

Squeezing the little guy:

The insurance industry's war on free enterprise and consumer rights

by Mike Causey

For an industry that extols the virtues of the free market, the insurance industry sure has a problem with consistency. The industry as a whole has done everything in its power to abolish the free market system in collision repairs and auto glass.

For the benefit of their own profits and to the detriment of the consumer, insurers have, over time, made an art form out of systematically denying contractual promises to policyholders and fair payment to claimants. That art form is practiced through schemes known as "glass networks" or "direct repair programs" (DRPs).

Autobody shop owners say they lose hundreds of thousands of dollars annually because insurance companies effectively set labor rates for repairs and steer business to certain "preferred" shops. Insurance industry officials deny the charge, but most body shop owners just want to see a level playing field and a true free market system in auto glass replacement and collision repair.

One Massachusetts body shop owner sued 34 insurers, claiming that the way they set labor rates has cost his business over \$270,000 since 1993. Brian J. Tennyson of Wayside Auto Body in Northampton, Massachusetts charged, in documents filed in Superior Court, that insurers "collectively control nearly 100 percent of the payments" made to shops, a situation that has cost him dearly.

Tennyson's attorney and brother, Chester L. Tennyson Jr., agrees that the system has hurt his brother's business.

Brian Tennyson and his wife work 70 to 80 hours a week, but their net income is only about \$24,000 a year.

"It's hardly fair compensation for the work he puts in," Chester said.

Walter Thomas, owner of Central Autobody Rebuilders in Worcester, Massachusetts, says that raising labor rates is a matter of survival for his business. "The rates haven't kept up with inflation," Thomas said. As a result, "it's causing problems" for shop owners and employees.

Autobody labor rates have stayed very low compared to the mechanical labor rate, since the mid-80s, and, according to an industry activist, have declined, in terms of real dollars adjusted for inflation, over the past 20 years. Labor rates over the past two decades have been stuck in the \$32 to \$38 range. Only Northern California seems to have bucked the trend. Body shops there get \$52 to \$54 per hour for labor.

What happened to the free market?

How is it that labor rates for mechanical repairs range from \$75 to \$100 per hour, but body shops will settle for labor rates of \$34 to \$38 per hour or less and give concessions to boot? Forty years ago, labor rates for sheet metal work were actually higher than labor rates for mechanical work in some areas.

We must demand that insurers pay fair compensation for our "skilled workmanship," or we continue to be on the short end of the insurance stick. Going unchallenged, insurers will continue pressuring body shops to lower their repair costs and cut profit margins.

Why continue to repair without making a profit? Low profits have been forcing thousands of owners to close up shop. Census reports show that the number of body shops in the United States has dropped significantly over the past 10 years. Experts predict that nearly half the body shops currently in business will shut their doors or be gobbled up by a larger facility over the next five years.

Some body shop owners say that not enough owners and managers are willing to say "no" to insurer demands. Of course it's not enough just to say "no." After all, the insurer is the party holding the checkbook and the pen that writes the check.

The shop owner should know what a proper repair calls for and put it in the estimate. In other words, it is important to write a proper estimate for the necessary repairs to restore the damaged vehicle to its pre-accident condition.

"Become familiar with the 'Procedural Pages' (P-pages) for all three major estimating systems—ADP, CCC, and Mitchell," says Scott Wilborn, co-owner of Precision Collision in Wake Forest, North Carolina. "Knowing what the P-pages say, along with the specifications of the paint supplier and/or the vehicle manufacturer, is essential to getting paid for your work."

As a State Farm adjuster told me, "Most shop owners don't know how to get paid for all their work, parts, and supplies because they don't know how to document the requirements to show the insurer what is necessary to restore the vehicle to its pre-accident condition."

It's a safe bet that the insurer knows exactly what's required to restore the vehicle to its pre-accident condition, but the insurer's goal is to pay out as little as possible. That's why they usually want cheap parts and quick turnaround time.

A veteran shop owner's perspective

"I've been in this business since 1967—nearly 38 years—and I have seen more drastic changes in the past five years from insurers than in all the other years combined," says Toby O'Neal, owner of O'Neal's Body Shop in Beaufort, North Carolina. "The insurance companies are squeezing us to death, in auto glass and collision repair claims."

"[Insurers'] actions are hurting my customers and my business," O'Neal explains. "My priority has always been my customer. Now the insurance company is dictating price, parts, and everything else. It's blatant price-fixing that hurts my customer and me. Whatever happened to free enterprise?"

"We used to blame the adjuster, but now they're programmed just like a military soldier," O'Neal adds. "They come in with their laptop computers already loaded with the insurance company's fixed prices. The adjuster has to do what he is told by the big insurance boss."

"One insurer [Geico] only wants to pay a flat rate of \$35 to install a windshield on a Lincoln Continental. That's a nearly three-hour job, or 2.8 according to the book time. At our already low \$38 per hour labor rate, we should be getting well over \$100 for this installation. But the insurer [Geico] says they will only pay \$35. I'll just sit home in a rocking chair if I'm forced to work at a loss," O'Neal laments.

And that may be just what the Goliath insurers want—keep squeezing until most of the independent shops give up. As a small business owner, you are entitled to a reasonable profit. Most insurers, in fact, make enough money that their profits have to be limited by state insurance regulators.

Consumer rights and safety

In addition to a reasonable profit, we can also promote safe customer repairs by pointing to specific language in automobile insurance policies. Every physical damage policy issued in the United States includes wording that can be used to a claimant's advantage. When it comes to safe repairs, this particular paragraph (which you'll find in most states' policies) is key:

"In the repair of your covered auto under the physical damage coverage provisions of this policy, we may require or specify the use of automobile parts not made by the original manufacturer. These parts are required to be at least equal in terms of fit, quality, performance, and warranty to the original manufacturer parts they replace."

This language is significant because it has been proven time and again that most imitation crash parts—generic or aftermarket—are not equal to original equipment manufactured (OEM) parts in fit, quality, or performance. Consumers should know that, even if their insurer requires non-OEM parts, an OEM part can be used when the non-OEM part is not equal in fit, quality, or performance.

Most shop owners fail to advise customers of their rights. As a result, they fail to protect themselves and their customers against insurance companies that count on the public's lack of knowledge.

Insurance monopoly

Insurers now have a near-monopoly on the collision repair process. Insurer-preferred shops and glass "networks" control the market. DRPs are on the rise, showing nearly 10 percent growth from 1998 to 2004. Many insurers are now successfully steering 50 to 80 percent of their vehicle damage claims through DRPs or glass networks.

More vehicles than ever are now being "totaled." These "total loss vehicles" represent a significant loss of work for body shops. Most state regulations specify that vehicles be declared a total loss when damage meets or exceeds 75 percent of the vehicle's value. But in reality, some insurers "total" a vehicle when the damage exceeds 50 percent.

"If shop owners and managers don't make a courageous effort to unite and confront the insurers when they don't play by the rules, they'll continue to take us to the cleaners until we're all bankrupt or out of business," says one shop owner who wishes to remain anonymous.

"The independent repairers are systematically discriminated against by insurers," says Erica Eversman, an attorney who works with body shops and consumers on collision repair issues. "Insurers and their vast legal and advertising coffers drive business to shops who are 'obligated' to them by agreement or contract to fraudulently compromise the interests of consumers."

According to Eversman, insurers (whose priority is "holding down the costs of premiums") "tortuously interfere" in established contracts of repair and discourage prospective consumers from going to shops that legally fulfill their duties to the consumer and protect consumer rights.

"Few consumers," she says, "have any knowledge in the area of auto repair, and are therefore misled about the cost and quality of repair. It's a little dance in which the consumer wants the highest quality of repair, and the insurer pays the bill and expects to pay as little as possible."

Stuck in the middle

"A DRP shop has a special arrangement with the insurer, initiated by the insurer, which spells out the obligations of the body shop to adhere to specific regulations from the insurer," Eversman explains. "Under this agreement, repair shops often make provisions such as writing estimates with generic or salvage parts as opposed to OEM parts, masking the cost difference from the customer, and accepting full liability for the work."

"These networks and DRPs," Eversman continues, "encourage the use of imitation parts, cheap labor, and other concessions by the body shop or auto glass shop in order for the cost of repair to be as low as possible in return for the promise of business referrals. Because insurers sign these agreements to minimize repair costs, the consumer's rights often are neglected."

What can we do?

Free enterprise, according to Webster's New Collegiate Dictionary, is the "freedom of private business to organize and operate for profit in a competitive system without interference by government beyond regulation necessary to protect public interest and keep the national economy in balance."

The insurance industry is blatantly trampling on consumer rights and strangling the life out of the collision repair and auto glass replacement free enterprise system.

Suppose a band of thugs started breaking down doors and windows to loot and vandalize the houses in our neighborhood. Would we really be saying there's nothing we can do about it? Of course not. We'd act swiftly and decisively.

This war on free enterprise system that is systematically destroying our livelihoods is being waged by talking suits in ivory towers, not a band of thugs. We're the ones in the trenches taking the bullets. So what are you going to do about it?

Mike Causey is a freelance writer, speaker, consultant, and lobbyist for the automotive industry. He specializes in collision repair, auto glass, insurance, and consumer rights issues. Mike is a Registered Lobbyist for the Independent Auto Body Association (IABA) and the Glass Industry Legislative Coalition. Mike is available for speaking engagements and business and political consulting.