

ABAC NEWS

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The Official Newsletter of the Auto Body Association of Connecticut



Doing The Right Thing

Tony Ferraiolo ABAC President

As president of the ABAC part of my duties are to take phone calls from customers with questions and or complaints.

A consumer contacted me on what he described as “**an improper repair**”. I asked him, a few questions. First question, did you pay your full deductible? Answer, no deductible, It was a third party claim.

Second question, did you go back to the repair shop to voice your concerns, and what did they tell you? **The shop states repairs were done properly and believe that their repair was the right repair.**

Third question, **can I inspect your vehicle with all your paperwork?** The consumer brought his vehicle down to my shop and we did some light disassembly to expose structural repair. We inspected his vehicle and we compared the insurance company’s estimate to the shop’s final invoice.

This is where the problem begins. The original shop was paid to change the rear body panel on the vehicle, replace the rear bumper cover, rear reinforcement bar, rear absorber, etc. The shop **repaired** the rear body panel and **did not change** the reinforcement bar! Everything else was done correctly. Now the real problem here is the shop's final bill, and what the customer was expecting. The original shop’s final invoice said **replace** rear body panel, **replace** rear reinforcement, **replace** rear bumper cover etc. etc. This is wrong and I mean **fraudulently wrong**. You will get in a lot of trouble running your business like this.

(Continued on page 2)

Also in this issue.....

ABAC Keeps the Information Flowing	Page 3-4
The Jim’s Auto Body Case - What it really means	Page 5
Thumbs Down it Insurer’s “Rule of Thumb!”	Page 6-9
State Farm Updates ASA on PartsTrader Program	Page 10-11
In the Headlights	Page 11
ABAC Corporate Sponsors	Page 12
ABAC Officers	Page 12



(Continued from page 1)

Rule of Thumb: never put something on a piece of paper that you're not prepared to defend in court. Now let's use a scenario; if customer said "okay repair rear body panel", and if you as shop owner stand by the repair and it's a safe repair *then that is the customer's choice*. The vehicle owner *is really your customer, and a very important fact to always remember*. Then your customer has made the repair choice. This was not the case in this repair. The customer never asked the original shop to *repair* the parts that they had assumed were going to be replaced. After all, the insurance company paid to replace the parts, why would the shop not replace them? Good point by the customer. **If you are not discussing the repair with your customer then how are you repairing their vehicle?**

Most of you are taking insurance company estimates, ordering parts off that estimate, and then repairing the vehicle the way the insurance company has prescribed. Wrong! **Very wrong! Hey we all did this for years, it's not your fault it's the way we always did it. Not anymore.**

The first step to proper repairs is to discuss the repair with the customer. **See what they want.** The insurance company wrote to replace with aftermarket parts, used, recycled etc. It's your customer's car. What do they want? **Let them question their insurance company on the parts choice, lack of procedures, underpayment of paint and materials, etc.** You as a shop have no say in these choices, but the customer does, **and your customer will get quicker and better results.**

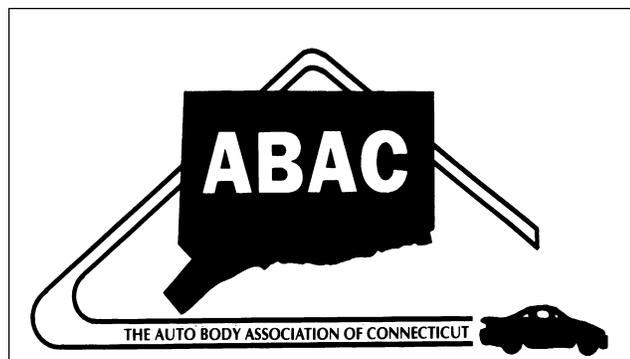
Second step is to **learn how to blueprint a car.** I-car has a new class on blueprinting, look for it. There is lots of information out there on proper blueprinting. It is the way of the future. But that being said you and your technicians need to buy into it and stick with it. You can develop a system that works best for you in your shop.

Now let's get back to the customer's repair at my shop. I am pleased to announce the consumer brought the vehicle back to the original shop, **and that shop re-repaired the vehicle properly.** I followed up with the consumer. He said he was happy with the repairs that the original shop preformed the second time around.

Moral of the story, **take care of your customers, keep them informed on the repair you are performing for them. Remember who the customer is, and don't let this happen to you.**

Document your repair properly on your final invoice. Customers these days are hard to come by. And always try to do the right thing.

At this time I would like to wish a Merry Christmas and happy holidays to all members of the ABAC and your families. I hope the New Year is filled with health and prosperity for you all.



ABAC KEEPS THE INFORMATION FLOWING

OEM's Support Education with Attendance!

Shop owners and managers attended last month's quarterly meeting at the Country House Restaurant in East Haven as several presenters and featured guest, General Motors, armed members with plenty of educational information and useful tools to help attendees with their businesses.

As with every meeting the Anti-Trust Agreement was read to all in attendance. ABAC VP Bill Romaniello thanked everyone for taking a portion of their valuable time to attend this meeting and then introduced ABAC President Tony Ferraiolo.



Ferraiolo presented the sponsors for the evening:

- **Richard Chevrolet & General Motors**
- **Motor Information Systems – MicroMix Material Estimating System**
- **Collision Design Center presenting Walcom Thermody Technology**

Tony then recognized the ABAC News Supporting Vendors as well as the 2012 ABAC Corporate Sponsors for their financial support to the association. He asked for input from members on any concerns/ideas that you, as shop owners, would like to see your association act upon. ***“Our association is moving forward. Members and potential members are joining us at these meetings to get the education for the OEM's who sponsor and present this valuable information. This is how we are able to stay on top of the new vehicle repair procedures. We need to let the manufacturers know that this (training) is the information that we want and need to repair these vehicles. No one but the OEM manufacturer should be telling us how to fix these cars,”*** says Ferraiolo.



Tony then introduced our first guest of the evening, Seth Blumenstock, Technical Information Specialist from MOTOR/Alldata who presented the MicroMix Material Estimating System. For up-to-date information and to see this product go to www.micromix.net or contact Seth at 800-791-9611.

Next up was Tony Lombardozi, President of CCRE who touched upon the MicroMix System and how it can and should be used in your business. ***“What you just saw is a system that will help you earn what you are entitled to!” (Profit)*** says Lombardozi.

Returning to the podium Ferraiolo reminded everyone to ***“support those who support your association”*** concerning the newsletter advertisers. Also, he said that I-Car Classes are coming. Class updates and the schedule will be announced as soon as more information is available. The ABAC will be sending out a questionnaire looking for your input asking:

- **What would you like to see at your association meetings?**
- **What are some of the challenges facing you, the shop owner?**

...and more

As soon as you receive this questionnaire please fill it out and fax or email back promptly!

Our next presenters were Robert Mercier and Jack Walters from Collision Design Center featuring the Walcom USA Thermody Technology. In order to help the transition to the new environmentally-friendly coatings as well as improve efficiency on the existing ones, WALCOM has developed and patented THERMODRY TECH-

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NOLOGY (TD3). This is the first product in the market that allows the painter to use filtered, heated and thermo-regulated (through a double heating action) compressed air, which maximizes results by eliminating environmental factors both in the booth and from external weather conditions. Painters will immediately feel the difference in terms of faster drying time, better paint flow-out, lower paint consumption and higher application speed. In addition, TD3 is the only product in the market that automatically regenerates silica-gel through an automatic air flow inversion process. It is very user friendly and requires very low maintenance. Customers can expect significant improvement in the quality of work when using both waterborne and solvent based paints. For more info contact them at 401-293-0200.

Attorney John Parese and Board of Director Bill Denya then gave everyone an update on their meeting with the Ct Towing Association.

Next up was our featured sponsor for the evening, Richard Chevrolet. They were represented by:

- **Ron Vernick – Parts Manager**
- **Ken LaFrance – Wholesale Representative**
- **Greg Yorkshait – Wholesale Representative**
- **Gary Plourde – Collision Shop Manager**

Richard Chevrolet used their relationship with GM to have several guests attend to help with the presentation. Representing GM:

- **Dan Tarca – GM District Manager Aftersales**
- **Jeff Shaw – GM Wholesale Specialist**
- **Jim Mickle – GM Wholesale Training**

Mickle gave a thorough offering of what GM has to offer as far as wholesale programs and collision repair training. Jim's presentation included:

- **“Bump the Competition” Program**
- **100% Write Program**
- **www.genuineGMparts.com**
- **Warranty Powertrain Contacts for troubleshooting**
- **OEConnection's Collision Link**
- **Hybrid Updates**
- **www.gmtechinfo.com**
- **Body Structure issues**
- **Body Control Modules (BCM) after the crash**
- **OnStar**
- **Electronic Stability Control**
- **Active Cruise Control**
- **Noise Control Crash issues**



YOUR ABAC: Education and informing you to help improve your business. Just by attending ONE of our education meetings you will more than off-set the price of being a member!

Don't remain uninformed...join the ABAC NOW and start making changes in your future!





The Jim's Auto Body Case: What It Really Means

In March 2008, the Connecticut Supreme Court issued a decision on a DMV appeal filed by Jim's Auto Body. The full case cite is Jim's Auto Body v. Commissioner of Motor Vehicles, 285 Conn. 794 (2008). Much has been said about the scope of the Jim's Auto Body Case and what it means for the industry. Some appraisers attempt to use the Jim's case as a sword: claiming that it stands for the broad proposition that the insurer is the shop's "customer", or that the repairer owes some duty to the insurer by virtue of the Jim's Auto Body case. Not true.

The limited issue addressed by the Court was this:

"Whether an insurance company that is obligated to pay for the repair of a motor vehicle is a "customer" under General Statutes § 14-63(b), thereby allowing it to file a complaint with the department of motor vehicles ... against a motor vehicle repair shop." Id. 796.

In essence, the real issue was this: can an insurance company file a complaint with the DMV? To this question, the court answered yes. The Court made it clear that it was attempting to give effect to the apparent intent of the legislature when it created § 14-63(b), which the Court perceived as an effort to regulate dealers and repairers, while simultaneously protecting customers from unscrupulous business practices. Accordingly, the court chose to broadly construe the term "customer" *in the context of § 14-63* so as to include insurance companies, thus allowing insurance companies to file complaints with the DMV. The Court concluded that this approach "better serves the purpose of the statute."

Had the Court interpreted the term "customer" more narrowly, thus prohibiting insurers from filing complaints with the DMV, the Court feared that it would lead to an absurd result "specifically discouraging the filing of complaint by the entity that actually has the incentive to do so."

So remember, the Jim's Auto Body case only means that insurance companies can file complaints with the DMV against dealers or repairers pursuant to § 14-63. It does not mean that insurance companies are your customer, or that you owe any obligation to an insurance company as though it were your customer.

Your customer is the vehicle owner.

I wish you and your family health and happiness this holiday season.

John Parese

**Buckley & Wynne
Attorneys at Law**



Thumbs Down to Insurers' 'Rule of Thumb'



By E. L. Eversman, J.D. - 11/5/2012

Paint and material payments have typically been tied to the number of paint-related labor units allotted for repair of a vehicle at half the body labor rate.

This method has come under criticism of late – with good reason. No one has ever demonstrated what relationship the number of work units has to do with the amount of paint and materials necessary to complete a repair. Likewise, no one has ever demonstrated how a value reflecting half the body rate multiplied by the number of refinish units is an appropriate measure of the goods incorporated into the customer's vehicle or consumed during the repair. This method is simply a one-size-fits-all multiplication task that fails to account for any distinctions in the unique nature of each repair or other variables like differences in paint product price. Instead, this payment method is based solely on a “rule of thumb.”

Rule of Thumb

Check out some definitions of rules of thumb I found on the Internet:

“A rule of thumb is a homemade recipe for making a guess.”

“A hundred years ago, people used rules of thumb to make up for a lack of facts.”

“Rules of thumb are used as a handy guess mechanism when there is no way to determine something specifically, or when precision isn't important.”

“A means of estimation made according to a rough-and-ready practical rule, not based on science or exact measurement.”

Rules of thumb, then, are an unscientific method of attempting to arrive at a result. With the advent of paint and materials calculators, however, using an antiquated method to determine how much to charge – or more precisely, how much an insurer should be reimbursing the consumer – is unwarranted.

Still Around

Now that the collision industry has an accurate method of determining the amount, and therefore, cost of paint and materials used in a repair, we would expect it to be embraced and used everywhere – including by insurers. But many repairers are not being reimbursed according to this method, largely because they report that insurers simply reject paint and material invoices and insist on compensating via the rule of thumb method of multiplying refinish hours by half the body labor rate.

In every industry, businesses strive to be equipped and capable of producing products and services that are “state of the art.” The term “state of the art” refers to the “highest level of general development, as of a device, technique or scientific field, achieved at a particular time.”

Progress, especially technical progress, is expected. Therefore, we have to ask ourselves why this fake formula for paint and material calculation based on an unscientific rule of thumb is continuing to be touted by insurers as the “industry standard” for determining these costs. Repair documentation has evolved to the point where every-

(Continued on page 7)

(Continued from page 6)

one expects repair blueprints to be generated from a computer estimating and management system rather than paper and pencil. Now that the repair industry has a more accurate method of determining the true cost of paint and materials used in any given repair, it's inappropriate for insurers to insist on making payment based on the antiquated rule of thumb.

Insurers Love Invoices

One of the most interesting questions on this issue is why insurers reject invoices generated by paint and material calculators designed to identify the actual costs associated with using those products. Insurers love invoices. How many times has an insurer demanded that a repairer hand over the towing or parts invoices (internal and proprietary business documents) before it reimburses on behalf of a consumer? So why are insurers suddenly dismissive of a bona fide invoice generated by a computer program expressly created to capture the true cost of paint and materials used in a repair?

The answer is clear. Paint and material calculators typically demonstrate that the true value of the products used in the repair is higher than those values being reimbursed using the rule of thumb formula. The rule of thumb is also directly tied to the influence insurers exert in keeping the "average" body labor rate payable to shops artificially low. There's no doubt that if the paint and materials programs produced a lower dollar value than the rule of thumb, insurers would have immediately switched to those programs and dropped the old method like a hot potato. The fact that insurers haven't moved on to a modern and more accurate method of identifying true costs, as the collision repair industry has, demonstrates their refusal to properly and fairly compensate consumers for the losses they suffer in exchange for those premium dollars we all pay for auto insurance.

By insisting on using the old rule of thumb method, insurers can disguise deliberate underpayments to consumers who file legitimate insurance claims and continue to justify those underpayments as "industry standard" to the state departments of insurance.

Industry Standard

The rule of thumb formula is the industry standard. Or is it?

We repeatedly hear that the rule of thumb formula is still the industry standard for determining paint and materials costs. The question that should be asked is, "The 'industry standard' as determined by whom?"

As discovery produced by State Farm in one of the lawsuits brought by Gunder's Auto Center Inc., against the insurer indicates, State Farm personnel changed the repair shop's answer to the survey question about how the shop charged for paint and materials from the use of a paint and material calculator to the rule of thumb formula. (See ["Gunder's Claims State Farm Altered Prevailing Rate Survey"](#)). Similarly, other repairers have reported they were warned by an insurer that if they answered a survey question stating the use of a paint and material calculator rather than a rule of thumb approach, all of their responses would be automatically excluded from the survey results. Accordingly, we should be deeply suspicious of any claim that the rule of thumb formula is the current repair industry standard.

Breaking the Law?

(Continued on page 8)

(Continued from page 7)

Perhaps most interesting is an analysis of the reimbursement amounts produced using the rule of thumb method versus the paint and material calculators. In many instances, the rule of thumb approach actually compensates repairers at below-cost levels. This is troubling as federal and state laws take a dim view of the practice of selling goods at a price below the acquisition cost. Selling products at a below-cost price – especially doing so on a routine basis without the benefit of legitimate reasons like minimizing losses on perishable goods or reducing unsuccessful inventory – is presumptively predatory and can be a violation of the Robinson-Patman Act, 15 U.S.C. § 13(a) and many states' laws.

Oklahoma's Unfair Sales Act, for example, states:

“It is hereby declared that any advertising, offer to sell or sale of any merchandise, either by retailers or wholesalers, at less than cost as defined in this act with the intent and purpose of inducing the purchase of other merchandise or of unfairly diverting trade from a competitor or otherwise injuring a competitor, impair and prevent fair competition, injure public welfare, are unfair competition and contrary to public policy and the policy of this act, where the result of such advertising, offer or sale is to tend to deceive any purchaser or prospective purchaser, or to substantially lessen competition, or to unreasonably restrain trade, or to tend to create a monopoly in any line of commerce.” (15 Okl. St. § 598.3)

Enforcement under the state unfair sales laws can be easier to obtain as these state laws, unlike federal law, typically do not require a demonstration of the market share of the below-cost seller and its power to hurt competition. Instead, the state's inquiry is whether the below-cost selling occurs for a wrongful purpose that's actionable – often as a crime – under the state's laws. As the Tenth Circuit Court of Appeals found when reviewing a below-cost sale case under the Oklahoma Unfair Sales Act, “The purpose of [the Act] is simply to prevent loss leader selling and to protect small business.” *Star Fuel Marts, LLC v. Sam's East, Inc.*, 362 F.3d 639, 648 (10th Cir. 2004) (applying Oklahoma law).

The Inquiry

The question we must ask ourselves is, “What effect does below-cost selling of paint and materials have on the collision industry?” It's simple to argue that insurers demand that their DRP shops sell paint and materials calculated via the rule of thumb method, resulting in below-cost rates, because they can then use that activity to try to impose below-cost selling across the board on all collision repair facilities. Successful, forced below-cost selling of paint and materials throughout the industry enables insurers to decrease their claims payouts and increase their profits.

It's also apparent that – whether the DRP shops are overtly aware or not that their acceptance of the insurer's required rule of thumb paint and materials reimbursement method often results in the sale of these goods at less than their cost – the DRP shops are willing to go along with the below-cost selling of paint and materials because their volume work arrangement with insurers coupled with below-cost selling allows them to capture more repair work for themselves and helps drive independent shops out of business. Therefore, criminal and civil inquiries should investigate whether insurers and their DRP shops are engaged in a conspiracy to sell (and purchase) paint and materials at below-cost prices with the desire to reduce the insurer's overall claim payment and capture more customers and work for the DRP shops at the expense of independents.

(Continued on page 9)

(Continued from page 8)

Conclusion

It seems that the time to address the forced below-cost selling of paint and materials in the collision repair business is at hand. Such activity is not only improper but is typically illegal. Any repair shop, whether a DRP shop or non-DRP shop, needs to immediately look at its method of determining paint and material costs to ensure it's not using a method that results in sales of these goods below the shop's acquisition cost. Otherwise, shops may find themselves the subject of a criminal or civil investigation into improper selling activities.

States Against Low-Cost Selling

A number of states besides Oklahoma condemn below-cost selling as a matter of state public policy:

Arkansas — A.C.A. § 4-75-209
 California — Bus & Prof Code § 17043
 Hawaii — HRS § 481-3
 Idaho — § 48-404
 Louisiana — R.S. 51:422
 Maine — 10 M.R.S. § 1207
 Massachusetts — ALM GL ch. 64C, § 14
 Minnesota — Stat. § 325D.04
 Montana — Code Anno., § 30-14-209
 North Dakota — Cent. Code, § 51-10-03
 Pennsylvania — 73 P.S. § 213
 Rhode Island — Gen. Laws § 6-13-3
 Tennessee — Code Ann. § 47-25-203
 West Virginia — Code § 47-11A-1
 Wisconsin — Stat. § 100.30

E. L. Eversman is the chief counsel for Vehicle Information Services Inc., and the author of the Forbes.com “Best of the Web” award-winning blog, AutoMuse. She has served as the chair of the Cleveland Bar Association’s Unauthorized Practice of Law Committee, vice chair of that association’s International Law Section and is listed in the National Registry of Who’s Who. Eversman is a frequent speaker and author on automotive legal topics and has been quoted in such publications as The Wall Street Journal Online, USA Today, Kiplinger’s Personal Finance, Cars.com, Yahoo! News and numerous trade magazines. She was also honored as the 2006 All Auto Appraisal Industry Conference hall of fame inductee. She is recognized nationally as an authority on diminished value and collision repair issues, and she served as an industry resource for the National Conference of Commissioners on Uniform State Laws’ Uniform Certificate of Title Act drafting committee. Prior to launching the AutoMuse blog addressing automotive legal and consumer issues, Eversman wrote the legal column for the Web directory, AutoGuide.net.

State Farm Updates ASA on Parts Trader Application

The Automotive Service Association (ASA) reported that State Farm has provided the association with an update on the status of the insurer's electronic parts ordering application PartsTrader.

ASA's Collision Division Director Dan Stander, and Denise Caspersen, ASA collision division manager participated in a conference call with State Farm's George Avery, claims representative, and State Farm staffer Duane Willemain. ASA said the November update is the first of several expected from the insurer, which has committed to keeping ASA members abreast of the pilot and its potential effect on future State Farm Select Service participants.

The following report has been published by ASA.

The ASA collision leadership and staff continue to focus on providing ASA members and the industry with accurate information about the pilot, while engaging and advocating on behalf of collision repairers.

The pilot, currently in four states and set to expand into Chicago, Ill., next month, will increase involvement to nearly 600 Select Service collision repair facilities of the 10,300 shops participating nationwide in the State Farm Select Service program.

The following updates were provided to ASA during the call:

- Pilot locations of Charlotte, N.C., and Birmingham, Ala., now have the ability to do 30-minute quotes - resulting in all four original pilot markets now having a 30-minute quote window.
- Regarding estimating systems, Audatex, a Solera Co.; CCC Information Services; and Mitchell International all have two-way integration in all four markets.
- A change has been made in the process of writing estimates to better accommodate alternative pricing. According to State Farm, if a shop has alternative pricing available through a different source, State Farm is recommending Select Service shops write estimates with those prices - therefore utilizing price matching.
- In Chicago, business meetings are set with multi-shop organizations and all Select Service repairers. Chicago is recognized as a heavy consolidator market.

Items for the meetings include:

An overview of the program

- Handouts about the program
- Preparation material for a Dec. 10 "live" date
- PartsTrader started hosting meetings Nov. 12 for dealers and parts suppliers.
- Select Service shops have been asked to identify suppliers.
- To date, 466 letters from State Farm to suppliers have been sent out.
- 500-600 suppliers have been identified in the Chicago market.
- To date, 475 of 477 Select Service shops have registered.
- Regarding cycle time improvements, State Farm said it was hard to prove, at this point, any cycle time improvements linked to the application. State Farm does not expect an immediate or large reduction in

(Continued on page 11)

(Continued from page 10)

cycle time.

- Regarding "saving of total losses," State Farm said that at this point there is not enough data to validate this. Nor is there data that demonstrates an increase in recycled or alternative parts.
- PartsTrader is moving forward with integration into the various collision management systems.
- No evidence to date on reductions in parts profit.
- The length of the Chicago pilot is unknown. According to State Farm, once a change is introduced into the application in pilot, it is necessary for the change to "mature" to determine the impact of the change. This, then, impacts the end date.
- The PartsTrader application has undergone a minimum of seven updates since the initial pilot release in March 2012.
- PartsTrader announced it will not charge suppliers until 2014.

"For the ASA collision membership volunteering on the operations committee, the focus continues to be one of information, engagement and impacting the outcome in the most positive way on behalf of repairers. It was apparent early on that the 'train had left the station' in regard to stopping this application from being piloted. The ASA team made the decision to focus on accuracy and engagement, and will continue to do so as this pilot continues and future items arise," said Caspersen.

Collision repairers may share their comments or concerns regarding the pilot by contacting Caspersen at denisec@ASAshop.org; or by phone at (800) ASA-SHOP, ext. 106, or (817) 514-2906 (direct).



In The Headlights

This edition of the ABAC news respectfully features Tony Lombardozzi, President, The Coalition for Collision Repair Excellence (CCRE) . Over the past several years many of us within the ABAC have come to know, work closely with, and greatly respect Tony for his endless dedication to the collision repair industry. His teachings and message have helped so many understand how to better run our businesses now and for the future. Tony has spent much of his life traveling the country, sharing his vast knowledge and passion for the industry. He has shared his driving focus behind his endeavors with many, "to leave the collision repair industry in a better state than it was when he started in it over 50 years ago". We, as the ABAC, have benefitted, personally and professionally, beyond what mere words can express from Tony's tireless travels, knowledge, teachings and personal sacrifice for the industry. A heart felt thank you for all that you do and have accomplished.

***Respectfully,
The ABAC.***

To learn more about Tony & his message, go to www.theCCRE.org



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The goal of the ABAC News is to provide a forum for the free expression of ideas. The opinions and ideas appearing in this publication are not necessarily representations of the ABAC and should not be construed as legal advice.



The Auto Body Association of Connecticut would like to extend our wishes for a safe, happy and healthy holiday season to all of our members, friends and industry professionals!



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