

**IN THE MATTER OF:**

**Carfax, Inc. and CARFAX Total Loss Valuation Service Application**

**Mitchell International, Inc.’s  
Written Comments Regarding  
Carfax, Inc. and CARFAX Total Loss Valuation Service Application and Public Hearing**

Mitchell International Inc. (“Mitchell”) submits these written comments pursuant to the request and timeline established by Hearing Officer Warren at the May 4, 2020 Teleconference Hearing in the above-captioned matter. Mitchell contends that applications for products such as Mitchell’s WorkCenter Total Loss product (“WorkCenter”) and other qualifying web-based products (collectively, WorkCenter and other qualifying web-based valuation services are referred to herein as the “Web-Based Valuation Services”) should be eligible for approval for use as a Total Loss Valuation Service in Rhode Island under R.I. Gen. Laws § 27-9.1-4(25) and 23-RICR-20-40-2.8(A)(2).

**BACKGROUND**

On February 18, 2018, Mitchell submitted a filing to the Rhode Island Division of Insurance of the Department of Business Regulation (the “Department”) seeking approval of WorkCenter as a Total Loss Valuation Service in Rhode Island under R.I. Gen. Laws § 27-9.1-4(25) and 23-RICR-20-40-2.8(A)(2). In response, the Department issued an Order Appointing Hearing Officer and Notice of Solicitation of Public Comment and Hearing regarding relating the WorkCenter application. A public hearing was held on April 12, 2018 (the “Mitchell Hearing”). On June 14,

2018, Hearing Officer Warren issued a Decision recommending that the WorkCenter application be denied (the “Mitchell Decision”). Mitchell believed then, and continues to believe now, that the reasoning behind the Mitchell Decision was flawed and that Web-Based Valuation Services such as WorkCenter should be eligible for approval for use as a Total Loss Valuation Service in Rhode Island under R.I. Gen. Laws § 27-9.1-4(25) and 23-RICR-20-40-2.8(A)(2).

### **I. CRITERIA FOR APPROVAL AS A TOTAL LOSS VALUATION SERVICE**

The Rhode Island Department of Insurance of the Department of Business Regulation (the “Department”) has articulated a clear standard of review for the Hearing Officer to apply in its consideration of Total Loss Valuation Service applications. Specifically, in accordance with Rhode Island General Laws § 27- 9.1-4, 23-RICR-20-40-2.8(A)(2) and Insurance Bulletin 2014-2, the three-part standard of review is: (i) whether the applicant is a nationally recognized compilation of motor vehicle values; (ii) whether the applicant is commonly used by the automotive industry to establish values of motor vehicles; and (iii) whether the applicant applies arbitrary deductions taken from comparable vehicle values when calculating the total loss value. The Auto Body Association of Rhode Island (“ABARI”) likewise expressed in its comments in connection with the Mitchell Hearing, that the analysis “starts and ends” with a determination of whether the Total Loss Valuation Service satisfies this standard. To date, the two valuation products approved by the Department are National Automobile Dealers Association Used Car Guide (“NADA”)<sup>1</sup> and Kelly Blue Book (“KBB”). The Department has not approved any Web-Based Valuation Services for use as a Total Loss Valuation Service in Rhode Island. For the reasons discussed herein, certain Web-Based Valuation Services such as WorkCenter unequivocally satisfy this standard and, therefore, should be approved for use as a Total Loss Valuation Service in Rhode Island.

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<sup>1</sup> NADA Used Car Guide is now J.D. Power Valuation Services, see [www.nada.com/b2b/WhyNADAValues.aspx](http://www.nada.com/b2b/WhyNADAValues.aspx).

**a. A Web-Based Valuation Services can be a Nationally Recognized Compilation of Motor Vehicle Values**

WorkCenter is an example of a Web-Based Valuation Service that qualifies as a “nationally recognized compilation” of motor vehicle values. The WorkCenter comparable vehicle database is a compilation of data from industry leading and nationally recognized sources of data and information to the auto industry (including consumers, dealerships, manufacturers, repair facilities, insurers, and car rental companies) on the retail sale and list prices of new and used automobiles. The sources of this data, which is used to produce WorkCenter comparable vehicle reports and valuations, include Power Information Network from J.D. Power and Associates (“P.I.N.”), Mannheim Auto Auctions, AutoTrader.com, Cars.com, TrueCar, and Vast. Each of the sources of data is, standing alone, a nationally recognized data source. Together, these data sources are even more powerful. The following publicly available statements describe each of these sources:<sup>2</sup>

- P.I.N. “provides real-time automotive information and decision-support tools based on the collection and analysis of daily new- and used-vehicle retail transaction data from thousands of automotive franchises”.
- AutoTrader.com “is the only website with more than 3 million vehicle listings from 40,000 dealers and 250,000 private owners. We provide the largest selection of vehicles and attract more than 14 million qualified buyers each month.”
- Cars.com is a “leading digital marketplace and solutions provider for the automotive industry that connects car shoppers with sellers. Launched in 1998 and headquartered in Chicago, the Company empowers shoppers with the data, resources and digital tools

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<sup>2</sup> These statements were pulled directly from websites for the identified entities. *See*, <http://www.jdpower.com/solutions/power-information-network-pin>; <https://www.autotrader.com/about/index.xhtml>; <https://investor.cars.com/news/press-release-details/2020/Most-Watched-Sporting-Event-Translates-to-a-Big-Win-for-Carscom-As-Car-Shoppers-Drive-554-Spike-in-Site-Traffic/default.aspx>; [https://www.truecar.com/about\\_us.html](https://www.truecar.com/about_us.html); <https://www.carstory.ai/enterprise/>; and <https://publish.mannheim.com/en/about-mannheim.html>.

needed to make informed buying decisions and seamlessly connect with automotive retailers.”

- TrueCar.com is a “digital automotive marketplace [that] helps car shoppers consider choices from every angle . . .”. TrueCar powers car-buying programs for over 250 leading brands, including USAA, Sam’s Club, and American Express. Nearly half of all new-car buyers engage with TrueCar powered sites, where they buy smarter and drive happier.”
- Vast “drives innovation across the automotive retail ecosystem with the industry’s most comprehensive and accurate view of local retailing data and AI-powered market & vehicle insights.”
- Manheim is “North America’s leading provider of vehicle remarketing services, connecting buyers and sellers to the largest wholesale used vehicle marketplace and most extensive auction network. Through 125 traditional and mobile auction sites and a robust digital marketplace, the company helps dealer and commercial clients achieve business results by providing innovative end-to-end inventory solutions. Approximately 18,000 employees enable Manheim to register about 8 million used vehicles per year, facilitate transactions representing nearly \$57 billion in value and generate annual revenues of more than \$2.6 billion.”

Using the data from these nationally recognized sources, WorkCenter creates an up-to-date comprehensive comparable vehicle database of new and used car retail listings. WorkCenter then uses statistically validated algorithms to select vehicles from its comprehensive database that most closely match the loss vehicle within the specific geographic area of the loss vehicle to create a total loss valuation.

The collaborative efforts described above unequivocally result in a “nationally recognized compilation” of motor vehicle values. The fact that this compilation is available electronically does not negate that it is such a compilation. In its 2018 comments in connection with the Mitchell Hearing, the Department acknowledged that the definition of “compilation” is not restricted to a paper format and includes an electronic compilation. As noted by the Department in these comments, like WorkCenter, the two valuation products approved by the Department, NADA and KBB, are used by both insurers and consumers in an electronic format. In fact, KBB is only available in electronic format. Furthermore, like WorkCenter, NADA and KBB are both compilations of other nationally recognized compilations and sources of vehicle value data - only Mitchell captures such data on such a frequent basis.

**b. Web-Based Valuation Services are Used by the Automotive Industry to Establish Values of Motor Vehicles**

The second part of the Department’s standard asks whether the Valuation Service is “commonly used by the automotive industry to establish values of motor vehicles”. Web-Based Valuation Services are in fact used by the automotive industry to establish values of motor vehicle. Like NADA and KBB, WorkCenter is commonly used by a critical segment of the automotive industry - specifically the automobile *rental* industry - to determine the fair market value of total loss vehicles. Mitchell agrees with the Departments’ interpretation (as stated in Insurance Bulletin 2014-2) that the term “automotive industry” certainly includes entities that actually sell automobiles. Notably, nothing in § 27-9.1-4(25), 23-RICR-20-40-2.8(A)(2) or Bulletin 2014-2 requires the entity’s business activities be exclusively limited to the sale of automobiles. Rather, the question is whether the entity actually sells automobiles.

WorkCenter, for example, is commonly used by the automobile rental industry in its capacity as sellers of automobiles. In addition to renting automobiles, the automobile industry is both an active purchaser and seller of automobiles. In the first quarter of 2020, automakers sold 550,000 vehicles to rental-car companies. All of the major automobile rental companies (e.g., Hertz, Enterprise, Avis and Dollar Thrifty) are actively involved in the direct marketing and sale of vehicles to consumers. Each of these companies engages in robust advertising of its sales operations.<sup>3</sup> In fact, a significant part of the automobile rental industry's revenue is the direct sale of vehicles. According to the annual reports of these companies, automobile rental companies typically hold their vehicles for anywhere between 4 and 22 months, with an average holding period of 13 months. It is estimated that, each year, automobile rental companies turn over roughly 92% of their respective vehicle inventories through vehicle sales - including direct sales to consumers. In doing so, automobile rental companies thus squarely fit within even a narrow definition of "automotive industry" that is limited to entities engaged in the actual sale of vehicles. Accordingly, WorkCenter is used by entities actively engaged in the sale of automobiles to consumers.

**c. WorkCenter Does Not Apply Arbitrary Deductions Taken from Comparable Vehicle Values when Calculating the Total Loss Value**

The third part of the Department's standard asks whether the applicant applies arbitrary deductions taken from comparable vehicle values when calculating a total loss value as such arbitrary deductions are prohibited by Rhode Island. 230-RICR-20-40-2.8(A)(4)(b). While Mitchell cannot speak to what other Web-Based Valuation Services do, with respect to WorkCenter, the answer to this question is "no". Following its review of WorkCenter's

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<sup>3</sup> See, <https://www.hertzcarsales.com>; <https://www.enterprisecarsales.com>; <https://www.aviscarsales.com>; and <https://thriftycarsales.com/home>.

application in 2018, the Department determined that WorkCenter did not apply arbitrary deductions to valuations and that the Department would not oppose Mitchell's application for approval of WorkCenter for use as a Total Loss Valuation Service in Rhode Island.

## II. OTHER CONSIDERATIONS

It is worth noting that, in the Mitchell Decision, Hearing Officer Warren included some discussion regarding the requirement that “current” and “updated” editions of a nationally recognized compilation of “retail” values are used. Concerns regarding timeliness seem misplaced in the context of Web-Based Valuation Services such as WorkCenter which, unlike the historically-used physical editions which are updated/re-printed on a periodic basis, are updated continuously - in as close to real-time as possible. WorkCenter essentially represents a “daily edition” of values. Concerns regarding whether Web-Based Valuation Services represent a national compilation of *retail* values are also unfounded, at least with respect to WorkCenter, as even Hearing Officer Warren herself conceded that 97% of WorkCenter’s values are in fact retail values derived from automobile dealers.

As indicated by both the Department in its written comments and ABARI in their respective statements in the Mitchell Hearing, the analysis to be applied by the Hearing Officer in the review of a Web-Based Valuation Service starts and ends with a determination of whether the Total Loss Valuation Service in question is: (i) a nationally recognized compilation of motor vehicle values; and (ii) commonly used by the automotive industry to establish values of motor vehicles. Any other factors, unfounded criticisms or theoretical concerns raised by ABARI or others are simply a distraction from this analysis.

**CONCLUSION**

For the reasons discussed herein, Mitchell respectfully requests that the Department approve applications for qualifying Web-Based Valuation Services for use as a Total Loss Valuation Service in Rhode Island under R.I. Gen. Laws § 27-9.1-4(25) and 23-RICR-20-40-2.8(A)(2).

RESPECTFULLY SUBMITTED:

Mitchell International, Inc.

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DocuSigned by:  
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Debbie Day

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**CERTIFICATION**

I hereby certify that on this 5<sup>th</sup> day of May, 2020, a copy of these comments were emailed and/or submitted electronically via Web Transfer Client to:

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