



THE COMMONWEALTH OF MASSACHUSETTS AUTO DAMAGE APPRAISER LICENSING BOARD

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AGENDA

For Auto Damage Appraiser Licensing Board (“Board or ADALB”) Meeting Scheduled for Tuesday, August 28, 2018, 9:30 AM at 1000 Washington Street, Boston, Massachusetts

- I. Call to order.
- II. Approval of the Board minutes for the Board meeting held on June 20, 2018.
- III. Report by Board Member Richard Starbard on the next Part-II examination for motor vehicle damage appraiser.
- IV. Discussion by the Board about defining the term Like Kind and Quality (LKQ) as compared to the language contained in M.G.L. c. 175, § 2 and as a definition of LKQ on an auto appraisal as it relates to used parts. Whether used parts need to be from the same model year or newer and have the same or less miles in compliance with MGL C 175 Sec 2 providing “A contract of insurance is an agreement by which one party for a consideration promises to pay money or its equivalent, or to do an act valuable to the insured, upon the destruction, loss or injury of something in which the other party has an interest.” The Board will discuss how the words “pay money or equivalent” relate to 211 CMR 133.05 “Determination of Values” as that provision relates to determine total losses of a damaged motor vehicle and subsection (d) which provides that such vehicles must be LKQ. Two axioms for “Determining Values” are: (1) when pricing the value of a vehicle the prior year cannot be used and (2) vehicles with higher mileage cannot be used unless there is an adjustment for the mileage overage. Assuming the LKQ automobile for comparison purposes must be of the same year and the mileage must be the same or lower than the damaged motor vehicle, *a fortiori* the only conclusion that can be reached, is that under 211 CMR 133.04 the threshold would be the same as it relates to used parts or replacement parts for a damaged motor vehicle.

That is to say: they must be the same year as the damaged motor vehicle or newer, with the same mileage or lower.

- V. Discussion by the Board comments and input from insurance companies writing property and casualty motor vehicle insurance in Massachusetts, representatives of the auto body repair industry, and other interested parties on the proposed Advisory Ruling submitted by Board Member William Johnson and amended by Board Member Lyle Pare, 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. The proposed Advisory Ruling submitted by Board Members Johnson and Pare 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 will hold a vote 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

- VI. A document submitted for discussion by the Board captioned "THIS ESTIMATE IS SUBJECT TO CARRIER REVIEW & MAY BE REVISED".
- VII. Other business – reserved for matters the Chair did not reasonably anticipate at the time of the posting of the meeting and agenda.
- VIII. Executive session to review and discuss the background of applicants for motor vehicle damage appraiser test whom have disclosed a criminal conviction on the application. Review and discussion of Complaints 2018-04, 2018-07A, 2018-07B, 2018-08A & B,

2018-09A, 2018-09B, and 2018-09C, and 2018-10, 2018-11, 2018-12, and 2018-13 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.

IX. Motion to adjourn.