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Revealing State Farm's

"PREVAILING PRICE" SCHEME

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STATE FARM'S "PREVAILING COMPETITIVE PRICE" SCHEME UNVEILED

Dear Mr. McDorman:

I own and operate a collision facility in East Texas. We are OEM-certified for the vast majority of each make and model that we repair. When we perform collision repairs for State Farm clients, it leaves them owing the difference between our posted rates and what State Farm claims is the "prevailing competitive price" in my area. I know of no case where State Farm has ever indemnified our client (their insured) for the difference between their asserted prevailing competitive price and our actual posted Labor Rate. Also, State Farm will not provide any type of supporting documentation to back their "prevailing competitive price" numbers. When our clients who are insured with State Farm question why they owe an amount over their deductible, they have told us repeatedly that State Farm blames us for overcharging for our labor. They say that State Farm told them that their shop of choice (mine) is the only one charging these rates and State Farm's liability is only for the "prevailing competitive price" – again, without supplying any documentation in support of their assertion. In the interest of customer satisfaction and full transparency, we never want our clients to doubt us as to why we have charged a specific rate. How can our clients be sure State Farm has properly indemnified them from liability for their safe and proper OEM-certified collision repair? Finally, it is my understanding you handle motor vehicle claims all over Texas. Do you have supporting documents showing variances in the State Farm prevailing competitive price scheme? I, as well as other readers, hope you can shed some light on this sensitive situation and help get our clients some answers as to how they may request these answers from their insurer, State Farm.

Thank you for your comments and great questions. I also find it completely amazing that State Farm and other carriers can continue to get away with employing their "prevailing competitive price and practice" schemes with zero oversight as to the accounting process of the data collected, received and maintained to support such claims, if any. As I wrote last month, "The allowing of this practice can best be described as the fox guarding the hen house." About your questions, let me first answer the latter, "Do you have supporting documents showing variances in the State Farm prevailing competitive price scheme?" Yes, we do – many! The State Farm estimates we have on file show a vast difference in the Texas State Farm prevailing competitive price and practice scheme. As an example, we have documented the State Farm refinishing prevailing competitive price in Stephenville as \$48 per hour, Houston and the DFW area as \$50, Tyler as \$60, Henderson \$65, Beaumont \$68 and Paris as \$70 per hour. These refinishing rates are the latest rates we have documented for these cities. The rate could have been updated or revised since our last client from the noted city; however, each of these documented refinishing rates have been verified within the last 12 months.

As we see here, should a State Farm insured select a collision facility in Stephenville that had a posted refinishing Labor Rate of \$70, and the required refinishing time to safely return the vehicle to its pre-loss condition required 40 refinishing hours, the

total refinishing cost would be \$2,800. Yet, we see State Farm's prevailing competitive price in Stephenville is \$48 at the last documented period. Based on the State Farm prevailing competitive price of \$48, State Farm's position would be that they only have a liability of \$1,920 ($\$48 \times 40 = \$1,920$). Under this scenario, it is my position the insured would be under-indemnified \$880, or 32 percent, for just this single operation; however, if the same repair was performed in Paris, Texas where the State Farm prevailing competitive price is \$70 – the same as the collision facility's posted rate – the insured would have been made whole for their loss without any out-of-pocket expense other than the deductible.

So, what about Paris and Stephenville can explain such drastic claimed Labor Rate differences? The State Farm policy states, "The prevailing competitive price means prices charged by a majority of the repair market in the area where the **covered vehicle** is to be repaired as determined by a survey made by **us**." As noted in last month's cover story in *Texas Automotive*, State Farm's policy doesn't define the survey parameters, which raises many questions on the subjectivity involved in determining what they call "prevailing competitive price." Their survey could use greater data points from DRP shops (repair facilities under contract with State Farm) and non-OEM-certified collision facilities, rather than the OEM-certified collision facilities that only perform repairs per OEM guidelines. Determining the prevailing practices and price in this manner ultimately leaves the consumer responsible for the cost difference between the substandard collision repair facility and the OEM-Certified collision repair facility. That's straight-up under-indemnification.

In support of the actual rate in a market area, we always reach out to the Variable Rate System (nationalautobodyresearch.com), which is an unbiased authority on the subject of collision facility-



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related charges. It is my understanding that the Variable Rate System has been retained by one or more state regulatory agencies as an unbiased authority to assist in identifying the true prevailing rate on every related charge in the collision industry. Additionally, consumers may go to Labor Rate Hero (laborratehero.com). So, what does the Variable Rate System say about the average hourly refinish rate in Paris versus Stephenville? For Paris, it is \$70 and for Stephenville \$61 – a \$9 difference versus State Farm’s claimed \$22 difference!

As we can clearly see above, there is a lot of variability and subjectivity in the way State Farm indemnifies its insureds for covered losses when it comes to the competitive prevailing price scheme. When the insured is seeking such clarification on indemnification issues from State Farm on Texas claims, we always point them to the Texas Department of Insurance Consumer Bill of Rights – Superseded by Commissioner’s Order No. 12-0862 and the heading EXPLANATION OF CLAIM DENIAL (tdi.texas.gov/rules/bor-auto-english.html). Your insurance company must tell you in writing why your claim (or part of it) is denied. When you file a claim on your own policy, you have the right to have it processed fairly and paid promptly. If State Farm fails to meet required claims processing and payment deadlines, you could be entitled to collect 18 percent annual interest and attorney fees in addition to your claim amount. State Farm should be held accountable for any short gaps and misrepresentations of such.

The issues and concerns on the perceived competitive price calculation and prevailing practice issue is far greater than a dispute

between State Farm wanting to pay less and the collision industry wanting to be paid more. It is clearly a consumer safety issue that could compromise the safety of the collision repair – and potentially even the availability of quality collision repair shops in a particular area. For example, if you witnessed a lack of quality body shops in a certain geographical area and wanted to fill the void by opening an OEM-certified shop with highly trained and qualified personnel, would you be willing to do so when learning that the many non-OEM shops in the area would be setting your allowed Labor Rates and practices? Thus, poor repair practices can perpetuate continued poor repair practices.

In closing, the insured should always ask for written proof with supporting documentation from their insurance carrier for any application of an exclusion in the policy and any exception to (or other avoidance of) coverage claimed by the insurer. This is their policy right. The more light that can be shed on this “prevailing competitive price” scheme, the higher the likelihood of discovering the ugly underbelly and exposing it for what it is – yet another way for insurers to escape liability and under-indemnify their policyholders.

I thank you for your question and look forward to any follow-up questions that may arise.

Sincerely,
Robert L. McDorman
TXA

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