STATE OF MINNESOTA

DEPARTMENT OF COMMERCE

BULLETIN 99-1

Issued this 4th day of May, 1999

To: All Companies Licensed to Write Property/Casualty Insurance in Minnesota and all Companies Approved to be Self Insured for Automobile Insurance

SUBJECT: Reimbursement for Replacement of Windshield Glass

The Minnesota Department of Commerce has analyzed several recent Minnesota court cases concerning the duty of an insurer to reimburse the insured "for all reasonable costs" for the repair or replacement of windshield glass.

PLEASE BE ADVISED THAT EFFECTIVE IMMEDIATELY the department will enforce Minnesota Statutes, Section 72A.201, subdivision 6, clauses (14), (15), and (16) in accordance with the statutory interpretation rendered by the Minnesota courts, as described more fully below.

Minnesota Statutes, Section 72A.201, subdivision 6, clause (14) states that any act of an insurer, adjuster, self-insured, or self-insurance administrator (hereinafter, "Insurer") will constitute an unfair settlement practice, where an automobile policy provides for the adjustment or settlement of an automobile loss due to the damaged window glass, and the Insurer fails to assume "all reasonable costs sufficient to pay the insured's chosen vendor for the repair or replacement of comparable window glass." The statute also clarifies that:

> This clause does not prohibit an insurer from recommending a vendor to the insured or from agreeing with a vendor to perform work at an agreed-upon price, however, that before recommending a vendor, the insurer shall offer its insured the opportunity to choose the vendor.

This statute has been at the center of two district court cases heard in Hennepin County, one decided in May 1998, and the other in March 1999. In Glass Service Company, Inc. v. West Bend Mutual Insurance Company, No. ACC 96-18583 (4th Dist., May 13, 1998), Glass Service sued West Bend for breach of contract based on West Bend's failure to pay the full amounts invoiced by Glass Service for repair or replacement of the insureds' broken windshields.

The court found that Glass Service received a valid assignment from each insured for the proceeds of the insured's policy with West Bend and that Glass Service had standing to bring the action. The court held that West Bend breached its contract with its insured by failing to pay all reasonable costs to "repair or replace the property with other property of like kind and quality."

West Bend policies contained no language about conducting market surveys or establishing prevailing market price. The court concluded that the "market survey" conducted by West Bend failed to establish (1) that Glass Service's pricing was unreasonable and (2) that the survey was reflective of the actual market.

> The UCPA establishes that insureds can choose any glass vendor so long as the price is reasonable. This will involve a range of prices which are all reasonable. The UCPA prohibits an insurance company from limiting an insured's choice of glass vendor ... It is not sufficient for West Bend to claim that the payments it seeks to make are also within the reasonable range because there is nothing in its contract that prohibits its insureds from going to any glass vendor that offers reasonable prices. If West Bend did prohibit that choice, they would be in violation of Minnesota Statutes, Section 72A.201, subdivision 6(14).
> Glass Service v. West Bend Mutual Company, Id.

Since Glass Service established that its prices were within a reasonable range, and West Bend failed to prove Glass Service's prices were unreasonable under the circumstances of the case, Glass Service was awarded a judgment in this case.

In March 1999, the Hennepin County District Court again awarded damages to Glass Service Company in a claim it brought against Progressive Specialty Insurance Company (Glass Service Company, Inc. v. Progressive Specialty Insurance Company, et al., No. AC-98-1732 (4th Dist., Mar. 5, 1999). Glass Service received valid assignment from each insured for the proceeds of the insured's policy with Progressive, and sued Progressive for the full amount invoiced to repair or replace the insureds' windshield glass.

The court found that the fact that Glass Service gave some insurers a larger discount than it gave to Progressive did not establish that Glass Service's charges to Progressive were unreasonable. The court also found that Progressive failed to contemplate the quality of the materials and the quality of the installers in determining the reasonable cost to pay Glass Service. Although Progressive conducted a market survey to show that Glass Service's prices were unreasonable, the court concluded that the survey was seriously flawed and was not reflective of the market. (For example, the survey made no inquiry into the quality of the glass or adhesive to be used, the breakdown of materials or labor rate charged or whether the quoted price was for glass that met the OEM standard for that particular vehicle.) Also, the court found that for the survey, Progressive called only glass vendors who had previously contacted Progressive's claims professionals and who had marketed to Progressive.

The court held that Progressive breached its contract with its insureds. Progressive was obligated to pay all reasonable costs sufficient to reimburse their insureds' chosen vendors for the repair or replacement of auto glass.

The court distinguished this case from the facts in an earlier case, Glass Service Company v. State Farm Insurance Company, 530 NW2d. 867 (Minn. App. 1995). In that case, State Farm's policy specifically allowed for a market survey to determine "the prevailing competitive market rate" defined by labor rates, parts prices, and materials prices charged by a substantial number of repair facilities. The court in the State Farm case found that State Farm conducted a written market survey of the total installed price in accordance with its policy/contract. Since State Farm had developed a referral list of vendors based on an adequate market survey, the court held that State Farm was justified in advising its insureds of the limitation on amounts it would pay for repair or replacement performed by Glass Service, and in suggesting alternative vendors whose charge would be fully covered under the policy.

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Based on the cases referenced above, glass repair or service companies taking valid assignments from insureds will be entitled to reimbursement of all reasonable costs for the repair or replacement of comparable window glass. Any attempt by the Insurer to reduce the amount paid to the insured or its assignee, without appropriate policy language and/or adequate evidence that the fees were unreasonable will result in a determination that the Insurer has violated the Unfair Claims Practices

Act, and specifically, Minnesota Statutes, Section 72A.201, subdivision 6.

Secondly, the department is aware that some insurance companies have been hiring glass vendors to answer telephone inquiries placed to the insurer concerning glass repair or replacement coverage. Some of these glass vendors have been representing themselves as the insurance company in failing to identify themselves by name and their relationship to the insurance company. Furthermore, it has been reported to the department that some of these vendors are attempting to steer customers away from the customer's chosen glass vendor in violation of the freedom of choice provisions under Minn. Stat. § 72A.201, subd. 6.

PLEASE BE ADVISED that the department views these activities as violations of the Unfair Claims Practices Act: (1) failure to pay all reasonable costs for repair or replacement of comparable window glass; (2) failure of a glass vendor to properly identify itself to a customer; and (3) any apparent attempt to circumvent a customer's freedom of choice in selecting a glass vendor as required under Minn. Stat. § 72A.201. Insurers or their agents who engage in these activities and/or who allow glass vendors to engage in these activities on their behalf will be subject to civil penalties and/or other administrative action.

Questions regarding this bulletin should be directed to Donna Watz, Staff Attorney, at (651)296-6593.

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Commissioner of Commerce