

6004 Liberty



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

HENRY McMASTER
ATTORNEY GENERAL

August 31, 2005

The Honorable John M. Knotts, Jr.
Senator, District No. 23
500 West Dunbar Road
West Columbia, South Carolina 29169

Dear Senator Knotts:

In a letter to this office you requested an opinion regarding alleged abuses in the auto glass industry by the insurance industry. The attachment forwarded with your letter refers to an alleged conflict of interest between selected auto glass retailers and the insurance companies. As described by the attachment:

The insurance industry has hired the very largest auto glass retailers and manufacturers to adjust auto glass claims. The market in which the auto glass industry operates is controlled and distorted by this inherent conflict of interest.

These auto glass retailer/adjuster companies also own auto glass "networks". An auto glass network is a contractual affiliation of auto glass companies with the retailer/adjuster network whereby all the companies agree to do work for the same price which is set by the retailer/adjuster network, their competitor.

The lynch pin in the whole scheme is: the insurance industry will only pay auto glass claims through these auto glass installer/adjuster networks.

The attachment claims that these practices steer business to chosen auto glass retailers, mislead the consumer, and keep that consumer from having a choice as to necessary windshield work. According to the attachment, "...the consumer ends up being badgered and/or threatened until they agree to use the claim adjuster's preferred shop, thus depriving the consumer of their legal right to choose...eliminating quality and service as factors in the decision."

In reviewing your question, it must be noted that this Office has repeatedly indicated that an opinion of the Attorney General cannot investigate or determine facts. See: Ops.Atty.Gen. dated October 27, 2004 and November 4, 2003. A conclusive determination as to exactly what activities are taking place would necessitate a factual inquiry, a matter beyond the scope of an opinion of this

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office. Therefore, in reviewing your question, we must rely on the factual basis set forth in your request.

Two provisions of the State Code of Laws refer to criminal actions involving the auto glass repair business. Pursuant to S.C. Code Ann. §§ 38-55-173,

(A) A person who is acting on behalf of or engaged in a vehicle glass repair business is guilty of a misdemeanor if the person offers or makes a payment or transfer of money or other consideration to:

(1) a third person for the third person's referral of an insurance claimant to the vehicle glass repair business for the repair or replacement of vehicle safety glass;

(2) an insurance claimant in connection with the repair or replacement of vehicle safety glass; or

(3) waive, rebate, give, or pay all or part of an insurance claimant's casualty or property insurance deductible as consideration for selecting the vehicle glass repair business.

As to the penalty for such a violation,

(B) If the amount of the payment or transfer of subsection (A) has a value of:

(1) one thousand dollars or more, the person, upon conviction, must be fined in the discretion of the court or imprisoned for not more than three years, or both, per violation; or

(2) less than one thousand dollars, the person, upon conviction, must be fined not more than five hundred dollars or imprisoned for not more than thirty days, or both, per violation.

S.C. Code Ann. § § 39-5-170 provides that

It is an unfair trade practice and unlawful for a person who is acting on behalf of or engaged in a vehicle glass repair business to offer or make a payment or transfer money or other consideration to:

(1) a third person for the third person's referral of an insurance claimant to the vehicle glass repair business for the repair or replacement of vehicle safety glass;

(2) an insurance claimant in connection with the repair or replacement of vehicle safety glass; or

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(3) waive, rebate, give, or pay all or part of an insurance claimant's casualty or property insurance deductible as consideration for selecting the vehicle glass repair business.

Therefore, if any of the actions described in your letter would come within these prohibitions such may be referred to local law enforcement for possible prosecution.

As set forth, Section 39-5-170 refers to certain activities being "an unfair trade practice". In addition to that provision, the South Carolina Unfair Trade Practices Act expressly prohibits unfair or deceptive practices in trade or commerce. Pursuant to the South Carolina Unfair Trade Practices Act ("SCUTPA"), as set forth at S.C. Code Section 39-5-20(a), "unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful." The courts have qualified the SCUTPA by stating that a trade practice is "unfair" when it is "immoral, unethical, or oppressive" and the "unfair" act impacts the public interest. See Liberty Mut. Ins Co. v. Employee Resource Mgmt, Inc., 176 F.Supp.2d 510 (2001) and Williams-Garrett v. Murphy, 106 F.Supp.2d 834 (2000).

It is obvious that the conduct described in your attachment involves trade or commerce so the question becomes whether such activities are unfair or deceptive. An examination as to whether the activities involving the auto glass industry violate the South Carolina Unfair Trade Practices Act would be in order. Again, however, this office cannot determine facts in an opinion and a conclusive determination in such regard would be a matter for local law enforcement. Additionally, inasmuch as the activities described involve insurance companies, consideration may be given to referring such to the State Insurance Commission for their review.

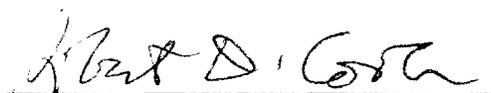
With kind regards, I am,

Very truly yours,



Charles H. Richardson
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Assistant Deputy Attorney General