

## ARBITRATION POINTS

### Frazier v. USAA

**USAA initial valuation = \$10,639 (James Brown appraiser)**

**Auto Appraise valuation = \$11,964 (All SoCal references)**

**Alba valuation = \$9,565**

#### **A. Problems w/ Alba comparables**

1. Relies upon cars outside of market area. State law requires market area comparables.
  - Nohr's Auto Brokers  
1332 Pine St Walnut Creek, CA 94596
  - Future Ford Lincoln-Hyundai 2285 Diamond Blvd, Concord CA 94520
  - Dave Callender (private seller - no location indicated)
  - Corona Motors 1502 W. Holt Blvd. Ontario, CA (120 miles away)
2. None of the sellers listed by Alba are reputable dealers. Only an individual with no track record and auction sellers/wholesalers, e.g. Nohr's which represents itself as a "Low Mileage Vehicles at near Wholesale Pricing" (<http://www.nohrsauto.com/>).
3. Alba's assertion about car availability in local market is contradicted by USAA's own web site as well as Auto Trader web pages that shows San Diego Prius available, in Riverside and San Bernardino although at much higher price within 2 weeks of accident.. (see attachments)

#### **B. Problems with Alba deductions**

1. Alba reduced car value by \$606 for "poor condition" yet USAA found Prius condition was normal or above average condition and justified an *increase* by \$38.
2. Alba's methodology is overly critical (based upon brand new parts and almost 70% labor discounted by only 60%) and his photos are inconclusive.
3. Alba's description of car condition is also contradicted by Ms. Frazier's affidavit. Especially problematic: condition of paint and failure to consider steam cleaning of upholstery.
4. Much of the body damage that he describes was likely done at the USAA compound where the total loss cars are stored or in the towing to that compound.

## California Code of Regs:

### Section 2695.8. Additional Standards Applicable to Automobile Insurance

(a) This section enumerates standards which apply to adjustment and settlement of automobile insurance claims.

(b) In evaluating automobile total loss claims the following standards shall apply:

(1) The insurer may elect a cash settlement that shall be based upon the actual cost of a "comparable automobile" less any deductible provided in the policy. This cash settlement amount shall include all applicable taxes and one-time fees incident to transfer of evidence of ownership of a comparable automobile. This amount shall also include the license fee and other annual fees to be computed based upon the remaining term of the loss vehicle's current registration. This procedure shall apply whether or not a replacement automobile is purchased.

(A) If the insured chooses to retain the loss vehicle or if the third party claimant retains the loss vehicle, the cash settlement amount shall include the sales tax associated with the cost of a comparable automobile, discounted by the amount of sales tax attributed to the salvage value of the loss vehicle. The cash settlement amount shall also include all fees incident to transfer of the claimant's vehicle to salvage status. The salvage value may be deducted from the settlement amount and shall be determined by the amount for which a salvage pool or a licensed salvage dealer, wholesale motor vehicle auction or dismantler will purchase the salvage. If requested by the claimant, the insurer shall provide the name, address and telephone number of the salvage dealer, salvage pool, motor vehicle auction or dismantler who will purchase the salvage. The insurer shall disclose in writing to the claimant that notice of the salvage retention by the claimant must be provided to the Department of Motor Vehicles and that this notice may affect the loss vehicle's future resale and/or insured value. The disclosure must also inform the claimant of his or her right to seek a refund of the unused license fees from the Department of Motor Vehicles.

(2) A "comparable automobile" is one of like kind and quality, made by the same manufacturer, of the same or newer model year, of the same model type, of a similar body type, with options and mileage similar to the insured vehicle. Newer model year automobiles may not be used as comparable automobiles unless there are not sufficient comparable automobiles of the same model year to make a determination as set forth in Section 2695.8(b)(3), below. In determining the cost of a comparable automobile, the insurer may use either the asking price or actual sale price of that automobile. Any differences between the comparable automobile and the insured vehicle shall be permitted only if the insurer fairly adjusts for such differences. Any adjustments from the cost of a comparable automobile must be discernible, measurable, itemized, and specified as well as appropriate in dollar amount and so documented in the claim file. Deductions taken from the cost of a comparable automobile that cannot be supported shall not be used. The actual cost of a comparable automobile shall not include any deduction for the condition of a loss vehicle unless the documented condition of the loss vehicle is below average for that particular year, make and model of vehicle. This subsection shall not preclude deduction for prior and/or unrelated damage to the loss vehicle. A comparable automobile must have been available for retail purchase by the general public in the local market area within ninety (90) calendar days of the final settlement offer. The comparable automobiles used to calculate the cost shall be identified by the vehicle identification number (VIN), the stock or order number of the vehicle from a licensed dealer, or the license plate number of that comparable vehicle if this information is available. The identification shall also include the telephone number (including area code) or street address of the seller of the comparable automobile.

(4) The insurer shall take reasonable steps to verify that the determination of the cost of a comparable vehicle is accurate and representative of the market value of a comparable automobile in the local market area. Upon its request, the department shall have access to all records, data, computer programs, or any other information used by the insurer or any other source to determine market value. The cost of a comparable automobile shall be determined as follows and, once determined, shall be fully itemized and explained in writing for the claimant at the time the settlement offer is made:

**TOTAL AMOUNT SOUGHT FROM USAA**

Independent Appraisal = \$11,964

Trailer Hitch Reimbursement = 170.41

Toyota Service before accident = \$544.48

Sales tax = \$957.12 (8%)

License refund = \$137.58 (1.15%)

DMV transfer fee = \$15

**Total ACV = \$13,788.59**