

Position Regarding "Reasonable and Customary" Complaints

The Consumer Affairs Division receives a number of complaints from auto body shops regarding denials by insurance companies for that portion of auto physical damage claims that exceed what the insurers consider to be "reasonable and customary". I also understand there has been some suggestion that the Insurance Department should determine what the "reasonable and customary" rates for auto body repairs should be.

It is a violation of the Connecticut Unfair Insurance Practices Act for an insurer to conduct with such frequency as to indicate a general practice "not attempting in good faith to effectuate prompt, fair and equitable settlements of claims in which liability has become reasonably clear". Conn. Gen. Stat. §§38a-815 and 38a816(6)(f).

Conn. Agencies Regs. §38a-790-8 imposes on motor vehicle damage appraisers a code of ethics in which they are to engage in "fair and honorable dealings", approach the damage "without prejudice against, or favoritism toward" any party in order to make "fair and impartial appraisals", to disregard efforts of others in attempting to influence his judgment and to prepare an independent report of the damage.

These statutes and regulations impose obligations on insurance companies to negotiate each claim in good faith. It would be unacceptable, for example, to reimburse the same amount for each vehicle without considering the individual circumstances involved in claims. Some flexibility is inherent in good faith. Companies may have statewide guidelines, but it should be unacceptable for companies to apply those guidelines inflexibly throughout the state, no matter how difficult the job or what type of vehicle is being repaired.

If examiners believe a company is being unreasonable in its determination of "usual and customary" rates, they may ask the company to support how it arrived at the rates.

Insurance companies, however, are part of the marketplace. From an antitrust standpoint, they have generally been found to be purchasers of services, and their efforts to keep prices low generally are not considered to pose antitrust problems.

Prices for auto repairs are a function of the marketplace, not of regulation. Moreover, the Insurance Department does not have the statutory or regulatory authority to establish "reasonable and customary" rates. However, if examiners believe a company may be unreasonable in its determination of "usual and customary" rates, they may ask the company to support how it arrived at the rates.

While it is not used on a regular basis, the Consumer Affairs Division also has the authority pursuant to Conn. Gen. Stat. §38a-9(b) to facilitate arbitration between claimants and insurers concerning auto physical damage claims when liability and coverage are not in dispute. My understanding is that the time and relative formality involved in the arbitration generally makes it unattractive to consumers.

In summary:

1. Insurance companies must negotiate in good faith and with flexibility in each auto claim.
2. What is a "reasonable and customary" rate is a function of the marketplace, not of regulation.
3. Examiners may ask companies to support the methodology used in arriving at "reasonable and customary" rate to make sure good faith is used in arriving at the rate.
4. Insurance companies have a right to negotiate for low prices.
5. The Insurance Department does not have the authority in statute or regulation to determine what rates insurance companies will pay body shops.
6. In certain cases, the arbitration procedures of Conn. Gen. Stat. §38a-9(b) may be used, but this is a time consuming and formal process, and consumers and body shops should be aware of that.

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