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FISCAL NOTE

STATE OF ALASKA
2002 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: SB 348
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: DCED
 Title An Act relating to insurance for and work on certain BRU Insurance (116)
motor vehicle repairs; and providing for an Component Insurance Operations
 Sponsor Senate Transportation
 Requester Senate Transportation Component No. 354

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

| OPERATING EXPENDITURES | FY 2003 | FY 2004 | FY 2005 | FY 2006 | FY 2007 | FY 2008 |
|------------------------|------------|------------|------------|------------|------------|------------|
| Personal Services | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| Travel | | | | | | |
| Contractual | | | | | | |
| Supplies | | | | | | |
| Equipment | | | | | | |
| Land & Structures | | | | | | |
| Grants & Claims | | | | | | |
| Miscellaneous | | | | | | |
| TOTAL OPERATING | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

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|-----------------------------|--|--|--|--|--|--|
| CAPITAL EXPENDITURES | | | | | | |
|-----------------------------|--|--|--|--|--|--|

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|-------------------------------|--|--|--|--|--|--|
| CHANGE IN REVENUES () | | | | | | |
|-------------------------------|--|--|--|--|--|--|

FUND SOURCE (Thousands of Dollars)

| | | | | | | |
|---|------------|------------|------------|------------|------------|------------|
| 1002 Federal Receipts | | | | | | |
| 1003 GF Match | | | | | | |
| 1004 GF | | | | | | |
| 1005 GF/Program Receipts | | | | | | |
| 1037 GF/Mental Health | | | | | | |
| Other (Specify Type--Do not abbreviate) | | | | | | |
| TOTAL | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

Estimate of any current year (FY2002) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2003 budget proposal:

POSITIONS

| | | | | | | |
|-----------|--|--|--|--|--|--|
| Full-time | | | | | | |
| Part-time | | | | | | |
| Temporary | | | | | | |

ANALYSIS: (Attach a separate page if necessary)

This bill has no fiscal impact on this component.

Prepared by: Robert A. Lohr, Director
 Division: Insurance
 Approved by: Deborah B. Sedwick, Commissioner
 Agency: Department of Community & Economic Development

Phone 269-7900
 Date/Time 4/4/02 10:15 AM
 Date 4/4/2002

Appendix II
 State Legislation Governing Aftermarket
 Crash Parts and Recycled Airbags

Figure 2: State Aftermarket Crash Parts Legislative Provisions as of November 2000

| State | Disclosure statement required on consumer's estimate ^a | Consumer consent required ^b | Estimate must identify aftermarket parts ^c | Aftermarket parts must be "of like kind and quality" to OEM parts ^d | Manufacturer's warranty required ^e | Disclosure required about the effect of part's use on vehicle warranty ^f | Insurer cannot require use of aftermarket parts ^g | Manufacturer's identification required on part ^h | No regulation ⁱ |
|--------|---|--|---|--|---|---|--|---|----------------------------|
| Ala. | ■ | | ■ | | ■ | | | ■ | |
| Alaska | | | | | | | | | ■ |
| Ariz. | ■ | | ■ | ■ | ■ | | | ■ | |
| Ark. | ■ | ■ | ■ | | ■ | | | ■ | |
| Calif. | ■ | | ■ | | ■ | | | ■ | |
| Colo. | ■ | | ■ | | ■ | | | ■ | |
| Conn. | ■ | | ■ | | ■ | | | | |
| Del. | | | | | | | | | ■ |
| Fla. | ■ | | ■ | | ■ | | | | |
| Ga. | ■ | | ■ | | ■ | | | ■ | |
| Hawaii | ■ | ■ | ■ | ■ | ■ | | | ■ | |
| Idaho | ■ | | ■ | | ■ | | | ■ | |
| Ill. | ■ | | ■ | ■ | ■ | | | ■ | |
| Ind. | | ■ | | | | | | | |
| Iowa | | | ■ | | ■ | | | ■ | |
| Kans. | ■ | | ■ | | ■ | | | | |
| Ky. | | | ■ | ■ | | | | | |
| La. | ■ | | ■ | | ■ | | | ■ | |
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| Minn. | | | | | | | ■ | | |
| Miss. | ■ | | ■ | | ■ | | | ■ | |
| Mo. | ■ | | ■ | | ■ | | | ■ | |
| Mont. | | | | | | | | | ■ |

**Appendix II
State Legislation Governing Aftermarket
Crash Parts and Recycled Airbags**

| State | Disclosure statement required on consumer's estimate ^a | Consumer consent required ^b | Estimate must identify aftermarket parts ^c | Aftermarket parts must be "of like kind and quality" to OEM parts ^d | Manufacturer's warranty required ^e | Disclosure required about the effect of part's use on vehicle warranty ^f | Insurer cannot require use of aftermarket parts ^g | Manufacturer's identification required on part ^h | No regulation ⁱ |
|--------------|---|--|---|--|---|---|--|---|----------------------------|
| Nebr. | ■ | | ■ | ■ | | | | ■ | |
| Nev. | | | | | | | | | ■ |
| N.H. | ■ | | ■ | ■ | | | | ■ | |
| N.J. | ■ | | ■ | ■ | ■ | | | ■ | |
| N.Mex. | | | | | | | | | ■ |
| N.Y. | | | ■ | ■ | ■ | | | | |
| N.C. | ■ | | ■ | ■ | | | | | |
| N.Dak. | | | | | | | | | ■ |
| Ohio | ■ | ■ | ■ | | ■ | | | ■ | |
| Okla. | ■ | | ■ | | ■ | | | ■ | |
| Oreg. | | ■ | ■ | | ■ | ■ | | ■ | |
| Pa. | | | | | | | | | ■ |
| R.I. | ■ | ■ | ■ | | | | | | ■ |
| S.C. | | | | | | | | | |
| S.Dak. | ■ | | ■ | | ■ | | | ■ | |
| Tenn. | ■ | | ■ | | ■ | | | ■ | |
| Tex. | | ■ | | | | | | | |
| Utah | ■ | | ■ | | ■ | | | ■ | |
| Vt. | | | | | | | | | ■ |
| Va. | ■ | | ■ | | | ■ | | | |
| Wash. | ■ | | ■ | | | | | | |
| W.Va. | ■ | | ■ | | | ■ | | | |
| Wis. | ■ | | ■ | | ■ | | | ■ | |
| Wyo. | ■ | ■ | ■ | ■ | | | | ■ | |
| Total | 33 | 8 | 36 | 10 | 27 | 4 | 1 | 23 | 10 |

^aSome states require that written repair estimates contain a disclosure statement notifying consumers that aftermarket crash parts will be used in the repair.

^bSome states specify that aftermarket crash parts can only be used after the consumer has signed a written consent for their use.

SENATOR
JOHN J. COWDERY
Anchorage

Committees
Chair: Transportation
Chair: World Trade &
State/Federal Relations
Rules
Legislative Council
Judiciary



January - May:
State Capitol, Suite 101
Juneau, Alaska 99801-1182
Tel: 907-465-3879
Toll Free: 888-269-3879
Fax: 907-465-2069

May - December:
716 W. 4th Avenue
Anchorage, Alaska 99501
Tel: 907-269-0222
Fax: 907-269-0223

Senator_John_Cowdery@legis.state.ak.us

Sponsor Statement Senate Bill 348

"An Act relating to insurance for and work on certain motor vehicle repairs; and providing for an effective date."

In the case of motor vehicle repairs, there are many cases where consumers are not currently provided with full information on the many types of replacement crash parts, which are available to be used in the repair of their collision-damaged vehicles. Some types of replacement crash parts may be of inferior quality or may void the warranty for adjacent parts or other original vehicle equipment. Alternative parts also can create unnecessary safety risks due to improper fitting. Despite this, some insurers direct the use or installation of parts other than "original equipment manufactures" (OEM) replacement crash parts without advising consumers of these considerations. While some replacement crash parts are comparable to those manufactured or distributed by the carmaker, the professionals have found others to be inferior to OEM parts in terms of fit, finish, and quality.

What SB 348 does is protect consumers from their new vehicle warranty loss. It merely states that the insurance company must be responsible for maintaining the warranty on a vehicle for aftermarket crash parts when applicable and if used. It also reinforces the consumers' right to have a choice through the consent language to the use of non-OEM parts, during the year of the vehicle's manufacture or during 3 years following that year. The vehicle repair shop must also disclose on the invoice when aftermarket parts are used in making a repair.

My message is that consumers are being shortchanged every time an inferior fender, bumper, hood, radiator, wheel spindle or steering component is used to repair body damage to a new vehicle. I believe when you buy insurance you have a reasonable expectation your car will be repaired and restored to the condition it was before an accident, and without your original warranty being in jeopardy. Consumers are entitled to this.

A jury in the State of Illinois held State Farm in breach of contract with their policy holders. The policy holders contract was for State Farm to return the damaged cars to pre-accident condition. The lawsuit was a result of State Farm using non-OEM aftermarket parts. State Farm was liable for 1.18 billion in damages to their policy holders.

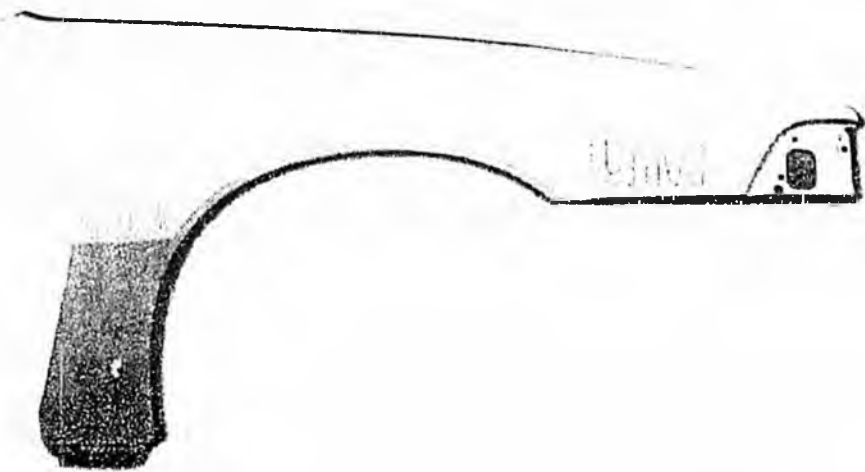
This bill will allow consumers to consider their options with regard to an insurer's policy on the use of replacement crash parts, especially in newer vehicles where a manufacturer's warranty is still in effect.

Test Photos Tell the Story

These photos show graphic results of tests simulating three years of a vehicle fender's exposure to a controlled corrosive environment.

The fender on the left is a new genuine GM Replacement Part. The fender on the right is a foreign imitation fender.

The American Iron and Steel Institute's Corrosion Task Force has labeled this as one of the tests that best represents actual field use performance.



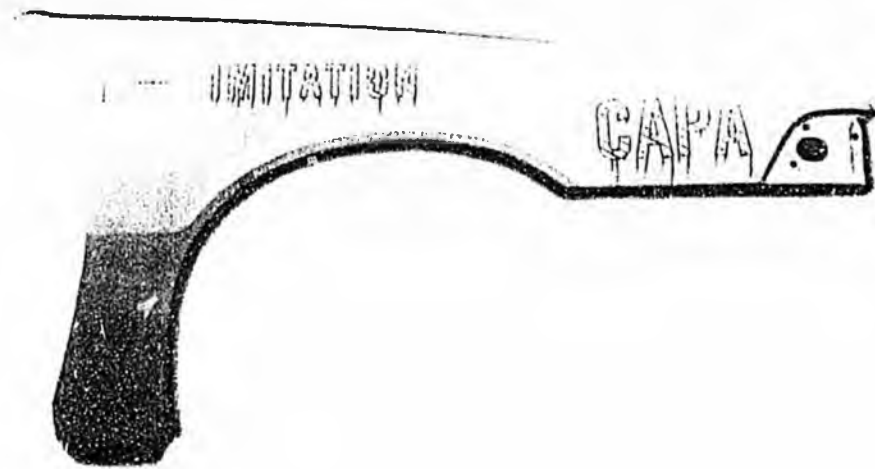
DOUBLE-SIDED GALVANIZED GM FENDER

| | | |
|----------------------|---------------------------|---|
| Metal Thickness | 0.033 Inches | Provides Greater Strength and Integrity to the Part |
| Zinc Layer Placement | Outside of Sheet Metal | Resists Surface Rust |
| Zinc Layer Placement | Inside of Sheet Metal | Helps Prevent Holes |
| Zinc Layer Volume | 60 Grams per Square Meter | Adds Durability |
| Primer Thickness | 1.2 to 1.3 Mils | Extends Weather Protection and Adds to Corrosion Resistance |
| Total Weight | 8.5 Pounds | Contributes to Overall Vehicle Strength |

Check It Out for Yourself

To get the full report on the results and fairness of Test GM9540P (Method B) shown here, write to:

General Motors-SPO
P.O. Box 33115
Detroit, MI 48232



NON-GALVANIZED FOREIGN IMITATION FENDER

| | | |
|----------------------|-----------------------------|---|
| Metal Thickness | 0.030 Inches | Diminishes Part's Strength and Integrity |
| Zinc Layer Placement | None Outside of Sheet Metal | Leaves Metal Vulnerable to Surface Rust |
| Zinc Layer Placement | None Inside of Sheet Metal | Provides No Protection from Holes, Which Typically Start on the Inside |
| Zinc Layer Volume | None | Makes Part Less Durable |
| Primer Thickness | 0.5 to 0.9 Mils | Provides Substantially Less Weather Protection and Corrosion Resistance |
| Total Weight | 8 Pounds | Lessens Overall Vehicle Strength |

DO NOT BE FOOLED BY LESSER QUALITY IMITATIONS. RESIST DEFEATING NON-GENUINE GM COLLISION PARTS.

The Insurance Guide **Consumer** Professional

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Agent Find a

Get a Quote!

Add information to your favorites

Flash a Consumer

Free Loan Services

Parental

Med & Kit

 Five leading auto insurers want to show you their lowest quotes. [CLICK HERE NOW](#)

Are you entitled to brand-name repair parts? Know your OEM rights

By insure.com

Your insurance company promises to return your vehicle to its pre-accident condition after you're involved in a crash. Unfortunately, the definition of "pre-accident condition" is hazy at best, and the use of original equipment manufacturer (OEM) parts at repair time could develop into a tug of war involving many players.

You are certainly entitled to demand OEM parts after you crash your car, but your insurance company might not pay 100 percent of the repair bill if you do. What do you do if you're leasing a vehicle? And what do you do if you have to return it in the same condition as when you got it? Companies say non-OEM parts are just as safe and effective as original manufacturer parts. However, several class action lawsuits against major insurance companies call the safety of non-OEM parts into question.

OEM parts are manufactured by the maker of your vehicle. Non-OEM parts, often called aftermarket parts, are made by third-party vendors. Many insurance companies recommend cheaper non-OEM parts for the repair of damaged vehicles because it keeps insurance costs down. The industry sees non-OEM parts as quality replacements that are guaranteed and a perfectly reasonable alternative to OEM parts.

The use of original equipment manufacturer (OEM) parts at repair time could develop into a tug of war involving many players.

"We believe the existence and use of [non-OEM] parts save consumers

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money and ultimately serve them well," says Sharon Frazier, a spokesperson for State Farm Insurance Co. "All non-OEM parts [we recommend] must be Certified Automotive Parts Association [CAPA] certified. CAPA ensures that quality standards are followed in making competitive crash parts and making sure parts bearing the CAPA quality seal are in compliance with these standards."

State Farm encourages its policyholders to go with the non-OEM parts at repair time, and although the company allows you to choose between OEM and non-OEM parts, it discourages OEM usage through its practice of making you pay for the difference in costs.

Progressive Auto Insurance spokesperson Donna Marquard says her company will generally recommend that nonstructural parts, such as fenders, be replaced with non-OEM parts because that allows the company to save money.

However, Progressive's reimbursement practices depend on your policy. "If our policyholder specifically requests that OEM parts be specified on the estimate for all replacement parts, they may do so," says Marquard. "But they may have to pay the cost difference between the OEM part they desire and the non-OEM part we may have specified on the estimate."

How much can this cost you? Insure.com sought quotes for both an OEM rear bumper for a '90 Honda Accord and a non-OEM bumper. The Honda bumper was priced at \$275 and the non-OEM bumper was \$210. If you are a State Farm or Progressive policyholder, you'd have to come up with the extra \$65 for the Honda bumper. An estimate for a 1996 Ford Contour OEM hood was \$585. The aftermarket hood was \$299. You'd have to come up with at least \$286 (not including the tax) to get your Contour fixed with an OEM hood as a Progressive or State Farm customer.

As another example, the Insurance Information Institute's March 1999 report, "Where the Auto Insurance Premium Dollar Goes," says that it would cost \$72,000 to totally repair a 1997 Ford Taurus GL with OEM parts. The Taurus retails for around \$19,000.

Pennies from heaven?

Aftermarket parts are certainly cheaper, but why? In a friend-of-the-court brief, Public Citizen, a consumer-watchdog group founded by Ralph Nader, says, "Non-OEM parts can be sold at reduced rates because their manufacturers do not bear the cost of research, development, advertising, or special packaging . . . [and thus] the cost-savings made through the use of non-OEM parts runs into the hundreds of millions of dollars" for large insurance companies.

Interestingly, non-OEM parts are not encouraged across the board, and whether you'll be pressured to accept them depends on your insurer. At Chubb Insurance Group, for example, the use of OEM parts is *encouraged* whenever possible. According to Cristoph Ritterson, marketing manager for personal lines at Chubb, the company has found that its customers want protection from potential car depreciation, and that means installing OEM parts at the time of repair. "The customer doesn't even need to ask [for the use of OEM parts]. That's what we expect to do," says Ritterson.

Whether you'll be pressured to accept non-OEM parts depends on your insurer.

And unlike State Farm, Chubb doesn't require its policyholders to scrape together the difference between a non-OEM and an OEM repair. "We'll reimburse our customer for 100 percent of the repair bill, regardless," promises Ritterson. "If they want to go with non-OEM parts, they can, but we've found that our customers feel OEM parts are better than non-OEM parts."

Ritterson does note an important trade-off for his company's 100 percent reimbursement for OEM parts: Chubb's auto policies are more expensive than others on the market.

Look before you lease

Choosing not to use OEM parts might cost you a part of your security deposit at the end of the lease.

Your lease company requires the vehicle to be in the same condition when you turn it in as when you began the lease. Both GE Capital Auto Leasing and Provident Auto Leasing Co. forbid their lessees to add any parts that would reduce the vehicle's value. In the case of a Provident lease, you can't replace any parts without Provident's permission. This means that if you're involved in an accident and have to make repairs, you'll likely have to use OEM parts. The question is, will your insurance company pay the full OEM amount?

The answer is not clear. "If we feel that the vehicle cannot be restored to pre-accident condition using non-OEM parts," says

Marquard of Progressive, "we write the estimate based on OEM parts." That means you'll be fully covered for repairs to your leased vehicle if you're a Progressive policyholder.

However, if you're a State Farm policyholder and the company feels it

can repair your leased vehicle to its pre-accident condition with non-OEM parts, you're probably going to be in a bind. Your lease might say explicitly that you have to use OEM parts at repair time, or it might imply that OEM parts must be used. If you choose OEM parts, you'll need to come up with the difference between State Farm's aftermarket part estimate and the OEM estimate.

Choosing not to use OEM parts might cost you a part of your security deposit at the end of the lease or you might be charged a disposition fee (typically between \$200 and \$500) when your lease runs out. The reason is that you're obligated to return the vehicle to your dealership in its pre-accident condition.

Safety of aftermarket parts a litigious issue

"Imitation parts may be a serious safety threat."

There are at least five lawsuits pending against insurance companies over the use of non-OEM parts for vehicle repair. State Farm, Allstate, GEICO, Nationwide, and USAA (five of the top 10 auto insurers nationwide) are being sued for, among other alleged no-nos, recommending the use of non-OEM parts.

"Imitation parts may be a serious safety threat," says Steve Mitchell, an attorney with Hagens-Berman, a Seattle-based law firm that brought the lawsuits against Allstate, GEICO, Nationwide, and USAA. "Repair shops call these parts 'Taiwan trash' for a good reason — they have substandard fit, crash resistance, and mechanical operation. In a word, they are dangerous."

Mitchell bases his conclusions on a *Consumer Reports* study from February 1999 that shows non-OEM bumpers and fenders might cause *more* damage to vehicles in crashes than OEM parts.

However, the Insurance Institute for Highway Safety (IIHS), which conducts crash tests, says that non-OEM parts do not degrade the safety of a vehicle involved in a crash. In two separate advisories the IIHS published in 1987, it concluded that "the cosmetic parts used to repair cars are irrelevant to safety" and that "cars without any of these parts at all easily comply with the [frontal-]crash test requirements set" by the government. IIHS stands by its advisories today, saying the information is still "accurate" and "relevant."

The concern about non-OEM hoods is that they won't buckle properly in a crash due to inferior manufacture. Despite the aftermarket hoods' apparent shortcomings, the IIHS predicted that, based on its examinations, non-OEM hoods would buckle correctly during a crash.

GEICO spokesperson Greg Marsh says that his company uses non-OEM parts unless there is a safety issue involved. Marsh would not comment further on the issue because of the ongoing lawsuit.

Choose your parts wisely

States that do not require non-OEM part disclosure

- Alabama
- Alaska
- Arizona
- California
- Delaware
- Washington D.C.
- Hawaii
- Iowa
- Maine
- Montana
- New Mexico
- North Dakota
- Pennsylvania
- South Carolina
- Texas
- Vermont
- Washington



Source: National Association of Insurance Commissioners

Consider whether you're going to trade-in or sell your vehicle before making a decision on using OEM parts. "If you're buying a Mercedes, you're buying it, in part, for the craftsmanship," says Ritterson of Chubb. "Who's going to want to buy a Mercedes with non-Mercedes parts?" Dealers routinely check the crash history of a vehicle to see what kinds of parts were used in its repair, according to Ritterson. Your resale or trade-in value might be hurt if non-OEM parts are used.

By the same token, you don't want to buy a patch-work vehicle from a dealer, so the onus is on you to check the vehicle's crash history if you're suspicious of its condition. Web sites like Carfax.com and Vhronline.com will run the vehicle history for \$25. Although you won't be able to see whether or not the vehicle was repaired with OEM parts, you will be able to see if the vehicle has been damaged and repaired in the past.

Know, too, that you have the right to ask for OEM parts whenever you've been involved in a crash. Most auto policies say the insurance company will return your crashed vehicle to its pre-accident state

with parts of "like kind and quality." Policies generally don't exclude the use of OEM parts (although your insurance company might not repair vehicles with OEM parts as standard practice), so don't be shy about insisting. In addition, some states do not require insurers to disclose to policyholders their use of non-OEM parts. It's important to know that in these states, you *have* to ask.

Aftermarket parts do help to keep auto insurance costs down. So if you're not concerned about keeping your vehicle free of imitation parts, you're likely doing yourself and your neighbors a favor in the long run. "Increased use of [aftermarket] parts would trim billions off the cost of the nation's auto insurance bill," according to the Insurance Information Institute's 1999 report on where your auto insurance premium dollars go. The group says that around 72 percent of all repairs are done with OEM

THE ARGUMENTS ARE AS PARTISAN AS PRESIDENTIAL POLITICS, WITH LITTLE or no middle ground being staked out by either side. From the perspective of the insurance industry and aftermarket (A/M) crash parts distributors, it's about choice and freedom from a monopoly, both easily recognized as consumer issues.

For the opposition, it, too, is about choice — a consumer's right to choose how his car is repaired and with which parts. It's about not being told what's in their best interest, but rather, being allowed to make an informed decision that takes safety, value and circumstances into consideration.

But didn't the landmark verdict in *Avery v. State Farm*, in which the insurance giant was found guilty of consumer fraud and breach of contract for its use of A/M crash parts, put an end to all this controversy? To put it simply, no. Though the stakes have been raised to billions of dollars, there are no clear winners at this point. As the case continues its rage on the Illinois court system — State Farm lost its appeal and has petitioned the Illinois Supreme Court for further review of the verdict — the A/M crash parts issue continues to plague the industry.

How this real-world-problem-turned-courtroom-drama plays out depends on market forces set in motion by consumers, cer-

The Jury's Still Out

Two years after the landmark \$1.2 billion State Farm class-action verdict, the debate about aftermarket crash parts still rages. What does the future hold for these OE counterparts? If you thought the controversy ended when the verdict came down, think again.

BY CHARLIE BARONE

"There's overwhelming evidence of State Farm's calculated deception of its policyholders in a deliberate and universally employed for the purpose of obtaining unearned, illegitimate monetary gain. This was an unfair treatment. There is an abundance of evidence to support the trial courts findings that the class members

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tification agencies, repairers, industry associations and insurers alike. I don't have a crystal ball and can't predict exactly how these forces will affect the future of A/M crash parts, but I can tell you that insurance companies alone won't be calling the shots.

Survival Strategy

WHEN ASKED ABOUT THE FUTURE OF A/M

parts, SCRS Chairman Don Keenan — who's also president of Philadelphia-based Keenan Auto Body, a collision repair business with six locations, and a Certified Automotive Parts Association (CAPA) board member — had encouraging words for CAPA.

"There will always be aftermarket crash parts," he says. "They were here before the insurance companies

started specifying them, and there will always be a market for them. Some people are driven by quality, others by price and still others by both. In the past, aftermarket parts manufacturers were led to believe it was all about price. Today, they're getting a strong signal that the driving force is quality. Quality repairers demand quality parts."

Keenan's pragmatic approach to the parts issue seems to be the controlling attitude among some major players in the business. And despite sound defeats in the courts, the insurers' advocacy of these generic parts appears as vigorous as ever, which includes some major public relations moves, such as getting Ralph Nader's Public Citizen on board.

Still, the A/M parts issue has bled down to the consumer level, where A/M parts popularity rates about as well as big tobacco, HMOs and Firestone Tire. The term "aftermarket parts" has even been used with negative connotations in the prime-time Fox Network sitcom "Titus."

In the other camp, Mark Cobb — CCRE president and owner of Cobb's Collision Center in Windham, Maine — isn't nearly as optimistic as Keenan regarding the future of A/M parts.

"Consumer awareness and education will clearly define the viability of imitation parts in the future," says Cobb. "As consumers become more and more aware of how these parts affect the safety and function of their vehicles, the use of these inferior parts will be so greatly challenged that the value of their use will be nearly diminished."

With that said, Cobb adds that it's important to be completely clear on definitions. "Aftermarket parts encompass all types of parts — batteries, shocks, suspension components, muffler systems and so on," he says. "In a broad sense, sheet metal would

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DESPITE THE PERCENTAGE OF CAPA-CERTIFIED A/M CRASH PARTS REPORTED NOT TO PROVIDE AN ACCEPTABLE fit, respondents to the 2001 BodyShop Business Industry Profile aren't inclined to notify CAPA regarding such parts problems. Only 10 percent say they notify CAPA all the time; 15.5 percent say they notify CAPA 50 percent of the time; and 55.5 percent say they never notify CAPA. Source: 2001 BodyShop Business Industry Profile.

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disregard of its express written promises contained in the policies issued. The deceit was deliberate
ill-gotten gain, acquired at the expense of persons that trusted and relied upon State Farm for honest
injuries were proximately caused by State Farm's deceptive conduct."

— EXCERPT FROM THE APPELLATE COURT OPINION REGARDING STATE FARM'S APPEAL

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be included in that group, but sheet-metal parts are of a far different character and should be addressed without reaching out for support from parts that have been tried and tested in the marketplace."

For the Record

WE LIVE IN A LITIGIOUS SOCIETY — A society in which lawyers are challenging big business, including the auto insurance industry and its use of A/M crash parts. Has this boldness forever changed the course of A/M crash parts or simply made a ripple in the waters?

Earlier this year, an aftershock trembled the A/M crash parts market when an Illinois appellate court upheld the landmark lower court ruling finding State Farm Insurance Company guilty of fraud and breach of contract. Even though State Farm hasn't shown any signs of cutting their losses and giving up the fight, it's clear that the more they struggle, the deeper they sink in the A/M quagmire.

Another less publicized but significant case was the class-action lawsuit against Country Companies Insurance, alleging — this should sound familiar — fraud and breach of contract for its practice of mandating the use of A/M crash parts in the repair of their insureds' vehicles. There were no allegations of a runaway jury in this case, or an admission of wrongdoing on the part of the defendant. The insurer simply settled.

While the monetary figure wasn't earthshaking (\$6.2 million), the court ordered the company to radically change their habits in terms of how they settled claims for collision damage with policyholders. Not only does Country Companies have to discontinue its practice of limiting claims settlements to the use of A/M crash parts, the insurer has been enjoined from participating in CAPA.

Examined at face value, this court order might appear unreasonable, such as a court telling a local business that it can't be involved in the chamber of commerce. However, this penalty goes to the heart of the consumer fraud question that was the foundation of the State Farm case. That is, it wasn't so much what the parts were as it was how the parts were represented to the policyholders — and CAPA certification was part and parcel of that representation.

But what long-term affect have these cases really had on the future of A/M crash parts?

Shortly after the State Farm verdict, almost all insurance companies (with the exception of some uncompromising carriers like USAA) quickly withdrew from the practice of mandating A/M crash parts in the repairs of policyholders' cars — as if they suddenly realized they were standing too close to an out-of-control fire. But no sooner had the smoke cleared when a number of companies, excluding State Farm, reverted to their old ways. Others claim that many shops are also reverting to their old ways.

According to Crash Fax, Brian Sullivan — of the Auto Insurance Report — spoke at a recent conference in Washington, D.C., and predicted that "non-OEM parts will start to creep back into the market. In fact, it's already happened. Some of them will come from insurers. But what's also happening is that the body shops are bringing these parts back." (Sullivan's referring to the fraudulent practice of shops substituting A/M crash parts for OEM parts and then pocketing the difference in cost.)

"One of the purposes of the \$600

million punitive damage award against State Farm was to deter other insurance companies from cheating their insureds the same way State Farm did," says attorney Tom Thrash, one of several lawyers representing the plaintiffs in the State Farm case. "I guess \$600 million wasn't large enough. We'll certainly bring this to the court's attention in the pending cases against these other ... insurance companies. You can't cheat people and get away with it."

Still, the now-legendary State Farm class action has had its effects on the marketplace, especially, some say, on A/M parts manufacturers. The behavior of a number of insurance companies [in changing] their policies regarding after-

market crash parts after the State Farm class-action verdict has devastated the aftermarket industry," says Karen Fierst, president of KerenOr Consulting and Taiwan Auto Body Parts Association (TABPA) liaison to the U.S. market. "While I believe most of the litigation will eventually be resolved in a way that enables the inde-

pendent aftermarket to flourish in the future, it's causing a serious setback to the industry."

Despite Fierst's claims of a devastated A/M crash parts market, not all OEM suppliers credit the verdict for OEM sales increases. Art Garner, spokesman for American Honda, dismisses the case's effect on his company's parts sales and credits the strong economy of recent years for any increase. "We've had an across the board increase in sales, including our captive parts where there are no aftermarket competitors," says Garner. •

"To quote State Farm, CAPA is a joke," says attorney Tom Thrash, one of several lawyers who represented the plaintiffs in the State Farm case. "If their past is any indication of their future, CAPA has none. CAPA hasn't worked in the past. What on earth would make [anyone] think CAPA can work in the future?"



HE SAID ...

"Essentially, all the litigation reaching the public has dealt with consumer issues, (ones) we've long supported," says COALITION FOR COLLISION REPAIR EXCELLENCE (CCRE) PRESIDENT MARK COBB. "The State Farm verdict was a landmark, and we hope the ruling stands. But even if it doesn't, insurers realize business isn't as usual from now on. Someone is out there watching their practices, so they're going to have to be more attuned to proper claims handling."

... SHE SAID

"The politicization of the issue, the allegations of safety problems and the insistence (on) banning the products or having signed consent is simply anti-consumer," says KAREN FIERST, PRESIDENT OF KERENDR CONSULTING AND TAIWAN AUTO BODY PARTS ASSOCIATION (TABPA) LIAISON TO THE U.S. MARKET, ABOUT THE ACTIVITIES IN BOTH THE COURTHOUSES AND STATE HOUSES TO ADDRESS THE PARTS ISSUES. "This issue is being used as a weapon for some in the repair segment to hit back at the insurance industry."



CAPA

The Changing Face of Certification

IS THERE ANY HOPE FOR CAPA EVER GAINING recognition as a credible, independent testing organization? It depends on whom you ask. Keenan, a CAPA board member, says the organization has only begun to prove its value in the marketplace.

"In my opinion, CAPA has made more headway in assuring quality aftermarket parts in the last year or so than they have in their entire history," he says. "The vehicle test fit program has provided manufacturers with an accurate, real-life opportunity to see just how their parts fit on a vehicle."

If you're unfamiliar with recent changes at CAPA, the test Keenan is referring to is an actual vehicle test fit of parts performed by real-life technicians on actual cars — a process previously deemed unreliable by the cer-

tifying organization. CAPA had always asserted that OEM vehicle-build quality was too inconsistent to serve as a means of testing replacement parts. With the test fit now a part of every certification process, that argument has apparently lost its supporters within the organization. Perhaps with good reason: The parts are designed and intended for installation on those supposedly unreliable OEM vehicles, as opposed to a test fixture developed in a laboratory.

Was this change made in a last-ditch effort to give the association credibility? Until now, CAPA never tested anything, though they could've been doing these vehicle test fits for years. But the off-shore, voluntary in-house testing at the point of manufacture bounced fewer parts, and members were happy with that. CAPA is, after all, an association of manufacturers.

As you might suspect, not everyone is impressed with CAPA's so called "progress." "To quote State Farm, CAPA is a joke," says Thrash. "If their past is any indication of their future, CAPA has none. CAPA hasn't worked in the past. What on earth would make [anyone] think CAPA can work in the future?"

How is CAPA handling such industry negativity?

In an apparent effort at damage

control in the wake of CAPA Executive Director Jack Gillis' gaffes both in and out of court, the association took on some new blood early last year. General Henry "Butch" Viccello of USAA was appointed president of the CAPA board.

"CAPA isn't a flawless organization, and while we'll continue to recruit insurance industry members to participate in the organization, a multi-industry partnership is the only effective approach to a truly competitive marketplace — CAPA's primary goal," says Viccello. "This partnership needs to include the collision repair industry, the insurance industry, parts manufacturers, parts distributors and those who promulgate policy through legislation or regulation."

But even if A/M crash parts aren't legislated and/or litigated out of existence, some degree of market forces may come to bear on the parts. Consistently inferior parts will earn a reputation as such, as will better fitting and performing parts. However, this type of brand recognition has yet to surface in the collision repair market due to the generic nature of A/M parts. Most aren't identified by brand as much as they're ordered strictly by application. The typical body shop operator has no idea what's inside that string bikini packaging until it arrives.

"As an industry, the aftermarket crash part segment realizes that it must brand its products and provide a high level of consumer and repairer confidence in order to turn the image around," says Fierst.

"Until a few years ago, Taiwanese companies had hoped that CAPA would be the recognized brand for quality parts," she says. "They put their energies into the program thinking it would provide marketing and brand image support. It's become clear over the past few years that CAPA, while being a viable certification option, isn't the answer to the branding issue. ... The bottom line is that certification organizations should be invisible, like Underwriters Laboratory in the field of electronics."

What Consumers Really Want

WHILE THE BATTLE OVER A/M CRASH PARTS

Comments?

Are you impressed? Irritated? Angry? If you have something to say — about this article, another article in BSB or something going on in the industry — we want to hear from you! Please fax your comments to (330) 535-0874 or e-mail them to BSB editor Georgina Kajjanic at gakajjanic@babcox.com.

has largely been waged on body snop and insurance turf. the party with the most at stake is the collision repair customer. (Though some aftermarket advocates would have us think customers are oblivious to the parts issues.)

Do consumers really demand more affordable auto parts? In general terms, the answer is an unequivocal yes. However, just like with virtually every other consumer product, consumers demand better quality, convenience and service *along with* the bargain price. This principle is the basis for the success of big box retailers like Wal Mart and The Home Depot.

But what you have to remember in regard to the A/M crash parts issue is that we're not talking about the traditional retail scenario. Autobody sheet metal is, at best, an arm's length transaction for consumers.

The automotive aftermarket has existed on the oversights, errors and excesses of OEMs, which is why we find a non-OEM battery with the most powerful name recognition in the business. But are Diehard batteries and Gordon hoods analogous? The implication that they are could face skepticism.

Even if A/M body parts and hard parts are similar in terms of value, consumers haven't shown any substantive desire for price consciousness when the repairs to their cars are covered by an insurance claim (threats of premium hikes notwithstanding). The prospect of savings passed along to policyholders in the form of lower rates tends to lose significance when you're talking about a consumer's personal vehicle. At that point, he or she typically doesn't want to compromise. Most times, the only instance a consumer is willing to compromise is in the case of an older vehicle without collision coverage, in which function is stressed over form and appearance. At that point, a generic part could very well be an acceptable alternative to declaring the car a total loss. But in general, the real demand for more affordable collision parts comes from third-party payers.

"I think most consumers give little thought to the issue of aftermarket parts," says Fierst. "Those who do

One Tech's Thoughts on A/M Parts

FINALLY, A VIEW FROM GROUND ZERO — THAT OF A FLAT-RATE LINE TECHNICIAN, AN OFTEN forgotten party to the A/M crash parts dispute. Barney Slifer is an ASE Certified collision repair tech with more than 25 years of experience. He works at Arnell Paint and Body, a dealer body shop in Burns Harbor, Ind. What's his first-hand take on A/M crash parts?

"Not that it's pertinent to the replacement sheet-metal arguments, but A/M inner-structure parts are equally miserable as far as accuracy of fit," says Slifer.

"At present, I'm doing a Grand Am builder for which [the owner] bought a Taiwanese (Conjoin Key) upper tie-bar and left and right rad-support reinforcements. It's all flimsy, lighter gauge metal, and it's terrible when you're jiggling up the parts as per a unibody data sheet. Nothing is accurate.

"Unlike OEM components, I can't trust these parts to be dimensionally correct. Once you weld them in, you're committed. There's no going back for further adjustments after you've jigged them to factory specs, only to find yet another related A/M fit problem later on. This is the same reason I hate CAPA-certified A/M external sheet metal, such as fenders. In addition to the usual reasons most anti-A/M parts critics give, I find them a real handicap to production.

"[Some measuring system manufacturers] recommend using OEM front fenders as the final say-so when it comes to determining front datum measurements. If the fender fits the door, you're good to go. But I can't do it on this particular job because I can't trust the A/M part to be accurate enough to perform this kind of preliminary measuring. Even if I do correct the front datum to the factory height — which it now is — odds are, the Taiwanese fender won't fit the door without some serious modifications, which, I might add, no one pays me for."



"Unlike OEM components, I can't trust these parts to be dimensionally correct." — Barney Slifer, Arnell Paint and Body, Burns Harbor, Ind.

have likely been influenced by the February 1999 'Consumer Reports' article or their collision repair professionals. In my opinion, the negative image of aftermarket crash parts, as perceived by repairers, is far more problematic than that of consumers.

"This image is a perception that's evolved over the past 20 years. There's some historical basis for the perception, but problematic aftermarket parts aren't found in the market today as frequently as some people would have us believe. In fact, while aftermarket part quality is continually improving, poor quality OEM parts are more and more evident in the marketplace."

The Power of Test Fits

IN WHAT HAS BECOME A REGULAR EVENT (IN addition to being a round of ammunition for the A/M parts industry), the

Collision Industry Conference (CIC) parts test fit trials are often held up as a definitive measure of the parts' suitability.

The test fit held in Orlando in December 2000 indicated that a Yung Shine fender made in Taiwan was actually a *better* part than the OEM replacement fender. Assuming the A/M part was reverse-engineered from the part it was judged against, this raises a question as to the test's validity: How can a copy of an original be better than the original? This assumes, of course, that the service parts made by the OEM are identical to the ones the vehicle came with, a fact A/M parts makers dispute.

At any rate, the blind test by industry participants yielded higher scores for the imitation part. However, these types of tests only deal in the illusory qualities of appearance and don't

address the more substantive issues of the part's construction, long-term durability or effect on the owner's equity in the car.

When questioned as to whether the steel of the Yung Shine fender was made from two-sided galvanized steel like the Ford fender, CAPA spokesperson Stephanie Ackerman said: "As of Jan. 1, 1999, all CAPA sheet-metal parts are required to be constructed of double-sided galvanized steel. This part was no exception."

While her response was precise, it was somewhat ambiguous. CAPA standards may very well require that the Yung Shine part be constructed from two-side galvanized steel in order to be certified, but that in and of itself doesn't necessarily mean that the OE-grade of steel has made its way into parts inventories. E-mails and telephone calls to Yung Shine to confirm this weren't returned.

In follow up communication with Ackerman, she seemed less convincing. "I'm pretty sure that was a two-sided galvanized part," she said. "If it was certified, it's a given."

Asked for his assessment of the significance of the CIC parts trials, George Gilbert — crash parts merchandising manager, Ford Customer Service Division of Ford Motor Com-

pany — says, "A lot of flurry comes out of those [CIC] tests. We never agree with the tests, even when we win. The real fit tests are done every single day by body shops."

Gilbert also touched on a cost issue in which the OEM part could conceivably have an advantage over its cheaper competitors. In terms of enhanced repair cycle time, which has become the biggest buzzword in the business, OEM parts usage could involve real net savings in repair costs. Because A/M parts have been associated with increased labor time for their installation, delivery time delays and the tedious process of trial-and-error fitting, OEM parts makers have been able to claim the high ground on that basis.

"Where the parts-to-labor ratios change and you start to do more replacement [work] than repair, I see it as an opportunity — anything that can improve value to the customer is worthwhile," says Gilbert.

Survival of the Fittest

I CAN'T PREDICT EXACTLY HOW THESE forces will affect the future of A/M crash parts, but I don't see these parts disappearing ... ever. Some will improve based on sales (what a concept, huh?), while the not-so good parts won't sell as well and will be

used primarily by re-builders of totals. The better fitting, better performing, better looking A/M crash parts will gain recognition as the good brands.

Which brings us to branding. Like in every other business, some brands will be established as better than others. Up until now, A/M crash parts have been generic: You ordered by the application, e.g. hood and fender for an F-150. In the future, however, it may be "Send me a Brand Y hood and fender for an F-150. I've had good luck with them in the past. And don't send me a Brand X hood or fender; they're bad."

Like it or not, the A/M crash parts market will continue to evolve and mature. It may have a long way to go, but understand one thing: It's not going away. ☺

Writer Charlie Barone has been working in and around the body shop business for the last 27 years, having owned and managed several collision repair shops. He's an ASE Master Certified technician, a licensed damage appraiser and has been writing technical, management and opinion pieces since 1993. Barone can be reached via e-mail at (charlie@auto-claimshelp.net).

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State Farm Argues Its Case Before Appellate Court

Claims decision to use non-OEM parts rests with individual shops

By Sheila Loftus, Hammer & Dolly

In its appeal of a \$1.2 billion class action decision against it, State Farm argued last month before the Illinois Appellate Court in Mount Vernon, Illinois that State Farm doesn't fix cars, it only pays for them to be repaired. Any issue with the repair – or the parts used in the repair – would seem to be the concern of the collision repair facility, State Farm indicated.

If State Farm loses its appeal (and a decision is expected sometime between now and the end of the summer), it has two more recourses, the Illinois Supreme Court and the United States Supreme Court.

Robert (Barney) Shultz Jr., State Farm's lead attorney, argued that simply because a non-OEM crash part is specified on an estimate doesn't mean the part is used in the repair. That decision, Shultz intimated, is in the hands of the shop. In addition, Shultz said State Farm's obligation is "not to pay for a part that is equal to a brand new OEM part. It is to pay for a part to restore to preloss condition."

State Farm lost a \$1.2 billion class action suit over its advocacy of non-OEM parts in October of 1999 in a trial in Marion, Ill. The judgment against it (and in favor of the 4.7 million policyholders who were part of the class) was the

largest class-action verdict in Illinois history.

The plaintiff's lawyer, Elizabeth Cabraser, said State Farm breached its contract with policyholders by writing estimates for the cheapest parts, not parts that would restore their insureds' vehicles to pre-loss condition. The insurer relied on a computer to determine the cheapest part, she said, a decision State Farm based on cost-efficiency. But in seeking the cheapest part, State Farm committed fraud against its policyholders, she said. "State Farm," she said, "chose to use the computer" when it could have opted for a better way to ensure that its insureds' vehicles were returned to preloss condition.

Another plaintiffs' lawyer, Edward Kionka, argued that non-OEM crash parts are incapable of restoring a car to preloss condition, "State Farm promised [its policyholder] parts of like kind and quality," he said. "When State Farm gave a cheaper part, [the insurer saved] \$130 million by doing this."

The three judges hearing the appeal, Gordon Maag, Robert Welch, and Thomas Welch (no relation), were outspoken in their questioning of the lawyers. At one point, Maag paraphrased Supreme Court Justice Antonin Scalia to suggest that Shultz was evading giving an honest answer to a question he asked.

Shultz repeated his main argument – that State Farm doesn't fix cars, only pays to have them fixed – a number of times during the course of his

(continued on next page)

argument before the court.

Fifty-six people were in attendance at the courthouse, including four collision repairers.

Since losing the class-action verdict, State Farm has not written for non-OEM parts.

Publisher's note: Our thanks to Sheila Loftus, publisher of Hammer & Dolly, for this eyewitness report.

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ALASKA AUTO DEALERS ASSOCIATION

P.O. Box 201305, Anchorage, Alaska 99520-1305

April 2, 2002

The Honorable John Cowdery
Chair Senate Transportation Committee
Alaska State Legislature
Juneau, Alaska 99801-1182

Re: SB 348

Dear Senator Cowdery,

On Behalf of the Alaska Auto Dealers Association we wish to lend our support to SB 348. This is a pro-consumer issue that is extremely important to the constituents of our state.

Throughout the country there has been a strong influx of potentially inferior body parts. We feel that although these parts are touted as being less expensive and therefore have the potential of reducing insurance rates nothing could be further from the truth. These parts may not have the quality and longevity of OEM (original equipment) body parts. This could result in more expense for the consumer.

SB 348 does not simply single out insurance carriers and their relation to body shops. It also provides protection in the consumer/body shop relationship by requiring strong, clear disclosure of the quality, type, and options available to the consumer.

We strongly support the Transportation Committees effort to advance SB 348.

Respectfully Yours,

A handwritten signature in black ink, appearing to read "Steve Allwine". The signature is fluid and cursive, written over a horizontal line.

Steve Allwine
Chair AADA Legislative Committee