

PROPERTY DAMAGE

I. The Insurance Policy

A. Liability Coverage

The standard auto policy only indicates “we will pay damage for bodily injury or property damage for which any insured becomes legally responsible because of an auto accident” There is nothing in the liability portion that explains what is covered or not covered under the policy. Liability coverage will include all types of property damage

B. Collision Coverage

The standard auto policy sets out what is considered collision and what is other than collision. The policy also indicates the additional duties for Coverage for Damage to Your Auto. They are as follows:

- 1) Take reasonable steps after loss to protect your covered auto or any non-owned vehicle and their equipment from further loss. We will pay reasonable expenses incurred to do this.
- 2) Promptly notify the police if your covered auto or any non-owned auto is stolen
- 3) Permit us to inspect and appraise the damaged property before its repair or Disposal

The policy also limits what it may pay for equipment that was added to the car.

As this paper is not focusing on the specific policy provisions of each coverage. As collision coverage limits payments on stereos and its accessories, or to other custom furnishings in the vehicle, a liability carrier has to consider all of the damage that was done.

Collision Coverage does give you a right to an appraisal if the insured and the insurance carrier cannot agree on the loss amount. Each side will select an appraiser who will select an umpire. The appraisers then submit their appraisals and if it is different they will submit the appraisals to the selected umpire. A decision agreed to by any two will be binding. Each will pay its appraiser and bear the

expenses of the appraisal and the umpire equally. This provision gives some added leverage without going through an entire trial.

II. Repairable v. Non-Repairable

A. Estimates

- 1) Do you have to obtain more than 1 estimate?

No

If the insurance company requests more than 2 estimates the insurance company should pay for the additional estimates. 11 N.C.A.C. 4.0419 (1).

- 2) Must the Client go to a shop the adjuster recommends or suggests?

NO

An insured or claimant can select his/her own repair shop. N.C. Gen. Stat. §58-3-180 (2006)

The insurance adjuster can suggest a shop (some call it a priority repair option or blue ribbons shop) but the insured/claimant has no responsibility to go there. The insurance company is not allowed to take a kick back from the body shop. N.C. Gen. Stat. §58-33-76 (2006).

There are benefits to going to a PRO shop, for instance:

- a) A guarantee on the repair work done from insurance company not just the body shop
 - b) Less rental issues because the body shop is recommended by insurance company, the insurance company will get any additional rental items back from the shop
 - c) Less fighting to agree to fix car
- 3) Must the client go to the adjuster at a Drive-In location or meet an adjuster?

No

A Drive in claim service must be on a voluntary basis. 11 N.C.A.C 4.0417. A claimant should be able to request an insurance company adjuster to come to his/her house and if the adjuster is

too far away the adjuster can hire an independent appraiser. 11 N.C.A.C. 4.0419(2).

Adjusters typically write an estimate on what is visible to the naked eye; they are not breaking down the vehicle to see the damage behind the bumper. The body shops will typically run an estimate that will include items they know are typically damaged based on their experience.

It is also important to review the estimate to see how much of the estimate is labor time and how much is allotted to parts. If the labor time is high, you can help defeat a MIST type case to indicate how much time it would take to repair even though the costs of the parts may be low.

When repairing a vehicle, an insurer will replace parts with an original manufacturer part or non original manufacture part also called an after market part. 11 N.C.A.C. 4.0426 indicates no insurer shall require the use of an after market par unless the market part is at least equal to the original part in terms of fitness, quality, performance and warranty. If an after market part is used, the estimate must clearly indicate it is an after market part. Insurers can use the aftermarket parts but it has to be clear on the estimate.

4) Is the claimant entitled to a copy of the estimate?

YES

A claimant is entitled to a legible front/back copy of the estimate with any indication of what will not be included or paid. You may see on an estimate list OR or CR noted which indicates the Owner Requested or the Customer Requested a certain item. This can be a clue that the body shop may not think the item is not related to the accident.

If an item of damage is denied by the adjuster, your client should receive in writing why the item is denied, which typically will be on the estimate.

5) Can a claimant claim additional damage as the vehicle is being fixed or after it is fixed?

YES

This additional damage is referred to as supplemental damage. Typically as a body shop is breaking down a vehicle, the body shop will contact the adjuster to let the adjuster know there is additional damage that was not seen nor factored in originally. If the body shop can help explain that the additional damage is related to the accident, typically the adjuster and the body shop work it out to get the vehicle fixed.

Sometimes the additional damage is not noticed until after the vehicle is fixed and the owner has driven it and realizes it is not correct. Depending on the type of estimate done, the owner can take the car back to have the repairs fixed properly. Most body shops offer a guarantee of their work, in addition if it was a priority shop that the adjuster referred the owner to, the insurance company will typically guarantee the work that is done. If the owner picks his/her own shop, the owner needs to notify the adjuster immediately of the additional damage.

11 NCAC 4.0421 (4) indicates if a claimant who has executed a release or full payment of a claim involving a repair to a motor vehicle, it shall not bar the right of the claimant to assert a claim for property unknown to either the claimant or the insurance carrier prior to the repair of the vehicle, which damages were directly caused by the accident and which damages could not be determined or known until after the repair or attempted repair of the motor vehicle. Claims asserted within 30 days after repair shall be considered promptly asserted.

Because of this administrative code, I always suggest to my clients to notify the insurance carrier of any problems they are noticing immediately in order to be within the 30 days if at all possible. This doesn't mean all claims after 30 days are barred as you can argue about what is reasonable and when the owner discovered the problem.

- 6) Is there a time frame in which an adjuster has to respond to paying the property damage?

YES and NO

There is no specific time frame, but adjusters are given guidelines through statutes and the administrative code to act promptly N.C. Gen Stat §58-63-15(11)(b). They must state under what part of the policy the damage is being paid, ie: uninsured motorist or collision, and they cannot hold up settling the property damage in order to

get the personal injury claim to settle. NC Gen. Stat. §58-63-15(11)(m).

B. Total Loss

- 1) How do you determine when a vehicle is totaled and is non-repairable?

N.C. Gen. Stat. § 20-71.3(h)(1) states... "a branded title shall be issued if the cost of repairs, including parts and labor, exceed 75% of its fair market value at the time of the collision or other occurrence." The statute also sets out a distinction if the vehicle is more than 6 model years old, the 75% is determined excluding the cost of the air bag restraint system.

It is important to note the statute says SHALL because many people if they decide to keep the vehicle do not want salvage written across the title and thus attempt to get the adjuster to not total the vehicle.

In fact, 11N.C.A.C. 4.0418 (5) indicates no insurer nor its agents shall enter into any oral or written agreements to limit any original or supplemental claims to artificially keep the repair cost below 75% of its pre-accident value, if the basically all the damage exceeds 75% of that value.

- 2) Can you include additional items other than straight repair costs?

Maybe

Depending on the insurance company, you can argue economics to get a vehicle totaled out. You can get them to see the damage amount, the likely supplement damage that will occur, the rental time and then a depreciation claim will be filed. By the time the insurance company pays all of these damages, it may be cheaper to total the car and get more money for salvage.

See Roberts v. Pilot Freight Carriers, 273 N.C. 600, 160 S.E.2d 712 (1968)

C. Towing

- 1) How many tows will an insurance company pay?

Usually 2, if the car is not SAFELY drivable.

The insurance company typically will pay for towing from the accident scene to the towing facility and then one to the repair shop. Then if at the body shop, the vehicle is totaled, the insurance company will pay to tow it to the salvage yard.

If a claimant wants to keep the vehicle and wants it towed to his/her house, if the insurance company has paid for 2 tows, many times they won't pay for the extra towing charge.

D. Storage

- 1) How much storage does the insurance company have to pay?

It Depends

An insurance company will pay storage fees that accrue on a totaled vehicle or on a vehicle that is repairable. However, it will not be an indefinite period of time. Always suggest to your clients to move the vehicle to the repair shop where it will be fixed or move it home. A tow charge is much cheaper than ongoing daily charges for storage.

The insurance company pursuant to 11 NCAC 4.04118 (6) can limit the storage fees they will pay. The insurance company can cut off storage fees three days after they notify the owner of the vehicle AND the storage facility in WRITING that the insurer will no longer pay storage fees. The code sets out all of the requirements the insurance letter needs to specify to each the owner and the storage facility. The letter to the storage facility must state the name, address and if known the telephone number to the owner. The letter to the owner must state the name, address and telephone number to the storage facility.

Many times the insurance company notifies your client it won't pay for additional storage but doesn't also notify the facility or the insurance company verbally tells your client they won't pay storage after a certain date. If the adjuster is slow on handling the property damage or doesn't make a decision, they could pay for the entire storage until they comply with the code.

If your client is stuck with a large storage fee on a totaled vehicle, many times the storage facility will take the vehicle for the storage fees and call it quits. However, the code sets forth that no insurer shall abandon the salvage to a towing or storage facility without consent of the facility. And if the checks are issued to the owner of the vehicle, it shall be jointly issued to the owner and the facility. 11 N.C.A.C. 4.0418(6).

III. Determining FMV- Fair Market Value

A. Definition

Fair Market Value (FMV) is the actual cash value of the vehicle. It is an amount a seller is willing to sell and a buyer is willing to buy. FMV can be affected by the local region in which one lives. It is not usually what the pay off is on the vehicle. If a claimant has done any recent additional work to the vehicle, he/she needs to send in the receipts for additional work that was done which could make the value of the vehicle higher. For example replacing an engine 2 months prior to the accident should increase the amount of one's FMV offer.

Fair market value is crucial in determining if a vehicle is a total loss, since the repair estimates have to equal or exceed 75% of the pre-accident actual cash vehicle.

This is somewhat of a catch 22, since you want the value of the vehicle to be lower to get to 75% easier to total the vehicle, but you also want the highest possible value for your client if the vehicle is totaled.

B. How to Determine

There are various ways to help determine the fair market value of the vehicle, since most people do not have an offer to sell their vehicle within days of the accident.

- 1) If the claimant just purchased the vehicle within the last 30 days, the contract price can be used as evidence of what a willing seller would buy the vehicle for.
- 2) Typically the NADA is used. The NADA can be found online or in the local library. The NADA lists the MSRP, trade in and retail values. In addition, NADA deducts for high mileage and adds value for low mileage along with various features the car may or may not have. There is some speculation to this as well since determining a vehicle to be in fair, good, excellent

condition is subjective. However, NADA is often judicially accepted by the courts in showing a fair market value of the vehicle.

- 3) Kelly Blue Book.—another book like NADA, which is usually higher, but has less add ins and deductions than the NADA and most of the values include costs that it would take to advertise and to sell the vehicle.
- 4) The Insurance way.

The insurance way is when they use an outside source to determine the value. Typically the insurance company gives the information about the vehicle, what condition it is in, type of mileage and then the “appraisal company” finds comparable vehicles in your market and averages them out.

If an insurance company uses this, your client needs to get written statement of what information was sent to the appraisal company and what each item was pulled into the market. The client can then review each to get the adjuster to pull some of the not similar vehicles out of the total to get a higher average. This can be helpful if your client wants a similar car because some insurance companies will help your client purchase the vehicle in order to settle the total loss claim. It is rare, but some will do.

In fact the code indicates if the claimant is unable to reach an agreement with the insurer, the insurer will base its offer not just on regional average, but also local market of comparable vehicle. If there is no comparable vehicle, then quotes from at least 2 qualified dealers within the local market area can be used. 11 N.C.A.C. 4.418(1).

- 5) Independent Appraisal

A claimant can hire an independent appraisal to help determine the FMV of the vehicle. Typically this will cost anywhere from \$200- \$500.

- 6) Dealership

A dealer is in the business of buying and selling cars and may give the claimant a written statement about what he could have sold the vehicle for had it not be wrecked. Some adjusters will increase the FMV offer with a dealer’s opinion but most balk at

this. However pursuant to the code, get two qualified dealers in the local market and hopefully the insurance company will agree to the value of the vehicle. The problem is most dealers do not want to get involved in this for clients as they don't want to go to court. However, if a claimant has an offer from an insurance company and takes it to a dealer for an opinion, many times if it is outrageously low, the dealer will be more inclined to get involved.

C. Salvage

Once the vehicle is determined to be a total loss and an offer is made. The adjuster will make two offers, one that indicates the insurance company will keep the vehicle and sell it for salvage and one that indicates the client can keep the vehicle. The majority of the time the insurance company keeps the vehicle.

If the client wants to keep the vehicle, the adjuster has to determine the salvage value of the vehicle in order to deduct the salvage from the FMV. The salvage value is what one may be able to sell the vehicle for as parts. The client can ask the insurance company for name and address of salvage dealer who will purchase salvage for allotted salvage amount before deducting salvage. This is just about impossible, most salvage yards do not know how much it will sell for until they get the vehicle and can sell some of the parts.
11 N.C.A.C. 4.0418(3)

IV. LOU- Loss of Use/Rental

A. What is Covered?

The insurance company owes a client for the loss of use of his vehicle while the vehicle is out of use. The insurance company owes for reasonable repair time if the vehicle is repairable.

Reasonable repair time is how long it would typically take to fix a vehicle. The estimate is the go by for the amount of time it will take to fix. The rental time is determined by factor how long it will take to get parts and how long to get the vehicle fixed, if the vehicle is not safely drivable. If the vehicle is safely drivable, the insurance company will expect the parts to be received, then for your client to have the vehicle fixed. If the repair time is less than 5 days, the insurance company will not pay for weekend rentals since it can be fixed in less than 5 days.

If a client picks his shop to have his vehicle fixed at and the shop is

running behind on repairs due to hurricanes lets say, the insurance company won't pay loss of use for that additional delay as it is not reasonable and the client can choose another body shop. Using a PRO shop can help because it is one of the shops the insurance company recommended and as such, if the delay is due to the shop, most insurance companies will deal with the body shop versus your client.

- 1) Does an insurance company have to provide a rental?

NO

The insurance company does not have to place a person in a rental; it can reimburse a client for the reasonable rental rate for a reasonable time. The insurance companies prefer to "cash out" the rental. This means the insurance may offer to pay a certain amount for loss of use and the client can then decide to rent a vehicle or use another spare vehicle.

- 2) Does the insurance company owe collision damage waiver (CDW)?

DOUBTFUL

The tortfeasor needs to place the individual in the place they were in before the accident not necessarily a better position. You can argue they are in a worse position due to having to pay insurance on a vehicle. Unfortunately, if your client doesn't carry collision on his own vehicle, the insurance companies usually will not pay for the extra cost since the client didn't have collision coverage on the vehicle before.

- 3) Does the insurance company have to pay for a similar vehicle?

YES

If you drive a Ford Explorer, the insurance company may not want to pay for a similar vehicle, however, the claimant can insist on a similar vehicle. Typically once a client explains the situation like they have 5 kids and need the space or I have to work and carry large items, most adjuster's understand this and will increase. If the company still refuses to pay for a similar vehicle have your client pay for the rental and request reimbursement later. Most of the time the owner will be reimbursed for the rental *See Roberts v. Pilot Freight Carriers*, 273 N.C. 600, 160 S.E.2d 712 (1968).

Be mindful that an owner is entitled to the cost or renting a similar vehicle whether or not the owner actually rents a vehicle.

B. Totaled vehicles

The pattern jury instruction reads an owner may recover the loss of use of a non repairable vehicle only if a substitute vehicle is not immediately obtainable. There is no specific case law as to what is immediate; but typically you can get about 2 weeks of rental depending on the various circumstances. See *Roberts v. Pilot Freight Carriers*, 273 N.C. 600, 160 S.E.2d 712 (1968). N.C.P.I., 106.67.

C. Lost Profits

The owner can have a claim for lost profits if the vehicle was used for business. One has to show reasonable efforts to obtain a substitute to avoid losing money and to show he actually lost money by the inability to use the specific type of vehicle, then one can recover lost profits in place of loss of use. See *Amerison vs. Willis*, 109 N.C. App. 297, 426 S.E.2d 428 (1993) and *Ling v. Bell*, 23 N.C. App. 10, 207 S.E.2d 789 (1974).

IV. Depreciation/Diminution of Value

A. What is Depreciation?

Depreciation is the amount a vehicle has decreased in value due to an accident. Depreciation is determined by determining the fair market value of the vehicle immediately prior to the accident and the post accident value of the vehicle after repair.

The depreciation amount is important because a seller has to disclose damage that was done to his/her vehicle that exceeds 25% of the value of the car if the car is less than 5 years old. NC Gen. Stat. §20-71.4 Many adjusters use this to deny depreciation claims for vehicles that are older than 5 years. The statute does not indicate there is no depreciated value to older vehicles, it just indicates if the car falls within those guidelines the seller may be responsible to the buyer for the seller's misconduct. As the seller may not have to tell a buyer about the damage, buyers are more aware today of wrecked vehicles in my opinion. First, buyers many times may be able to see a different shade of paint, or they have a mechanic look at it first who can tell the buyer about a different part

or overspray on underneath parts. Secondly, we have the internet - Car Fax can indicate when a vehicle has been damaged or was part of another claim. Thirdly, when a vehicle is traded in, most dealers, or even places like Car Max can tell a car was wrecked and are not going to pay the same amount for the vehicle had it not been wrecked. Let's face it, it doesn't matter how much damage was caused to the vehicle, a willing buyer will never pay full value for a wrecked vehicle.

B. When to File

The NCAC indicates if a release or full of claim is executed by a third party involving a repair to a motor vehicle, it shall not bar the right of the third party claimant to promptly assert a claim for diminished value, which diminished value was directly caused by the accident and which diminish value could not be determined or known until after the repair or attempter repair of the motor vehicle. Claims asserted within 30 days after repair for diminished value should be considered promptly asserted. 11 N.C.A.C. 4.0421(5).

This does not mean you have to file within 30 days as this is a guideline for adjusters on the handling of loss and claim payments. However some insurance companies use this administrative code as a statute of limitations. If a release has been signed I think more weight would be given to this administrative regulation because most releases are general even to property damage. However, I argue you still have 3 years from the date of the accident to make your depreciation claim.

It is best to avoid the issue of the 30 day language to have your client file notice of a depreciation claim within 30 days of picking the car up from the body shop.

C. How to File?

In order to prove your 30 days to the adjuster, it is best to send by fax with a confirmation received or by certified mail. Most adjuster then will not have issue with a depreciation claim proceeding.

D. How to Determine?

In order to determine how a vehicle has depreciated you have to go back to figuring fair market value of the vehicle before the accident, just like you would if the vehicle was totaled. Then you have to have some indication of what the vehicle is worth now after repairs.

The best way to prove a depreciation claim is through an Independent Appraiser. They do cost some money but they typically do a very good job explaining why and how a car is devalued now even after it has been repaired.

You can use a dealership if the dealer will put in writing what it could have sold the car for before the accident and what it could sell it for after the accident. Car Max will typically do a good job to explain what caused a decrease in value and what it discounted out of the value to be able to show is from the accident repairs.

The adjuster will also review the estimate and the vehicle and come up with his/her own value of depreciation. Typically they figure 10 to 20% of the estimate and make an offer based on that.

V. Releases and Subrogation

A. Property Damage only releases

Be sure if an insurance company requires this to be signed it could operate as a general release to your client's bodily injury claim. In addition, if your client has any additional damage to the car that is discovered or has a depreciation claim, you need to file the claims within 30 days to avoid an issue of asserting your claim within a reasonable period of time.

B. General releases

When signing your general release on your bodily injury claim, be sure all the property damage matters are taken care of. There should be no depreciation claim, loss of use or additional damage claim outstanding.

C. Subrogation

If your client's insurance company paid for the damage under collision coverage, sometimes there is a release to sign to indicate you will assist your company in pursuing the collision claim. However, even if no release is signed, your client, as an insured has a duty to assist his/her insurance company in recovering that money. So before signing a release, be sure the insurance company has been reimbursed by the tortfeasor's carrier. In addition, if your client's carrier has not been reimbursed, be sure to include the claim for property damage, loss of use and the deductible in your bodily injury complaint.

VI. Filing Suit

If you have only a property damage case, you can file suit once an adjuster denies the case on liability or makes a bad offer. However, if your client is the injured party and is also the owner of the vehicle, you have to file the property damage and bodily injury case together. You cannot file just for property damage, get it settled and file a voluntary dismissal; res judicata will apply to your bodily injury case.

In addition, if you file for the bodily injury claim and do not include the depreciation claim, you could be barred from adding it to the complaint or recovering for your client.

When you are getting ready to file a lawsuit due to bodily injury claim, you need to be sure the property damage was paid and there are no outstanding claims arising from the property damage or you could be committing malpractice

VII. Using the damage to your benefit on a PI case

A. Photos inside/out

Get photos from the outside, underneath and the inside if there was damage on the inside or to show the items that could have been thrown around and smashed.

If the property damage was handled before, ask the insurance company for a copy of the photos at the front end or verify he/she has them and developed them so at suit time it will not be an issue of "lost" photos

A picture can still speak a thousand words when it comes to jury trials. A photo that shows a lot of damage, can help a jury understand causation in a real sense vs. a hypothetical - reasonably likely testimony from a medical provider. If the photo says, how did anyone survive that impact?, causation should be one step closer to proving.

B. Estimate frame damage / labor time

It is important to review the estimate to help explain damage to the vehicle.

Look at how long it took to repair an item, if it was replaced or just pounded out. If a steel bumper was replaced this could help show a good impact. Frame damage can explain the impact was more

substantial than the outside minimal damage. Quarter panel damage can explain a hard impact than what you may see in a photo. Undercarriage damage in an estimate can show there was more damage that went underneath than what may be shown in a photo of just the rear bumper.

Review the police report to see what the TAD number is to see if it matches with the estimate. The TAD helps explain what the officer thought of the severity of the impact, it if was none (0) to most severe (7).

Know that the title numbers on vehicles are put through an indexing system that the insurance adjusters use for determining fraudulent claims. So look at the estimate to see if a body shop coded something at owners request or prior damage as that may indicate something isn't right.

APPENDIX

11 N.C.A.C. 4.0417 (2006)

.0417 DRIVE-IN CLAIM SERVICE FACILITIES

No insurer shall require any claimant to use a drive-in claim service operated by the insurer. The claimant's voluntary utilization of a drive-in claim service shall not prejudice the right of either party to obtain independent appraisals and negotiate settlement on the basis of such appraisals.

TITLE 11. DEPARTMENT OF INSURANCE
CHAPTER 4. CONSUMER SERVICES DIVISION
SECTION .0400. PROPERTY AND LIABILITY

11 N.C.A.C. 4.0418 (2006)

.0418 TOTAL LOSSES ON MOTOR VEHICLES

The commissioner shall consider as prima facie violative of [G.S. 58-63-15\(11\)](#) the failure by an insurer to adhere to the following procedures concerning settlement of covered "total loss" motor vehicle claims when such failure is so frequent as to indicate a general business practice:

(1) If the insurer and the claimant are initially unable to reach an agreement as to the value of the vehicle, the insurer shall base any further settlement offer not only on published regional average values of similar vehicles, but also on the value of the vehicle in the local market. Local market value shall be determined by using either the local market price of a comparable vehicle or, if no comparable vehicle can be found, quotations from at least two qualified dealers within the local market area. Additionally, if the claimant represents that the vehicle actually owned by him was in better than average condition, the insurer shall give due consideration to the condition of the claimant's vehicle prior to the accident.

(2) Where the insurer has the right to elect to replace the vehicle and does so elect, the replacement vehicle shall be available without delay, similar to the lost vehicle, and paid for by the insurer, subject only to the deductible and to the value of any enhancements acceptable to the insured.

(3) If the insurer makes a deduction for the salvage value of a "total loss" vehicle retained by the claimant, the insurer, if so requested by the claimant, shall furnish the claimant with the name and address of a salvage dealer who will purchase the salvage for the amount deducted.

(4) If a written statement is requested by the claimant, a total loss payment by an insurer shall be accompanied by a written statement listing the estimates, evaluations and deductions used in calculating the payment, if any, and the source of these values.

(5) When a motor vehicle is damaged in an amount which, inclusive of original and supplemental claims, equals or exceeds 75 percent of the preaccident actual cash value, as such value is determined in accordance with this Rule, an insurance carrier shall "total loss" the automobile by paying the claimant the preaccident value, and in return, receiving possession of the legal title of the salvage of said automobile. At the election of the claimant, or in those circumstances where the insurance carrier will be unable to obtain an unencumbered title to the damaged vehicle then the insurance carrier shall have the right to deduct the value of the salvage of the total loss from the actual value of the vehicle and leave such salvage with the claimant subject to the insurance carrier abiding by Subparagraphs (3) and (6) of this Rule. No insurer, adjuster, appraiser, agent, or any other person shall enter into any oral or written agreement(s), by and between themselves, to limit any original or supplemental claim(s) so as to artificially keep the repair cost of a damaged vehicle below 75% of its preaccident value, if in fact such original and any supplemental claim(s) exceed or would exceed 75% of the vehicle's preaccident value.

(6) The insurer shall be responsible for all reasonable towing and storage charges until three days after the owner and storage facility are notified in writing that the insurer will no longer reimburse the owner or storage facility for storage charges. Notification to the owner shall include the name, address, and telephone number of the facility where the vehicle is being stored. Notification to the storage facility shall include the name, address, and, if available, telephone number of the owner. No insurer shall abandon the salvage of a motor vehicle to a towing or storage service without the consent of the service involved. In instances where the towing and storage charges are paid to the owner, the check or draft for the amount of such service shall be payable jointly to the owner and the towing or storage service. Amended Eff. April 1, 1993; April 1, 1989; July 1, 1986.

Statutory Authority [G.S. 58-2-40](#); 58-63-65;

TITLE 11. DEPARTMENT OF INSURANCE
CHAPTER 4. CONSUMER SERVICES DIVISION
SECTION .0400. PROPERTY AND LIABILITY

11 N.C.A.C. 4.0419 (2006)

.0419 MOTOR VEHICLE REPAIR ESTIMATES

The commissioner shall consider as prima facie violative of [G.S. 58-63-15\(11\)](#) the failure by an insurer to adhere to the following procedures concerning repair estimates on covered motor vehicle damage claims submitted when such failure is so frequent as to indicate a general business practice:

(1) If the insurer requires the claimant to obtain more than two estimates of property damage, the cost, if any, of such additional estimates shall be borne by the insurer.

(2) No insurer shall refuse to inspect the damaged vehicle if a personal inspection is requested by the claimant. However, if the damaged vehicle is situated other than where it is normally used or cannot easily be moved, the insurer may satisfy the requirements of this Section by having a competent local appraiser inspect the damaged vehicle.

(3) When the insurer elects to have the claimant's property repaired, the insurer shall, if so requested by the claimant, furnish the claimant with a legible front and back copy of its estimate. This estimate shall contain the name and address of the insurer and, if the estimate was prepared by a repair service, the name and address of that service. If there is a dispute concerning pre-existing damage to the vehicle which the insurer does not intend to have repaired, the extent of such damage shall be clearly stated in the estimate.

(4) If requested by a claimant, an insurer shall provide to the claimant copies of the estimate and all supplements thereto that it uses to offer a settlement. Amended Eff. April 1, 1993; April 1, 1989.

Statutory Authority [G.S. 58-2-40](#); 58-63-65;

TITLE 11. DEPARTMENT OF INSURANCE
CHAPTER 4. CONSUMER SERVICES DIVISION
SECTION .0400. PROPERTY AND LIABILITY

11 N.C.A.C. 4.0420 (2006)

.0420 WRITTEN CONFIRMATION OF ORAL AGREEMENTS

(a) If an insurer, by telephone or otherwise, accepts liability or advises a claimant to have damaged property repaired with the understanding that the insurer will pay or reimburse the claimant, the insurer shall, if requested by the claimant, promptly confirm the understanding in writing. Such writing shall clearly state the responsibility assumed by the insurer for payment of incurred costs.

(b) If so requested by the claimant, the insurer or its representative shall confirm in writing all other oral agreements between itself or its representative and the claimant.

Authority [G.S. 58-2-40](#); 58-3-100; 58-63-15;

TITLE 11. DEPARTMENT OF INSURANCE
CHAPTER 4. CONSUMER SERVICES DIVISION
SECTION .0400. PROPERTY AND LIABILITY

11 N.C.A.C. 4.0421 (2006)

.0421 HANDLING OF LOSS AND CLAIM PAYMENTS

The commissioner shall consider as prima facie violative of [G.S. 58-3-100](#) and [58-63-15\(11\)](#) failure by an insurer to adhere to the following procedures concerning loss and claim payments when such failure is so frequent as to indicate a general business practice:

- (1) Loss and claim payments shall be mailed or otherwise delivered within 10 business days after the claim is settled.
- (2) Unless the insured consents, no insurer shall deduct from a loss or claim payment made under one policy premiums owed by the insured on another policy.
- (3) No insurer shall withhold the entire amount of a loss or claim payment because the insured owes premium or other monies in an amount less than the loss or claim payment.
- (4) If a release or full payment of claim is executed by a claimant, involving a repair to a motor vehicle, it shall not bar the right of the claimant to promptly assert a claim for property damages unknown to either the claimant or to the insurance carrier prior to the repair of the vehicle, which damages were directly caused by the accident and which damages could not be determined or known until after the repair or attempted repair of the motor vehicle. Claims asserted within 30 days after repair shall be considered promptly asserted.
- (5) If a release or full payment of claim is executed by a third party claimant, involving a repair to a motor vehicle, it shall not bar the right of the third party claimant to promptly assert a claim for diminished value, which diminished value was directly caused by the accident and which diminished value could not be determined or known until after the repair or attempted repair of the motor vehicle. Claims asserted within 30 days after repair for diminished value shall be considered promptly asserted. Amended Eff. February 1, 1996; April 1, 1993; April 1, 1989; July 1, 1986.

Authority [G.S. 58-2-40](#); 58-3-100; 58-63-65;

TITLE 11. DEPARTMENT OF INSURANCE
CHAPTER 4. CONSUMER SERVICES DIVISION
SECTION .0400. PROPERTY AND LIABILITY

11 N.C.A.C. 4.0423 (2006)

.0423 ETHICAL STANDARDS

(a) Every agent, limited representative, broker, adjuster, appraiser, or other insurer's representative shall, when in contact with the public:

(1) promptly identify himself and his occupation;

(2) carry the license issued to him by the Department of Insurance while performing his duties and display it upon request to any claimant, any repairer at which he is investigating a claim or loss, any department representative, or any other person with whom he has contact while performing his duties;

(3) conduct himself in such a manner as to inspire confidence by fair and honorable dealings.

(b) No claims management person, agent, agency employee, limited representative, broker, adjuster, appraiser, or other insurer's representative shall:

(1) accept any gratuity or other form of remuneration from any provider of services for recommending that provider to claimants;

(2) purchase salvage from a claimant;

(3) intimidate or discourage any claimant from seeking legal advice and counsel by withdrawing and reducing a settlement offer previously tendered to the claimant or threatening to do so if the claimant seeks legal advice or counsel. No adjuster shall advise a claimant of the advisability of seeking legal counsel nor recommend any legal counsel to any claimant under any circumstance;

(4) cause any undue delay in the settlement of a property damage claim on account of the claimant's choice of a motor vehicle repair service.

(c) No claims management person, agent, agency employee, limited representative, broker, or other insurer's representative shall recommend the utilization of a particular motor vehicle repair service without clearly informing the claimant that he is under no obligation to use the recommended repair service and that he may use the service of his choice.

Statutory Authority [G.S. 58-2-40](#); 58-33-10; 58-33-25; 58-33-30; 58-35-25; 58-63-65; 58-65-40;

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11 N.C.A.C. 4.0425 (2006)

.0425 DEFINITIONS

As used in this Section the following terms shall be construed as follows:

- (1) "After market part" means a part made by a nonoriginal manufacturer.
- (2) "Insurer" includes any person authorized to represent the insurer with respect to a claim and who is acting within the scope of the person's authority.
- (3) "Nonoriginal manufacturer" means any manufacturer other than the original manufacturer of a part.
- (4) "Part" means a sheet metal or plastic part that generally is a component of the exterior of a motor vehicle, including an inner or outer panel.

Authority [G.S. 58-2-40](#);

TITLE 11. DEPARTMENT OF INSURANCE
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11 N.C.A.C. 4.0426 (2006)

.0426 LIKE KIND AND QUALITY

No insurer shall require the use of an after market part in the repair of a motor vehicle unless the after market part is at least equal to the original part in terms of fit, quality, performance and warranty. Insurers specifying the use of after market parts shall include in the estimate the costs of any modifications made necessary by the use of after market parts.

Authority [G.S. 58-2-40](#);

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11 N.C.A.C. 4.0427 (2006)

.0427 DISCLOSURE REQUIREMENTS

Every insurer that writes motor vehicle insurance in this state and that intends to require or specify the use of after market parts must disclose to its policyholders in writing, either in the policy or on a sticker attached thereto, the following information in no smaller print than ten point type:

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.

All after market parts installed on a motor vehicle shall be identified on the estimate and invoice for such repair.

Authority [G.S. 58-2-40](#);

*** THIS DOCUMENT IS CURRENT THROUGH ALL 2005 LEGISLATION ***
*** ANNOTATIONS CURRENT THROUGH JUNE 23, 2006 ***

CHAPTER 20. MOTOR VEHICLES
ARTICLE 3. MOTOR VEHICLE ACT OF 1937
PART 3A. SALVAGE TITLES

◆ [GO TO CODE ARCHIVE DIRECTORY FOR THIS JURISDICTION](#)

N.C. Gen. Stat. § 20-71.3 (2006)

§ 20-71.3. Salvage and other vehicles -- titles and registration cards to be branded

(a) Motor vehicle certificates of title and registration cards issued pursuant to [G.S. 20-57](#) shall be branded in accordance with this section.

As used in this section, "branded" means that the title and registration card shall contain a designation that discloses if the vehicle is classified as any of the following:

- (1) Salvage Motor Vehicle.
- (2) Salvage Rebuilt Vehicle.
- (3) Reconstructed Vehicle.
- (4) Flood Vehicle.
- (5) Non-U.S.A. Vehicle.
- (6) Any other classification authorized by law.

(a1) Any motor vehicle that is declared a total loss by an insurance company licensed and approved to conduct business in North Carolina, in addition to the designations noted in subsection (a) of this section, shall:

- (1) Have the title and registration card marked "TOTAL LOSS CLAIM".
- (2) Have a tamperproof permanent marker inserted into the doorjamb of that vehicle by the Division, at the time of the final inspection of the reconstructed vehicle, that states "TOTAL LOSS CLAIM VEHICLE". Should that vehicle be later reconstructed, repaired, or rebuilt, a permanent tamperproof marker shall be inserted in the doorjamb of the reconstructed, repaired, or rebuilt vehicle.

(b) Any motor vehicle up to and including six model years old damaged by collision or other occurrence, that is to be retitled in this State, shall be subject to preliminary and final inspections by the Enforcement Section of the Division. For purposes of this section, the term "six model years" shall be calculated by counting the model year of the vehicle's manufacture as the first model year and the current calendar year as the final model year.

These inspections serve as antitheft measures and do not certify the safety or road-worthiness of a vehicle.

(c) The Division shall not retitle a vehicle described in subsection (b) of this section that has not undergone the preliminary and final inspections required by that subsection.

(d) Any motor vehicle up to and including six model years old that has been inspected pursuant to subsection (b) of this section may be retitled with an unbranded title based upon a title application by the rebuilder with a supporting affidavit disclosing all of the following:

- (1) The parts used or replaced.
- (2) The major components replaced.
- (3) The hours of labor and the hourly labor rate.
- (4) The total cost of repair.
- (5) The existence, if applicable, of the doorjamb "TOTAL LOSS CLAIM VEHICLE" marker.

The unbranded title shall be issued only if the cost of repairs, including parts and labor, does not exceed seventy-five percent (75%) of its fair market retail value.

(e) Any motor vehicle more than six model years old damaged by collision or other occurrence that is to be retitled by the State may be retitled, without inspection, with an unbranded title based upon a title application by the rebuilder with a supporting affidavit disclosing all of the following:

- (1) The parts used or replaced.
- (2) The major components replaced.
- (3) The hours of labor and the hourly labor rate.
- (4) The total cost of repair.
- (5) The existence, if applicable, of the doorjamb "TOTAL LOSS CLAIM VEHICLE" marker.
- (6) The cost to replace the air bag restraint system.

The unbranded title shall be issued only if the cost of repairs, including parts and labor and excluding the cost to replace the air bag restraint system, does not exceed seventy-five percent (75%) of its fair market retail value.

(f) The Division shall maintain the affidavits required by this section and make them available for review and copying by persons researching the salvage and repair history of the vehicle.

(g) Any motor vehicle that has been branded in another state shall be branded with

the nearest applicable brand specified in this section, except that no junk vehicle or vehicle that has been branded junk in another state shall be titled or registered.

(h) A branded title for a salvage motor vehicle damaged by collision or other occurrence shall be issued as follows:

(1) For motor vehicles up to and including six model years old, a branded title shall be issued if the cost of repairs, including parts and labor, exceeds seventy-five percent (75%) of its fair market value at the time of the collision or other occurrence.

(2) For motor vehicles more than six model years old, a branded title shall be issued if the cost of repairs, including parts and labor and excluding the cost to replace the air bag restraint system, exceeds seventy-five percent (75%) of its fair market value at the time of the collision or other occurrence.

(i) Once the Division has issued a branded title for a motor vehicle all subsequent titles for that motor vehicle shall continue to reflect the branding.

(j) The Division shall prepare necessary forms and doorjamb marker specifications and may adopt rules required to carry out the provisions of this Part.

HISTORY: 1987, c. 607, s. 1; 1987 (Reg. Sess., 1988), c. 1105, s. 2; ♦ [1989, c. 455, ss. 2, 3](#); 1989 (Reg. Sess., 1990), c. 916, s. 1; ♦ [1997-443, s. 32.26](#); ♦ [1998-212, s. 27.8\(a\)](#); ♦ [2003-258, s. 1](#).

CHAPTER 20. MOTOR **VEHICLES**
ARTICLE 3. MOTOR **VEHICLE** ACT OF 1937
PART 3A. SALVAGE TITLES

N.C. Gen. Stat. § 20-71.4 (2006)

§ 20-71.4. Failure to disclose **damage** to a **vehicle** shall be a misdemeanor

(a) It shall be unlawful for any transferor of a motor **vehicle** to do any of the following:

(1) Transfer a motor **vehicle** up to and including five model years old when the transferor has knowledge that the **vehicle** has been involved in a collision or other occurrence to the extent that the cost of repairing that **vehicle**, excluding the cost to replace the air bag restraint system, exceeds twenty-five percent (25%) of its fair market retail value at the time of the collision or other occurrence, without disclosing that fact in writing to the transferee prior to the transfer of the **vehicle**.

(2) Transfer a motor **vehicle** when the transferor has knowledge that the **vehicle** is, or was, a flood **vehicle**, a reconstructed **vehicle**, or a salvage motor **vehicle**, without disclosing that fact in writing to the transferee prior to the transfer of the **vehicle**.

(a1) For purposes of this section, the term "five model years" shall be calculated by counting the model year of the **vehicle's** manufacture as the first model year and the current calendar year as the final model year. Failure to disclose any of the information required under subsection (a) of this section that is within the knowledge of the transferor will also result in civil liability under [G.S. 20-348](#). The Commissioner may prepare forms to carry out the provisions of this section.

(b) It shall be unlawful for any person to remove the title or supporting documents to any motor **vehicle** from the State of North Carolina with the intent to conceal **damage (or damage** which has been repaired) occurring as a result of a collision or other occurrence.

(c) It shall be unlawful for any person to remove, tamper with, alter, or conceal the "TOTAL LOSS CLAIM **VEHICLE**" tamperproof permanent marker that is affixed to the doorjamb of any total loss claim **vehicle**. It shall be unlawful for any person to reconstruct a total loss claim **vehicle** and not include or affix a "TOTAL LOSS CLAIM **VEHICLE**" tamperproof permanent marker to the doorjamb of the rebuilt **vehicle**. Violation of this subsection shall constitute a Class I felony, punishable by a fine of not less than five thousand dollars (\$ 5,000) for each offense.

(d) Violation of subsections (a) and (b) of this section shall constitute a Class 2 misdemeanor.

HISTORY: 1987, c. 607, s. 1; 1987 (Reg. Sess., 1988), c. 1105, s. 3; ♦ [1989, c. 455, s. 4](#); 1989 (Reg. Sess., 1990), c. 916, s. 2; ♦ [1993, c. 539, s. 337](#); ♦ [1994, Ex. Sess., c. 24, s. 14\(c\)](#); ♦ [1998-212, s. 27.8\(b\)](#); ♦ [2003-258, s. 2](#).