

# DOIs: The Fox Guarding the Henhouse?

For the most part, collision repairers believe state departments of insurance turn a deaf ear to their concerns. Here's an in-depth look at the role they play in regulating the insurance industry.

Part 3 of the 4-part Industry Unity series.

BY JASON STAHL

WHEN BODY SHOP OWNER GENE CROZAT REMARKED, "THE CALIFORNIA DEPARTMENT of Insurance is one neutered animal," in the cover story of last month's issue of *BodyShop Business*, most repairers probably felt he could have been describing their own state's department of insurance (DOI), too.

Lately, more and more shops have been filing complaints with DOIs, along with bringing insurance companies to court, as one way of fighting back against what they perceive as "unfair business practices." But the remark from repairers time and time again is that the DOIs are unresponsive to their complaints or ineffective at coming to what they deem to be satisfactory resolutions.

A common frustration among repairers is that, when they file a complaint about an insurance company with their state DOI, whether it be that the insurer steered a customer from their shop or failed to pay them their labor rate, the result is usually a letter stating something to the effect of, "We have found no evidence of wrongdoing..."

Erica Eversman, a well-known attorney and consumer advocate, says that there's a simple reason for this.

"The problem for repairers is that DOIs will only take complaints from a consumer. They believe their whole constituency, generally, is people who buy insurance," Eversman says. "The response you invariably get if you're a repairer is, 'We don't regulate nor do we have jurisdiction to regulate any activities or relationships or contracts between insurance companies and collision repairers.' They don't extend themselves sufficiently to understand that this is a function of claims handling, for which they do have jurisdiction."

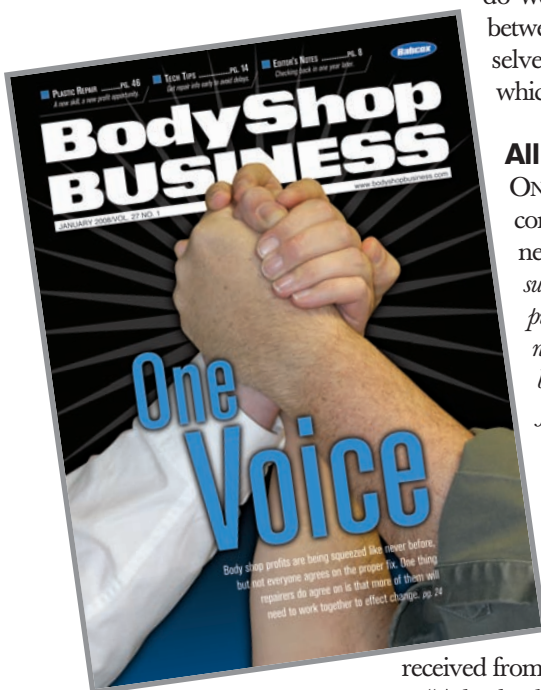
## All About the Consumer?

ONE LOOK AT A COUPLE DOIs' MISSION STATEMENTS SUPPORTS EVERSMAN'S contention that they serve consumers and consumers alone. For instance, Connecticut's reads: *The mission of the Connecticut Insurance Department is to serve consumers in a professional and timely manner by providing assistance and information to the public and to policy makers, by regulating the insurance industry in a fair and efficient manner which promotes a competitive and financially sound insurance market for consumers, and by enforcing the insurance laws to ensure that consumers are treated fairly and are protected from unfair practices.*

North Carolina's basically says the same thing: *The Department of Insurance provides valuable services to the people of North Carolina by regulating the insurance industry, licensing insurance professionals and others, educating consumers about different types of insurance, handling consumer complaints and much, much more.*

Even though the emphasis for DOIs is on the "consumer," Bob Lisson, deputy commissioner of the North Carolina DOI Consumer Services Division, says his state's DOI makes no distinction between a complaint received from a body shop or one received from John Q. Public.

"A body shop can come to us as a consumer, and there can be instances in which a body shop has a concern with an insurance company and it's something we can inter-



## Florida DOI: Dropping the Hammer on Allstate

The Florida Office of Insurance Regulation is doing much these days to shed the "lame duck" reputation most departments of insurance (DOIs) have with collision repairers.

Its investigation into alleged fraud by Allstate has garnered national media exposure and revealed tough talk from Insurance Commissioner Kevin McCarty that flies in the face of what repairers say they've typically heard from DOI commissioners in the past.

It all started when insurance providers in Florida said their hurricane losses were off the charts and needed some help. In response, state legislators approved a \$12 billion plan to provide them with the necessary reinsurance. Policyholders were then supposed to gain a corresponding rate reduction.

While more than 80 percent of Florida's insurance companies complied, Allstate did not. Instead, Allstate raised the ire of the DOI by allegedly not passing on savings to its customers and, despite getting cheaper reinsurance, asking for a 42 percent increase. By acting this way, Allstate cast suspicion on itself that it was colluding with other insurance companies to keep rates artificially high.

The Florida DOI issued a subpoena last October demanding that Allstate turn over internal documents collectively known as the McKinsey Report relating to how Allstate sets the rates on its homeowner premiums. Allstate refused to turn over the documents by the DOI's Jan. 15 deadline, arguing that the documents were only used to set auto-insurance rates, and therefore a hearing set for Jan. 15 was dismissed. The tough talk from Commissioner McCarty then began.

"In view of Allstate's ongoing, blatant disregard of our subpoenas, I have little choice but to take an action that will send a clear message about how seriously I am taking this issue," McCarty said. "I am also frustrated that Allstate keeps trying to tell us which documents are relevant to our investigation. Suspending their certificate of authority to write new business in our state should make my point."

McCarty then made good on his promise, an action that was viewed as unprecedented by collision repairers and many others familiar with the insurance industry.

"His actions were unprecedented, but as he said, he had no other choice but to suspend [Allstate's] license in order to get the company to comply with the requirements of the subpoena," says Tom Zutell, the commissioner's deputy communications director. "Currently, under Florida law, the only other choice was to fine Allstate \$25,000. Considering that Allstate has been paying a Missouri court-imposed obstruction of justice penalty (for withholding some of the same documents requested in our subpoena) of \$25,000 a day since last September, the Commissioner did not think a single fine of \$25,000 would force it to comply."

Following the suspension, Allstate quickly responded by providing nearly 40,000 pages of information, including roughly 13,000 pages of the McKinsey Report that reportedly details how Allstate saves money through low-ball offers that allow it to pay less for settling automotive claims.

Collision repairers are hopeful that the Florida DOI's actions may cause a ripple effect and force closer scrutiny of the insurance industry overall throughout the United States.

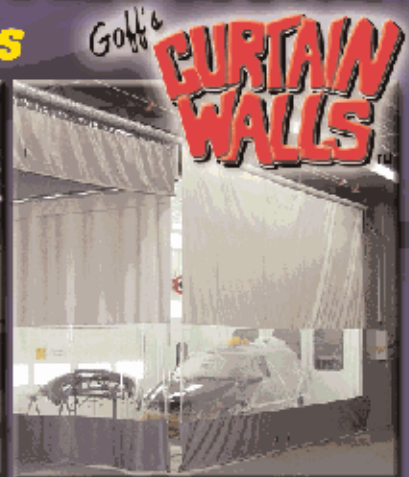
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vene in," says Lisson. "We would not turn them away. Instead, we would interpret their complaint like any other: within applicable laws, regulations and the language in the policy of insurance."

Bob Winfrey, owner of All Precision Collision Repair in Marshville, North Carolina, begs to differ. Winfrey, who has been in collision repair for more than 30 years and currently doesn't participate in any direct-repair programs, says the North Carolina DOI has been anything but responsive to him.

"[North Carolina Insurance Commissioner Jim Long's] responses mimic the insurance companies' responses on adjuster conduct and consumer complaints," Winfrey says. "My five complaints with this department have received little or no attention at all. My last complaint received no response from his office whatsoever."

According to Lisson, Winfrey filed four complaints with the NCDOI: one in March 2003, two in February 2004 and one in March 2004. One of these was referred to the NCDOI by the Attorney General's office. Lisson says the 2003 complaint is no longer on the system because the NCDOI doesn't keep records that far back. In February 2004, the NCDOI received a separate complaint from a consumer regarding the same claim discussed in one of Winfrey's 2004 complaints. The complaint referenced Winfrey's shop, but any response would have been sent to the consumer, not to Winfrey, Lisson says.

Out of the three 2004 complaints, two related to steering and one concerned an insurance company's reimbursement rates for labor (lower than the rates Winfrey's shop was charging). All three, Lisson says, resulted in a disposition of "question of fact." In the labor rate complaint, Winfrey requested the insurance company's methodology for establishing its reimbursement rates for labor.

"Based on the company's response that this was not public information, we were unable to further assist Mr. Winfrey and suggested that he consult an attorney if he wished to pursue the matter," Lisson says. "On all three complaints, he was indeed sent written responses explaining our findings and position."

In this case, it appears the body shop

owner did indeed receive responses to his complaints, but they weren't the responses he wanted to hear. In fact, many shop owners express immense frustration with these "question of fact" rulings and "We are unable to further assist you..." letters back from DOIs, which are largely the reasons why repairers believe DOIs are ineffective. But Lisson says repairers have to understand what DOIs aren't.

"We're not a courtroom, we're not a trier of fact, we don't have a judge or jury or truth serum or lie detectors," he says. "Some complaints leave us unable to force resolution and leave us in the position of advising the complainant that he or she may want to pursue legal consultation. And that's entirely consistent with the parameters."

The Ohio Department of Insurance has also been accused of dragging its feet

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on repairers' concerns, particularly the accusation that certain insurance companies in the state have shops in their preferred programs that aren't licensed as required by the Board of Motor Vehicle Collision Repair Registration. Attorney Eversman, who's based in Ohio, said she and others alerted Ohio DOI Director Mary Jo Hudson to the matter in a sit-down meeting last June but haven't heard anything back. Hudson's response sounded more along the lines of what repairers say they're used to hearing from DOIs.

"It's an issue and we will continue to look into it," Hudson says. "We've been in the process of doing some restructuring and other work here, but it's a very valid point."

At this time, the department's only action toward the problem is to tell consumers who call in and ask about a shop they want to go to or one that an insurance company told them to go to that they should make sure it's registered with the Board.

Lip service is also what repairer Lee Amaradio says the Collision Repair Association of California (CRA) has been getting from its insurance commissioner on a bill against aftermarket parts and another one against steering.

"We worked very hard to get Insurance Commissioner [Steve] Poisner to enforce Department of Insurance laws and regulations that are already on the books," says Amaradio. "We worked with him for over one year and he has done nothing. He says he will look into things but never does."

Amaradio says the CRA's strategy now is to go to Attorney General Jerry Brown with its concerns.

### Sly Foxes?

SOME REPAIRERS BELIEVE THE FAILURE of the DOIs to take action on their behalf has less to do with their parameters and more to do with their employees having insurance backgrounds. Repairers often refer to this as the "fox guarding the henhouse." Eversman says that the insurance commissioners who are appointed (the vast majority) usually do have insurance backgrounds.

"The theory behind hiring an insurance person to oversee insurance is because they know about insurance and know what's right and wrong and they'll know how to keep everybody in

line," Eversman says. "But repairers have found that these commissioners protect insurers' interests."

Eversman believes insurance commissioners who are elected are more receptive to serving all of their constituents, including collision repairers, because their jobs depend on being voted in.

Lisson doesn't deny DOI commissioners' insurance ties, but says that knowledge of the industry is crucial to doing the job well.

"If you as a consumer sent a complaint to the DOI, would you rather have that complaint handled and investigated by someone who has experience in the insurance industry or someone who was hired in from a career in dry cleaning?" Lisson says. "We owe both the consumer and the insurance company a fair shot. It takes an enormous amount of expertise to be fair. Someone who doesn't have that background or expertise in applicable statutes, regulations and the

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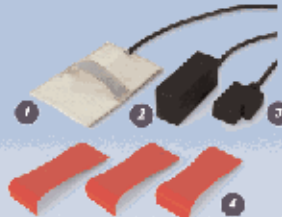
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machinery of insurance, i.e. how underwriting, adjusting and claims processing is done, isn't going to be nearly as effective at their job as someone who does."

Lisson makes a good point, but then again, an argument can also be made for a fresh pair of eyes unfamiliar with the insurance world coming in and more thoroughly examining how the business of insurance is conducted.

"These days, I frankly would rather have someone from the dry cleaning industry," says Eversman. "Without having a background in what is 'OK' or what is 'industry practice' within the insurance world, I expect the dry cleaners would ask a lot of the right, pointed questions instead of just glossing over some inaccurate thought process or activity as an accepted 'industry practice.'"

Although Ohio DOI Director Mary Jo Hudson has never worked for an insurance company directly, she did focus on insurance regulation as part of her 18-year law career. She also worked as an attorney with the Ohio DOI from 1989 to 1995 and as General Council for the Office of the Ohio Insurance Liquidator. She, too, feels that a background in insurance is vital to succeeding as the head of a DOI.

"You want to have folks who know what they're talking about," says Hudson. "Let's face it, insurance is a complex financial service product that is sold to consumers, which kind of doubly compounds what we have to do. And it involves money, which always invites a lot of poor sales practices and predatory practices. So we not only have to make sure it's sold well but that it's sold in a way consumers understand."

As far as the risk of favoritism toward insurance companies, Hudson says there's a very strict code of ethics her department must follow that ensures that will never happen.

"Nobody from the insurance industry outside of the DOI can even buy me or anyone who works here a cup of coffee," she says. "We try to keep an arm's length relationship with it."

## Conclusion

THE BOTTOM LINE IS THAT DOIs WILL NOT get involved in what they deem a "business dispute" between an insurer and a body shop. They serve "buyers"

of insurance, or consumers. That means that they *will* step to the plate for a body shop's customer who feels he or she has been wronged. So it's up to body shops to urge their customers to file complaints when they feel they've been short-changed by their insurers or mistreated in some other way. Repairers know, however, that it takes a special customer to go that far because most just want to have their car fixed, be on their way and forget about the whole experience.

If what is currently going on in Florida is any indication (see sidebar pg. 46), however, the tide may turn soon and repairers may see more DOIs taking hard-line stances with insurers. But it won't be because shops are being mistreated by insurers. Rather, it will still be all about the consumer. ☞

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