

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF BUSINESS REGULATION
233 RICHMOND STREET
PROVIDENCE, RHODE ISLAND 02903**

Ray Stewart’s, Inc.,	:	
Complainant,	:	
	:	
v.	:	
	:	
Allstate Insurance Company,	:	DBR No. 03-I-0237
Respondent.	:	
	:	

DECISION ON MOTION FOR SUMMARY JUDGEMENT

As set forth in the briefs filed herein, this matter was brought as a complaint by Ray Stewart’s, Inc. (“Stewarts”) against Allstate Insurance Company (“Allstate”). The Department issued an order to show cause and scheduled the matter as a complaint hearing. The essential facts upon which the parties agree can be summarized as follows:

- Following an automobile accident Stewart’s was selected to repair a vehicle for which Allstate was liable to pay for the repair.
- Allstate, at its election, obtained an appraisal of the vehicle pursuant to R.I. Gen. Laws § 27-10.1-1 *et seq.* through a licensed appraiser selected by Allstate.
- The appraisal was completed and specified a cost of \$7,290.87 for the repairs to the vehicle. Allstate paid \$7,290.87 to Stewart’s.
- Stewart’s requested a supplemental reinspection pursuant to R.I. Gen. Laws § 27-10.1-6(e) with regard to additional damage which was unknown at the time of the original appraisal.¹
- At the time of the reinspection Allstate’s appraiser noted that new parts had been used in the repair rather than the used parts specified in the appraisal.

¹ Although the word “reinspect” is used in both R.I. Gen. Laws § 27-10.1-6 (e) and R.I. Gen. Laws § 27-10.1-9 these are actually two distinct functions. The “reinspection” at issue under R.I. Gen. Laws § 27-10.1-6(e) occurs when an auto body shop discovers additional damage during the course of the repair which was not visible on the original appraisal aka a “supplemental.”

- The appraiser issued a supplement in the amount of \$673.91 for the subsequently discovered damage.
- Allstate learned, as a result of the reinspection, that new parts were used in the repair rather than the used parts which had been specified in the appraisal.
- Allstate requested that Stewart's submit all invoices actually incurred in the repair. Stewart's complied with this request.
- Allstate determined that the actual cost of the repairs was less than the \$7,290.87 previously agreed upon in accordance with the original estimate.
- Allstate, therefore, "adjusted" the \$7,290.87 it had previously paid and came to a total amount, including the supplement, of \$7,227.78 and "billed" Stewart's for the \$18.09 difference between what it had previously paid and what it now believed was owed.

The Order to Show Cause and the prehearing order indicated that the issues in this matter were whether Allstate had violated R.I. Gen. Laws §§ 27-10.1-6(e), 27-10.1-9(b) and Insurance Regulation 78. Allstate thereafter filed this motion for summary judgment upon the allegation that these statutes are not applicable to an insurer and it cannot, therefore, be found to have violated these statutes and regulation. The hearing officer that was originally assigned left the employ of the Department and the undersigned was appointed as substitute hearing officer.

On summary judgement Allstate alleges:

- (1) As a matter of law Allstate could not have violated R.I. Gen. Laws § §§ 27-10.1-6(e), 27-10.1-9(b) and Insurance Regulation 78 as those provisions are inapplicable to insurers; and
- (2) Stewart's does not have standing to bring the complaint.

INSURERS DUTY TO REPAIR VEHICLE TO PREACCIDENT CONDITION

Insurers which are liable to repair a motor vehicle as the result of either a first or third party claim are required to compensate the first or third party for the loss he or she has

incurred. That liability means that an insurer must pay the amount which it would take to return the vehicle to pre-accident condition.

In Rhode Island a somewhat complex group of statutes has been enacted regarding how the insurer must discharge that obligation. Under Rhode Island law, the first or third party claimant has the right to select the automobile body shop he or she wishes to have repair the vehicle. The insurer then has the option to accept an estimate from the automobile body shop or require an appraisal of the vehicle damage. If the insurer decides to have an appraisal completed, the insurer sends an appraiser licensed under R.I. Gen. Laws §§ 27-10.1-1 *et seq.* to appraise the damage to the vehicle. The appraiser prepares an appraisal of the damage including the estimated costs of parts and time to repair the vehicle. The insurer then negotiates with the automobile body shop and comes to an agreed upon price for repair based upon the appraisal and the facts of the particular claim. If requested under R.I. Gen. Laws §§ 27-10.1-6(e) the appraiser must return to the shop for preparation of a supplement. The insurer thereafter considers the supplement in light of the facts of the case and, if no liability issues exist, pays the supplement.

The appraiser is separately licensed and is required by R.I. Gen. Laws §§ 27-10.1-3 to be “independent” from an auto body shop. Under this system the appraisal is the definitive statement of the amount of damage to vehicle. The insurer retains the right to dispute that it is liable in whole or in part for the claim. In other words, while the appraisal is the amount of damage to the motor vehicle, if the insurer concludes that its insured in a third party claim is only partially liable, it is only required to pay the percentage of the appraisal representing its insureds liability. Another example of when the insurer would not be liable for the full amount of the appraisal would be when other evidence in the possession

of the insurer shows that some or all of the damage disclosed in the appraisal was caused by something other than the accident in question

The insurer's obligation is to pay the damages suffered by the insured or third party claimant as a result of contract (first party) or liability of its insured (third party). In the event of an accident in which there is no allegation of preexisting damage, that amount is the amount of the appraisal and the supplement(s), if any. The insured or claimant, however, is not required to have all of the work performed on his or her vehicle or to have the exact work designated in the appraisal done at all. For example, the insured may decide that he would prefer to not have some portion of the vehicle repaired and accept the cash equivalent as his damages. He or she could also decide not to have the vehicle repaired at all and simply accept the cash payment. These decisions have nothing to do with the insurer as the insurer is liable to pay for the damages suffered, not to determine how that payment will be utilized. The insurer cannot reduce the amount due under the appraisal because the consumer does not utilize the funds as designated by the appraiser.

ALLSTATE'S POTENTIAL REGULATORY LIABILITY IN THIS MATTER

Allstate argues on Summary Judgment that R.I. Gen. Laws §§ 27-10.1-9(b) and Insurance Regulation 78 apply only to auto body shops and, therefore, Allstate cannot be liable under those statutes. Although contained in chapter 10.1 relating to motor vehicle damage appraisers, R.I. Gen. Laws §§ 27-10.1-9(b) clearly places requirements on insurers and auto body shops to participate in a statistical reinspection process. Within that process, R.I. Gen. Laws §§ 27-10.1-9(b) requires the auto body shop to produce certain documentation and insurance carriers to obtain documentation regarding repairs. The statute specifies that the information the auto body shop is to provide includes invoices for

parts "...excluding price of the part..." Although the R.I. Gen. Laws §§ 27-10.1-9 process was not being undertaken in this matter, Allstate (after a reinspection under R.I. Gen. Laws §§ 27-10.1-6(e)) did request and receive the price of parts from Stewart's and thereafter reduced the amount it claims it was liable to pay by the difference between the estimated and actual price. While Allstate is technically correct that this would not be a violation of R.I. Gen. Laws §§ 27-10.1-9(b), it may be a violation of the Unfair Claims Settlement Practice in that Allstate requested information the legislature clearly stated it was not entitled to.

Insurance Regulation 78 requires that the auto body shop to complete and an insurer to maintain the Certification of Automobile Repair. It is unclear why the previous Hearing Officer indicated that this regulation was at issue in this matter. While an insurer could violate section 4(b) of this regulation, there does not appear to be any facts which indicate such a violation in this case.

Allstate also argues that it cannot be charged with a violation of R.I. Gen. Laws §§ 27-10.1-6(e) which places a burden upon a licensed appraiser to produce a supplement if the auto body shop finds additional damage during the repairs. Allstate's contention in this regard is partially correct. If the appraiser, acting completely independently and without the knowledge of the insurer, refused to produce a supplement the violation would be the appraiser's alone. However, if the insurer either knew or acquiesced to the appraisers conduct or acted upon the appraisers inappropriate conduct in the negotiation of the claim it could be liable. Again, the liability would not be for violation of R.I. Gen. Laws §§ 27-10.1-6(e), but rather for Unfair Claims Settlement Practice Act in authorizing or acquiescing to a violation of the statute by an appraiser hired by the insurer. The insurer can, therefore,

avoid any responsibility under R.I. Gen. Laws §§ 27-10.1-1 *et seq.* by refusing to allow any appraiser it employs to violate the statute and, if a violation occurs of which it later becomes aware, by immediately repudiating the conduct and requiring the appraiser to comply with the statute. If the insurer does not take these steps, or actually acts upon inappropriate action by the appraiser, it creates its own separate regulatory liability under the Unfair Trade Practices Act.

REGULATORY LIABILITY UNDER THE AGREED FACTS PRESENTED

Allstate's motion is predicated upon the argument that any wrongful conduct was that of the appraiser for which it is not liable and that Stewart's does not have standing to bring this action.

It is agreed between the parties that the appraiser in this matter completed both an initial appraisal and supplement. It does not appear, therefore, that a violation of R.I. Gen. Laws §§ 27-10.1-1 *et seq.* or Insurance Regulation 78 occurred. Rather, if a regulatory violation occurred it would be Allstate's own conduct in refusing to honor the appraisal and the supplement. Allstate admits that, notwithstanding the amount in the appraisal, it "went behind" the appraisal to determine how much was actually spent by Stewarts in the repair of this vehicle and reduced the amount it paid accordingly. Once Allstate determined that the "excess" over the original appraisal exceeded the Supplement, it refused to pay the supplement.

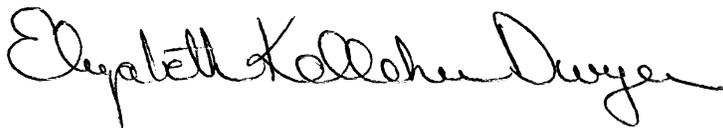
The question in this matter, therefore, is not whether R.I. Gen. Laws §§ 27-10.1-1 *et seq.* and Insurance Regulation 78 were violated but rather whether R.I. Gen. Laws §§ 27-9.1-4 and Insurance Regulation 73 were violated. Allstate, possibly in anticipation of this conclusion, goes on to argue that Stewart's, does not have standing to prosecute a potential

violation of R.I. Gen. Laws §§ 27-9.1-4 and Insurance Regulation 73 as it is not the consumer. Allstate is correct in its reading of the statute. However, the fact that Stewart's cannot maintain the action, does not mean that the action cannot be brought. The Department has overall regulatory jurisdiction over its licensees and, regardless of where it obtains the factual information, can bring an action against a licensee for violation of any provision of Title 27 or the regulations enacted hereunder. Therefore, while the matter does not seem to have been brought before the hearing officer in this manner, it does appear that sufficient facts have been alleged to raise the question of whether Allstate violated R.I. Gen. Laws §§ 27-9.1-4 and Insurance Regulation 73.

Therefore, the hearing officer recommends as follows:

1. That Allstate's motion for summary judgment with regard to its liability under R.I. Gen. Laws §§ 27-10.1-1 *et seq.* and Insurance Regulation 78 be granted;
2. That a Departmental prosecutor be appointed;
3. That an Order to Show Cause be issued requiring Allstate to show cause as to why it should not be found to be in violation of R.I. Gen. Laws §§ 27-9.1-4 and Insurance Regulation 73.

Dated: July 2, 2008



Elizabeth Kelleher Dwyer, Esq.
Hearing Officer

I have read the Hearing Officer's Decision and Recommendation in this matter, and I
hereby

ADOPT
 REJECT
 MODIFY

the Decision and Recommendation.



Dated: July 2, 2008

A. Michael Marques
Director

NOTICE OF APPELLATE RIGHTS

THIS DECISION CONSTITUTES A FINAL ORDER OF THE DEPARTMENT OF BUSINESS REGULATION PURSUANT TO R.I.G.L. § 42-35-12. PURSUANT TO R.I.G.L. § 42-35-15, THIS ORDER MAY BE APPEALED TO THE SUPERIOR COURT SITTING IN AND FOR THE COUNTY OF PROVIDENCE WITHIN THIRTY (30) DAYS OF THE MAILING DATE OF THIS DECISION. SUCH APPEAL, IF TAKEN, MUST BE COMPLETED BY FILING A PETITION FOR REVIEW IN SUPERIOR COURT. THE FILING OF THE COMPLAINT DOES NOT ITSELF STAY ENFORCEMENT OF THIS ORDER. THE AGENCY MAY GRANT, OR THE REVIEWING COURT MAY ORDER, A STAY UPON THE APPROPRIATE TERMS.

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF BUSINESS REGULATION
233 RICHMOND STREET
PROVIDENCE, RHODE ISLAND 02903**

Ray Stewart's, Inc.,	:	
Complainant,	:	
	:	
v.	:	DBR No. 03-I-0237
	:	
Allstate Insurance Company,	:	
Respondent.	:	

DECISION ON MOTION FOR STAY AND RECONSIDERATION

On July 22, 2008 Allstate Insurance Company (“Respondent”) filed a motion to stay and for reconsideration of a Decision issued by the undersigned on July 8, 2008 adopting the recommendations of the hearing officer in this matter. Pursuant to Central Management Regulation 2 section 19 the undersigned issues this Decision on the Motion to Stay and for Reconsideration.

The Motion to Stay and for Reconsideration are based on Allstate erroneous belief that the Decision made some factual findings against Allstate. The Decision, in fact, dismissed the complaint against Allstate in its entirety. Allstate objects to the Hearing Officers discussion in the Decision of potential violations of statutes and regulations by Allstate’s conduct which could exist if proven in a future administrative proceeding.

Although I believe that the Decision is clear I will clarify that no factual or legal conclusions have been made as to Allstate’s conduct and that if the Department decides to prosecute alleged violations, all such violations must be proven in an administrative hearing. The Decision as issued rules in favor of Allstate in the motion for summary judgment and, therefore, there is nothing to “stay” or “reconsider.”

Wherefore, the motions of Allstate to stay and reconsider are DENIED.



Dated: August 20, 2008

A. Michael Marques
Director

NOTICE OF APPELLATE RIGHTS

THIS DECISION CONSTITUTES A FINAL ORDER OF THE DEPARTMENT OF BUSINESS REGULATION PURSUANT TO R.I.G.L. § 42-35-12. PURSUANT TO R.I.G.L. § 42-35-15, THIS ORDER MAY BE APPEALED TO THE SUPERIOR COURT SITTING IN AND FOR THE COUNTY OF PROVIDENCE WITHIN THIRTY (30) DAYS OF THE MAILING DATE OF THIS DECISION. SUCH APPEAL, IF TAKEN, MUST BE COMPLETED BY FILING A PETITION FOR REVIEW IN SUPERIOR COURT. THE FILING OF THE COMPLAINT DOES NOT ITSELF STAY ENFORCEMENT OF THIS ORDER. THE AGENCY MAY GRANT, OR THE REVIEWING COURT MAY ORDER, A STAY UPON THE APPROPRIATE TERMS.

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF BUSINESS REGULATION
Insurance Division
1511 PONTIAC AVENUE, BLDG. 69-2
CRANSTON, RHODE ISLAND 02920

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Ray Stewart's, Inc.,	:	
Complainant,	:	
	:	
v.	:	DBR No. 03-I-0237
	:	
Allstate Insurance Company,	:	
Respondent.	:	
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DECISION ON MOTION FOR RECONSIDERATION

On July 2, 2008 the undersigned issued a Decision in this matter. On July 22, 2008 Allstate Insurance Company ("Respondent") filed a motion to stay and for reconsideration of that Decision based on its belief that the Decision made factual findings against Respondent. On August 20, 2008 the undersigned issued a Decision clarifying that discussion of possible violations of statutes not before the hearing officer did not constitute findings against Respondent.

On September 9, 2008 Respondent filed a second Motion for Reconsideration. Respondents motion indicates that unless the second and third paragraphs of the July 2, 2008 Decision are "dismissed" the clarification that they are not mandatory is not effective. Those paragraphs provide:

- "2. That a Departmental prosecutor be appointed;
- 3. That an Order to Show Cause be issued requiring Allstate to show cause as to why it should not be found to be in violation of R.I. Gen. Laws §§ 27-9.1-4 and Insurance Regulation 73."

In the August 20, 2008 Order on the Motion for Stay and Reconsideration the undersigned expressly stated that the two quoted portions of the Decision are discretionary and that “[t]he Decision as issued rules in favor of Allstate in the motion for summary judgment and, therefore, there is nothing to “stay” or “reconsider.”

Respondent thereafter filed another Motion for Reconsideration indicating that the undersigned was not correct in construction of his own Decision and that unless paragraphs 2 and 3 quoted above are “dismissed” they are effective. I will again clarify that paragraphs 2 and 3 were intended as discretionary and that if the Insurance Division does not find sufficient cause to go forward with additional administrative proceedings against Respondent a prosecutor need not be appointed and an administrative hearing need not be held. Paragraphs 2 and 3 of the July 2, 2008 Decision in this matter are hereby modified to read that “ a prosecutor may be appointed” and “an Order to Show Cause may be issued.” In all other respects the original Decision stands and Respondents motion for reconsideration is DENIED.

Dated: January 12, 2009



A. Michael Marques
Director

NOTICE OF APPELLATE RIGHTS

THIS DECISION CONSTITUTES A FINAL ORDER OF THE DEPARTMENT OF BUSINESS REGULATION PURSUANT TO R.I.G.L. § 42-35-12. PURSUANT TO R.I.G.L. § 42-35-15, THIS ORDER MAY BE APPEALED TO THE SUPERIOR COURT SITTING IN AND FOR THE COUNTY OF PROVIDENCE WITHIN THIRTY (30) DAYS OF THE MAILING DATE OF THIS DECISION. SUCH APPEAL, IF TAKEN, MUST BE COMPLETED BY FILING A PETITION FOR REVIEW IN SUPERIOR COURT. THE FILING OF THE COMPLAINT DOES NOT ITSELF STAY ENFORCEMENT OF THIS ORDER. THE AGENCY MAY GRANT, OR THE REVIEWING COURT MAY ORDER, A STAY UPON THE APPROPRIATE TERMS.