

ABAC NEWS

JUNE 2007

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The Official Newsletter of the Auto Body Association of Connecticut



CT Atty. Gen. Richard Blumenthal says **“Enough is enough!”** at Annual Auto Body Meeting

Over 170 ABAC members, guests and distinguished dignitaries convened at the Country House Restaurant in East Haven, CT. on Tuesday May 8th, 2007 for the Auto Body Association of Connecticut's Annual Meeting.

Master of Ceremonies Dave Fogarty of the Lorensen Auto Group welcomed all in attendance and briefly described the events of the evening. Fogarty thanked everyone for taking time to support their association. He then thanked the sponsors for their financial support.

They were: **Enterprise Rent-A-Car, Paul Francis Co., Metropolitan Car-O-Liner, Vinmark, Bald Hill Chrysler-Dodge-Subaru, and the Lorensen Auto Group.**

Dave then introduced Tom Vicino from Superior Auto Body who spoke about the Mohegan Sun Casino Fundraising bus trip that was held on June 16th.

Next introduction was ABAC Past President Mike Wilkowski from Stanley's Auto Body who gave a brief overview of the ABAC since its inception in 1968. Mike then recognized the past ABAC Presidents that were in

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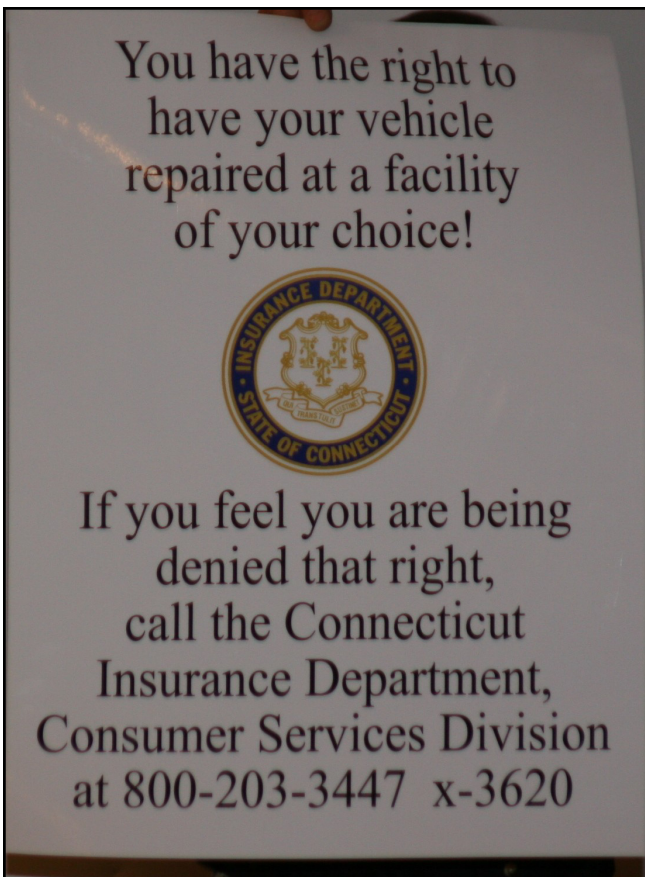
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attendance. They were: **Mike Brunt**, Autocraft Auto Body, **Vin DiLauro**, Columbus Auto Body, **Bill Denya**, Denya's Auto Body, **Eddie Lupinek**, Eddie's Auto Body, **Karl Mauhs**, Hamden Auto Body and **Chip Platz**, Artie's Auto Body.

Election results were then announced. The Executive Board is as follows:

- | | | | |
|--|-----------------------|----------------------------|-------------------|
| • President | Tom Bivona | My Way Auto Body | Greenwich |
| • 1st Vice President | Mike Walsh | T&J Auto Body | E.Hartford |
| • 2nd Vice President | Joanne Serkey | A&R Auto Body | Torrington |
| • Treasurer | Bob Skrip | Skrip's Auto Body | Cheshire |
| • Secretary | Mark Wilkowski | Stanley's Auto Body | Waterbury |

Tom Bivona, Mike Walsh and Joanne Serkey then took to the podium to address members and convey the upcoming plans within the ABAC and answer any questions.



Everyone in attendance received a folder with a wealth of information inside. Board of Director Bill Romaniello from Richard Chevrolet took the floor and covered that information and how members could use this information to their advantage. Bill then turned things back to Dave Fogarty who went on to explain the importance of the financial support that the ABAC receives from the Supporting Advertisers in the ABAC News. Every supporting advertiser in the Ad Directory directly helps fund the ongoing changes and challenges that the ABAC face each and every day. This support does not go unrecognized by ABAC members. Members use the Supporting Advertisers Directory when making their purchases of parts, paints, materials and services.

Dave then turned the podium back to Mike Wilkowski who spoke about the meeting that was held earlier in the day with regional state auto body board members. Those in attendance were: Mike Parker, Parker's Classic Auto in Vermont, John Petrarca, Providence Auto Body and President of the Auto Body Association of Rhode Island, Ed Kizenberger, Long Island ABA, NY, Tony Lombardozzi, CCRE President, New Hampshire, Randy

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Bottella, Reliable Collision, Rhode Island, Brian Vespi, AASP/NJ, New Jersey, Peter Abdelmaseh, AASP, Massachusetts, Steve Behrndt, Penn Collision Trade Guild, Pennsylvania and Greg Caccaro, North State Custom, New York.



Wilkowski then introduced Attorneys Alan Neigher and David Slossberg. They enlightened the crowd concerning the latest details on the Hartford Class Action Suit. The Hartford lost all their appeals that were filed in Stamford Superior Court. The Circuit Court of Appeals refused the Hartford's request to hear the case. The case will now be heard in the U.S. Supreme Court scheduled to begin in the fall of 2007. At this time ABAC attorneys appear to be very confident.

Also recognized in attendance were Atty. Erica Eversman who is also Chief Counsel for Vehicle Information Services, Inc. and Shiela Loftus, President, CRASH Network.

The highlight of the evening was ABAC President Tom Bivona's introduction of Connecticut Attorney General Richard Blumenthal to an extremely warm welcome from the entire audience. The AG has been a huge ally of the ABAC. Blumenthal says he has never been prouder to work with any group. Says Blumenthal, ***"I thank you (the ABAC) for your courage to stay with it and continue working to change the system, not only for your benefit but for consumers."*** He continues, ***"The principle here ought to be, for consumers, your car, your choice. Your car, you choose where you want to take it. No insurance company offering you lower deductibles, lower premiums, threats of delays, warnings about quality of work, lack of guarantees, all of the tactics that you see day in and day out. And of course we already know those tactics are against the law right now."*** ***"I believe we can change that law to give the Insurance Department no latitude without honestly and effectively enforcing this law. It's your car! It's your choice! Enough is enough!"*** ***"We need to pass Bill #739. We need to muster, we need to educate, we need to work. I pledge to you that I'm going to spend as much time as I can, working long and hard to make sure we get that law through. It's about respect and rights. Respect and rights for you (the shop owner) and respect and rights for the consumers. That's a very powerful combination. And we can't lead this fight from Connecticut. I know we have some out of town folks here and I can tell you that I'm going to your state, I'm going throughout the northeast."*** (At this point the AG literally brought the house down!) He continued, ***"We're going to take this fight to other states so that insurers that feel they can confine the fires to Connecticut have another thing coming!"*** Blumenthal then received his biggest round of applause along with a standing ovation. He closed by saying, ***"I appreciate your hard work. Your families should be very proud of the work that you do."*** After the Attorney General fielded a few questions, Tom Bivona thanked Mr. Blumenthal for going above and beyond with his tremendous help and assistance to the Auto Body Association of Connecticut.

Everyone in attendance left the evening's events with confidence knowing that the ABAC led by President Tom Bivona along with all of his officers and directors is absolutely dedicated and have put tremendous efforts into creating positive change within our industry. Attendees also realized that we have an Attorney General in Richard Blumenthal who is equally committed to our industry and most of all an ally and friend!

ABAC MEETS WITH NEW INSURANCE COMMISSIONER

On May 7, 2007, the ABAC had a long and productive meeting in Hartford with the new Commissioner of the Insurance Department, Thomas R. Sullivan. Governor Rell appointed Mr. Sullivan in April. Undoubtedly, the aggressive and zealous efforts of our representatives enabled the ABAC to arrange this meeting within one month of the Commissioner's appointment. The meeting was designed to foster a relationship and line of communication with the Commissioner and to outline the ABAC's concerns. The three primary topics discussed were: (1) illegal steering; (2) price fixing; and (3) the lack of oversight and accountability of "independent" appraisers.

Commissioner Sullivan was accompanied by his assistants: Girard O'Sullivan and Debra Korat. The ABAC was represented by: Tom Bivona, Mike Walsh, Joanne Serkey, Bill Denya, Attorney Erica Eversman, Attorney John Parese, and our lobbyists: Ken Przybysz and Jay Aaronson. This diverse and knowledgeable group of your representatives presented well-reasoned arguments, data, facts and horror stories about the existing state of affairs in the auto repair industry.

ILLEGAL STEERING

We explained to the Commissioner that Connecticut has both a statutory and regulatory prohibition on steering. See General Statutes § 38a-354 ("No automobile physical damage appraiser shall require that appraisals or repairs should or should not be made in a specified facility or repair shop or shops"); and Connecticut State Regulations § 38a-790-6 ("No appraiser shall request that appraisals or repairs be made in a specified repair shop or shops."). The group shared stories and facts about the overwhelming existence of both "soft" steering and "hard" steering.

The attorneys argued that one of the most egregious and patently illegal forms of steering in this state is Direct Repair Programs (DRP). The attorneys argued that DRP agreements are entirely one-sided in favor of insurers and problematic for many reasons. Most notably, DRP agreements frequently: (1) require after-market or salvage parts (which is both a consumer rights and safety concern); (2) require repairers to actively look for "betterment" or other ways to save insurers money; (3) seek blanket indemnification for any claims or actions brought against the insurer; and (4) dictate the specific estimating software that an appraiser must use, which may be directed by the insurer itself.

The attorneys also argued that DRP contractual agreements are unenforceable and illegal in this state because they lack "consideration" (i.e. something of value received by the repairer). In other words, the entire DRP arrangement is predicated on the insurer receiving discounts and other benefits from repair facilities in exchange for the insurer's agreement to send repair facilities a high volume of customers. This is *de facto* steering, which is illegal in this state – and as such, there is no legal "consideration" for DRP agreements. The ABAC called on the Commissioner to take all necessary and appropriate measures to shut down the DRP program.

By letter dated May 25, 2007, the Commissioner stated that he would not shut down the DRP program. He opined that DRP contracts are not *per se* illegal, provided the consumer is not required to use or not use a particular repair facility. We believe the Commissioner is wrong about this issue and we will continue to fight for what is right and what is legal.

PRICE FIXING

Again with facts and horror stories, we explained how price fixing is as pervasive as steering and equally illegal. Ken Przybysz discussed oversight of labor rates and asked Mr. Sullivan to revisit and review

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the ABAC's previously submitted response with concerns about the Insurance Department's "Best Practices" guidelines for determining labor rates. You might recall that in January 2007, the Insurance Department issued a "Best Practices" guideline to insurers setting forth certain criteria for determining labor rates. The factors included geographic location, type of repair shop, timeframe since labor rate was last examined, fair and unbiased data sampling and the type of vehicle, equipment and accreditation of a particular shop and its personnel.

Based on the Department's own guidelines, labor rates for a particular insurer should vary throughout the state and vary between different repair facilities. As we know, they do not.

The Commissioner has offered to investigate complaints and determine whether any laws have been broken. Thus, you should encourage your customers to report complaints to the Department when you observe violations of our laws or regulations.

"INDEPENDENT" APPRAISERS

One of the most widely expressed concerns of the ABAC is the lack of independence of auto appraisers. According to Connecticut Law: "Every appraiser shall . . . approach the appraisal of damaged property without prejudice against, or favoritism toward, any party involved in order to make fair and impartial appraisal; [and] . . . disregard any efforts on the part of others to influence his judgment in the interest of the parties involved; [and] . . . prepare an independent appraisal of damage." (Connecticut State Regulations § 38a-790-8).

We all know that appraisers in this state are not following the law. As Bill Denya said: "many appraisers actually want to follow the law, but can't do so because of the mandates of their company. The pressure from insurers is simply too great. And, there is no oversight or protection from the Insurance Department." We told the Commissioners that consumers are relying on him to stand up for their rights by protecting appraisers and preserving appraisers' ability to act impartially.

In response to our concerns, Mr. Sullivan agreed to investigate any complaints and take appropriate action under the law.

CONSUMER RIGHTS SIGNS

At the conclusion of our meeting, which was nearly two hours, the Commissioner presented us with 18" x 24" consumer rights signs that state in relevant part: "You have the right to have your vehicle repaired at a facility of your choice. If you feel you are being denied that right, call the Connecticut Insurance Department Consumer Service Division at 1-800-203-3447, ex. 3620." This sign was a good first step toward assistance from the Commissioner and demonstrated his awareness of the depth of the problem. We subsequently requested the Commissioner mandate that every facility engaged in writing appraisals, including drive-in claims centers, conspicuously post this sign. We are waiting for the Commissioner's response.

In the meantime, Mr. Sullivan agreed to make additional copies available to our members free of charge. Everyone should post this sign in his or her shop. To get a free copy, contact the ABAC or the Insurance Department.

Finally, I would strongly encourage everyone to call and/or file a written complaint with the Insurance Department if you feel that you or your customer have been the victim of steering or otherwise treated unfairly. To register a call-in complaint, call: 1-800-203-3447, ex. 3620. To register a written complaint, write to: Connecticut Insurance Department, P.O. Box 816, Hartford CT 06142-0816. Make sure you fax a copy of any written complaints to Denise Banta at 860-848-0534.

A Sincere Thank You

**to all of our sponsors whose financial contributions helped make
our May 8, 2007 ABAC Annual Meeting a great success!**



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Body Shops Suing Progressive

The Hartford Courant

By DIANE LEVICK
Courant Staff Writer

June 15 2007

Auto body shops in Connecticut are suing the insurer Progressive, alleging that it illegally steers customers to certain repairers and pays "unreasonably low" labor rates to fix vehicles after an accident.

The lawsuit by the Auto Body Association of Connecticut and three body shops continues a battle they've been waging for years, in court and in the General Assembly, against practices they say interfere with consumer choice and repairers' ability to make a living.

The suit, filed Wednesday in U.S. District Court in New Haven and proposed as a class action, takes on Ohio-based Progressive, one of the largest auto insurers in Connecticut.

Progressive, the suit says, has instituted a system of preferred shops - often called "direct repair" - and in-house appraisers to suppress labor rates and steer policyholders to the shops "in order to extract enormous profits from the automobile insurance programs" in Connecticut.

The conduct has caused "very substantial damages to the class of hard-working, highly skilled, auto body repair shops that are trying to earn an honest living in their industry," the suit says.

The suit does not specify how much is sought in damages, but David A. Slossberg, one of the attorneys representing the association in the case, said it's "in the millions."

Progressive spokeswoman Cristy Coté declined to comment Thursday, saying the company needs time to review the suit.

The suit is similar to one the auto body association filed several years ago in Connecticut against The Hartford Financial Services Group Inc. That lawsuit has been certified as a class action, but The Hartford is appealing the certification to the Connecticut Supreme Court.

Many auto insurers have long had networks of direct repair body shops that may agree to work at discounted labor rates or offer a discount on parts. Insurers say the shops must also meet standards for equipment and turnaround time on repairs.

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It is not illegal for insurers to have such networks, but they aren't supposed to require or strong-arm consumers to use the preferred shops. The auto body association, however, has long complained that insurers overstep the legal bounds.

The suit, for example, says Progressive tells customers it does not do business with non-direct repair shops, or that a claim may not get paid if the work isn't done at a direct repair shop.

The insurer tells people it's "easier" to have the car repaired at one of them, and that the insured can receive free towing if the vehicle is brought to a direct repair shop, the suit says.

Some are told they'll receive a discount off their deductible if they use one of the shops, and that Progressive will give a lifetime guarantee on repair work only if it's done at a direct repair shop, the suit said.

The organization decided to sue Progressive this time because "they are absolutely the worst, by far," said Tom Bivona, president of the association and co-owner of My Way Auto Body, which is in Greenwich and Stamford.

Progressive illegally imposes a cap on labor rates it pays repairers of about \$44 to \$46 an hour in the state, the suit says. The posted rates at shops for work not covered by insurance are more than \$70 an hour.

Bivona said that although other insurers also don't pay the posted rates, they are more reasonable than Progressive in approving the procedures and the amount of time allotted for repairs.

The suit alleges that Progressive has violated the Connecticut Unfair Trade Practices Act and has been "unjustly enriched" by keeping money it improperly failed to pay the plaintiffs and other body shops.

"In the end," Slossberg said, "it's about consumer choice" and not being pressured about where to get your car repaired.

Contact Diane Levick at dlevick@courant.com.

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Negotiations: The Fine Art

Shop Owner Uses Different Sales Techniques to Receive his Posted Labor Rate

A body shop manager in Middlesex County used some pretty creative salesmanship in negotiating a first party claim with an insurance company. When the insurance adjuster entered the body shop, the manager greeted him cordially. He then handed him his appraisal, which required the replacement of a bumper on an insured policyholder's Honda Odyssey. The body shop's posted and charged labor rate was \$22 per hour higher than the insurance appraiser decided to write his damage appraisal for.

The appraiser explained that his predetermined low-ball labor rate was the best that he could offer. The difference in total invoice was over \$400. The appraiser/adjuster was in the process of writing a company insurance check when the body shop manager asked him what he was actually doing. When the appraiser explained that he was writing a check (obviously for the wrong amount of money), the body shop manager told him to keep his check, explaining that if he accepted the check, that would only confuse the issue. He explained to the appraiser that they did not have an agreed price because of labor rate difference, and that he would make a courtesy call to the insurance company inside claims manager. The appraiser, at that point, left the body shop in a perplexed state of mind.

The body shop manager contacted the inside claims manager, explaining to her that there was a labor rate difference, and no agreement in price on the insured policyholder's claim. Before going any further, the shop owner pointed out that they both had something in common: that the policyholder was not only the insurance company's customer, but obviously the body shop's customer also. He then explained that the policyholder, a very intelligent individual, was aware that, by the terms of her policy, she was only responsible to pay her deductible. He cited a potential breach of policy contract if the customer was made liable to cover any additional costs out of pocket that the insurance company refused to pay. He offered the possibility that the customer would most likely contact Connecticut Attorney General Richard Blumenthal's office and file a complaint citing unfair claims settling practice against the inside claims manager personally. He suggested the policy holder may also contact her own attorney to pursue legal action, explaining that whatever happened from this conversation going forward was beyond his control. He finished by verifying the correct spelling of the claims manager's first and last name so that he could pass on accurate information to the policyholder.

The claims manager obviously understood that this was a serious issue that needed to be rectified. After careful consideration, the claims manager asked that the body shop manager fax her a copy of his final bill and a direction to pay document, stating that she would issue a check immediately, made out to the body shop for the exact amount of the repair invoice.

That check now makes its home on the body shop's wall, setting precedence for any future claims from that company. The moral of the story is as follows: Do not just be a body shop owner or manager. Be a customer-relations specialist, and a sales professional. The final and most important lesson: Take good notes, do not agree to unacceptable insurance appraisals, and hold individuals accountable for their statements and actions.

NOTICES AND BULLETINS

The ABAC NEWS welcomes the following new advertisers who have joined the ad directory. They are :

- **Countyline Nissan** **Watertown, Ct.**
- **Middletown Nissan** **Middletown, Ct.**

We wish them great success and thank them for their support!

The ABAC membership continues to grow! Congratulations to the following new members who have become part of the most powerful auto body association in the country. They are :

- **North Wilton Auto Collision Center** **Wilton, Ct.**
- **G B Family Auto Body** **West Hartford, Ct.**

AllState May Have Learned a Valuable Lesson?

Recently, a shop owner in New Haven County had a third party claimant's vehicle that was deemed a total loss by an AllState insurance adjuster. The only problem was that the adjuster initially refused to pay the shop's posted storage rates and administrative labor charge, citing that the AllState Company policy was that they would only pay the standard storage rates that licensed towing facilities charge, as per DMV regulations.

This law, however, pertains to licensed towing facilities only. The body shop owner explained that he was not a licensed tower, and that his individual posted storage rates were set by his accountant and were fair and reasonable. He also handed the adjuster a document showing a DMV ruling regarding a complaint filed by another insurance company against a body shop that was also not a licensed towing facility, complaining that the shop overcharged for towing, storage and administrative labor. It was clearly evident by the content of this document that the DMV ruled that the posted storage and administrative labor charges on the shop wall applied in this case. The appraiser left the facility without settling the total loss.

Ironically, the next ill-fated trick that AllState attempted with the body shop and his claimant customer was to issue a threat refusing to give her a reimbursement check for her total loss unless she paid the difference in storage and administrative labor that they were not willing to cover. The company also threatened to abandon the vehicle at the body shop. The body shop owner immediately contacted a representative from AllState's total loss division, faxed her the DMV document clarifying the correct liability in this matter. He also explained that if this issue was not settled in a prompt and satisfactory manner, both he and the customer would be filing individual complaints of unfair claims settling practice with the Attorney-General Richard Blumenthol's office and the Connecticut Department of Insurance.

An amazing thing happened after that. POOF. Just like magic, the shop owner received a call from the Salvage and Recovery Company (sub-contracted by AllState) asking for the total invoice for towing, storage and administrative labor charges to pick up the vehicle. What's the moral of this story? Know your laws, because it is the best way to look out for the well-being of your customers and your own business!

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ABAC NEWS

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