

BIG JOBS

SHOULD NOT GET SHORT PAY

What does going to a football game have in common with opening a magazine, watching T.V. on your couch, listening to the radio in your car or walking through a bus or train station or airport? The answer is you can't do any of these activities without being inundated by insurance company advertising. Everywhere you turn a cartoon Army General, an actress playing an overly upbeat salesperson in a white smock, an actor from a prison series playing the personification of "mayhem", sensitive cavemen upset with their stereotypes, or (and especially) a CGI Lizard, are coaxing you to buy their insurance. These advertisements all tell you that their companies will protect you – none of them tell you that when you need them to get your car fixed they very well may stiff you and that your only chance of getting your car properly repaired is the generosity and goodwill of your neighborhood autobody shop. Often this is exactly what is taking place.

This practice is known as "Short Pay" and it is a growing danger to the autobody industry. Insurance companies frequently do not pay the going rate in an area to fix a vehicle. They have their own people adjust the loss and pay what they deem appropriate. This has been a problem for many years but is much worse and much more dangerous now. Modern vehicles are incredibly sophisticated. While these features are designed to reduce accidents (and therefore save insurance costs) they are more difficult and costly to repair - rear cameras, front and rear parking sensors, forward collision warning sensors, blind spot monitors and lane departure warning systems, as well as automatic braking and adaptive headlights, all increase safety but add costs to repairs. Many manufactures strictly specify not only the replacement parts that may be used but the type of labor needed to do it. Insurance companies which should be encouraging safer vehicles often do not allow the time and effort needed to ensure the vehicle is safe or they won't pay for Original Equipment Manufacturer (OEM) parts, sometimes causing havoc on the safety system in vehicles where even the wrong paint can interfere with a car's safety sensors. Such repairs can violate the warranty, diminish the value of the vehicle or worse, expose the driver and his or her family to danger. Independent testing has shown that deviations, often found in non-OEM parts can also negatively impact the vehicle in a subsequent crash.

Insurance companies know better: Insurance rules and regulations clearly state that the insurance company must "repair the vehicle to its condition immediately prior to the loss or replace it with an item substantially identical to the item damaged". 11 NYCRR 216.6.

Insurance Companies however, refuse to pay for the work and parts necessary to do so. In this situation, ethical body shop owners are confronted with a choice of three bad options: 1) take the money that the insurance company offers and perform substandard repairs; 2) refuse the jobs and lose the goodwill and business of his customers or; 3) take the job at a discount and eat the difference. A wrong choice can not only be dangerous to the customer but also financially disastrous to the auto body shop.

Some courts in New York have now recognized a better alternative: fix the car properly and take an assignment of the claim – essentially a breach of contract claim – against the insurance company for its failure to live up to its obligations. To do this, the shop owner should



secure an assignment of the claim from the owner in exchange and consideration for repairing the automobile at the "short pay rate". (Courts have recognized that these assignment are valid even if the insurance contract doesn't allow them because they take place after the loss and in no way increase the risk to the insurance company above what it bargained for). Skilled advocates can sue the company on behalf of the assignee autobody shop against the carrier and hopefully recover the difference. Even better, a body shop that has had many short pay matters with a particular insurance company can bundle these cases into a single suit – not only making the recoveries faster but helping illustrate to the court how this is a pattern of activity – not just a small disagreement.

If an insurance company gets enough of these suits, maybe, just maybe, it will decide to spend more money repairing the vehicles of their insureds and less on talking lizards.

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