

## CCRE 2012 Seminar—Taking Back the Collision Repair Industry

When I first found out I was going to attend the Coalition for Collision Repair Excellence (CCRE) legal seminar in Philadelphia on March 30th and 31st, I thought I would need a pillow and lots of caffeine, but I could not have been more wrong. The seminar offered a wealth of intriguing knowledge, much of which I'd never heard of or even imagined. CCRE represents



Left to right: Robert McClallen, William Bensley and Ashly Van Earl

a whole movement dedicated to reviving and regaining an industry that has been guided by third-party interference for decades. The experienced collision repair shop owners and the lawyers in attendance presented much advice to attendees as well as the opportunity for shop owners to ask their own, personal questions. I will summarize some highlights of the seminar here with plans to exploring some of these topics in greater depth in the near future; however, I highly recommend all shop owners to attend CCRE's next seminar, which they plan to hold in six months, in order to learn first-hand that there are solutions to the multitude of problems that arise in the industry. Because it is *your* industry, and as CCRE President **Tony Lombardozi** emphasized "no one else is going to take this industry back except the repair shop owners themselves."

The event, hosted by the Pennsylvania Collision Trade Guild (PCTG), was held at the Airport Hilton in Philadelphia, PA. One hundred and ten people were in attendance from varying fields, including many lawyers who specialize in this field. Many of the attendees were non-CCRE members, and twenty-five states were represented with people coming from as far away as Texas, New Mexico and Nevada. Tony Lombardozi moderated the majority of the seminar with presentations being given by attorneys **Erica Eversman** of OH, **John Parese** of CT and **Robert McClallen** of VT.

Tony began by saying that this was a good industry when he first began his career, but collision repairers gave it away over the past twenty-five years in exchange for systems supposed to make their jobs easier. By accepting and following these systems, such as estimating guides, repairers have become manipulated by third-party influence. Repairers' investment, in both time and money, should yield a profit. Through a planned program of taking control of your business and realizing

that the insurance company has no place in your business, collision repair shops can still make a profit. As Tony stressed, "This has to become OUR collision repair industry."

Discussing how this problem began, Tony noted that there has always been two separate contracts: one between the vehicle owner and the insurance company, and another between the vehicle owner and the repairer; yet, somehow, these two contracts have joined each other as collision repair shops now have contracts with insurance companies through DRPs. Tony asked: why do insurance companies assume they have a say in the repairer's contract with the vehicle owner while the repairer cannot inter-



Erica Eversman



From left, Rick Dotterer, Steve Behrendt, Truman Fancher, Tony Lombardozi, and Mike Parker

fere with the insurer's contract with the customer?

Erica Eversman, Ohio attorney and General Council for Vehicle Information Services, became involved with the issues in the collision repair industry when she learned about the

problems that consumers have as a result of repairers' problems with insurance companies and realized that consumers have nowhere to obtain information to understand the repair



John Parese and Erica Eversman confer

process other than the insurance company or the repairer. Reiterating Tony's point about the combination of the two separate contracts, Erica noted that in DRP contracts, the insurer may or may not direct business to the repair facility, yet they act as if the repairer has obligations to the insurance company while they feel no obligation to the repairer.

In the contract between the vehicle owner and the repairer, the vehicle owner's obligation is to pay while the repairer is obligated to provide a quality repair. As oral contracts are difficult to enforce, Erica recommends having a written contract with the vehicle owner to protect yourself. In this contract, it is important to define your customer, each party's duties and what parts will be used. The specifics of these definitions vary based on individual state laws, but a valid contract makes it easier for the repairer to obtain payment for the work they do.

Erica also explained that insurance policies give insurance companies three options: replace the vehicle, pay for the loss in money, or elect to repair. Insurance companies rarely elect to repair because it makes them equally responsible as the shop for the

quality of the repairs; however, through DRPs, insurance companies are able to assume control of the repair without accepting liability. Erica went on to discuss several legal cases and examples of the insurance companies choosing inferior shops to save money.

Insurance companies write estimates to verify there is damage and to find out how much money to reserve for the claim, but these estimates are written for internal purposes only and mean nothing because insurers do not fix cars—they just pay for repairs. Erica noted that contracts do not override consumer protection laws, but since few consumers know their rights or realize they are being taken advantage of, insurance companies often ignore consumer protection laws or try to pressure collision repair facilities to do so.

Before introducing the next segment, **Steve Behrendt** of CCRE and PCTG noted that shops should have a solid contract customized for how they do business, and he revealed a sign that hangs in his shop specifying that insurance company paperwork, such as estimates, are used for informational purposes only and do not determine the methodology, extent or cost of repairs.



Steve Behrendt

Continuing her presentation, Erica agreed that the insurer's estimate is for informational purposes only, emphasizing that the insurer has no place in your business. Spelling this out in the contract allows repair shops to control their relationship with the customer, keeping the shop in the role of a professional and the insurer in their proper role. She also suggests addressing replevin in the contract, granting shops a lien that allows them to retain possession of the vehicle until they are paid for their work. One section of her sample contract also grants the shop the right to recover their lost profit if the insurance company steers the customer to a different shop.

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Turning the discussion to parts, Erica insisted that shops should never offer a warranty on parts, especially aftermarket parts, but they should warrant the quality of their repairs. While insurance companies can guarantee the work of a DRP shop, this means assuming liability. They usually offer warranties on replacement parts but not on workmanship, unless specifically stated.



Truman Fancher

Noting that warranties are like insurance policies in that they have more exclusions than coverage, Erica stressed that manufacturers' warranties will often be void if aftermarket parts are used, yet many insurance companies require shops to use these parts in their DRP contracts. She also pointed out that insurance companies are great at propaganda; many insurance ads create the impression that insurers are involved in the repair, and they focus on magical restorations.

In the Question and Answer section of her presentation, Erica noted that insurers only fear bad press and litigation as it presents unknown and unknowable costs. While other businesses are forced to comply with consumer protection laws, insurance companies are generally exempt and are only investigated if there is proof that their actions are common practice.

John Parese Esq., of CT presented next in regards to tort reform. Tort requires those responsible for harming others to compensate their victims, and the classical purpose of tort is to provide full compensation for proved harm. Tort reform proposes changes to reduce tort litigation on damages by setting procedural limits on the ability to file claims and capping the awards of damages, among other things. Advocates of tort reform include automobile manufacturers and insurance companies, in addition to the tobacco, chemical and pharmaceutical industries.

John then proceeded to show clips from "Hot Coffee," a documentary about Stella Liebeck's lawsuit against McDonald's when she spilled coffee in her lap. These clips show a

different side to the case than what was seen in the media, validating this seemingly frivolous lawsuit. John stresses "If you don't even know the basic minimal standard that you need to employ and then you harm someone, the consequences can be very significant.

John noted that these same tactics are being used to change the collision repair industry as insurance companies come out on top through public relations. Some of their methods are DRPs, insurance involvement in setting repair guidelines, misleading commercials and legislative "reforms" to allow more steering and greater control over repairs. He asked "does it feel like there's an ever-encroaching insurer presence changing fundamental ways of doing business, relentlessly grabbing for more and more of your business, in part through a perpetual public relations and legislative campaign of distorted information?"

Continuing the presentation, John explained that consumers are misled by false perceptions that insurance



Tony Lombardozzi

companies fix cars and by propaganda reinforced by uninformed courts, legislators and state officials. They are also given false information regarding warranties, delays, quality, rentals and trust. Yet, most consumers do not even know they have been harmed!

After watching several insurance company ads that show magical repairs and stress that the insurance company repairs vehicles, the audience erupted in applause to see an anti-steering commercial. The dissemination of this type of information is one way that the collision repair industry can fight back, through recognizing the problem and playing the same game of public relations. Collision repair shops' goals should be to get the insurer out of the repair process, remember who the customer is and use a well-reasoned strategy of informing. Make things about the process, not the money.

SCRS Executive Director **Aaron Schulenburg** then gave a brief but informative report on information they had received regarding the new State Farm parts bidding program (see related story this issue) and the potential impact the process could have on repairer processes and profits.

Attorney Robert McClallen of VT then began discussing assignment of proceeds. This document is useful as it allows the repairer to effectively step into the consumer's shoes in order to sue the insurance company and get paid for their work. By signing an assignment of proceeds, the customer gives the collision repair shop



Left to right: Joe Talarico, A. Brent Geohagan, John Parese and Erica Eversman gave legal advice the right to force the issue and receive payment. In creating an assignment of proceeds for your shop, it is important to clarify and specify exactly which rights are being assigned. Erica stresses that the wording of the document must be correct because shops will not have the right to sue if it only grants them rights to proceeds; it must also grant the right to act as the consumer in order to obtain payment.

On Saturday morning, the seminar resumed with a presentation by Robert McClallen and Mike Parker of CCRE as they discussed how Mike was able to use his assignment of proceeds to successfully sue an insurance company for repeated short pays. During the trial, Mike stressed that he felt like he was a "co-conspirator to defraud consumers" when questioned about why he asked to be taken off direct repair programs. Rob was able to prove the insurance company practiced steering against Mike as well. In his closing argument during the trial, Rob stressed that the insurance companies have no legal way to do this. "They're just doing it because they're big and they think they can." Rob consolidated Mike's 38 claims, all first-party claims because of short pay, and he won every single case.

Mike emphasized the importance of making sure the customer knows exactly what they are signing so that, in a trial, the insurance company cannot claim customers were coerced or unaware of what rights they were assigning. He also makes sure to explain what aftermarket parts are before using them in his repairs, and most customers refuse aftermarket parts, even when their insurance companies force them to pay the difference. Rob pointed out that the CCRE seminar is all about independence. Collision repair shops do not work for insurance companies, and

documentation will help shops get paid which is their right. The forms will get a shop halfway there, but you have to truly believe that you deserve to get paid for your work.

On Saturday afternoon, a panel of lawyers were brought to the front of the room to answer attendees' specific questions. The panel consisted of Joe

Talarico of NY, A. Brent Geohagan of FL, John Parese of CT, Erica Eversman of OH, Robert McClallen of VT, William Bensley of PA, and Ashly Van Earl of LA. The panel answered many questions from the audience pertaining to contracts, writs of replevin, mitigating damages and so forth.

Several key points were made and reiterated during this session:

- Because shops are the consumers' only advocate, it is a conflict of interest for a shop to have a contract with the insurance company.
- Though collision repair facilities do not work for insurance companies, insurance companies have completely bought into the mentality that they do. This allows shop the opportunity to use this incorrect belief to their advantage.
- The insurer's estimate is a hypothetical, educated guess that can be used as a guideline, but the repairer's invoice represents the cost of the repair and is the final answer.
- Class actions do impact insurance companies. If every shop reports their loss through a class action or through a credit reporting agency, the total amount will show the insurer's debt to repairers.

When the seminar wrapped up, attendees seemed reluctant to leave, but everyone walked away with a vast amount of new information and ideas for how to run their collision repair facilities independently. As Tony Lombardozzi stressed repeatedly throughout this seminar, they learned that "there is a better way to do business."

