



THE COMMONWEALTH OF MASSACHUSETTS AUTO DAMAGE APPRAISER LICENSING BOARD

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WILLIAM E. JOHNSON
LYLE M. PARE

Minutes of Meeting of the Board held on May 9, 2018, Approved by the Board at the June 20, 2018, Board Meeting; Motion of Board Member William Johnson and Seconded by Board Member Richard Starbard. The Motion Passed by a Vote of: 4-0, with Chairman Cox Abstaining.

May 9, 2018, Minutes of Board Meeting
Held at 1000 Washington Street, Boston, Massachusetts.

Members Present:

Chairman Cox
Joseph Coyne
William Johnson
Richard Starbard
Lyle Pare

Attending to the Board:

Michael D. Powers, Counsel to the Board
Steven Zavackis, Executive Secretary

Proceedings recorded by:

Chris Gervais of MAPFRE (Audio/Video). Evangelos Papageorg of EXP Consulting (Audio/Video). Joel Gausten of GRECO Publishing (Audio/Photo). Peter Bergstrom of Hanover Insurance Company (Audio).

Call to Order:

Chairman Cox called the meeting to order.

Review of minutes:

The Board reviewed minutes of the Board meeting held on February 27, 2018. Chairman Cox called for a motion to approve the minutes and Board Member William Johnson made the motion which was seconded by Board Member Richard Starbard. The motion passed by a vote of: 4-0 with Chairman Cox abstaining.

Report on the next Part-II examination for motor vehicle damage appraiser:

Board Member Richard Starbard reported the Motor Vehicle Damage Appraiser Part-II examination will be held on August 1, 2018, at Progressive Insurance Company's facility in

Westwood. Board Member Starbard reported that there was a Part-II examination held on May 1, 2018, at Progressive's facility and thanked Pete Smith, Eric Landry, Sue Conena, and Bill Roberts for their outstanding assistance with the examination. Board Member Starbard reported that there were only 9 people who have submitted applications to take the Part-II examination scheduled for August 1, 2018. This small number of applicants reflects the fact that the Board has caught-up to any backlog that may have previously existed for people taking the examination.

Mr. Adam Haddad requested permission to speak and Chairman Cox granted permission. Mr. Haddad informed the Board and members of the general public that, Access General Insurance Company filed for bankruptcy in two states and this could have an impact upon their ability to make payments on claims for motor vehicle damage.

Board Member Coyne responded that the issue was not one within the jurisdiction of the Board and the Board is only concerned with licensing of motor vehicle damage appraisers; the solvency of Access General is an issue for the Division of Insurance.

Chairman Cox agreed and directed Mr. Haddad to the Division of Insurance as the proper entity to address such an issue.

Vote by the Board to send a letter to insurance companies writing property and casualty motor vehicle insurance, conducting auto body business, and other interested parties in Massachusetts requesting their input on the proposed Advisory Ruling submitted by Board Member William Johnson requiring Manufacturers recommended repair procedures must be followed when a structural part of a motor vehicle has sustained damage affecting the safe operation of the motor vehicle:

Chairman Cox read the Board item and then requested that Board Member Starbard read the item in its entirety. Thereupon, Board Member Starbard read the Advisory Ruling submitted by Board Member Johnson which is the following:

TO ALL CONCERNED PARTIES

Re: Advisory Ruling 2018-XXXX

The Auto Damage Appraiser Licensing Board (ADALB or Board) is authorized to oversee all motor vehicle damage appraisers in the Commonwealth of Massachusetts pursuant to M.G.L. c. 26, § 8G and 212 CMR 2.00 et seq. titled, "The Appraisal and Repair of Damaged Motor Vehicles" as promulgated by the ADALB. In relevant part M.G.L. c. 26, § 8G provides, "The board shall after notice and hearing in the manner provided in chapter thirty A adopt rules and regulations governing licenses under this section in order to promote the public welfare and safety." In addition 212 CMR 2.01(1) provides, "Purpose and Applicability. The purpose of 212 CMR 2.00 is to promote the public welfare and safety by improving the quality and economy of the appraisal and repair of damaged motor vehicles... ." Furthermore, 212 CMR 2.04(1)(e) in pertinent part reads, "If, while in the performance of his or her duties as a licensed auto damage appraiser, an appraiser recognizes that a damaged repairable vehicle has incurred damage that would impair the operational safety of the vehicle, the appraiser shall immediately notify the owner of said vehicle that the vehicle may be unsafe to drive. The licensed auto damage

appraiser shall also comply with the requirements of M.G.L. c. 26, § 8G the paragraph that pertains to the removal of a vehicle's safety inspection sticker in certain situations.” Under its authority the ADALB is, *inter alia*, authorized to: issue licenses to all motor vehicle damage appraisers in the Commonwealth (licensed appraisers or appraiser) 212 CMR 2.02, regulate the conduct of motor vehicle damage appraisers in the Commonwealth 212 CMR 2.02, regulate the manner of conducting motor vehicle damage appraisals 212 CMR 2.04, and to issue Advisory Rulings pursuant to 212 CMR 2.01(3) and M.G.L. c. 30A, § 8. It is the intention of the ADALB to issue an Advisory Ruling consistent with 212 CMR 2.00 et seq. and M.G.L. c. 26, § 8G to be followed by licensed appraisers.

Pursuant to its authority, the ADALB voted by a majority vote at the Board’s meeting held on XXX, to adopt this Advisory Ruling.

ADVISORY RULING

212 CMR 2.04(1)(e) states in relevant part “[T]he appraisers representing the insurance company and the registered repair shop selected by the insured to do the repair shall attempt to agree on the estimated cost for such repairs. The registered repair shop must prepare an appraisal for the purpose of negotiation. No appraiser shall modify any published manual (*i.e.*, Motors, Mitchell or any automated appraisal system) without prior negotiation between the parties. Manufacturer warranty repair procedures, I-Car, Tec Cor and paint manufacturer procedures may also apply.” []. The Insurance Institute for Highway Safety (IIHS) and the Highway Loss Data Institute (HLDI) or other similar recognized industry resource may also be utilized for negotiation purposes.

The Auto Damage Appraiser Licensing Board has passed a motion declaring that for the purposes of reducing traffic accidents and safeguarding users of motor vehicles against unreasonable risks of accident, injury, or death, when structural damage is caused to the structural/frame component of a motor vehicle (the main structure of the vehicle and/or any component designed to provide structural integrity of the vehicle), and if the repair of a damaged part will impair the operational safety/integrity of the motor vehicle requiring the replacement of the part, to ensure the safe and proper repair of a damaged motor vehicle the manufacturer warranty, I-Car, Tec Cor (or similar recognized industry resource) repair procedures shall be followed. Components that are bolted onto a motor vehicle are not considered part of its structure or frame.

This Advisory Ruling shall be effective upon posting on the Auto Damage Appraiser Licensing Board public website. Failure to comply with this ruling could result in fines and penalties as provided by law.

For the ADALB,

Michael D. Powers, Esq.
Legal Counsel to the Board

After Board Member Starbard read the above-language, Board Member Johnson reported that after discussions with Board Member Pare, the beginning of the last sentence of the proposed Advisory Ruling would be changed. He also acknowledged that, insurance company appraisers could write LKQ (Like Kind and Quality) parts or aftermarket parts under the circumstances described in the proposed Advisory Ruling. Board Member Johnson proposed an additional change to the proposed Advisory Ruling by adding the word “cosmetic” at the beginning of the last sentence so that the sentence would read, “Cosmetic components that are bolted onto a motor vehicle are not considered part of its structure or frame.”

Board Member Starbard expressed his opposition to the proposed Advisory Ruling, in part, because “manufacturers warranty repair procedures” no longer exists in the auto body repair industry. Mr. Starbard explained, when the Board conducted a review of the ADALB’s regulation 212 CMR 2.00 et seq., he intentionally submitted a proposed amendment removing the language in the current regulation of, “manufacturers recommended repair procedures” because this language is an anachronism and, in fact, is no longer in use in the auto body repair industry in the country. This has been replaced by a variety of new terminologies.

Board Member Coyne asserted that the proposed Advisory Ruling exceeded the Board’s authority in so much as the Board could not direct members of the auto body industry on the specific manner of repairing motor vehicles.

Board Member Johnson asked Legal Counsel Powers whether he had a legal opinion on the proposed Advisory Ruling. Mr. Powers replied, since it was presented to the Board the proposed Advisory Ruling was amended several times, and because the Advisory Ruling was not finalized an opinion would not be appropriate at that time. Furthermore, the item on the agenda called for the proposed Advisory Ruling to be submitted to the auto insurance industry and other interested parties for review and comments and, thereafter, further review by the Board.

Board Member Johnson made a motion to adopt the language of the proposed Advisory Ruling to include the word “cosmetic” at the beginning of the last sentence, and to proceed with the item as posted on the agenda for input from the industry. The motion was seconded by Board Member Pare and the motion failed by a vote of 2-2, with Chairman Cox abstaining.

Chairman Cox entertained a second motion as to the proposed Advisory Ruling as listed on the agenda, but without the word “cosmetic” at the beginning of the last sentence. Board Member Johnson made a motion to submit the proposed Advisory Ruling for comments by the auto body industry and Board Member Pare seconded the motion; the motion passed by a vote of: 3-1 with Board Member Coyne voting against and Chairman Cox abstaining. Board Member Johnson added that he would like the letter to indicate that the Board discussed inserting the word “cosmetic” at the beginning of the last sentence.

Other business – reserved for matters the Chair did not reasonably anticipate at the time of the posting of the meeting and agenda:

Board Member Joseph Coyne informed the Board that he received a request from a previously licensed motor vehicle damage appraiser named John Jankowski who was cancelled for not renewing his license in 2010. Board Member Coyne said that he knew of Mr. Jankowski's ability, and he was a competent motor vehicle damage appraiser. Mr. Coyne made a motion that Mr. Jankowski's application for reinstatement be accepted by the Board without Mr. Jankowski being required to retake the examination for motor vehicle damage appraiser, provided that Mr. Jankowski will be required to pay all the additional fines and fees for each year he did not renew his license. The motion was seconded by Board Member Pare and the motion passed by a vote of: 4-0 with Chairman Cox abstaining.

Date of Next Board Meeting:

The Board Members agreed to hold the next Board meeting on June 20, 2018, at 9:30AM at 1000 Washington Street, Boston, Massachusetts.

Motion to Enter the Executive Session:

Chairman Cox announced that the Board was about to enter the executive session and would conclude the Board meeting in the executive session without returning to the public session. Chairman Cox then read the following announcement:

Executive session to review and discuss the background of applicants for motor vehicle damage appraiser test who have disclosed a criminal conviction on the application. Review and discussion of Complaints 2018-3, 2018-4, 2018-5, 2018-7A&B, 2018-8A&B, 2018-9A, B &C, and 2016-5 filed against motor vehicle damage appraisers licensed by the Auto Damage Appraiser Licensing Board. Such discussions during the executive session are allowed under M.G.L. c. 30A, §21(a)(1) and in accordance with the Office of the Attorney General's Open Meeting Law (OML) decisions such as *Board of Registration in Pharmacy Matter*, OML 2013-58, *Department of Public Safety Board of Appeals Matter*, OML 2013-104, and *Auto Damage Appraisers Licensing Board Matter*, OML 2016-6. Section 21(a) states "A public body may meet in executive session only for the following purposes:

- (1) To discuss the reputation, character, physical condition or mental health, rather than professional competence, of an individual, or to discuss the discipline or dismissal of, or complaints or charges brought against, a public officer, employee, staff member or individual. The individual to be discussed in such executive session shall be notified in writing by the public body at least 48 hours prior to the proposed executive session; provided, however, that notification may be waived upon written agreement of the parties. A public body shall hold an open session if the individual involved requests that the session be open. If an executive session is held, such individual shall have the following rights:
 - i. to be present at such executive session during deliberations which involve that individual;

- ii. to have counsel or a representative of his own choosing present and attending for the purpose of advising the individual and not for the purpose of active participation in the executive session;
- iii. to speak on his own behalf; and
- iv. to cause an independent record to be created of said executive session by audio-recording or transcription, at the individual's expense.

The rights of an individual set forth in this paragraph are in addition to the rights that he may have from any other source, including, but not limited to, rights under any laws or collective bargaining agreements and the exercise or non-exercise of the individual rights under this section shall not be construed as a waiver of any rights of the individual.

The licensed appraisers' attorneys have requested the matters be heard in the executive session.

Chairman Cox called for a motion to enter the executive session and the motion was made by Board Member Coyne and seconded by Board Member Starbard. A roll-call of the Board Members was taken by Chairman Cox with each one voting in the affirmative, and the motion passed by a vote of: 4-0 with Chairman Cox abstaining.

Executive Session:

An applicant for motor vehicle damage appraiser license who disclosed a conviction for a felony on the application appeared before the Board. The Board reviewed the arrest and conviction records and asked the applicant several questions about the arrest and conviction.

The applicant answered each question asked by Members of the Board. Chairman Cox called for a motion and a motion was made by Board Member Coyne to allow the applicant to take the Part-I portion of the examination, the motion was seconded by Board Member Starbard, and the motion passed by a vote of: 3-1 with Board Member Johnson voting against and Chairman Cox abstaining.

Complaint 2016-5

Attorney Owen Gallagher appeared during the executive session with the licensed appraiser. Board Member Johnson recused himself and left the Board room while the complaint was discussed. Previously Board Member Johnson attempted to mediate the dispute between Attorney Gallagher's client and the licensed motor vehicle damage appraiser whom filed the complaint. Attorney Gallagher pointed out that Board Member Johnson was required to recuse himself from participating because he was the Board Member who was assigned as the mediator. Since the ADALB's Complaint Procedures requires a Board Member participating in the mediation of a complaint to, thereafter, recuse himself from future proceedings that involve the complaint Mr. Johnson, in accordance with the Complaint Procedures, must recuse himself.

Attorney Gallagher informed the Board that his client scheduled the date of his appearance in this matter on the date the Board scheduled for the next meeting for May 2, 2018. This date was set by the Board at the close of the Board meeting that was held on February 27, 2018. Attorney

Gallagher and his client just recently learned that the Board changed the date from the one agreed at the last Board meeting to May 9, 2018. Attorney Gallagher's client had a long-standing company-wide event that he was scheduled to appear at and make a presentation. Consequently, Attorney Gallagher requested a continuance of the matter until the next meeting of the Board. Chairman Cox granted the continuance with the consensus of the Board members present.

Complaint 2018-3

Attorney John R. Callahan, a specialist in insurance laws and other legal areas, appeared with the licensed appraiser. In a letter Attorney Callahan sent to the Board notifying the Board that he represented the licensed appraiser and requesting the matter be heard in the executive session, Attorney Callahan asserted that the licensed appraiser did nothing that would constitute steering the consumer away from the auto body shop which filed the complaint and only responded to questions asked by the consumer's insurance agent.

Within the complaint filed by the complainant who owned the auto body shop, the complainant requested that Board Member Coyne recuse himself from participating in reviewing the complaint because Board Member Coyne's company periodically receives appraisal assignments from the insurance company that employs the licensed appraiser who the complaint was filed against.

Mr. Coyne asserted that although his company does receive assignments from the insurance company, as an independent appraisal company his company receives assignments from multiple sources and companies for motor vehicle damage appraising. Mr. Coyne asserted that neither he nor anyone employed by his company was engaged in the appraisal of the motor vehicle which is the subject matter of the complaint. Therefore, Board Member Coyne felt no need to recuse himself and declared that he would participate in the review of the complaint.

The licensed appraiser informed the Board that he never did anything to steer the consumer away from the auto body shop and in fact never spoke with the consumer about such a thing. The consumer's insurance agent called the licensed appraiser and asked whether it was possible that the consumer could be charged for out of pocket costs above and beyond those covered by the insurance company and he responded it was possible. He informed the insurance agent that the insurance company's referral program would cover all of the agreed to repairs. The licensed appraiser reaffirmed the fact that he never spoke with the consumer and said that in his past experience employees at the auto body shop could be difficult to deal with.

Board Member Johnson declared that there can be an upcharge for the work performed by referral shops and that information should have been disclosed to the consumer, but because the licensed appraiser spoke with the insurance agent he was not responsible.

Board Member Pare asserted that there were no facts that support a case for the licensed appraiser engaging in the misconduct of steering. As for referral shop repairs, 100% of repairs are covered but for additional repairs above what was agreed are not covered.

Board Member Starbard made a motion to table the matter and have a letter sent to the complainant requesting further information. The motion was seconded by Board Member

Johnson and the motion passed by a vote of: 3-2, with Board Members Pare and Coyne voting against.

Complaint 2018-4

Attorney Gallagher appeared with the licensed appraiser and asserted that the complaint may be broken down into two parts: (1) the history of the parties, and (2) the damage that was caused to the rear-end of the car. Attorney Gallagher asserted that the initial appraisal was in the amount of \$1,000 and, thereafter, a request for a supplemental appraisal was made by the auto body shop. The licensed appraiser appeared at the auto body shop, reviewed the damage, and negotiated with the auto body shop's appraiser for over one hour. At the conclusion of the negotiations the two appraisers agreed to an additional \$700 on the supplemental appraisal. Thereafter, the auto body shop appraiser contacted the insurance company's appraiser and requested additional money over and above the agreed price. The two appraisers engaged in further discussions but could not agree to some of the additional work. Attorney Gallagher concluded that the only duty the licensed appraiser was bound to under the ADALB's regulation was a duty to engage in good faith negotiations and his client fully complied with that duty.

After the motor vehicle was repaired and removed from the auto body shop, the appraiser for the auto body shop admitted that the additional paint work was not performed and in fact was not needed. Board Member Johnson made a motion that the Board schedule a conference with all of the parties, the motion was seconded by Board Member Pare and the motion passed by a vote of: 4-0 with Chairman Cox abstaining.

Complaint 2017-29

At the Board meeting held on December 6, 2017, the Board reviewed the complaint and dismissed it. On February 13, 2018, the complainant submitted a letter requesting to "resubmit" the complaint and the matter was treated as a request for reconsideration.

The Board reviewed the submittal, and there was no additional material evidence submitted with the letter. After discussion, the Board voted 3-1 to deny the request for reconsideration with Board Member Coyne opposed and Chairman Cox abstaining.

In addition, the complainant attached a second complaint, independent of the first matter, but did not fully complete the process of filling out the Board's "Application for Complaint". As a result, the matter was not assigned an original complaint number. Notwithstanding, the Board reviewed the material submitted. The gravamen of the allegations was that the insurance company did not make payment for the full amount of the damage to the motor vehicle because the insurance company determined that it was unrelated damage to the initial accident.

Attorney Gallagher submitted a "Forensic Report", by an investigator hired by the insurance company, about the alleged damage to the motor vehicle, and the report concluded that part of the damage was unrelated to the initial accident. After showing the report to the Board Members, Attorney Gallagher retrieved it from them because the claim was still at an investigatory stage at the insurance company.

Board Member Pare made a motion to dismiss the incomplete complaint and the motion was seconded by Board Member Johnson, the motion passed by a vote of: 4-0, with Chairman Cox abstaining.

Complaint 2018-5

Attorney Freedman, an expert on insurance laws, appeared for the licensed appraiser. The complaint was ostensibly filed by a consumer. However, a copy of the letter that was sent to the consumer about the date of the Board's review of the complaint was returned by the U.S. Postal Service marked "return to sender." Noteworthy was the fact that Complaint 2018-6 was also filed against the same licensed appraiser but by a different consumer for worked performed at the same auto body shop located in Everett, Massachusetts.

Attorney Freedman skillfully and succinctly summarized the salient facts and concluded that the auto body shop was paid for the supplementary appraisal and the motor vehicle was in fact repaired.

Board Member Johnson made a motion to dismiss and the motion was seconded by Board Member Pare, the motion passed by a vote of: 4-0 with Chairman Cox abstaining.

Complaint 2018-6

Attorney Freedman represented the licensed appraiser. The licensed appraiser informed the Board that the motor vehicle was determined to be a total loss by using the standard methodology used by the insurance company and as provided for in 211 CMR 133.00 et seq.

Board Member Coyne made a motion to dismiss, seconded by Board Member Pare, and the motion passed by a vote of: 3-1 with Chairman Cox abstaining.

Complaint 2018-7A & B

Complaint 2018-8A & B

Complaint 2018-9A, B & C

The above-referenced complaint involves complaints brought against two or more licensed motor vehicle damage appraisers. One licensed appraisers is named in all three of the complaints and his legal representative requested a continuance because of a scheduling conflict. Therefore, Board agreed to continue the review of these complaints until the June 20, 2018, Board meeting.

Motion to adjourn:

Board Member Pare made a motion to adjourn, which was seconded by Board Member Johnson, and the motion passed by a vote of: 4-0, with Chairman Cox abstaining.

Whereupon, the Board's business was concluded.

The form of these minutes comports with the requirements of M.G.L. c. 30A, §22(a).

List of Documents provided at the Board meeting:

1. Letter from Chairman Cox Access General Insurance Company.