

"Your Massachusetts Auto Body Association"

PROTECTING CONSUMERS AND THE COLLISION INDUSTRY



# DAMAGE REPORT

Volume 4 - Issue 6

December 2020



## 2020: The Year in Review

By Lucky Papageorg

To say that 2020 was not a typical year would be one of the biggest understatements ever uttered. Most of us cannot wait to put 2020 in the "rearview mirror." It was not great, but it was not a total loss either. In the face of adversity, AASP/MA continued protecting the consumers and collision repair industry here in Massachusetts and set an example and benchmark for other state associations across the country. It is true that COVID-19 has had a dramatic effect on our lives and the ability to run our businesses. Also true is the adage, "That which does not destroy us only makes us stronger!" We all had to learn to change how we interact with our customers, vendors, insurers and one another.

For the most part, AASP/MA did not skip a beat. We took advantage of the technology available to us and developed ways to continue our services and provide the assis-

tance and information needed to survive. We made sure that your questions were being answered. When you didn't know what you didn't know, we worked to anticipate your needs and provide you with the tools to survive. Our weekly "Tip of the Week" was a conduit that connected all of our membership to information about proper protocols regarding all aspects of the COVID-19 pandemic. We brought you "best business practices" dealing with the application of disinfecting materials, procurement of PPE and alternatives when these were in short supply. AASP/MA made sure that you had all the up-to-date information regarding stimulus packages and PPP loans to help keep your shops going. We made sure that it was understood from the beginning that the collision repair industry is and always will be an essential and integral part of the success of economic commerce in Massachusetts.

Legislatively, AASP/MA has been active on the national level as well as here at home. Many of you are familiar with the Consent Decree of 1963. This Decree identified specific actions by the insurance industry which were considered to be improper in the assigning and writing of collision damage repairs. The Consent Decree of 1963 made these actions unfair claims handling procedures and made the insurers

continued on pg. 11

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**President's Message**  
*by Molly Brodeur*

# THANK YOU!

This is a bittersweet message, as it's my last as president of AASP/MA. What a journey it has been, and there are so many amazing people who have helped the association and me along the way. My dad, Al Brodeur, brought me to my first meeting back in 2006 at the Holiday Inn in Marlborough, hosted by the Central Massachusetts Auto Rebuilders Association (CMARA) and with Tom Ricci at the helm. After that first meeting, I was in awe of the challenges this industry faced and felt compelled to help. Along with my dad, Tom Ricci was (and is) an incredible mentor to me. He taught me how to lobby and interact with legislators and regulatory bodies such as the ADALB. He showed, with incredible grace, how to lead an organization and how to act in the best interest of our members and the industry at-large.

Fast forward to 2010 when the three organizations – the Massachusetts Auto Body Association (MABA), CMARA and AASP MA/RI - agreed to merge to become the Alliance of Automotive Service Providers of Massachusetts (AASP/MA). I was asked to join the newly formed Executive Board as treasurer, and I have moved up the ranks since then. At the time of the merger, Tom Ricci was the interim president of AASP/MA, and Peter Abdelmaseh was our executive director. Our entire Board worked tirelessly to ensure a smooth transition, and to coin a phrase from Tom Ricci, "We cleared the brush and paved a new road forward" as a united industry in Massachusetts. Most recently, we've engaged Lucky Papageorg as our executive director. Lucky has tremendous passion for our industry, and it has truly been a pleasure working alongside him these past few years. His commitment to your success and the advancement of our industry is unparalleled. We are "Lucky" to have him!

As I wrap up my swan song, I want to acknowledge some folks who have bolstered AASP/MA and me over the years: Rick Starbard, for bringing a national perspective to our local industry and always engaging in thoughtful, diplomatic dialogue; Paul Hendricks, who brought years of wisdom and history to our Board meetings; and Tom Greco, Joel Gausten, Alicia Figurelli and our admin extraordinaire, Alana Bonillo – all with Thomas Greco

Publishing, who have consistently made our industry shine with our publication, *New England Automotive Report*; our members only-newsletter, *Damage Report*; and their rock-solid administrative support.

Last but certainly not least, a heartfelt THANK YOU to all of the Board of Directors members who have served alongside and supported me over the last 10 years. There were bumps along the way, but I can say with absolute certainty that ALL of the Board members who served then and now take a lot of time away from their business and families to work hard to protect our industry, provide education/information, lobby and create opportunity for you to improve your business. To my vice presidents, Adam Ioakim and Kevin Gallerani: You are the unsung heroes whose steadfast support, leadership and dedication is second to none.

In the words of the immortal Walt Disney, "Progress is impossible without change." It's time for change, and I hope you will embrace it with open arms.

With heartfelt thanks to you all,

Molly ■

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# ADALB Returns with Robust Teleconferences

By Joel Gausten

## ***“If someone is convicted of polygamy, what in the wild world of sports does that have to do with auto damage appraising?”***

That above question, posed by Auto Damage Appraiser Licensing Board (ADALB) Legal Counsel Michael Powers, was one of several intriguing highlights of the Board’s November 18 teleconference meeting. The 70-minute call followed a teleconference held by the Board on October 14, which was the first time in more than six months that it had gathered for a meeting in any form.

Powers’ inquiry/statement came during a discussion on a proposal submitted by Board member and collision repair industry representative William Johnson (Pleasant Street Auto; South Hadley/Belchertown) to adopt the following standard of review of damage appraiser license applicants who disclose a criminal conviction or pending criminal action on their application (with wording largely inspired by available verbiage from the Massachusetts State Police in regard to the towing industry and presented here from the Board’s November 18 meeting agenda without edits):

*The Auto damage Licensing Board has adopted a standard of review to clarify 212 CMR 2.02 definition of: good moral character*

*212 CMR: AUTO DAMAGE APPRAISERS LICENSING BOARD 2.02: continued (2) Qualifications for a License. Any applicant for a license shall be 18 years of age or over and of good moral character. He or she shall furnish satisfactory proof to the Board that he or she possesses the educational qualifications required for graduation from high school or that he or she possesses relevant work experience deemed satisfactory by the Board. No applicant shall be considered competent unless the applicant has assisted in the preparation of appraisals for at least three months under the close supervision of a licensed appraiser. He or she shall complete an approved appraisal course or at the Board’s discretion work experience may be substituted for said schooling.*

### Standard of Review

*No applicant for an Auto Damage Appraiser License may obtain such license if there is any criminal conviction or has a pending case within the last (7) years, involving stolen or embezzled vehicles, fraud related to the automotive repair and towing business, stolen property, crimes against morality or crimes against the person.*

*Nothing herein is intended to create any obligations in addition to those set forth in 212 CMR 2.00 or 211 CMR 133.00. If anything, herein is in conflict with these regulations, the regulations control.*

*Pursuant to its authority, the ADALB voted by a majority vote at the Board’s meeting held on xxxxxxxxx, 2020, to adopt this Standard of Review. 3 This Standard of Review shall be effective upon posting on the Auto Damage Appraiser Licensing Board public website.*

*For the ADALB,  
Michael D. Powers, Esq. Legal Counsel to the Board*

Although ADALB member and insurance industry representative Samantha Tracy (Arbella) argued that the Board should have consistent guidelines in place for when a criminal conviction is noted by an applicant, she questioned whether they should apply to legal matters that are pending at the time of the application.

“[Considering] pending cases seems absolutely unfair in that we’re convicting somebody or impacting their livelihood without any evidence that they’ve done anything wrong. That’s not up to us.”

Tracy also suggested that current Massachusetts general laws, specifically those under “Chapter 272 - Crimes against Chastity, Morality, Decency and Good Order,” may be “too exhaustive” of a list for the Board’s consideration for guidance, as it contains several offenses – including polygamy, incest and soliciting a prostitute – that don’t directly impact the business of automotive appraisal and repair. Powers concurred, noting that reviews of an applicant’s morality should be reserved for legal matters pertaining to the duties and responsibilities performed under that license. ADALB Chairman Michael Donovan referred the matter to Powers for further review and a vote at the Board’s next meeting.

On a related topic, the Board voted unanimously to hold a show cause hearing for Massachusetts shop owner Adam Haddad, who was convicted last September of three counts of aiding the preparation of false tax returns and will be sentenced in January. Initially discussed during the October 14 teleconference, the Haddad matter continued on November 18 with Johnson, prior to the Board’s vote to move forward with the hearing, questioning whether Haddad’s conviction for tax evasion should have any bearing on his auto appraisal license. Powers argued that the conviction was relevant due to the fact that Haddad’s crimes were committed in the course of his auto body business. The hearing is slated to occur at the Board’s January 19 meeting.

The November 18 teleconference saw Johnson propose an Advisory Ruling to codify a previously unanimously agreed-upon position stated in an ADALB letter written April 8, 1992 to Guy Crosby, claims manager of Aetna Life & Casualty. According to the ADALB meeting agenda, “[t]he letter specifically addressed the practice of requiring receipts [to] be submitted prior to agreed-upon replacement parts being paid for on a vehicle damage claim under the direct payment plan as outlined in 211 CMR 123. It clearly stated that this practice was prohibited under the direct payment plans.” Johnson’s proposed Advisory Ruling language (presented as follows with minor edits) aims to further solidify this position:

## ADVISORY RULING

*All licensed appraisers should continue to follow 211 CMR 133 and 212 CMR 2.0 in its entirety as it pertains to the estimating and writing of a complete appraisal and repair of a damaged motor vehicle. As stated in 212 CMR 2.04 (e): “The appraiser shall itemize the cost of all parts, labor, materials and necessary procedures required to restore the vehicle to pre-accident condition and shall total such items.” All parts required for repair shall be listed on the appraisal. At no time will the decision to make payment for parts be made based upon the submission of receipts. As stated in 212 CMR 2.04 (e): “No appraiser shall modify any published manual (i.e. Motors, Mitchell or any automated appraisal system) without prior negotiation between the parties.”*

*In the instance that a parts price is not available at the time of the preparation of the estimate, an approximate price shall be agreed upon. If the agreed upon amount is insufficient, a parts price increase supplement shall be submitted with documentation attached in the form of a paid receipt. The cost indicated on the receipt will be subject to a reasonable standard industry markup.*

Johnson stated that the Advisory Ruling was needed in light of certain insurers demanding receipts for parts from body shops during the supplement process.

“In a perfect world, we wouldn’t have to do these Advisory Rulings if everybody followed the CMRs.”

Tracy expressed concern that Johnson’s proposed language was ambiguous in terms of which amount would be subject to a markup.

“It’s unclear as to whether or not the difference we’re asking the insurance company to pay for is the list price or the actual price that the shop paid. If it’s the actual price that the shop paid, then they absolutely should be entitled to a reasonable industry markup. But if that markup is already incorporated in that receipt, then that would be double-dipping. That doesn’t seem quite as fair.”

ADALB member and collision repair representative Rick Starbard (Rick’s Auto Collision; Revere) noted that some receipts show list price and cost while others just show the cost. The latter is common when a part is bought from a salvage yard, as there is no OEM list price applicable. In those cases, the cost would be marked up. Tracy and Starbard later agreed that a change should be made to the proposed language to reflect that when the list price isn’t provided on the receipt, then shop cost indicated on the receipt will be subject to a markup. Additionally, Tracy suggested that “shall” be changed to “may” in the following sentence:

*If the agreed upon amount is insufficient, a parts price increase supplement shall be submitted with documentation attached in the form of a paid receipt.*

Powers suggested that the Board needed to allow for public comments on the Advisory Ruling before voting on it. The Board agreed to submit the proposed language to Powers to post online for such comments once Tracy’s revisions were made.

In addition to initial discussions on the Haddad matter, the October 14 meeting included a debate over whether to rescind the Advisory Ruling issued this past March that **temporarily** waives the requirement of personal inspection of motor vehicle damage in cases where the amount of loss, less any applicable deductible, is under \$3,000. This amount represents an increase from the \$1,500 threshold established in current state regulations. The Advisory Ruling was issued in response to Governor Baker’s State of Emergency declaration in Massachusetts as a result of the coronavirus pandemic. Johnson argued that it was time to return “to the original intent of the CMRs,” while Starbard added that the increase in photo estimating since the pandemic began has led to “shorted appraisals” and other detrimental impacts on auto repairs in the Commonwealth.

“We’re seeing estimates written off photos that are just... Cars [are] coming in here with bent suspensions, broken headlights and all kinds of safety-related issues when people shouldn’t even be driving these cars [...] It does show that photo estimating, [in] the way it’s been carried out, is a real safety concern.”

ADALB member and insurance representative Peter Smith (MAPFRE) expressed concern that rescinding the Advisory Ruling would put more appraisers at risk at the start of flu season in addition to them already having to deal with the dangers of COVID-19.

“I completely understand the need to conduct business and things like that. I just want to make sure we go about it as safely as we possibly can given the fact that we’re heading into a very, very high-risk peak flu season.”

With only Johnson and Starbard voting in favor of rescinding the Advisory Ruling and the other Board members (including Chairman Donovan) abstaining, the proposal died without any indication of when the conditions specified in the document would end.

*Complete audio of the October 14 and November 18 meetings is available in the Members Only section of [aaspma.org](https://aaspma.org). Information on upcoming meetings (including their agendas) is available at [mass.gov/service-details/adalb-notice-of-meetings-and-agenda](https://mass.gov/service-details/adalb-notice-of-meetings-and-agenda). The next ADALB teleconference is scheduled for January 19. ■*

# The Case against Those Insurance Deadline Letters: Part 1

By Charles M. Vacca Jr., Esq.

I am often confronted with unilateral letters, correspondence, emails, etc. from insurance companies pertaining to establishing a deadline regarding rental time periods and storage costs/fees related to resolving motor vehicle insurance claims. But the question beckons: What is the legality of these apparent amendments or corrections to an existing insurance policy?

For the most part, automobile insurance policies are “adhesion contracts” in which one party (i.e., the insurance company) establishes the terms and conditions of the agreement between the parties. The policyholder has little or no ability to negotiate more favorable terms and is placed in a “take-it-or-leave-it” position. In considering these unilateral letters (which I refer to as “drop dead” letters) establishing deadlines on rental periods and storage costs/fees pertaining to automobile claims, one needs to consider general common law concepts in determining their legality.

Under the Massachusetts Automobile Insurance Policy (MAIP), there are basically three places in which insurance companies agree and/or offer to provide compensation to policyholders for “reasonable and necessary” expenses for towing, recovery, rentals and storage. Under Part 7, “Collision,” insurance companies are required by the Commonwealth of Massachusetts to “pay reasonable and necessary expenses for towing, recovery and storage of **your auto**” (which is defined as any motor vehicle as described in a policyholder’s “Coverage Selections Page” or a “temporary substitute” thereof). More specifically, this section refers to coverage under a first-party claim in the occurrence of a collision to **your auto**.

Still, under Part 4 of the MAIP, “Damage To Someone Else’s Property,” the insurance company promises to “pay for damage or destruction of the tangible property of others caused by an accident...[paying] the amount the owner of the property is legally entitled to collect through a court judgment.” It is generally understood that this section is utilized for coverage regarding third-party claims, when **your auto** is damaged by another party and the damaged party is seeking compensation for vehicle repairs, towing, rental for substitute transportation, “loss of use” and storage costs/fees. There is further relief for compensation found under Part 10, “Substitute Transportation,” where the policyholder’s motor vehicle (i.e., **your auto**) has been involved in a collision and within the terms and conditions of the “Coverage Selections Page.”

Although those three areas of coverage have been solely established by the insurance company, the policyholder has “accepted” such non-negotiated terms and conditions by the mere fact of paying periodic premiums in a timely manner. (By the way, there is also coverage for such provided under Part 9, “Comprehensive,” which includes non-collision damage.)

The dispute arises in considering that the MAIP constitutes a legal contract in that the insurer “offers” its policy coverage(s) and the insured or policyholder “accepts” that offer of coverage(s) in the form of premium payments. In his 1981 publication, “Insurance Law in a Nutshell,” Villanova Law Professor John F. Dobbyn

described life insurance as if “one person is in a position to suffer an economic loss by the death of another because of a business or contractual connection with that person, the former has an insurable interest in the life of the latter [...] This means that a partner has an insurable interest in his partners.” That concept of “risk management” is carried into automobile insurance, in which the insurer is contractually agreeing with the insured policyholder to pay for any costs and fees resulting from damage(s) to the insured’s motor vehicle (i.e., insurable interest).

However, in considering the legality of any insurance agreements, courts have adopted traditional contract analysis. In the 1977 case *Strickland v. Gulf Life Insurance Co.*, the court said, “The policy is a contract and we cannot rewrite it.” In the 1973 case *Paris and Son, Inc. v. Campbell*, the same court ruled that “an insurance policy is to be governed by the rules applicable to contracts generally [...] The same rules of construction apply to it as to the other contracts.” Further, courts have determined that the purpose of contract interpretation is to ascertain the parties’ intent as found in the whole contract, such as in the 1982 case *Tobin v. Beneficial Standard Life Insurance Co.* Those decisions are mirrored in numerous cases determined by Massachusetts courts.

Besides the concepts of an “offer” and “acceptance,” there is “mutual assent.” As Clarke B. Whittier states in his 1929 *California Law Review* article “The Restatement of Contracts and Mutual Assent,” “It will probably be admitted by everybody that in the making of most contracts, there is actual assent communicated by each party to the other [...] An outward manifestation of assent to the express terms of a contract almost invariably connotes mental assent.” This mutuality of assent or meeting of the minds is at the crux of this discussion!

So, let’s get back to the insured’s policy, which has been offered by the insurer and mutually assented or agreed upon by the insured. We have already discussed how the MAIP will provide for payment of “reasonable and necessary expenses for towing, recovery and storage of **your auto**” (via Part 7 of the MAIP) or “the amount the owner of the property is legally entitled to collect through a court judgment” (via Part 4 of the MAIP) and similar costs/fees under Parts 9 and 10 of the MAIP. That gives the insured expectations through this mutual assent to the insurance policy (i.e., contract) that such costs and fees will be paid for within reason and without most restrictions.

In Part 2 of this article in the next issue of *Damage Report*, I’ll discuss a number of topics, including what happens when the insurers change the ground rules or terms and conditions of an existing written insurance policy that has been “mutually assented to” by both parties.



*Charles M. Vacca, Jr. is an attorney licensed in the state and federal courts of Massachusetts and Rhode Island and the US Supreme Court, located in Coventry, RI. Additionally, he serves as the in-house legal counsel for AASP/MA member Tom’s Auto Body in Ashland.* ■

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who were identified as violators, agree to cease those activities. An initiative was undertaken in 2020 to abolish a variety of Consent Decrees which were thought to have become obsolete. The concerted effort of AASP/MA and its members, along with other national associations led a campaign to keep this from happening. The power of numbers and working together once again proved to be successful!!!

At home, AASP/MA had been gaining momentum on our two primary legislative initiatives during the 2019-2020 legislative session, prior to the COVID shutdown. In March 2020, our Senate bill #182 was released from the Joint Committee on Public Safety and Professional Licensure with a favorable recommendation after AASP/MA gave testimony to the committee in July 2019. Bill #182 was sent to the Senate Ways and Means Committee for consideration. The bill, in summary, proposes moving the ADALB from the Division of Insurance to the Division of Professional Licensing. Multiple in-shop and Zoom platform meetings were held with Senators and Representatives across the state. Those who attended the meetings voiced overwhelming support and also wrote letters to the Ways and Means Committee in favor of the bill being brought to the Senate for debate and a vote. As 2020 wrapped up, AASP/MA representatives met remotely with Commissioner of Insurance Anderson, Lt. Governor Polito as well as Senate President Spilka's staff. All of these meetings have been positive and should guarantee a quicker, positive response to our bill when refiled in the 2021 – 2022 legislative session. A strong foundation has been laid for this pro-consumer legislation. We have also used these meetings and developing relationships to address relief from the artificially suppressed and controlled Labor Rates here in Massachusetts.

On November 3, the much-anticipated Right to Repair ballot question was passed by 75 percent of those voting. Clearly, Right to Repair is a very important issue to the consumers and vehicle owners here in Massachusetts. AASP/MA was a part of the coalition and gave testimony in favor of the bill before it became a ballot question. We continued our support throughout the pre-voting period. The voting public made their position known loud and clear - "their vehicle, their information, their choice." It is time for the collision repair industry to use this groundswell of support by the public to help promote a similar campaign: **The Right to Choose!!!** Just like our brethren in the mechanical repair industry, you need to take an active part in getting the message out to your customers so that they understand their rights are being eroded away. Again, we saw what effect the

power of numbers and working together can accomplish. Look for more to come in 2021 on this initiative.

As an association, we just completed our election process for the Board of Directors (BOD). Many existing Board members will return to serve another two-year term. There are also several new members elected to the BOD! All those who ran to be a member of the Board of Directors are owed a debt of gratitude for volunteering to be leaders and setting an example for our industry to follow. Those who were not among the top three vote-getters for their Zone will participate as affiliate directors, assisting and participating in AASP/MA as it continues its mission to "protect the consumers and collision repair industry." Your support of the BOD through your membership and participation is of the utmost importance and will help us regain the momentum we were experiencing prior to the COVID-19 shutdown.

A very special "THANK YOU" to our outgoing president, Molly Brodeur, for her unwavering leadership and guidance through challenging times and changes during her tenure. We ALL owe her a great deal of appreciation.

I look forward to once again holding face-to-face zone meetings across the state. Together, we can continue the growth of AASP/MA and influence the changes needed to make our industry strong and vibrant once again. AASP/MA will continue to update our website and add much need information, forms and other tools to the "Members Only" portal. We will continue to post videos of important meetings and the discussions which affect each of us. Coverage of ADALB meetings is also posted, as this will enable you to see firsthand the issues and positions taken by the ADALB and how these decisions affect you. If there is anything you need or feel we could do better, please reach out and let us know.

Twenty-twenty was not a complete disaster. AASP/MA has laid the foundation for successful advances going forward. With your help and support, we will continue to grow and become successful.

***I wish each of you the very best this holiday season and a very healthy and prosperous 2021!!!*** ■



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