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INFORMATIONAL LETTER NO. 55

DEDUCTIONS FROM TOTAL LOSS AUTO CLAIMS/
AVERAGE RETAIL CONDITION

It has come to the attention of the West Virginia Insurance Commission that a number of insurers are routinely deducting amounts from total loss automobile claims for what is variously called a "reconditioning fee," a "clean-up charge," "clean and shampoo charge," etc.

The West Virginia Insurance Regulations, Series 14, are very specific with regard to any deviation downward from the value of a subject vehicle as set by the "Official Used Car Guide." These regulations dictate as to the adjustment by cash settlement of total losses that:

(1) It (the insurer) must use the most recent publication of an "Official Used Car Guide" approved by the Commissioner and uniformly and regularly used by the company, as a guide for setting the minimum value of the motor vehicle which is the subject of the claim. Any deviation downward from the guides retail valuation must be supported by documentation that gives detailed information about the vehicles condition, and any deductions must be measurable, discernible, itemized and specified concerning dollar amount, and they shall be appropriate in amount;

(2) If the retail value of the specific motor vehicle is not published in the most recent publication of an "Official Used Car Guide" approved by the Commissioner and which is used uniformly and regularly by the company, the company must secure dealer quotations on the retail value of similar vehicles and base the settlement upon them. The offer must enable the insured to purchase the substantially similar vehicle for the case settlement and any deviation from this practice must be supported by documentation giving particular information about the motor vehicles condition. The source of the dealer quotations must be maintained in the claim file;

(3) The company shall provide a reasonable written explanation to the concerned parties when case settlement offers, as set forth in Subdivisions (1) and (2) above are made. The explanation must specify the dollar amount of the base figure and identify the actual source. Any additions or subtractions from the base dollar figure must be identified and explained; ... West Virginia Insurance Regulations, Series 14, §§ 114-14-7, 4(a)(1), (2) & (3), (emphasis & clarification added).

Regulations also require with regard to the adjustment of all automobile losses that:

(e) Deductions for betterment and/or depreciation are permitted only for parts normally subject to repair and replacement during the useful life of the insured motor vehicle. Deductions for betterment and/or depreciation shall be limited to an amount equal to the proportion that the expired life of the part to be repaired or replaced bears to the normal useful life of that part. Calculations for betterment depreciation and normal useful(sic) must be included in the insurers claim file.

(f) Deductions for previous damage or prior condition of the motor vehicle must be measurable, discernible, itemized and specified as to dollar amount, and such deductions must be detailed in the claim file. West Virginia Insurance Regulations, Series 14, §§ 114-14-7.3(e) & (1), (emphasis added).

Therefore, any deduction by insurers from the "book value" of automobiles which does not meet the above criteria is improper and will be considered an unfair trade practice. The routine deduction of "reconditioning" and similar charges which are not specific and documented certainly does not meet these criteria. Further, any deduction of "reconditioning" charges from the book value of total loss automobiles is highly artificial and is improper. Therefore, it should be noted that the deduction of "reconditioning," "clean-up," "clean and shampoo," "carpet and upholstery cleaning" and similar fees from total loss automobile claims will be treated as unfair trade practices.

This position is in accord with the findings of other jurisdictions which have examined such "clean-up" fees as to total losses and where the matter has been litigated. While the West Virginia Insurance Commission is aware that the current "Official Used Car Guide" makes mention of "reconditioning charges" it must be considered that such guide is written with the assumption that those vehicles listed are to be resold. This is not the case with total loss vehicles.

While the "Official Used Car Guide" is a useful tool in determining a vehicles value its limitations must be recognized and it must be construed reasonably. The deduction of such "reconditioning fees" when applied to a total loss vehicle which will only be resold for salvage and which will never see a used car lot is simply too far removed from reality to be permissible.

AVERAGE RETAIL CONDITION OF OLDER VEHICLES

Another misconception seems to be common with respect to the adjustment of auto losses on older vehicles. This is the practice of deducting amounts from the "Official Used Car Guide" value for all rust and blemishes on the vehicle.

The "Official Used Car Guide" assumes vehicles to be in average retail condition. Average retail condition is not the same for a late model vehicle as for an older vehicle. Thus, in assessing the average retail condition of an older vehicle some rust, blemishes, fading of paint, etc. is to be expected. Deductions from the "Official Used Car Guide" value for such items should be made only where such conditions are shown to be excessive. This, of course, will depend on the age and model of the particular vehicle. The overall point, however, is that older vehicles are not to be held to the standard of "like new" or "show room" condition.

Any questions regarding this Informational Letter should be directed to B. Keith Huffman, J.D., Director, Consumer Service Division, Offices of the Insurance Commissioner, 2019 Washington Street, East, Charleston, West Virginia 25305: Telephone No. (304) 348-3386.

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