



STATE OF NEW YORK INSURANCE DEPARTMENT

REPORT ON INVESTIGATION

REGARDING COMPLIANCE WITH INSURANCE LAW SECTION 2610

DATE OF REPORT:

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**New York State Insurance Department
Consumer Services Bureau**

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Executive Summary

Department staff met with representatives of the ABC Trade Association, Inc. on three occasions in 2007 and 2008 to discuss its concerns that insurance carriers were violating the provisions of Insurance Law Section 2610, which provides consumers the right to choose where they want their vehicles repaired after a collision.

In response to the group's allegations, a comprehensive investigation was undertaken, consisting of three phases. Phase One entailed a review of controls that insurers have put in place to ensure compliance with Section 2610. It included a detailed review of tapes and file notes from a business day selected at random. Phase Two consisted of an on-site review of randomly sampled tapes and file notes of two insurers. Phase Three consisted of a review of all complaints filed with the Department's Consumer Services Bureau alleging violations of Section 2610.

The investigation did not reveal any systemic violation of Section 2610. Apparent isolated violations of Section 2610 and related regulations were found and are being addressed with the respective insurers. The apparent violations included instances in which claims representatives mentioned the name of a repair shop without a request by the insured.

Report on Investigation Regarding Compliance with Insurance Law Section 2610

In April 2007, the Department was contacted by the Executive Director of the ABC Trade Association, Inc. ("ABC"), a statewide trade association for collision repair professionals. The Executive Director of ABC expressed concerns, which emanated from his membership, that many insurance carriers are not complying with Section 2610 of the New York Insurance Law ("Section 2610"). Staff of the Department's Consumer Services Bureau ("CSB"), Office of General Counsel ("OGC") and the Property Bureau met with the Executive Director of ABC to listen to his concerns and discuss the issue with him.

Section 2610 provides as follows:

- (a) Whenever a motor vehicle collision or comprehensive loss shall have been suffered by an insured, no insurer providing collision or comprehensive coverage therefore shall require that repairs be made to such vehicle in a particular place or shop or by a particular concern.

(b) In processing any such claim (other than a claim solely involving window glass), the insurer shall not, unless expressly requested by the insured, recommend or suggest repairs be made to such vehicle in a particular place or shop or by a particular concern.

Prior to the decision of the New York Court of Appeals in *Allstate Insurance Co. v. Serio*, 98 N.Y.2d 198 (2002), the Department had broadly interpreted Section 2610 to prohibit insurers from advising policyholders of the existence of Section 2610 or its provisions once a claim had been filed. Thus, insurers could not suggest to policyholders who presented claims that they could request a recommendation or referral of a particular body shop. Nor could insurers distribute brochures describing their preferred repair programs, or even post signs at insurer locations referring to such programs or to the provisions of Section 2610. However, the Court of Appeals rejected the Department's broad interpretation of Section 2610, and held that the statute should be interpreted literally:

The literal language of section 2610(b) restricts when an insurance company can make recommendations or suggestions that repairs be performed at a particular shop. The statute does not regulate speech on subjects other than recommendations or suggestions about particular shops, nor does the statute regulate the content or placement of material promoting an insurance company's repair program, nor does the statute regulate discussion or distribution of its text.

The legislative intent in enacting section 2610 was to protect the consumer's right to choose and to combat the practice of coercing or enticing consumers into using repair shops selected by insurers rather than the ones they preferred to use. (98 N.Y.2d at 205.)

In accordance with the decision of the Court of Appeals in *Allstate v. Serio*, the Department has restricted its review of steering complaints to ensuring that insurers do not (a) require that policyholders use repair shops in their repair programs, or (b) recommend a particular repair facility, except for claims solely involving window glass, unless requested by the policyholder.

At the April 2007 meeting with the Department, ABC stated it had received a number of complaints from its members alleging that insurers systematically violate Section 2610. Specifically, ABC members allege that insurers often require policyholders to repair collision damage at a facility of the insurer's choosing. Most insurers have designated repair facilities to perform collision repairs, but policyholders have the choice to have repairs done at the facility of their choosing. The Department requested that the specific complaints be forwarded to CSB.

CSB also met with the Executive Director of ABC on November 15, 2007, to discuss further concerns. He provided CSB with new steering complaints, as well as a DVD of "Consumers in the News Discussing Illegal Steering." In addition, the Executive

Director of ABC has regularly forwarded to CSB news articles alleging poor workmanship done at many of the insurer-designated repair facilities.

Subsequent to the April 2007 meeting with the Executive Director of ABC, CSB, Property and OGC met to discuss the appropriate manner for investigating ABC's allegations. Data analyzed by CSB and Property did not suggest any substantial evidence of steering violations; however, CSB nevertheless conducted an investigation into the allegations of unlawful steering by reviewing CSB's complaint database as well as complaints presented by ABC. In addition, CSB broadly assessed insurer compliance with Section 2610. CSB's investigation commenced in May 2007, and consisted of three phases:

Phase One entailed a review of controls that insurers have put in place to ensure for compliance with Section 2610 and review of insurer tapes and file notes from a business day selected at random.

Phase Two consisted of an on-site review of randomly sampled tapes and file notes of two insurers.

Phase Three consisted of a review of all complaints filed with CSB related to alleged violations of Section 2610.

A discussion of each of those phases is set forth below.

Phase One

The first phase of the investigation involved requesting and reviewing data and documents from twelve automobile group insurance carriers, comprising a total of twenty insurers. Pursuant to Section 308 of the Insurance Law, the Department sent a letter dated May 18, 2007 to the following insurers:

1. A Insurance Company and A Property and Casualty Insurance Company (collectively, "Insurer A")
2. B Indemnity Company, B Insurance Company and B General Insurance Company (collectively, "Insurer B")
3. C Insurance Company ("Insurer C")
4. D Insurance Company ("Insurer D")
5. E Insurance Company and E Direct Insurance Company (collectively, "Insurer E")
6. F Insurance Company and F Fire and Casualty Company (collectively, "Insurer F")
7. G Insurance Company ("Insurer G")
8. H Property Casualty Company of America and H Insurance Company (collectively, "Insurer H")
9. I Insurance Company ("Insurer I")
10. J Insurance Company and J Casualty Insurance Company (collectively, "Insurer J")
11. K Property and Casualty Insurance Company and K Casualty Insurance Company

(collectively, “Insurer K”)

12. L Insurance Company (“Insurer L”)

The Section 308 letter set forth the following inquiries:

1. *Are your claims representatives instructed about the requirements of Section 2610? If yes, describe how this is done and provide copies of relevant training materials and documents.*

2. *Are your claims representatives trained in any standard format to answer questions from claimants with regard to the processing of automobile physical damage claims? If yes, provide copies of all training materials and documents.*

3. *Does your company use a script for the claims representatives to follow to elicit specific information when an insured property damage claim is being submitted? If yes, provide a copy of this scripted text. If no, explain what the claims representatives rely on in obtaining claim information.*

4. *Do your claims representatives request information from your insured regarding the road worthiness of the damaged motor vehicle? Do they ascertain from the insured if a professional in the auto repair business has seen the vehicle to verify its road worthiness?*

5. *Do your claims representatives ever discuss with the insured that the insurer will guarantee the vehicle repair if the repair is performed at an insurer-affiliated repair facility? Under what circumstances do your claims representatives have such discussions with an insured?*

6. *Do your claims representatives inform insureds that your adjuster can view the damaged motor vehicle at a location of the insured's choosing?*

7. *Does your company record conversations between your claims representatives and insureds during the claims handling process? If yes, submit a copy of all transcribed recordings of automobile physical damage claims that were made on May 15, 2007. In addition, provide a copy of the file notes for all such claims. (If recordings are not made, submit the file notes only).*

8. *Does your company have a Direct Repair Program (DRP)? If yes, submit a sample copy of the contract. Does your company convey information about the DRP during the claim process to the insured? If yes, what information is conveyed?*

9. *Does your company convey its DRP program availability to an insured before a loss is reported? If yes, how is this done? Submit any written material used to provide this information to your insureds.*

10. *If your insured requests a referral to an insurer inspection site or insurer-affiliated repair facility, does your company document the insured's request in the claim file? If yes, explain how this is done and provide representative samples of such documentation.*

11. *If your insureds indicate a desire to take their car to their own repair shop, do your claim representatives ever suggest to the insureds that they instead take their car to an insurer-affiliated repair facility? If yes, under what circumstances is such a suggestion made?*

12. *Do your claim representatives discuss the quality of the repair, competence or reliability of an affiliated repair facility with your insureds? Under what circumstances do they have such discussions with your insureds? Do they ever have such discussions regarding non-affiliated repair facilities? If so, under what circumstances.*

13. *Are your claims representatives rewarded in any fashion if your insureds take their vehicle to an insurer inspection site or affiliated repair facility? If yes, explain.*

14. *Are your insureds ever asked to move their vehicle from a repair shop that they have chosen to do the repair? If yes, indicate under what circumstances this is done and the reasons why such request would be made of the insured.*

CSB received complete responses from all of the insurers by the end of August, 2007.

Scope of Review

CSB's insurance examiners reviewed the responses received from the twelve insurers surveyed. Each examiner was trained in the applicable law and instructed about how to conduct the review. The examiners sought to determine compliance with Section 2610. The review also entailed addressing any related compliance issues identified, such as violations of the Department's Regulation 64, styled, "Unfair Claims Settlement Practices and Claim Cost Control Measures." Section 216.7 of Regulation 64 reads in relevant part as follows: "If, upon notification of a loss, the insurer intends to exercise its right to inspect damages prior to repair, it shall have six business days following receipt of notice of claim to inspect the insured's damaged motor vehicle, which is available for inspection, during normal business hours at a place and time reasonably convenient to the insured."

The following is a summary, by insurer, of the investigative results. It should be noted that whereas Section 2610 only applies to first-party claims, some insurers submitted claim totals for first-party claims, third-party claims, glass only, and out-of-state claims.

Insurer A

Apart from responding to the questions posed in the Section 308 letter, Insurer A provided the Department with claim file notes, a copy of its Direct Repair Program contract, and instructional “Talking Points” for its employees. The evidence demonstrates that the carrier does not record phone conversations for claim file documentation. The examiner reviewed Insurer A’s entire response, and a CSB supervisor test-checked said documents. Of the 120 telephone claim submissions (the insurer requested and received permission to provide call data for the 9 A.M. to noon period of May 15, 2007), fifteen of those resulted in a referral to a Direct Repair Shop. CSB discerned no apparent Section 2610 violation based on the submitted information. Further, CSB’s review concluded that the carrier answered all of the questions posed completely, and provided appropriate supporting documentation.

Insurer I

Insurer I provided the Department with claim file notes and a copy of its Direct Repair Program contract together with its response to the Section 308 letter. The carrier does not record phone conversations for claim file documentation. A CSB examiner reviewed Insurer I’s entire response, and a supervisor test-checked said documents. Of the 28 telephone claims submitted, none resulted in a referral to a Direct Repair Shop. CSB discerned no apparent Section 2610 violation based on the submitted information.

CSB reviewed the carrier’s replies to the fourteen questions posed in the Section 308 letter. The carrier’s reply to question one -- *“Are your claims representatives instructed about the requirements of section 2610?”* -- may be problematic: *“We have no formal training materials or documents on section 2610. However, our claims service representatives are aware of the law and it is discussed during training meetings.”* The response suggests the carrier is not providing its staff with appropriate reference material. But Insurer I appears to have answered the rest of the questions posed completely, and provided appropriate supporting documentation.

Insurer L

Insurer L provided the Department with claim file notes, a copy of its Direct Repair Program contract, and instructional “Talking Points,” in its response to the Section 308 letter. The carrier does not record phone conversations for claim file documentation. A CSB examiner reviewed Insurer L’s entire response and a supervisor test-checked said documents. Of the 12 telephone claims submitted, none resulted in a referral to a Direct Repair Shop. CSB discerned no apparent Section 2610 violation based on the submitted information. However, CSB is concerned with the “Talking Points” script. According to the script, the carrier will advise a claimant, *“The (DRP) program involves a network of auto repair shops which were chosen to participate due to their superior reputation for quality repairs and service.”* CSB received no documents to substantiate the carrier’s “superior reputation” endorsement of one of their DRP shops over a non-DRP shop.

With regard to Section 2610, CSB's review of the carrier's replies to the fourteen questions posed in the Section 308 letter found that the carrier answered all of the questions posed completely, and provided appropriate supporting documentation.

Insurer B

Insurer B provided the Department with claim file notes, a copy of its Direct Repair Program contract, and instructional "Talking Points," in its response to the Section 308 letter. The carrier does not record phone conversations for claim file documentation. A CSB examiner reviewed Insurer B's entire response and a supervisor test-checked said documents. Of the 1,188 telephone claims submitted, 121 claimants were referred to a DRP shop. CSB discerned no apparent Section 2610 violation based on the submitted information.

CSB is concerned with the carrier's reply to question eight regarding its DRP contract, because the contract states that an "*appearance allowance on bumpers should be considered.*" This practice is not permitted by Insurance Law § 3411(i), which states in pertinent part, "Payment of a physical damage claim shall not be conditioned upon the repair of the automobile." The insurer thus appears to be reducing reimbursement for bumper damages unless the damage is repaired.

The contract also states that Insurer B will issue a two-party check to the vehicle owner. Section 216.7(b)(18) of Regulation 64 reads in relevant part as follows: "The insured shall have the right to receive the proceeds of any settlement in accordance with policy provisions. However, if the insured agrees and this agreement is documented in the claim file, the insurer may make the check or draft payable to the insured and the lienholder and/or the insured's designated repairer." Thus, it appears that the insurer is violating the regulation by issuing a two-party check without the insured's authorization.

CSB's review of the carrier's other replies found that the carrier answered all of the questions posed completely, and provided appropriate supporting documentation.

Insurer C

Insurer C provided the Department with recordings of telephone conversations, claim file notes, a copy of its Direct Repair Program contract, and instructional "Talking Points" for their employees in its response to the Section 308 letter. The examiners reviewed Insurer C's entire file and a CSB supervisor test-checked said documents. Of the 110 claim files submitted, five of those resulted in a referral to a Direct Repair shop. CSB discerned no apparent Section 2610 violation based on the submitted information.

CSB reviewed the carrier's replies to the fourteen questions and determined that the carrier answered all of the questions posed completely, and provided appropriate supporting documentation.

Insurer K

Insurer K provided the Department with claim file notes and instructional “Talking Points” in its response to the Section 308 letter. The carrier does not record phone conversations for claim file documentation. The carrier stated that it utilizes a Direct Repair Program and does not contract with participating shops. A CSB examiner reviewed Insurer K’s entire file, and a supervisor test-checked said documents. Of the 56 claim submissions, 12 of those resulted in a referral to a Direct Repair shop. CSB discerned no apparent Section 2610 violation based on the submitted information.

CSB reviewed the carrier’s replies to the fourteen questions and determined that the carrier answered all of the questions posed completely, and provided appropriate supporting documentation.

Insurer D

Insurer D provided the Department with recordings of telephone conversations, a copy of its Direct Repair Program contract, and instructional “Talking Points” for its employees, in its response to the Section 308 letter. A CSB examiner reviewed Insurer D’s entire file, and a supervisor test-checked said documents. Of the 106 telephone conversations, 20 of which were follow-up calls, two persons said they would utilize the Direct Repair shop program. CSB discerned no apparent Section 2610 violation based on the submitted information.

CSB reviewed the carrier’s replies to the fourteen questions and determined that the carrier answered all questions completely, and provided appropriate supporting documentation. However, CSB is concerned with the carrier’s reply to question six, “*Do your claims representatives inform insureds that your adjuster can view the damaged vehicle at a location of the insured’s choosing?*” Although Insurer D answered “Yes”, CSB noted three instances where the carrier required that the damaged vehicle be seen at an Insurer D Drive-Thru Claim Facility, which may run afoul of Section 216.7(b)(1) of Regulation 64. That regulatory provision reads in pertinent part as follows: “If, upon notification of a loss, the insurer intends to exercise its right to inspect damages prior to repair, it shall have six business days following receipt of notice of claim to inspect the insured’s damaged motor vehicle, which is available for inspection, during normal business hours at a place and time reasonably convenient to the insured.”

Insurer G

Insurer G provided the Department with claim file notes and instructional “Talking Points” in its response to the Section 308 letter. The carrier does not record phone conversations for claim file documentation. The carrier states that it utilizes a Direct Repair Program, and does not contract with the shops who participate. A CSB examiner reviewed Insurer G’s entire file, and a supervisor test-checked said documents. Of the 14 claims submitted, none of those resulted in a referral to a Direct Repair Shop. CSB discerned no apparent Section 2610 violation based on the submitted information.

CSB reviewed the carrier's replies to the fourteen questions and determined that the carrier answered all of the questions posed completely, and provided appropriate supporting documentation.

Insurer E

Insurer E provided the Department with claim file notes, recorded statements, a copy of its Direct Repair Program contract, and instructional "Talking Points" for its employees, in its response to the Section 308 letter. The carrier routinely records initial calls and initial follow-up calls. A CSB examiner reviewed Insurer E's entire file and a supervisor test-checked said documents. Of the 130 telephone claims submitted, nine of those claims resulted in a referral to a Direct Repair shop. CSB discerned no apparent Section 2610 violation based on the submitted information.

CSB reviewed the carrier's replies to the fourteen questions and determined that the carrier answered all of the questions posed completely, and provided appropriate supporting documentation. However, CSB is somewhat concerned with the carrier's reply to question 13, which asked, "*Are your claims representatives rewarded in any fashion if your insureds take their vehicle to an insurer inspection site or affiliated repair facility? If yes, please explain?*" In response, the carrier noted that it has set a "goal" of having 45-60% of repairable vehicles repaired at a network shop. While the response advises that all claim representatives are to comply with Section 2610, the carrier does not clarify what will happen if its goal is not met.

Insurer F

Insurer F provided the Department with claim file notes of telephone conversations, a copy of its Direct Repair Program contract, and instructional "Talking Points" for its employees, in its response to the Section 308 letter. The carrier does not record phone conversations for claim file documentation. A CSB examiner reviewed Insurer F's entire file and a supervisor test-checked said documents. Of the 151 claims submitted, eight persons said they would utilize the Direct Repair Program. CSB discerned no apparent Section 2610 violation based on the submitted information.

CSB reviewed the carrier's replies to the fourteen questions and determined that the carrier answered all of the questions posed completely, and provided appropriate supporting documentation.

Insurer H

Insurer H provided the Department with claim file notes, a copy of its Direct Repair Program contract, and instructional "Talking Points," in its response to the Section 308 letter. The carrier does not record phone conversations for claim file documentation. A CSB examiner reviewed and a supervisor test-checked said documents. Of the 80 claims

submitted, four resulted in a referral to a DRP Shop. CSB discerned no apparent Section 2610 violation based on the submitted information.

CSB reviewed the carrier's replies to the fourteen questions and determined that the carrier answered all of the questions posed completely, and provided appropriate supporting documentation.

Insurer J

Insurer J provided the Department with claim file notes, a copy of its Direct Repair Program contract, and instructional "Talking Points" in its response to the Section 308 letter. The carrier does not record phone conversations for claim file documentation. A CSB examiner reviewed the entire Insurer J file and a supervisor test-checked said documents. Of the 113 telephone claims submitted, eleven resulted in a referral to a Direct Repair shop. CSB discerned no apparent Section 2610 violation based on the submitted information.

CSB reviewed the carrier's replies to the fourteen questions and determined that the carrier answered all of the questions posed completely, and provided appropriate supporting documentation.

Phase One Conclusions:

The Phase One investigation did not reveal any practice that would be considered a systemic violation of Section 2610 of the Insurance Law. CSB's review of the recordings and case notes disclosed that the insurers seemingly handle automobile physical damage claims in a manner that complies with Section 2610. Indeed, as a general matter, the insurers took care to highlight the restrictions of 2610 to their claim staff. CSB intends to address with individual insurers any concerns identified during the investigation of each insurer's claims handling practices, and remediation will be pursued where appropriate.

Phase Two

CSB selected Insurer B and Insurer E as insurers to examine on-site for possible Section 2610 violations, since most of the complaints submitted by ABC asserted allegations against those two insurers.

On January 15 and 16, 2008, CSB examiners visited the offices of Insurer B. Insurer B's records consisted of file notes, screen prints and, in some cases, audio of phone conversations. Insurer B advised that approximately one of four phone calls were recorded for training/rating purposes and destroyed after the performance review. Insurer B culled files applicable to Section 2610 for ease of review; however, the insurer also gave CSB examiners access to all stored files. Files were sampled from both the culled recordings as well as ones picked at random by the examiners. Ninety files in total were audited for compliance. All calls reviewed occurred in the last several months of 2007.

There were no apparent instances where the carrier violated Section 2610(a) by requiring an insured to have his or her vehicle repaired at a particular repair shop. However, there were three instances where, without prompting from an insured, an Insurer B claim representative advised an insured of the name of an inspection shop where the repairs could be done. For example, in one instance, a claim representative told an insured to bring his car to a network shop for inspection and also mentioned that the repairs could be done there. Such conduct may constitute a violation of Section 2610(b). Additionally, there were several instances in which claim representatives promoted use of the direct repair network and did so in an apparently inaccurate manner. For instance, one claim representative advised that repairs would be done in almost half the time as a normal body shop. CSB requested that all files that were subject to this review not be deleted/destroyed.

On January 23 and 24, 2008, CSB examiners visited the offices of Insurer E. Insurer E utilizes a traditional paper file system along with calls recorded on micro-cassette and attached to the folder. Insurer E culled files at random applicable to Section 2610 for ease of review. However, the carrier also gave access to all stored files. Files sampled were from both the culled ones as well as files picked at random by CSB examiners. 112 files/recordings from the years 2006 and 2007 were reviewed for compliance.

There were no instances where the carrier required an insured to have his vehicle repaired in a particular place or shop or by a particular concern. However, CSB did find one instance where an Insurer E claim representative advised an insured of the name of an inspection shop where the repairs could be done, without prompting from the insured. Such conduct may constitute a violation of Section 2610(b). Additionally, there were several instances where claims representatives made statements about using a network shop that may have been inaccurate. For instance, one claim representative advised that repairs would be done in the shortest time possible, as the car would be worked on every day. In addition, CSB found a single instance in which the claim representative repeatedly asked the insured to bring his car to a network shop, and even pressured the insured to answer why he would not want to bring his car to a network shop.

Phase Two Conclusions:

In the Phase Two investigation, CSB examiners listened to a sample of claim conversations and did not find any conclusive instances of systematic non-compliance with Section 2610(a). With reference to Section 2610(b), CSB did not find systematic problems, either. However, CSB uncovered some instances where the insurer mentioned the name of a particular shop without first being prompted by the claimant. CSB also found several instances where statements made by claims representatives about using an insurer's network shops may have been inaccurate. Further, at least once, a claim representative repeatedly asked an insured to bring his car to a network shop, and even pressured the insured by asking the insured to answer why he would not want to bring his car to a network shop. CSB intends to address these concerns directly with the respective insurers.

Phase Three

CSB conducted an exhaustive review of all Section 2610 complaints received. From July, 2007 thru October, 2007, CSB received and closed 22 complaints. A summary of the complaints follows.

Insurer A – 2 complaints

1) Complainant 1

Complaint: Insurer A told claimant not to take the car to Complainant 1 (the complainant) to have his windshield replaced because the claimant supposedly would not get the same quality repair or warranty.

Insurer's response: It did not influence or offer resistance to the claimant when he chose a non-preferred shop. The insurer stated that its adjuster informed the claimant that claimant could use any shop of his choice. The claimant then went through the phone book, chose Complainant 1, and asked the adjuster to call the shop. The adjuster called the shop and set up an appointment. According to the insurer, the claimant was in total control of the decision-making process.

Department note: By its terms, Section 2610 does not apply to window glass repairs.

2) Complainant 2

Complaint: Policyholder states that after initial faulty repairs on his windshield replacement by an Insurer A shop, Insurer A tried to steer him to another Insurer A shop. Insured went to his dealer for assistance and the dealer recommended XYZ Collision ("XYZ"). Insurer A stated it would cover but later renege on its agreement to pay the bill in full.

Insurer's response: It did not have a chance to inspect the vehicle prior to XYZ doing the repairs, it never gave XYZ authorization to get the repairs done (so the insurer did not renege), and the XYZ bill was very high. Insurer A settled the bill with XYZ.

Department note: Section 2610(b) does not apply to window glass repairs.

Insurer B – 11 complaints

1) Complainant 3

Complaint: The complainant shop is losing business because Insurer B is telling customers it will take 6 days for Insurer B to inspect vehicles if customers do not use one of Insurer B's shops.

Insurer's response: Insurer B concedes that dispatching an adjuster to do a field inspection can lengthen the claims process by a week due to adjuster availability in a given area and the low frequency of customer attendance at these types of appointments.

Department note: Under Regulation 64, the insurer has six business days to inspect the vehicle. This was a complaint related to inspection of a vehicle, not repair of the vehicle. Section 2610 is not applicable to inspections.

2) Complainant 4

Complaint: The consumer says the Insurer B claim representative disregarded her request to have the car inspected at the shop of her choice and made an appointment for her at a network shop.

Insurer's response: The claim representative misunderstood the company policy and informed the claimant that Insurer B could not set up a field assignment to inspect her car. The insurer reiterated company policy to the claim representative to make sure that this does not happen again.

Department note: This was a complaint related to inspection of a vehicle, not repair of the vehicle. Section 2610 does not relate to inspections. However, since the insurer acknowledged that its claims representative erred in insisting that the vehicle be inspected at an Insurer B shop, the conduct in question appears to violate Section 216.7(b)(1) of Regulation 64.

3) Complainant 5

Complaint: Although the complainant shop is an Insurer B shop, after calling the company, the consumer decided to move the car to a repair facility with an in-house Insurer B adjuster.

Insurer's response: The car was moved at the request of the consumer because he was unhappy with the service he was getting from the complainant's repair facility.

Department note: A review of the insurer's call log for this file confirms that the daughter of the insured stated that her parents wanted the vehicle moved due to poor service at Complainant 5.

4) Complainant 6

Complaint: Insurer B said if the car can be driven, the consumer must take the car to one of Insurer B's shops.

Insurer's response: Insurer B offered, and the consumer agreed, to have the vehicle inspected at one of Insurer B's drive-in facilities. The next day the consumer called back

to say that it would be an inconvenience to do so, so Insurer B sent out an adjuster to make a field inspection.

Department note: This was a complaint related to inspection of a vehicle, not repair of the vehicle. Section 2610 is not applicable to inspections.

5) Complainant 1

Complaint: Complainant shop says the consumer was pressured to have her car moved from complainant's shop. Shop states that Insurer B even called the shop before Insurer B talked with the consumer and asked about the charges for getting the car moved from the shop.

Insurer's response: It contacted its insured and was informed that the insured did not give the shop authority to file the complaint, and that the insured was happy with the way Insurer B adjusted the claim.

Department note: CSB attempted to contact the insured to review this matter, but was unsuccessful.

6) Complainant 1

Complaint: Complainant shop says that when initial call was made to report the accident, the claimant felt pressured to use an Insurer B shop.

Insurer's response: Consumers are not required to use a network shop, nor does declining a network shop adversely affect the claim. Insurer B called the claimant and was told that the claimant did not authorize the shop to file a complaint, and was upset that one was filed.

Department note: CSB attempted to contact the insured to review this matter, but was unsuccessful.

7) Complainant 7

Complaint: Insurer B called the complainant shop to move the car without the consumer's consent. When the consumer questioned Insurer B, Insurer B said that it needed to move the car to guarantee the repairs.

Insurer's response: The insured was in an accident and her vehicle was towed to Complainant 7. The insured requested that the car be moved from Complainant 7 to the shop of her choice, which is not an Insurer B shop. Insurer B towed the car to the shop and inspected it, per insured's request.

Department note: CSB contacted the insured. Insured refutes everything stated by Complainant 7. Car was towed to Complainant 7 by the New York City Police

Department. The insured wanted vehicle moved to the other shop, and so advised Complainant 7. The insured stated that Complainant 7 made disparaging remarks about the work done at the other shop, and that she did not authorize Complainant 7 to file a complaint with the Insurance Department. According to the insured, Insurer B never asked nor mentioned having her vehicle inspected or repaired at an Insurer B shop.

8) Complainant 7

Complaint: After the car was inspected at an Insurer B drive-in facility, the consumer was told to get the repairs done at an Insurer B shop, since the repairs would be guaranteed. The consumer was then given a list of Insurer B shops even though the customer stated that he wanted the repairs done at Complainant 7.

Insurer's response: The adjuster did not say anything detrimental about Complainant 7 or that the consumer would not get a quality repair there. Insurer B also noted that its repair shop has two signs posted at that drive-in location advising consumers of the right to have autos repaired at the shop of their choice.

Department note: The insurer affirmed that two DMV VS-47A signs were posted in its shop. The issue of the insurer's adjuster identifying particular Insurer B shops was denied by Insurer B, and CSB cannot resolve this question of fact.

9) Complainant 7

Complaint: The consumer was told that Insurer B's network repair program would provide a quality job that was guaranteed. When the company then gave the consumer an estimate, the company included a list of Insurer B repair shops.

Insurer's response: The adjuster did not say anything detrimental about Complainant 7 or that the consumer would not get a quality repair there. Insurer B also noted that its repair shop has two signs posted at that drive-in location advising consumers of the right to have autos repaired at the shop of their choice.

Department note: The insurer affirmed that two DMV VS-47A signs were posted in its shop. The issue of the insurer's adjuster identifying particular Insurer B shops was denied by Insurer B, and CSB cannot resolve this question of fact.

10) Complainant 8

Complaint: The complainant is an Insurer B shop, but Insurer B has been telling consumers that the shop is not an Insurer B shop and its repairs will not be guaranteed. Also, Insurer B says that it will take ten days before an adjuster can inspect the vehicle if a non-Insurer B shop is used, as opposed to immediate inspection when using an Insurer B shop.

Insurer's response: Insurer B states that the shop is a network shop. Insurer B also notes that the claim representative did not convey correct information as to the status of the body shop and has been retrained. Insurer B conducts inspections within six business days, as the law requires.

Department note: Insurer B admitted that its consumer representative provided incorrect information and was retrained.

11) Complainant 9

Complaint: Insurer B required that the consumer bring her car to a drive-in inspection site or else Insurer B would not give the consumer an estimate for repairs.

Insurer's response: Consumers are not required to bring their cars to a drive-in facility. However, after the consumer here agreed to take the car to the drive-in facility, the consumer's shop called Insurer B and asked that the adjuster be sent to the consumer's shop for the inspection, which the company agreed to do.

Department note: CSB contacted the complainant and asked if she recalled matter. She did and stated that the insurer did not try to require that she have the vehicle repaired at an Insurer B shop.

Insurer D

Complainant 10

Complaint: Claimant says she was told that if she did not use an Insurer D shop, her repairs would not be guaranteed. Claimant had not asked for a recommendation, and had already asked to have her car repaired at her own shop.

Insurer's response: The insurer stated that the complaint letter was initiated and created by the shop. The claimant told Insurer D that she was very happy with Insurer D but did find it odd that the call center representative kept advising her about the network shop program. After her discussion with the representative, the claimant told her body shop that she was questioning her own decision to use the shop that she had chosen. The body shop felt that the insurer violated Section 2610 and wrote the complaint letter and had the claimant sign it. The insurer maintains that it advises claimants about the network shop program when customers either do not have a shop of choice or when the vehicle is at a shop where the customer may not want the vehicle to stay for repairs. The insurer contends that once the customer advises Insurer D that he has chosen a shop, Insurer D reassigns the claim for field handling.

Department note: CSB attempted to contact the insured to review this matter, but was unsuccessful.

Insurer E – 7 complaints

1) Complainant 3

Complaint: The complainant shop is losing business because Insurer E is telling customers that it takes six days for Insurer E to inspect vehicles if the customer does not use one of Insurer E's shops. This is not the case, says the shop, because the company usually sends adjusters within one to two days.

Insurer's response: The insurer maintains that it is familiar with the anti-steering laws, and educates its employees to ensure that they abide by the law. Further, Insurer E advises its customers that they have a choice when it comes to choosing a repair facility. The insurer states that if there are specific examples where it supposedly deviated from the above practices, it would like to know so it can investigate them.

Department note: CSB was unable to substantiate this complaint.

2) Complainant 11

Complaint: Insurer E attempted to steer the consumer to one of its shops and said the repair would not be guaranteed if the consumer used her own shop. Once work began, the company told her that she would have to pay out of her own pocket for additional expenses.

Insurer's response: It gave the consumer choice about where the consumer wanted the repairs done and paid for all supplements.

Department note: CSB attempted to contact the insured to review the matter, but was unsuccessful.

3) Complainant 12

Complaint: The car was at the complainant's facility when the shop received a call from the insurer stating that the insurer would be moving the car to a network shop. The complainant then contacted the consumer, who said the insurer made him feel that it was in his best interest to use the insurer's shop.

Insurer's Response: The consumer was briefed about the insurer's direct repair program and freely chose the insurer's network repair option.

Department note: CSB contacted the insured and asked if he recalled the matter. He reported that after the loss, the responding police officer asked where he wanted the vehicle towed. The insured stated that he wanted the car towed to Complainant 12, as he had been pleased with prior repairs done there. After getting home, the insured called Insurer E to advise it of the loss. During the conversation, the claim representative

suggested using the Direct Repair program. The consumer agreed, as he wanted the process to be as easy as possible. He stated there were no high pressure tactics. When the insured called Complainant 12 to advise that his vehicle was being picked up, he stated that the shop had him on the phone for an hour. He was very satisfied with how Insurer E handled the claim. It does not appear that the carrier violated Section 2610 in its handling of the claim.

4) Complainant 13

Complaint: After the insurer was told that the consumer wanted to use the shop of her choice, the insurer kept suggesting that it could fix the car for her, and would pay for original manufacturer's equipment parts. When the consumer refused to use a network shop, the adjuster low-balled and refused to pay for original manufacturer's equipment parts.

Insurer's response: The insurer contends that its adjuster did not mention repair options once it was informed that the claimant wanted to have the car repaired at the shop of her choice. The insurer maintains that no low-balling took place but concedes that there were additional hidden damages that it could not initially estimate. The insurer issued a check for the supplemental damages once those damages became apparent.

Department note: CSB attempted to contact the insured to review the matter, but was unsuccessful.

5 & 6) Complainant 14

Complaint: Complainant shop alleges the insurer lied to the claimant and said that getting the repairs done at his shop was not in his best interest.

Insurer's response: It told the claimant that he could get the repairs done at any shop he preferred, and the claimant ultimately chose to get the repairs done at the shop of his choice – Complainant 14.

Department note: This is a third-party claim. Section 2610 applies only to first-party claims.

7) Complainant 14

Complaint: Complainant shop owner says that the car was at his shop when Insurer E convinced the consumer that the shop was bilking her and the car was moved to a network shop.

Insurer's response: It was not able to reach an agreed price with the shop so it sent a Notice of Rights letter to the consumer and also wrote the consumer to advise that she would have to pay out of pocket costs if she used her shop. The insurer made no negative statements about the complainant's repair shop.

Department note: The insurer's estimate for repairs to the vehicle was less than that of the consumer's shop of choice. The insurer chose to move her vehicle to an Insurer E direct repair facility. Allegations of negative comments are questions of fact, which CSB cannot resolve.

Insurer F

Complainant 1

Complaint: Complainant shop says that when the claim was called in, the claimant was pressured to have his car repaired at an Insurer F shop. Also, adjuster could not reach an agreed price with the shop.

Insurer's response: Insurer F discussed with the consumer only its repair program and some of the conveniences it provides. Its estimates are based on prevailing rates in the area, and in this instance, it did reach an agreed price.

Department note: The allegations of steering made by Complainant 1 were refuted by Insurer F. CSB was unable to resolve this question of fact.

In addition to the 22 complaints addressed above, CSB reviewed 12 other complaints filed directly with CSB by the Executive Director of ABC at the November 15, 2007 meeting. A summary of those complaints follows.

Insurer E – 3 Complaints

1) Complainant 15

Complaint: Insured was told she could bring vehicle to one of Insurer E's shops for repair. Insured questioned insurer as to what benefit would she derive from doing this. Insurer advised that repairs would be guaranteed and "everything done for me" (insured's own words). Insured decided to have vehicle repaired at shop of her choice.

Insurer's response: Insurer E honored the consumer's choice to have the car repaired at her shop.

Department note: The complaint form noted that the insurer discussed the merits of the insurer's direct repair program. CSB's review could not substantiate any unlawful steering.

2) Complainant 16

Complaint: Complainant 16 was hit by an Insurer E insured and states that Insurer E tried to convince him to use its direct repair facility.

Insurer's response: Insurer E admitted full liability for the actions of its insured. Insurer E did discuss the merits of its direct repair program with the complainant.

Department note: This is a third-party claim. Section 2610 applies only to first-party claims.

3) Complainant 17

Complaint: Insured arranged with Insurer E to have her auto brought to an Insurer E shop for inspection. After inspection, insured advised Insurer E that she wanted vehicle brought to another shop, as she was happy with prior automobile repairs done there. Insurer E's adjuster advised that work would not be guaranteed at insured's shop of choice, and opined that prior work to the right front wheel was not done properly. Insured also claims that when insured's shop of choice picked up her vehicle, it was in a state of disassembly, which was not authorized by her.

Insurer's response: Insurer E adjuster noted, "The right apron was repaired poorly and welds from RAD Baffle to right apron could have been better." Insurer E advised insured that she had a choice of where she could get her vehicle repaired and moved the vehicle to her shop of choice for repairs.

Department note: CSB's review could not substantiate any unlawful steering.

Insurer B - 9 Complaints

1) Complainant 18

Complaint: Complainant claims that Insurer B attempted to steer him to an Insurer B direct repair facility after one of Insurer B's insureds struck his vehicle.

Insurer's response: Insurer B's assumed full responsibility for the accident and informed complainant, the third-party claimant, of the merits of its direct repair program.

Department note: This is a third-party claim. Section 2610 applies only to first-party claims.

2) Complainant 19

Complaint: Insured was told that he had choice of repair shops but stated, "The representative didn't allow us to tell them my shop's name." Also, the Insurer B representative "told us that he only had 5 shops in the area and to pick one."

Insurer's response: Insurer B states that the insured agreed to have the damages appraised at Insurer B's shop and then repaired at the insured's body shop. The complainant agreed to bring her vehicle to an Insurer B drive-in location so that Insurer B could write an estimate. Insurer B appraised the vehicle and issued a check that day. Subsequently, Insurer B received a call from the complainant's body shop wherein supplemental damages were discussed. A supplemental check was issued that day.

Department note: CSB's review could not substantiate any unlawful steering.

3) Complainant 20

Complaint: Insurer B told insured that she had to bring her vehicle to the Insurer B Drive-In, and she felt pressured to do so.

Insurer's response: Complainant reported a loss to Insurer B, advising Insurer B that she had a shop of choice. The Insurer B claim representative suggested that she bring in the car to an Insurer B drive-in facility for an estimate, which the complainant did. Insurer B received a follow-up call from the insured's body shop stating that it wanted the vehicle inspected at its shop. Insurer B agreed and set up an appointment.

Department note: CSB's review could not substantiate any unlawful steering.

4) Complainant 21

Complaint: Insured requested that Insurer B pay storage fees that the insured's shop of choice charged because the shop would not release the insured's vehicle until Insurer B delivered a check.

Insurer's response: Insurer B issued a check timely and then reissued and hand delivered a replacement check. Insurer B also indicated that the insured's shop of choice did not have to hold car since Insurer B agreed to the repair amount at the point of inspection.

Department note: This is a third-party claim. Section 2610 applies only to first-party claims.

5) Complainant 22

Complaint: Insured was told by Insurer B that she had to bring car to an Insurer B drive-in to have it inspected.

Insurer's response: Insurer B spoke with the insured after the accident. Initially the insured agreed to have the vehicle inspected at an Insurer B drive-in facility. Subsequently, the body shop called Insurer B and informed the insurer that the vehicle was unsafe to drive and was being towed to its shop. Insurer B called the insured and apologized for any misunderstandings as to the vehicle's drivability. The insured stated

that she did not authorize the body shop to file a complaint, and was satisfied with Insurer B's service.

Department note: CSB's review could not substantiate any unlawful steering. The claim was adjusted in August, 2006 and the complaint was filed by QRS Collision in May, 2008.

6) Complainant 23

Complaint: Insured was told she had to bring car to Insurer B Drive-In to have it inspected.

Insurer's response: Insurer B honored the consumer's choice to have the car inspected at her shop and came to an agreed price.

Department note: CSB's review could not substantiate any unlawful steering. The claim was adjusted in August, 2006 and the complaint was filed by QRS Collision in May, 2008.

7) Complainant 24

Complaint: Complainant agreed to have vehicle repaired at Insurer B shop and is unhappy with the work.

Insurer's response: This is a quality of repairs complaint. Complainant moved his automobile to another shop. Insurer B made a supplemental payment after the vehicle was re-inspected.

Department note: CSB's review could not substantiate any unlawful steering. The complaint concerned the quality of repairs at the Insurer B direct repair shop, not Section 2610.

8) Complainant 25

Complaint: Insured was told he had to bring car to Insurer B Drive-In to have it inspected.

Insurer's response: Complainant was unsure about where to have the vehicle inspected and cancelled several appointments for inspection. The insured finally had the vehicle inspected at an Insurer B facility and repaired at the shop of his choice.

Department note: CSB's review could not substantiate any unlawful steering. The complaint was received more than one year after the claim was settled.

9) Complainant 26

Complaint: Insured was told she had to bring car to Insurer B Drive-In to have it inspected.

Insurer's response: Insurer B honored the consumer's choice to have the car inspected and repaired at her shop. The car was inspected within six business days.

Department note: CSB attempted to contact the insured to review the matter, but was unsuccessful.

Phase Three Conclusions:

The Phase Three review of complaints did not reveal any clear evidence of systemic violations of Insurance Law Section 2610. Some of the complaints involved questions of fact where CSB could not, from the given facts, substantiate the allegations of the complainant. Also, Section 2610 was not applicable to several of the complaints, as noted in the individual complaint summaries.

Of the total of 34 complaints received by CSB, during a period spanning from mid-2006 through early 2008, a total of 8 auto repair facilities filed 16 complaints. In addition, 18 complaints were filed directly by insureds. Here is the breakdown:

<u>Shop</u>	<u># of Complaints</u>
Complainant 1	4
Complainant 3	2
Complainant 5	1
Complainant 7	3
Complainant 8	1
Complainant 12	1
Complainant 13	1
Complainant 14	<u>3</u>
Sub-Total	16
Insureds	<u>18</u>
Sub-Total	34
Duplicates	<u>2</u>
Total	32

Of the 32 complaints received, Section 2610 did not apply in ten instances. Moreover, in four instances, the insureds themselves complained that the auto body shop filed complaints alleging the insured's dissatisfaction.

Overall Conclusion From All Phases:

CSB's review did not reveal any systemic violation of Section 2610. Nevertheless, insurers should be vigilant and take steps to clearly inform insureds that they have a right to choose the location for both the inspection and repair of the damaged vehicle. Further, insurers should take all necessary measures to assure that their claim representatives do not recommend a repair facility unless requested by the insured.