicle’s safety systems are like links in a chain. Each system must work together to ensure the other safety systems perform as designed. When the faulty structural repairs were made, the crashworthiness systems were all compromised.**”

“Due to the roof’s lack of proper welding, the entire structural system of the 2010 Honda Fit was compromised, including the A-pillar, toeboard, footwell, and floorpan which allowed excessive intrusion into the survival space of the driver and front seated occupant,” Ziejewski wrote. “Mr. and Mrs. Seebachan’s torso injuries, upper extremity fractures, Mr. Seebachan’s facial laceration, and Mrs. Seebachan’s inner organ injuries are consistent with their bodies impacting and being crushed by the intruding components. The intruding footwell most likely was the injury mechanism of their lower extremity fractures, with entrapment preventing immediate escape thus causing them to sustain burn injuries.”

The glued roof also produced an inability to open the doors — something that should have been possible had the Fit’s crashworthiness been restored by the body shop, according to Hannemann. (Acura showed a similar point with its 2015 comparison of a factory MDX after a crash and an improperly sectioned MDX after a crash — the doors on the botched one were stuck.)

“Mr. and Mrs. Seebachan were thrown forward and to the left impacting the intruding vehicle’s structures, and consequently trapped by the jammed doors and intruding footwell,” Ziejewski wrote. “The fire then caused enhanced injuries due to entrapment.

“Conclusion: Had the roof been properly welded by Mr. John Eagle Collision, the vehicle’s structure would have been able to appropriately distribute the impact energy and maintain the occupants’ survival space. Had the survival space been maintained, Mr. and Mrs. Seebachan’s injuries would not have been as severe, they would not have been trapped within their vehicle, and most likely their vehicle would not have caught fire.” (Emphasis Ziejewski’s.)

Hannemann makes an important argument that a used-vehicle owner should be able to expect the same collision protection as a new-car buyer. “The defendants’ may suggest that pre-owned buyers are not entitled to the same degree of safety as the original owner,” he wrote. “While the vehicle may be used, have mileage and age, creating wear and tear, this should not affect the important safety systems. These systems do not ‘wear out’ like engines, transaxles, suspension, etc. The safety systems should be designed for the ‘life of the vehicle’. The vehicle structure also does not ‘wear out’, it should maintain its integrity and function for the life of the vehicle. Safety is not related to the age of a vehicle.”

The Seebachans originally sued the Kia dealership which sold them the Fit; Hannemann’s report argues the company should have been more aware of the Fit’s condition. They’ve since removed the dealership as a defendant and dropped the case against it for good.

**Source: [www.RepairerDrivenNews.com](http://www.RepairerDrivenNews.com)**

**Article by John Huetter**

## Manager's comments in Texas deposition might feel familiar to some shops

The following excerpts were taken from the article named above from July 31, 2017

**Auto body shop owners, managers and technicians across the country might want to read the deposition of a Texas dealership collision center's director and take a look in the mirror.**

### **A shop doesn't have to follow OEM repair procedures if the insurer says otherwise?**

Q. Do you agree that as the voice of John Eagle Collision Center, that when someone takes their vehicle to your certified body shop to be repaired after a vehicle collision or hail damage, that people trust that the body repairs will be performed according to the vehicle manufacturer's repair specifications?

A. Yes. According to the insurance company.

Q. But at the end of the day, I mean, you have — John Eagle Collision Center has to comply with the vehicle manufacturer's repair specifications, correct, sir?

A. Correct. ...

A. Well, unfortunately we're guided by insurance. So — the — if you brought your car into my shop, right, the insurance company's going to dictate what — how we're going to repair your car.

Q. I understand. But the — but you — your — as a certified body shop, you have to — you — the — the insurance company cannot trump the OEM specifications, correct, sir?

A. Yes, they can.

Q. Where does it say that?

A. By not paying the bill.

### **Rejecting OEM repair procedures?**

Q. And they tell you, regardless if it's Honda Motor Company, Ltd. or American Honda Motor Company, Inc., they all — both of those entities put out repair guidelines for body repairs, correct?

A. Correct.

Q. And tell me what the name of any American Honda Motor Company, Inc. body repair document that authorizes repair facilities like John Eagle Collision Center, that authorizes them to use adhesive to glue a new roof back on a 2009 to 2013 Honda Fit.

A. There is none.

Q. So John Eagle Collision Center chose on its own to use adhesive to glue back a roof — a new roof on a 2010 Honda Fit?

A. Yes. ...

Q. So John Eagle Collision Center, they made a conscious decision to use adhesive to glue this roof in place?

A. Yes. ...

Q. This is the — the OEM, Honda Motor Company, Ltd., is telling John Eagle, you better follow this, right?

A. Well, they don't tell you you better follow it, but it's — it's a guide to repairing a car.

Q. It's the — it's the body repair bible, right?

A. Supposedly, yes.

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### Not reading OEM procedures before a repair?

Q. All right. Did (the technician) know about Exhibit 202?

A. He has — he has access to it.

Q. Where do you have access to —

A. Through the parts department.

Q. Do you have a hard copy of the 2009 to 2013 Honda Fit Body Repair Manual?

A. No

Q. Is it just an electronic version?

A. Yeah, you'll go into the parts department and they'll pull it up on the Honda net.

Q. Did (the technician), did he pull up the 2009 to 2013 Honda Fit Body Repair Manual?

A. No.

**As a portion of this, the deposition shows, it seems extremely easy for an attorney to decimate any position that doesn't involve following OEM auto body repair procedures. Read the deposition, think about your own rationale for doing what you do in your shop, and mull over how well you think you and your practices would fare in the witness seat.**

Source: [www.RepairerDrivenNews.com](http://www.RepairerDrivenNews.com)

Article by John Huetter

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## Subaru Issues Position Statement Recommends Pre- and Post- Scanning of Collision Damaged Vehicles

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Subaru of America, Inc. is the latest vehicle manufacturer to provide guidance on diagnostic scanning in collision repair. The manufacturer issued a position statement this month recommending both pre-collision repair and post-repair scanning for trigger diagnostic trouble codes (DTC) on model year 2004 and newer vehicles.

### According to the statement:

In the event of a collision, these components could incur damage, which may trigger diagnostic trouble codes (DTC), but may not be evident via a warning light on the instrument cluster. It is imperative that these components be evaluated after a collision to ensure the vehicle is completely repaired. If these components are not evaluated, it could have a direct effect on vehicle operation and safety."

For Subaru vehicles from model year 2004 and forward involved in a collision, Subaru collision repair procedure recommends that pre-repair scanning be performed. Pre-scanning will reveal DTCs for items that are not functioning properly in the vehicle. It allows a shop to identify any issues early in the estimate process, allowing a more complete estimate and encompassing repair process.

Additionally, Subaru collision repair procedure also recommends that post-repair scanning be performed on these vehicles. Post scanning is critical in ensuring the malfunctioning items have been repaired and there are no remaining DTCs. It may also assist in assuring the appropriate calibrations and reinitializations have been performed.

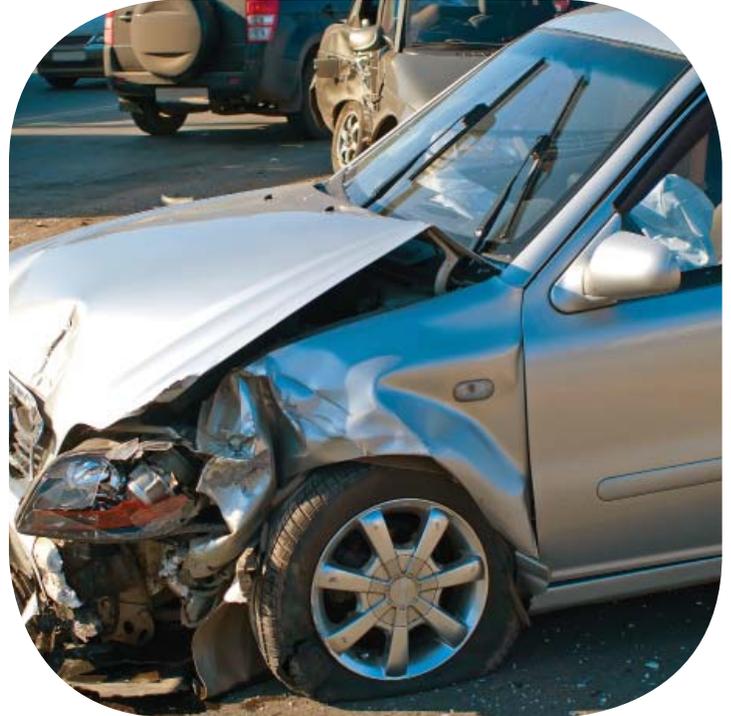
## It is important to check OEM procedures before beginning any repair

Each time a damaged vehicle is brought into a shop for repair, the technician needs to research the OEM repair procedures to know for sure exactly which repairs will be needed to complete a full, proper, and safe repair.

There is a wide variation with vehicle types, materials and joining technologies. The only way for the technician and repair shop to know every repair procedure for every car is to consult the OEM procedures. Technicians should never assume they know the repair methods. Relying on memory can be dangerous because changes with OEM procedures happen quite often.

### Advantages of a pre-scan

In order for the technician to properly understand the existing diagnostic and vehicle electronic issues, they should perform a pre scan using the asTech™ device. asTech master technicians perform the scan using OEM factory scan tools. Upon completion of the pre and or post scan a detailed report is delivered directly to the repair facility. Technicians use this information, along with the OEM repair procedures, to make safe and accurate repairs, and to document the file in order to provide the required information to both the insurance company and the customer.



OEMs are constantly updating their information regarding the repair procedures of their newer vehicles, which include the newest vehicle technology. Having current OEM data is critical in order to complete the repairs and return the vehicle to pre-accident condition.

### Reduced delays

Without checking the OEM procedures regularly before each repair begins, the technician will not know if, or when, specific repair methods for specific vehicles have changed.

Checking OEM procedures on every vehicle is a good business practice. The slightest change in a specific repair procedure can affect the final outcome of the repair. Checking OEM procedures before every repair allows the technician to write more accurate repair estimates, order parts more accurately, and provide better direction to sublet vendors; all of which reduce the overall cycle time of the repair.

Performing a post repair analysis of the diagnostic and vehicle electronics using the asTech™ device ensures the vehicle has been checked and is ready for safe delivery back to the customer.

Source: [www.asTech.com/news](http://www.asTech.com/news)

**Are you checking the OEM Procedures when repairing? ALL these experts are telling us that OEM Repair Procedures can change weekly. You need to check the OEM's EVERY time you repair a vehicle even if you did the same repair LAST WEEK!**

~ABAC

## Where Can I Find OEM Information?

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**Here are a few links to help you find Collision & Mechanical help along with Position Statements.**

The list will be growing!

<http://abaconn.org/>

[www.OEM1stop.com](http://www.OEM1stop.com)

<https://www.moparrepairconnection.com/>

<http://owners.honda.com/parts-accessories/parts>

<http://asashop.org/oem-position-statements/>

<http://collisionadvice.com/>

<https://astech.com/>

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## Ct. Department of Insurance Compared to DMV?

Submitted by John Shortell

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If the Connecticut Insurance Department operated anywhere near as efficiently as the Department of Motor Vehicles operates, Connecticut's collision repair industry would be much healthier.

I've filed countless complaints with the Insurance Department against insurers for a variety of reasons. It's always the same. Fill out their form and provide plenty of documentation. Send it to the Insurance Department and wait for a reply. I always receive the same form letter telling me they will investigate, and if I'm lucky, I'll receive a form letter telling me (in not so many words) that I have wasted my time. Sometimes I get no response at all. The insurance company can do no wrong.

I recently received my first complaint from the Motor Vehicle Department. Apparently, AMICA doesn't have enough to do, so they are going through all their towing disbursements through COPART. For those who have never received a complaint from the DMV, let me walk you through it.

*A DMV agent calls and asks to speak to someone in charge. She tells me she has received a complaint from AMICA about towing charges.*

*"Please fax me the invoice you received from the towing company and the invoice you gave to COPART." Now I normally refuse to let anyone see any invoice I receive from my sublet providers, but being the DMV I don't think I had a choice. Besides, I had nothing to hide. I marked up the tow bill like any other sublet. Being a consensual tow and we are not a licensed tower, there is no problem with that.*

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*I faxed the invoices and a letter explaining that there is no basis for this complaint because the customer asked the wrecker driver to bring the vehicle to us for repairs.*

*My storage rates are clearly posted as required, and I gave the appraiser my towing invoice along with my storage rate. He never questioned it.*

*The very next day I received a phone call from the DMV agent telling me I owe AMICA the difference between the state rates and what I charged. I tried to explain the regulations to her, but she would hear none of it. She had made up her mind. Her argument was that the state police called the wrecker company to pick up the car at the accident scene. At the top of the original tow bill under "Requested By" the wrecker driver wrote in "Troop C." When the wrecker got to the scene the vehicle owner requested her car be towed to our shop for repairs, creating a consensual tow. The state police merely made the phone call for her. She was in total control of the situation. This happened after hours so I never met the person or got her to sign any paperwork.*

*I asked the DMV agent, "That's it? That's the investigation? How about calling the vehicle owner and talking to her?" She told me it didn't matter. The state police made the call, making it a non-consensual tow. I told the agent I would have the customer call her. You're going to love her response. She told me that wouldn't matter. She had no way to verify whether the person calling her was the vehicle owner.*

*She left me speechless so I told her to send me her finding and I would look it over. She told me "This is the finding. You owe the insurance company a refund." Nothing in writing? How do I know she is who she says she is? She says she doesn't have time to put things in writing. She's too busy. A government agency issues a legal decision with nothing in writing? Is that even legal? I pushed the issue about getting something in writing and it escalated things.*

*She told me if I wanted something in writing I would have to ask for a hearing, and then I would be subject to civil penalties on top of what I owed the insurance company. What's the word for that? Coercion? Extortion?*

So we need to make some changes to the way we do business. I've told the company that does my towing that if a customer asked for the vehicle to be towed to our shop (which is every tow because we're not doing the towing), be sure to note that on the tow bill. In the "Requested By" box enter, "Customer."

I will also be creating another form for customers to sign verifying that their vehicle was towed to our shop at their request, with their consent.

As for the DMV? Maybe we can convince some of their employees to transfer to the Insurance Department.

And as for AMICA. Talk about tripping over a dollar to pick up a penny. I have referred them to countless customers over the years. They're willing to lose all those referrals for a few dollars on a tow bill? Geniuses!

UPDATE: DMV called me back. They contacted the vehicle owner. The vehicle owner told DMV she doesn't remember asking the wrecker driver to bring her car here. Great.

But how did the DMV agent verify she was actually talking to the vehicle owner?

**John Shortell - Coventry Collision**

**The views and opinions expressed in this article are the author's own and do not necessarily reflect the views of Auto Body Association of Connecticut, its Board of Directors or members of the ABAC.**

## Think there are too many lawsuits these days? Think again.

*John M. Parese, Esq., ABAC General Counsel*



Happy summer all. I hope this finds you in good spirits and enjoying the closing weeks of another interesting summer. Having nothing to do with the possibility that I've flat out run out of interesting auto body insights, I figured that I would deviate from my typical auto body twaddle and write for a moment about a macro view on our perceived "litigation society" and how that relates to similar perception challenges in the auto body world. If you're thinking to yourself: this cook has totally lost sight of his audience, I would encourage you to hang in there and give me a chance to bring this into some relevance for you.

Let's talk about numbers for a moment. According to a recent Wall Street Journal article, Americans these days are filing far fewer lawsuits than they have in the past. More specifically: "Fewer than two in 1,000 people—the alleged victims of inattentive motorists, medical malpractice, faulty products and other civil wrongs—filed tort lawsuits in 2015, an analysis of the latest available data collected by the National Center for State Courts shows. That is down sharply from 1993, when about 10 in 1,000 Americans filed such suits."

These data contradict the public's perception that we are completely besieged by so many lawsuits it's a wonder anyone can do anything without getting sued these days. The idea that too many people are getting rich off the legal system, is completely pervasive. I know that sentiment well from my own experiences speaking to juries and from keeping my ear to the ground on matters of this sort. The false perception of a frivolous litigation society has deep roots; roots that often arise from feelings of resentment and hostility toward individuals that file lawsuits. Let me give you an example of what I'm talking about. I recently attended a conference for trial lawyers from across the country. One of the seminars I attended dealt with the subject of jury bias and a phenomenon known as "victim blaming". I was interested in the subject because I've experienced this phenomenon in some of my cases. Victim blaming is essentially the tendency of jurors to blame injury or crime victims for the consequences of another person's wrongdoing. For example, "if she weren't stupid enough to go into that dark parking garage at midnight, she never would have been raped." Or, "he should have done more research about that doctor before choosing him to do the surgery, which was done completely wrong resulting in terrible injuries."

There is a contingent of our population that is simply more comfortable blaming victims than responsible parties. I believe this victim blaming is a symptom of the larger perception that everyone's getting rich off the legal system: all these jerks getting easy money are costing my insurance premiums to go up!

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Or as one Ohio trial lawyer put it: “Let’s do word association,” says Sean Harris, a Columbus-based plaintiffs’ lawyer and president-elect of the Ohio Association for Justice, a trial lawyer group. “What word comes to mind when I say ‘frivolous?’” “Lawsuit” is the word most people think, he says. “If we go to trial, we know that we are going to face a hostile jury.” (We Won’t See You in Court: The Era of Tort Lawsuits Is Waning, By Joe Palazzolo, July 24, 2017).

So, what’s all this nonsense have to do with me, Mr. Auto Body Shop Owner? I promised that I would bring this around and here’s why I think this is worthy of your attention. First, like the false perception that everyone’s getting rich off a broken legal system that rewards frivolous lawsuits, is a similar hostile campaign to convince consumers that auto body shops are unfairly charging for excessive procedures and unwarranted parts. Second, these campaigns to set a distorted public perception originate from the same source: the insurance industry. Third, and most importantly, to address this epidemic, we need to tackle the “why” this is happening and the “how” we can fix it. Of course, I think we all know the reason and who benefits most from a society primed to distrust trial lawyers, injury victims, claimants and repairers. So that leaves us with the “how” we can fix it.

Spoiler alert, I don’t have a simple answer for how to fix this problem. But I don’t think it hurts to have some awareness of the similarities between what the insurers have done to the tort bar and the auto body industry. **“Speaking truth to power”** is a saying that gets thrown around a lot these days. No doubt we have an uphill battle here. But, I think exercising truth to power as a guiding model for greater transparency in both trial law and auto body repair certainly couldn’t hurt.

*John M. Parese, Esq. is a Partner with the law firm of Buckley Wynne & Parese and serves as General Counsel to the ABAC. Buckley Wynne & Parese maintains offices in New Haven, Hartford and Stamford, and services clients throughout all of Connecticut. The opinions set forth in Attorney Parese’s articles are for education and entertainment purposes only, and should not be construed as legal advice or legally binding. If you have any questions or concerns about the content of this or any of Attorney Parese’s articles, you are encouraged to contact Attorney Parese directly.*



**AUTO BODY  
ASSOCIATION  
OF CONNECTICUT**

## IMPORTANT UPCOMING ABAC MEETINGS

Tuesday Sept 26th	USS Chowder Pot Restaurant - Hartford
Tuesday Oct 24th	Norwalk Inn - Norwalk
Tuesday Nov 14th	Country House Restaurant - East Haven

## Fretting about higher auto body repair bills? Don't blame the shops, our analysis shows

As insurers raise premiums to correspond to increased collision repair severity, it's important that customers, carriers and policymakers don't mistakenly look to shops as the source or solution to those charges.

Shops should be following OEM and paint manufacturer repair procedures to repair any vehicle, which means the actual line items on the estimate are technically derived from the OEM instructions for restoring that particular vehicle following that specific collision.

The need for those repair procedures can't be controlled by a shop which wants to do a complete and proper repair. Deviating from them would open the shop up to liability and mean that an insurer has failed to meet their obligation to restore the vehicle to pre-loss condition.

"The days of repairing vehicles in the same generic manner that we did years ago (are) gone. Completely," Dorn's Body & Paint owner Barry Dorn wrote in an email. He noted that insurance carriers seem to be asking "Who Moved My Cheese?" when it comes to modern vehicle repair costs.

The accompanying parts and paint/materials demanded for these repairs are similarly out of a shop's hands. If an OEM says a \$900 part is replace-only, the shop must order that \$900 part and install it on the car or risk the liability of an incorrect repair. If an extra stage of paint is demanded by an OEM, the shop must buy that paint and apply it on the vehicle in many different applications. The cost is the cost to do it right.

"It just keeps taking a slice of that pie," European Motor Car Works owner Kye Yeung said of expenses.

This makes for a difficult situation during the current bidding war for technicians. Ultimately, the idea of shops courting technicians with huge salaries but failing to raise rates seems unsustainable, Yeung suggested.

"I don't know how they stay in business," Yeung said of shops with static rates. Such shops must be "making no money, losing money or cheating somewhere," he said.

While the cost of auto body repair rose 15.7 percent between 2009 and 2016, auto body labor rates only rose 9.1 percent. Inflation itself was 11.87 percent. (Motor vehicle parts — all parts — rose 7.09 percent, while buying new and used cars rose a remarkably similar 7.19 percent.)

Not only did shops raise rates less than inflation dictated, they raised rates less than they increased technician salaries — which climbed 10.14 percent during that time.

Regardless, it seems pretty clear: Shop owners are giving insurers a deal both on rates and on the entire cost of repair — particularly when you realize carriers raised the cost of auto insurance 37.02 percent during the same time period.

Want cheaper auto body repair? You'll have to lower the price of everything else first. That, or stick consumers in deadlier but cheaper-to-repair cars. Just don't paint body shops as the reason for higher repair bills.

**Excerpts taken from "Fretting about higher auto body repair bills? Don't blame the shops, our analysis shows."**

Source: [www.RepairerDrivenNews](http://www.RepairerDrivenNews)

## Education is Spreading Throughout the Northeast

### AASP/NJ Meetings Ignite Industry Conversation

In June, representatives from shops all around New Jersey gathered at the Holiday Inn in Totowa and the Clarion Hotel and Conference Center in Toms River to partake in two nights of education on collision repair business practices led by the Alliance of Automotive Service Providers of New Jersey (AASP/NJ) Executive Director Charlie Bryant. As any shop owner knows, navigating the minefield of this industry and owning a successful shop when dealing with insurers can be a difficult task. Bryant shared wisdom from his decades of experience in the industry with attendees, giving guests tips and notes about how to get the most out of their businesses without suffering from stagnating insurance practices.

“Who gets an authorization to repair every time a car comes in?” Bryant surveyed the crowd. “How many of you work off an insurance estimate? How many don’t write your estimate? Is your auto body license number on your estimates and your business cards? Do you give a warranty on your work and list the terms of that warranty for your consumer? Do you give notice to your customer that they have the right to receive replacement parts?”

Each hypothetical question that Bryant posed led to a variety of reactions as hands went up and down in response to these basic business practices. After polling the crowd, Bryant passed out documents to attendees breaking down Department of Insurance (DOI) regulations, and highlighting important passages to help shop owners find success in a challenging industry.

“We’re all familiar with the ways that insurers complicate our daily business,” Bryant stated. “And everyone in this room knows that these practices are not once in a blue moon. They happen regularly. But the Department of Insurance says that they cannot take action against an insurer unless the damaging things the insurer is doing can be proven to be a ‘general business practice.’”

The DOI regulations over Unfair Claims Settlement Practices state that any poor business practices on behalf of insurers must be “committed in conscious disregard to the law or...committed with such frequency as to indicate a general business practice to engage in that type of conduct.”

As Bryant offered to the crowd, this would be the equivalent of if “a police officer had to catch you running a red light three times in one week before he could give you a ticket.” So in order to truly take a step towards bettering the industry for all shops across the state, Bryant offered shop owners in attendance one large piece of advice.

“When you encounter an insurer that says, ‘we don’t pay for that,’ or ‘you’re the only one who charges for that,’” Bryant said, “Do yourself and your fellow shop owners a favor and submit a complaint to the DOI. If we work together as an industry, we can get changes made.”

After going through the regulations set forth by the DOI, attendees shared some grievances with one another, commiserating about the unfair practices facing them as shop owners, and sharing practices that have worked for them.

“The best thing you can do is educate your consumer,” said one attendee. “You have to be more involved in how you handle your customer and your claims. Explain to them their rights as your client and your rights as a shop. Tell them everything you’re doing, why you’re doing it, and how it’s going to help them.”

Bryant also brought up some of the resources provided by AASP/NJ to help shops in their day-to-day business, including the AASP/NJ Hot Line, Labor Pool, equipment exchange, insurance benefit programs and the AASP/NJ Legal Defense Fund.

“There are certain things facing us that we won’t solve here tonight,” Bryant explained. “We may not even get them solved completely through [the DOI] regulations. I believe the only way we will really make this industry better is through standing our ground, working together and by bringing the terrible things insurers are doing to us to a court of law.”

**For more information on these meetings, contact AASP/NJ Executive Director Charles Bryant at 732-992-8909. For more information on AASP/NJ’s NORTHEAST® Automotive Services Show, please visit [www.aaspnjnortheast.com](http://www.aaspnjnortheast.com).**

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