NORTH DAKOTA AUTO BODY ASSOCIATION INC.

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NEWS • REPORT

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PRESIDENT'S LETTER

As we get ready to say goodbye to 2020, It's safe to say there will be some aspects of 2020 that will not be missed. One should never wish time away, but 2021 can't get here soon enough.

When all this pandemic chaos started, I was never happier to live in quiet friendly ND. Well, as we know, that all changed. It has become a full-time job keeping yourself and your family safe.

Arguably the biggest challenge we have faced is keeping our shops and our employees safe, and without employees we have no business. Some of our members and their staff have been affected by Covid-19 and our prayers are with them.

The NDABA lost another friend in the passing of Amos Stackhouse. Amos was an engineer for Ford Motor Co. and was very instrumental in helping the NDABA organize our very first Convention. He most recently attended our Summer retreat in Lisbon in 2009. Your support and contributions to Association will be remembered.

Hopefully, when you read the next issue of our magazine we all know what our "new normal" will be.

Happy Holiday from the NDABA.

Scott Heintzman, NDABA President

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AkzoNobel offers shops ideas to counter insurer rate, 'cost of doing business' assertions

By John Huetter on November 2, 2020

Reprinted with permission from SCRS-repairer driven news

Collision repairers should develop their own market survey of retail door rates to successfully counter insurer objections to their labor rate, an AkzoNobel industry consultant advised in a virtual Repairer Driven Education course out now.

AkzoNobel senior services consultant Tim Ronak also discussed how a repairer might have to charge a higher rate just to break even on equipment or OEM certification expenses and explained how GAAP could debunk an insurer's "cost of doing business" assertion.

Ronak's "Overcoming Insurer Objections to Payment for Needed Repair Procedures" was among the five educational sessions the Society of Repair Specialists posted in conjunction with this week's virtual SEMA360 show.

Other batches of courses in the series are slated to be released through the rest of the week. If you were too busy to catch Ronak's session or any of the others available Monday, don't worry. The entire week of RDE courses will be replayable on-demand through Aug. 31, 2021.

One session on the "BOT" and DEG tools is available for free and accessible now. The rest of the regular RDE courses are $75 each, and the OEM Collision Repair Technology summit coming later in the week is $150. A full-series pass is available for $375.

Labor rates and surveys

Ronak mentioned seeing a recent insurance policy declaring the carrier would pay the rate produced by a labor

(Continued on next page)

AkzoNobel senior services consultant Tim Ronak in a virtual SCRS Repairer Driven Education course posted Nov. 2, 2020, encouraged collision repairers to perform their own door rate surveys of their market. (Screenshot from Society of Collision Repair Specialists video)

General Objection Categories

1. Rates (Non-Contracted)

A. Prevailing Rate

- Any assertion of a calculated prevailing Retail Rate should be accompanied by a methodology of how that rate was specifically arrived at.
  - Challenging what the rate is assumes you have done your own research to dispute it
- Rates provided by a Data Provider likely include 'Contracted' discounted rates that are typically 'influenced' by the provision of work guarantees (a tangible Benefit) and DRP contracts.
- Use of any contracted or DRP rates in the calculation of "prevailing Market Rate" may be a violation of the Sherman Act and may be described as Purchaser Price Fixing and is a federally-prohibited practice with significant penalties and incarceration.
- There is NO Antitrust Exemption for insurers in the business of fixing cars and paying claims.

B. Retail Market Rate

- This is simply a survey of the local Posted Retail Door rate of competitors.
  - HAVE YOU DONE A SURVEY?
- No contracted rates are included in the calculation.
- It is important to note that your individual Retail Door Rate may be higher or lower than this rate based on your own justified individual investment in Training, Facility and Equipment.
- In a court, the key point to establish is that YOUR door rate is "***Reasonable***" and that you arrived at it independently through your own research and business decisions.

"The Judicial Reasonableness Test"

SCRS 2020 REPAIRER DRIVEN EDUCATION SEMA360

AkzoNobel ...

(Continued from previous page)

rate survey "defined by us." However, the survey is closed and not up for review or "substantiation," he said.

Challenging an insurer's declaration of a prevailing rate requires a shop to have done its own research. In many cases, repairers haven't, he said.

Information providers do make labor rate data available. However, those statistics typically include contractually discounted rates, Ronak said. (For example, rates a shop has agreed to as part of a direct repair program.)

CCC, for example, has made it clear: "CCC does not conduct labor rate surveys or report on prevailing street rates." The benchmark data it provides aren't the actual market rates.

Ronak said he recommends shops conduct their own survey of competitors' retail posted door rates. This might take the form of a "mystery shop" to assess the market, he indicated.

The retail door rate might vary between shops, he said. One repairer might lack OEM certifications. Another might be spending $20,000-$30,000 a year to maintain them, he said.

Ronak explained what this might mean for the repairer's hourly bill.

A typical technician is available for about 2,100 hours a year, Ronak estimated. (Fifty-two 40-hour work weeks comes out to 2,080 work-hours in a year.) If that tech works at a 150 percent efficiency rate, the owner is billing 3,100-3,200 hours off them, he estimated. (1.5 times 2,080 is 3,120 hours.)

He gave the example of a shop with a single 3,200-hour technician and a $32,000 annual OEM certification bill.

The shop owner would have to charge an extra $10 an hour just to break even, Ronak said. "That's not (making) more money on it," he said. "That's just to recoup your money."

The same thinking might apply to expenses like a new frame machine or welder, Ronak said.

Ronak also pointed out that it might be "problematic" from an antitrust perspective for closed contract negotiations between two parties to result in payment being limited to an "unencumbered third party." There's a misconception that antitrust laws don't apply to insurers, but it's merely a limited exemption granting new insurers the ability to see claims history data, he said.

"They have no exemption" in claims processing or payment, he said. He said that as far as he knew, such a carve-out "just doesn't exist."

Should a dispute over labor rates wind up in court, a shop will face what can be described as a "reasonableness test," according to Ronak.

"There is no specific amount in a court," Ronak said. Instead, the matter rests on what a "reasonable person" would think, he said. Would such a person think it appropriate that a shop with a significant OEM certification investment charged more?

YouTube video That's Not a "Cost of Doing Business" - Using GAAP to Identify Direct Costs vs Overhead - Tim Ronak can be found at https://youtu.be/1n4dJo1Fmew

GAAP and 'cost of doing business'

Ronak also had a solution to shops who bill for a charge only to have the insurer reject it as a "cost of doing business." He called such a claim a "Jedi mind trick" and an assertion insurers might resort to when they don't understand what a particular operation is.

Harkening back to his speech before the 2019 Repairer Driven Education IDEAS Collide, Ronak said in Monday's course that shops could respond using generally accepted accounting practices, also known as "GAAP."

GAAP involves a set of accounting rules businesses — including publicly traded insurers — all agree to follow, he said, citing Investopedia. This allows consistency and transparency for observers examining the books of businesses within the same industry or different sectors, he said.

GAAP includes both overhead and direct costs, Ronak said. Overhead costs don't increase or decrease with sales and might include items like salaries and rent, he said. These are often described as unavoidable fixed expenses, he said.

"These are the fixed expenses that you have even if nobody shows up," he said.

He said COVID-19 provided an "real example" of overhead: Companies still owed on leases, energy and utilities even though handing "zero productive work."

Direct costs are variable expenses tied to the specific output of goods and services.

'There're going to move up and down as your output increases and decreases," Ronak said.

He offered the example of a shop's parts and materials spending, which would increase with the number of cars the repairer fixed. Costs like productive labor, calibrations and hazardous waste removal wouldn't arise if you weren't fixing a particular vehicle, he said.

"This is a key point," Ronak said. "… It allows you to have a test."

Ronak said the test would be to ask "Is it an avoidable cost?" Ask that of a charge an insurer claims is a cost of doing business, he said. Could you avoid a particular charge if you didn't fix that vehicle? "That's the test."

If the answer is yes, then the amount is truly a direct cost associated with the individual repair. It's not a cost of doing business.

Ronak also warned against insurers offering "cost-shifting": Refusing to pay one charge but offering to add more labor on another operation.

"That's just illegal," he said. "That's fraud."

3M: Trying to fix profitability with cheaper materials can backfire

3M global expertise delivery manager Jason Scharton. (Provided by 3M via SCRS)

By John Huetter on October 22, 2020

Reprinted with permission from SCRS-repairer driven news

Misunderstanding the reason for paint material losses can prompt a collision repairer to seek out cheaper paint material.

But the savings "really are minor," and the repairer's decision to use a lower-quality but less expensive product line can be disruptive and affect the shop's productivity, 3M global expertise delivery manager Jason Scharton said Wednesday.

Scharton will examine paint material profitability and lower-cost products at "Material Planning: How to Use the Best Materials AND Increase Your Profit," one of the courses in SCRS' 2020 virtual Repairer Driven Education series Nov. 2-6. The session will be released Nov. 6 and replayable on-demand through Aug. 31, 2021.

The repairer technically might not be losing money on the actual paint material at all, according to Scharton. The true culprit might be misclassifying the entire jobber bill — which might include anything from body material to hand soap — as paint material expenses but continuing to charge a paint material rate limited to the traditional items. Naturally, the math won't work out.

Thus, the instinct to use cheaper products is incorrect. With proper accounting, your paint materials are probably profitable, according to Scharton. Instead, the solution might be to reclassify the other expenses and recoup them with other categories of revenue. (For example, a separate body materials rate or itemization for items like structural adhesive which a paint material rate wouldn't capture.)

Shifting to a different material line "throws the shop in an uproar," Scharton said. In addition, the savings "really are minor," he said. By the time it all works out, gross profit might only have changed by a tenth of a point.

For a shop at or under budget, "changing to a cheaper product doesn't help," he said.

The shop also is forgetting the potential impact to productivity, according to Scharton. He estimated that 85 percent of the time a technician is working on a vehicle, they have a consumable material in hand. There is a "very direct link" between materials and labor, and it provides a "tremendous lever," he said.

If a cheaper product wears out quicker or requires more time to accomplish a task, productivity suffers, he said.

Quality materials can create a bit of a "virtuous circle," Scharton said. A shop can negotiate better because they can justify quality materials, and without the threat of financial hardship, staff performs better work, according to Scharton. Employees also take more pride in their work, he said.

Other shops might find their plan to shore up their balance sheet through lower-quality materials collapsing into a "spiral" of cutting corners, dropping quality, "franticness" and decreased pride in work, according to Scharton.

Sign up for Scharton's course at **https://rde.scrs.com/p/material-planning**. Individual RDE classes are $75 and replayable on-demand through Aug. 31, 2021. SCRS also will offer a $375 full-series pass good for entry to the more than a dozen virtual sessions and the $150 virtual OEM Collision Repair Technology Summit.

More information:

Society of Collision Repair Specialists virtual Repairer Driven Education website

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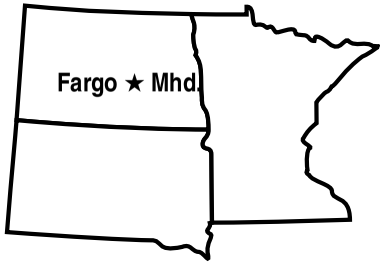

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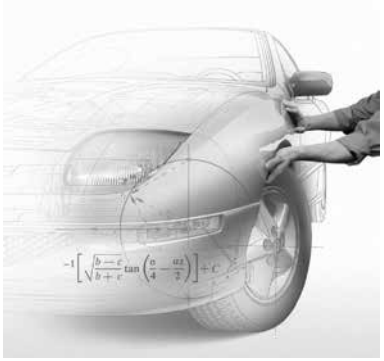

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3M: Overly broad accounting might mislead shop on paint material profitability

By John Huetter on October 21, 2020

Reprinted with permission from SCRS-repairer driven news.

Auto body shops lamenting an inability to make money on paint materials might be defining the concept far more broadly than their paint material rate had been set up to cover, according to 3M.

Comparing revenue from the paint material rate to true paint material expenses would mean "they're probably doing really really well," 3M global expertise delivery manager Jason Scharton said Wednesday. However, repairers the "great majority" of the time just classify the entire jobber bill as paint material costs, he said.

Scharton will explain such potential errors during "Material Planning: How to Use the Best Materials AND Increase Your Profit," one of the courses in SCRS' 2020 virtual Repairer Driven Education series Nov. 2-6. The session will be released Nov. 6 and replayable on-demand through Aug. 31, 2021.

3M studied about 1,400 invoices from 98 different shops, "slicing and dicing" the jobber bills, according to Scharton. It found that 5.5 percent of shop spending were items "not related to the repair," such as tools, equipment, laptops, tablets, coffee and hand soap, he said.

From an accounting perspective, these are probably more aptly classified as fixed costs or capital expenditures, not as paint materials spending. And the paint material rate might not have been designed to recoup those expenses.

Eleven percent of the jobber bill could be attributed to body material, such as welding wire or structural adhesive, he said. Most shops aren't even charging for it, "but there is cost," Scharton said.

Scharton said many small to medium-size repairers won't take the time to break down the jobber bill in this fashion. Other repairers will create different accounts for paint, tools and

everything else, which is a "step up the ladder" — but "where are you putting everything else?"

Scharton called the problem a holdover from decades ago when all the material costs were in the paint department. Seam sealer, structural adhesives and noise, vibration and harshness items were minimal or nonexistent considerations. Because of that "legacy tribal knowledge," repairers still think materials costs are only a paint department issue, he said.

Two-thirds of the average jobber bill is paint, and another 15 percent is associated with painting. But a "huge chunk" — 17 percent — isn't paint-related at all but is getting treated like it, according to Scharton.

The average paint material rate in 2019 was $30.70, up 2.6 percent, according to CCC data.

Failure to precisely distinguish non-paint materials expenses from paint materials costs and revenue doesn't deliver a significant enough financial blow to spur the repairer to investigate, according to Scharton. Instead, it produces "just enough" of an impact to lead the repairer to erroneously conclude they're losing money on paint materials. This might lead to undesirable responses like switching to a cheaper paint materials line.

Scharton noted that this accounting oversight can even trip up jobbers. He said 3M a few years ago noticed that a distributor had a service level agreement on the cost of materials and kept triggering a rebate penalty over this metric being too high as a percentage of sales.

When 3M investigated the matter, they realized that the jobber was a victim of its own success. The distributor had also been closing sales with the shop on items like a refrigerator, which aren't variable costs at all. But these were being factored into the percentage.

He said many shops plan to have materials account for roughly 10 percent of sales. If the goal is for 40 percent gross profit, they should be paying out 6 percent in sales in material costs. For example, a shop doing $1 million per month would be buying about $60,000 worth of materials.

A shop's paint material rate covers paint material, but "we don't have that" separate rate for the body materials consumed, Scharton said.

A repairer could develop such a rate. Scharton said he'd been in three shops who have a body material rate, and the estimating services are able to accommodate the additional category. Or the repairer's bill could reflect itemized body materials.

"You need to do one or the other," Scharton said.

Some repairers' accounting/profitability solution is to sell body material as though it were a vehicle part. That's an option too, but it must be reconciled in one's accounting system, according to Scharton.

For example, if body materials are treated as paint material expenses coming in but parts revenue going out, it might be harder to get a sense of either segment's business performance and if corrections need to be made.

Even if at the end of the day it's all part of the shop's overall gross profit, it's better to keep associated revenue and expense "in the same bucket," Scharton said. It's about "really understanding your numbers," he said.

One tool for repairers attempting to get a handle on body material P&L might be a body material planner. Scharton said this could help calculate the amount of a particular item needed on a job with inputs such as OEM procedure information and the bead length of the substance present on the actual vehicle, according to Scharton.

This information could also be provided to the back of the shop so technicians know what they're expected to use. "It really starts to close the loop," he said.

There's even the possibility of using the concept for quality control. Scharton at one point used an example of a repairer who estimates two cartridges of a substance will be needed to fix the car. If only one cartridge has been consumed by the end of the repair, was the job done correctly? Or, if twice as much of a product was used than expected, did the shop waste some of it?

Sign up for Scharton's course at https://rde.scrs.com/p/material-planning. Individual RDE classes are $75 and replayable on-demand through Aug. 31, 2021. SCRS also will offer a $375 full-series pass good for entry to the more than a dozen virtual sessions and the $150 virtual OEM Collision Repair Technology Summit.

Incorrect payments, weak files, omitted notices among other claims issues DOIs often flag

By John Huetter on October 12, 2020

Reprinted with permission from SCRS-repairer driven news

Various auto insurer behaviors making life difficult for your customers during claims might actually violate state laws or regulations.

Five of the Top 10 property and casualty "compliance shortcomings" compiled by Wolters Kluwer from market conduct actions with 2019 activity involved claims issues.

in market conduct compliance."

We took a close look at the No. 1 problem — blown deadlines to take action or respond to communications — in another article: *Wolters Kluwer: Timeliness No. 1 among Top 10 P&C insurance compliance snags*. But the other claims issues on the list offer insight for insurers, customers and shops as well. We'll look at the three that might matter during a repairable vehicle claim.

1. Failure to acknowledge, pay, investigate or deny claims within specified timeframes
2. Failure to issue correct payments and/or compliant denial notices
3. Failure to provide required compliant notices and disclosures in claims processing
4. Failure to process total loss claims properly
5. Improper/incomplete documentation of underwriting files
6. Using unapproved/unfiled rates and rules or misapplying rating factors
7. Failure to cancel, non-renew, decline policies in accordance with requirements
8. Failure to adhere to producer appointment, termination, records, reporting and/or licensing requirements
9. Improper/incomplete documentation of claim files
10. Failure to provide required compliant notices and disclosures in underwriting processes (Minor formatting edits.)

Wolters Kluwer senior compliance counsel Kathy Donovan told a Sep. 8 webinar that claims problems were represented in about 68 percent of Department of Insurance determinations of noncompliance or "negative or adverse findings."

"While technology has helped to streamline and automate some processes, our annual Top 10 market conduct action results continue to show the ongoing challenges insurers face in managing their regulatory requirements," Wolters Kluwer compliance solutions Executive Vice President Steven Meirink said in a statement Oct. 2. "However, a robust compliance program management approach that includes a strong risks and controls framework can be key to helping improve insurers' success rate

Failure to issue correct payments and/or compliant denial notices

No. 2, "Failure to issue correct payments and/or compliant denial notices" likely evokes a common collision repair frustration. Based on Donovan's presentation, your state might not be happy about such behavior either.

Many denial notices need "reasonable reasons" listed and describe a customer's rights to review it with a department of insurance and appeal, according to Donovan.

Donovan presented an example of the Virginia Bureau of Insurance alleging Progressive violated "§ 38.2-517 A of the Code of Virginia. The company set unreasonable and/or arbitrary limits on what it would allow for reimbursement of paint and materials to repair a vehicle."

Progressive challenged this, but the VBI wouldn't delete the accusation.

"Progressive disagrees with this observation," the insurer replied. "Please see Review Sheet 948115832 and the Company's explanation for the miscommunication related to the claim, including the fact that repair was completed in a different state. In addition to the question of whether Virginia law applies to a repair completed in another state, this claim was paid in full and no cap was applied."

"The violation for ClaimVehPPA948115832, CPA067, remains in the Report," the VBI replied. "The estimate, written in Virginia, contains a paint cap. The amount of payment by the Company is limited to the amount noted as the paint cap."

The state DOI did not ultimately allege a violation of 38.2-517, and it's absent from the settlement the state ultimately reached with Progressive. Under the terms of the deal, the insurer admitted no wrongdoing.

Donovan said the paint and materials issue arises sometimes in other states too.

Donovan also told the webinar of a Connecticut Insurance Department report that AIG failed to educate the consumer and pay for loss of use.

"This is something that you see perennially" in Connecticut, she said of the omission of a loss of use payment.

"It was also determined that the company did not consider loss of use in the settlement of automobile property damage liability claims as per Connecticut Regulation 38a-334-2(c) and 38a-334-5(a) and Bulletin CL-1-07," the agency wrote. "The file documentation did not show evidence

(Continued on next page)

Incorrect payments ... *(Continued from previous page)*

claimant was advised they were entitled to loss of use compensation. The company has since developed a letter they now will send to claimants in which it will advise they are entitled to loss of use compensation."

AIG ultimately entered into a consent order settling the matter but admitted no wrongdoing.

As far the failure to notify the customer about loss of use compensation, "you see this a lot too" in multiple states' examinations, she said. An insurer's documentation should include proof of compliance, she said.

Donovan also used an example from Vermont to flag the issue of an insurer incorrectly failing to waive a deductible.

"Title 23 V.S.A. § 941 sets forth the statutory requirements for insurance against uninsured motorists," the Vermont Department of Insurance wrote in a settlement it had reached with State Farm. "Under this provision, a deductible of $150 is permitted only if the claimant does not have collision coverage for his or her motor vehicle. [1] If the claimant does have collision coverage, no deductible is permitted. A violation of this provision of Title 23 constitutes a violation of 8 V.S.A. § 4723 pursuant to 8 V.S.A. § 4724(9)(F).

"After receiving consumer complaints, the Department began an investigation into Respondents' claims practices relating to UMPD coverage.

"As a result of its investigation, the Department concludes that Respondents failed in some cases to waive the collision deductible when it should have been waived, which constitutes a violation of 23 V.S.A. § 941 and 8 V.S.A. § 4723 pursuant to 8 V.S.A. § 4724(9)(F).

"As a result of its investigation, the Department concludes that Respondents' systems and policies were insufficient in that some insureds were not clearly notified of all applicable policy coverages and conditions, which constitutes a violation of 8 V.S.A. § 4723 pursuant to 8 V.S.A. § 4724(9)(A)."

Claims disclosures

Claim disclosure issues flagged by departments included Virginia alleging Progressive omitted required aftermarket parts notices.

"The examiners found six violations of § 38.2-510 C of the Code of Virginia," the VBI wrote of motorcycle claims. "The company failed to disclose the required aftermarket parts notice to the vehicle owner on the estimate of repairs or in a separate document.

"These findings occurred with such frequency as to indicate a general business practice."

Progressive didn't dispute this one, but it did challenge a similar report about a single alleged violation regarding automobile claims.

"Progressive disagrees with this observation," Progressive wrote. "The Company provided the Examiners with a copy of the repair authorization that contained the required aftermarket parts disclosure. Please see Review Sheet 167393529 and the accompanying document which included the required disclosure."

"The notice was not on the estimate," the VBI wrote back. "The repair authorization states that '…part not

made by the original manufacturer' 'may' be included on the estimate. The estimate clearly included after-market parts and therefore the word 'may' was not in compliance with the notice required by the statute."

But it's unclear if the single auto claim actually made it onto the final settlement. The document speaks of 38.2-510 C violations that "indicate a general business practice."

Donovan called aftermarket parts notices a "fairly common requirement" nationally.

She also highlighted an instance where a company's notification, rather than the absence of one, constituted a violation.

West Virginia accused Illinois National of a single instance where it "recommended that the third-party (claimant) make claim under their own policies solely to avoid paying the claim under the insurer's insurance policy, in violation of W. Code St. R § 114-14-6.13."

The insurer didn't challenge the allegation, and the state noted that it wasn't a common behavior. It wasn't included in the conclusions of law or final order.

Another interesting disclosure Donovan mentioned involved the California Department of Insurance flagging a failure to ask a claimant if a child seat was in the vehicle at the time of collision. Anecdotally, the issue "comes up over and over again," she said.

Total losses

Donovan noted two California total loss issues: Attempting to calculate cash value using 13 vehicles far out of the San Diego market area and only three within it, and a lack of notice that an inability to buy a comparable car with the settlement could allow a consumer to reopen the claim. She called the latter consumer right "very specific to total losses."

She also highlighted a carrier's alleged failure to include a $6 salvage title fee in Utah as part of a total loss settlement.

Claims documentation

Insurers might not put shaky assertions in writing or explain their rationales for denials. But internally, they might have to keep a record of such interactions and philosophies — and regulators might take exception if they don't.

Donovan showed how the Missouri Department of Insurance alleged how the insurer IDS "failed to develop a system that would explain the reductions that were applied to claim settlements concerning depreciation. The life expectancy, age, and condition of the building and personal property items damaged, were not shown on the estimates. In addition, there was no depreciation schedule used that would show how the reductions were made. Therefore, the examiners were unable to determine if the claim settlements were fair and equitable, because the depreciation reduction amounts could not be determined."

This was a problem under RSMo §375.1007(3), §374.205.2(2), and 20 CSR 100-8.040(3)(B), according to the DOI.

Missouri also alleged "the Company failed to clearly document the following claim files showing the inception, handling and disposition of the claim. In claim number xxx1973, there was no explanation or documents that explained why the insured was not eligible for Additional Living Expense coverage

(Continued on next page)

Incorrect payments ... *(Continued from previous page)*

that was not paid. In claim number xxx3759, there were no documents confirming that claim forms were provided nor any notes documenting the substance of any conversations, emails or letters. In claim number xxx3599, there was no Adjuster Report explaining the damage, or closing letter documented in the claim file. Therefore, the examiners were unable to determine their handling and dispositions in accordance with Missouri law."

§374.205.2(2) and 20 CSR 100-8.040(3)(B) preclude such behavior, according to the DOI.

IDS executed a settlement with the state but admitted no wrongdoing.

More information:

"Wolters Kluwer analysis reveals timely claims processing is top compliance challenge for US insurers"
Wolters Kluwer, Oct. 2, 2020

"Top 10 Property & Casualty Market Conduct Issues of 2019" webinar and slides
Wolters Kluwer, Sept. 8, 2020

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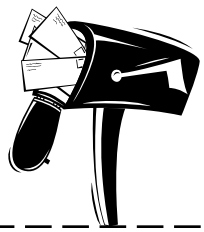

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