



MATTHIESEN, WICKERT & LEHRER, S.C.
Hartford, WI ❖ New Orleans, LA ❖ Orange County, CA
❖ Austin, TX ❖ Jacksonville, FL ❖ Boston, MA
Phone: (800) 637-9176
gwickert@mw-law.com
www.mw-law.com

USE OF NON-ORIGINAL EQUIPMENT MANUFACTURER (OEM) AFTERMARKET CRASH PARTS IN REPAIR OF DAMAGED VEHICLES

According to a 1999 study commissioned by the Alliance of American Insurers (AAI), if you were to build a \$25,000 vehicle using only Original Equipment Manufacturer (OEM) parts, it would cost you over \$100,000. When repairing vehicles damaged in accidents, insurance companies argue that the use of look-alike, aftermarket (non-OEM) generic crash parts significantly contributes to holding down the cost of repairs and helps keep auto insurance premiums low. Insurers claim that without a viable market allowing for the use of non-OEM parts, auto makers would have a monopoly on the replacement part industry with no checks or balances on pricing. They claim it is in the best interests of both insurance companies and their insureds to allow the use of aftermarket parts in the repair of damaged vehicles. However, as a society we must balance cost with the safety and integrity of these “generic” parts. As a result, there is an ongoing debate over the use of such non-OEM parts in repairing damaged vehicles. The laws regarding and regulations overseeing the use of non-OEM parts in repairing damaged vehicles are confusing and inconsistent. It is the goal of the article to explain the controversy and shed light on how all 50 states regulate and govern the use of such parts.

What are aftermarket crash parts?

Crash parts, often referred to as cosmetic parts, are sheet metal or plastic parts that are installed on the exterior of a motor vehicle. Crash parts exclude mechanical parts such as batteries, filters, mufflers, shock absorbers, and engine parts (according to a 2001 U.S. General Accounting Office Report). The most commonly cited examples of aftermarket parts are fenders, hoods, doors, and bumper components. “Aftermarket parts” generally mean sheet metal or plastic parts that constitute the exterior of a motor vehicle, including inner and outer panels. A “non-original manufacturer” means a manufacturer other than the original manufacturer of the part.

There are three sources for crash parts used to repair damaged vehicles:

- (1) **Original Equipment Manufactured (“OEM”)** parts are manufactured by the original auto manufacturer. They are brand new parts made specifically to go with a particular make and model of vehicle by that vehicle’s original manufacturer.
- (2) **Non-Original Equipment Manufactured (“Non-OEM”)** parts, also known as aftermarket crash parts, are generic parts produced by independent manufacturers who manufacture replacement crash parts and sell them cheaper than the original equipment manufacturer.
- (3) **Used, salvaged, reconditioned, or recycled** parts are bought from salvage companies and junk yards. They are usually only used in special insurance policies which offer lower premiums in exchange for the right of the insurance company to use the lowest price of crash parts in repairing your vehicle. Junk yard parts are OEM parts, only used.

Efforts are occasionally taken to disguise aftermarket parts as something other than what they are. In recent years, some body shops have been referring to “Optional OEM” (Opt-OEM) or “Alternative OEM” (Alt-OEM) parts in their repair invoices. Opt-OEM parts are not supplied by the vehicle manufacturer to the repair facility and may be blemished or run off parts. These parts do not come with a warranty from the vehicle manufacturer. The California Bureau of Automotive Repair (BAR) strictly limits the type of parts that may be installed on a customer’s vehicle and the law clearly defines each category of parts. The law has no provisions for a category of part called “optional OEM”. The BAR says that repair shops must go beyond a simple “Opt-OEM” tag and better inform consumers of the nature of such replacement parts. Section 9884.8 of the California Business and Professions Code says in part:

If any used, rebuilt, or reconditioned parts are supplied, the invoice shall clearly state that fact. If a part of a component system is composed of new and used, rebuilt or reconditioned parts, that invoice shall clearly state that fact. The invoice shall include a statement indicating whether any crash parts are original equipment manufacturer crash parts or nonoriginal equipment manufacturer aftermarket crash parts. One copy of the invoice shall be given to the customer and one copy shall be retained by the automotive repair dealer. Cal. Bus. & Prof. Code § 9884.8.

California’s Bureau of Automotive Repair Regulation § 3356(a)(2)(B) provides:

(B) Each part supplied, in such a manner that the customer can understand what was purchased, and the price for each described part. The description of each part shall state whether the part was new, used, reconditioned, rebuilt, or an OEM crash part, or a non-OEM aftermarket crash part. Cal. Code Regs. tit. 16, § 3356.

Some insurance companies’ policies have begun using terms such as “Like Kind and Quality” or “Quality Replacement Part” to describe used or aftermarket crash parts. However, in California, for example, BAR only acknowledges the parts description of new, used, rebuilt, reconditioned, or Original Equipment Manufacturer (OEM) crash part or Non-Original Equipment Manufacturer (non-OEM) aftermarket crash parts. CCR §3356(a)(2)(B)

The debate within the industry and the world of vehicle repairs is over the use of OEM parts vs. non-OEM or junk yard (used) parts. The practice of using parts salvaged from junk yards has received a lot of attention over the last few years. In *State of West Virginia v. Liberty Mut. Ins. Co.*, 2012 WL 10478650 (W.Va. Cir. Ct., Dec. 2012), the West Virginia Attorney General sued Liberty Mutual because it was requiring the use of salvaged crash parts when negotiating the repairs of motor vehicles without the written consent of the vehicle owners. The trial court ordered Boston insurance company Liberty Mutual to stop using parts salvaged from junkyards to fix newer cars. The court found that these actions were in violation of West Virginia’s Automotive Crash Parts Act. Junk parts (sheet metal) often show up at the repair shop full of old bodywork done poorly, paint work needing stripping or even rust and dirt removal. Parts have to be sent back until acceptable parts can be used, which lengthens the time repairs take.

Aftermarket crash parts can further be categorized by whether they have been certified by organizations which certify aftermarket crash parts, such as CAPA (Certified Automotive Part Association), or NSF International. CAPA is a non-profit organization that was established in 1987 to assure the suitability and quality of automotive replace parts. NSF International is a 70+ year old independent testing and certification organization which boasts an ANSI-accredited NSF Aftermarket Automotive Parts Certification Program. Both organizations determine the quality of collision parts, examine a manufacturer’s plant, equipment, manufacturing processes, and resulting products. If the examined parts are equivalent in appearance, fit, material composition, and mechanical properties to new OEM parts, the aftermarket parts will be CAPA-certified or NSF-certified. This certification creates a presumption that certified non-OEM parts the equivalent of OEM parts in kind and quality.

Currently, 35 states have statutes or regulations that address a first-party insurer’s obligations with regard to the use of non-OEM aftermarket crash parts used in vehicle repairs. Thirty-one (31) states require a disclosure statement with the repair estimate that addresses the use of non-OEM parts. Twenty (20) states have a requirement that the manufacturer of the non-OEM parts must be identified. Thirteen (13) states have a requirement that non-OEM parts used must be of “like kind and quality” as OEM parts. Six (6) states require the consent of the insured before using non-OEM parts.

The disclosure requirement on repair estimates often prescribes specific language which must be contained in the estimate. As an example, Alabama and many other states require the following disclosure to appear in the repair estimate:

THIS ESTIMATE HAS BEEN PREPARED BASED ON THE USE OF AFTERMARKET CRASH PARTS SUPPLIED BY A SOURCE OTHER THAN THE MANUFACTURER OF YOUR MOTOR VEHICLE. THE AFTERMARKET CRASH PARTS USED IN THE PREPARATION OF THIS ESTIMATE ARE WARRANTED BY THE MANUFACTURER OR DISTRIBUTOR OF SUCH PARTS RATHER THAN THE MANUFACTURER OF YOUR VEHICLE.

Arkansas and many other states require the following disclosure to appear in the insurance policy:

IN THE REPAIR OF YOUR COVERED MOTOR VEHICLE UNDER THE PHYSICAL DAMAGE COVERAGE PROVISIONS OF THIS POLICY, WE MAY REQUIRE OR SPECIFY THE USE OF MOTOR VEHICLE PARTS NOT MADE BY THE ORIGINAL MANUFACTURER. THESE PARTS ARE REQUIRED TO BE AT LEAST EQUAL IN TERMS OF FIT, QUALITY, PERFORMANCE, AND WARRANTY TO THE ORIGINAL MANUFACTURER PARTS THEY REPLACE.

History of Non-OEM Replacement Parts

In the 1960s, prior to the introduction of aftermarket parts, OEM's "marked up" the cost of their replacement parts by as much as 800%. There were no generic look-alike parts available. The only alternative to these expensive parts were salvage parts from other wrecked vehicles. Some of you may remember when vehicle fenders and quarter panels would rust through in less than a year. Sheet metal "stampings" shaped in the same general shape as a fender was sometimes used to repair rusted fenders and quarter panels. For the most part, however, only expensive OEM parts were used. A pricing structure known as "Wholesale Comp" infected the pricing structure, enabling everybody who touched a replacement part to make a good profit. The body shop doing the repairs had a 40% margin, and the dealership selling the part made a healthy profit. The consumer paid \$500 for a fender which would cost \$75 if made by a non-OEM fabricator.

Over time, a few enterprising Pacific Rim companies began making look-alike parts and selling them for a fraction of the cost of OEM parts. The *Wholesale Comp* scheme slowly ground to a halt as auto makers could no longer compete if everybody who touched the part had their hand out. In fact, in the early 1970s, many auto repair shops refused to work on Volkswagens because they could only make a 20% mark-up as opposed to 40% for Chrysler or General Motors parts. These early non-OEM parts were of poor quality. Many didn't fit well, rattled after installation, or were made of thinner, weaker material. Flanges and tabs were in the wrong location and a significant amount of rigging was necessary to install them.

Until the late 1970s, auto repair shops were primarily using OEM parts for repairs. As manufacturing technology became more available and cheaper, independent manufacturers began selling auto replacement parts at a much lower cost, driving down the price of OEM parts down by an average of 30%. At the same time, auto makers undertook a massive public relations and legal campaign against the use of aftermarket parts, claiming they are unsafe and inferior. Referring to the non-OEM parts as "imitation" parts, auto makers struck fear in the hearts of vehicle owners by advising them not to use such aftermarket parts. As a result, insureds around the country began to push back against insurance companies because they felt they were being cheated or endangered by the use of non-OEM parts. The auto makers claim that independent studies have documented the lesser quality of non-OEM repair parts. They claim that studies have proven that the OEM replacement parts are designed to meet defined quality, safety, and appearance specifications, and non-OEM parts are not.

The U.S. General Accounting Office (GAO) has documented that there have been seven studies of non-OEM replacement parts, with varying results. One study by Consumer Reports determined that the non-OEM parts were of inferior quality, fit improperly, and rust quicker than OEM parts. Another study by Ford concluded that the non-OEM parts are not of "like kind and quality." It also says that the after-market parts cause more damage in subsequent collisions if used in place of OEM parts in vehicle repairs, pulling the innocent dealers into the ongoing debate between insurance companies, auto manufacturers,

state governments, and consumer advocates. Three other studies sponsored by the insurance industry and insurance associations determined that non-OEM parts do not influence vehicle safety.

The U.S. collision repair business is a \$200 billion industry, which explains the ongoing war between insurers, OEMs, and replacement part manufacturers. Requiring OEM replacement parts can raise the cost of repair to the point of totaling a vehicle which could otherwise be repaired. Auto makers are warning dealerships that the use of non-OEM parts in repairs could expose them to liability as well. As you might expect, the battle is also taking place in the courts.

Avery v. State Farm

In 2005, the Illinois Supreme Court lit a firestorm of criticism when it decided the case of *Avery v. State Farm Mut. Auto. Ins. Co.*, 835 N.E.2d 801 (Ill. 2005). The plaintiffs filed a state court class action lawsuit claiming that State Farm's practice of using non-OEM parts violated its policy terms, violated the Illinois consumer protection laws, and constituted misrepresentation and fraud. Notwithstanding the fact that the various State Farm policies could not be construed to require the use of OEM parts, a jury found State Farm liable and awarded the plaintiffs \$445 million in damages and an additional \$730 million in punitive damages, for a total verdict of \$1.05 billion. On appeal, the Illinois Supreme Court reversed, agreeing with State Farm that this should not have been a class action and that the Illinois consumer protection statutes did not apply to the many insurance claims that took place outside of Illinois. They also found that the evidence did not support a fraud claim. The decision meant that, in Illinois at least, the use of like kind and quality, competitively priced aftermarket repair parts is recognized by the insurance code and is not categorically prohibited. The decision emboldened insurers and the non-OEM part makers. Since *Avery v. State Farm*, more class actions have been filed and they are in various stages of litigation. In 2012, plaintiffs filed a two-count, class-action federal racketeering lawsuit against State Farm in a U.S. District Court for the Southern District of Illinois. The class could include 4.7 million policyholders, argues that starting in 2003, State Farm conducted a racketeering enterprise to enable the insurer to evade payment of the \$1.05 billion judgment that had been affirmed by the Illinois Court of Appeals. It argued that State Farm had exerted financial and political influence to get Supreme Court Justice Lloyd Karmeier elected. It argued that State Farm recruited Karmeier, directed his campaign, had developed a vast network of contributors and funneled as much as \$4 million to the campaign. First Amendment rights aside, the OEM saga in Illinois is continuing.

In 2000, the automakers controlled \$7.2 billion of the \$9 replacement part industry. Today, body shops still purchase OEM parts over non-OEM parts five to one. Some repair shops receive a 25% discount on OEM parts, which is not passed on to the vehicle owner or insurance company.

In 2015, U.S. Senator Richard Blumenthal (CT-D) called on the U.S. Department of Justice to investigate the practice. "Safety concerns are raised by this practice of steering because often it involves the use of parts that may be salvaged or inferior or even counterfeit and that is a real urgent and imminent safety concern for the consumer who may have no idea what the origin of the parts are, who made them, or even whether they're installed properly," Blumenthal said to CNN. Shortly thereafter, more than 500 repair shops from 36 states joined in a lawsuit against the top insurance companies, and states like Louisiana, Mississippi, and Oklahoma are also getting involved. The Louisiana Attorney General has filed a lawsuit against State Farm alleging that they have engaged in a pattern of unfair and fraudulent business practices involving the use of unsafe aftermarket parts installed without the knowledge or consent of Louisiana consumers and vehicle owners. The allegation is that State Farm steered consumers to direct repair providers that have signed agreements with the insurance company, dictating how long the repair should take, what types of repairs are made, and the quality of replacement parts. The attorney general claims that, in many cases, the repairs are completed with sub-standard parts without the consent of the insured or made with junk yard parts of questionable quality.

Many insurance companies now offer an "OEM Endorsement" to an auto insurance policy or otherwise allow an insured to opt for OEM part coverage. An OEM endorsement ensures that aftermarket replacement (non-OEM) crash parts won't be used to repair a vehicle. Policyholders are often required to have comprehensive and/or collision coverage to add this option. Comprehensive and collision coverage is often extended to repair or replace damaged property

with new OEM parts, provided they are available, which creates another issue for the parties. In order to obtain the OEM Endorsement, a vehicle is frequently required to meet the following criteria:

- Must carry both comprehensive and collision coverage;
- Must be an auto, pickup, or a van; and
- Must be 10 years old or newer.

A car's age is measured by the current calendar year minus the vehicle model year. OEM Endorsement coverage is only available up through the vehicles 10th year of age. After that, the coverage will automatically be removed from the policy at the next renewal period.

State Farm has a program called the "Select Service Program." It gives their insureds an option when vehicle repairs are needed, by having the repair shop write a complete estimate with OEM parts. The estimate is then augmented with non-OEM parts by using software called Parts Trader, which pulls non-OEM parts into the bid automatically. One hour is given for quotes and the repair shop updates the estimate with the part types and prices they selected. However, State Farm advises that if insured wants parts other than those included on the repair estimate, the insured can advise the repair shop, but the insured will have to pay the increased cost of using OEM parts. This does not apply to tires, batteries, belts, hoses, and other maintenance items subject to wear and tear. The State Farm website reads as follows:

State Farm® keeps the promise of "Good Neighbor" service every day as we pay individual claims. Our promise includes a commitment to your satisfaction regarding new non-original equipment manufacturer (non-OEM) and recycled parts used in the repair of your vehicle. When a damage estimate is prepared, it may include competitively priced, readily available new non-OEM parts, recycled parts or new parts provided by the manufacturer of your vehicle.

If the owner is not satisfied with the repairs using non-OEM or junk yard parts, State Farm promises to repair or replace to the owner's satisfaction.

The Claims Process

The insurance industry pays for 90% of all collision repairs. After an accident that involves vehicular damage, an insurance company typically has the vehicle appraised to determine whether its policyholder's vehicle must be deemed a total loss or is repairable. For an article discussing when a vehicle is considered a total loss and the laws and regulations of all 50 states regarding same, see [HERE](#). When a vehicle is a total loss, the insurer will issue payment to its policyholder in the amount of the vehicle's fair resale value. However, if the vehicle is not a total loss, assessing a vehicle's repair cost can be problematic due to varying repair cost estimates, some of which may include the use of cheaper, aftermarket parts or non-original manufacturer (OEM) auto parts. The first-party repair of a damaged vehicle is when an insured negotiates with his or her own insurance company for repair of the insured vehicle. The insurer's obligations depend on the terms of the insurance policy, as well as the wishes of the vehicle's owner.

When a third-party tortfeasor is responsible for causing an accident, the insurance company insuring the vehicle driven by the "at-fault" driver is typically liable to pay for a portion of the damages caused by the accident. Such insurers are typically required to repair a damaged vehicle to substantially the same condition as it was in before the damage occurred. However, third-party liability carriers will often try to negotiate to pay only a portion of the full cost of repairs, arguing their at-fault insured was only partially at fault for the accident or loss. As a result, the first-party carrier will often make the repairs and then seek subrogation against the third-party liability carrier and/or its insured to recover the cost of repairs.

If an insurer is paying for collision repairs and the insurance policy calls for original manufactured crash repair parts, the insurer will repair the policyholder's damaged vehicle according to the terms of the policy. However, if a driver's insurance company is paying due to an accident caused by another driver, is it

fair to be forced to accept aftermarket parts? The issue has become quite contentious and involves billions of dollars. State legislatures and insurance commissioners are slowly coming to the table with laws and regulations addressing the issue.

The Debate

The repair shop industry loves OEM parts because they fit perfectly and do not need retrofitting or adjustments. They also produce fewer customer complaints and repair follow-ups. The repair shops usually do not have OEM parts in stock, so they must be ordered, which can lengthen the time a repair takes. Insurance companies, on the other hand, prefer non-OEM parts because OEM parts are more expensive. They usually use OEM parts only if no other parts are available and feasible. Vehicle owners and insureds are caught in the middle. Some prefer OEM parts and others – especially those who are paying for the repairs personally – like the lower prices and quicker repairs which non-OEM repairs allow. Nobody wants to sell inferior parts because for-profit businesses don't make a profit if customers have to return with complaints and defects in parts and/or workmanship. The insurance industry is advocating for the use of non-OEM parts because, of course, they are cheaper. Whether or not they are inferior remains a point of some contention and debate. Every year, tens of thousands of vehicles and light trucks are repaired with non-OEM parts.

Some repair shops blame insurance companies for “pushing them” to use used or salvaged replacement crash parts. In some cases, the shops claim that insurance companies are steering their policyholders toward body shops that “play ball” and use the aftermarket parts. They say that if a body shop refuses to use such an aftermarket part due to safety concerns, the insurance company steers their insureds elsewhere. Most insurers deny this allegation, however.

Cost

Whether CAPA-approved or not, non-OEM parts are significantly less expensive than OEM parts. Non-OEM parts can cost anywhere from 20 to 65% less than the cost of OEM crash parts. Using Non-OEM parts can be the difference between a car that is deemed repairable and one that is considered a total loss. Auto makers and those who oppose the use of aftermarket crash parts argue that the cost of generic parts is quickly made up by the poor quality of the parts and negative impact on the vehicle's resale value. Insurers, however, argue that lower repair costs result in lower premiums for policyholders. If after-market parts were never used, the high cost of OEM parts would drastically increase insurance premiums.

Safety

Concerns have been raised for many years about the quality and safety of aftermarket crash parts. Generally, insurance companies believe that aftermarket parts are cosmetic only and accordingly do not affect vehicle safety. On the other side of the safety debate, auto makers argue that non-OEM parts do not fit or wear the same way and, therefore, can be unsafe. No clear conclusion concerning the safety of aftermarket parts has been reached. However, studies by the Insurance Institute for Highway Safety (IIHS) found that non-OEM parts do not affect vehicle safety.

Warranty

Insurers do not warrant the actual repair part; rather, insurers simply maintain a contractual relationship with the insured policyholder to repair vehicles to a pre-loss condition. Warranties have been an important aspect in the debate over the use of aftermarket crash parts.

The idea that the use of non-OEM parts voids the auto manufacturer's warranty has been floated out there but is false. The issue is whether the use of non-OEM aftermarket crash parts would affect the warranty on the entire vehicle. Opponents of non-OEM parts argue that using non-OEM parts to repair a damaged vehicle voids the manufacturer's warranty. This argument is without merit. The federal Magnuson-Moss Warranty Act provides that no warrantor

may condition the continued validity of a warranty on the use of only authorized repair service and/or authorized replacement parts for non-warranty service and maintenance.

Most insurance companies offer their insureds a choice – paying more for OEM parts or accepting aftermarket parts. Whether an insurer is adhering to the terms of its insurance policy agreement when it repairs its insured’s vehicle with aftermarket crash parts and whether repairing damaged vehicles with non-OEM parts restores the damaged vehicle to substantially the same condition as it was in before the damage occurred are both debatable and the subject of much litigation. Much depends on the language of the auto insurance policy and on the individual state law.

The Magnuson-Moss Warranty Act (MMWA), 15 U.S.C. § 2301, *et seq.*, prevents manufacturers from voiding or invalidating warranties based on the use of aftermarket or recycled genuine OEM parts during repairs. It is a federal law, passed in 1975, that governs consumer product warranties. Its purpose was to improve the adequacy of information available to consumers, prevent deception, and improve competition in marketing of consumer products. It requires manufacturers and sellers of consumer products to provide consumers with detailed information about warranty coverage. In addition, it affects both the rights of consumers and the obligations of warrantors under written warranties. Its purpose was to ensure that consumers could get complete information about warranty terms and conditions. By providing consumers with a way of learning what warranty coverage is offered on a product before they buy, the Act gives consumers a way to know what to expect if something goes wrong, and thus helps to increase customer satisfaction. It also ensures that consumers could compare warranty coverage before buying. Finally, its purpose was to promote competition based on warranty coverage. By assuring that consumers can get warranty information, the Act encourages sales promotion based on warranty coverage and competition among companies to meet consumer preferences through various levels of warranty coverage. It does not require a company to provide a warranty, but once a warranty is offered, it must comply with the Act.

Industry Regulation

The National Highway Traffic Safety Administration (NHTSA) is a federal agency, responsible for reducing accidents, deaths, and injuries resulting from motor vehicle crashes. *See GAO-01-225 Aftermarket Crash Parts*. The Motor Vehicle Safety Act provides NHTSA with the authority to prescribe safety standards for new motor vehicles and new motor vehicle equipment sold in interstate commerce—a category that includes aftermarket crash parts. Although NHTSA has the authority to regulate aftermarket crash parts, it has not determined that these parts pose a significant safety concern and, therefore, has not developed safety standards. Some aftermarket parts are regulated by the NHTSA based on safety concerns. NHTSA regulates equipment that is required on all new motor vehicles. Emissions-related parts are also regulated by the U.S. Environmental Protection Agency (EPA) or other state agencies. An aftermarket part may be directly regulated (*e.g.*, lighting equipment, tires, mirrors, brake hoses) or it may be indirectly regulated (*i.e.*, a part may not take the vehicle out-of-compliance when installed). In all cases, NHTSA can regulate any equipment that poses a safety concern. Individual states may enact equipment regulations which are identical to NHTSA standards or, in the absence of a federal rule, create their own laws and regulations. Examples include rules regulating the use of parts such as auxiliary lighting equipment, noise levels for exhaust and stereo systems, suspension height, and window-tinting. It is the responsibility of the manufacturer to be aware of federal and state laws and regulations in order to meet compliance requirements.

The Specialty Equipment Market Association (SEMA) is a trade association consisting of manufacturers, distributors, and retailers of autos and auto parts, and SEMA has compiled a comprehensive “Black Book” which is an excellent resource for the industry on compliance requirements and how to secure applicable CARB Executive Orders (E.O.s) whereby the manufacturer can demonstrate that its product will not increase the emissions on the intended model year vehicle when installed. This Black Book can be viewed [HERE](#).

Aftermarket Parts Model Regulation and Legislation

The National Association of Insurance Commissioners (NAIC) is the U.S. standard-setting and regulatory support organization created and governed by the chief insurance regulators from every state. Through the NAIC, state insurance regulators establish standards and best practices, conduct peer review, and coordinate their regulatory oversight. NAIC staff supports these efforts and represents the collective views of state regulators domestically and internationally. NAIC members, together with the central resources of the NAIC, form the national system of state-based insurance regulation in the U.S. The NAIC has compiled a series of model laws, regulations, and guidelines which state legislature and/or state insurance commissioners can either adopt or use as models in crafting new legislation, rules, and guidelines within various areas of the insurance industry. In 2000, the NAIC drafted the *After Market Parts Model Regulation* which can be found on the NAIC website [HERE](#). It proposes model Unfair Trade Practices legislation which addresses the industry's use of non-OEM parts in auto damage repairs which insurers pay for on their insured's vehicles. Some states have adopted the model regulation verbatim, while others have used bits and pieces in crafting their own rules and laws on the subject.

The National Conference of Insurance Legislators (NCOIL) is a legislative organization comprised principally of legislators serving on state insurance and financial institutions committees around the nation. NCOIL writes Model Laws in insurance, works to both preserve the state jurisdiction over insurance as established by the McCarran-Ferguson Act seventy years ago and to serve as an educational forum for public policy makers and interested parties. In 2010, NCOIL's Property and Casualty Insurance Committee drafted a proposed *Model Act Regarding Motor Vehicle Crash Parts and Repair*. It sets forth situations in which auto carriers can specify the use of aftermarket crash parts and sets forth disclosure and consent requirements, establishes conditions whereby these parts can be specified, and requires permanent identification of crash parts. The Automotive Service Association (ASA) and the Society of Collision Repair Specialists (SCRS) were opposed to the Model Act. Meanwhile, the American Insurance Association (AIA) asked for the Model Act to include the use of aftermarket crash parts provided the insurer warrants them, requires notification to the insured along with delivery of the policy if aftermarket parts are used or allowed.

Federal Motor Vehicle Safety Standards (FMVSS) are regulations issued by NHTSA that establish minimum safety performance requirements for vehicles and other equipment travelling on public roads. They establish *performance* requirements without dictating *design* specifications. FMVSS regulates basic auto safety equipment, such as tires, headlamps, tail lamps, brake parts, etc. They also establish crashworthiness requirements which include front and side impact, roof crush crashworthiness, fuel systems, and the like. It is not for a non-OEM to manufacture or market parts that do not conform to these FMVSS. A quick guide to FMVSS can be found [HERE](#). Even foreign manufacturers, assemblers, and importers are required to designate a permanent resident of the U.S. as the manufacturer's agent for service of all process, notices, orders, and decisions, and they too are required to meet U.S. minimum standards and laws.

Currently, the aftermarket repair part makers have about 15% of the repair part market, with OEM's enjoying the balance. That ratio is destined to change.

Several states have enacted legislation which regulates the use and disclosure of aftermarket (non-OEM) crash parts by insurers in vehicle repairs. Some have not yet addressed the issue. Bills are routinely proposed by legislators which ban the use of non-OEM and junk yard parts, in the belief that such parts are sub-standard and without recognizing the utility and value the use of such parts provides to the insurance industry and without recognizing their role in helping to hold down auto insurance premiums. As an example, Michigan recently passed House Bill 4344, which restricted the vehicle repair community's access to the broad range of non-OEM parts. However, the bill was vetoed by Gov. Rick Snyder. Despite being the home of the big three automakers, Michigan also has a robust aftermarket parts industry. Governor Snyder was concerned that the bill would increase auto insurance prices that were already too high, creating a greater financial burden on Michigan residents. The details of the bill, which was similar to other proposed legislation in other states, included:

- The 62-page bill updated the 1974 Michigan Motor Vehicle Service and Repair Act and made reference to restricting use of "major component parts," which only included sheet metal and body parts.

- The period covered by the statute was the term of the vehicle manufacturer’s original warranty, or the first five years of the vehicle manufacturer’s original warranty; whichever was less.
- It required repair shops to replace major component parts [certain sheet metal and/or body parts] with one of the following:
 - New original equipment manufacturer (OEM) parts;
 - Used or recycled original equipment manufacturer parts; or
 - Parts that meet any applicable federal motor vehicle safety standards established under 49 CFR 571, and meet the standards for parts recognized as OEM-comparable quality as verified by the Certified Automotive Parts Association, NSF International, or another nationally-recognized automotive parts testing agency.
- The repair facility had to be directed by the owner of the motor vehicle, in writing, for permission to install a part that does not meet subdivision (a), (b), or (c), [above].

Regardless of which side of the debate you come down on, more legislation proposals similar to Michigan’s can be expected and the auto repair landscape will continue to become more confusing and fraught with potential landmines for the unwary. One thing is clear- this interesting debate is one which bears watching within our industry. Insurance professionals must be aware of the current legislation and regulations within each state in order to properly adjust each individual claim. With the help of research by Jacob Coz, a Marquette law student and summer legal intern at Matthiesen, Wickert & Lehrer, S.C., let’s take a closer look at the specific laws and regulations in each state. It is not to be considered a complete or exhaustive list of laws applicable but is to be used as a starting point for understanding the law surrounding the controversial use of aftermarket parts in vehicle repairs. For more questions on auto insurance subrogation by insurers, contact Gary Wickert at gwickert@mw-law.com.

ALABAMA:

Authority: Ala. Stat. § 32-17A-1 to § 32-17a-3 (1975).

Summary: Alabama requires the insurer and repair shop to disclose the use of non-OEM parts. The written estimate must clearly identify each such part used in the repair. All non-OEM parts must have a logo or the name of the manufacturer on the part. The part’s manufacturers, rather than the auto manufacturer, are responsible for part warranties.

ALASKA:

Authority: Alaska Stat. § 45.45.190.

Summary: Alaska requires repair shops to provide every customer, at the time the customer retakes possession of the motor vehicle, with a copy of a dated invoice detailing the costs of all parts and labor involved in the repair, and identifying all part replacements as being either new, used, rebuilt, or reconditioned.

ARIZONA:

Authority: A.R.S §§ 44-1292 to 1294.

Summary: The insurer must provide the claimant with a written notice attached to the repair estimate that “aftermarket” parts are being proposed for use in the repair of the vehicle. The insurer’s estimate must be in an amount that can be reasonably expected to satisfactorily repair the damage and restore the

vehicle to its pre-collision condition. See Regulatory Bulletin 2003-9, 2003 WL 24891856 (AZ INS. BUL.), 2. Additionally, any non-OEM parts must be identified with a brand name or logo, and such name or logo should be left visible if practicable after the installation of the part.

ARKANSAS:

Authority: A.C.A. § 4-90-301 to 307.

Summary: Damaged parts under OEM warranty may only be repaired using OEM parts unless the owner gives written consent to use of non-OEM parts. Any non-OEM parts must be identified with a name or logo that should be left visible after their installation if at all practicable. If any non-OEM parts are used in the repair of the vehicle, that information must be disclosed to the insured with the written estimate. Insurers should disclose in their policy, or with an attached sticker, the insurer's intent to specify the use of non-OEM parts or aftermarket parts. See Bulletin 13-97, 1997 WL 34584301 (AR INS. BUL.), 5.

CALIFORNIA:

Authority: Cal. Bus. & Prof. Code §§ 9875 to 9875.2; 10 CA A.D.C. § 2695.8.

Summary: Insurers are prohibited from requiring the use of aftermarket parts when repairing a damaged vehicle, unless use of the aftermarket part is disclosed to the policyholder prior to repair. Any parts used on the vehicle must have their manufacturer readily identifiable from some sort of marking on the part. This mark should remain visible after installation if at all practicable. The written estimate must notify the insured of who manufactured the non-OEM parts and that the part manufacturer warrants the non-OEM parts, not the auto manufacturer.

COLORADO:

Authority: C.R.S. §§ 10-3-1301 to 1307.

Summary: Colorado requires non-OEM parts to be specified in the vehicle repair estimate, which should be accompanied by a disclosure statement that informs the insured that the part manufacturer or distributor warrants the parts, not the auto manufacturer. All non-OEM parts should feature some marking that identifies the part's manufacturer. The name and trademark of the manufacturer of the non-OEM parts must be visible when practicable after installation.

CONNECTICUT:

Authority: C.G.S.A. § 38a-355.

Summary: Insurer must provide a written estimate of repairs that clearly identify OEM or non-OEM parts. Connecticut law also requires the attachment of a disclosure statement to the repair estimate, as specified by the statute.

DELAWARE:

Authority: 6 Del. C. § 4905A

Summary: The invoice must state if non-OEM parts were used in the repair.

DISTRICT OF COLUMBIA:

Authority: No information on point.

FLORIDA:

Authority: F.S.A. § 501.30 to 34.

Summary: The insurer and/or the repair shop must notify the consumer of the use of non-OEM parts by identifying the non-OEM parts in the written estimate. Additionally, a disclosure must be attached to the estimate informing the consumer that the part manufacturer or distributor warrants the non-OEM parts, not the auto manufacturer.

GEORGIA:

Authority: O.C.G.A. § 33-6-5; GA ADC § 120-2-52-.05.

Summary: All non-OEM parts must be marked with the logo, identification number, or name of manufacturer and it must be visible after installation, whenever practicable. The insurer and repair shop must identify non-OEM parts in the estimate. Additionally, they must include a disclosure statement stating that the manufacturer or distributor of the part warrants the non-OEM parts, not the vehicle manufacturer.

HAWAII:

Authority: Haw. Rev. Stat. § 437B-1; Haw. Rev. Stat. § 437B-13; Haw. Rev. Stat. § 437B-15; Haw. Rev. Stat. § 431:10C-313.6.

Summary: The insured must be given a choice between using OEM or non-OEM parts. If the insured chooses to use the OEM part over a non-OEM part, the insured must pay for the difference in cost between the OEM and non-OEM part unless the car's warranty specifies that OEM parts must be used. If a non-OEM part is used, the insurer must guarantee the non-OEM part for either 90 days or the same length that the OEM part would be guaranteed for, whichever is longer. All work done by the repair shop must be recorded on an invoice and note clearly where the non-OEM parts were used. Any warranties that come with the non-OEM parts must also be included with the invoice.

IDAHO:

Authority: Idaho Code § 41-1328A-D.

Summary: Any non-OEM parts that are used must be marked with the name or logo of their manufacturer and the name and/or logo must be visible after installation whenever practical. The insured must be given a written estimate that states that non-OEM parts will be used and what parts will be used must be identified specifically. Lastly, the estimate must have a disclosure attached that informs the customer that the manufacturer/distributor of the non-OEM parts has warranted them, not the vehicle manufacturer.

ILLINOIS:

Authority: Ill. Admin. Code tit. 50 § 919.80(d)(5); 815 I.L.C.S. § 308/15.

Summary: Insurers must guarantee that non-OEM parts are of equal quality to their OEM counterpart. Any non-OEM parts used must identify their manufacturer in some way on the part and the mark identifying the manufacturer should be visible after the part is installed, if at all practical. The insured must be informed in writing that non-OEM parts are going to be used and must be given an estimate that identifies the non-OEM parts and a disclosure informing them that the manufacturer/distributor warrants the non-OEM part, not the auto manufacturer.

INDIANA:

Authority: I.C. § 27-4-1-4.5; I.C. § 27-4-1.5-8 to 12.

Summary: An insurer may not direct a body shop to repair a vehicle until after the insured is given written notice that the insured has a right to choose between OEM and non-OEM parts. This right only applies to the first five years after the model year of the auto.

IOWA:

Authority: I.C.A. § 537B.4.

Summary: The insured must receive prior notification in writing if non-OEM parts are going to be used and the notification must also inform the insured that the part manufacturer warranted the part, not the auto maker. The non-OEM parts must be marked with the manufacturer's name or logo, and such name and/or logo should be visible after installation if at all practicable.

KANSAS:

Authority: K.S.A. § 50-659 to 665.

Summary: The insured must receive written notification of what non-OEM parts are being used and include a disclosure statement that the part's manufacturer warrants the parts, not the auto manufacturer. The installer is responsible for any damages if they install the part negligently. The requirements of the statute expire once a vehicle is more than ten years old.

KENTUCKY:

Authority: 806 Ky. Admin. Reg. 12:095(8).

Summary: The insurer may not require the use of non-OEM parts unless the part is equal in quality to its OEM equivalent.

LOUISIANA:

Authority: La. R.S. § 51:2421 to 2425.

Summary: The insured must be given a written estimate that informs the insured of any non-OEM parts that are used and informs the insured that the part's manufacturer warrants the non-OEM parts, not the auto manufacturer. Any non-OEM part used must be marked with its manufacturer's name or logo, and the name or logo should remain visible after installation if at all practicable.

MAINE:

Authority: <https://www.maine.gov/pfr/insurance/consumers/auto-insurance/auto-claims>

Summary: Insurers are not required to use OEM parts on used vehicles. The insured has the final choice as to which parts will be used to fix their vehicle, but the insurer is not obligated to pay for the more expensive OEM parts; the insured must pay the difference. In addition, replacing old parts with new is considered "betterment" by the Maine Department of Professional and Financial Regulation, as the insured is put in a better position after the repair than they were to begin with, and companies can deduct for this. As an example, consider a vehicle with 75,000 miles that is involved in an accident. Because of

the accident damage, the transmission must be replaced. Assuming the standard life of a transmission is 150,000, replacing the damaged transmission with a new one is a betterment of 50%, thus an insurer may only pay for 50% of the cost of the new transmission.

MARYLAND:

Authority: Md. Code Commercial Law § 14-2301 to 2304; Md. Code Insurance § 27-906.

Summary: If non-OEM parts are used, the body shop must attach a statement to the written estimate informing the insured of which parts are non-OEM and that the vehicle manufacturer does not warrant these parts. A copy of the non-OEM part's warranty must be provided to the vehicle owner upon request.

MASSACHUSETTS:

Authority: M.G.L.A. 90 § 34R; 211 MA ADC § 133.01 to 133.09.

Summary: If non-OEM parts are used to repair the visible exterior sheet metal or plastic parts of a vehicle, then either the insurer or repairer must inform the insured in a written estimate of which non-OEM parts were used. The insured must also be informed in writing that the part's manufacturer warrants the parts, not the auto manufacturer. In *Roth v. Amica Mut. Ins. Co.*, 796 N.E.2d 1281 (Mass. 2003), the court followed *Given*, but noted that, "[i]n an appropriate case, a plaintiff may successfully claim damages based on an insurer's specification of [use of] a substandard non-OEM part, or successfully demonstrate that the insurer's duty to repair or replace can only be satisfied by the designation of a particular OEM part to repair the specific damage to that vehicle. There are parts of some vehicles where unique dimensions or specifications of the part are such that only a replacement part from the original manufacturer will suffice to restore the vehicle to its proper functioning condition."

MICHIGAN:

Authority: M.C.L.A. §§ 257.1361 to 1364.

Summary: If an insurer requests the repair shop to use non-OEM parts, those parts may only be used if the insured receives a written estimate that clearly identifies the non-OEM parts and informs the insured that the part's manufacturer, distributor, or insurer warrants the parts.

MINNESOTA:

Authority: M.S.A. § 72A.201(6) and (7).

Summary: An insurer may not require an insured to use non-OEM parts for repairs, except for window glass repairs. (Note: Certain parts of this statute were found unconstitutional in *Safelite Group, Inc. v. Rothman*, 229 F.Supp.3d 859 (D. Minn. 2017). As a result, the statute may change in the near future.

MISSISSIPPI:

Authority: M.C.A. § 63-27-1; M.C.A. § 63-27-3; M.C.A. § 63-27-1-5; M.C.A. § 63-27-7.

Summary: All non-OEM parts must be labeled with a logo, brand name, or identification number that is visible after installation if practical. The use of non-OEM parts must be disclosed in the estimate and the same disclosure must inform the insured that the part's manufacturer warrants the parts, not the auto manufacturer.

MISSOURI:

Authority: Mo. Rev. Stat. § 407.295.

Summary: The insured must be informed by a written estimate that non-OEM parts are going to be used and that the non-OEM parts are warranted by their manufacturer. The statute defines the size and locations of these notifications. All non-OEM parts must be marked with either the name or logo of their manufacturer and they must be visible if at all practicable.

MONTANA:

Authority: Mont. Admin. R. 23.19.202.

Summary: If non-OEM parts are used during the repair, the invoice must clearly state that fact, unless the non-OEM part was a remanufactured part that comes with a new part warranty.

NEBRASKA:

Authority: 210 Neb. Admin. Ch. 45 § 001 to § 009.

Summary: All non-OEM parts must be permanently marked in such a way that identifies the manufacturer and the mark should be left visible after installation if at all practical. An insurer may not require the use of a non-OEM part unless the non-OEM part is of the same quality as its OEM equivalent. The insured must be informed of what parts are non-OEM in the written estimate and that the parts are of equal quality to their OEM equivalent.

NEVADA:

Authority: Nev. ADC § 686A.240.

Summary: The written estimate must notify the insured that non-OEM parts were used in the repair and that the warranty for non-OEM parts is provided by the manufacturer or distributor, not the auto manufacturer.

NEW HAMPSHIRE:

Authority: N.H. Rev. Stat. Ann. § 407-D:1 to D:5.

Summary: All non-OEM parts must be permanently marked in a way that identifies the part manufacturer and should be left visible after the installation if practical. Insurers may not require the use of non-OEM parts unless they are of equal quality to the same OEM part. The insurer must give a written statement to the insured that identifies which parts are non-OEM parts and inform them that the parts are of equal quality to an OEM part. The language of the disclosure must conform to the specific language in the statute. Non-OEM parts may not be used on vehicles less than two-years-old or with less than 30,000 miles on the odometer or on leased vehicles if the vehicle's lease holds that the use of non-OEM parts will reduce the vehicle's residual value.

NEW JERSEY:

Authority: N.J.A.C. § 11:2-17.10.

Summary: Non-OEM parts must be marked with the manufacturer's identification and that identification should remain visible if at all practical. Insurers may not require the use of non-OEM parts unless it is of equal quality to its OEM counterpart and the part's manufacturer has placed a warranty on the part. The estimate must inform the insured that the repairs include non-OEM parts and that the non-OEM parts are of equal quality to their OEM counterpart. Section 11:2-17.10(a)(11) provides as follows:

11. No insurer shall require the use of after market parts in the repair of an automobile unless the after market part is warranted by the manufacturer in a reasonable manner as to duration and coverage and at least equal in like kind and quality to replacement parts available from the original manufacturer of the part in terms of fit, quality and performance. Use of after market parts which have been certified by an independent testing laboratory as being of like kind and quality to the original manufactured part will be deemed to be in compliance with the requirements of this paragraph.

NEW MEXICO:

Authority: N.M. ADC § 12.2.6(12).

Summary: Failure to disclose the use of non-OEM parts by an insurer or repair facility shall be treated as an unfair or deceptive trade practice. If the use of non-OEM parts is not disclosed, the parts shall be assumed to be new, and be warranted as such.

NEW YORK:

Authority: 11 NY ADC § 216.7; NY Circular Letter 1993-7; 15 NY ADC § 82.5.

Summary: The estimate must specify who manufactured any non-OEM parts used in the repair. An insurer must get permission from an insured if the insurer wishes to specify the use of non-OEM parts from more than three suppliers. Additionally, the insurer can only specify for the use of certified non-OEM parts. If the non-OEM part that is used has not been certified yet, the insurer must confirm that the part has a written warranty warranting that the part is of like quality and function to its OEM equivalent, and that the warranty will last as long as the insured drives the car. If the part's manufacturer does not honor the warranty, the insurer is responsible for returning the vehicle to working condition.

NORTH CAROLINA:

Authority: 11 N.C.A.C. § 4.0425 to 4.0427; N.C.G.S.A. § 58-36-95.

Summary: Only those non-OEM parts that are identical in quality and functionality with their OEM counterpart may be required to be used by an insurer. If an insurer is going to require the use of non-OEM parts, the insured's policy must contain this information in a format and size in line with the statute. Lastly, the written estimate must include a statement disclosing the use of non-OEM parts and their likeness to the equivalent OEM parts.

NORTH DAKOTA:

Authority: <https://www.nd.gov/ndins/consumers/auto/>

Summary: There is currently nothing in North Dakota law that requires the use of OEM parts when repairing a vehicle. Earlier bills that would have required non-OEM parts to be certified by a third-party rating agency was rejected by the North Dakota House of Representatives.

OHIO:

Authority: Ohio Rev. Code Ann. § 1345.81.

Summary: Non-OEM parts must be permanently marked with the logo or name of the manufacturer of the part. The name or logo should remain visible after installation if at all practicable. If the insured receives a written estimate, the estimate should list each non-OEM part used and include a disclosure statement

that must be signed by the insured as proof that the insured is aware of the disclosure's contents. If the insured receives an oral estimate or no estimate at all, the required notice must be read to the insured and a copy of the notice should be attached to the final invoice.

OKLAHOMA:

Authority: 15 Okla. Stat. Ann. §§ 952 to 956.

Summary: All non-OEM parts must have the logo or name of the manufacturer on the part and should be left visible if possible. Insurers cannot specify to a repair shop that they must use non-OEM parts and the repair shop may not use non-OEM parts until written notice is given to the insured. Any written estimate must clearly identify any non-OEM parts used and include a disclosure that informs the insured that the part's manufacturer warrants the non-OEM parts, not the auto manufacturer.

OREGON:

Authority: O.R.S. § 746.287; O.R.S. § 746.288; O.R.S. § 746.289; O.R.S. § 746.291.

Summary: An insurer can only mandate the use of a non-OEM part if they receive either the insured's consent to use the part, OR an independent test facility has certified that the non-OEM part is of equal quality to its OEM equivalent. In the written estimate, the insurer must disclose the use of non-OEM parts, that the parts of the original warranty might be invalidated, and that the repair shop will include a copy of the warranty for the non-OEM parts to the insured. Lastly, the insurer must be able to provide the insured with a copy of the warranty for the non-OEM parts used if asked for one by the insured.

PENNSYLVANIA:

Authority: 31 Pa. Admin. Code § 62.3(10.)

Summary: An appraisal that uses non-OEM parts must clearly state that the appraisal includes the use of non-OEM parts and a disclosure statement must be included with the appraisal. If the use of non-OEM parts voids the warranty of the part being replaced or any other part, the non-OEM part must include a warranty equivalent to or better than the remainder of the warranty that is voided. All non-OEM parts must be identified as such.

RHODE ISLAND:

Authority: R.I.G.L. § 27-10.2-1 to 27-10.2-3; R.I.G.L. § 5-38-29.

Summary: No insurance company may require the use of aftermarket parts when negotiating repairs with any repairer unless the repairer has written consent from the owner to install aftermarket parts. An insurance company may not require aftermarket parts if your vehicle is less than 30 months old (from date of manufacture). The insured is entitled to OEM parts. However, this prohibition applies only to vehicles that are less than 48 months beyond their date of manufacture. For any auto less than forty-eight (48) months beyond the date of manufacture, the insurer and auto body repair shop must provide a written notice to the vehicle owner that: (i) he or she may require the insurer to pay for and the auto body shop to install "original equipment manufacturer parts" or "OEM parts" in the repair of a motor vehicle; or (ii) he or she may require the insurer to pay for and auto body shop to install "non-original equipment manufacturer parts" (non-OEM parts) in the repair of a motor vehicle. To comply with this provision, written notice may be provided on the appraisal written on behalf of the insurer and the estimate prepared by the auto body repair shop. Whenever aftermarket parts are used for repairs to physically damaged motor vehicles, certain standards apply.

SOUTH CAROLINA:

Authority: S.C. Code Ann. § 38-78-50; S.C. Code Ann. § 38-78-20.

Summary: Service contracts applying to autos must include information about when non-OEM parts will be allowed.

SOUTH DAKOTA:

Authority: S.D.C.L. § 32-15-35; S.D.C.L. § 32-15-36; S.D.C.L. § 58-33-70; S.D.C.L. § 58-33-71.

Summary: Non-OEM parts should be marked with the name or logo of their manufacturer, and such mark should be left visible after installation whenever practicable. An insured must be given written notification of the insurer/repair shop's intent to use non-OEM parts before the parts are used. The written estimate must disclose information as to which parts are non-OEM parts and the disclosure must conform to the standards outlined in the statute and must state that the vehicle manufacturer warrants the non-OEM parts, not the auto manufacturer.

TENNESSEE:

Authority: Tenn. Comp. R. & Regs. 0780-01-59-.01 to .06.

Summary: All non-OEM parts specified for use by the insurer must be marked with either the logo or name of the part manufacturer and the logo or name should remain visible after installation whenever possible. The written estimate must identify which parts are non-OEM parts and include a statement informing the insured that the part's manufacturer, not the auto manufacturer, warrants the part. Lastly, non-OEM parts may not be used on vehicles from the current model year or the previous model year unless express permission is given from the insured to the insurer.

TEXAS:

Authority: V.T.C.A., Insurance Code § 1952.301; Texas Dept. Insurance Commissioner's Bulletins # B-0031-10 (Aug. 2010) and #B-0026-11 (June 2011).

Summary: First-Party and Third-Party Insurers may not limit the parts that can be used in a repair in any way within the policy. Bulletin B-0026-11 reads as follows:

[First-party and third-party] insurers have a responsibility to claimants regarding payment for damage to a motor vehicle and must comply with these provisions. Furthermore, insurers must not directly or indirectly require a claimant to use a specific repair person/facility or require the claimant to select a specific repair person/facility from a list provided by the insurer.

Section 1952.301 of the Texas Insurance Code specifies that an insurer may not directly or indirectly limit the insurer's coverage under a policy covering damage to a motor vehicle by:

- (1) specifying the brand, type, kind, age, vendor, supplier, or condition of parts or products that may be used to repair the vehicle; or*
- (2) limiting the claimant of the policy from selecting a repair person or facility to repair damage to the vehicle.*

The Department continues to have concerns that setting reimbursement rates artificially low for specific motor vehicle repairs and parts that are used to make the repairs may lead to substandard repairs, which may also impact vehicle warranties. The majority of personal automobile insurance policies require insurers to pay the amount necessary to repair or replace the property with other(s) of like kind and quality. It is an unfair claim settlement practice for an insurer to pay a claimant an amount for the repair of the vehicle, including parts, that is not a reasonable amount for

repairing or replacing the property with other of like kind and quality, or is not sufficient to make the repairs necessary for the manufacturer to honor the vehicle warranty.

UTAH:

Authority: U.C.A. § 31A-22-316 to 319.

Summary: All non-OEM parts must be marked with either the name or logo of the part's manufacturer and the name/logo should remain visible after installation if possible. The insurer may not use non-OEM parts unless the insured is given written notification and the written estimate identifies which parts are non-OEM parts and includes a disclosure stating that the part manufacturer warranted the part, not the auto manufacturer.

VERMONT:

Authority: <https://legiscan.com/VT/text/H0362/id/760499>.

Summary: No laws prohibiting the use of non-OEM. Effective July 1, 2023, a Vermont law will go into effect that calls for an automotive labor rate, aftermarket parts, and market conditions study—all with an eye towards future legislation over non-OEM parts. See <https://www.repairerdrivenews.com/2023/06/08/vermont-lawmakers-mandate-labor-rate-aftermarket-recycled-parts-study/>.

VIRGINIA:

Authority: Va. Stat. § 38.2-510(c).

Summary: The insurer must give the insured written notification if they intend to use non-OEM parts. Any non-OEM parts must be of equal quality and kind to their OEM equivalent. The insured must also be informed that the non-OEM parts are warranted by their manufacturer, not the auto's manufacturer.

WASHINGTON:

Authority: R.C.W.A. § 46.71.025.

Summary: A written estimate must be provided to the insured or the designee before any repairs are performed. The insured must also be informed of the use of any non-OEM parts in keeping with the standards of the statute.

WEST VIRGINIA:

Authority: West Virginia Automotive Crash Parts Act, W. Va. Code Ann. § 46A-6B-1 to 6.

Summary: OEM parts must be used on a vehicle for both the year the vehicle was manufactured and two subsequent years. Repair shops must give the insured a list of all parts to be used and denote whether they are OEM or non-OEM parts, and if non-OEM parts are used, a disclosure informing the consumer that the non-OEM parts were used and that the parts might invalidate the warranty on the vehicle must be included. In *State of West Virginia v. Liberty Mut. Ins. Co.*, 2012 WL 10478650 (W.Va. Cir. Ct., Dec. 2012), a trial court ordered Boston insurance company Liberty Mutual to stop using parts salvaged from junkyards to fix newer cars.

WISCONSIN:

Authority: Wis. Stat. § 632.38; Wis. Stat. § 100.44.

Summary: Automobile repair shops can use after-market parts. Auto policies usually do not specify what parts will be used. If an insured requests after-market parts, they may be responsible for increased repair costs. All non-OEM parts must be labeled with the logo or name of the manufacturer and the logo or name should remain visible after installation if possible. To use non-OEM parts, the insurer must give either written notice through a document either attached to the written statement or by phone, followed by written notice within three days of the phone notice. The notice must inform the insured that the non-OEM parts are warranted by their manufacturer, not the auto manufacturer.

WYOMING:

Authority: Wyo. Admin. Code Ins. Gen. Chap. 19 § 1 to § 7.

Summary: Insurers cannot require the use of non-OEM parts unless the parts are permanently marked in some way that identifies the manufacturer of the part. The parts must be equal in quality to their OEM counterparts, the insured must be notified that they are not required to accept the use of non-OEM parts, and the insured must accept the use of non-OEM parts in writing before they are used. The insurer's estimate must disclose the use of non-OEM parts and that they are of equal quality to their OEM counterpart.

These materials and other materials promulgated by Matthiesen, Wickert & Lehrer, S.C. may become outdated or superseded as time goes by. If you should have questions regarding the current applicability of any topics contained in this publication or any of the publications distributed by Matthiesen, Wickert & Lehrer, S.C., please contact Gary Wickert at (800) 637-9176 or gwickert@mw-law.com. This publication is intended for the clients and friends of Matthiesen, Wickert & Lehrer, S.C. This information should not be construed as legal advice concerning any factual situation and representation of insurance companies and/or individuals by Matthiesen, Wickert & Lehrer, S.C. on specific facts disclosed within the attorney\client relationship. These materials should not be used in lieu thereof in anyway.