



WHEN YOU ARE PROVEN WRONG IN COURT (and It's Too Little Too Late)

October 2, 2017 is a day that will live in infamy in the collision repair industry. It was on this date that a Texas jury found John Eagle Collision Center in Dallas, TX liable for a self-created bonding procedure for the installation of a 2010 Honda Fit roof panel that was determined to be an incorrect repair. The jury also decided that John Eagle was liable for 75 percent of the damages sustained in an accident this vehicle endured, and it awarded the couple who was trapped inside the burning car \$31.5 million. For much of the industry, this was not only shocking, but also a wake-up call for shop owners to realize how their liability can be exposed if they do not follow the recommended OEM repair procedures. As Erica Eversman (collision industry expert attorney), Kristen Felder and I have been saying for years (and we again reiterated on the Collision Hub Repair University Live show, "The Brewing Legal Storm," presented by BASF and available on YouTube), the OEM recommended procedures are requirements.

The jurors believed that an OEM's "recommended procedure" meant the shop **must** fix the vehicle that way or "they assume full liability." This should make you pause and take notice, especially if you have been misled or misinformed about this, as people's lives are at stake. In our opinion, this is going to get worse, as plaintiff attorney Todd Tracy will likely go after more cases involving poorly repaired vehicles. As he makes case law, more attorneys will follow his lead. We also need to realize the amount of poorly repaired vehicles posted on social



media every day. Many collision repair facilities and former industry personnel are performing post-repair inspections (PRIs) on a daily basis.

A small percentage of these incorrect repairs are uncovered by another auto body facility observing issues after an unrelated subsequent collision repair. Another percentage of these incidents comes from a vehicle owner noticing an issue such as, but not limited to: A color mismatch, a drivability issue, a leak, an issue with closure panel operation, etc. Then the vehicle owner brings the vehicle to a different shop than the one that performed the repairs, and these problems are discovered.

A very small percentage of incorrect repairs are associated with a collision event in which there is a significant injury (or death), such as we saw in the Texas case. Conversely, a large percentage of incorrect

repairs that result in PRIs start off as diminished value (DV) cases. Generally, during the initial steps of the DV, incorrect repairs are discovered and the job becomes a PRI. Sometimes the incorrectly repaired vehicle is purchased from the vehicle owner by the liable insurer; this practice is generally associated with a direct repair program (DRP). Other times, the facility who performed the incorrect repair will purchase the vehicle, and this can be associated with a DRP repair facility or an independent repair facility. In some rare cases, the insurer facility or the facility's garagekeepers insurance company exercises their option to defend the case in a court of law. The following is an example of an incorrectly repaired vehicle involved in a court case; I was retained as an expert during the proceedings.



2012 Nissan Maxima

In 2014, the vehicle was impacted in the rear and forced into another vehicle in front. The vehicle sustained damage to the rear bumper assembly, rear body panel, front bumper fascia, left and right headlamp assemblies and radiator core support. The insurer to the third party at fault suggested the vehicle owner take the vehicle to a DRP facility, and the vehicle owner agreed. The repair facility replaced the rear bumper fascia, rear bumper reinforcement, rear body panel, front bumper fascia, left and right headlamp assemblies and the composite radiator core support. The vehicle was inspected for DV, but during the inspection, there were multiple unacceptable panel gaps and misaligned components observed. The engineering company I work for (Lange Technical Services) was called in for a forensic examination of the vehicle. This process revealed the following issues:

Visual Examination

1. The front bumper fascia-to-hood panel gaps were excessively positive. The front fascia was not attached properly and moved up and down as the vehicle was operated, or it would move by just applying upward force by hand.
2. The left and right headlamps to front bumper fascia panel gaps at the undersides of the headlamps were excessively positive.
3. Both high and low air conditioning lines were missing.
4. The left and right tail lamps to left and right quarter panel gaps were not consistent.
5. The trunk lid did not open smoothly when unlatched.
6. The seam sealer to the rear area of the trunk floor to the backside of the rear body panel was inconsistent. The color to the backside of the rear body panel and rear portion of the trunk floor mismatched the adjacent areas in the rear trunk storage compartment area. The particle (cardboard-type) spare tire cover was fractured. Two trunk trim panel clips were missing and one was fractured, and a portion was separated and missing. There was seam sealer applied to the outside mating flanges of the rear body panel

where the plug welds or resistance spot welds would be placed to join the panels.

Forensic Examination

The client attorney gave us permission to destructively test the vehicle by removing components and the sealer. The following is what was discovered:

1. The front bumper underside retainer clips were removed. We observed the clips were loose in their mountings, and evidence uncovered indicated the clips were reused.
2. Twelve inches of the sealer covering the gap between the rear floor pan and inside of the rear body panel was removed. After removal of the sealer, we observed a black substance between the panels. The black material was sticky and residue transferred to my finger upon touching the material. Removal of the seam sealer on the outside mating flange, in the same area of the sealer removed from the inside, revealed no indications of resistance welds or plug welds. We placed a flat-bladed gasket scraper between the backside of the rear body panel and rear floor pan gap where the black material was observed. We applied downward force by hand, and the scraper easily breached the black material. We continued to breach the material along the 12-inch span with little resistance. Black residue transferred onto the scraper. In the area where the scraper was placed, the panels were separated and there were no indications of welds. From the outside, I placed my hand and applied outward force. The rear body panel started to separate from the rear floor panel with almost no resistance. We continued with both hands until the panel completely separated from the rear floor pan and both lower areas of the rear quarter panels. It was determined that the vehicle was unsafe to operate, and the vehicle owner retained a rental vehicle.

Court Case and Testimony

Michael Anderson (Collision Advice) and I were plaintiff expert witnesses. Anderson testified about the estimate, final invoice and charges that showed evidence to indicate the repair processes and operation performed by the facility. I

testified on the issues uncovered during the examination and testing that showed evidence to prove the incorrect repair attempts. The facility decided to bond the repair body panel on. During testimony, using the Nissan Body Repair Manual, we were able to show evidence for the following incorrect procedures:

1. The front bumper fascia was loose due to the reuse of the retaining clips. This also caused the excessively positive panel gaps of the front bumper fascia to the adjacent components. This was not a major safety issue.
2. The missing caps for the air conditioning high and low lines were due to carelessness by the technician. This was not a major issue.
3. The misalignment of the left and right tail lamps was due to incorrect repairs attempted to the left and right tail lamp panels. This is a concern if the vehicle was involved in a subsequent rear collision, where the displaced panels could cause the collision energy to travel in a manner not designed into the vehicle.
4. The repair procedures call for approximately 71 plug welds or squeeze-type resistance welds. Evidence uncovered indicated none were performed. Examination of the adhesive bonding material showed evidence to indicate the material was not applied properly or the material was expired. This is a major concern if the vehicle was involved in a subsequent rear collision where the adhesive joining method would fail as the force was applied. As such, the collision energy would transfer to adjacent components in a manner not designed into the vehicle and could cause injuries to the occupants.
5. The repair facility's only defense was that their technicians learned how to adhesively bond panels in the I-CAR ADH01 class. Unfortunately, the shop didn't pay attention to the lessons on expiration dates and panel preparation.

Verdict

The jury deliberated for eight hours. The original repair was approximately \$4,700. The jury decision was in favor of the plaintiff for approximately \$22,000. The decision included treble damages for

consumer fraud, rental vehicle, loss of use and court fees. The jury said that the shop was liable due to incompetency and refusal to follow the OEM repair procedures.

The following are other cases I worked on through my company, P & L Consultants:

2009 Ford Mustang: The vehicle was involved in a frontal collision event and sustained structural damage. The vehicle was repaired at a DRP facility under a first-party claim. Approximately six months later, the vehicle owner was having drivability issues and took the car back to the DRP facility four times, but that shop was unable to determine and resolve the issues. The vehicle owner then took the vehicle to a shop they had previously frequented. The shop performed a PRI and discovered the front structure was displaced on the right upper and lower uni-rails. Additionally, the right strut tower was displaced. They also noted that the replaced upper uni-rail was MAG plug welded on incorrectly. According to the final invoice, the replacement uni-rail was procured from a totaled-out vehicle. I was called in to examine the vehicle and discovered the same issues as the facility technician. We also uncovered evidence during borescope examination to indicate the rear suspension was displaced, 25 MAG plug welds were unacceptable and no corrosion protection was applied. After my deposition, the DRP's insurance company decided to purchase the vehicle from the insured and settle costs out of court.

2008 Land Rover LR3: The vehicle sustained frontal damage to the uni-body, front frame assembly and front suspension mountings. The vehicle was repaired at a dealership DRP shop as a first-party claim, but the third party was at fault. After the repairs, the insured had the vehicle inspected for DV. During the inspection, multiple issues were discovered. The vehicle was taken to a Certified Collision Repair Facility (CCRF) for a PRI. The facility discovered multiple fractures that were welded and displaced with indications of corrosion to the front bumper mounting and front suspension mountings. Three-dimensional electronic measuring of the vehicle revealed the vehicle frame assembly was significantly displaced. Excessive tire wear was also observed. I was hired to review the facility findings, documents, testing results and the OEM repair protocols and write an affidavit of their analysis. The dealership elected to go to court. This state allowed all inspection costs, attorney's fees, loss of use and punitive damages to be attached. The verdict was significant; the jury awarded the plaintiff \$438,000, which also included unfair and deceptive trade practices along with treble damages (consumer fraud).

1967 Ford Mustang Wide-body Custom: The vehicle was taken to a custom restoration auto body shop for fabrication of metal wheel flares, widened rear wheel wells, custom handmade front and rear molded in metal spoilers and a custom paint job. The shop determined the work to

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the vehicle would cost approximately \$55,000. During the custom work, the vehicle owner added some things, raising the cost to \$75,000. Now this case is unique, as the vehicle was completed and the owner was very pleased. There were no issues with the custom work, but the vehicle owner never received any paperwork (officially notified in writing of the additional costs), and the shop was sued for consumer fraud laws for triple damages. I was retained to go over the repair and charges. The hours were clocked on a technician worksheet that was very accurate. The charges were reasonable based on the amount of clocked hours, photographic documentation and video evidence provided. Although the shop documented all the custom work, they neglected to put the additional costs in writing and have the consumer sign the authorization for the extra hours and craftsmanship. The case was settled out of court, with the customer only having to pay approximately \$10,000 for the work. The shop faced losing upwards of \$225,000 if they lost the case in court. The attorney for the defendant (the shop) advised the shop owner to cut their losses, learn their lesson and settle.

As you can see, a legal tsunami is headed towards the collision repair industry. Please keep the following in mind:

1. Keep accurate paperwork, photographs and even video evidence of the repair.
2. Always follow the OEM recommended repair procedures (which is a requirement), protocols and positions.
3. The insurance company has no control over what replacement components you use, where you procure or purchase them from, what is repairable or is replaced and any other operations you are charging for. Only the vehicle owner can authorize or approve of the repairs you are charging for, regardless if you are a DRP, non-DRP or a custom repair facility.



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4. The insurance company is almost never held liable for the repairs you attempt.
5. If the insurance company refuses to pay for a procedure, operation, an OEM component or a sublet repair, it is not your problem. It is *the vehicle owner's* problem, but you can assist them. Ultimately, the vehicle owner owes you for the work performed. The insurance company never pays you monies unless it is your own vehicle.
6. Learn your state insurance laws, rules and regulations, unfair claims settlement practices, consumer protection laws and the rules and regulations from the state agency that governs your repair facility. It is not your state's Department of Insurance (DOI).
7. Check with your attorney that all your consumer paperwork is correct, and make sure protection is provided for you.
8. Hold Harmless Agreements will generally not hold up in court to protect your liability.

I hope this article has raised some questions for you to find the answers to some myths or misinformation. I also hope that I have convinced you to do some research and contact your attorney for a consultation. As always, please feel free to contact me if you have questions.

NJA

Larry Montanez, CDA is co-owner of P&L Consultants with Peter Pratti Jr. P&L Consultants works with collision repair shops on estimating, production and proper repair procedures. P&L conducts repair workshops on MIG & Resistance Welding, Measuring for Estimating and Advanced Estimating Skills. P&L also conducts investigations for insurers and repair shops for improper repairs, collision reparability and estimating issues. Larry is ISO 9606-2 Certified for Audi and Mercedes-Benz and is a certified technician for multiple OEM collision repair programs. P&L can be reached by contacting Larry at (718) 891-4018 (office), (917) 860-3588 (cell) or info@PnLEstimology.com.



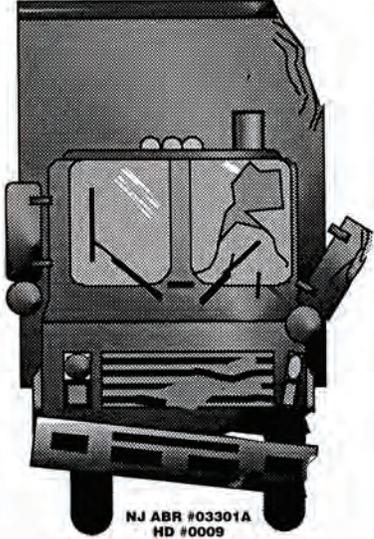

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