

Issue Analysis

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Consumer Choice in Auto Repair: The Politics and Economics of Automobile Insurance Repair Practices

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Executive Summary

Many automobile insurers operate direct repair programs (DRPs), in which they contract with particular body shops to perform insured auto repairs according to terms agreed to by the insurer and the repair shop owner. Many insurers also specify the use of aftermarket crash parts instead of original equipment manufacturer (OEM) parts to replace damaged vehicle components such as door panels, fenders, and hoods.

Insurers' use of DRPs and aftermarket cosmetic crash parts has come under attack in state legislatures and courts by groups whose economic interests are threatened by these practices. These groups – which consist primarily of non-DRP shops and manufacturers of OEM parts – contend that insurers' use of DRPs and aftermarket parts forces consumers to accept shoddy repairs performed by substandard shops using inferior replacement parts.

These claims do not withstand scrutiny. Robust competition in the U.S. automobile insurance market has created strong incentives for insurers to find ways to both reduce the price of insurance for consumers and to ensure that their customers experience a high level of satisfaction with the vehicle repair process and outcome. The practice of utilizing DRPs and aftermarket parts for insured auto repairs is best understood as a cost-saving, quality-enhancing innovation by firms seeking to attract and retain customers in a highly competitive environment.

DRPs have several features that serve to enhance consumer welfare. Because insurers require repair shops to meet higher standards regarding equipment, training, and service to enter and remain part of a DRP network, such shops are likely to provide higher quality repairs and better service than a randomly chosen shop. Consequently, DRP shops are often authorized by insurers to begin repairs immediately without waiting for approval from claims adjusters and appraisers. DRPs also decrease incentives to commit insurance fraud.

Despite the benefits they provide to consumers, DRPs have been the subject of protectionist legislation aimed at preventing insurers from effectively operating these programs. Some states

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The interests of insurers and their policyholders are served when the cost of repairs is minimized without sacrificing quality or convenience.

have enacted or are considering laws that require insurers to obtain independent appraisals that needlessly extend DRP shop repair times and increase claim costs. Other states have enacted or are considering laws that restrict the ability of insurers to provide information to policyholders regarding DRPs. Courts in several jurisdictions have struck down these so-called “anti-steering” laws on constitutional grounds, implicitly recognizing the benefits consumers derive from DRPs.

Insurers’ use of aftermarket cosmetic crash parts has created robust competition between OEM and non-OEM parts manufacturers in a market that was once dominated by OEMs. By offering lower-cost alternatives to OEM parts, aftermarket parts manufacturers have forced OEMs to reduce prices. As a result, the cost of all cosmetic crash repair parts is less than if aftermarket parts were absent from the marketplace.

Given that there exists no credible evidence that aftermarket cosmetic crash parts are inherently inferior to or less safe than OEM parts, legislative proposals and patent litigation intended to drive aftermarket crash parts from the marketplace would serve primarily to advance the economic interests of OEMs while doing nothing to protect consumers. Indeed, our analysis demonstrates that if aftermarket parts could no longer be used for insured auto repairs, annual auto insurance premiums would increase on average by \$109 per vehicle.

In sum, policymakers should carefully consider the economic consequences of proposals to prohibit or restrict insurers’ use of direct repair programs and aftermarket crash parts, giving particular attention to the effect these measures would have on consumer welfare.

Introduction

Each year approximately 6 percent of drivers submit claims for comprehensive and collision damage to their vehicles.¹ In 2009, U.S. insurers incurred \$41.2 billion in automobile physical damage losses.² A large portion of this amount is paid to automobile collision repair facilities (hereafter “body shops”) and automobile parts manufacturers. The interests of insurers and their policyholders are served when the cost of such repairs is minimized without sacrificing quality or convenience. However, all else being equal, parts manufacturers and body shops clearly benefit from maximizing the price insurers pay for parts and labor. Given the amount of money involved, it is not surprising that various stakeholders would turn to legislatures and the courts to further their conflicting interests.

Two cost-effective processes used by insurers that have been particularly contentious. One is the use of direct repair programs (DRPs). In a DRP, insurers identify and contract with body shops that are able to perform high-quality repair work. In exchange for referrals from the insurer, the body shop agrees to warrant repairs and provide consistently measurable standards of service and quality for each repair.

The other cost-effective process is the specified use of cosmetic replacement parts for insured vehicle repairs that were not manufactured by the vehicle’s original equipment manufacturer (OEM). Such parts, often called aftermarket or non-OEM parts, are substantially less expensive than OEM parts.³ Auto insurers specifying the use of aftermarket parts for automobile body repair is similar to consumers’ choice when

purchasing batteries, shock absorbers, lights and other parts from local parts, tire and warehouse stores such as WalMart, Costco, Goodyear, Firestone and AutoZone.

Interest groups representing some body shops and parts manufacturers have proposed and supported legislation and litigation to place constraints on the ability of consumers to decide when and if to utilize these value-enhancing practices in concert with insurers. They support legislation requiring automobile insurers to pay for expensive OEM crash parts, and imposing restrictions on insurers' operation of DRPs that would undermine their viability. Some plaintiff attorneys have engaged in litigation to suppress the use of aftermarket crash parts via class action torts and patent law. By supporting these measures, some parts manufacturers, plaintiff attorneys, and body shops seek to gain economic benefits to the detriment of consumers.

In this *Issue Analysis*, we conduct a thorough evaluation of the effects of aftermarket crash parts and DRP networks on insurance consumers. We present strong evidence supporting the pro-consumer effects of these activities. We demonstrate that the vigorous level of competition in automobile insurance markets drives profits to (or perhaps below) the cost of capital, resulting in fair-market pricing. We show that in competitive insurance markets, cost-effective practices in general – and the use of aftermarket crash parts and DRPs in particular – reduce the price of insurance substantially, thereby benefiting consumers. We also comment on the ability of DRPs to mitigate insurance fraud. Finally, we summarize and comment on recent legislative enactments and judicial rulings affecting DRPs and aftermarket parts. We argue that limiting insurers' ability to promote or recommend DRPs to their policyholders violates the First Amendment's protection of commercial speech. We also find that challenges to the use of aftermarket parts via class action torts and patent law are unpersuasive.

The discussion, analysis and evidence presented in this study should be useful to policymakers at the state and federal levels currently considering legislation affecting DRPs and aftermarket parts.

The remainder of this *Issue Analysis* is organized as follows. In Section I, we describe issues arising from insurers' use of direct repair programs and aftermarket parts in the context of market competition and consumer welfare. In Section II, we provide economic analysis of these issues. In Section III, we summarize and comment on recent legislative enactments and judicial rulings affecting DRPs and aftermarket parts. Finally, in Section IV, we provide a review of our findings.

I. Framing the Issue: DRPs, Aftermarket Parts, and Competitive Markets

Direct Repair Programs: Use by Insurers and Government Oversight

Automobile insurers create DRPs by contracting with certain body shops to repair insured damage to their policyholders' vehicles. The shops agree to a fair and reasonable price for each repair and make other concessions to the insurer, such as providing onsite rental cars and vehicle storage, as well as agreeing to specific guidelines on customer satisfaction and completion times. In return, insurers recommend these shops to their policyholders, increasing the volume of business for the shop. Both parties benefit from this agreement. Insurers pay a competitive price for repairs and ensure a convenient, expeditious claim experience for policyholders. Body shops are able to justify these concessions based on reduced marketing expenses and economies of scale.

While DRPs have existed since the 1970s, the most significant growth came in the 1980s and 1990s.⁴ Recent surveys estimate 44 percent

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to 50 percent of body shops participate in a DRP.⁵ Among shops that participate in DRPs, nearly 57 percent of sales are referred by insurance companies.⁶

In addition to lowering the price of insurance, DRPs benefit policyholders in several other ways. First, repair facilities are screened by insurers before they are included in DRP programs. The insurer may require that the shop meet standards related to equipment, training, service and pricing.⁷ Therefore, DRP shops are likely to provide higher quality repairs and better service than a randomly chosen shop. In loose support of this hypothesis, we find that direct repair shops tend to be larger than other shops, with approximately \$867,800 in average gross annual sales volume compared to close to \$326,800 for non-DRP shops.⁸

Policyholders may also benefit from added convenience when using DRP shops. DRP members often have the authority to begin repairs for the insurer without the need to wait for approval from adjusters or claims representatives. They also eliminate the need for insureds to get multiple competing bids for covered repairs.

Further, it is likely that vertical contracts between insurers and body shops reduce the instance of insurance fraud. Because the DRP agreement enhances communication and aligns the incentives of insurers and body shops, the body shop is less likely to collude with its customers to defraud insurers.⁹ For example, absent these agreements, body shops might be more likely to bill the insurance company for the cost of repairing damage to the insured vehicle that existed before the covered crash. And although it is illegal, body shops have been known to overcharge insurers for a repair and use the excess to offset an insured's deductible. Instances of these types of insurance fraud are common and have attracted attention from law enforcement agencies and state legislatures. In 2010, for example, the Arizona Legislature enacted a law that makes

it illegal for auto glass providers to falsely sign on behalf of a policyholder a claim submitted to an insurer; add to the damage or encourage the policyholder to add to the damage of auto glass before repair in order to increase the scope of repair or replacement; or perform work clearly and substantially beyond the level of work necessary to repair or replace the auto glass.¹⁰

Government scrutiny of DRPs began in the late 1980s amid body shop concerns that insurers wielded too much market power. Since then, body shops have lobbied for legislation to limit insurers' ability to affect policyholders' choice of body shop for covered repairs, alleging that DRP agreements limit competition among body shops. For their part, insurers have opposed such restrictions and supported legislation allowing them to offer recommendations to policyholders about body shop choices and their DRP networks.

Because insurance is regulated at the state level, laws affecting DRPs can and do differ across states. The main issues addressed by such laws concern the ability of insurers to require policyholders to seek repairs at a particular shop, and the amount and type of information that is allowed (or required) to be communicated to the policyholder. Table A.1 indicates which states have laws or regulations related to DRPs and the nature of those laws and regulations.

The debate over DRP legislation occurs on a continuum that ranges at one end from not permitting insurers even to recommend a shop to policyholders, to the other end where insurers are allowed to recommend that repairs be made at a shop selected by the insurer, but are prohibited from requiring or coercing claimants to use the insurer's preferred shop. Toward the center of the continuum are disclosure requirements in which states require that consumers are provided with information to make them aware of their options regarding body shop choice.

To understand the current legislative environment, it is instructive to consider three recent political skirmishes. One of the most significant was the enactment in California in 2009 of a law that clarifies that insurers can lawfully explain the benefits of their direct repair programs to consumers. The law, introduced as Assembly Bill 1200, amended a section of the insurance code that prohibits auto insurers from requiring a claimant to use a specific auto repair facility, and to disclose, both orally and in writing, that claimants are entitled to select the auto body shop of their choice. Body shops in the state had brought lawsuits in which judges ruled that the law prevented insurers not just from requiring the use of certain shops, but also from informing claimants about the benefits that DRPs provide. A.B. 1200 overturned these decisions by establishing that insurers may provide claimants with “specific truthful and nondeceptive information regarding the services and benefits available to the claimant during the claims process.” The bill was designed to ensure that consumers had the information necessary to make informed choices when selecting auto repair shops for their claims. Groups including the California New Car Dealers Association, the Consumer Attorneys of California, Consumer Watchdog, the Collision Repair Association of California and the California Auto Body Association strongly opposed the bill.¹¹

In 2008, lawmakers in Connecticut simultaneously pursued both approaches described above – one allowing insurers to encourage, but not require or coerce, claimants to use DRPs; the other preventing insurers from promoting or even informing claimants about DRPs. The House bill, H.B. 5152, mandated that automobile insurance policyholders must be notified of their right to choose where their vehicles are repaired. By contrast, the Senate bill, S.B. 288, which was backed by the Auto Body Association of Connecticut, would have prohibited the promotion of preferred provider and direct repair programs by insurers. Ultimately the House version was enacted.¹²

Finally, the passage in 2010 of a Rhode Island bill demonstrated the emergence of a new tactic in the assault on direct repair programs. The new law, introduced as Senate Bill 2508, requires insurers to conduct an independent appraisal of vehicles with damage of more than \$2,500. The appraiser cannot be affiliated with the repair shop. The legislation was supported by the Auto Body Association of Rhode Island.¹³ However, insurance trade groups voiced strong concern as it adds an extra layer of cost and complexity to claims handling and limits insurers’ ability to effectively use DRPs.¹⁴ This bill is very likely to increase insurance premiums in Rhode Island, which are already among the highest in the country.¹⁵ The bill was signed into law by the governor after a hard fought political battle in a legislature that has historically favored the auto body industry,¹⁶ arguably, in this case at least, at the expense of consumers.

In Sections II and III, we present economic and legal analyses of DRP issues, respectively. Our analyses and evidence support promotion of DRP networks to policyholders on economic and legal grounds.

Aftermarket Cosmetic Crash Parts: Use by Insurers and Government Oversight

As the name implies, cosmetic crash parts are exterior parts that may be damaged in automobile crashes.¹⁷ They include body panels, bumpers and other exterior parts. Automobile parts manufacturers supply replacement crash parts used to repair damaged vehicles. Until the late 1970s, automobile manufacturers held a firm monopoly on the market for cosmetic crash parts. New replacement parts were available only from the manufacturer of the automobile.

As body style changes became less frequent, production of crash parts became more efficient, luring additional manufacturers into the crash parts market. Today, aftermarket cosmetic crash parts manufacturers represent approximately 20 percent of the market.¹⁸

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The introduction of aftermarket cosmetic crash parts created a less expensive alternative to OEM crash parts. In addition, competition from aftermarket manufacturers caused the prices of OEM crash parts to decrease by up to 43 percent.

Aftermarket cosmetic crash parts are often much less expensive than their OEM substitutes. The amount of savings differs by the type of vehicle and type of part; however, all estimates of savings from using aftermarket parts are substantial. For example, a study of the 1999 Toyota Camry found that, although the retail price of a new 1999 Camry was \$23,263, to replace all parts of the vehicle with OEM parts would cost an astounding \$101,355.¹⁹ On average, consumers save 60 percent by choosing aftermarket parts instead of OEM parts.²⁰ Therefore, it is not surprising that insurers began suggesting, and in some cases requiring, the use of these products for the repair of insured vehicles as a means to control claims costs.²¹

The use of aftermarket parts has grown considerably in the last two decades. A survey by *Body Shop Business* finds that the percentage of shops using non-OEM parts has nearly doubled in the past 20 years, increasing from 47 percent in 1990 to 92 percent in 2009.²²

The introduction of aftermarket cosmetic crash parts created substantial benefits for consumers. The most immediate effect was the availability of a less expensive alternative to OEM crash parts. In addition, competition from aftermarket manufacturers caused the prices of OEM crash parts to decrease by up to 43 percent.²³ One study estimates that aftermarket crash parts reduce the cost of automobile insurance by \$3.25 billion per year.²⁴

Opponents of aftermarket parts usage have raised allegations centered on intellectual property and quality. OEM manufacturers claim that vehicle body designs are their intellectual property and that aftermarket manufacturers are infringing on OEM design patents. We analyze this claim in Section III. The second argument is that aftermarket parts are of lower quality than OEM parts. Opponents contend that aftermarket parts are inferior to OEM parts, and hence that using them to repair a vehicle

decreases the vehicle's value and may create safety hazards.

The Certified Automotive Parts Association (CAPA) was created, in part, to address quality and safety concerns. As a non-profit organization, CAPA "oversees a testing and inspection program that certifies the quality of automotive parts used for collision repairs. CAPA ensures that parts meet quality standards for fit, component materials, and corrosion resistance. CAPA is not a manufacturing, marketing or sales organization."²⁵ For parts to be CAPA-certified, the manufacturer must first agree to allow inspection and review of its manufacturing process so that the facility can be approved. To further ensure that the manufacturer continues to maintain certain standards, CAPA conducts random quality checks. The CAPA process is quite extensive. For example, just becoming an approved facility does not guarantee that all parts produced will be CAPA-certified. The manufacturer must submit individual parts for testing and approval.

In response to safety concerns, the Insurance Institute for Highway Safety (IIHS) performed a series of tests and concluded that cosmetic crash parts – from any manufacturer – are irrelevant to safety. In one test, IIHS crashed identical Toyota Camrys with and without generic crash parts.²⁶ The safety of drivers and passengers was unchanged. Institute President Brian O'Neil suggested that, "The safety claims are red herrings to try to frighten people. With the possible exception of hoods, there are no safety implications of using cosmetic crash parts from any source."²⁷

On the other hand, opponents of aftermarket parts have produced only anecdotal evidence or subjective opinions to support their claims regarding the safety of aftermarket parts. For example, the most common source cited is a 1999 *Consumer Reports* article titled "Shoddy Auto Parts." However, this article concedes that there are "little data on the safety of replacement parts." Therefore, it relies on

anecdotal evidence to raise concern.²⁸ Indeed, in 1987, Ford’s vice president of Environmental and Safety Engineering told O’Neil of IIHS, “After a review of the information you provided, as well as other data available to us, we have concluded that, in general, fenders and door ‘skins’ are components whose design or manufacture is not likely to have a significant effect on vehicle safety.”²⁹

As the prevalence of aftermarket crash parts increased, state regulators and legislators began to regulate their use. The most common element of such regulation is to ensure consumers are aware that aftermarket parts are being used to repair their vehicles. Another somewhat common provision is to require consumer consent before installing aftermarket parts on a damaged vehicle.

Early in the debate, the National Association of Insurance Commissioners (NAIC) conducted a study of the issue. Based on the results, the NAIC drafted model laws that would allow the use of aftermarket parts subject to certain conditions. The NAIC’s After Market Parts Model Regulation³⁰ was adopted in June 1987. The requirements covered in the Act are: (1) that the manufacturer of the aftermarket parts be clearly identified on the part; (2) that the aftermarket part be of like kind and quality as the OEM part; and (3) that aftermarket parts be clearly identified on the estimate and that a disclosure statement must be provided to the insured. The statement must read:

“This estimate has been prepared based on the use of automobile parts not made by the original manufacturer. Parts used in the repair of your vehicle by other than the original manufacturer are required to be at least equal in kind and quality in terms of fit, quality and performance to the original manufacturer parts they are replacing.”

The main issue considered by the states appears to be consumer awareness. Within this context, the focus is on a variety of issues including ensuring that consumers are aware that aftermarket parts are being used in the repair process; that they understand that they need not consent to the use of these parts (though they may bear additional costs); and that they are informed of the potential impact of the use of aftermarket parts on existing warranties. Other areas of focus include quality and the warranty of aftermarket parts.

Currently, the majority of states have some legislation or regulation related to aftermarket parts, with many of these being passed or adopted in the 1990s. A table of state-by-state legislation affecting the use of aftermarket parts appears as Table A.2.

II. Economic Analysis

Market Competition and Consumer Welfare

“Competition is the keen cutting edge of business, always shaving away at costs.”

— Henry Ford³¹

The concept of market competition is central to this *Issue Analysis* for two reasons. First, observed competition among insurance companies ensures that value-enhancing practices implemented by insurers lead to lower prices for consumers. Second, some of the anti-consumer outcomes that would result from restricting use of DRP networks and aftermarket crash parts occur because proposed legislation and litigation would reduce competition among parts manufacturers and body shops.

Market competition is crucial to consumer welfare. When firms compete against each other, goods and services are sold to consumers at a fair price. Without competition (e.g. monopoly), firms can extort larger profits, limited only by consumers’ ability to pay rather than by the cost of providing goods together with a fair profit. Because insur-

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Competitive markets commonly exhibit four characteristics. First, they include multiple independent sellers with low to moderate market shares. Second, there are multiple consumers with enough information to determine the value of the product. Third, the product is relatively homogeneous, allowing consumers to differentiate value across offered prices and expected levels of service. Finally, barriers to entry and exit are low, allowing new suppliers to enter the market if prices rise above the fair-market price, or exit the market if they cannot produce the product at the fair-market price.

The following hypothetical example illustrates the concept of a competitive market. First, assume there is only one company (Company A) that provides a certain product, say, televisions. Also assume that consumers can easily determine the quality of a television upon casual inspection. Company A has a monopoly on televisions because there are no competitors in this market. The cost per unit of manufacturing and distributing a television is \$300. Company A decides to price its televisions at \$1,000 per unit, yielding a \$700 profit on each television it sells. Consumers like television, and many are willing to pay \$1,000.

A few months later, Company B enters the market and offers an identical television for \$849. Company B is satisfied with the \$549 profit and consumers prefer the lower price. Company B gains market share from Company A. In response, Company A lowers its price to, say, \$600; leading Company B to drop its price to \$500, and so on. At some point, perhaps around \$375, Company A and Company B reach a point where it is not worth their time, effort and risk of operation to manufacture and

distribute televisions for less. This is the fair price of a television in a competitive market.

In the remainder of this section, we draw on the theory of competitive markets to provide an economic analysis of the issues relating to insurers' use of direct repair programs and aftermarket cosmetic crash parts. We begin by establishing the level of competition in insurance markets. We then discuss consumer outcomes related to DRPs and aftermarket parts based on this level of competition and the nature of these practices.

The insurance industry exhibits all four of the characteristics common in competitive markets identified above. First, there are many companies participating in the market. In 2008, a total of 2,911 companies were licensed to sell property and liability insurance in the United States. There are obviously many consumers as well, given that most homes, automobiles, and businesses are insured. In personal lines (homeowners and automobile) especially, insurance products are quite homogeneous. Homogeneity is assured by policy form standardization. Most policies differ only slightly, if at all, from the standard policies created by insurance advisory organizations such as the Insurance Services Office and the American Association of Insurance Services. This allows consumers to compare insurance products across companies based on price and expected service. Finally, insurers frequently enter and exit state insurance markets, showing that barriers to entry and exit are not prohibitive. From 2000 to 2008, insurers entered most states' markets for automobile insurance. On average nearly five companies entered each state per year.³³

Competitive markets also lead to moderate average returns that approach the cost of capital. In other words, profits resemble the risk of outcomes rather than the highest price consumers will bear in the market. In a market without competition, we would anticipate a consistent stream of large profits.

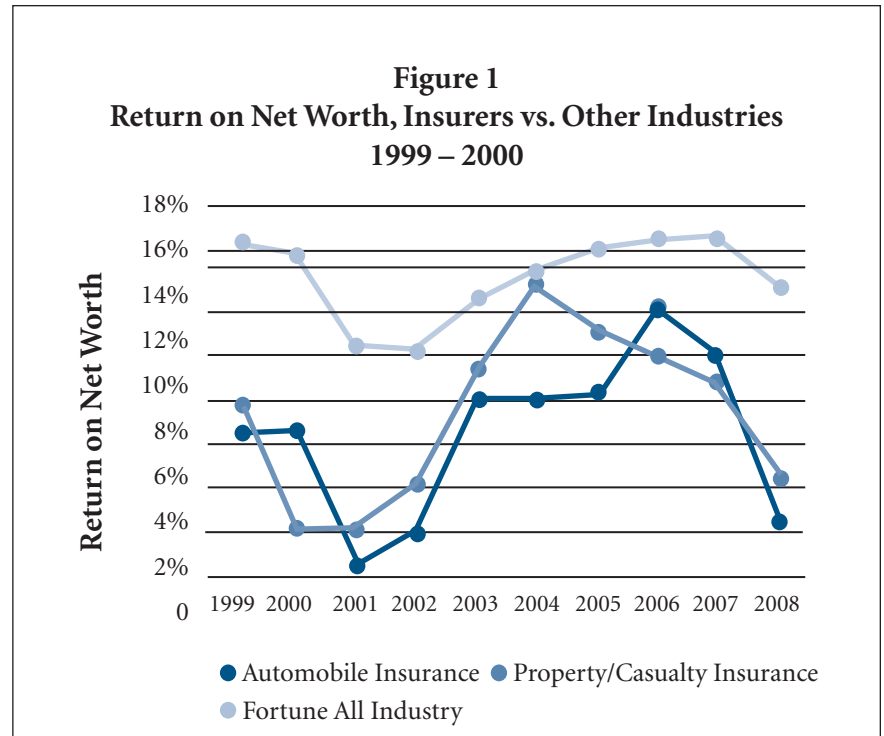
Figure 1 compares return on net worth for automobile insurance, all property and casualty insurance, and the Fortune All Industry Average. Given the consistent difference between insurers and other industries, it is clear that neither automobile insurers nor the rest of the insurance industry display excessive profits. Figure 2 recaps the salient qualities of competition in insurance markets.

These results support our strong conclusion that insurance markets are highly competitive. Given this vigorous level of competition, it is safe to assume that the primary determinant of insurance prices is the cost of providing insurance. Therefore, if certain practices, such as using DRPs or after-market parts, increase the value of insurance to consumers (thereby attracting more customers) or decrease the cost of providing insurance, they will also decrease the price consumers pay for insurance.

An Economic Analysis of Direct Repair Programs

Direct repair programs present several possible avenues for decreasing the cost of insurance and increasing value provided to consumers. Because insurance markets are competitive, the benefits of these programs will be passed on to consumers as lower prices and greater value.

There are several ways that DRPs improve consumers' claim experiences and increase the efficiency of handling insurance claims. When using a DRP-approved repair facility, consumers are likely to receive faster repairs because time spent with claims adjusters and obtaining multiple estimates has been eliminated from the repair process. Compared to repairs performed using non-DRP shops, the time from filing a claim to repair is typically shortened by approximately five days to seven days.³⁴ The same efficient aspects of DRPs that enhance value to consumers are also likely to decrease costs. For example, expedited repair processes reduce claims



Source: NAIC Report on Profitability by Line by State, 2008

costs by decreasing expenses for rental car benefits and by reducing the expense of hiring claims adjusters. One estimate indicates savings of approximately 10 percent to 15 percent for the average claim.³⁵

As we describe in more detail below, another positive consequence of DRP networks is a reduction in insurance fraud. Given the staggering cost estimates of insurance fraud, steps to mitigate such activities are likely to decrease the cost of insurance substantially.

The primary argument set forth by opponents of DRP networks is that they give DRP shops a competitive advantage over non-DRP shops while suppressing labor rates for all body shops. We are aware of no evidence to support this claim, but even if true, it would seem to have little relevance to the welfare of insurance consumers. Careful consideration of the body shop industry, the role of insurers, and the changing nature of vehicles built in recent decades suggests that DRPs do not adversely affect the competitive landscape for consumers seeking auto body repairs. To the

Figure 2
Insurance Industry Competition “Box Score”

Number of Property/Casualty Insurers, 2009	2,911
Number of Insured Autos	195 million
Homogeneous Product	Standardized Policy Forms
Average Annual Market Entries per State 2000 – 2008	4.9

Average Return on Net Worth 1999 – 2008	
Automobile Insurance	7.4%
Property/Casualty Insurance	6.3%
Fortune All Industry Index	13.5%

Source: NAIC InfoPro Database, various years. NAIC Report on Profitability by Line by State, 2008.

contrary, it is quite likely that DRPs improve repair outcomes for consumers.

For consumers to experience a competitive market for auto body repair, they require the same four conditions as in any other industry. There are obviously many sellers of this service. The U.S. Bureau of Labor Statistics reports 36,041 collision repair shops operated in the United States in 2008. Given that this number varies each year, it is clear that firms enter and exit the market frequently. The millions of wrecks that occur each year indicate that there are many independent buyers in this market as well.

The troubling aspect of this market is consumers’ likely inability to easily and accurately differentiate quality of work across repair shops. The changing and highly technical nature of late model vehicles virtually ensures consumers will struggle to assess the quality of a repair facility ex ante. Even when the consumer has experience with a specific shop, if the shop does not maintain and periodically enhance its equipment and training, it

could go from being a high-quality shop to a low-quality shop in just a few years.

Insurers, on the other hand, interact with body shops every day. They employ professionals with the experience and technical expertise that are necessary to accurately differentiate across body shops based on expected quality and service. By suggesting such shops to their insureds, insurers can reduce the price of insurance and increase customer satisfaction. For example, a 2006 J.D. Power and Associates survey of collision repair satisfaction finds a large difference in customer satisfaction index (CSI) between claimants using DRP body shops (CSI=793) and those that do not (CSI=726).³⁶

Because insurers operate in a competitive market, it is not possible for them to maintain a profitable market share while recommending body shops that provide subpar service. Indeed, we find no merit in claims that DRPs reduce competition to the detriment of consumers.

In fact, Bourgeon, et al.³⁷ offer evidence suggesting that utilization of DRP networks may ultimately influence consumers’ insurance purchase decision. The authors’ example shows changes in the market shares of leading automobile insurers in California from 1998 through 2004. Figure 3 is a chart similar to that of Bourgeon et al. From 1998 until 2001, Allstate appears to gain substantial market share from its primary rival, State Farm. During this time, Allstate made extensive use of DRPs and State Farm did not. However, in 2002 it appears that State Farm began to recapture market share from Allstate. The timing of this change coincides with State Farm’s implementation of a vast DRP network, now the largest in the industry. While this evidence is not conclusive, it is quite suggestive that DRPs play a positive role in consumer purchase decisions.

Bourgeon et al. provide theoretical analysis of another means by which DRPs likely reduce the cost of insurance. In their model,

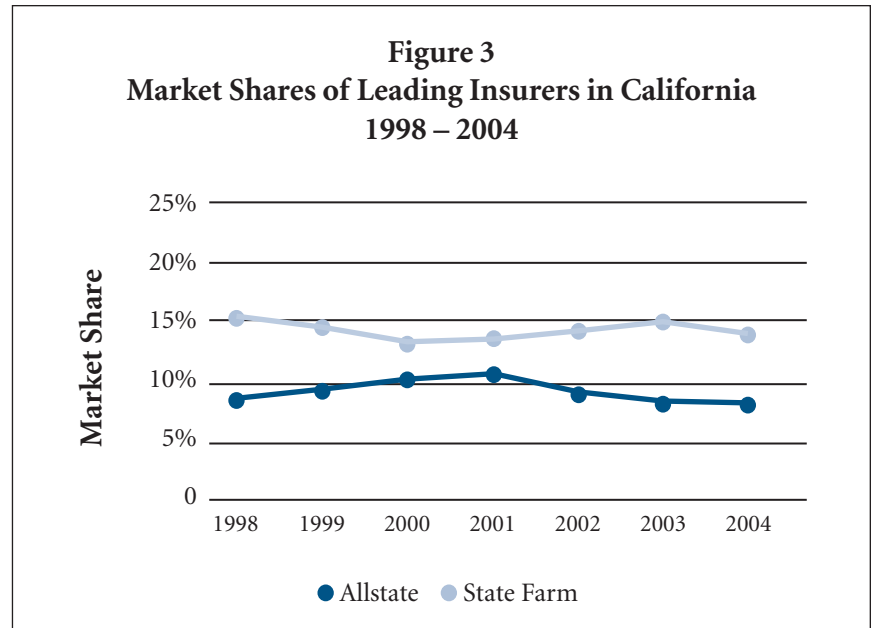
vertical contracts between insurers and body shops reduce the probability of collusion among body shop and policyholders to commit insurance fraud.

The most common forms of insurance fraud committed by body shops, often in concert with consumers, are “burying the deductible” and inflating damage estimates.³⁸ When body shops bury deductibles, they hide the cost of the deductible in the estimate so that the insurer unknowingly pays the deductible instead of the insured. Inflating damage estimates involves charging for work that will intentionally never be completed and parts that will never be installed. They may also inflate the estimate by causing additional damage to the vehicle so they will be paid to fix it.

As a means of mitigating this type of fraud and the increased cost it adds to the insurance system, the National Insurance Crime Bureau suggests asking one’s insurance company for recommendations of reputable body shops, among other measures. Because DRP networks partially align the interests of insurers and body shops and improve the flow of information between these parties, body shops gain less utility from colluding to commit fraud than those without DRP contracts. Hence, it is likely that DRP networks significantly reduce the price of insurance by decreasing the cost of fraud.

Economic Analysis of Insurer Use of Aftermarket Cosmetic Crash Parts

Aftermarket cosmetic crash parts provide a lower cost alternative to OEM parts for consumers who must repair damaged vehicles. By decreasing the cost of collision repairs, aftermarket parts reduce the cost of automobile insurance. Cost containment can lead to other consumer benefits as well. For example, by keeping repair costs down, the use of aftermarket parts can prevent some cars from being considered a total loss. When a car is deemed a total loss, the insured is paid the actual cash



value of the vehicle, and the vehicle is sold as salvage. Avoiding total losses can be especially helpful for insureds driving older cars because it prevents them from having to purchase a replacement vehicle that may exceed the actual cash value of the damaged vehicle.

In this economic analysis of aftermarket crash parts, we first consider the underlying market effects of competition from aftermarket manufacturers. Then, using assumptions from this consideration, we extend a recent empirical analysis of consumer savings from the use of aftermarket crash parts.

Aftermarket manufacturers are an important source of competition in the market for crash parts. As noted above, before aftermarket parts became available, OEM part manufacturers had a monopoly on crash parts. While automobile manufacturers competed against each other for new car sales, there was no competition for replacement parts.³⁹ They were able to set crash part prices at the highest levels the market would bear, rather than the fair price derived from a competitive market.

When aftermarket crash parts entered the market, the price of OEM parts dropped in response to this competition. For example, in

In considering a public policy issue, it is important to assemble as much information as possible about the scope and scale of consequences. In these circumstances, the best analytical tool is a meta-analysis.

1992, an OEM replacement fender for a 1992 Toyota Camry cost \$253. In 1993, aftermarket manufacturers began to produce this same part. They sold it for only \$202. By 1996, this led Toyota to decrease its price by 43 percent to \$143.88. During the same period, competition among aftermarket manufacturers sent the price crashing to only \$60, a 70 percent reduction.⁴⁰ A similar example shows the price of a replacement nose cover for a 1983 Chevy Camaro fell by 31 percent once aftermarket replacement parts became available.

It is difficult to accurately measure the effects of aftermarket crash parts on the cost of insurance. Applicable data are scarce, and potentially confounding events occur during the period when aftermarket crash parts entered the market.⁴¹ However, in considering a public policy issue, it is important to assemble as much information as possible about the scope and scale of consequences. In these circumstances, the best analytical tool is a meta-analysis.⁴² A meta-analysis estimating the effect of aftermarket parts on the cost of automobile insurance was recently conducted by the Property Casualty Insurance Association of America (PCI). It finds that aftermarket parts save insurance consumers \$3.25 billion annually.⁴³ However, the study only considers the fact that aftermarket parts are less expensive than OEM parts. It does not consider the important effects of competition from aftermarket manufacturers on OEM prices. We apply a conservative estimate of the competitive effects of aftermarket prices to extend the PCI study.

The meta-analysis methodology applied in the PCI study combines the results of existing studies to estimate a new result. It uses the following observations and assumptions to estimate the savings from using aftermarket crash parts.

1. According to the Certified Automotive Parts Association (CAPA),⁴⁴ aftermarket parts represent 20 percent of the total cosmetic crash parts market.

2. As a group, OEM parts are said to cost about 60 percent more than aftermarket parts.⁴⁵
3. The cost of labor for sheet metal is estimated to be about 25 percent of total auto body work.⁴⁶
4. There are roughly 22.5 million claims reflecting collision, property damage liability, comprehensive (excluding theft), and uninsured/underinsured motorist (property damage) coverages. Of these claims, 4.5 million involve non-OEM parts and 18.0 million involve OEM parts.
5. The current total vehicle damage loss dollars reflecting all crash parts are about \$53.41 billion. The cost of non-OEM parts and labor is estimated to be \$7.21 billion and the cost of OEM parts and labor is estimated to be \$46.20 billion.

While the PCI analysis assumes that aftermarket parts will be replaced with OEM parts at current prices, we take the next logical step from observed effects of market competition. Recall that competition from aftermarket manufacturers drove down the price of OEM crash parts by observed levels including 31 percent for the GM nose cover and 43 percent for the Toyota fender. It follows that removing competition from the market for automobile crash parts would send prices back to levels observed with less competition. If we assume a conservative 25 percent average increase in price, the model yields a substantially different number.

Assuming a 75 percent–25 percent distribution between parts cost and labor cost,⁴⁷ about \$5.41 billion is spent on aftermarket crash parts and \$34.65 billion is spent on OEM crash parts. First, we apply the 60 percent increase in cost from eliminating aftermarket parts. This increases the cost of crash parts by 60 percent of \$5.41 billion ($0.6 \times 5.41B = 3.25B$). The total cost of what used to be aftermarket parts becomes \$8.66 billion ($\$5.41B + \$3.25B = \$8.66B$).

The total cost of crash parts becomes \$43.31 billion ($\$8.66\text{B} + \$34.65\text{B} = \43.31B). Next, we include the assumption that the price of OEM crash parts increases in the absence of competition. If these prices increase by 25 percent, this yields total cost of \$54.14 billion ($1.25 \times \$43.31\text{B} = \54.14B). Thus, the total expected increase in the cost of crash parts from banning aftermarket parts would be a staggering 35 percent or \$14.08 billion ($\$54.14\text{B} - \$40.06\text{B} = \14.08B) per year.

Completing the analysis, we note that property damage losses paid by the affected coverage in 2006 equaled \$313 per insured vehicle. Therefore, a 35 percent increase in property damage losses would result in an increase of \$109 per insured vehicle.⁴⁸

To summarize, we find that the PCI study may have significantly underestimated the potential effect of banning the use of aftermarket parts. PCI's analysis does not take account of the expected effects of reduced competition on current prices of OEM crash parts. If we assume these prices would increase by 25 percent, it follows that insured losses for affected coverage would increase by 35 percent, or approximately \$14.08 billion. This translates to a \$109 annual increase in the cost of automobile insurance for each automobile.

Clearly, the cost of limiting competition in this market is large and, given observed levels of competition in insurance markets, it would undoubtedly be passed on to consumers as higher insurance premiums. Policymakers would be wise to consider these costs as they deliberate this important issue.

III. Judicial Responses to Insurers' Use of DRPs and Aftermarket Parts

Issues related to the use of both DRPs and aftermarket parts have been contested in the court system on various grounds. A careful review of judicial rulings provides further insight into the conflict between efforts to

protect the interests of some body shops and OEM parts manufacturers, and the ability of consumers to obtain information and exercise choice in the area of automobile insurance repairs.

Direct Repair Programs: "Anti-Steering" Laws versus the First Amendment

The First Amendment of the U.S. Constitution provides, in part, that "Congress shall make no law ... abridging the freedom of speech." While the First Amendment specifically applies to Congress, the U.S. Supreme Court has incorporated the First Amendment through the Fourteenth Amendment to apply to the states. The Court at one time held that the First Amendment's free speech clause applied only to "political speech" and did not protect "commercial speech." Eventually the Court extended First Amendment protection to commercial speech after recognizing the importance of this kind of speech in a modern economy. "It is a matter of public interest," the Court declared in a 1976 decision, "that economic decisions, in the aggregate, be intelligent and well informed. To this end, the free flow of commercial information is indispensable." The Court noted that a "particular consumer's interest in the free flow of commercial information ... may be as keen, if not keener by far, than his interest in the day's most urgent political debate."⁴⁹ The Court would emphasize this point again in a 1980 decision, observing that "commercial expression not only serves the economic interests of the speaker, but also assists consumers and furthers the societal interest in the fullest possible dissemination of information."⁵⁰

This is not to say that the freedom of commercial speech is unlimited, or that states can never restrict such speech. The Court has predicated the protection of commercial speech on the proposition that such speech is valuable to society to the extent that it disseminates knowledge, which is to say, truthful information. Thus, only commercial speech that contains truthful, non-misleading information is afforded protection.⁵¹

The Supreme Court at one time held that the First Amendment's free speech clause applied only to "political speech" and did not protect "commercial speech." Eventually the Court extended First Amendment protection to commercial speech after recognizing the importance of this kind of speech in a modern economy.

If insurers’ communication with policyholders about the benefits of having one’s vehicle repaired at a DRP shop is not false or deceptive, the presumption ought to be that it is protected under the First Amendment.

This suggests that when considering the constitutionality of so-called “anti-steering” laws that restrict the ability of insurers to communicate with policyholders about DRP shops and the benefits of having one’s vehicle repaired at such shops, the crucial question is whether the communication in question is false or deceptive. If it is not, the presumption ought to be that it is protected under the First Amendment. As one pair of commentators have observed, “When the government prohibits commercial speech that involves otherwise lawful activity and is neither false nor misleading, it faces a heavy burden to justify the action – a burden that anti-steering laws cannot sustain.”⁵²

The constitutional infirmity of anti-steering laws was well illustrated in a 1994 case involving Allstate Insurance Company and the state of South Dakota.⁵³ Here, an insurer successfully challenged a state law that prohibited insurers from recommending the use of a particular company for glass replacement or repair, as well as from informing insureds about the existence of a repair network. The court concluded that informing insureds about the existence of a repair network does not involve speech that is deceptive, false, or misleading. Therefore, the state had no legitimate interest that would justify banning it.

A similar result emerged more recently in another Allstate case,⁵⁴ which is now regarded as the leading case in anti-steering jurisprudence. In striking down a Texas law that prohibited an insurer from recommending that policyholders have their vehicles repaired at an insurer-owned body shop, the Fifth Circuit Court of Appeals wrote:

Consumers benefit from more, rather than less, information.

Attempting to control the outcome of the consumer decisions following such communications by restricting lawful commercial speech is not an appropriate way to advance a state interest in protecting consumers.⁵⁵

In sum, even as anti-steering laws have been introduced in more states, courts have increasingly indicated that these laws are likely to be found unconstitutional. They have rejected the arguments of those who claim that restrictions on the ability of insurers to communicate to insureds the availability of recommended body shops through the enactment of anti-steering laws is a valid means of “protecting consumers.” To the contrary, these governmental restrictions are counterproductive in that they prohibit consumers from receiving information from insurers about the most reputable shops that perform services at a high level of quality.

Insurer Use of Aftermarket Parts: Struggling to Enhance Market Competition

“The competitor to be feared is one who never bothers about you at all, but goes on making his own business better all the time.”
— Henry Ford⁵⁶

From 1903 until 1913, Henry Ford fought a vigorous legal battle against the Association of Licensed Automobile Manufacturers (ALAM) and its Selden patent. The Selden patent, shared by this alliance of established automobile manufacturers, claimed it had the right to patent vehicles powered by gasoline engines. Moreover, the ALAM claimed exclusive rights to license automobile manufacturers that were of sufficient quality to meet the needs of consumers. It refused to license Ford Motor Company and other start-up firms, thereby creating an oligopoly for its member companies. Henry Ford’s mission was to manufacture an affordable vehicle for the common person and break the ALAM cartel.⁵⁷

What a difference 100 years makes. Today, aftermarket parts manufacturers such as KLM have participated in a protracted legal dispute with Ford over Ford’s claim to hold design patents on replacement crash parts. Clearly, this scenario places Ford in

exactly the opposite position from the one it held a century ago; the namesake of the once heralded “monopoly buster” has become the monopolist fighting to suppress competition.

Automakers, abetted by class action plaintiff attorneys, have utilized a variety of legal strategies to lessen competition from aftermarket suppliers. These efforts and their ramifications for insurers and policyholders have been discussed at length in academic literature and legal journals. The claim most commonly made in litigation aimed at halting insurers’ use of aftermarket crash parts for insured auto repairs is that these parts are inferior to their OEM equivalents and therefore do not conform to standards requiring that insurers repair vehicles using parts that are of “like kind and quality” compared to OEM parts.

This was the basis of the complaint alleged in *Avery v. State Farm*,⁵⁸ a class action lawsuit that dragged on for years before finally being decided by the Illinois Supreme Court in 2005. At the trial and appellate court levels, the plaintiffs successfully argued that non-OEM parts are categorically inferior to OEM parts and that the insurer had breached contractual duties to its insureds by specifying non-OEM parts. On appeal, the Illinois Supreme Court⁵⁹ reversed the breach-of-contract ruling, finding that the trial court had erred in certifying a nationwide class whose members had claims that originated and were processed outside of Illinois. Thus, the judicially mandated use of OEM parts on a nationwide basis (by a state judge, no less), was avoided, as was the inevitable resulting increase in auto insurance costs.

Unlike the Illinois trial court in *Avery*, most state courts have found little merit in claims alleging that aftermarket crash parts are inferior to OEM parts. For example, an Arizona case was dismissed when the plaintiff failed to prove an aftermarket radiator was inferior or that he had sustained

damages.⁶⁰ In a similar Florida case, the court found no breach of contract or economic loss.⁶¹ Similar results were obtained in Massachusetts, Pennsylvania, Tennessee and Texas.⁶²

Auto manufacturers have a financial interest in not only limiting competition for frequently needed parts like fenders and hoods but also limiting the access of independent providers to the information, parts, and tools that automobile manufacturers make available to their authorized dealers.⁶³ As one commentator has noted, “Consumers have generally preferred independent mechanics over the OEM dealers for non-warranty work on their cars. OEMs, however, have strived to make dealers a more attractive option for consumers, partly as an effort to increase OEM sales of parts and tools.”⁶⁴ OEMs have had the ability to require dealers to use OEM parts, but not independents. While dealers have purchased 75 percent of their parts from OEM manufacturers, “less than one-fifth of the total parts purchase[d] by independent repair shops are assemblers’ ‘genuine’ parts for which there exist competitive alternatives.”⁶⁵ One important effect of independent shops’ preference for non-OEM parts is that it has constrained the ability of OEM manufacturers to raise prices.⁶⁶

Having failed in their attempts to limit or eliminate competition for replacement parts as outlined above, OEMs have also turned to design patent laws. The rationale for patent law is to encourage the creation of inventions. The inventor makes the invention public and in exchange obtains an exclusive right to the invention for a limited period of time. Inventions that are patentable include a process, machine, manufacture, composition of matter, improvements made to any such processes and products, certain plants and ornamental design for a product.⁶⁷ The use of ornamental design patents by OEM manufacturers to restrict competition from aftermarket cosmetic parts manufacturers raises the question of whether cosmetic crash parts are “ornamental” or “functional.” If the latter, they are generally not eligible for patent protec-

One important effect of independent shops’ preference for non-OEM parts is that it has constrained the ability of OEM manufacturers to raise prices.

Our economic and legal analyses of DRPs and aftermarket parts are consistent with the view that these practices benefit consumers.

tion. Federal legislation has been introduced in an attempt to clarify which parts are not eligible for patent protection. The Access to Repair Parts Act would amend Section 271 of Title 35 of the U.S. Code and provides a new subsection that states:⁶⁸

(a) It shall not be an act of infringement of any design patent to make, use, offer to sell, or sell within the United States or import into the United States any article of manufacture that itself constitutes a component part of another article of manufacture, if the sole purpose of the component part is for the repair of the article of manufacture of which it is a part so as to restore its original appearance.

(b) Applicability – The amendment made by subsection (a) applies to acts done on or after the date of the enactment of this Act.

The impetus for the Access to Repair Parts Act is the fact that original equipment manufacturers have in recent years obtained patents from the U.S. Office of Patents and Trademarks on some individual crash parts. The distinction between “ornamental” and “functional” design patents has been problematic, as illustrated in *Chrysler Motors Corp. v Auto Body Panels of Ohio*, in which a federal appeals court affirmed a decision that the crash parts at issue – fenders used on Chrysler’s Dodge Dakota trucks – had been “designed according to functional performance considerations as opposed to aesthetic or ornamental considerations and, therefore, that the validity of the . . . patent was called into serious question.” The court concluded that it had been persuasively shown that there was a likelihood that the fender “design is predominantly dictated by functional considerations and thus not eligible for design patent protection.”⁶⁹

Unable to obtain a monopoly through the courts or Congress, one OEM looked

for relief through the International Trade Commission (ITC). Ford sought an order under Section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) that would prohibit the importation of certain aftermarket automotive parts based upon alleged design patent infringements covering several “ornamental” features of the Ford F-150 truck. Similar action was sought with respect to Ford Mustang crash parts.

In December 2006, the ITC ruled that seven of 10 F-150 crash part patents had been infringed. In so holding, the ITC disallowed or ignored two important defenses. First, it disallowed the “functional” vs. “ornamental” attack on the validity of the patents that forms the basis of all the infringement cases in federal court. Thus, the ITC dismissed affirmative defenses of the defendants asserting the right to repair a “non-patented functional item (the complete vehicle).” Second, while ruling that three of the patents were invalid because of Ford’s public use of the designs on those parts, the court ignored evidence that Ford fraudulently obtained its patents on the other seven crash parts by intentionally withholding from the Patent and Trademark Office the fact of their prior public use. Such public use would invalidate those patents as well. Interestingly, the ITC office of Unfair Import Investigations (an independent party to the litigation representing the public interest) agreed with the defendants that all 10 patents were invalid, not infringed, and unenforceable. The result is monopolistic protection for Ford and the effective result will be less competition, less consumer choice and higher repair costs and insurance premiums for the consumer.

IV. Summary and Review

Our economic and legal analyses of DRPs and aftermarket parts are consistent with the view that these practices benefit consumers. We demonstrate that vigorous competition occurs in the automobile insurance industry. In our economic analysis

of DRPs, we explain that, contrary to the claims of some critics, DRPs do not affect competition in the auto body repair market to the detriment of consumers. In fact, it appears they likely do the opposite. Because insurance companies interact frequently with repair shops, they acquire knowledge and experience that allows them to ascertain which body shops are able to offer the best quality and service. Given that competition requires well-informed consumers, allowing insurers to share this knowledge with policyholders and claimants should increase the level of competition in body shop markets. We also show evidence consistent with DRPs creating comparative advantage for automobile insurers. Finally, we discuss other avenues by which DRPs likely reduce cost, such as by deterring insurance fraud.

Our economic analysis of aftermarket crash parts considers the cost-reducing effects of competition in this market. We extend an existing meta-analysis of the effects of banning aftermarket crash parts and find that eliminating aftermarket parts from the marketplace would increase the cost of

insured losses by 35 percent, or \$14.08 billion per year. This would increase the average U.S. automobile insurance premium by more than \$109 per year.

Our legal analyses of these topics suggests compelling legal and constitutional bases for allowing insurers to control cost and improve service provided to policyholders through the use of DRPs and aftermarket crash parts. We examine several leading court cases holding that the First Amendment's protection of commercial free speech includes the right of insurers to communicate truthful, non-deceptive information to claimants about DRPs. We conclude that on both constitutional and economic grounds, insurers should not be prohibited from sharing information with policyholders or claimants regarding preferred body shops.

Finally, we examine efforts to award design patent protection for OEM crash parts despite inconsistencies with U.S. law. Given the cost distortions that could potentially result from awarding these patents, our results support enactment of the Access to Repair Parts Act.

Eliminating aftermarket parts from the marketplace would increase the cost of insured losses by 35 percent or \$14.08 billion per year, and raise the average auto insurance premium by more than \$109 per year.

Table A.1
Laws and Regulations Affecting
Automobile Direct Repair Programs

Citation	Use of Specific Repair Shops	
	Cannot Require Use	No Specific Restriction Preventing Requirements
ALABAMA Ala. Admin. Code r. 482-1-125-.08		✓
ALASKA Alaska Admin. Code tit. 3, § 26.080		✓
ARKANSAS Ark. Reg. r 054 00 043	✓	
ARIZONA Ariz. Rev. Stat. § 20-469 Ariz. Admin. Code R20-6-801 Ariz. Regulatory Bulletin 2003-9	✓	
CALIFORNIA Cal. Ins. Code § 758.5 Cal. Code Regs. tit.10 § 2695.8	✓	
COLORADO Colo. Rev. Stat. § 10-4-120; Colo. Rev. Stat. § 10-4-613	✓ ¹	
CONNECTICUT Conn. Gen. Stat. § 38a-354; Conn. Gen. Stat. § 14-65f	✓	
DELAWARE Del. Code Ann. tit. 18 § 3916	✓ ²	
FLORIDA Fla. Stat. Ann. § 626.9743		✓
GEORGIA Ga. Code Ann. § 33-34-6	✓	
HAWAII Haw. Rev. Stat. § 431:10C-313.5		✓ ³
IDAHO No statutory or regulatory provision		
ILLINOIS 215 Ill. Comp. Stat. § 5/143.30 IL Bulletin 93-13 (11/04/1993) Ill. Admin. Code tit. 50 § 919.80	✓	
INDIANA No statutory or regulatory provision		
IOWA Iowa Bulletin 91-8 (11/01/1991)		✓ ⁴
KANSAS Kan. Sess. Laws. 40-2,155 KS Bulletin 1994-13 (06/29/1994)	✓ ⁵	

Table A.1 (cont'd)

Citation	Use of Specific Repair Shops	
	Cannot Require Use	No Specific Restriction Preventing Requirements
KENTUCKY Ky. Rev. Stat. Ann. § 304.9-470 806 Ky. Admin. Regs. § 12:095	✓	
LOUISIANA La. Rev. Stat. Ann. §. 22:1892; La. Rev. Stat. Ann. § 22:1966; La Directive 117 (02/02/1994)	✓	
MAINE Me. Rev. Stat. Ann. tit. 24-A § 2164-C Bulletin 171 (09/19/1990) Bulletin 284 (10/14/1998) Bulletin 336 (08/22/2005)	✓ ⁶	
MARYLAND Md. Ann. Code Ins. § 10-503 MD Notice 4-29-94 (04/29/1994)	✓	
MASSACHUSETTS Mass. Regs. Code tit. 211 § 56.05 Mass. Regs. Code tit. 211 § 123.06 Mass. Bulletin B-94-03 (04/15/1994) Mass. Bulletin B-97-02 (04/29/1997)		✓
MICHIGAN Mich. Comp. Laws § 500.2110b	✓	
MINNESOTA Minn. Stat. § 72A.201 Minn. Bulletin 99-1 (05/04/1999)	✓	
MISSISSIPPI Miss. Code Ann. § 83-11-501 Miss. Bulletin 98-7 (08/27/1998)	✓ ⁷	
MISSOURI Mo. Code Regs. Ann. tit. 20 § 100-1.050		✓
MONTANA Mont. Code Ann. § 33-18-221 Mont. Code Ann. § 33-18-224	✓ ⁸	
NEBRASKA Neb. Admin. Code Ch. 60 § 009		✓
NEVADA Nev. Admin. Code 686A.680		✓
NEW HAMPSHIRE N.H. Rev. Stat. Ann. § 417:4 N. H. Code Admin. R. Ann. INS 1002.17 N.H. Bulletin 99-014-AB	✓	
NEW JERSEY N.J. Stat. Ann. § 17:33B-36.1 N.J. Admin. Code § 11:2-17.10	✓ ⁹	

**Table A.1
Laws and Regulations Affecting
Automobile Direct Repair Programs (cont'd)**

Citation	Use of Specific Repair Shops	
	Cannot Require Use	No Specific Restriction Preventing Requirements
NEW MEXICO No statutory or regulatory provision		
NEW YORK N.Y. Ins. Law § 2610 11 N.Y. Comp. Codes R. & Regs. 216.7 N.Y. General Counsel Opinion 3-6-2002 N.Y. Circular Letter 2000-16 (05/10/2000)	✓	
NORTH CAROLINA N. C. Gen. Stat. § 58-3-180; N,C. Gen. Stat. § 58-33-76	✓	
NORTH DAKOTA N.D. Bulletin 83-2 (01/19/83)	✓	
OHIO Ohio Admin. Code § 3901-1-54	✓	
OKLAHOMA Okla. Stat. tit. 36 § 1250.8 Okla. Admin. Code § 365:15-3-8	✓	
OREGON Or. Rev. Stat. § 746.280	✓	
PENNSYLVANIA 31 Pa. Code § 146.8 31 Pa. Code § 62.3	✓	
RHODE ISLAND R.I. Gen. Laws § 27-9.1-4 R.I. Gen. Laws § 27-29-4 R.I. Code R. 02 030 073 R.I. Bulletin 2004-2 (Amended) (01/07/2005)	✓	
SOUTH CAROLINA S.C. Bulletin 3-2005 (12/16/2005) S.C. Bulletin 1-94 (01/11/1994)	✓	
SOUTH DAKOTA S.D. Codified Laws § 58-33-67 S.D. Codified Laws § 58-12-17 S.D. Codified Laws § 58-33-72	✓	
TENNESSEE Tenn. Code Ann. § 56-8-105		✓
TEXAS Tex. Ins. Code Ann. § 1952.301 Tex. Ins. Code Ann. § 1952.303 28 Tex. Admin. Code § 5.501	✓	
UTAH Utah Admin. Code R. 590-190		✓

Table A.1 (cont'd)

Citation	Use of Specific Repair Shops	
	Cannot Require Use	No Specific Restriction Preventing Requirements
VERMONT Vt. Code R. 21 020 008		✓
VIRGINIA 14 Va. Admin. Code 5-400-80		✓
WASHINGTON Wash. Admin. Code § 284-30-390 Wash. Admin. Code § 284-30-3902 Wash. Admin. Code § 284-30-3903	✓ ¹⁰	
WEST VIRGINIA W. Va. Code Ann. § 33-6D-1 W. Va. Code Ann. § 33-6D-3 W. Va. Code St. R. § 114-14-7	✓ ¹¹	
WISCONSIN Wis. Stat. Ann. § 632.37 Wis. Admin. Code § 6.08	✓ ¹²	
WYOMING No statutory or regulatory provision		

1. The Colorado statute is different from some of the other statutes in that rather than just saying insurers cannot require use of a specific shop, it states “directly or indirectly require that appraisals or repairs to the property be made or not made by a specified repair business.” CO ST § 10-4-120-(2)-(a).
2. Applies only to glass repair or replacement work. 18 Del.C. § 3916.
3. While the law does allow for DRP programs, the insurer does have to meet certain provisions including appropriate rate filings and offering a choice of “no less than two preferred repair providers to the claimant, if available.” HI ST § 431:10C-313.5.
4. While the administrative code in Iowa is not specific to glass replacement (IA ADC 191-15.43), the IA Bulletin 91-8 issued in 1991 does relate to just the process related to glass. It provides more explicit details related to warranty requirements in the event an insurer requires the use of a specific glass repair shop.
5. Only applies to glass replacement, repair, and products.
6. The Maine statute specifically relates to motor vehicle glass. However, Bulletin 336 (08/22/2005) extends to all motor vehicle collision damage appraisals or repairs.
7. There are some restrictions on amounts that an insurer is required to pay for glass repair related to the lowest price related to contractor’s prices in a given area.
8. MT ST § 33-18-221 relates only to glass replacement while MT ST § 33-18-224 relates to automobile body repair business in general.
9. While the insurer cannot require the use of a specific repair facility, it can require that the shop selected by the claimant agree to the same terms and conditions of the shop with which the insurer has the most generous arrangement (NJ ST § 17:33B-36.1).
10. While the administrative codes provide that the insurer may not require that the insured use a specific shop, the code does outline the procedure for settling a claim if the insurer and insured do not agree. Part of this includes language that suggests that the insured may be liable for part of the cost if they go to a repair facility that costs more than the insurer’s estimate.
11. The West Virginia statutes WV ST § 33-6D-1 and ST § 33-6D-3 refer only to glass. There is however WV ADC § 114-14-7 that is not glass specific.
12. WI ST 632.37 does specifically relate to glass coverage.

Table A.2
Summary of Laws and Regulations Affecting Aftermarket Parts

Citations	Identification of Non-OEM Parts on Estimate	Disclosure Statement	Quality Requirement	Identifying Information on non-OEM Part	Consent of Owner for Use	Warranty*
ALABAMA Ala. Code §§ 32-17A1 to 32-17A3	✓	✓		✓		✓ i
ALASKA No statutory or regulatory provision						
ARKANSAS Ark. Code Ann. §§ 4-90-302 to 4-90-307	✓	✓		✓	✓ ¹	✓ i
ARIZONA Ariz. Rev. Stat. §§ 44-1291 to 44-1294	✓	✓		✓		✓ i
CALIFORNIA Cal. Ins. Code § 1874.87 Cal. Ins. Code § 758.5 Cal. Ins. Code § 790.06 Cal. Bus. & Prof. Code §§ 9875 to 9875.2	✓	✓				✓ i
COLORADO Colo. Rev. Stat. §§ 10-3-1302 to 10-3-1307 Colo. Rev. Stat. Ann. § 42-9-107 to 108	✓	✓		✓		✓ i
CONNECTICUT Conn. Gen. Stat. § 38a-355; § 38a-364	✓	✓				
DELAWARE No statutory or regulatory provision						
FLORIDA Fla. Stat. §§ 501.30 to 501.34	✓	✓				✓ i
GEORGIA Ga. Code Ann. § 33-6-5(13) (A)-(C) Ga. Comp. R. & Regs. r 120-2-52-.05	✓	✓		✓		✓ i
HAWAII Haw. Rev. Stat. Ann. § 431:10C-313.6		✓	✓		✓ ²	✓
IDAHO Idaho Code §§ 41-1328A to 41-1328D	✓	✓		✓		✓ i
ILLINOIS 215 Ill. Comp. Stats. 5/155.29	✓	✓		✓		✓ i
INDIANA Ind. Code § 27-4-1.5-1 to 27-4-1.5-13		✓			✓ ³	
IOWA Iowa Code § 537B.4 Iowa Admin. Code r. 191-15.45(507B)	✓	✓		✓		✓ i
KANSAS Kan. Stat. Ann. § 50-660 to -664	✓	✓				✓ i
KENTUCKY 806 Ky. Admin. Regs. § 12:095, Section 8(4)			✓			
LOUISIANA La. Rev. Stat. Ann. § 51:2421 et seq. LA Directive 143	✓	✓				✓ i
MAINE 29-A Me. Rev. Stat. § 1804-1804					✓	

Table A.2 (cont'd)

Citations	Identification of Non-OEM Parts on Estimate	Disclosure Statement	Quality Requirement	Identifying Information on non-OEM Part	Consent of Owner for Use	Warranty*
MARYLAND Md. Ann. Code Ins. § 27-906 Md. Com. Law Ann § 14-2301-2304						✓ i
MASSACHUSETTS Mass. Ann. Laws ch. 90 § 34R 211 Code Mass. Regs. 133.04	✓	✓				✓ i
MICHIGAN Mich. Comp. Laws § 257.1361 et seq.	✓	✓				✓ i
MINNESOTA Minn. Stat. Ann. §§ 72B.091 325F.60		✓				
MISSISSIPPI Miss. Code Ann. § 63-27-1 et seq.	✓	✓		✓		✓ i
MISSOURI Mo. Rev. Stat. § 407.295 Mo. Code Regs. Ann. tit. 20, 100-1 et seq.	✓	✓		✓		✓ i
MONTANA No statutory or regulatory provision						
NEBRASKA Neb. Admin. R. tit. 210 ch. 45-001 et seq.	✓	✓	✓	✓		
NEVADA Nev. Rev. Stat. § 679B.130 Nev. Admin. Code § 686A.240		✓				✓ i
NEW HAMPSHIRE N.H. Rev. Stat. Ann. 407-D:1 to 407-D:5 Insurance Bulletin of 5/598 Insurance Bulletin of 9/20/99	✓	✓	✓	✓		
NEW JERSEY N.J. Rev. Stat. § 11:2-17.10(a)(10)-(13)	✓	✓	✓	✓	✓ ⁴	
NEW MEXICO N.M. Admin. Code tit. 12 § 12.2.6.12	✓	✓				
NEW YORK N.Y. Comp. Codes R. & Regs. Tit. 11 § 216.7	✓		✓		✓ ⁵	✓
NORTH CAROLINA N.C. Gen. Stat. §§ 58-36-95 and 58-36-41 11 N.C. Admin. Code 04.0425 to 04.0427		✓	✓			✓ i
NORTH DAKOTA No statutory or regulatory provision						
OHIO Ohio Rev. Code Ann. § 1345.81; Ohio Admin. Code § 3901-1-54	✓	✓		✓		✓ i
OKLAHOMA Okla. Stat. tit. 15 §§ 953 to 956	✓	✓		✓		✓ i
OREGON Or. Rev. Stat. Ann. §§ 746.287 to 746.292 Or. Admin. R. 836-080-0240		✓	✓		✓ ⁶	✓

Table A.2
Summary of Laws and Regulations Affecting Aftermarket Parts (cont'd)

Citations	Identification of Non-OEM Parts on Estimate	Disclosure Statement	Quality Requirement	Identifying Information on non-OEM Part	Consent of Owner for Use	Warranty*
PENNSYLVANIA 62 P.A. Cons. Stat. § 62.3 and § 177.502	✓	✓	✓			✓ ⁷
RHODE ISLAND R.I. Gen. Laws §§ 27-10.2-1 to 27-10.2-3 Code R.I. R. r. 02-030-042		✓ ⁸	✓		✓ ⁸	
SOUTH CAROLINA No statutory or regulatory provision						
SOUTH DAKOTA S.D. Codified Laws Ann. §§ 58-33-70 to 58-33-71 and § 32-15-35, 36	✓	✓		✓		✓ ⁱ
TENNESSEE Tenn. Comp. R. & Regs. 0780-1-59-.01 et. seq.	✓	✓		✓	✓ ⁹	✓ ⁱ
TEXAS Tex. Ins. Code Ann. § 1952.301 -.307						
UTAH Utah Code Ann. § 31A-22-316 to 31A-22-319	✓	✓		✓		✓ ⁱ
VERMONT No statutory or regulatory provision						
VIRGINIA Va. Code Ann. § 38.2-510C § 59.1-207.5		✓	✓			
WASHINGTON Wash. Rev. Code § 46.71.015, .025	✓	✓				
WEST VIRGINIA W.Va. Code §§ 46A-6B-1 to 46A-6B-6	✓	✓	✓		✓ ¹⁰	✓ ⁱ
WISCONSIN Wis. Stat. § 632.38	✓	✓				✓ ⁱ
WYOMING Wyo. Ins. Regs. Ch. 19	✓	✓	✓	✓		

* ✓ = must provide warranty

✓ⁱ = must notify that if warranty provided, not by OEM or that use of non-OEM may invalidate existing warranties.

1. Consent required if vehicle under warranty.
2. Consent required; insurer must pay for OEM parts if requested and warranty requires the use of OEM parts.
3. Consent required; the insurer must pay for OEM parts if requested on current year vehicles and those within five years of model year.
4. Consent required if the non-OEM if part is not warranted.
5. Consent required if repair uses non-OEM crash parts from more than three different suppliers.
6. Consent required if part is not certified by an independent testing facility.
7. Warranty only required if the use of the non-OEM parts voids existing warranty.
8. Only applies if vehicle is less than 30 months beyond the date of manufacture.
9. Consent required if vehicle is current year or last year model.
10. Consent required if vehicle is current year or within two years of model year.

Endnotes

¹ Insurance Information Institute/ISO.

² Statistics from the SNL database based on the National Association of Insurance Commissioners Property-Casualty Insurance database.

³ Property Casualty Insurers Association of America, "Analysis of the Impact of Banning Aftermarket Parts," January 19, 2009. Paper available at: [http://www.pciaa.net/web/sitehome.nsf/lcpublic/394/\\$file/AftermarketPartsPaper0109.pdf](http://www.pciaa.net/web/sitehome.nsf/lcpublic/394/$file/AftermarketPartsPaper0109.pdf). Accessed online February 2010.

⁴ IBIS World publishes business intelligence reports on more than 700 U.S. industries. View its website at: www.ibisworld.com.

⁵ For the percentage of auto body shops participating in DRPs, see "Purchasing Profile," *Body Shop Business*, May 2009. Accessed online February 2010 at: http://www.bodyshopbusiness.com/Content/Site303/ContentBlocks/3063purchasing0_00000020867.pdf and IBIS World.

⁶ See 2009 Industry Statistics at *Body Shop Business* (2010).

⁷ Donna Lawrence, "Managed' Insurance May Bleed Dealer Profits," *Automotive News*, January 8, 1996, pg. 8.

⁸ See note 6.

⁹ Jean-Marc Bourgeon, Pierre Picard and Jerome Pouyet, "Providers' Affiliation, Insurance and Collusion," *Journal of Banking and Finance*, vol. 32 (2008), pp. 170-186.

¹⁰ See Arizona House Bill 2463. Such schemes occur commonly in body shops across the country. For example, California authorities arrested 53 body shop employees in a single 2010 sting operation for committing these crimes. See, "California DA Charges 53 Body Shop Employees with Insurance Fraud in Sting Operation," *Body Shop Business*, June 7, 2010. Accessed online July 31, 2010, at: http://www.bodyshopbusiness.com/Article/74343/california_da_charges_53_body_shop_employees_with_insurance_fraud_in_sting_operation.aspx.

¹¹ A fiscal analysis of California Assembly Bill 1200 can be found at: http://www.leginfo.ca.gov/pub/09-10/bill/asm/ab_1151-1200/ab_1200_cfa_20090908_204708_asm_floor.html.

¹² Sean Carr, "Connecticut Governor Signs Insurer-Backed Steering Bill," *BestWire*, May 27, 2008.

¹³ The Auto Body Association of Rhode Island is a formidable lobbying organization in the Rhode Island Legislature. View its website at: <http://www.autobodyassociationri.com/>.

¹⁴ See Paul Tetrault, "Taking stock of 2010 state legislative sessions," *American Agent & Broker*, August 9, 2010. View article at: <http://www.agentandbroker.com/Issues/2010/August-2010/Pages/Taking-stock-of-2010-state-legislative-sessions.aspx>.

¹⁵ NAIC statistics, see note 2.

¹⁶ The vice chairman of the House committee responsible for this bill is the son of the president of the Auto Body Association of Rhode Island.

The secretary of the committee owns a body shop. Neither member recused himself from the discussion or the vote.

¹⁷ Cosmetic crash parts are generally made of sheet metal or plastic and installed on the exterior of a motor vehicle. These parts include bumper components, hoods, doors, fenders and trunk lids. Crash parts exclude mechanical parts such as batteries, filters, shock absorbers and spark plugs.

¹⁸ This information was compiled by the Automotive Aftermarket Industry Association. View its website at: <http://www.aftermarket.org/>.

¹⁹ The information mentioned here is from a study published by the Alliance for American Insurers in 2009.

²⁰ PCI study, see note 3.

²¹ General Accounting Office, "NHTSA's Ability to Detect and Recall Defective Replacement Crash Parts Is Limited," Report to Congressional Requesters, January 2001.

²² *Body Shop Business*, see note 6.

²³ Insurance Information Institute, "Generic Auto Crash Parts," May 2010. Accessed online June 2010 at: http://www.iii.org/issue_updates/generic-auto-crash-parts.html.

²⁴ PCI study, see note 3.

²⁵ See the Certified Automotive Parts Association website at: <http://www.capacertified.org/home.asp>. Accessed online April 2010.

Endnotes (cont'd)

²⁶ Watch video of this test at <http://www.qualitypartscoalition.com/video/camry1.MPG>.

²⁷ Insurance Institute for Highway Safety, "Cosmetic Repair Parts Irrelevant to Safety," Status Report, Vol. 35(2), February 19, 2000.

²⁸ Ibid.

²⁹ Ibid.

³⁰ National Association of Insurance Commissioners, "After Market Parts Model Regulation," NAIC Model Laws, Regulations and Guidelines, Model Act 891, June 1987.

³¹ Ted Goodman, "The Forbes Book of Business Quotations: 10,000 Thoughts on the Business of Life," London: Black Dog Publishing, 2007.

³² See Paul L. Joskow, "Cartels, Competition and Regulation in the Property-Liability Insurance Industry," *Bell Journal of Economics*, Vol. 4(2), (1973) pp. 375-427, and Lawrence S. Powell, "The Assault on the McCarran-Ferguson Act and the Politics of Insurance in the Post-Katrina Era," *Journal of Insurance Regulation*, 26, 3: 3-21. Spring 2008.

³³ Authors' calculations using NAIC InfoPro database. This database contains the statutory annual statement accounting data that are filed with the NAIC by virtually all insurers in the U.S. These data are used with permission of the NAIC. The NAIC does not endorse any analysis or conclusions based upon the use of its data.

³⁴ Kerry Capell, "Test-Driving Managed Care for Your Car," *Business Week*, October 23, 1995, pg. 134.

³⁵ Ibid.

³⁶ See J.D. Power and Associates, Collision Repair Satisfaction Survey (2006).

³⁷ Bourgeon, et al., see note 9.

³⁸ See National Insurance Crime Bureau, "Putting a Dent in Collision Repair Fraud." Available from https://www.nicb.org/theft_and_fraud_awareness/fact_sheets, accessed online September 8, 2010.

³⁹ Some evidence suggests that U.S. automobile manufacturing markets were not competitive before the entrance of Japanese manufacturers. See, Bradford C. Snell, "Annual Style Change in the Automobile Industry as an Unfair Method of Competition," *Yale Law Journal*, 80:567 (1971).

⁴⁰ See John C. Bratton and Stephen M. Avila, "After-Market Crash Parts: An Analysis of State Regulations," *Journal of Insurance Regulation*, 18 (2) 1999, pp. 150-176.

⁴¹ For example, the companies that manufacture and distribute aftermarket crash parts have experienced several mergers and acquisitions. Many of them operate in multiple industries and domiciles.

⁴² Meta-analysis is a quantitative approach in which individual study findings addressing a similar problem are integrated and analyzed to estimate the effectiveness of interventions.

⁴³ PCI study, see note 3.

⁴⁴ Information obtained from "Fact Sheet: Generic Auto Crash Parts," www.genericautoparts.net/fact_sheet.htm.

⁴⁵ Alliance of American Insurers (now part of the PCI).

⁴⁶ PCI, based on data obtained from U.S. Department of Treasury "Market Segment Specialization Program: Auto Body and Repair Industry," August 1995, (p. 35), www.irs.gov/pub/irs-mssp/autobody.pdf.

⁴⁷ PCI study, see note 3.

⁴⁸ NAIC Auto Insurance Database Report, 2009.

⁴⁹ See *Virginia Board of Pharmacy v. Virginia Citizens Consumer Council, Inc.* 425 U.S. 748 (1976).

⁵⁰ See *Central Hudson Gas and Electric Corp. v. Public Service Commission*, 447 U.S. 557 (1980).

⁵¹ 44 *Liquormart, Inc. v. Rhode Island*, 517 U.S. 484, 497 (1996), as cited in Orrin L. Harrison, III and J. Carl Cecere, Jr., "'Anti-Steering' Insurance Laws: State Censorship of Consumer Information Treads on First Amendment Rights," *Washington Legal Foundation*, February 26, 2010.

⁵² Harrison and Cecere, *ibid.*

⁵³ See *Allstate v. State of South Dakota*, 871 F. Supp. 355 (1994).

⁵⁴ *Allstate v. Abbot* 495 F.3d 151 (2007).

⁵⁵ *Ibid.*

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⁵⁶ Goodman (2007), see note 31.

⁵⁷ Allan Nevins and Frank Ernest Hill, "Ford: The Times, The Man, The Company." New York: Charles Scribners' Sons, 1954.

⁵⁸ *Avery v. State Farm* No. 97-L-114, Ill. Cir. Ct. October 8, 1999.

⁵⁹ See 216 Ill. 2d 100; 835 N.E. 2d 801 (2005).

⁶⁰ See *Kenner v. Government Employees Insurance Company*, No. CV 99015220 Ariz. Supreme Ct., February 18, 2000.

⁶¹ *Clayton v. State Farm*, 729 So. 2d 1012, 1013 (Fla. 3d DCA 1999).

⁶² See, Matthew Rearden, "OEM or Non-OEM Automobile Replacement Parts: The Solution to *Avery v. State Farm*," 28 *Florida State University L. Rev.*, 543 (2001).

⁶³ For a discussion of the access of independent service providers, see Norman W. Hawker, "Under Threat: Competition in the Automotive Service Aftermarket." AAI Working Paper #08-05, November 13, 2008.

⁶⁴ *Ibid.*

⁶⁵ *Ibid.*

⁶⁶ *Ibid.*

⁶⁷ See Jane P. Mallor, et al., "Business Law: The Ethical, Global, and E-Commerce Environment," 12th edition, New York: McGraw-Hill Higher Education, 2004, 190.

⁶⁸ The Access to Repair Parts Act (S. 1368) has been read twice and referred to the Senate Committee on the Judiciary (for full text of the bill, see <http://www.opencongress.org/bill/111-s1368/show>). The House companion bill, H.R. 3059, has been referred to the House Committee on the Judiciary (for full text of the bill see http://www.opencongress.org/bill/111-h3059/actions_votes).

⁶⁹ *Chrysler Motors Corp. v. Auto Body Panels of Ohio, Inc.*, 908 F.2d 951 Fed. Cir.1990.

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