

NY STATE AUTO COLLISION TECHNICIANS ASSOCIATION

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Phone: 315-471-8521

January 24, 2012

Attorney General Darrell McGraw

State Capitol Complex

Bldg. 1 Room E-26

Charleston, West Virginia. 24305

Re: West Virginia VS Liberty Mutual etal

Re: ARA Complaint regarding term "junkyard"

Dear Mr. McGraw,

On behalf of our Association, we offer our appreciation and gratitude for your efforts in protecting consumers relative to the sale and installation of, industry referred to; used, salvage, and junkyard supplied parts. We further support your position that the installation of these parts MAY affect vehicle limited warranties and highway safety.

In that regard, enclosed please find an article regarding Automotive Recyclers Association (ARA) opposition to your use of the term "junkyard parts". We have also enclosed **an attorney** position letter from the Federal Trade Commission relative to the same issues. The FTC letter was in response to questions fielded by author Danny Wyatt published in his book, Collision Collusion, copy enclosed. The FTC opines terminology, using verbiage, such as LKQ (Like, Kind, Quality) or "quality recycled" can be misleading and may confuse consumers. The use of the term "junkyard", "wrecking yard", "salvaged part" or "used salvage" often times more accurately describes the part; the FTC goes on to state suppliers and marketers of these parts "should not mislead customers about a part's condition, or the extent of previous use". We refer to this condition as a part's "status."

With regard to the ARA's position on vehicle warranties, we respectfully submit, the FTC position cited by the ARA was taken out of context. In practical terms the WHOLE vehicle limited warranty may not be voided or affected if aftermarket or salvage parts are used but portions of the limited warranty MAY indeed be voided by use of NON-OEM supplied replacement parts. Common sense should dictate any limited warranty offered on a consumer product is modified/altered if parts are substituted with NON-OEM parts. By substituting parts a vehicle is in essence re-engineered. We cannot think of a single manufacturer of any product who would honor their limited warranty on an item and all its components consistently if a part in the "stream of mechanicals" were replaced with an off brand aftermarket part or a part salvaged from a wrecking yard e.g., Junkyard. There are too may variables and risks for blanket acceptance and compatibility.

In our collective experience, the term "recycled" has been misused and/or abused in collision repair estimates prepared by insurance company appraisers and some repair shops/garages for years. More specifically, information providers, pre-worded, pre-

programmed computer database scripts and insurance company driven programs consistently recite the term “recycled”. These “used parts” from a “salvage yard” are, unless otherwise noted, NOT considered “recycled” in terms of being remanufactured or being re-processed according to the FTC (“Environmental Guidelines”), 16 CFR Part 20. Being removed off a host car and re-used by a shop and/or another consumer who may or may not be fully informed of their origination. The process known as “RECYCLING” by definition is when a vehicle is shredded and metal by-products are re-smelted for another use. The “salvage part” re-conditioning process, loosely used, takes place at the repair shop. If the shop is qualified, or cares, the repair shop inspects, cleans, repairs cosmetic damage including rust, flaws, then test fits, re-paints and applies rust-inhibitors to body parts to match and protect the existing consumer’s vehicle. It’s the repair shop that is responsible to inspect, test and magniflux critical components, mechanical items or structural members should they even be considered for use due to function, appearance, safety, value and liability concerns. This reconditioning - process IS the only “re-use” “reconditioning” process we as repair shops complete.

The re-use of a “salvage part” or the selling of a “salvaged previously used part” does not qualify them as “recycled” part(s). In our experience, the term “recycled” as it relates to “salvaged parts” amounts to little more than a revolving door. The part goes into the salvage yard attached to a host car; it’s unbolted, cut or sawed off, torch cut, removed, inventoried, stocked and then sold to the next user. Describing these salvaged/used parts as “recycled” misrepresents the part’s condition and may deceive the consumer.

In our collective experience, many times parts from “salvage yards” are obtained from vehicles that for the most part, were damaged and in many instances were considered total losses. Most of these vehicles were assumed to be involved in severe violent collisions where un-determined stress may have been placed on the remaining visibly undamaged usable parts. Internal components such as, window motors, pumps, valves are often sold without thorough testing understandably based on value, how much testing is reasonable compared to part value? Totaled cars are often subject to winching from ravines, difficult accident scenes, dragged over rocks, off tree stumps and impaled guard rails. Then they often moved around auction holding yards, dragged on to carriers and flatbeds and then towed to salvage yards where they are moved with fork trucks and pay loaders. Typically these totaled vehicles are treated in a haphazard manner including but not limited to being hauled, lifted and dropped to varying degrees from various heights. Furthermore, “salvage yard” parts can sit exposed to elements, for long periods of time, before during and after inventory causing rust corrosion and fatigue. Accordingly, we are now concerned that “aftermarket” NON-OEM parts from “salvage yard” vehicles are being sold as original manufacturer parts unbeknownst to shops and/or consumers. The net effect is that these un-crash tested part(s) could be installed on a vehicle and sent back out on the highway from unknown origin.

The “salvage yard” associations certainly have the right to defend their members; we are simply suggesting the term “recycled” only be used when the part has truly been recycled as defined by law not simply renamed in the interest of creating an impression of “green” efforts and making a profit to the detriment of the consuming public.

The auto collision repair industry and the general public have been misled and to a certain extent, deceived by an insurance industry that consistently attempts to use their substantial financial resources to influence shops and persuade consumers for its own cost saving, profit driven greed. Unfortunately, the Insurance industry appears all too willing to sacrifice safety for profit by lulling consumers into a false sense of what is “commercially” viable and more importantly, safe. Simply referring to a part or process as “green” does not make it suddenly acceptable especially when the term “green” or “recycled” is being used to deceive or at least mislead the consuming public.

In our experience, the insurance industry often attempts to remove itself from consumer safety and liability issues by placing the repair shop between the consumer and the insurance company. We find this to be particularly evident with regard to liability claims against repair shops, warranty claims and safety issues once the vehicle has been repaired. Even the tone of the FTC, MAY 2007 letter, puts the responsibility for “status” of parts on the repair shop as does the New York State DMV.

We respectfully submit, consumers are owed, according to most insurance policies, to have their vehicles returned to “pre-loss condition” after a property damage scenario. Receiving payment allowance for a loss based on the installation of parts from a “salvage yard” that are of unknown origin, is not acceptable. Salvaged parts may have been subjected to, undetermined stress, use, or abuse. The consumer is owed equal or better, not unknown! In our daily experience, as long as the insurance industry can save money, churn a profit and insulate themselves with the repair shop between them and the consumer, they are more than willing to perpetuate the process. We hear it all the time, *“that insurance companies are not the expert(s), the repair shop is, insurers just pay claims.”* Unfortunately we’ve often heard that statement in courtroom situations where the repair shop is being sued due to repair shop liability claims or is attempting to collect on a short payment in attempt to obtain full payment, for returning the consumer’s vehicle to pre-loss condition.

Our Association firmly believes the term “junkyard” (where applicable) is not any more derogatory than the term “repairman-person” vs “repair technician” or “repair shop” vs “garage.” There will always be alternative words/terms to describe every trade, profession, process or part. We respectfully submit consumer safety and awareness is and always will be more important than nomenclature.

In closing, we commend you and your office for your unfettered commitment to consumer awareness and safety. If you have any questions or we can be of additional assistance please do not hesitate to contact us.

Sincerely,

Michael Orso, President