

STATE OF RHODE ISLAND
DEPARTMENT OF BUSINESS REGULATION
INSURANCE DIVISION

IN THE MATTER OF:

**Carfax, Inc. and CARFAX Total Loss Valuation
Service Application**

2020-IN-001

APPLICANTS

**Pursuant to R.I. Gen. Laws § 27-9.1-4(25) and
230-RICR-20-40-2.8(A)(2)(c)**

**THE AUTO BODY ASSOCIATION OF
RHODE ISLAND'S OBJECTION TO CARFAX, INC.,
AND CARFAX TOTAL LOSS VALUATION SERVICE'S PETITION
FOR APPROVAL PURSUANT TO INSURANCE REGULATION 230-RICR-20-40-2(C)**

Carfax, Inc. (CARFAX) has petitioned its "Total Loss Valuation Service" product for approval as a method to be used by insurers to determine the retail value of total loss vehicles in property damage claims. The Auto Body Association of Rhode Island (ABARI) objects to CARFAX's petition as it meets none of the requirements delineated in R.I. Gen. Laws § 27-9.1-4(25).

I. BACKGROUND

In 2013 the Rhode Island General Assembly enacted R.I. Gen. Laws §27-9.1-4(25) to ensure Rhode Island consumers are reimbursed a fair amount for their vehicles when designated a total loss by an insurer. The Legislature placed this requirement in the Unfair Claims Settlement Practices Act, as it deemed the consumer's interest in not falling victim to insurer- based valuation products, which existed for the sole purpose of lowering vehicle values in the payment of claims, quite significant. For many consumers their vehicle is the second largest asset, and for

many others, it is their first. As such, the payment of premiums to protect that asset demands fairness and transparency in the claims process.

To this end, in 2019, the Legislature amended R.I. Gen. Laws § 27-9.1-4(25) to place even stricter parameters on insurance companies when settling total losses:

(iv) If condition adjustments are made to the retail value of a motor vehicle designated a total loss, all such adjustments must be in accordance with the standards set forth in the current edition of a nationally recognized compilation of retail values, commonly used by the automotive industry, used by the insurer to determine the retail value of the vehicle; and all such adjustments, including prior damage deductions, must be itemized, fair, and reasonable;

R.I. Gen. Laws § 27-9.1(25)(iv)

The amendment reflects the Legislature’s continued concern with the clever ways in which some insurers attempt to improperly reduce the value of total loss vehicles. However, this concern is far from novel. The Department, in Insurance Bulletin 2014-2, noted: “Over the past decade the Department has been presented with numerous consumer complaints concerning the amount consumers are offered by insurers for total losses. In virtually every situation, the conflict results from arbitrary deductions taken from comparable vehicle values when calculating the total loss.” As a testament to the success of the legislative act of 2013, it is ABARI’s understanding that the Department has witnessed a significant drop in consumer complaints.

The statute and its terms are clear and unambiguous. As such, previous attempts to re-introduce insurer-based valuation products into the claims process for total losses in Rhode Island have been properly denied by the Department. Specifically, Mitchell International was denied in 2014, and again in 2018. ABARI will demonstrate herein, for many of the same reasons, why CARFAX’s petition must be denied as well.

II. ANALYSIS

R.I. Gen. Laws § 27-9.1-4(25)(i) defines “fair market value” as the “retail value of a motor vehicle as set forth in a current edition of a nationally recognized compilation of retail values commonly used by the automotive industry to establish values of motor vehicles.”

As the Department noted in its initial response to CARFAX’s application, the Department’s interpretation of the statute at issue has been clearly delineated in its decision dated June 21, 2018, which notes a three –part test all petitioners must meet: 1) whether the applicant is a nationally recognized compilation of retail values; 2) commonly used in the automotive industry; 3) without arbitrary deductions. (See, Exhibit 1, Department Decision). A petitioner must also demonstrate that the information is publically available, and from a current edition. The Department further determined the following:

- “The insurance industry is not part of the automotive industry;”
- “Car rental companies are not part of the automotive industry;”
- “The values in the national compilation are to be of retail values, rather than wholesale or discounted prices.”
- “Edition is ‘the form or version in which a text is published [e.g.] ‘paperback edition’ or the whole number of copies published at one time’.”
- “National compilations can be published electronically, but it needs to be a current edition.”
(Exhibit 1, pp. 12-13)

ABARI will demonstrate that CARFAX’s application cannot meet the three-part test, or any other requirement of R.I. Gen. Law § 27-9.1-4(25).

- a. **CARFAX's Total Loss Valuation Service is not a current edition of a nationally recognized compilation of retail values.**

- i. **Current Edition**

Much like its predecessor petitioner, Mitchell International, the online service CARFAX markets and sells to insurers for claims use is not a "current edition" of anything. CARFAX notes that its database is updated "weekly on then current vehicle sales data and pricing information from millions of used cars offered for sale." Much like Mitchell, CARFAX's total loss valuation service is not a "nationally recognized compilation" of retail values, and never can be because it is a software program that accesses a constantly changing database to determine individual vehicle values on a case by case basis. Therefore, it is a snapshot of a moment in time, and precisely what the law intended to guard against.

NADA and Kelley Blue Book have been used as approved valuation sources in Rhode Island since 2014, as they were and remain nationally recognized, publically available sources for retail motor vehicle values, which are updated quarterly, divided into geographic regions, in the form of a current edition, which can be accessed by consumers. In contrast, to the petitioner's product, NADA and Kelley Blue Book values are not a snapshot of three "comparable" vehicles in a particular market at the moment, which could never statistically be representative of a "retail" value.

- ii. **Publically Available**

CARFAX attempts to claim that it is a "publically available" source, because a valuation service is available to consumers on its website, and allegedly, that valuation will be the same as the one produced by the product it sells to insurers. However, this statement is not entirely accurate, and is not sufficient to meet the requirements of the statute. Though, the resulting value

may be available, the information provided to the insurance company using its total loss service is not. Specifically, a consumer will not receive the comparable vehicles used to determine the value if they use the Carfax website themselves. CARFAX notes that it “pre-selects up to 3 vehicles deemed to be most similar according to its proprietary matching technology.” Therefore, unlike NADA or Kelley, consumers and insurers are not operating at the same starting or end point. When NADA, for example, is used by consumers, there is no wizard behind the curtain requiring an unveiling at the moment a claim is made. Instead, consumers can rest assured that they are looking at the same publically available information as the insurer at the outset. CARFAX’s total loss valuation service removes this inherent safeguard by giving insurers more information than can be accessed by a consumer alone.

For this reason, CARFAX’s Total Loss Valuation Service is not publically available and its application should be denied.

b. Neither CARFAX’s Total Loss Valuation Service, nor its vehicle valuation tool on its website are “commonly used by automotive industry” in Rhode Island.

CARFAX has admitted that its “Total Loss Valuation Service” is a program provided for a fee to insurance companies only. In fact it states this service “will revolutionize the way insurance companies settle automobile total loss claims.” It notes that this service is already used by “over 300 auto insurance claims organizations in the resolution of auto physical damage claims.” Moreover, the name of the website used to access the for a fee system is a web portal called “CarfaxForClaims.com.” Therefore, the total loss valuation service was created for and is solely used by the insurance industry. The Department has already ruled that the “insurance industry” is not part of the “Automotive Industry.”(Exhibit 1). For this reason, Carfax attempts to

confuse the issue with the variety of other products it offers, in order to meet the statutory requirement.

To its credit, CARFAX has become a common word used in nomenclature, much like that of Kleenex or Xerox. Its name refers to a product, which others may provide. When one hears the word CARFAX today, it is associated with its “Vehicle History Report” service. It is not, however, associated with its vehicle valuation product. Moreover, though its, “Vehicle History Report” may be used by some auto dealers when making their own adjustments to the assessment of vehicle value, auto dealers in Rhode Island do not use CARFAX’s online history based valuation service to determine retail values. Though it is the petitioner’s burden to prove, and it has not done so, ABARI nonetheless conducted a survey of the largest automobile dealer’s in Rhode Island to determine whether they use CARFAX valuation service. Responses from all dealership included in the random survey have been attached to this memorandum. (Exhibit 2, Affidavit of Erica Annis, and Survey Results).

The “automotive industry” was clearly interpreted in the Department’s previous decision. The results of ABARI’s survey of many of the largest parts of the “automotive industry” in Rhode Island are telling. Balise, Flood, Greico, Hurd, Paul Masse, Penske (Warwick Auto Mall), Scott Volkswagon, Tarbox, Tasca, and Viti were asked which vehicle valuation service they use in the ordinary course of their business. The results were as follows: six (6) indicated that they use both NADA and Kelley Blue Book; two (2) noted they use only Kelley Blue Book; Two (2) stated they use only NADA. Most importantly, when asked, none reported that they use Carfax history-based valuation tool, Mitchell or CCC. (Exhibit 2). All of the foregoing provide insurer-based total loss claims services, none of which are used by the automotive industry in Rhode Island.

A survey of the dealerships' websites in Rhode Island further confirms this, as "Carfax Vehicle History Reports" are routinely found in advertisements for the sale of used vehicles, but Carfax "History Based Valuations" are notably absent¹. Therefore, though CARFAX's Vehicle History Report service may be used in the automotive industry, Carfax's resulting determination of vehicle values is not. It is important to note, many vehicles do not have a history of previous accidents. When this factor is removed from the analysis, CARFAX's product is no different from any other insurance-based valuation system. The fact that it adds a layer of information, which may or may not be accurate, does not make the result any more reliable, or statutorily appropriate. As such, it should be no surprise that R.I. auto dealers continue to rely on "current editions of nationally recognized compilations of retail values," namely NADA and Kelley Blue Book.

Therefore CARFAX has not, and cannot prove its Total Loss Valuation Service is "commonly used by the automotive industry" and its petition should be denied.

c. CARFAX's Total Loss Valuation Service includes "Arbitrary Deductions."

When asked by the Department to discuss the concept of "arbitrary deductions" included in CARFAX's valuation system, it responded that insurers cannot make arbitrary deductions from the value. It explains that insurance adjusters can make adjustments to mileage, trim, factory options, and condition. However, though this may appear to present a safeguard, it does not absolve the system of its inherent arbitrary characteristics.

To begin, the example in the "Total Loss Valuation Report" provided by CARFAX uses a vehicle in which the adjuster/appraiser determined the pre-accident condition of the loss vehicle

¹ Greico Automotive Group was the only exception found wherein a very small percentage of vehicle advertisements listed a Carfax Value, and appeared only to be used to demonstrate the Dealership asking price was lower.

to be “good.” (Exhibit 3, p.1). In “Step 2” there is a metric, which lists this “good” assessment in the middle of a line between “poor” and “excellent.” Yet, there is no dollar amount deduction noted. Likewise, in “Step 3, “Analyzed Market Supply” the example vehicle ranks in the high end of the metric between “more” and “less” supply, but no value is associated with that metric. Finally in “Step 4: Adjusted for Pre-Accident Vehicle History” the vehicle ranks in the highest of all metrics, but again no dollar value for the metric is noted. In the end we arrive at “Step 5: Computed a VIN SPECIFIC VALUE.” The following page entitled, “Valuation Methodology: How CARFAX Calculates Value” provides no further insight. Instead, it merely lists definitions of the terms used on previous page. (Exhibit 3, pp.2-3). However, no methodology, range, or dollar amounts are provided.

Further, when one attempts to analyze CARFAX’s “comparable vehicles” it is impossible to understand the methodology. According to CARFAX, the example loss vehicle is a close to perfect retail vehicle, in that it has low mileage, no accidents, one (1) owner, a service history and was used as a personal vehicle. Yet, somehow, it is worth only Fifty Dollars (\$50) more than a non-personal use vehicle with multiple owners, and no traction control. (Exhibit 3, pp. 4-5). Even more confusing is the comparison to a vehicle with a reported prior accident or accidents (this is unclear), used as a rental vehicle, with no anti-lock brakes (this should not be listed, and is impossible as Federal Law requires all vehicles to have anti-lock braking systems (ABS) since 2013), no key-less entry, and no rearview camera. In that circumstance the loss vehicle was worth \$450 more. Finally, the only other “comparable” vehicle had damage reported, multiple owners, no anti-theft system, no leather seats, no rear-view camera, no tire pressure monitoring system (this should not be listed, and is impossible as Federal Law has required all vehicles

under 10,000 pounds to have tire-pressure monitoring systems (TPS) since 2000) and 3,200 more miles than the loss vehicle. This vehicle was valued at \$1,130 less.

If it looks confusing, and incomprehensible, that's because it is. Unlike, its predecessor petitioner, CARFAX does not list dollar amounts for any deductions or additions to the vehicle. Moreover, the loss vehicle provided is a higher value than the comparable vehicles, but what would the report look like if the loss vehicle were in fact worth less than the comparable ones? How would a consumer know how the deductions were taken and if they were fair? NADA for example, gives mileage classes, and sets certain criteria for each class of vehicles for each make. Deductions are set, and applied to each vehicle based on mileage class. Additions or deductions for equipment are also set numbers, based on model year. No such information is provided in the CARFAX report. In the end the consumer has no idea how the figures came into existence. Though report indisputably provides data, it nonetheless relies on three (3) comparable vehicles, picked from ten (10), with absolutely no information of how the vehicle valuation was determined. As a result, it must be considered arbitrary, and CARFAX'S petition should be denied.

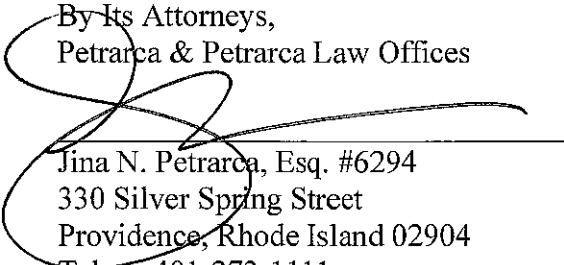
III. CONCLUSION

It is sometimes useful to end at the beginning. R.I. Gen. Laws § 27-9.1-4(25) was enacted and signed into law by Governor Chaffee to protect consumers from unreliable insurer-based valuation systems, which rely on information and matrices that are unavailable to the consumer. The statute was enacted to give consumers a fair, uniform, transparent, nationally recognized method to settle their total loss claims. The requirements of the law were further strengthened in 2019, demonstrating the Legislature's continued concern for fairness and transparency in the process of total loss settlements.

NADA and Kelley Blue Book give the consumer information that is reliable, publically available, uniform, and used by the automotive industry which sells vehicles. For this very reason, many insurers continue to use NADA when determining vehicle value for the purpose of rating a policy. As ABARI has demonstrated herein, CARFAX's Total Loss Valuation Service does not meet any of the standards required by law. To approve such a petition would return the consumer to the very disadvantage the statute sought to, and thus far has, remedied. The likely result would be an immediate reversal of the success of the statute evidenced by the lack of consumer complaints filed at the Department; a trend that is certain to be reversed if CARFAX's petition is approved.

Based upon the foregoing, ABARI respectfully requests the Hearing Officer deny CARFAX's petition for approval of its Total Loss Valuation Service.

Respectfully Submitted,
Auto Body Association of Rhode Island
By Its Attorneys,
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CERTIFICATION

I, hereby certify that on April 27, 2020, I caused a true and accurate copy of the foregoing to be emailed to:

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