

Illinois Department of Insurance 320 W. Washington St. Springfield IL

August 18, 2000

10:30 am

Present:

Dale Emerson - Asst. Deputy Director, Consumer Services Section IDOI

Robert Heisler- Deputy Director, Consumer Market Division IDOI

Michael Hessler - Asst. Deputy Director , Market Conduct Section IDOI

Mark Pierson - Princeton Auto Body, Princeton IL

Robert Styck - Styck's Body Shop, Gibson City IL

Wade Ebert - American Auto Body, Springfield, IL

Emerson: Well we do thank you for coming in today, and ...issue kind of explain your position

Pierson: I would like to make it clear that even though this particular issue came up with Country Companies, ... I'm not just trying to pick on them in particular because this is something we see that's ongoing with many companies right now, this just happened to be a very clear cut case, and I went back through my archives and I saw something that Bob wrote...back a few years on the insuring agreement vs. Caps, to the insurers.

Heisler: Ah... jog my memory

Pierson: When that first came out in your departmental newsletter, there was a big swing in the companies...they immediately backed off in the capping but it seems recently, especially in the last year we've seen a major push, not all the insurers...some of the majors have told us we do not cap and we are very sensitive about material reimbursements so...let us know if you see it in our company, but there are others that are notorious for using this to cut their claims loss....we were joking a little bit in the car that of we could have you guys here for six weeks and bore you to death with all our problems...but we thought it would be best just to stick to this issue and ask what the procedures would be or what enforcement is there....to tell the insurance companies to look at this...because in this particular Country Companies case I would be compelled to file a small claims case to recoup this money....and I just don't think it's fair that I should sue my customer because Country Companies violated insurance statute.

Heisler: Tell us...tell us about the situation.

Pierson: OK... I had a little fun with my computer and laid out the...this is based on that particular material cap. That was actually a Country Companies agents vehicle which had rolled over....so they came out to adjust a claim on their own agents vehicle. Instead of using what they call the standard formula on this job, because they knew it was extensive ...and there would be quite a bit of material involved, they capped it at \$400.00, and of course they do not call it a cap...they call it their material threshold and at the end of their estimate there is a disclaimer that

says if additional materials are needed they may be authorized by us....I notified the adjuster immediately that this was a cap...and he just shrugged and said that is what we are told to do, but let me know how much more it will cost...so this vehicle was repaired, we ran an actual accounting on it ...we ran an invoice system...we accounted for every can we used..right down to the smallest detail. I did submit the invoice to them...that's when they went back ...seeing that actual costs were higher than what their standard formula, that's when they came back and made a counter offer...I forgot the exact amount...\$174.00...\$160.00...as a side note I've never been paid that either. But the point is they take a take it or leave it attitude ...whatever benefits them..but they would not acknowledge actual costs on this job. And that is the whole problem with this capping issue...it would not be a problem if they would pay for actual costs when completed...at that point they compel us to go after their insured...our owner.

Heisler: There's uh there's several of these accounting....out there...ADP I think has the same thing.

Emerson: Do you guys rely on something like that in establishing your....

Pierson: Right, and some shops such as Bob's believe in carrying various accounting systems for the material...you have Mitchell material refinishing and Paintex...

Heisler : Paintex?.....What are the companies using?

Pierson: The companies....that's the problem...they aren't using anything...they can't account for their formulas

Emerson: I picked that up...

Ebert: Generally what will happen...they will set a rate per refinish hour that they'll pay...they'll come up to X number of dollars ..that pretty much yanks the teeth out of any rate per the refinish hour issue additionally we have some data bases specifically Mitchell who have gone to calculating only material for operations which are pourable and sprayable...I don't know when they changed it...I'm trying to get an answer from them...they changed from a dollars per hour for certain operations...

Emerson: Who changed?

Ebert: .Mitchell....so we are left with a situation where we've got to somehow account for the materials we are using...the accounting systems for material arose out of the capping issue years ago...I had a sit down with Nat...a couple of years ago when he first came into office...and I said look ...here a few of the issues that are within the industry...They said fine, we'll pay more, if you can provide an invoice for us...well fine, let's develop an accounting system, or spreadsheet or something so that we can as the end retailer can show all of our paint and material...as elements of a formula....my formula is weighed out on a scientific scale...my painter drops each element into it. So I buy the elements of the formula....and then we create the primers, paints clears are the same way. And we're left to try to create some type of a program to account for what we

created and properly bill them out for the actual usage. Now that we have the spreadsheet programs that allows us to do that...they still do not want to pay.

Pierson: It frightens them to death because we ran the last nine years on material costs and we have a average 75% increase in our costs in these materials, the insurance companies on average with their formulas have taken maybe a 15 to 18% jump....so the insurers recognize that there are huge deficits being absorbed by both their customers...and us.... I took Country Companies rate from 1991 formula rate of \$17.00 and if we take that up 75% we are up to like over \$30.00...which is little different that the \$21.00 they are paying now....

Heisler: ...what is that 21?...is that their hourly rate?....

Pierson:No... that is Country Companies determination of what the materials should costs per refinish hour....during the repair process.... the company themselves pay \$21.00 in Princeton, 22.00 in Peoria, 23.00 in Galesburg, 24.00 in LaSalle, 25.00 in Oregon, 26.00 in Rockford and 28.00 in Gibson...they can't account to us why there is a huge across the state difference because there is certainly no large difference in material costs across the country....materials in Boston are not that much different than here.

Ebert: So in these accounting systems that we use it allows me to...by the formula for the vehicle...to determine what my actual costs are for each element in the formula....

Heisler: Now whos formula is it?

Ebert: The formula is created by the paint company....you pull it from the computer or microfiche...and it will say x-number of grams....

Pierson: Here's the invoice used on that particular job I filed the complaint on....so we are getting fairly specific on our charges...

Emerson: So am I hearing you right that the your form of charging you do is probably more sophisticated than the capping than they are doing?

Pierson: Extremely more sophisticated....we know it, they know it and now their argument to us that they cap...then they make a counter offer that may be half of our actual usage and then they make the ridiculous argument that they cannot accept our invoice on the grounds it is self generated. Well...who is going to generate that invoice as the retailer....and I said can you dispute any item on the invoice which I would be happy to discuss or any item I may not used...they say well no we cannot do that, they just disavow the invoice and refuse to pay.

Styck: And another major problem I see is that they told me if you invoice the material we'll pay it, so I bought this system to invoice the material Paintex, which is made by the same people who put out the frame books, I'll send them a Paintex on a cap of say 400.00, and if they use their old time finish time per hour it might come up to say...\$560.00....ok..I'll invoice it through Paintex

with our markup and itemize everything like they asked for ...and at that point they remove the cap and step up to the old fashion way of so much per refinish hour ...but they still not pay the invoice...they refuse to pay the invoice ...they say we're not paying that.

Pierson: and our problem is the initial cap itself, they know going in that they have something useful to them...especially in the big cat claims we recently had in Chicago with hail damage...they will cap every hail damage job knowing that only a certain percentage of those jobs will be repaired...so they're knowingly shorting insured hundreds of dollars of material on every reimbursement check...which in itself we are really not concerned with as we are not repairing those cars, but then to have the audacity to come back and not reimburse for the cars that are actually are repaired...it is ridiculous.

Heisler: How many types of manuals are there out there? There's Mitchell, Paintex....what else?

Ebert: As far as I know as material calculators go....I believe DuPont has one....

Pierson: I would say those are the two major ones.....

Heisler: ADP...are you familiar with them?

Pierson: I'm familiar with ADP....they may have a material calculator

Ebert: I don't believe they do....the Mitchell as far as I know is not specific to paint code or paint manufacturer...they go off of an average of all the brands....it a good guess or bad guess....but if you consider at least the last time I looked the majority of cars are red...I lose because I paint more red cars than white...so as long we can be specific we can say now we can produce an invoice and now that we can... they say oh gosh...

Pierson: What it is coming down to is a few years the deficits were small enough that they were being absorbed...most of us were absorbing these costs...a shop owner came into my shop just a few days ago.. From a town twenty miles away who I hadn't seen for perhaps a year....and it was this issue...a real small shop but he came in and said I can't do it anymore, they said they would pay...I sent them my invoice and they shorted the payment \$100.00 he said what can I do? I can't subsidize the insurers any longer...I told him his only recourse was to bill the owner of the car. But...it is getting to the point every medium size repair up is going to be a loss for the insured or they are going to find themselves in small claims court with the repair shop.

Ebert: We see this with a lot of independents as well who get the guidelines from whatever company they are working for..even an out of state company will say our cap is this and this is how we pay for that with no regardspecifically with those domiciled in Illinois ...I don't know what the law is...

Pierson: State Farm told me last month we absolutely, positivley don't cap material...and if we do let us know let us know immediatly because we consider it an unfair claims practice..I said .that's nice to hear.

Heisler: You do not have problem with State Farm?

Pierson: Absolutely not....most companies we don't ...there are just a few.....

Hessler: State Farm paying you Paintex invoices?

Pierson: Yes they are...

Styck: They won't pay mine....

Ebert:They never pay mine!!

Styck: They absolutely refuse to pay...

Hessler: Are any of you gentlemen under contract with any insurance company right now for direct repair?

Pierson,Styck, Ebert: No

Emerson: You want to talk about the law a little bit? The statute itself.....Let's just talk about that a little bit...the statute sets forth in the insurance code ...you know this is passed by the general assy. We're the admisistrative agency to enforce the insurance code...it lays out standards by which insurance companys has to comply with. There are really kind of two measures of standards through the normal complaint process which we receive in such as yours or others complaints about a particular practice...once these practices are somewhat observed and maybe a trendand then we will conduct a market conduct examination on insurance companies...and there is where our real regulatory force comes into play....ok? The statute lays out....I'll just give you this....the statute lays out..what are acts that constitute a improper claims practices....if we can just refer to....section 154.6...thats on the first page here..I've drawn a little arrow there...acts consistuting improper claims practices...as you read those they have to be committed without just cause and in violation.....and if you go to page two...item number j, it says establishing unreasonable caps or limits on paints and materials when estimating vehicle repairs....it actually says unreasonable caps....it does not say they cannot have caps....ok? So I wanted to be sure we understood the ground rules on that to begin with.

Pierson: The only point that I am unclear on is though it being a insurance claim...they're taking a cookie cutter..they're not looking at these claims as individual claims...they taking cars that roll over...hail damage....\$400.00...that's it.

Emerson: Ok...but understand we have to take a look at this as a general business practice ...ok? So on individual claims yeah...they can establish a cap per claim...the question is as a general business practice are they establishing unreasonable caps?...that's our charge as a department so I'm hearing your information here today that appears to be two different systems out there that you use as paint estimators, yet the carrier is coming back with a dollar amount they set forth in the first estimate and then they ask you to submit documentation ...you submit it and then it

appears to be rejected..from what I'm hearing....and even right here at this table we have State Farm that is good standing with you but does not appear to be in good standing over here...

Pierson: Well...the company has not recognized this particular paint program..but they still reimburse you...

Heisler: It the program they have a problem with like...Paintex?

Pierson: The companies are a little nervous to recognize any material costing program...because this has been too profitable for them...

Styck: When I ordered my...from Mitchell, three or four weeks ago I ordered their material program, I talked to my Mitchell rep because I was getting such resistance on Paintex...I said OK, I'll go to their estimating system being they use Mitchell....

Hessler: Meanig they? State Farm?

Styck: Yeah..they use Mitchell and we write off the same system they do...and that way they can't say they don't recognize the system....because that's what ther're telling me...and the first thing the Mitchell rep told me was...yes, you need to get the system in and they will pay it because they are looking into it right now and they know they have to do something...I'm telling you , you'll get paid from this system...now I haven't had the opportunity to use this system on them yet, because I use the Paintex. 34:20

Hessler: How much difference is there between Paintex and Mitchell?

Styck: as far as the bottom line? I don't believe there is that much difference...

Hiesler: What companies are the biggest offenders in your

Pierson: Well...of course I see Country Companies but I talked to a shop in Joliet who has numerous caps with Farmers and he brought this up to the Farmers adjuster who said yeah, yeah, yeah we know but we are going to do it until someone stops us...those were his words...and as I said this has been going on for some time but our materials seem to be tied to oil prices....and when oil prices go down our materials still take their traditional 8% jump in March...and I just looked at eight years...but in eight years it has come to the point there is such a disparity between what the insurance companies are calculating for material and what we are spending...there is a breaking point.

Emerson: But on those Mitchell type systems...I take it that a fine craftsman can make money on those right?...so you can't repair less than that?

Pierson: Not when we are talking material....material is material...when the car rolls in I can put a paint gun in the hands of a high school kid and he will go through three quarts of paint just as I would go through three quarts of paint.

Emerson: So you are saying you can't discount material...so it is only your craftsmanship and your labor goes that skill applies in the ability area?

Pierson: Yeah...that is why we said we want to stay away from some of the other issues because this is so clear cut. And another point is that materials that are not being reimbursed by the insurance companies but still are....and they always make their own estimate of record....most shops will take that insurance company and make it their own estimate of record which sales tax is not being paid on three, four or five hundred dollars. I'm certain they add up over the course of a year in this state.

Ebert: My favorite windshields, you might have a \$1200.00 set up at a sublet item with no tax assessment. So I either charge that tax to the owner, pay that tax myself...every time I draw it to the attention of...in this case it was Country Companies...nothing happens so I charge the tax to the customer.

Pierson: They're avoiding the sales tax...generally we don't, we end up paying the sales tax, but a majority of shops don't.

Hiesler: You charge tax on your estimates?...but that doesn't include sublet business?

Ebert: When you write an item as a sublet item....every line item on almost every system gives you the option whether to include tax or not...as a sublet some defaults are set up on the insurance system, or anyone else will use that will if checked as a sublet would usually be checked as sublet labor which is not taxed...labor items in the state of Illinois are not taxed...but obviously a windshield as a sublet item of \$1200.00 should have tax on it.

Pierson: Here is a one that was capped...a windshield went into this vehicle, they put down sublet repairs \$516.74, they put down as sublet repairs...they didn't pay tax on that.

Hiesler: So how is the tax broken down to you on that?

Pierson: Well I pay the tax....I run a sheet of what was actually done to the vehicle and use that as the estimate of record. That breaks down all my parts and material usage and my accountant makes sure that all the parts I purchased which includes the windshield ...the tax is paid...I paid the tax on that windshield.

Hiesler: But why didn't you include the tax on your estimate?

Pierson: Oh but I did! But the insurance company did not take my estimate...they wrote their own...

Hiesler: ...and did not include tax.

Styck: On the material issue I think that the difference that what they pay, if they moved from their capping point of let's say \$400.00 and it's \$658.00 invoiced, with our markup, we're entitled to make a profit...they'll step up and pay \$526.00 because with the old time calculation that is what they come up to and that is all they will pay....and the consumer has to pay this out of their pocket.

Hessler: Why don't we hear any complaints this back from the consumers?

Styck: Well...most consumers that I've run into are scared to death to raise a fuss because they are scared that the insurance company is going to drop them, raise their rates or put them on their bad list where the next thing happens they're done with them.

Pierson: ...and we have situations where agents have come in and paid the difference to keep them as a customer, and a majority of the time the company reimburses them when they are threatened with suit and has them paid within hours, when they don't, the people ...

Heisler: Do have any experience in regards to how often that happens ? Would you have any examples of that happening?

Pierson: State wide it happens every single day...a Peoria shop sent me a cap two weeks ago...he called me up, it's Country Companies ...it's nearly a \$4000.00 job, we took their own formula which would be nearly \$900.00 in material, they capped at \$450.00....now why would their formula be valid all the way to \$450.00 and then cease to have relevance? What the insurance company is saying is that we have a valid formula to calculate material, but it only valid to the point, after that it cost us more money ... we're just going to cut it off right here... and I would venture to guess, this shop has never been reimbursed either.

Styck: and I think what I was heading to before is that where that falls under is unreasonable...I mean if it was \$5.00 or \$10.00 I think that is a reasonable difference...but when you are talking \$100.00, \$200.00 difference on one car for paint and material, that falls under unreasonable.

Pierson: What we are saying is \$450.00 cap on a \$4000.00 repair, they know that is an unreasonable amount...by their own calculations they know it is double that...but this gives them a good bargaining chip...the shop will invoice them for \$1000.00 in material, they will send them \$200.00...and say well here is \$200.00 more.

Styck: Some of the shops I know, are scared to death to say anything about an insurance company because they will start sending out these little letters that the shop you have chosen is charges more than....

Ebert: ...an American Autobody issue.

Heisler: Is the issue a dollar per hour difference...or are you doing with your hourly rate and just discounting the paint?

Styck, Pierson: No

Pierson: Like I said with Country Companies with their own logic and formulas and the average rise in materials over the years they would be like \$33.00 per refinish hour...but they are not, they flat out refuse....

Hessler: Is your refinish hour rate the same as your labor rate?

Ebert, Styck, Pierson: No, no it is not.

Pierson: No it is calculated...I do have also a refinish hour rate for smaller repairs when I do not run the cost invoicing program for every single item...every shop will be a little different but mine is like \$6.50 higher than what Country Companies reimburses right now.

Ebert: I guess what we're saying is that if insurance companies are going to write estimates using an hourly rate it should at least be reasonable....at that point where they say \$400.00 is enough...why in the hell did the rate even exist in the first place?

Pierson: See...they could have written an \$8,000.00 estimate here, it still would have been \$450.00 on this sheet....now, they have written estimates long enough to know....

Ebert: So in these cases where you then present an invoice...and you've gone through your items and even you didn't get nit-picky with every small thing....it's still there...it's just like selling a fender.

Emerson: Do you three gentlemen belong to an association?

Pierson: We pretty much represent all the associations in Illinois....I'm the vice president of what was ASA and now is AASPI.

Emerson: The name we have known over the years is John Loftus...is he still

Pierson: He is SCRS...he is retired now

Emerson: Oh, John's retired now.

Hessler: Do you ever go back after they put these caps on and give them an add order?

All: Yes...absolutely

Hessler: Do they pay it?

Pierson: Well if they were paying our add orders....we would not be sitting here now.

Ebert: There is such disparity in how insurance companies do business in Illinois...some come in and take care of things.

Pierson: We have some fantastic companies her in Illinois...they are fine to work with, they are professional , and what is ironic is that they tend to some of the smaller companies who are apparently making a profit in the bbusiness of insurance. They absolutely are professionals.

Heisler: Give me an example who you are talking about....

Pierson: Pekin insurance is good to work with....

Ebert: Cincinatti....

Heisler: OK...on the other side whos bad? Country Companies, State Farm....and....

Pierson: No...well State Farm in certain areas...every company may have something we don't agree with...Progressive....

Heisler: Progressive?...thats surprising....

Ebert: Sometimes you run into Allstate ...but they do a good job of steering to their shops that we don't see any....

Pierson: Yeah...we don't have a complaint against Allstate because we never see any of their insured....

Emerson: State Farm uses their preffered shops to....

Pierson: Well they do...but State Farm is very smart...they have their criteria shops,they have the Service First shops and now they even have a new designation of Select Service shops...and number two criteria shops....so one way or another we do see a State Farm repair now and then.

Heisler: So let us do this...let us do some research on our own and be in touch with these companies ...engage in some conversations and then get back to you.

Ebert: So far as Country Companies goes with me...I give them a Paintex invoice and they pay.

Hessler: There are some inconsistancies

Pierson, Styck: and we never are paid Paintex invoices....and said they never would....and that is aggravating to us.

Heisler: Where do your adjusters come out of?

Pierson: Mine come out of Peru Illinois.

Styck: Mine come out of Champaign, and Bloomington sometimes.

Ebert: and I don't know how they figure caps that come out of ... Country Companies... they are there...some Farmers are there....I haven't taken a look at the last Allstate...but they are there. The issue is'nt so much if I'm being paid...it's just that they are still capping material and they are little shops out there who are more afraid to stand up than American Autobody...who suffer daily and say well...what do I do? If he doesn't make money on material he has to make it elsewhere...do I steal this fender or repair this fender to make up the difference?

Pierson: and if you question Country Companies on their tactics such as caps...then from then on every customer recieves this letter which does not say anything derorotory about the shop...but it does infer you may not be reimbursed fully and have some out of pocket expense.

Styck: In my area...anybody who chooses my facility gets that letter...if they choose anyone else in the area...they do not get a letter.

Pierson: I see the same.

Ebert: I have one more question for you....I'm sure your familiar with the Ebert v State Farm thing from last year...I get phone calls from all over the state...the country...about the issue we just went through...people experiencing the same situation on a daily basis and what do I do? They want to know....is there anything the Department on Insurance can do? In our case, there wasn't anything that could be done...actually pop came in ...in 94 and things were starting to develop and he met with you...and that was part of the issue...at least in that case there is plenty of evidence this was going on...is there anything the department can do?

Emerson: I think what Bob says...we need to fully investigate the issue fully...

Heisler: and we will...I give you my word on that.

Pierson: We had a feeling you guys didn't have enough to do...so we came down for a visit.

Ebert: So are you saying you are looking at now ...that the tortious inerfiercece issue and how companies are treating providers in my industry...is that happening...are you considering that?

Pierson: Let me clear it up...your to close to it. What we are seeing is that insurance companies in collison repair are going to a medical type ppo....we're aware in the medical end at least there is some regulation by your department...but in our end it is a wide open...wild, wild west where

these companies are setting up these programs and steering customers into their direct repair shops with no oversight or regulation

Emerson: Don't you find Mark that most customer are just tickled to death if all they have to do is just pay their deductible and they don't have to worry about anything at all...

Pierson: Sure, that's the way it should be...and that is the way it should be in any one of our shops. But when they are told go to the dealership and everything will be taken care of...if you go to him...your going to pay something out of your pocket....at that point I need affidavits and you know what that would be like trying to get that from a consumer....they are setting up repair networks which is where we see a majority of the fraud, we inspected a Progressive repair which the company purchased the car to get it off the street.

Emerson: are you under contract to do inspections?

Pierson: No, it was a customer that Progressive was giving such problems to, I told her to go through their program and see how the car comes out, we inspected and...this was before the State Farm trial and some defective imitation parts and fraud was involved...Progressive bought the car for \$16,000.00 and took the car...and that facility is still their direct facility.

Styck: Allstate did the same thing at my place and so did American Family... they bought two cars after they were repaired....one was a \$17000.00 repair...and they paid to have it done...and I inspected it...they came up and paid for the car.

Pierson: We understand this is a whole new can of worms....we would like to come back someday and discuss this with you.

Styck: There a lot of little things out there...I feel we're entitled to do business as free Americans in the business world like Country Companies or anyone else...and we're finding this dictatorship where they say this is what we do....where it doesn't say in their policy we don't pay for this or we don't pay for that.

Hessler: You say you represent a association....is there a separate director for your association?

Pierson: Our executive director here in Springfield is Mike Lane

Hessler: Mike Lane...does he know you are here today?

Pierson: Sure.

Heisler: Allright....we have a lot on our plate right now...I will promise you that I will at least get back to you within a month..