



California Collision Insurance Repair Law Update

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Second Appellate District Holds Auto Insurer Satisfies Contractual Obligations When Elects to Repair Insured's Vehicle without Insured's Authorization, but Insurer May Be Liable in Bad Faith if it thereafter Subrogates Against the Liable Party for the Cost of the Unauthorized Repair

On February 24, 2011, the California Court of Appeal issued a two-part ruling regarding an automobile insurer's obligations when an insured refuses to authorize repairs to a damaged car. In Harry R. Hibbs v. Allstate Insurance Company, No. CIV233435, 11 C.D.O.S. 2503, the Second Appellate District held that an "insurer satisfies its contractual obligation when it elects to repair, although the insured refuses to authorize the repairs." However, the court warned that an insurer may be liable in bad faith if it thereafter subrogates the liable party for the cost of the unauthorized repairs, because a subrogation action "may be prejudicial to the insured's direct action against the tortfeasor."

After Allstate paid to repair the Hibbs' vehicle, which had been damaged in an accident, Allstate recovered its repair costs from the liable driver. However, the Hibbs alleged that they had never authorized any repairs and refused to pay their \$ 500 deductible for the repairs. As a result, the owner of the auto repair shop bought the Hibbs' vehicle to satisfy the auto shop's lien for the \$ 500 deductible and other costs. Harry and Jessica Hibbs thereafter filed an action against Allstate for conversion, breach of contract, and breach of the covenant of good faith and fair dealing. Allstate moved for summary judgment and summary adjudication.

The court began by analyzing whether the Hibbs had authorized the repair of their vehicle. Pursuant to Business and Professions Code section 9884.9, subdivision (a), "The automotive repair dealer shall give the customer a written estimated price for labor and parts necessary for a specific job. No work shall be done and no charges shall accrue before authorization to proceed is obtained from the customer." Subdivision (c) of section 9884.9 adds that "an automotive repair dealer, when doing auto body or collision repairs, shall provide an itemized written estimate for all parts and labor to the customer." If a dealer does not comply with section 9884.9, the dealer "may not recover under any theory." After the court considered dueling declarations submitted by the Hibbs and Allstate, it ruled that there was a triable issue of fact regarding whether the Hibbs had authorized the repairs to their van.

Next, the court considered the Hibbs' contention that they were entitled to the cost of repairs. Allstate argued that under the Hibbs' policy Allstate had the choice to "pay for the loss in money" or to "repair or replace the damaged . . . property at [Allstate's] option." The appellate court, finding no California case on point, turned to cases from other jurisdictions. The out-of-state cases to consider the issue espouse two diverging views. The first set of cases holds that an insured is not entitled to recover the costs of repair when the insured refuses to authorize repairs. These cases explain that the insurer has the right to opt to repair damaged property, and, when an insurer does so, the insurance policy becomes a binding contract and the insured is not entitled to recover costs of repair.

The second set of cases holds that an insured that refuses to allow repairs is still entitled to the cost of repairs. These cases concede that “a rule relieving the insurer of liability where the insured refuses to allow repairs might be supported by ‘cold logic.’” However, “such a rule ‘would neither comport with our conception of substantial justice nor be consonant with the primary purpose of all insurance coverage, *i.e.*, indemnification against loss.’”

After considering these two view points, the *Hibbs* court sided with the first view. The court explained that “nothing in Allstate’s policy gives the insured . . . a right” to the cost of repairs.” On the contrary, “[t]he policy clearly and unequivocally provides that Allstate has the option to repair.” Therefore, “[w]here, as here, Allstate chooses the option to repair, the Hibbs’s prevention of Allstate’s performance excuses Allstate’s obligation under the policy.” Allstate “has not withheld a benefit due the insured. Allstate performed as it was required under its policy.”

Lastly, the court considered the Hibbs’ bad faith claim against Allstate. The Hibbs argued that Allstate acted in bad faith when it repaired their car. The court disagreed, explaining that the fact that the auto shop may have acted without the Hibbs’ consent did not mean that Allstate acted in bad faith. However, the court found that there was a triable issue of fact as to whether Allstate had acted in good faith in pursuing its subrogation action against the liable driver. If the Hibbs did not authorize the repairs, the auto shop was not entitled to any payment. Therefore, Allstate’s payment to the auto shop was voluntary. As a voluntary payer Allstate was not entitled to subrogation.

Regardless of Allstate’s right to subrogation, however, Allstate’s act of subrogating the tortfeasor potentially amounted to bad faith because it prejudiced the Hibbs’ action against the liable driver. The liable driver would have the right to reduce any settlement payment to the Hibbs by the amount he paid in subrogation. Therefore, the court ruled there was a triable issue of fact as to whether Allstate breached its covenant of good faith by subrogating the tortfeasor. The court reversed and remanded for trial on the issue of bad faith and awarded costs on appeal to the Hibbs.

- 1) In light of *Hibbs*, it is important for insurers to take the following steps to avoid potential bad faith liability: If you opt to have your insured’s vehicle repaired, make sure your chosen auto shop complies with Business and Professions Code section 9884.9:
 - a) The auto shop should provide the insured with “an itemized **written** estimate” before asking the insured to sign a repair authorization. This estimate should “describe labor and parts separately and . . . identify each part, indicating whether the replacement part is new, used, rebuilt, or reconditioned. Each crash part [should] be identified on the written estimate and the written estimate [should] indicate whether the crash part is an original equipment manufacturer crash part or a nonoriginal equipment manufacturer aftermarket crash part.”
 - b) Next, the auto shop should present the insured with a repair authorization form for his or her signature. To avoid any confusion, the repair authorization should be separate from any teardown or other authorizations.
- 2) If the insured refuses to authorize repairs or asks you not to subrogate the tortfeasor, you should delay initiating subrogation proceedings until you have conferred with counsel.

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