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Date: April 18, 2012

To: The Honorable Noreen Evans
The Honorable Tom Harman
Members, Senate Judiciary Committee

From: Rex D. Frazier, President
Michael A. Gunning, Vice President
Kimberley Dellinger Dunn, General Counsel
Manolo P. Platin, Legislative Advocate

Re: SB 1460 (Yee) Automotive repair: replacement parts
As amended April 17th, 2012

Senate Judiciary Committee Hearing: April 24, 2012
PIFC Position: Support

The Personal Insurance Federation of California, representing six of the nation's largest insurance companies (State Farm, Farmers, Liberty Mutual Group, Progressive, Allstate and Mercury) who collectively write a majority of the personal auto and home insurance in California, **supports SB 1460 (Automotive repair: replacement parts), by Senator Yee.**

SB 1460 contains three provisions designed to benefit insurance customers. First, the measure would provide an important incentive for auto insurance companies to pay for higher-quality replacement car parts than current law requires. Second, the measure encourages auto insurance companies to pay for replacement car parts that are easier to track and recall, which would improve the accountability of replacement part makers. Third, the measure would require suppliers of replacement parts that are not made by the original car makers to provide new consumer warranties, in addition to existing consumer protections.

Pre-Loss Condition: To Repair or Replace?

Auto insurance companies promise their customers to restore a crashed vehicle to its pre-loss condition. This promise requires insurers to either (1) replace or (2) repair a damaged vehicle. If it costs more to repair a car than it does to buy a replacement vehicle, then an insurer would typically declare the vehicle a "total loss," purchase a replacement car for the customer, take possession of the crashed vehicle and sell it to those who would "part" it out. Because insurers must make this decision about whether to replace or repair a damaged vehicle, insurers watch the cost of repair parts closely. Many customers are attached to their vehicles and are hesitant to see them "totaled."

Repair with OEM or New Non-OEM Replacement Parts

One demonstrated way to reduce the cost of auto repairs is to use parts not made by the original car-maker (also known as the original equipment manufacturer (OEM)). Most consumers know that getting their car repaired using "genuine" car-maker (or OEM) parts can be much more expensive than finding an "after-market" or "new non-OEM" alternative. In fact, when body shops repair a car that is not insured and which will be paid solely out of the customer's pocket, they frequently provide a new non-OEM alternative to make the repair affordable. Insurers make the same calculation and look for appropriate opportunities to use new non-OEM parts, recognizing there are many instances where OEM parts may be the best solution.

Non-Safety “Crash Parts”

One area where insurers particularly believe new non-OEM parts are appropriate is when the parts are cosmetic. In the repair world, these cosmetic parts are known as “crash parts,” which are the non-mechanical, non-safety parts used on the exterior of the vehicle, such as the outer panels, hoods, fenders, doors, trunk lids, and bumper parts. These parts “don’t affect vehicle strength in a collision and are irrelevant to crash safety,” as the Insurance Institute for Highway Safety (IIHS) noted as long ago as 1987 (see *Status Report*, Nov. 21, 1987, at www.iihs.org).

SB 1460 does not address safety parts, such as the interior frame of a vehicle.

Given the non-safety nature of crash parts, consumers and insurers purchase many new non-OEM replacement parts with less concern than they would if safety was involved. Non-OEM parts make repairs more affordable, and importantly provide a competitive alternative to an original car-maker as the exclusive source of a replacement part. Attached is an example of a major car-maker advertising it will “match or beat” the price of new non-OEM parts. Without this alternative part market, it is obvious what would happen: the price of OEM car parts would rise without discipline.

Criticism of new non-OEM crash parts

Car manufacturers that sell OEM parts, car dealers that sell OEM parts, and body shops that install OEM parts periodically attempt to undermine this competitive alternative. They use language like “cheap,” “knock-off” and “imitation” parts to imply that new non-OEM parts cannot be trusted or that they harm consumers. They stage publicity stunts where they cut up a non-OEM part and argue that it is inferior to an OEM part. Under their argument, they knowingly install parts which they allege are dangerous. But their motivation is obvious: they can make more money selling and installing OEM parts if the competition is out of the way.

Improving the Quality of New Non-OEM Crash Parts

While insurers take great exception to the allegations that they would short-change their customers, they have attempted to respond to criticism in a productive way. Several insurers were leaders in a movement to provide a quality assurance process for new non-OEM parts. For instance, these insurers, along with parts distributors and body shop leaders, are active in the Certified Automotive Parts Association (CAPA), which is a non-profit organization that certifies the quality of new non-OEM parts for use in collision repairs (see www.capacertified.org). The executive director of CAPA is Jack Gillis, a noted consumer advocate and Director of Public Affairs for the Consumer Federation of America. NSF International (www.nsf.org) also provides a certification system for new non-OEM parts.

Both of these organizations have developed rigorous crash part manufacturing and testing standards. They developed these standards after being accredited by the American National Standards Institute (ANSI), an internationally recognized private, non-profit organization that administers and coordinates the U.S. voluntary standards and conformity assessment system. ANSI is not itself a standards developing organization, but rather oversees the creation, promulgation, and use of thousands of standards, guidelines, and conformity assessment activities that directly impact businesses and consumers in nearly every industry and product line. California law recognizes the role that ANSI plays in overseeing the development of quality standards, as can be seen by SB 303 (Padilla / 2011), which relies upon ANSI as the accrediting body for those who train commercial food handlers in California.

PIFC members believe that a robust certification system has improved the quality of new non-OEM parts, and is a direct answer to criticisms about “imitation” replacement parts. However, we believe more can be done to provide incentives to insurers to pay for certified new non-OEM parts – which are typically more expensive than non-certified parts.

Legal Status of New Non-OEM Crash Parts

Insurers' contracts set the terms of their promises to customers. A typical insurance contract promises to restore a customer's vehicle to "pre-loss" condition, which courts have defined as "substantially the same condition it was before the accident." Ray v. Farmers Insurance Exchange, 200 Cal.App.3d 1411, 1416 (1988).

Insurance contracts do not require the use of a replacement part that is in all manners "equivalent." Insurance contracts just require restoration to substantially the same condition as before a crash. While auto manufacturers continue to argue that new non-OEM parts are not "equivalent," PIFC member companies are not arguing that point and do not care to. Insurance contracts do not require equivalence, nor does California law. Whether or not new non-OEM parts are equivalent is an intellectual point unrelated to the everyday business of insurers which pay to repair vehicles.

PIFC has surveyed the legal landscape to determine whether there are any cases that criticize new non-OEM parts, particularly certified new non-OEM parts. **There are no cases in the country where a jury or judge has found that an insurer's decision to pay for certified new non-OEM parts to repair a vehicle fails to satisfy an insurance contract.** We found one case in Missouri that questioned, in general, the use of new non-OEM parts instead of OEM parts, but the resolution to that case involved the insurance company deciding to use CAPA-certified parts in the future.

When it is appropriate to use a new non-OEM crash part to repair a car, the legal landscape is clear that certified new non-OEM parts satisfy insurers' contract requirements.

The Need for SB 1460

We have occasionally heard opponents of SB 1460 ask "why is the bill necessary?" If certified new non-OEM parts are so good, "then why don't the insurance companies get together, re-write their contracts, and all agree to pay for certified new non-OEM crash parts?" The answer is California's Cartwright Act, which is California's main antitrust law. The moment that insurers would get together and start discussing their contracts in a group, there would be attorneys lining up at courthouses to sue. We assume the Consumer Attorneys of California would be willing to confirm this.

Because our membership believes that certified new non-OEM parts can deliver superior customer benefits and alleviate public concern about using alternative parts, PIFC believes it is important for state law to incentivize insurers to use certified new non-OEM parts. Insurers cannot get together and jointly agree to modify their contracts, so SB 1460 is another approach.

SB 1460 Will Encourage Insurers to Pay for Certified New Non-OEM Crash Parts Instead of Non-Certified Parts

SB 1460 provides a legal presumption that using certified new non-OEM crash parts restores a vehicle to its pre-loss condition. We strongly believe this presumption is justified and will encourage insurers to use certified crash parts in the absence of a group agreement to do so.

Opponents of SB 1460 say this presumption is unwarranted and use heated rhetoric criticizing certified crash parts, but they offer nothing real in their arguments. **More importantly, while opponents are criticizing non-OEM parts, they oppose our efforts to improve the quality of non-OEM parts. It seems they want to frighten the public about the use of competitive alternative parts while preventing any improvement in these very same parts. They cannot have it both ways.**

SB 1460 Would Increase the Ability to Track New Non-OEM Parts

Even with all the rhetoric about the superiority of OEM parts, we have all seen examples of OEM parts failing and becoming subject to a recall. Whether OEM or non-OEM parts, there will be future cases of manufacturing defects. That is certain.

SB 1460 provides that the only way a part can be “certified” is if it can be identified by either a unique serial number or a production lot number that enables full traceability through the certifier. CAPA uses the serial number method; NSF (as well as the OEMs) uses the production lot method. Both are sufficient to track and recall a part.

As SB 1460 would increase the use of certified new non-OEM parts, it would increase the ability to track non-OEM parts (which are not required to bear any tracking information). Tracking allows consumers, attorneys, body shops and insurers to learn which parts are good and which are bad, and this accountability will undoubtedly increase the quality of non-OEM parts used in California.

SB 1460 Provides Important Customer Protections Associated with New Non-OEM Crash Parts

Current law requires insurers to notify and disclose to a consumer if replacement crash part repairs include the use of non-OEM parts. SB 1460 takes current law a step further. The bill:

- Requires suppliers of new non-OEM crash parts to provide a warranty for the parts at least equivalent to Original Equipment Manufacturer warranty; and
- Requires disclosure on an estimate that new non-OEM crash parts will be installed and, on the final invoice, which crash parts were actually installed.

The PIFC members believe in relying upon a sensible auto repair system that accomplishes the twin aims of keeping premiums low for consumers while ensuring high-quality, safe auto repairs. Just as there are generic drugs which are accepted as quality alternatives to name brand drugs, there should be a source of quality auto parts that are less expensive than those manufactured by auto manufacturers. Such a system would deliver cost savings to consumers just as generic drugs have saved patients countless dollars and keep the cost of insurance lower for consumers. SB 1460 would help to establish a sensible system for the use of certified new non-OEM crash parts.

For the reasons stated above PIFC **supports SB 1460 by Senator Yee and urges your “aye” vote.** If you have any questions regarding PIFC’s position, please contact Michael A. Gunning at (916) 442-6646.

cc: Senator Leland Yee, Author
Tara M. Welch, Senate Judiciary Committee
Amber Alexander, Senate Republican Caucus
Gareth Elliot, Secretary of Legislative Affairs, Office of the Governor

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