



NEWS • REPORT

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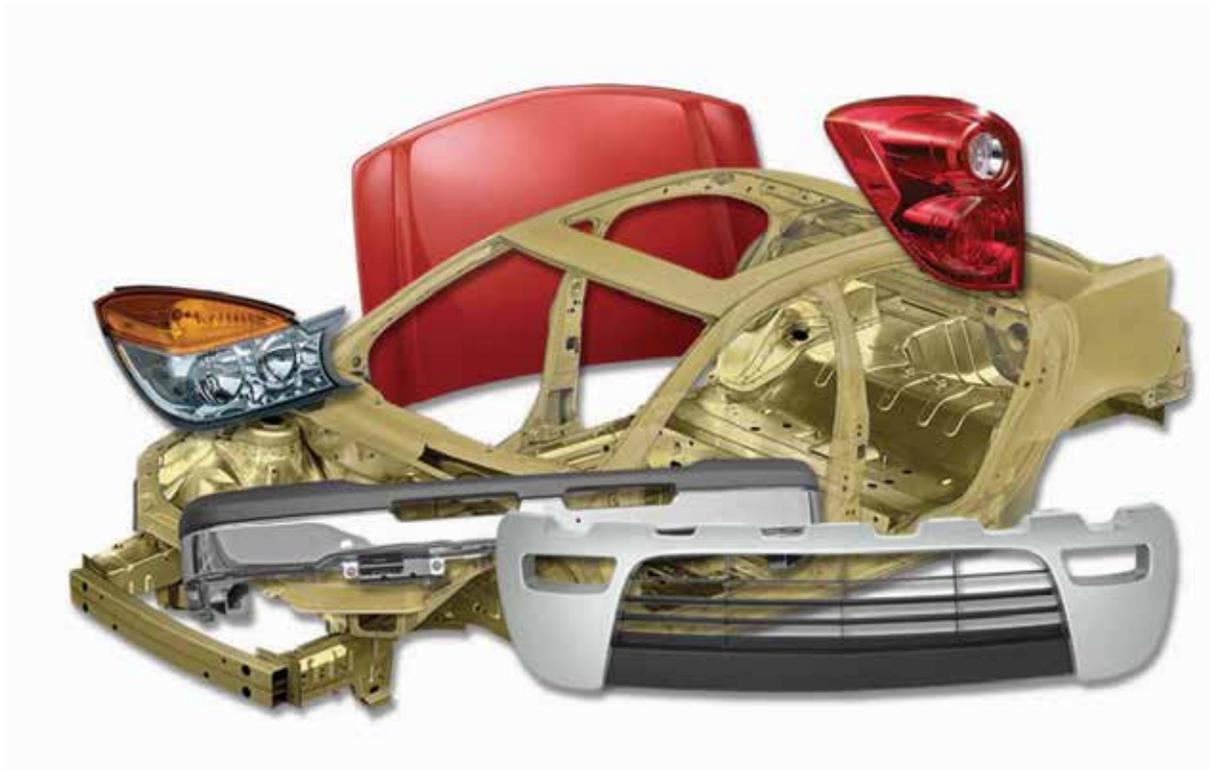


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Thank You!!!!

Issues for NDABA News Report

Issue	Copy Deadline	Printing Date
February-March	Mar. 1	Mar. 15
<i>(Note: Dates for the pre-convention issue may vary.)</i>		
May-June	June 1	June 15
August-September	Sept. 1	Sept. 15
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PRESIDENT'S LETTER



When the time comes to put together an article for this magazine, I always struggle what to say.

If I sent our magazine editor what's really on my mind regarding what it's like to own or manage a business that deals with collision repair and its roller coaster relationship with the insurance industry these days, he would have to censor it down to a sentence or two.

So I usually thumb through a few of the trade journals to see what is on other people's minds and guess what you find ... a lot of the same concerns.

When you have a conversation with another shop owner or manager, the same topics come up about our relationships with our industry partners. It seems like the end product of all this is stress and anxiety. As if we haven't had an overwhelming amount of that in the last

year due to a pandemic?

As the pandemic hopefully is starting to subside, our work related stress and anxiety isn't going away. Everybody deals with it differently and it is a challenge for any individual to not bring it home and mix it in with normal life stress.

Sometimes you find piece of mind talking to another shop owner and knowing you are not the only one that feels this way. It does work for me I know.

Win each day and let's get life back to normal as soon as we can. Have a great Summer!!.

Scott Heintzman, NDABA President

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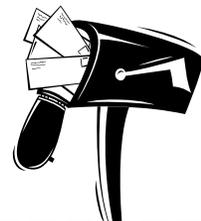
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AASP, ASA, SCRS define scanning, 'qualified' tool, personnel

By John Huetter on March 5, 2021

Reprinted with permission from SCRS Repairer Driven News



The three national collision repair trade groups on Friday released a position statement narrowly defining both the scanning operation and what constitutes a “qualified scan tool.”

The document by the Alliance of Automotive Service Providers, Automotive Service Association and Society of Collision Repair specialists also describes what the operation would look like on an estimate and outlines knowledge that “Qualified Scanning Personnel” should have.

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Scanning is simply “A mechanical operation to connect a qualified diagnostic scan tool into an OBD-II port or other communication ports in order to retrieve all Diagnostic Trouble Codes (DTC)s using the most current, available OEM information to ensure a proper and safe repair.”

Period. Everything else is separate, according to the trade groups.

“All other procedures necessary to correctly and safely identify and address a vehicle’s electronic system faults or Diagnostic Trouble Codes (DTC)s are considered additional operations and not included in the scanning operation,” AASP, ASA and SCRS wrote. (Emphasis original.)

“ADAS Calibrations”; “Prepping the vehicle for a scan”; “Researching, Verifying and Documenting Manufacturers’ Data”; “Systems Initialization”; “Systems Programming”; “Test driving”; and “Vehicle Diagnostics” were among the items which would be separate

operations, according to the three trade groups.

From an estimating perspective, the act of scanning represents a “necessary and not-included operation” which could appear on a repair order “with either a fixed cost, in labor hours and/or set dollar amount.” Either type of line item would involve “(a) reasonable and necessary amount that may vary depending on year/make/model and scan tool used.”

The position also holds that only “OEM approved” scan tools count as qualified ones.

Some OEMs will approve tools other than their factory devices, while others only permit their own technology to be used on their vehicles. It’s also important to note that OEM approval of a tool might only qualify under specific parameters, such as the device running the automaker’s official software.

Under the AASP, ASA and SCRS position statement, a qualified scan

tool is “A device approved by the vehicle’s manufacturer (OEM) to provide a repair technician access to the status of the vehicle’s sub-systems. OEM approved scan tools are specific to each OEM and have the complete suite of capabilities as determined by their service engineering groups. ...

“Scan tools are manufactured in a variety of hardware and software configurations, including PC/Laptop based software application tools connected with a vehicle’s communication interface, to handheld (embedded) tools with built in interfaces and software.”

SCRS Executive Director Aaron Schulenburg later in the spring explained the document held that usage of other, unqualified scan tools in the market was not grounds to refuse compensation for shops using qualified scan tools.

Qualified devices would be “Used to query, display and document all vehicles’ control system networks (through Security Gateways if applicable)” and must identify all diagnostic trouble codes and electronic control units. The tool must also produce a report.

As far as the person doing the scanning, the position statement says a qualified worker “should be familiar with:

- Scan tool operation
- Vehicle specific set-up operations
- Adding battery support
- Researching vehicle manufacturer repair procedures
- Diagnostic Code Interpretation (Minor formatting edits.)

“We feel that we hit the mark and with the valued input and support of SCRS and AASP,” ASA Collision Division Director Mike LeVasseur said in a statement. “This should prove to bring a more united clarity when writing, negotiating and repairing the complex safety systems in today’s vehicles.”

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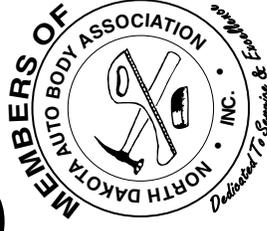
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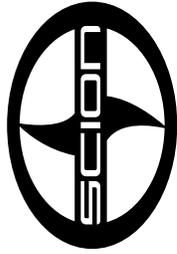
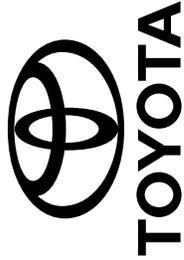
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The Dealers Who Are Working To Keep Your Business

Attorney offers steps for auto body shops considering short-pay lawsuit

By John Huetter on April 15, 2021

Reprinted with permission from SCRS Repairer Driven News

Note: Parese's comments and this article are for informational purposes and not intended as legal advice. Consult with qualified counsel licensed in your jurisdiction before taking any action. Parese also works out of Connecticut, and so some of this might not apply to your particular state.

A Connecticut attorney last fall offered auto body shops some perspective on filing short-pay lawsuits in small-claims court.

The discussion by Buckley Wynne & Parese partner John Parese in "Litigating and Winning Short Pay Claims" applies to shops using assignment of benefits agreements to obtain money an insurer still owes their customer for the repair.

Customers are the ones who actually owe body shops; first-party or third-party insurers in turn owe and reimburse the customers. A shop owner has "no independent right" against an insurer, according to Parese.

But when an insurer refuses to reimburse part of the repair bill, a shop and customer might enter into an assignment of benefits. This lets the shop "step in the shoes of your customer in order to advocate the claim," according to Parese.

This could include going to court. Parese discussed other venues for litigation, but the bulk of his advice in the Repairer Driven Education session applied to filing these AOB short-pay lawsuits in small-claims court with the help of legal counsel.

Parese said he files a straightforward complaint. Most courts won't want to get bogged down in concepts like the history of

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Buckley Wynne & Parese partner John Parese presents “Litigating and Winning Short Pay Claims” during the Society of Collision Repair Specialists’ virtual Repairer Driven Education series in fall 2020. A sample assignment of benefits form is at left. (Screenshot from SCRS video)

John Parese is a Partner at the law firm of Buckley Wynne & Parese. The firm represents individuals injured in auto accidents, workplace injuries, falls and serious injuries and death arising out of medical malpractice. John has been active with and fighting for the rights of auto body shop owners for over thirteen years. Here in Connecticut and throughout the country, John has consulted with auto body shops and lectured on legal issues affecting the industry. John has worked with countless local, state and federal officials; and for over a decade has served as General Counsel to the Auto Body Association of Connecticut.

labor rate suppression or the 1963 Consent Decree, he said.

Simplicity is better, according to Parese. “You’re a bill collector,” he said: You’re filing a lawsuit to be paid for work performed.

Proper documentation

If the repairer lacks the proper repair forms and authorization, “you’re dead in the water,” Parese said. He said he won’t even take a short-pay case if the shop doesn’t have a proper, signed contract and invoice with the customer.

“You gotta have your paperwork right,” he said.

Parese said a shop and customer should have a contract, a “legally binding agreement.” The repairer should consult with state statutes and regulations about what must be in that document.

Parese said he also prefers for shops to obtain customer consent to charge storage fees, so “everything’s transparent.”

“You can never go wrong

with transparency,” Parese said. Demonstrating this transparency in court will always be the right move as well, he said.

As far as a final invoice, it should state the shop’s charge, the amount paid, and the amount left owed. “It really should be that simple,” Parese said.

He described prior experiences with shops which involved juggling multiple documents, such as a third supplement, to work out a total. “Forget that,” he said.

Parese also advised shops against working off the insurer’s estimate. “Get away from that,” he said.

Parese said shops should also ensure they’ve completed all work and billed for it correctly.

Lawsuits mean “extreme scrutiny,” Parese said. If you did “anything shady,” such as charged for work unperformed or took cash on the side, you can’t go to court, he said.

Proper AOB

As noted above, the customer is

the one owed money, either under their own first-party policy or by the at-fault party which hit them (who in turn is owed by his or own insurer). Parese said a shop must have the assignment of benefits entitling them to the money due the claimant.

“You need to get in their shoes,” Parese said.

Parese said he uses the same assignment of benefits for first- and third-party claims. It’s a contract that offers to exchange the consideration of returning the customer’s vehicle for the right to the customer’s benefits.

Parese said he also brings a copy of the law on assignment of benefits to court in case there’s ever a dispute that “you can’t legally assign this claim.” However, he said that while he’s filed between 50-100 actions on behalf of shops, “I’ve never had my assignment challenged in court.”

Parese said another lawyer might “bark” occasionally at an assignment, but 95 percent of the

(Continued on next page)

Parese’s course and more than a dozen other virtual SCRS Repairer Driven Education courses remain replayable through Aug. 31, 2021 at rde.scrs.com

Attorney offers steps...

(Continued from page 11)

time it's never even challenged, and he's never lost on this point.

"It's a well-known legal right," he said.

Know the customer

Parese said repairers should ensure their customer will be cooperative. Mostly, customers will feel confident in a shop which is confident and willing to go to court, he said — the perception is that a repairer doing something untoward wouldn't be trying to go to court.

However, some customers might be more difficult to deal with, and it's not worth attempting litigation in those situations, Parese said.

"You gotta pick your battles," he said.

He also said a customer couldn't file for a repair short-pay action if a lawsuit already existed over a bodily injury claim.

He said a shop instead would want to send their information to that attorney and pursue the matter in that action.

Establish liability

A shop must be sure they have liability nailed down in a third-party AOB claim. "You can't win without fault," Parese said.

He said he's heard stories from other lawyers who think they're taking a case over a discrepancy in bill payment — only to find no evidence exists of who is at fault. It's

an underlying predicate necessary for the case, according to Parese.

This typically can be established with a police report, or it might be admitted in the answer to a complaint, according to Parese. He said he will make the assertion that liability is undisputed in his demand letter, and if the other party doesn't challenge this, their silence can apply assent.

Labor rate survey

Parese encouraged body shops to conduct a labor rate survey and described a process involving calling 8-10 competitors and asking about

Parese encourages shops to be very clear that their cashing of insurer checks doesn't represent agreement to the insurer's estimate.

their posted labor rates. It could be used in court, he said.

However, he stressed keeping the information private and not sharing it with competitors so as not to run afoul of antitrust law.

He said he often finds his clients are "somewhere in the middle," calling this "helpful information" for a judge or jury who is "inevitably" told by the insurer that a shop's rates are the highest anywhere.

"It's coming," he said.

Parese also said he likes to have

examples of a shop paid its labor rate, which rebuts the idea that the rates are absurd. He said he's had clients produce dozens of examples of being paid that labor rate. "That's great evidence," he said.

Stamp checks 'UNDER PROTEST'

Finally, Parese encouraged shops to be very clear that their cashing of insurer checks doesn't represent agreement to the insurer's estimate.

He said all of his clients have a stamp stating, "ACCEPTED UNDER PROTEST AS PARTIAL PAYMENT ONLY FOR PROPERTY

DAMAGE." They stamp checks at the time of endorsement with this message "every time. All the time."

Such a stamp should certainly be applied in situations where the shop anticipates a "beef" with the carrier, Parese said.

Without this declaration on cashed checks, Parese said, an insurer could argue in court that they made an offer, the shop accepted it and received consideration. "That's a contract." The shop's appearance on court could come off as reneging on the deal.

Through the stamp on the check and by sending a demand letter, the dispute about price has been documented. "You have avoided that pitfall," Parese said.

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Summary of Steps:

- ✓ **Proper documentation:** If the repairer lacks the proper repair forms and authorization, “you’re dead in the water.”
- ✓ **Proper AOB:** A shop must have the assignment of benefits entitling them to the money due the claimant. It’s a contract that offers to exchange the consideration of returning the customer’s vehicle for the right to the customer’s benefits.
- ✓ **Know the customer:** Repairers should ensure their customer will be cooperative. “You gotta pick your battles.”
- ✓ **Establish liability:** A shop must be sure they have liability nailed down in a third-party AOB claim. “You can’t win without fault.”
- ✓ **Labor rate survey:** Conduct a labor rate survey ... calling 8-10 competitors and asking about their posted labor rates. It could be used in court. However, Parese stressed keeping the information private and not sharing it with competitors so as not to run afoul of antitrust law.
- ✓ **Stamp checks ‘UNDER PROTEST’:** Be very clear that cashing of insurer checks doesn’t represent agreement to the insurer’s estimate.

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Ford: No repairs, only refinish on bumper fascias if ADAS present

By John Huetter on May 7, 2021

Reprinted with permission from
SCRS Repairer Driven News

Ford on Monday issued position statements barring all bumper fascia repairs on vehicles equipped with advanced driver assistance systems.

“Repair of bumper fascias using fillers, reinforcement tape, hot staples or plastic welding can adversely affect ADAS operation,” Ford wrote Monday in separate but essentially identical position statements for Ford and Lincoln vehicles. “For this reason, Ford Motor Company is limiting repairs on front and rear bumper fascias on all Ford Motor Company vehicles equipped with any ADAS features to topcoat refinish only. ...

“Any bumper fascia damage that requires substrate repairs must be replaced.”

Ford warned that repairing “sonic-welded sensor retainer rings or tabs” is also forbidden, “due to possible misalignment and incorrect operation of the sensor.”

Ford encouraged repairers to only use new OEM parts when replacing a bumper, citing the risk someone had repaired a reconditioned or recycled one once before.

A shop’s ability to refinish the bumper fascia isn’t absolute. Ford bans topcoat refinishing which exceeds 12 mills (300 microns) of coating, and it said repairers should measure this with an ultrasonic paint thickness gauge. The OEM suggested the PosiTector 200 or Phase II UTG-2900 it sells on the official Ford equipment site Rotunda.

Finally, customers and shops might be unable to use certain bumper adornments, according to Ford. Ford says that wraps, aftermarket accessories and even bumper stickers “in the area of the fascia can create system operation concerns.”

Ford ended the position statement with a plug for using its own scan tools and following OEM procedures.



The 2021 Ford Explorer King Ranch edition is shown.
(Provided by Ford)



Collision Position Statement

May 3, 2021

Bumper Fascia Repair with Advanced Driver Assistance Systems (ADAS)

Ford vehicles contain many state-of-the-art features that provide occupant safety and enhance the driving experience. Bumper fascias play an integral role in the performance and functionality of these features. The original bumper fascias on Ford Motor Company vehicles are designed and manufactured to function with advanced driver assistance systems (ADAS) like those listed below:

- Pre-Collision Assist with AEB
- BLIS® with Cross-Traffic Alert
- Intelligent Adaptive Cruise
- Lane-Keeping System
- Active Park Assist
- Evasive Steering Assist
- BLIS® with Trailer Coverage
- Pro Trailer Backup Assist

During body repairs that involve front and rear bumper fascias, it is critical that the vehicle be restored to proper operating condition to ensure that these important safety systems function correctly. Repair of bumper fascias using fillers, reinforcement tape, hot staples or plastic welding can adversely affect ADAS operation. For this reason, Ford Motor Company is limiting repairs on front and rear bumper fascias on all Ford Motor Company vehicles equipped with any ADAS features to topcoat refinish only. Topcoat finish cannot exceed 12 mills (300 microns) in total thickness. Any bumper fascia damage that requires substrate repairs must be replaced.

Measurement of the topcoat finish requires the use of an ultrasonic paint thickness gauge, such as PosiTector 200 or Phase II UTG-2900, available through Rotunda.

The following points provide an overview of bumper fascia repairs:

- Paint repairs can be made if the material thickness does not exceed 12 mills (300 microns) in total thickness
- Use of any filler materials or reinforcement tapes to repair substrate damage is not permitted
- Use of hot staples or plastic welding to repair cracks or damage is not permitted
- Repair of any sonic-welded sensor retainer rings or tabs is not allowed, due to possible misalignment and incorrect operation of the sensor
- Note that vehicle wraps, bumper stickers and aftermarket accessories in the area of the fascia can create system operation concerns

Reconditioned, refurbished or salvage bumper fascias may have been repaired using substrate repairs, including the use of filler material, plastic welding and hot staples, which can interfere with ADAS operation. For this reason, Ford Motor Company does not approve the use of reconditioned, refurbished or salvage bumper fascias. Only by using Ford Original Equipment bumper fascias can you be assured of the fit, function and safety of the repair.

Ford recommends the use of the Integrated Diagnostic System (IDS) or Ford Diagnosis and Repair System (FDRS) to perform all vehicle diagnostic testing, and when performing module programming and system calibrations during collision repairs. Additionally, Ford factory diagnostic and repair procedures should be used when carrying out all collision repairs. Ford dealer-owned body shops can access service information, training and diagnostic scan tool support through the Professional Technician Society at <http://www.fordtechservice.dealerconnection.com> and independent collision repairers can find information at www.motorcraftservice.com.

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- ◆ North Dakota leads the nation in production of spring wheat, durum wheat, dry edible peas, dry edible beans, honey, flaxseed and canola.
- ◆ North Dakota is the No. 1 producer of honey in the nation.
- ◆ 39.1 million acres — nearly 90% of North Dakota's land area — is in farms and ranches.
- ◆ The world's largest french fry feed is held every year in Grand Forks, during Potato Bowl USA. A new record was set on September 10, 2015, when 5,220 pounds of french fries were served.
- ◆ Little Missouri National Grasslands is the largest grassland in the United States at more than 1 million acres and one of three grasslands in North Dakota.
- ◆ The geographical center of North America is marked in Rugby.
- ◆ Explorers William Clark and Meriwether Lewis and the Corps of Discovery spent more time in what is now North Dakota than any other place on their journey.
- ◆ The International Peace Garden is a beautiful symbol of peace and friendship straddling the U.S. and Canadian border of North Dakota and Manitoba.
- ◆ North Dakota is home to more wildlife refuges (63) than any other state. Wildlife viewing and birding opportunities are abundant.
- ◆ Lake Sakakawea has more shoreline than the California Pacific Coast.
- ◆ Teddy bears got their name from former U.S. President Theodore Roosevelt. North Dakota is home to Theodore Roosevelt National Park, known for its scenic beauty and natural wildlife.
- ◆ The Enchanted Highway is a collection of the world's largest scrap metal sculptures constructed at intervals along a 32-mile stretch of two-lane highway in the southwestern part of the U.S. state of North Dakota.
- ◆ North Dakota holds the Guinness World Record for the most snow angels made simultaneously in one place. On February 17, 2007, 8,962 people made snow angels at the state capitol grounds beating the previous record of 3,784.
- ◆ The world's largest hamburger was eaten in Rutland, North Dakota, in 1982. It weighed 3,591 pounds and more than 8,000 people were invited to the meal.
- ◆ World's Largest Buffalo monument stands tall on the hill in Jamestown. This 26-foot-tall, 60-ton concrete giant has been standing watch over Jamestown since 1959.

- ◆ In 2008, Fargo, North Dakota, hosted the largest pancake feed in the world, serving up 34,818 pancakes.
- ◆ The "World's Largest Holstein Cow," built to honor the dairymen of the area is 38 feet high and 50 feet long, and is visible for five miles.
- ◆ Movies filmed in North Dakota include Dakota (1945), My Father's Garden (1996) and Woolly Boys (2001). None of the scenes in the popular movie Fargo were filmed there, however, the wood chipper used in the movie is now on display at the Fargo-Moorhead Visitor Center.
- ◆ North Dakota Capitol Building The 19-story state capitol building in Bismarck is one of only four tower-style capitols in the U.S. An observation floor at the top provides a panoramic view of Bismarck-Mandan and the Missouri River Valley.
- ◆ The weather in North Dakota varies greatly, as do reports of year-round cold and snow. Suffice it to say that reports of never-ending bone-chilling cold are greatly exaggerated. In reality, weather often varies by location with the southwest (banana belt) generally warmer than the northeast. In fact, the average high in North Dakota in February is 29 degrees, the same as Minneapolis; six degrees less than Chicago; and 10 degrees less than Boston.

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