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INSURANCE LAW ALERT

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Insurer Not Engaging in a "Consumer Transaction"

Ohio Supreme Court holds estimates for car repairs by insurance companies are not subject to damages under the state's Consumer Sales Practices Act

After hitting a deer, Jerry Dillon (Dillon) and Nancy Dillon filed a claim with their insurer, Farmers Insurance of Columbus, Inc. (Farmers). Farmers prepared an estimate for the cost of repairs. The insurance contract included language that indicated Farmers would not pay an amount that exceeds the lowest priced parts, which could include "rebuilt parts, quality recycled (used) parts and parts supplied by non-original equipment manufacturers." In the estimate provided to the auto-repair shop, Farmers included non-original equipment manufacturer parts in the estimate. When the auto-repair shop called Dillon to let him know the estimate was created with non-OEM prices, he informed Farmers he wanted the repairs to include only original equipment manufacturer (OEM) parts. In response to Farmers' refusal to pay for OEM parts, Dillon filed a complaint.

At the trial court, Summary Judgment was granted for Dillon's claim that Farmers violated the Consumer Sales Protection Act (CSPA) by not obtaining one of the Dillons' signatures and approval on the estimate, in violation of R.C. 1345.81. Section 1345.81 includes requirements on issuing vehicle repair estimates based on the use of non-OME parts. However, it also specifically applies to a "consumer transaction" as defined in section 1345.01, which excludes transactions between insurers and their customers. In affirming the trial court decision, the Court of Appeals dealt with that "irreconcilable" contradiction by applying rules of construction, including using the more specific provision or the later adopted provision when two directly contradict.

The Ohio Supreme Court vacated the Appellate Court's decision, holding sections 1345.01 and 1345.81 are *not irreconcilable,* and an insurer's vehicle repair estimate is not a consumer transaction. R.C. 1345.81 still applies to other parties that create an estimate and applies to insurance providers in limited circumstances. Furthermore, R.C. 1345.81 specifically referred to the definitions of a consumer transaction found in R.C. 1345.01. The legislature has written other provisions of the CSPA that have not directly referred to R.C. 1345.01. Therefore, the legislature did not need to mention that provision, and the Court could not ignore that limiting language. Additionally, the estimate does not implicate Farmers as a party to the "consumer transaction" of the car repairs. The only role they played was creating the estimate and writing coverage checks, which did not rise to the level of being a party to the transaction.

Accordingly, an insurance company providing an estimate for vehicle repairs is not subject to the damages and attorney's fees available under the CSPA. However, an insurer who violates R.C. 1345.81 may still face a declaratory judgment, injunction, or "other appropriate relief against an act or practice that violates" the CSPA.

If you have any questions about this case or how the CSPA could affect insurers, please contact **Ron Lee** at rlee@ralaw.com or **Megan Faust** at mfaust@ralaw.com.