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BUSINESS FEATURE: Stamp Out Liability

Declaring that a customer's vehicle is unsafe to drive by stamping the estimate protects you from a potential lawsuit, not to mention increases your chances of closing the sale.

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It's a normal business day (if something like that actually exists) and you're in your office tending to the day's duties when a potential client walks in and asks you for an estimate. You pick up your little notepad and walk out to the vehicle and make small talk to instill in him a sense of comfort and familiarity. Judging from the few seconds that you've known him, you guess that he's in his mid-60s.

The vehicle is a 2006 Chevrolet Impala, and you see that it has taken a very hard hit to the front and right side. The hood is bent into a V, and the right fender has been pushed back far enough to prevent the right front door from opening. You also notice that the right front suspension appears to have been driven back and that both air bags have deployed. You can't imagine how he ever made a turn with the air bag hanging out, and you also wonder why anyone in his right mind would even attempt to drive something like this. What you would really like to do is knock soundly on his forehead and yell, "Hello...McFly...are you nuts driving this thing around?" But in the interest of customer retention, you resist that temptation and decide to save the thought for a funny dinner table story.

Making the Pitch

After walking around the vehicle and examining the damage, you tuck your notepad under your arm and proceed to explain why there is no need to get more estimates. You add that it's impossible to write an accurate damage report under these circumstances and that a complete teardown is necessary. You continue your pitch and tell him that he should leave the vehicle with you because of your years in business, superior equipment and sterling reputation. You also explain that his vehicle has sustained major collision damage and should not be driven under any circumstances because of serious safety risks and the possibility of creating engine damage if the cooling system isn't working properly. You further inform him that if the cooling system is damaged, his vehicle manufacturer's warranty won't cover any engine damage resulting from driving the car after the accident.

You conclude your spiel by calling attention to the smashed headlamp and non-working turn signals and explain that he'll probably receive a citation from the police for driving an unsafe vehicle. Your potential client occasionally nods while listening to everything you have to say without interruption, then calmly asks again for an estimate.

It's then you realize that talking to him was like talking to a dial tone.

You see, this particular vehicle owner heard what you said but none of it was more important than his mission to get an estimate. I've found that this is fueled by several things:

- He's considering paying out-of-pocket so his insurance rates won't increase, so he's getting competitive estimates. It's also safe to assume that he's probably ignorant of the repair process and low-ball estimating tactics.

- He doesn't trust any body shop enough to leave the car there without knowing the repair cost first.
- If the repair cost is more than he can afford and he has to report it to his insurance company, he thinks that the insurer will want three estimates. And take it from me, it will be difficult to convince him otherwise.
- He doesn't make major decisions on his own. He feels that he must take the car home again and confer with his spouse first. He doesn't want to have to tell her that he didn't get an estimate, which is the reason she sent him out in the first place. He would much rather have you upset with him than her upset with him.

But being a good salesperson, you persist in trying to get him to hand you the keys and registration. Unfortunately, after about a half hour, it's clear that even if you stood on your head and juggled meat cleavers, you still wouldn't convince him to leave his car with you.

So what do you do? Do you write the best estimate you can? Do you not write anything because you can't see all the damage? What if something happens when he leaves your shop? Who's responsible?

In terms of securing the car for repairs, this situation is complex and will take some professional maneuvering to gain the vehicle owner's trust and get the job. In my opinion, it also may leave you open to legal action. Ask me how.

I'm glad you asked.

Note that I'm neither an attorney nor do I have any legal experience. However, for the purposes of this article, let's pretend that I'm McFly's lawyer and you own the shop that he last visited. Driving back home in his severely damaged car, he has another accident due to the fact that he can't see over the bent-up hood and that there's damage to the steering system. This one results in bodily injury to McFly and to the driver and passenger of the other car.

Once I find out all the details of both accidents, I, as his lawyer, will come after you as the responsible party for the second accident and will sue you for negligence. Why? Because you're the professional. You inspected my client's car and you knew without a doubt that it was dangerous to drive and yet you allowed him to drive it home. And here's the kicker: Mr. McFly will swear that you never told him it was dangerous to drive. That wouldn't be true, of course, but given a choice, who do you think he'll incriminate, himself or you?

You need to remember that in today's world, no one is responsible for their actions. As McFly's lawyer, I'll further contend that you're no better than the bartender who gave a person who he or she suspected was drunk another drink and allowed him or her to leave the bar and drive home. I'll bet that any good lawyer will make that argument stick or, at the very least, get a settlement. Has this scenario ever actually occurred? I don't know, but I made up my mind some time ago that I was not going to be the first to find out.

Protect Thyself

When I used to write at the front door, we got our share of this type of drive-in estimate request, so I felt it necessary to put something in place to protect what I worked so hard for every day. We even had vehicles pull into our driveway fresh from an accident with antifreeze leaking out from under the hood and still couldn't get the owners to leave their cars with us. They would say things like their home was only a couple of blocks away and they wanted the vehicle at their home until they decided what to do, and off they would go with their crashed cars in a cloud of antifreeze steam like cowboys on the backs of Brahma bulls.

What we did to solve this problem and protect ourselves also produced some unintended positive results. The first thing we did was order a 1-inch by 3-inch rubber stamp with bright red ink that boldly read, "VEHICLE NOT SAFE TO DRIVE." It also had a line underneath for a signature.

When a vehicle owner would stop in for an estimate driving what I considered to be an unsafe car and I couldn't talk them into leaving the car with me, I would reluctantly write an estimate. Then, if my final request to leave the vehicle went upon deaf ears, I would stamp the first page of the estimate "officially" noting that the vehicle was unsafe to drive and ask the owner to sign on the line. He or she typically would be a little surprised at this and would always hesitate for a couple of seconds, and it was at that point I would explain the reason for the stamp.

I would tell the vehicle's owner that I could not impress upon him or her enough how dangerous it would be to continue driving the vehicle in its accident-damaged condition and that I couldn't even be sure that he or she would make it home. Then I would say that it was my duty as a professional to inform him or her of the dangers of driving the wrecked vehicle, and the stamp was part of that process.

I'd say that the stamp, verified with his or her signature, was also meant to protect myself and my company from being held responsible for future damages by proving that I did indeed advise him or her not to drive the vehicle. I would make it clear that if he or she was involved in another accident caused by the dangerous condition of the vehicle, 100 percent of the liability would lie with the driver of the car. I would also mention that one copy was for my records. All of this, by the way, was done in a professional, business-like manner.

A Versatile Tool

Would any of this hold up if challenged in a negligence lawsuit? Again, I have no legal training or background, so I don't know for sure. I do know, however, that the stamp clearly documents my efforts to warn drivers and counters the "He never told me" argument, one I believe the businessperson would lose.

In a lot of cases, I would see an interesting reaction from the owner when I asked for his or her signature under the stamp. It was a kind of like an awakening that hey, this is serious stuff, maybe this guy isn't just handing me a sales line. Although I can't say how many times this helped me secure a repair, I can tell you that it definitely was a factor and it helped me sleep better at night.

I didn't just use the stamp on heavily damaged vehicles like the fictional Impala. I also used it on vehicles with side hits where one of the front doors was inoperable, rear-end hits that rendered brake lights or turn signals inoperable, front-end hits that damaged the headlamps, and also any collisions that caused visible suspension or steering damage.

I'm always reluctant to write a drive-in estimate on major collision damage because I know that, due to hidden damage, my estimate won't be worth the paper it's written on. Nor will anyone else's for that matter. But I will write an estimate on the damage I can see and make the appropriate notes because I don't want a potential client to leave my shop with just my business card in his or her hand. It's a safe bet that some other shop will give him or her a written estimate, incomplete or not. In my mind, an estimate and marketing material trumps a tiny business card. So regardless of the circumstances, I want my shop's name in the hat with any others that the customer visits. Therefore, in my mind, I have to do at least what I know the competition will.

Whatever happens, I at least have my trusty stamp to protect myself. However, I still can't help thinking that knocking on someone's forehead would be much more satisfying.