



STATE OF CONNECTICUT

INSURANCE DEPARTMENT

6446

Testimony of the Connecticut Insurance Department

Before the Insurance and Real Estate Committee

Tuesday, February 17, 2009

House Bill ~~6446~~ — An Act Concerning Motor Vehicle Repairs

The Connecticut Insurance Department would like to offer the following comments on HB 6446 – An Act Concerning Motor Vehicle Repairs. This proposal seeks to regulate certain communications between an insurer and insured concerning the motor vehicle repair process. The Department believes that this could unnecessarily delay the repair process if disputes arise between the repair facility and the insurer paying for the repair work. This proposal will also require that many insurers re-file their policy forms to the extent they do not already include provisions dealing with discounts and guarantees for the use of preferred repair shops.

Further, enactment of this bill would have a significant impact on the Department by requiring the department to annually review premium credits and develop regulations to review and adjust those credits depending on the reduction in motor vehicle thefts. The resources needed are beyond those currently in place at the Department. Additionally, today's rates reflect reductions in theft exposure for mechanisms such as theft alarm systems. Should etching prove to provide additional cost savings, the actuarial data for lower frequency of theft claims would ultimately lead to lower premiums.

The Connecticut Insurance Department would like to outline the steps the Department has taken – and will continue to take – to enforce the insurance laws relative to auto body shop repair work and we hope that the information presented assists you in your deliberations on this long-standing debate.

First, on January 29, 2007, the Department issued administrative guidelines concerning Labor Rates. These guidelines outline best practices that companies should use when determining labor rates. We specifically asked insurers to consider the geographic location of a body shop, the type of repair facility, the methodology for determining labor rates, the data sources used to determine the labor rates and deviations on individual claims although we are mindful of the fact that the Department has no jurisdictional authority to fix or set the auto body labor rates paid by insurers to the body shops.

In 2006, the Department reconfigured its independent arbitration program as a means of resolving many consumer concerns. This program gives consumers a relatively low cost means of resolving motor vehicle damage disputes in situations where coverage and liability are not in dispute. The Department has designated the American Arbitration Association as the independent arbitrator—the program is administered through the Department's Consumer Affairs Unit. In that regard, whenever there is a dispute between an insurer and claimant over the costs associated with an automobile physical damage claim, consumers have the right to have their dispute first mediated by the Department. If mediation proves unsuccessful, the consumer then has the right to pursue arbitration rather than being forced to court to seek a resolution.

At the end of 2007, the Department distributed posters to over 4000 auto repair shops and garages asking that they be displayed for consumers. The first poster alerts consumers of their right to have their car repaired at any auto body shop of their choice. The second informs consumers that when a dispute exists between a repair facility and their insurance company regarding the price to fix their vehicle, assistance is available through the Insurance Department.

We have also issued a series of Frequently Asked Questions regarding motor vehicle repairs to help consumers better understand the process.

In addition to the actions taken by the Department noted above, members of the Insurance and Real Estate Committee may be interested in an overview of our current marketplace. Consumers fare best when competition is fair and robust, and when prices are low. While a small number of auto body repair facilities may be finding it difficult to compete in some markets, the Department cannot act outside of its authority and jeopardize the marketplace as a whole.

In Connecticut, consumers are experiencing favorable trends in auto insurance premiums according to a report published by the National Association of Insurance Commissioners. From 2004 to 2005, Connecticut enjoyed a slight decrease in combined coverage premiums which was consistent with the national average. While both collision and liability premiums were relatively unchanged, comprehensive premiums dropped nearly 5% in the state. The countrywide decrease for comprehensive coverage was only 2.5%. A likely factor in the decrease of comprehensive coverage premiums is that the average claim severity, i.e. the actual cost per claim, decreased by 1.7%. It is important to note that in Connecticut, the average claim severity is 27% less than the national average -- \$688.00 as opposed to \$941.00. Also worth noting is that according to the Department's most recent analysis, the average rate filing for auto body physical damage has decreased for 2007 by .4%. This is good news for consumers. This means lower costs for consumers and premium increases well below the pace of inflation.

As Committee members are aware, the Department investigates all complaints – whether they are from consumers or auto body repair facilities – concerning steering or disputes of labor rate.

To provide the committee with some history regarding the level of steering complaints the Department has received in the past, the following is offered. The Department has received 39 complaints of steering since January 1, 2005. Of those 39, 25 complaints or 64% were submitted by a handful of licensed auto body shops in Connecticut, not by vehicle owners. It is important to note that in each case, the consumer stated that they did not feel coerced into getting their car repaired at a specific shop and, in some cases, the consumer did not even know a complaint was submitted on his or her behalf.

The Department acknowledges that it is difficult to prove steering allegations. When instances arise where the Department questioned the activities of insurance companies, but did not have clear-cut evidence of wrongdoing, we have required that carriers appear before the Insurance Department to explain their activities. These meetings have resulted in specific changes to company call center scripts to ensure that consumers are aware of their right to choose the shop of their choice for the estimate and repair of their vehicle.

Further, in responding to questions posed by Attorney General Richard Blumenthal, and in reviewing this matter in greater detail, the Department will now secure tapes or transcripts (when available) of call center conversations for all complaints of steering in the future. However, in order to protect the privacy of the vehicle owner, the Department will request that the consumer affirmatively consent to the release of these documents before providing them to a third party.

Second, the committee may be interested in data regarding labor rate complaints received by the Department from January 1, 2005 to September 14, 2007. In this time, the Department has received 62 labor rate complaints. Fifty-four of the 62 complaints or 87% were made by auto body shops. Six auto body repair shops have filed 40 or 64% of these complaints.

Because the Department does not have any statutory or regulatory authority to determine labor rates, the Department investigates each complaint on a case-by-case basis to ensure that the claim was handled properly and that the vehicle owner was not adversely affected. As with all complaints, the Department will investigate each new complaint forwarded to us to ensure that there have been no violations of the insurance laws. If the Department is unable to mediate the dispute between the claimant and the insurer, he or she is entitled to have their dispute reviewed by an independent arbitrator.

In closing, the Department believes that Connecticut consumers are benefiting from a healthy and vibrant auto insurance market and hopes the information provided in this testimony is informative and assists in your deliberations.



STATE OF CONNECTICUT

INSURANCE DEPARTMENT

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INFORMATIONAL PAMPHLET REGARDING ARBITRATION PROCEDURES FOR CERTAIN AUTO CLAIMS

6446
ATTACHMENT
5 PAGES

This Informational Pamphlet describes arbitration procedures for the settlement of disputes between claimants and insurance companies concerning automobile physical damage and automobile property damage liability claims in which liability and coverage are not in dispute.

Arbitration affords the opportunity for a prompt and efficient resolution of a claim.

Please read this Pamphlet carefully. We believe it will assist you in understanding the arbitration process and guide you in presenting your claim.

IMPORTANT NOTE REGARDING COMPLAINT PROCESS

Consumers having complaints with the way that an insurance company has handled their auto damage claim should file a complaint with the Department. Claims will only be considered for arbitration after they have been filed with the Department's Consumer Affairs Division Consumer (complaint form (pdf 152 kb) (rtf 198 kb fill-in format)) and attempts by Division staff to resolve the matter have been unsuccessful.

As indicated in Bulletin CL-5 (pdf 134 kb), the Insurance Department has entered into a contract with the American Arbitration Association to provide independent arbitrators for the settlement of disputes between claimants and insurance companies concerning auto physical damage and auto property damage liability claims in which liability and coverage are not in dispute.

I. INTRODUCTION

A. WHAT IS ARBITRATION?

Arbitration is a process involving a hearing before an impartial arbitrator on disputed automobile damages between a consumer claimant and an insurance company when liability and coverage are not in dispute. Arbitration proceedings are intended to be binding on all parties to the proceedings.

B. WHO IS ELIGIBLE FOR ARBITRATION?

Two types of consumers are eligible to participate: (1) Insurance policyholders may arbitrate first party property damage claims under the collision or comprehensive portion of their auto policy when coverage and liability are not in dispute. (2) Owners or lessees of automobiles who have made an auto damage liability claim against an at-fault driver's insurance company when coverage and liability are not in dispute.

C. WHAT DAMAGES MAY BE ARBITRATED?

The following are examples of disputes which may be arbitrated: Disputes involving damages to the claimant's automobile and repair costs for such damage; the value of the automobile; loss of use damages; rental bills for a replacement vehicle while your vehicle is being repaired; and storage charges after the accident.

D. WHO ARE THE ARBITRATORS?

The arbitrators are members of the American Arbitration Association who have experience in hearing and settling disputes, and who are familiar with the rules of procedure.

E. IS AN ATTORNEY REQUIRED?

No, however, the consumer claimant and insurer each have the right to legal representation. Arbitration hearings are designed so that a consumer claimant may present his/her own case to the arbitrator if he/she wishes to do so. However, a claimant should be thoroughly prepared.

F. WHAT ARE THE COSTS?

Each party must pay a \$20.00 non-refundable fee by check, payable to the "Treasurer, State of Connecticut". The cost of witnesses, if any, is the responsibility of the party who requests their testimony.

G. IS A CLAIMANT REQUIRED TO ATTEND THE ARBITRATION HEARING?

Yes, if an In-person Hearing is selected. No, if a Documentary Hearing is selected. Only written testimony submitted by the claimant and insurer will be reviewed by the arbitrator at a Documentary Hearing. When completing the *Request for Arbitration Form*, a claimant must choose between an In-person or Documentary Hearing.

II. HOW TO FILE

A. FORMS REQUIRED

A *Request for Arbitration Form* must be filled out completely, signed and returned via the U.S. Mail to the Arbitration Unit, Insurance Department, State of Connecticut, P.O. Box 816, Hartford CT 06142-0816 accompanied by a non-refundable check in the amount of \$20.00, payable to the "Treasurer, State of Connecticut", and all evidence which you wish the arbitrator to consider.

B. INFORMATION NEEDED

The arbitrator requires the originals or copies of all evidence which supports your disputed damages. Estimates and appraisals must be itemized. The arbitrator may request photographs which identify damaged areas on the vehicle, if available; itemized bills/invoices which are pertinent to the claim; and cancelled checks and paid receipts, if any. The Insurance Department will provide a copy of its investigative file to the arbitrator.

C. STATEMENT OF FACTS

A claimant must submit a specific statement outlining the dispute. It is available for completion in the *Request for Arbitration Form*. It is most important to include all dates, information and evidence, pertinent to the dispute with your Request for Arbitration.

D. WILL THE INSURANCE COMPANY TESTIFY?

A representative of the insurance company that is the subject of the dispute will be required to appear before the arbitrator when an "In-person hearing" has been selected, and testify, if necessary. When a Documentary Hearing is requested, the insurance company must also respond in writing.

E. MAY WITNESSES ATTEND THE HEARING?

Yes. Witnesses may appear for either you or the insurance company. Costs for witnesses must be paid by the party who requests them.

III. ARBITRATION PROCEDURE

A. PREPARATION

Arbitration procedures are designed so that a claimant may represent himself/herself without prejudice to his/her case, even when the respondent insurance company is represented by an attorney. Simply appearing however, will not prove a claim. If an In-person Hearing has been selected, you must bring to the hearing the originals or clear copies of appraisals, estimates, invoices, cancelled checks, sales receipts, letters, notes, explanation sheets, pictures and any other evidence that relates to the disputed damages. If you are bringing witnesses, notify them in advance of the hearing date, time and location.

You will need to prepare a statement of your case. It should be clear and concise. Include dates when pertinent to the dispute. This will allow for the orderly presentation of evidence. If a Documentary Hearing has been selected, the arbitrator will base the decision only on the written documentation submitted by you and the insurance company.

B. WHAT OCCURS ON THE DAY OF AN IN-PERSON HEARING?

Disputed damages will be heard by the arbitrator assigned to the case. The arbitrator will first hear testimony from you and any witness you may have. Then the insurance company's testimony will be heard. You will be given time to respond. Remember, it is your responsibility to prove your claim for disputed damages.

C. IF THE COMPANY OR CLAIMANT IS UNHAPPY WITH THE ARBITRATOR'S DECISION, MAY THE INSURANCE DEPARTMENT RECONSIDER IT?

No. By statute, the Insurance Department is expressly forbidden from amending, reversing, rescinding or revoking any decision of the arbitrator.

D. WHEN WILL THE ARBITRATOR'S DECISION BE ISSUED?

Within fifteen (15) days following the hearing, the arbitrator will issue a written decision to the parties involved. Decisions favoring the claimant, are required to be paid by the insurance company within ten (10) business days following receipt of the decision.

IV. APPEALS

A. IS THERE A RIGHT TO APPEAL?

Under Connecticut General Statutes Sections §52-418 and §52-419, appeals to the Superior Court of arbitration decisions may only be made under very limited and extraordinary circumstances. Arbitration awards are intended to be binding and final.

An arbitration award may be **vacated** by a court only on finding that:

- (1) the award has been procured by corruption, fraud or undue means;
- (2) there has been evident partiality or corruption on the part of any arbitrator;
- (3) the arbitrator has been guilty of misconduct in refusing to postpone the hearing upon sufficient cause shown or in refusing to hear evidence pertinent and material to the controversy or any other action by which the rights of any party have been prejudiced; or
- (4) the arbitrator has exceeded his or her powers or so imperfectly executed them that a mutual, final and definite award upon the subject matter submitted was not made.

An arbitration award may be **modified** or **corrected** by a court only on finding that:

- (1) there has been an evident material miscalculation of figures or an evident material mistake in the description of any person, thing or property referred to in the award;
- (2) the arbitrator has awarded upon a matter not submitted to him or her unless it is a matter not affecting the merits of the decision upon the matter submitted; or
- (3) the award is imperfect in matter of form not affecting the merits of the controversy.