October 27, 2015

Amy Parks, Esq.
Acting Insurance Commissioner
Property & Casualty Section
Nevada Division of Insurance
1818 E. College Parkway, Suite 103
Carson City, NV 89706-7986

sent via email to: pflasch@doi.nv.gov

RE: DOI Total Loss Subcommittee – Trades' Reply to 9/3/15 Meeting Summary

The National Association of Mutual Insurance Companies (NAMIC), the Property Casualty Insurance Association of America (PCI), and the American Insurance Association (AIA), hereinafter referred to as the "Trades", appreciate the Nevada Division of Insurance's (DOI) outreach to members of the insurance industry to discuss the DOI's recent interpretation of NRS 487.790, "Total Loss Vehicle Defined."

The trades commend the DOI for its efforts to make sure that insurers understand the requirements of Title 43, "Public Safety; Vehicles; Watercraft" and specifically Chapter 487, "Repair, Removal and Disposal of Vehicles", and offer the following comments in response to the October 1, 2015, DOI summary of the September 3, 2015, Total Loss Subcommittee Meeting.

Although the trades and their respective members agree with the DOI's stated position *that "an insurer may offer a settlement and retain the vehicle. If the insurer retains the vehicle, it may obtain a salvage title and resell, but if the claimant insists on keeping the vehicle, the insurer may not force the insured to accept a salvage title . . ."*, the trades disagree with the DOI's interpretation and application of NRS 487.790 as it relates to the DOI's position that an insurer may "*not deduct the value of the salvage from the settlement.*"

The trades share the DOI's laudable desire to promote public safety, and insurer compliance with the insurance code and the terms/conditions of the insuring agreement. In the spirit of cooperation, the trades respectfully offer the following comments and concerns for the DOI to consider as the Total Loss Subcommittee moves forward with this regulatory project:

1) The trades question the DOI's purported regulatory authority to expand the scope of Title 43, Chapter 487 and make it a de-facto insurance code provision that controls insurance claims settlement practices.

Title 43 of the Nevada Revised Statutes pertains to *public safety* not insurance claims settlement practices, which is expressly and extensively addressed in Title 57, "Insurance". Consequently, the trades are concerned by the DOI's attempt to make NRS 487.790 a de-facto insurance code provision that governs insurance claims practices. None of the 19 subsections of Title 43 pertain to or reference the insuring agreement or insurance claims practices. Only one subsection in Title 43 even mentions "insurance" and that is the subsection that addresses the financial responsibility requirements of motorists, which is an insurance mandate *to consumers* to comply with state required auto insurance coverage requirements. Nothing in this subsection *requires insurers* to alter or modify their insuring agreement to address how an insurer is to specifically settle "total loss vehicle" claims.

Therefore, the trades believe that NRS 487.790 does not grant the DOI regulatory authority to apply a *public safety statute* to the claims settlement process, which is expressly relegated to and governed by a number of statutory insurance code provisions.

2) The trades are concerned that the DOI's interpretation and application of NRS 487.790 "Total Loss Vehicle Defined" is inconsistent with the plain language and legislative intent of the statute.

Title 43 expressly pertains to *public safety*, which is not specifically an insurance coverage or claims settlement related issue. Consequently, NRS 487.790 should be interpreted and applied so as to conform with and promote public safety. How does the DOI's position that an insurer may not deduct the value of the salvage from the claims settlement, when the consumer retains possession of the total loss vehicle, have anything to do with public safety?

NRS 487.790 pertains to how and when to determine whether a vehicle has been damaged to an extent where public safety is promoted by designating the damaged vehicle as a "total loss vehicle" for state automobile titling purposes. The very intent and purpose of this subsection is to promote uniformity in titling of salvage vehicles and to facilitate informed consumer decision-making in the purchasing of "total loss vehicles", i.e. to make sure that subsequent purchasers of the "total loss vehicle" understand what the state automobile title designation legally means. This statute has nothing to do with claims settlement practices.

3) The trades are concerned that the DOI's stated position is antithetical to the best interest of insurance consumers and would detrimentally impact certain insurance consumers and unfairly benefit other insurance consumer for no legitimate public policy reason.

The trades' concerns are best illustrated by example:

Scenario: A vehicle has a FMV of $10k, and it has sustained $5k (50% of FMV) in non-cosmetic damage, and $2k in paint damage. The total damage to the vehicle is $7k or 70% of FMV. The salvage value of vehicle is $3k. [The trades appreciate that, in this scenario, application of NRS 487.790 dictates that the vehicle would not be designated a "total loss vehicle" for subsequent motor vehicle titling purposes, because the statutory recognized damages are only 50% of the vehicle's FMV.]

Pursuant to the insuring agreement and state law, the insurer has the contractual right to make a business decision and settle the insurance claim by either repairing the vehicle or designating the vehicle a "*contractual* total loss" (as distinguished from an NRS 487.790 "*statutory* total loss vehicle") pursuant to the insuring agreement and pay the consumer the $10k FMV of the vehicle. The insurer may pay the

consumer the $10k FMV in one of two ways: (a) the insurer may retain possession and accept title to the vehicle (a professional courtesy to the consumer), and then sell the vehicle as salvage. In this situation, the consumer gets a check for the full FMV of the vehicle ($10k); or (b) the consumer may retain possession and title of the vehicle, which has a salvage value of $3k, and also receive a check for $7k from the insurer. In this situation, just like in the situation where the consumer turns over possession and title of the damaged vehicle, the consumer receives the full value of their claim ($10k via a check for $7k plus a vehicle worth $3k).

In either situation, the insurance consumer receives an insurance settlement of $10k. The only difference is that the consumer in claims settlement approach (a) gets a check for a larger amount ($10k), but no vehicle; and the consumer in claims settlement approach (b) gets a smaller check ($7k), but a vehicle with economic value ($3k), which is equal to the amount reduced from the settlement check. In essence, the consumer who retains the damaged vehicle gets the exact same amount as the consumer, who doesn't want to deal with the damaged vehicle and wants to utilize the professional courtesy offered by the insurer to handle the burden of disposing of the damaged vehicle.

In contrast, the DOI's interpretation of law creates an unfair economic windfall for the consumer who retains the damaged vehicle and punishes the consumer who wants to utilize the professional courtesy and contractual benefit offered by the insurer to dispose of the damaged vehicle.

Specifically, if the consumer requests claims settlement approach (a) the consumer gets a check for $10k, but no vehicle; but the consumer who requests claims settlement approach (b) would get a check for $10k (FMV of vehicle with no set-off or reduction for the value of damaged vehicle retained) and possession/title to a salvage vehicle worth $3k, for a total settlement of $13k.

In effect, the consumer who retains their damaged vehicle gets more insurance claims compensation than the person who decides not to retain their vehicle. How is this fair? How is this not unfair discrimination against certain insurance consumers, i.e. those unwilling or unable to retain the damaged vehicle, which may have some relationship to their age, physical or mental abilities, financial circumstances, etc. The total claims settlement value should <u>not</u> be dependent upon whether the consumer retains the damaged vehicle or not.

Therefore, the trades believe that the DOI's position would unfairly harm some consumers and improperly reward other consumers. The trades believe that this would not promote pro-consumer public policy.

4) The trades are concerned that the stated position of the DOI would improperly interfere with the contractual rights of the parties to the insuring agreement and potentially act as an insurance rate cost driver.

The trades are concerned that the DOI's position would interfere with the contractual rights of parties and could lead insurers to contractually require consumers to relinquish possession and title to their damaged vehicle as part of the claims settlement, so that no insurance consumer receives more or less than the full and fair value of their auto insurance claim. This would adversely impact consumer choice in the claims settlement process.

NAMIC, PCI, and AIA are also concerned that the DOI's position could act as an insurance rate cost driver for consumers, because certain consumers will retain their damaged vehicle in order to "game the system" and recover an economic windfall (the full FMV of the vehicle plus the salvage value of the damaged vehicle). This additional and improper claims settlement cost will act as an unavoidable insurance rate cost driver.

Finally, the trades are also concerned that the DOI's position will hinder insurers in their legal duty to mitigate damages. Specifically, if the policyholder retains the damaged vehicle (using the hypothetical stated above), the insurer will have paid out $3k more than the insurer would have paid out in damages had the insurer taken possession of the damage vehicle and sold it as salvage to reduce the asserted damages claim in the insurer's subrogation legal action against the at-fault driver.

In closing, although the trades appreciate the importance of the DOI's desire to make sure that consumers are not required as part of the claims settlement process to procure a "total loss vehicle" title if the statutory requirements of NRS 487.790 have not been strictly adhered to, this vehicle titling statute should not be used as the regulatory basis to alter the current and well-established pro-consumer claims settlement practices of insurers.

The trades look forward to the continued collaboration with the DOI on this project. Please feel free to contact Christian Rataj of NAMIC at crataj@namic.org, Mark Sektnan of ACIC/PCI at mark.sektnan@acicnet.org, or Steve Suchil at ssuchil@aiadc.org, if you would like to discuss this letter.

Respectfully,

Christian John Rataj
Mark Sektnan
Steve Suchil