

**STATE OF RHODE ISLAND
RHODE ISLAND DEPARTMENT OF BUSINESS REGULATION
INSURANCE DIVISION**

**AUTO BODY ASSOCIATION OF RHODE ISLAND'S OBJECTION TO MITCHELL INTERNATIONAL,
INC.'S PETITION FOR APPROVAL PURSUANT TO INSURANCE REGULATION 230-RICR-20-40-2**

Mitchell International, Inc. (Mitchell) four (4) years after the implementation of R.I. Gen. Laws §27-9.1-4(25), and for the second time, (Mitchell's original request for approval was denied in 2104), has requested its WorkCenter Total Loss product be approved as a method to be used by insurers to determine the retail value of total loss vehicles in property damage claims. The Auto Body Association of Rhode Island (ABARI) objects to Mitchell's petition as it again fails to meet the requirements of R.I. Gen. Laws §27-9.1-4(25).

I. BACKGROUND

R.I. Gen. Law §27-9.1-4(25) was enacted to ensure that Rhode island consumers are reimbursed a fair amount for their vehicles when deemed a total loss by an insurance company. The Legislature determined the consumer' interest significant enough to place the regulated conduct in the Unfair Claims Settlement Practices Act. In doing so, it removed the insurer-based valuation products, such as Mitchell from the claims process, as such products were demonstrated to be easily manipulated and result in significantly lower vehicle values than those properly established by the automotive industry. The Department, in Insurance Bulletin 2014-2, noted the historic difficulty consumers had experienced with insurer-based valuations: "Over the past decade the Department has been presented with numerous consumer complaints concerning the amount consumers are offered by insurers for total losses. In

virtually every situation, the conflict results from arbitrary deductions taken from comparable vehicle values when calculating the total loss." The Legislature's solution to the valuation issue was to pass the specific requirements found in R.I. Gen. Law §27-9.1-4(25).

II. ANALYSIS

A. R.I. Gen. Law §27-9.1-4(25) requires insurers to use the "fair market value" of a vehicle when processing total loss claims.

R.I. Gen. Law §27-9.1-4(25)(i) defines "fair market value" as "...the retail value of a motor vehicle as set forth in a current edition of a nationally recognized compilation of retail values commonly used by the automotive industry to establish values of motor vehicles."

The terms used in this definition are clear and unambiguous and are not subject to more than one interpretation.

i) "Retail Value"

The "retail" value of an item is defined as "the price of a good or product when it is sold to the end-user for consumption, not for resale through a third-party distribution channel." (Businessdictionary.com); or "to sell in small quantities directly to the ultimate consumer." (Merriam-Webster). Therefore, the retail value of a vehicle is the value sold in the normal chain of commerce, i.e. auto dealers, which excludes wholesale or trade-in values. The National Automobile Dealer's Association Guidebook (NADA), and the Kelly Blue Book, which have been approved by the Department, are Rhode Island's automotive industry's "go-to" for establishing retail vehicle values. In contrast, Mitchell's WorkCenter Total Loss program uses on-line sites

that list classified ads for vehicles for sale, such as TrueCar and cars.com, to allegedly find comparable vehicles. In order to arrive at the value, the program then makes adjustments to each comparable vehicle value, using a method that violates the statute as it does not result in the “retail” value of the vehicle in question.

In Exhibit A of its petition, Mitchell presents an “Overview of Mitchell’s WorkCenter Total Loss Methodology.” Under “Step 2 – Adjust Comparable Vehicles,” Mitchell lists the types of adjustments made to comparable vehicles, which cannot result in the “retail” value of a total loss vehicle. For example, the alleged “projected sold adjustment” is described as “an adjustment to reflect consumer purchasing behavior, (negotiating a different price than the list price).” However, to the contrary, the retail value of an item in commerce is not the sale price, nor is it the best negotiated price. Such asking price discounts are at the discretion of the retailer and are, most especially in the sale of used motor vehicles, difficult if not impossible to quantify. Nonetheless, the law does not state “the discounted retail value,” therefore any such adjustments are in violation of the plain meaning of the statute as they do not result in the “retail” value. Further, as the comparable vehicle database includes sales by owners listed in classified, the resulting value cannot be considered the “retail” value.

ii) “Current edition of a nationally recognized compilation of retail values”

R.I. Gen. Laws §27-9.1.-4(25)(i) requires insurers use a source of retail values that is a “nationally recognized compilation” and a “current edition”. Both NADA and Kelly Blue Book are nationally recognized, publicly available sources for retail motor vehicle values, which are updated quarterly, divided into geographic regions, and can be accessed by consumers.

Mitchell, in an attempt to meet this requirement states, "Mitchell's WorkCenter Total Loss Product was commercially released (the online equivalent of published) in 2005." However, nothing in the foregoing statement meets the requirements set forth above. The convoluted statement that the "product" was "commercially released" in 2005 and therefore, it is the equivalent of "published" is an example of creative writing. To begin, the "product" is not a "nationally recognized compilation" of retail values, and never can be, because it, "the product" is a software program that accesses a changing database to determine individual vehicle values on a case by case basis.

Moreover, the fact that the "product" was first made available for sale to insurers for use in claims processing in 2005 does not make it "published." Though Mitchell attempts to impress with its rendition of statistics, none are relevant. The fact that many in the "automobile insurance industry" and the "automobile rental industry" may pay significant sums to use its WorkCenter Total Loss "product" or computer software, does not help it meet the requirements of the statute. Further, it is important to note that though Mitchell claims that it is the "leading provider of property and casualty claims technology solutions- processing 50 million transactions annually for over 300 automobile insurers and claims payers and 30,000 collision repair facilities," one must be very cautious not be misled. In this statement, Mitchell is referring to all of its property damage technology solutions, which include its damage appraisal software for insurers and repairers. This software is what is used by collision repair facilities, not the WorkCenter Total Loss as issue in its petition. Therefore, the fact remains, despite Mitchell's attempt to confuse, WorkCenter Total loss is a computer software program, available for sale or use, at a price, to insurers and rental agencies. It is not a "nationally recognized

compilation”; it is not “published”; it is not available for consumer use; it is not publicly available; and it does not establish “retail” values. Therefore, it cannot meet the requirements of the statute.

iii) “commonly used by the automotive industry to establish values of motor vehicles.”

It is never wise to attempt to re-invent the wheel. This petition should be no exception. The term “automotive industry” has a plain meaning and is unambiguous. The Department, in Insurance Bulletin 2014-2 interpreted the term to be “those entities that actually sell automobiles.” The United States Department of Labor, Bureau of Labor Statistics, determined the “automotive industry includes industries associated with the production, wholesaling, retailing and maintenance of motor vehicles.” The Free Dictionary defines the “automobile industry” as “the business of producing and selling self-powered vehicles, including passenger cars, trucks, farm equipment, and other commercial vehicles.” Therefore, the “automotive industry” for the purposes of this statute is, as the Department correctly determined, “those entities that actually sell automobiles,” as the law regulates the payment of retail values for used motor vehicles. It is logical that one would look to the values established by those selling the product, i.e. vehicles, to determine the amount that should be paid in an insurance claim.

Mitchell, however, requests the Department broaden the “scope” of the term “automotive industry,” to include the “automobile insurance industry.” To begin, ABARI could not find a definition of the term, “automobile insurance industry.” Auto insurance is certainly part of the “insurance industry,” but it cannot be deemed to be part of the clearly defined “automotive industry” simply because it is prefaced by the word “automobile.” The only connection between the two is the fact that but for the existence of the automotive industry,

the “automobile insurance industry” would not exist. This exercise in logic does not extend to merge two (2) clearly separate and distinct industries into one. In support of its position, Mitchell claims “...the automobile insurance industry is a key part of the overall automotive industry and its valuations are connected to a material percentage (up 20%) of overall vehicle purchases nationally.” However, ABARI cannot find any source that mentions insurance in the definition or explanation of “automotive industry,” not even in a footnote.

Finally, Mitchell claims that the “automobile insurance industry” is “responsible for establishing the values for the purchase of new and replacement vehicles following a total loss.” This statement is patently false in general and specifically in Rhode Island where insurers do not settle total loss claims based on values of new or replacement vehicles. As noted above R.I. Gen. Laws §27-9.1-4(25) mandates insurers to pay the “fair market value” of the vehicle deemed a total, not the value of a replacement or a new vehicle. Furthermore, insurers do not “establish” or “bring into existence” vehicle values; the automotive industry does that, and insurers must pay the established value when settling a loss. It is clear that to accept Mitchell’s proposition would lead to a ridiculous result as it is undeniable that insurance companies are not in the business of designing, manufacturing, or selling automobiles.

B. WorkCenter Total Loss is at the center of a class action lawsuit claiming unfair claims practices.

Mitchell’s product is currently the focus of a class action lawsuit in Louisiana wherein the Plaintiff’s claim Progressive Insurance Company illegally used WorkCenter Total Loss to calculate the base value of total loss vehicles. “Plaintiff’s claim that using WCTL instead of lawful sources such as the National Automobile Dealers’ Association (NADA) Guidebook or the

Kelly Blue Book (KBB), resulted in their vehicles being assigned a lower base value and accordingly resulted in Plaintiffs receiving lower payouts in their insurance claims.” *Slade v. Progressive Security Insurance*, 856 F.3d 408, 5th Cir.(La), May 9, 2017. The claim which is the basis of this lawsuit, demonstrates that the sole point and purpose of the existence of WorkCenter Total Loss is to reduce the insurer’s exposure on total loss claims, without regard for whether the consumer has received a fair settlement. R.I. Gen. Law §27-9.1-4(25) was enacted to prevent exactly such an unfair claims practice. Therefore, Mitchell’s request for approval of its WorkCenter Total Loss product should be denied.

III. CONCLUSION

ABARI hereby respectfully requests the Hearing Officer deny Mitchell International, Inc.’s petition for approval of its WorkCenter Total Loss product for the following reasons:

- It is a computer software program, available for purchase or use for insurance companies; it is not a “nationally recognized compilation of retail values”;
- It does not calculate or obtain the “retail value” as it makes a “projected sold adjustment” which is not quantifiable and represents a discount off retail and uses different comparable vehicles on case by case basis;
- It includes “private party classified ads” in its valuations, who are not part of a “nationally recognized compilation” commonly used by the “automotive industry”;
- It is not “published” or “publicly” available to consumers;
- It is not used by the “automotive industry” which includes new and used car dealers. WorkCenter Total Loss is not used by auto dealers in Rhode Island, unlike NADA and Kelly Blue Book which are used by virtually all new and used car dealers to establish retail and trade-in values.
- The “automotive industry” does not include the “automobile insurance industry;”

- Mitchell WorkCenter Total Loss is at the center of a class action lawsuit which alleges it was used by Progressive to illegally reduce the value of vehicles in total loss claims.

Respectfully Submitted,
Auto Body Association of Rhode Island
By its Attorneys
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CERTIFICATION

I hereby certify that on April 2, 2018, I caused a true and accurate copy of the foregoing to be emailed to:

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