



California New Car Dealers Association

February 25, 2009

Mr. Drake Shogun
Policy & Planning Unit
California Department of Insurance
300 Capitol Mall, 16th Floor
Sacramento, CA 95814

Re: Comments on Proposed Department of Insurance Regulations: File Number REG—2009—00036, Title 10, Chapter 5, Subchapter 9, Article 7.5, Section 2698.93

Dear Mr. Shogun,

The California New Car Dealers Association (CNCDA) is a statewide trade association which represents the interests of over 1,200 franchised new car and truck dealer members. CNCDA members are primarily engaged in the retail sale of new and used motor vehicles, but also engage in automotive service, collision repair, and parts sales. We are writing on behalf of our dealer members to provide comments relative to the above-referenced regulatory proposal on insurer referrals to collision repair facilities (steering).

CNCDA has worked with your office, the insurance industry, and the collision repair industry for over a year on the steering issue and several other industry concerns. During these good faith discussions, we found a surprising recognition of common interests and concerns between all parties. As we and other collision repair industry representatives have emphasized, insurer steering takes advantage of distressed consumers who are pushed toward a shop with which the insurer has negotiated discounted repair and materials rates. Such shops may be contractually obligated to use subpar parts and materials, and to forego more-expensive repairs deemed unnecessary by an insurer looking to cut costs. The legislature prohibited this practice in passing SB 551 (Speier) in 2003. Since then, significant uncertainty has existed in the industry as to what insurer practices are permissible. By clarifying the statutory prohibitions found in Insurance Code Section 758.5, the proposed regulation seeks to extinguish this uncertainty.

While we fully support Departmental regulations to confront insurer steering and believe the proposed draft will go a long way toward doing so, we have concerns with subdivision (e) of the draft proposal, which reads as follows:

(e) Nothing in this article restricts the ability of an insurer to explain contractual provisions of the insurance policy to the claimant, including the insurer's obligation to pay only costs that are reasonably necessary to restore the damaged vehicle to its pre-accident condition.

At best, this provision is duplicative of existing law—nothing prevents an insurer from discussing policy limitations with the insured, and the proposed regulation could not be reasonably interpreted to prevent such discussions. Unfortunately, the language providing that insurers may explain their “obligation to pay *only* costs that are reasonably necessary to restore the damaged vehicle to its pre-accident condition” (emphasis added) would cause significant confusion. For example, insurance policies may provide for insurer obligations that exceed this minimal amount, such as a policy that requires the insurer to provide a rental car or other services. The proposed draft could reasonably be interpreted as limiting the obligations of an insurer regardless of the actual contractual provisions.

Subdivision (e) should be removed from the proposed regulation entirely; it is unnecessary and fails to fulfill the clarity standards established by the Administrative Procedures Act and regulations promulgated thereunder, since the language is capable of being reasonably interpreted as having more than one meaning.¹

Alternatively, we recommend that the language be amended to fix our concern with the proposed regulation's clarity, as follows:

(e) Nothing in this article restricts the ability of an insurer to explain contractual provisions of the insurance policy to the claimant, ~~including the insurer's obligation to pay only costs that are reasonably necessary to restore the damaged vehicle to its pre-accident condition.~~

We appreciate the opportunity to provide comments on the proposed regulation, as well as the fruitful series of workshops provided by the Department leading up to this regulatory proposal. If you have any questions or should you like to discuss our concerns further, feel free to give me a call at (916) 441-2599.

Best Wishes,

A handwritten signature in black ink, appearing to read 'Jonathan Morrison', with a long horizontal line extending to the right.

Jonathan Morrison

¹ Specifically, Government Code Section 11349.1 and 1 California Code of Regulations Section 16(a)(1).