

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS  
DEPARTMENT OF BUSINESS REGULATION  
1511 PONTIAC AVENUE  
CRANSTON, RI 02920**

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<b>AMICA MUTUAL INSURANCE COMPANY</b>	:	
<b>COMPLAINANTS,</b>	:	
	:	
v.	:	<b>DBR No. 05-L-0007</b>
	:	
<b>RELIABLE COLLISION REPAIR,</b>	:	
<b>RESPONDENT.</b>	:	

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**DECISION**

Hearing Officers: Catherine R. Warren  
Michael P. Jolin  
Elizabeth Kelleher Dwyer

Hearing Held: July 8, 2008

Appearances: Kevin J. Flannery, Esq. on behalf of the Complainant  
Tammy A. Bottella, Esq. on behalf of the Respondent

**I. INTRODUCTION**

The above-entitled matter came before the Department of Business Regulation ("Department") as the result of a complaint filed by Amica Mutual Insurance Company ("Amica") against Reliable Collision Repair ("Reliable"). An order appointing Hearing Officer and Providing Notice of Complaint Hearing was issued on January 11, 2005.

A prehearing conference was held before hearing officer Catherine R. Warren on April 6, 2005. After extensive argument by counsel, the Hearing Officer identified the issue in the matter as:

...whether Respondent violated R.I. Gen. Laws § 5-38-10(6) and/or violated *Commercial Licensing Regulation 3 – Automobile Body Repair Shop Storage Rates* during a transaction between the parties.

The hearing officer also set a discovery cutoff and a hearing date of June 22, 2005.

On June 22, 2005 the Department held a hearing concerning Amica's objection to discovery requested by Reliable. The Department reviewed Amica's objections to Reliable's Interrogatories and made various orders based upon the specific requests.

On May 24, 2006 the Director issued an Order Appointing Michael P. Jolin as substitute hearing officer in the matter. On May 31, 2006 Reliable filed a Motion to Dismiss. The basis for that motion is that the proper party to this action is Reliable Towing, which is a licensee of the Division of Public Utilities and Carriers<sup>1</sup>, not Reliable Collision which is a licensee of this Department. A hearing was held on the Motion to Dismiss on July 11, 2006. On July 2, 2007 the Director issued an Order Appointing Elizabeth Kelleher Dwyer as substitute hearing officer in the matter. On July 20, 2007 Elizabeth Kelleher Dwyer issued a Decision denying the Motion to Dismiss. That Decision is attached hereto and incorporated herein.

A series of requests for continuances of the hearing were made in this matter by both parties. The hearing was finally held on July 8, 2008. Oral argument was made by counsel for each party and further explanation of the fee in question was provided by Randy Botella, principal of Reliable Collision. Nine documents were admitted into evidence and Amica agreed to provide copies of photos of the vehicle in question to the Department and Reliable's counsel by email. Amica provided those photos on July 8, 2008. The parties were asked to file memorandum summarizing their positions in this matter and each made such filing on July 29, 2008.

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<sup>1</sup> The motion states "Public Utilities Commission", however, the Department take administrative notice of the fact that towing licenses are issued by the Division of Public Utilities and Carriers not the Public Utilities Commission.

## **II. JURISDICTION**

As indicated in the Decision on the Motion to Dismiss, the Department has jurisdiction over this matter pursuant R.I. Gen. Laws §§ 5-38-1 and 42-14-1 *et seq.*

## **III. MATERIAL FACTS AND TESTIMONY**

The issue in this matter is the propriety of Reliable's refusal to release a vehicle until Amica paid a bill that included a \$50 fee on a total loss vehicle. R.I. Gen. Laws § 5-38-10 provides in relevant part:

The department of business regulation may deny an application for license or suspend or revoke a license after it has been granted, for the following reasons:

...

(6) For refusing to surrender any automobile to its owner upon tender of payment of the proper charges for towing, storage and work done on that automobile;

The Department has previously indicated that an auto body shop must release a vehicle upon payment of the items in R.I. Gen. Laws § 5-38-10(6). See, *In re Standard Auto Body*, DBR No. 02-L-0113, issued February 7, 2003. In *Standard*, the Department determined that storage charges were not "work done" and the vehicle could not be held pending payment of storage (the statute was subsequently amended to include storage). The Department further held that failure to release the vehicle subjected the auto body shop to discipline.

Reliable obtained the vehicle in question on March 6, 2004 when, at the request of Amica's insured, it towed the vehicle from Currier Collision to Reliable. Reliable stored the vehicle between March 6, 2004 and March 12, 2004. The vehicle was determined to be a total loss and Reliable charged Amica \$427.50 which it required to be paid before it would release the vehicle. Although two invoices were issued (and were admitted as

Exhibits 1 and 2 in this matter), Amica was only charged and only paid once. Amica paid a total of \$427.50. Included in this amount was a \$50 charge identified as “Labor” on Exhibit 1 and “Administrative” and Exhibit 2. It is this charge, referred to as an “administrative” charge throughout this Decision, which is at issue in this case. When asked to describe the “work done” in support of the “administrative” charge of \$50,

Reliable responded:

Upon being contacted by Britton Bates, Reliable towing contacted Currier Collision and made arrangements for the vehicle to be towed to Reliable Towing. At that time the total charges owed to Currier Collision were verified and it was confirmed what form of payment was acceptable. Then, a police release was obtained in order to have the vehicle removed by Currier Collision. The vehicle was towed from Currier Collision to Reliable Towing and when the vehicle arrived at Reliable the customer information was entered into the computer, together with the year, make, model and vehicle identification number of the vehicle. Then it was confirmed with the owner whether she need (sic) any items out of the vehicle. An identification number was put on the windshield of the vehicle and then the vehicle was inspected and the damage assessed for the owner. The vehicle was jump-started in order to put the window up and secure the vehicle from weather damage. Then, the vehicle was moved to Reliable Towing's secured lot. Then, Reliable made arrangements for an appraiser on behalf of Amica Mutual Insurance Company to inspect the damage to the vehicle and appraise the damage. On or about March 9, 2004, when an appraiser on behalf of Amica Mutual Insurance Company, John Mello, came to Reliable's facility. Reliable's representative reviewed the damage to the vehicle with the appraiser. Then, once the vehicle had been determined by Amica Mutual Insurance company to be a “total loss” Reliable contacted Britton Bates and informed her of the same and made arrangements for her to remove her personal items from the vehicle. Then, Reliable coordinated with the salvage yard for the vehicle to be removed. Then, because the vehicle was not drivable, Reliable assisted the subject tow company with the vehicle by jump-starting and moving it so that it could be towed.

Reliable response to Interrogatory number 8

At the hearing Mr. Botella indicated that this was not a routine situation but rather an unusual situation in which the vehicle was not an “obvious total.” As a result, Mr. Botella testified that he did work authorized by the owner including additional

weatherizing pending evaluation by the appraiser. Mr. Botella indicated that this was not done on all vehicles which enter his shop but rather the “work done” was unique to this repair. The description of the “work done” provided in response to interrogatory 8 (exhibit 5) and Reliable’s initial response to this complaint (exhibit 4) did not provide this same explanation

On July 23, 2008 Amica sent an email to the Hearing Officer and opposing counsel indicating that “Amica has decided to withdraw its complaint in the above matter.” On July 23, 2008 counsel for Reliable sent return email indicating that Reliable objected to Amica’s request. Reliable indicated that it had expended considerable resources defending this matter and, if the complaint is dismissed, it demanded “...reimbursement of Reliable Collision’s attorney’s fees, costs and that Amica Insurance Company be penalized and/or sanctioned for filing a frivolous complaint in this matter.”

The discovery in this matter listed a number of items in alleged justification of this fee. However, at the hearing of this matter a significantly different picture was painted of this particular repair. Mr. Bottella testified that this was not a routine matter but instead was a unique case of a vehicle which on initial viewing appeared repairable but upon further inspection was determined to be a total loss. Mr. Bottella testified that because of this unique set of facts he did “work” which he does not do on every repair and for which he charged \$50.

Under these facts the Department does not agree with Reliable that this was a “frivolous” complaint. Amica was confronted with an unexplained “administrative fee” and filed a challenge to the imposition of that fee. Only at the hearing itself was enough information provided to clarify that this was not a “standard” situation and Reliable was

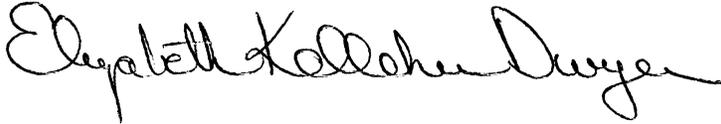
not advocating that an “administrative” fee can be added to all total losses as “work done.” As a result of these unique characteristics the Department does not believe, as Reliable suggests, that this is a case which is likely to be repeated.

The Department would suggest that when an auto body shop undertakes work for which it intends to be compensated that it describe that work on its invoice in terms other than “administrative fee.” In this case, Amica has requested that its complaint be withdrawn and the Hearing Officer is recommending that this matter, therefore, be closed.

**IV. RECOMMENDATION**

The Hearing Officer recommends that

1. The Hearing Officer's Decision on the Motion to Dismiss, which is attached hereto, be adopted as a Decision of the Department.
2. That this matter be dismissed upon the withdrawal of the complaint by Amica.



Dated: August 27, 2008

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Elizabeth Kelleher Dwyer, Esq.  
Hearing Officer

I have read the Hearing Officer's Decision and Recommendation in this matter, and I hereby

ADOPT  
 REJECT  
 MODIFY

the Decision and Recommendation.



Dated: August 27, 2008

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A. Michael Marques  
Director

**NOTICE OF APPELLATE RIGHTS**

**THIS DECISION CONSTITUTES A FINAL ORDER OF THE DEPARTMENT OF BUSINESS REGULATION PURSUANT TO R.I.G.L. § 42-35-12. PURSUANT TO R.I.G.L. § 42-35-15, THIS ORDER MAY BE APPEALED TO THE SUPERIOR COURT SITTING IN AND FOR THE COUNTY OF PROVIDENCE WITHIN THIRTY (30) DAYS OF THE MAILING DATE OF THIS DECISION. SUCH APPEAL, IF TAKEN, MUST BE COMPLETED BY FILING A PETITION FOR REVIEW IN SUPERIOR COURT. THE FILING OF THE COMPLAINT DOES NOT ITSELF STAY ENFORCEMENT OF THIS ORDER. THE AGENCY MAY GRANT, OR THE REVIEWING COURT MAY ORDER, A STAY UPON THE APPROPRIATE TERMS.**

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS  
DEPARTMENT OF BUSINESS REGULATION  
233 RICHMOND STREET  
PROVIDENCE, RHODE ISLAND 02903**

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**AMICA MUTUAL INSURANCE COMPANY  
COMPLAINANTS,**

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**RELIABLE COLLISION REPAIR,  
RESPONDENT.**

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**DBR No. 05-L-0007**

**ORDER ON MOTION TO DISMISS**

On May 31, 2005 Respondent Reliable Collision Repair (“Reliable”) filed a Motion to Dismiss. The basis for the motion is that “this matter involves Reliable Towing and not Reliable Collision and that this action should properly be before the Public Utilities Commission<sup>1</sup> rather than the Department of Business Regulation.” As support for this motion Reliable attached the check from Amica’s agent to Reliable in this matter. That check was made payable to “Reliable Towing.”

A hearing was held on the motion to dismiss on July 11, 2006. On July 2, 2007, the Director issued an Order appointing the undersigned as substitute hearing officer in the matter. This order is based upon the oral argument and discovery responses of the parties.

Respondents’ counsel indicated, in response to questioning from the hearing officer that Reliable Collision and Reliable Towing were both fictitious names of the same entity. Respondent indicated that Amica had paid with a check payable to

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<sup>1</sup> The motion states “Public Utilities Commission”, however, the Department take administrative notice of the fact that towing licenses are issued by the Division of Public Utilities and Carriers not the Public Utilities Commission.

“Reliable Towing” although there appears to have been two bills received by Amica one under the name “Reliable Collision” and the other under “Reliable Towing.”

The parties agree that Reliable obtained the vehicle in question on March 6, 2004 when, at the request of Amica’s insured, it towed the vehicle from Currier Collision to Reliable. Reliable stored the vehicle between March 6, 2004 and March 12, 2004. The vehicle was determined to be a total loss and Reliable charged Amica \$427.50 which was paid. As indicated in Respondent’s motion the check from Amica’s agent was made payable to “Reliable Towing.”

The question in the motion is whether jurisdiction over the transaction between Reliable and Amica is with DBR and the auto body license or DPUC and the towing license. DBR has jurisdiction over “auto body repair” pursuant to R.I. Gen. Laws § 5-38-1 *et seq.* DPUC has jurisdiction over towings pursuant to R.I. Gen. Laws §§ 39-12- 1 and 39-12.1-1 *et seq.* The statutes governing the jurisdiction of the DPUC specifically exempt the situation present here. R.I. Gen. Laws § 39-12-2(q) provides:

"Private carrier", as used in this chapter, means any person, other than a common carrier or a contract carrier or an interstate carrier who or which transports in intrastate or interstate commerce by motor vehicle, property of which the person is the owner, lessee, or bailee, when the transportation is for the purpose of sale, lease, rent, or bailment, or in the furtherance of any commercial enterprise. The private carrier shall be exempted from the provisions of this chapter.

When Reliable became involved in this tow it was doing so in “...the furtherance of any commercial enterprise” namely in furtherance of anticipated auto body repair work. DPUC did not, therefore, have jurisdiction over Reliable’s involvement with this vehicle.

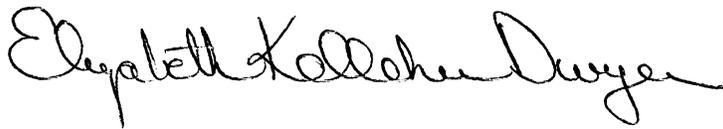
DBR’s has jurisdiction over the transaction between Reliable and Amica because the transaction was in anticipation of auto body repair work. Reliable was asked by the owner

to obtain the vehicle and perform auto body repair work. The fact that the car turned out to be a total loss does not vitiate DBR's jurisdiction over the transaction.

In this case there was testimony with regard to the dba that billed the charges and the dba to which Amica made payment. Reliable has a number of dba's at least one of which is licensed by DPUC and another licensed by DBR. The billing and payment by the licensees, however, do not alter the statutory jurisdiction of either DBR or DPUC. Therefore, although Amica may have made the check out to "Reliable Towing" that fact does not alter DBR's statutory jurisdiction.

For the foregoing reasons, the Motion to Dismiss is Denied.

Dated: July 20, 2007



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Elizabeth Kelleher Dwyer, Esq.  
Hearing Officer