**Model letter for a first-party total-loss claim
that you have not yet settled**

**Jerry Marlow, www.wasyourcartotaledorstolen.com**

If you wish to do so, you may use the generic letters and emails in this docx file as starting points for your letter and email to your automobile insurance company.

This Word.docx file contains generic versions of letters and emails that I might send to an automobile insurance company if my total‑loss claim were a first-party claim in which I was dealing with my own automobile insurance company.

If, instead of a first-party claim, your total‑loss claim is a third-party claim, then you may wish to download my generic letters and emails for a third-party total‑loss claim from [www.wasyourcartotaledorstolen.com/Marlow\_Third\_party\_Not\_yet\_settled\_letter.docx](http://www.wasyourcartotaledorstolen.com/Marlow_Third_party_Not_yet_settled_letter.docx)

This Word.docx file contains the following generic letters and emails:

* Polite letter for first-party claim
* Polite email
* Muscular letter for first-party claim
* Muscular email

You may choose to draft a polite letter, draft a muscular letter, or draft a letter that is a blend of polite and muscular.

I discuss these letters and emails at [www.wasyourcartotaledorstolen.com/what\_i\_would\_do\_today.html](http://www.wasyourcartotaledorstolen.com/what_i_would_do_today.html)

In case you wish to use my generic letters and my generic emails as a starting point to draft your own letter and email to your automobile insurance company, I include in this document suggestions for how you might want to go about doing so.

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**Please keep in mind that I am not an attorney. I am not offering you legal advice.**I am merely showing you the sort of letters and emails that I would write
to my automobile insurance company if I were trying to get a fair valuation
of my total‑loss vehicle in a first-party total‑loss claim.

After you draft your letter, whether you use or do not use
any of my ideas or language, I recommend that you have an attorney in your county who is knowledgeable about automobile insurance claims review and vet your letter, your email, and your supporting documents before you send them to your automobile insurance company.

An attorney in your county who is knowledgeable about automobile insurance claims can make sure that your letter is consistent with the automobile insurance regulations and other laws of your state.

As you go through this document, you will encounter my suggestions.

First, I suggest that you use “Find and Replace” —> “Replace all”
to change all the specifics of my generic letters and emails
to the corresponding specifics of your total‑loss claim.

(Before you make those global replacements, you may wish to read all the letters and emails so you’ll have a sense of what they said before you made your global replacements.)

Then, in red, I suggest sentences and even whole sections that you or your attorney may wish to include, delete, modify, or replace
depending on whether or not your state’s commissioner of insurance authorizes
J.D. Power as a source of valuations for total‑loss vehicles;
depending on whether or not your automobile insurance policy promises that your automobile insurance company will value your total‑loss vehicle at your total‑loss vehicle’s actual cash value;
depending on what the market valuation report that you received from your automobile insurance company says about what the market valuation report is and who should rely on it;
depending on how the market valuation report that you received describes the valuation-services vendor’s valuation methodology;
depending on whether the regulatory laws of your state take away a first‑party total‑loss claimant’s right to sue his or her automobile insurance company for punitive damages if the automobile insurance company engages in reprehensible misconduct;
and depending on whether the regulatory laws of your state hold automobile insurance companies responsible for the validity of the market valuation reports that they use to value total‑loss vehicles.

Whenever you do not know whether to modify a sentence or section, to delete it, or to keep it as is; leave my notation in red in the draft. Leave it up to your attorney to modify the sentence or section, delete it, or leave it as is.

If you wish to review my excerpts of the laws of your state that regulate how automobile insurance companies are required to value total‑loss vehicles and settle total‑loss claims, go to [www.wasyourcartotaledorstolen.com/usa](https://www.wasyourcartotaledorstolen.com/usa/index.html).

Then click your state.

If you wish to see if an attorney in your county has advertised his or her expertise on wasyourcartotaledorstolen.com, then, after you click your state, click the photo of four attorneys standing next to one another.

Then click your county.

The generic letters here may require minor changes or require substantial changes.

If your draft letter requires few, minor changes; then the attorney with whom you meet can tell you how to make those changes or make them for you.

You may wish to email the Word.docx file of your draft letter to the attorney before you meet with him or her so he or she can edit your draft letter during your meeting.

In case you wish to email your draft letter to a local attorney, at the end of this document, I include a model email that you may wish to use as your starter email.

You may also wish to have a printout of your draft letter with you so you can make notes on it during your meeting.

If your co-pilot or someone else other than you did the word processing of your  draft letter, then, if at all possible, take that person with you to your meeting with the attorney. Make sure that your word-processing person has a printout of the draft letter with her or him so she or he can make precise notes of what she or he needs to fix in your draft letter.

If you elect to edit the letter yourselves, neither one of you want to sit down at your next work session and ask, “What did the attorney say we should change?”

If the generic letters here are a bad fit for your state’s regulatory laws, then the attorney with whom you meet may recommend that you use your supporting documents with a standard letter that he or she uses to get total‑loss claimants fair valuations of their total-loss vehicles and fair settlements of their total-loss claims.

When you go to meet with the attorney, be sure to take along
a copy of your automobile insurance policy
and a copy of the market valuation report that you received
from your automobile insurance company.

Okay, my friend.

Work your way through the generic letters and emails that follow.

If the muscular generic letter requires more work than you want to do,
then you may wish to work only with the polite generic letter.
It’s a lot simpler than the muscular generic letter.

May this task go more smoothly than you’re expecting!

Jerry

For each of the following words or phrases,
use “Find and Replace” —> “Replace all.”

Do the global find and replace in the order given. If you change a short name before you change the corresponding long name, your global change of the long name will not change the long name.

After you make these changes, preserve this list of specifics. Include the list of specifics in the document that you provide to the attorney. It will provide him or her with the specifics of your claim all in one place.

Find: Replace with

jerrymarlow@jerrymarlow.com Your email address

Jerry Marlow Your name

Jerry\_Marlow Your name with underscore separation

3 Washington Square Village Your street address

New York, NY Your city and state

10012 Your zip code

July 4, 2024 Today’s date

123456 Your claim number

Ms. Honorific for your claim rep

j.jones@abcautomobileinsurance.com Claim rep’s email address

Jesse Claim rep’s first name

Jones Claim rep’s last name

Claim Settlement Representative Claim rep’s title

Peace of mind is as easy as ABC. Your automobile insurance company’s advertising slogan.

ABC Automobile Insurance Company, Inc. Full name of automobile insurance company

ABC Short name of automobile insurance company

666 Fleece Street, Suite 666 Address of automobile insurance company

Flimflam City, NY 10000 City, state, and zip of auto insurance company

ZZZ Valuation Services Full name of valuation-services vendor

ZZZ Short name of valuation-services vendor

Jeep Cherokee Overland Your total‑loss vehicle’s make, model,
and trim level.

2019 Your total‑loss vehicle’s model year

35,082 Your total‑loss vehicle’s mileage

1C4PJMJX2KD249619 Your total‑loss vehicle’s VIN number

$24,444 Amount at which the automobile insurance company’s valuation-services vendor valued your total‑loss vehicle (sales tax not included)

$30,000 Ballpark price for which vehicles substantially similar to your total‑loss vehicle are selling at automobile dealerships (sales tax not included)

$29,976 J.D. Power Buy from Dealer price
 for your total‑loss vehicle
(sales tax not included)

192 Number of automobile sales on which J. D. Power based its valuation of your total‑loss vehicle

$2,660.37 Sales tax on J.D. Power Buy from Dealer price

**A question to which you need to get the answer so you can adapt the first‑party polite letter to the laws of your state.**

If your state’s laws mention N.A.D.A. Guides as an approved source of valuations of total-loss vehicles, then, most likely, your state’s commissioner of insurance has approved J.D. Power as an authorized source of valuations for total-loss vehicles.

In 2015, J.D. Power acquired NADA’s Used Car Guide and www.nadaguides.com.

The company has rebranded NADA Guides as J.D. Power and rebranded www.nadaguides.com as www.jdpower.com.

Whether your state’s laws mention N.A.D.A. Guides or not, to be sure of the correct answer to this question, ask the attorney with whom you meet.

1. Does your state’s commissioner of insurance approve J.D. Power as an authorized source of valuations for total-loss vehicles?

 Yes ( ) No ( )

Jerry Marlow
3 Washington Square Village
New York, NY 10012

July 4, 2024

Ms. Jesse Jones
Claim Settlement Representative
ABC Automobile Insurance Company, Inc.
666 Fleece Street, Suite 666
Flimflam City, NY 10000

Re: Claim # 123456

Dear Ms. Jones,

I hope you are having a swell day.

I reviewed the valuation offer that you sent to me for my total‑loss vehicle.

When I searched at automobile dealerships for vehicles that are substantially similar to my total‑loss vehicle, none of the substantially similar vehicles that I found for sale were for sale for anywhere near as little money as the ZZZ valuation.

The prices of the substantially similar vehicles that I found were all very close to $30,000 (sales tax not included).

Their average price seemed to be right around $30,000 (sales tax not included).

That average price of $30,000 is well above the amount of money at which ZZZ Valuation Services valued my total‑loss vehicle.

ZZZ must have made some sort of data-processing or computational error.

Accordingly, I do not accept ZZZ’s valuation.

I do not accept ABC’s valuation offer.

I do not propose that, to value my total‑loss vehicle, we use the price of one of the substantially similar vehicles that I found for sale at an automobile dealership because none of those vehicles are for sale at local automobile dealerships.

Instead, I propose that we use the J.D. Power valuation of my total‑loss vehicle.

Most likely, the commissioner of insurance of your state has approved J.D. Power as a source of valuations for total‑loss vehicles. When you meet with an attorney, you may wish to confirm with her or him that, in your state, J. D. Power is an approved source of valuations. If you learn that J. D. Power is ***not*** an approved source, then I would delete the following sentence:

I understand that our state’s commissioner of insurance recognizes J.D. Power as an authorized source of valuations for total‑loss vehicles.

If my automobile insurance policy promised that my automobile insurance company would value my total‑loss vehicle at my total‑loss vehicle’s actual cash value, then I would include here the following sentence:

In my automobile-insurance-policy contract, I read that ABC promises, in the event of a total loss, to value my total‑loss vehicle at its actual cash value.

Otherwise, I would delete the above sentence.

Check your automobile insurance policy.

The J.D. Power Buy from Dealer price for my total‑loss vehicle appears to be a fair, accurate, and reasonable calculation of my total‑loss vehicle’s actual cash value.

The J.D. Power Buy from Dealer price for my total‑loss vehicle is $29,976 (sales tax not included).

Hence, I propose that ABC value my total‑loss vehicle at $29,976 plus $2,660.37 sales tax.

To substantiate this valuation, to the email to which this letter was attached, I have attached the J.D. Power valuation for my total‑loss vehicle, the Monroney Label window sticker for my total‑loss vehicle (which I used to obtain the J.D. Power valuation), and a printout of the vehicle specs and options that I used to produce the J.D. Power valuation.

If you and your colleagues agree to the J.D. Power valuation, then we can settle my claim quickly, easily, and amicably.

Your automobile insurance policy may entitle you to reimbursement of out-of-pocket expenses that you incurred as a result of your total-loss event.

To compensate you for loss of use of your total-loss vehicle, your automobile insurance company may provide you with a rental vehicle at the automobile insurance company’s expense while your claim is open or reopened. Or you may be entitled to full or partial reimbursement for the money that you paid to rent a vehicle while your claim was open.

You may wish to include in your letter to the automobile insurance company an itemization of the expenses for which you expect reimbursement. To do so, you may wish to modify and perhaps expand the following section of this starter letter. (The right-hand column is set to align at the decimal points.)

If you wish to calculate my final settlement amount based on the J.D. Power Buy from Dealer price for my total‑loss vehicle, please remember to include reimbursement up to my policy limits on each of these expenses:

Reimbursement for loss of use of my total-loss vehicle $1.00

Cost to protect crashed vehicle from additional damage $1.00

Car fare home from the accident $1.00

Towing charges $1.00

Vehicle‑storage charges $1.00

**Total** $5.00

Please respond to my valuation proposal via email or letter.

I do not wish to negotiate the settlement of my claim over the telephone.

I love ABC’s advertising slogan: “Peace of mind is as easy as ABC.”

I have seen and heard your commercials innumerable times.

ABC’s advertising has set my expectations for how I expect ABC to settle my total-loss claim: quickly, reasonably, fairly, and in good faith.

Thank you.

I look forward to hearing from you.

With best personal regards,
Jerry Marlow

To: j.jones@abcautomobileinsurance.com

From: jerrymarlow@jerrymarlow.com

Claim # 123456 response to your valuation offer

Dear Ms. Jones,

I hope you are well.

To this email, I have attached a letter in which I respond to your valuation offer for my total‑loss vehicle.

My letter is the first attachment, Claim\_123456\_Jerry\_Marlow\_Response\_to\_ABC\_s\_valuation\_offer.pdf.

It appears that ZZZ must have made some sort of error or errors in its valuation of my vehicle.

Hence, I cannot agree to ZZZ’s valuation amount.

I propose that we use a different valuation source.

I propose that we use my total‑loss vehicle’s J.D. Power retail valuation of $29,976 plus $2,660.37 sales tax.

To this email, I have also attached: the J.D. Power valuation of my total‑loss vehicle, the Monroney Label window sticker for my total‑loss‑vehicle, and a PDF of the vehicle specs used to produce the J.D. Power valuation of my total‑loss vehicle.

Please respond to my valuation proposal via email or letter.

I do not wish to negotiate the settlement of my claim over the telephone.

I look forward to hearing from you.

With best personal regards,
Jerry Marlow

Attachments:

Claim\_123456\_Jerry\_Marlow\_Response\_to\_ABC\_s\_valuation\_offer.pdf

Total\_loss\_Vehicle\_1C4PJMJX2KD249619\_JD\_Power\_Value\_$29,976.pdf

Total\_loss\_Vehicle\_1C4PJMJX2KD249619\_Monroney\_Label\_window\_sticker.pdf

Total\_loss\_Vehicle\_1C4PJMJX2KD249619\_JD\_Power\_Specs.pdf

**Questions to which you need to get the answer so you can adapt the first‑party muscular letter to the laws of your state.**

In many states, state law says that, for a comp vehicle to qualify as substantially similar to a total-loss vehicle, the comp vehicle must be the same make, same model, same model year, same trim level, same major options, and have similar mileage.

In some states, state law goes on to limit the mileage difference between a comp vehicle and a total-loss vehicle.

For example, the New Jersey administrative code that governs automobile physical damage claims says:

“ ‘Substantially similar vehicle’ means a vehicle of the same make, model, year and condition, including all major options of the insured vehicle. Mileage must not exceed that of the insured vehicle by more than 4,000 miles.”

1. Do your state’s laws say that, for a comp vehicle to qualify as substantially similar or comparable to a total-loss vehicle, the comp vehicle’s mileage must be similar to the total-loss vehicle’s mileage?

 Yes ( ) No ( )

1. Do your state’s laws go on to limit the mileage differences
between total-loss vehicles and substantially similar or comparable vehicles?

 Yes ( ) No ( )

In most states, courts have decided that the state’s automobile insurance regulations take away a first-party claimant’s right to sue his or her automobile insurance company for punitive damages (also called exemplary damages) if his or her automobile insurance company not only acts in breach of contract but also engages in reprehensible misconduct.

These court decisions typically argue that only the state’s commissioner of insurance can fine or otherwise punish an automobile insurance company for engaging in unfair claim settlement practices and in reprehensible misconduct.

In a few states, however, automobile-insurance regulatory laws explicitly give total-loss claimants the right to sue his or her automobile insurance company for punitive or exemplary damages if his or her automobile insurance company not only acts in breach of contract but also engages in reprehensible misconduct.

1. Do court decisions in your state take away your right to sue your automobile insurance company for punitive or exemplary damages if your automobile insurance company not only acts in breach of contract but also engages in reprehensible misconduct?

Most likely, you will need to pose this question to the attorney with whom you meet because the answer to this question likely depends on court decisions.

 Yes ( ) No ( )

1. Or do the regulatory laws of your state explicitly give you the right to sue your automobile insurance company for punitive or exemplary damages if your automobile insurance company not only acts in breach of contract but also engages in reprehensible misconduct?

You may be able to find the answer to this question in your state’s laws.

 Yes ( ) No ( )

In many states, court decisions say that an automobile insurance company is not responsible for the validity of valuation opinions that it buys from other corporations.

The regulatory laws of a few states say that an automobile insurance company is responsible for the validity of valuations that it uses to value
claimants’ total-loss vehicles.

1. Do the regulatory laws of your state hold an automobile insurance company responsible for the validity of its valuation of your total loss vehicle?

 Yes ( ) No ( )

(The discussion and question that follow are the same as for question 1. above for the polite model letter.)

If your state’s laws mention N.A.D.A. Guides as an approved source of valuations of total-loss vehicles, then, most likely, your state’s commissioner of insurance has approved J.D. Power as an authorized source of valuations for total-loss vehicles.

In 2015, J.D. Power acquired NADA’s Used Car Guide and www.nadaguides.com.

The company has rebranded NADA Guides as J.D. Power and rebranded www.nadaguides.com as www.jdpower.com.

Whether your state’s laws mention N.A.D.A. Guides or not, to be sure of the correct answer to this question, ask the attorney with whom you meet.

1. Does your state’s commissioner of insurance approve J.D. Power as an authorized source of valuations for total-loss vehicles?

 Yes ( ) No ( )

Jerry Marlow
3 Washington Square Village
New York, NY 10012

July 4, 2024

Ms. Jesse Jones
Claim Settlement Representative
ABC Automobile Insurance Company, Inc.
666 Fleece Street, Suite 666
Flimflam City, NY 10000

Re: Claim # 123456

Dear Ms. Jones,

To reach a fair and amicable settlement of my total‑loss claim, ABC Automobile Insurance Company and I first need to agree on a fair and reasonable valuation of my total‑loss vehicle.

I have received ABC’s valuation offer for my total‑loss vehicle.

To the best of my understanding, ABC Automobile Insurance Company paid ZZZ Valuation Services to prepare this market valuation report for my total‑loss vehicle, a 2019 Jeep Cherokee Overland, VIN number 1C4PJMJX2KD249619 with mileage of 35,082 miles.

I reviewed the market valuation report that ZZZ Valuation Services prepared for you.

**ZZZ’s market valuation report inspires neither trust nor confidence.**

If you choose to draft a similar letter, here, next, you need to delete the sentences that I made up about how the fictitious valuation-services vendor describes its market valuation report and replace those sentences with similar sentences that you copy and paste from the market valuation report that you received from your automobile insurance company.

In one section, the document describes itself as a Market Valuation Report:

“ZZZ Valuation Services has prepared this Market Valuation Report for the exclusive use of ABC Automobile Insurance Company.

“No other person or entity is entitled to rely upon this Market Valuation Report or on any of its contents.

“No other person or entity *should rely* upon this Market Valuation Report or on any of its contents.

“ZZZ is one source of vehicle valuations. Other sources of valuations are available.”

By thus calling itself a Market Valuation Report, the document appears to be trying to sound authoritative and unbiased.

Yet, in another section, the document describes itself as merely an opinion or as a reflection of an opinion:

“The ZZZ Market Valuation Report reflects ZZZ Valuation Services Inc.’s opinion as to the value of the loss vehicle, based on information that ABC Automobile Insurance Company provided to ZZZ.”

By calling itself merely an opinion or a reflection of an opinion, the document sounds like ZZZ wishes to evade responsibility for the accuracy of its work product.

I found this switching back and forth between authoritative language and evasive language to be contradictory and confusing.

Nonetheless, from ZZZ’s market valuation report, I understand that:

If you choose to draft a similar letter, here, next, you need to review the conclusions that I drew from the fictitious market valuation report and change my fictitious conclusions into the conclusions that you draw from the market valuation report that you received from your automobile insurance company.

1. ABC Automobile Insurance Company provided ZZZ with the description of my total‑loss vehicle upon which ZZZ based its valuation.
2. ABC’s description of my total‑loss vehicle included an abundance of representations as to my total‑loss vehicle’s VIN, mileage, specs, major options, and condition at the time of the total‑loss event.
3. To come up with its valuation of my total‑loss vehicle, ZZZ relied upon the completeness and accuracy of ABC’s representations in its description of my total‑loss vehicle.
4. ZZZ’s valuation is merely an opinion or a reflection of an opinion.
5. Only ABC Automobile Insurance Company is entitled to rely on ZZZ’s valuation.
6. I am not entitled to rely on ZZZ’s valuation.
7. *I should not rely on ZZZ’s valuation.*
8. I should not rely on any of the contents of the ZZZ market valuation report. That is, I should not rely on the accuracy or veracity of any of the representations made in the ZZZ market valuation report.
9. It would be prudent of me to obtain valuations from other sources.

I am so advised.

Thank you!

**Did ZZZ have motive, means and opportunity to undervalue my total‑loss vehicle?**

ZZZ’s description of its valuation methodology and the valuation methodology itself caused me to wonder:

Did ZZZ value my total‑loss vehicle honestly, fairly, and accurately?

Or did ZZZ have motive, means, and opportunity to significantly undervalue my total‑loss vehicle?

Let’s explore each of these red-flag factors in turn.

**Motive to undervalue: Profit maximization**

Profit maximization is the number-one goal of most, if not all, C corporations.

Quite likely, ZZZ’s management seeks to maximize ZZZ’s profits.

Hence, quite likely, ZZZ seeks to produce market valuation reports that maximize ZZZ’s profits.

What kind of valuation outcomes would maximize ZZZ’s profits?

To the best of my understanding, ZZZ sells its vehicle-valuation services only to automobile insurance companies.

Hence, to maximize its own profits, ZZZ likely seeks to help its customers— automobile insurance companies— maximize their profits.

How can ZZZ help automobile insurance companies maximize their profits?

ZZZ can generate market valuation reports that undervalue total‑loss claimants’ total‑loss vehicles.

Every dollar that ZZZ saves an automobile insurance company on the valuation of a claimant’s total‑loss vehicle reduces the automobile insurance company’s claim-settlement expense by one dollar.

Reductions in claim-settlement expenses increase an automobile insurance company’s profits dollar for dollar.

Claim-settlement expenses are far and away an automobile insurance company’s biggest category of expenses.

Hence, insofar as ABC and ZZZ seek to maximize their companies’ profits, ZZZ has a strong financial motive to produce valuations that undervalue claimants’ total‑loss vehicles by as much money as the management of ZZZ thinks ZZZ can get away with.

If you choose to draft a similar letter, here, next, you need to modify, correct, or delete the sentences that I made up about the fictitious valuation-services vendor’s valuation methodology and replace those sentences with your assessment of the valuation methodology described in the market valuation report that you received from your automobile insurance company.

**Means to undervalue: A black-box valuation methodology that lends itself to easy manipulation of valuation outcomes**

As best I was able to figure out from ZZZ’s market valuation report, ZZZ uses a proprietary, black‑box, computerized model to predict the retail price at which a local automobile dealership would sell a vehicle that is substantially similar to a claimant’s total‑loss vehicle.

To make its prediction, ZZZ’s black-box model does not use all the prices at which substantially similar vehicles sold recently at local automobile dealerships.

Instead, ZZZ maintains a proprietary database of vehicles.

To predict the retail price at an automobile dealership of a vehicle that is substantially similar to a claimant’s total‑loss vehicle, ZZZ first selects from its database a dozen or so somewhat similar vehicles to use as comp vehicles.

Then, ZZZ makes numerous “adjustments” to the price of each somewhat similar vehicle that it selected from its database.

According to the ZZZ market valuation report that I received for my total‑loss vehicle, ZZZ makes price adjustments to reflect differences in vehicle attributes— including mileage, options, and vehicle condition.

Then ZZZ calculates “a weighted average of the adjusted values” of the somewhat similar vehicles that ZZZ selected from its database.

ZZZ weights its weighted average based on these factors:

* Whether ZZZ obtained the data from advertisements or from inspection of the database vehicle.
* Similarity of database vehicle to total‑loss vehicle
* Proximity of the for-sale location of the database vehicle to the usual place of garagement of the total‑loss vehicle
* How long ago ZZZ obtained or updated the information about the database vehicle

This black-box methodology is the means by which ZZZ can undervalue a claimant’s total‑loss vehicle.

**Opportunity to undervalue: An abundance of opportunities to reduce the valuation amount that ZZZ’s valuation methodology produces.**

In its valuation methodology, ZZZ has created for itself an abundance of opportunities to misrepresent facts, bias its selections, fudge its “adjustments,” and tilt its weightings— all in ways that reduce the valuation amount that its black-box model produces for a claimant’s total‑loss vehicle.

Through intentional “errors and omissions,” ZZZ can misrepresent the specifications and options of a claimant’s total‑loss vehicle in ways that lower that vehicle’s valuation amount.

Likewise, ZZZ can misrepresent the specifications and options of its database vehicles in ways that lower a total‑loss vehicle’s valuation amount.

To undervalue claimants’ total‑loss vehicles, ZZZ can select from its database only the somewhat similar vehicles the prices of which are at the lower end of the somewhat-similar-vehicle price range.

ZZZ can include in its database vehicles that are advertised on the internet with low click-bait prices— even though a would-be buyer cannot actually buy those vehicles at their low advertised prices.

If ZZZ uses prices of vehicles that have not yet been sold, ZZZ may program into its software to take a deduction from those vehicles’ list prices on the questionable assumption that the actual sales price of each vehicle will be less than the vehicle’s list price.

ZZZ can fudge up the vehicle conditions of its database vehicles and fudge down the vehicle condition of a claimant’s total‑loss vehicle. Such double fudging can reduce a valuation amount significantly.

If my state’s laws said that, for a comp vehicle to qualify as substantially similar to a total-loss vehicle, the comp vehicle’s mileage be similar to the total-loss vehicle’s mileage, then I would include the following two sentences. Otherwise I would leave out these two sentences.

For a comp vehicle to qualify as substantially similar to a total-loss vehicle, our state’s laws require that the comp vehicle’s mileage be similar to the total-loss vehicle’s mileage.

ZZZ can ignore this requirement and subtract hundreds or even thousands of dollars from the value of a claimant’s total‑loss vehicle because ZZZ’s selected database vehicles have lower mileages.

If my state’s laws went on to limit the mileage differences between total‑loss vehicles and substantially similar vehicles used to value total-loss vehicles, then I would leave out the previous two sentences. I would include the following two sentences instead.

Our state’s laws limit the mileage differences between total‑loss vehicles and substantially similar vehicles.

ZZZ can ignore these limitations and subtract hundreds or even thousands of dollars from the value of a claimant’s total‑loss vehicle because ZZZ’s selected database vehicles have lower mileages.

Otherwise I would leave out these two sentences.

To produce a low weighted-average valuation, ZZZ can update information on low-value database vehicles so that those low-value vehicles weigh heavier in its weighted average.

Likewise, ZZZ can inspect only low-value database vehicles so that those low-value vehicles weigh heavier in its weighted average.

In commerce, “price quote” is generally taken to mean the price at which a dealer is willing to enter into a binding sales contract with a buyer for an item that the seller has in his inventory or can readily acquire.

In keeping with that generally accepted meaning of “price quote,” when  a used-car dealer gives a prospective buyer a “price quote” on a vehicle of a particular make, model, model year, trim level, and mileage and the prospective buyer replies’ “I’ll take it,” that exchange between buyer and seller creates a binding sales contract at the price quoted.

In a contradiction of this generally accepted meaning of “price quote,” ZZZ may casually ask a used-car dealer to guess or speculate how much the dealer ***might sell*** a vehicle of a particular make, model, model year, trim level, and mileage for ***if he had such a vehicle in inventory,*** and then use the dealer’s casual, speculative guesstimate as a “price quote” for vehicle-valuation purposes even though no buyer can buy the vehicle described at that speculative price that the dealer casually guessed at.

These are all simple and obvious ways in which ZZZ can misrepresent facts, bias its selections, fudge its “adjustments,” and tilt its weightings to produce low vehicle valuations for automobile insurance companies.

Clever valuation specialists and systems developers at ZZZ may have figured out many more ways to manipulate their black-box model and its data to produce low vehicle valuations for automobile insurance companies.

**Did ZZZ have motive, means and opportunity to undervalue my total‑loss vehicle?**

A preponderance of evidence strongly suggests that the answer to our question is:

“Yes.”

In most states, the laws that regulate how automobile insurance companies are required to value total‑loss vehicles and settle total‑loss claims take away a first-party claimant’s right to sue his or her automobile insurance company for punitive damages (also called exemplary damages) if his or her automobile insurance company engages in reprehensible misconduct.

If my claim were a first-party claim and I lived in a state that took away my right to sue my automobile insurance company for punitive damages, then I would add to the letter here the argument that follows.

If your state’s regulatory laws ***do not take away*** your right to sue your automobile insurance company for punitive damages, then, when you ask an attorney to review and vet your letter, he or she should tell you to delete the argument that follows.

**Is it fair and realistic of me to suspect that ZZZ undervalued my total‑loss vehicle?**

Ordinarily, American consumers presume that corporations honor contractual obligations of good faith, honesty, and fair dealings.

Ordinarily, many American consumers (or their attorneys) know that, if a corporation breaches its contractual obligations of good faith, honesty, and fair dealings and engages in reprehensible misconduct; then the consumer can sue the corporation not only for compensatory damages but also for punitive damages.

Punitive damages are on top of compensatory damages.

Punitive damages can be as much as three times compensatory damages.

Ordinarily, the possibility of having to pay punitive damages for engaging in reprehensible misconduct deters corporations from engaging in reprehensible misconduct.

Given contractual obligations of good faith, honesty, and fair dealing and given the threat of punitive damages for engaging in reprehensible misconduct, is it fair and realistic of me to suspect that, to maximize their company’s profits, ZZZ might misrepresent facts, bias selections, fudge “adjustments,” and/or tilt weightings to produce low vehicle valuations?

Let’s explore that question.

An automobile insurance policy is a contract between an automobile insurance company and the policyholder.

But an automobile insurance policy is not an ordinary contract.

The regulatory regime that our state’s legislators created for automobile insurance companies that do business in our state takes away a policyholder’s right to sue his or her automobile insurance company for punitive damages for engaging in reprehensible misconduct.

Absent the deterrent of punitive damages, why wouldn’t employees of automobile insurance companies and employees of automobile insurance companies’ valuation services vendors engage in whatever types of conduct that they believe will maximize their companies’ profits?

The regulatory laws of a few states say that an automobile insurance company ***is responsible*** for the validity of valuations that it uses to value claimants’ total‑loss vehicles. If the regulatory laws of your state hold an automobile insurance company responsible for the validity of its valuation of your total‑loss vehicle, then the attorney whom you ask to vet your letter should tell you to delete the contradictory language in the next three paragraphs— or tell you to delete the entire section.

Also, I am aware that, in at least one court case, Milligan v. GEICO Gen. Ins. Co., 20-3726-cv (2d Cir. Feb. 14, 2022), an automobile insurance company and its valuation-services vendor successfully argued that the valuation-services vendor had no contractual obligations [such as duties of good faith, honesty, and fair dealing] to the total‑loss claimant because 1) the total‑loss claimant was not a party to the contract between the automobile insurance company and its valuation-services vendor [lack of privity] and 2) the contract between the automobile insurance company and its valuation-services vendor did not imply that the total‑loss claimant was a third-party beneficiary of that contract.

At the same time that a valuation services vendor can argue that it has no obligation of good faith, honesty, and fair dealing to the total‑loss claimant, an automobile insurance company can argue that it has no responsibility for the validity of a valuation opinion that it purchased from another corporation.

Given the free pass that our state’s legislators have granted to automobile insurance companies on punitive damages; given the free pass that the law gives valuation services vendors on contractual obligations to a total‑loss claimant of good faith, honesty, and fair dealing; and given that no one is legally accountable to the total‑loss claimant for the legitimacy and validity of a valuation opinion that an automobile insurance company buys from a valuation services vendor; I believe it is both fair and realistic for me to suspect that, to maximize their companies’ profits, ABC or ZZZ or both just might have misrepresented facts, biased selections, fudged “adjustments,” or tilted weightings to produce an unfairly low valuation for my total‑loss vehicle.

**ZZZ predicted that an automobile dealership would sell a vehicle that is substantially similar to my total‑loss vehicle for $24,444 (sales tax not included).**

Using the valuation methodology described above, ZZZ’s proprietary, black‑box computerized valuation model predicted that a vehicle that is substantially similar to my total‑loss vehicle and that is for sale at a local automobile dealership will have a retail price of $24,444 (sales tax not included).

**How can a total‑loss claimant determine if ZZZ valued his or her total‑loss vehicle fairly and accurately?**

A total‑loss claimant has no feasible way to directly investigate and analyze ZZZ’s opaque, black-box methodology.

To validate or repudiate a ZZZ valuation directly, a total‑loss claimant would have to survey the entire market of somewhat similar vehicles.

A total‑loss claimant would have to survey the marginal difference that every option on a vehicle makes to the vehicle’s total value.

A total‑loss claimant would have to survey the differences in vehicle value associated with differences in that vehicle’s mileage.

For every somewhat similar vehicle in ZZZ’s database, a total‑loss claimant would have to do due diligence on every data item.

A total‑loss claimant would have to do due diligence on every line of computer code in ZZZ’s valuation software.

A total‑loss claimant is unable to do any of these things— much less do all of them.

**I do not agree with ZZZ’s valuation.**

**I do not accept ABC’s valuation offer.**

If you changed the letter’s language above, you may need to make corresponding changes in the following paragraph.

Whereas ZZZ had motive, means, and opportunity to undervalue my total‑loss vehicle, whereas ZZZ had no legal obligation or duty to me to produce a fair and honest valuation, and whereas ABC bears no legal responsibility for the fairness or honesty of ZZZ’s valuation of my total‑loss vehicle; I do not agree to ZZZ’s valuation of my total‑loss vehicle.

I do not accept ABC’s valuation offer of $24,444 (sales tax not included).

**Instead, I propose that, to value my total‑loss vehicle, we use its J.D. Power valuation of $29,976 (sales tax not included).**

Most likely, your state’s superintendent of insurance approved J.D. Power as a valuation source for total-loss vehicles. If you or your attorney know that is not the case, delete the following sentence.

J.D. Power is a valuation source approved by our state’s Superintendent of Insurance.

J.D. Power has no financial motive or incentive to either undervalue or overvalue total‑loss vehicles.

Both buyers and sellers of used vehicles rely on J.D. Power’s valuations.

J.D. Power’s success as a business depends on its valuations being fair to both buyers and sellers of used vehicles.

Hence, J.D. Power has a strong financial motive to be fair to both buyers and sellers of used vehicles.

To put J.D. Power’s business and business practices into courtroom language, one might say that J.D. Power has motive, means, and opportunity to produce valuations that are fair to buyers of used vehicles, fair to sellers of used vehicles, fair to total‑loss claimants, and fair to automobile insurance companies.

I obtained and documented a J.D. Power valuation.

To get the J.D. Power valuation, I entered my total‑loss vehicle’s mileage of 35,082 miles into J.D. Power’s online calculator at www.jdpower.com/cars/manufacturers.

I entered the vehicle specs and major options that are on my total‑loss vehicle’s Monroney Label window sticker.

I entered the zip code of my total‑loss vehicle’s principal place of garagement.

J.D. Power’s value calculator reported that, for 192 recent sales of similar vehicles in my local market, the average selling price was **$29,976** (sales tax not included).

The J.D. Power Buy from Dealer price for my total‑loss vehicle is a fair, accurate, and reasonable calculation of my total‑loss vehicle’s actual cash value.

To substantiate this J.D. Power valuation, to the email by which I transmitted this letter to you, I attached the J.D. Power valuation for my total loss vehicle, the Monroney Label window sticker for my total loss vehicle that I used to obtain the J.D. Power valuation, and a printout of the vehicle specs and options that I used to produce the J.D. Power valuation.

Whereas the valuation that I propose is in full, demonstrable, documented, and verifiable compliance with our state’s insurance regulations and with other laws of our state, I trust that you and your colleagues will agree that the **$29,976** valuation (sales tax not included) that I propose is fair to all.

If you and your colleagues agree to the J.D. Power valuation, then we can settle my claim quickly, easily, and amicably.

Please respond to my valuation proposal via email or letter.

I do not wish to negotiate the settlement of my claim over the telephone.

Thank you.

I look forward to hearing from you.

With best personal regards,
Jerry Marlow

To: j.jones@abcautomobileinsurance.com

From: jerrymarlow@jerrymarlow.com

Claim # 123456 response to your valuation offer

Dear Ms. Jones,

I hope you are having a wonderful day.

To this email, I have attached a letter in which I respond to ABC Automobile Insurance Company’s offer to value my total‑loss vehicle at $24,444 (sales tax not included).

My letter is the first attachment, Claim\_123456\_Jerry\_Marlow\_s\_response\_to\_ABC\_s\_valuation\_offer.pdf.

In my letter, I reject ZZZ’s valuation.

I explain in detail why I reject ZZZ’s valuation.

Because ABC’s valuation offer is based on ZZZ’s valuation, I do not agree to ABC’s valuation offer.

Instead, I propose that, to value my total‑loss vehicle, we use my total‑loss vehicle’s J.D. Power retail valuation of $29,976 (sales tax not included).

To this email, I have also attached: the J.D. Power valuation of my total‑loss vehicle, the Monroney Label window sticker for my total‑loss‑vehicle, and a PDF of the vehicle specs used to produce the J.D. Power valuation of my total‑loss vehicle.

Please respond to my valuation proposal via email or letter.

I do not wish to negotiate the settlement of my claim over the telephone.

I look forward to hearing from you.

With best personal regards,
Jerry Marlow

Attachments:

Claim\_123456\_Jerry\_Marlow\_s\_Response\_to\_ABC\_s\_valuation\_offer.pdf

Total\_loss\_Vehicle\_1C4PJMJX2KD249619\_JD\_Power\_Value\_$29,976.pdf

Total\_loss\_Vehicle\_1C4PJMJX2KD249619\_Monroney\_Label\_window\_sticker.pdf

Total\_loss\_Vehicle\_1C4PJMJX2KD249619\_JD\_Power\_Specs.pdf

**Questions about the laws of your state to which the answers may prove useful if the automobile insurance company does not agree to the valuation amount that you propose in your letter.**

While you are looking for the answers to the above questions for your first-party total-loss claim, you may wish to keep an eye out for answers to these additional questions.

The answers to these questions may prove useful if the automobile insurance company does not agree to the valuation amount that you propose in your letter.

In the laws below, you may find that your state legislators have given you a right of recourse.

If you have a right of recourse and the automobile insurance company refuses to value your total-loss vehicle at its actual cash value, then you may be able to get additional money from the automobile insurance company if you exercise your right of recourse.

If your state’s legislators have given you a right of recourse, they may also have given the automobile insurance company dubious ways to preclude or satisfy your exercise of your right of recourse.

The automobile insurance company may be able to preclude your exercise of your right of recourse if, when they send you a settlement check, they identify an allegedly substantially similar vehicle for sale at a local automobile dealership that you allegedly can buy for their valuation amount.

Likewise, the automobile insurance company may be able to satisfy your exercise of your right of recourse if, after you exercise your right of recourse, they identify an allegedly substantially similar vehicle for sale at a local automobile dealership that you allegedly can buy for their valuation amount.

If either of these possibilities come to pass, you likely will want to inspect the automobile insurance company’s candidate right-of-recourse vehicle to determine if that vehicle is, in fact, substantially similar to your total-loss vehicle— same make, same model, same model year, same major options, similar mileage, and same or better condition.

You likely will want to verify that the automobile insurance company’s candidate right-of-recourse vehicle is for sale at the automobile dealership that the automobile insurance company alleges at the price that the automobile insurance company alleges.

If the laws of your state give you a right of recourse, counting from the day that the automobile insurance company puts the initial settlement check in the mail, you likely have only so many days in which to exercise your right of recourse or you lose your right of recourse.

1. Do the laws of your state give you a right of recourse?

 Yes ( ) No ( )

1. If you have a right of recourse, do the laws of your state allow an automobile insurance company to preclude your exercise of your right of recourse if, when they send you a settlement check, they identify a substantially similar vehicle for sale at a local automobile dealership that you can buy for their valuation amount?

 Yes ( ) No ( )

1. If you have a right of recourse, do the laws of your state allow an automobile insurance company to satisfy your exercise of your right of recourse if, after you exercise your right of recourse, they identify a substantially similar vehicle for sale at a local automobile dealership that you can buy for their valuation amount?

 Yes ( ) No ( )

1. If you have a right of recourse, how many days after the automobile insurance company sends you a settlement check do you have to exercise your right of recourse before you lose it?

 \_\_\_\_\_\_ days

In some states, the law allows an automobile insurance company to take away a first-party claimant’s right of recourse if the automobile insurance company invokes the appraisal clause in the claimant’s automobile insurance policy.

1. In your state, do you lose your right of recourse if your automobile insurance company invokes the appraisal clause in your automobile insurance policy?

 Yes ( ) No ( )

The laws of some states prohibit an automobile insurance company from saying that, if you cash or deposit a settlement check, then, thereby, you agree to the settlement.

Such a prohibition may use such language as this:
“No insurer shall issue a check or draft in payment of a claim that contains any language or provision that implies or states that acceptance of the check or draft constitutes a final settlement or release of any or all future obligations arising out of the loss.”

1. Do the laws of your state prohibit an automobile insurance company from saying that, if you cash or deposit a settlement check, then, thereby, you agree to the settlement?

 Yes ( ) No ( )

**The legislators of a few states give to their citizens rights that the legislators of other states take away from their citizens.**

**Are your state legislators right givers?**

**Or right takers?**

At least one state has a consumer-protection law that says
an automobile insurance company cannot require a first-party total-loss claimant to resolve a claim-settlement dispute through private arbitration unless the claimant’s automobile insurance policy allows the claimant the right to resolve the dispute through a small-claims lawsuit instead.

1. Do your state’s consumer-protection laws give first-party total-loss claimants the right to have a dispute resolved through a small-claims lawsuit in lieu of having that dispute resolved through private arbitration?

 Yes ( ) No ( )

In some states, if a party to a written contract acts in bad faith,
the laws of the state regard that act of bad faith as a tort
against the non-breaching party.

1. In your state, if your automobile insurance company not only breaches the terms of your automobile insurance policy but also acts in bad faith, does their bad-faith misconduct give you a cause of action against them under tort law?

 Yes ( ) No ( )

1. If the answer to the previous question is yes, then is your cause of action under tort law exempt from your automobile insurance policy’s arbitration clause?

 Yes ( ) No ( )

**Example email with which to email your draft letter and supporting documents to the attorney with whom you are scheduled to meet.**

After you have done as much work as you care to do on your draft letter, I suggest that you make an appointment with an attorney in your county or in a nearby county.

I suggest that, at your meeting with the attorney, you ask him or her to review, vet, edit, tweak, and strengthen your draft letter as he or she thinks best.

When you meet with the attorney, it may make sense for the attorney to have your draft letter up on a computer screen during the meeting.

That way, the attorney can make changes directly to your draft letter or insert notes for you or your co-pilot to make changes.

Hence, before you meet with the attorney, I suggest that you email your draft letter and supporting documents to the attorney so he or she can have your draft letter and supporting documents up on a computer screen during your meeting.

If I were going to email my draft letter and supporting documents to an attorney with whom I was scheduled to meet, my covering email would look something like the email below.

If, earlier, you used “Find and Replace” —> “Replace all” to change the specifics ofmy fictitious total-loss claim to the specifics of your total-loss claim, then some of those changes will have rippled through to this email.

If you wish to do so, you may use my email as the starting point for your email.

Dear \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_,

I am scheduled to meet with you on MONTH, DAY, YEAR at TIME for one hour.

I need your legal expertise in the settlement of my first-party total-loss claim with ABC Automobile Insurance Company.

I am writing a letter to ABC in which I am challenging their valuation of my total‑loss vehicle.

ABC hired ZZZ Valuation Services to value my total-loss vehicle.

ZZZ valued my total-loss vehicle at $24,444.

The online J. D. Power valuation of my total-loss vehicle is $29,976.

In my draft letter, I reject ZZZ’s valuation.

In my draft letter, I propose that ABC value my total-loss vehicle at its J.D. Power Buy from Dealer price of $29,976 plus $2,660.37 sales tax.

At our upcoming meeting, I ask that you review my draft letter, vet my draft letter against our state’s laws that regulate how automobile insurance companies are required to value total-loss vehicles and settle first-party total‑loss claims, tweak my draft letter, and strengthen my draft letter as you think best.

I ask that you provide these legal services on a limited-scope basis so I can represent myself in the settlement of my total-loss claim.

At our meeting, you may wish to have my draft letter up on a computer screen so you can make your changes directly to my draft letter.

To that end, I have attached to this email my draft letter to ABC.

I also have attached the supporting documents that I plan to email to ABC along with my letter.

I do not ask that you do any work on the letter prior to our meeting.

I ask only that you have the letter available on a computer during our meeting.

To get started on my draft letter, I used one of the example letters that Jerry Marlow offers to his readers at www.wasyourcartotaledorstolen.com.

Mr. Marlow is not an attorney. He encourages his readers to educate themselves about total-loss automobile insurance claims, do some research, and then meet with a local attorney.

NAME NAME will accompany me to our meeting. NAME is doing the word processing for my letter.

Thank you for helping me with this matter on a limited-scope basis.

If we are unable to complete the necessary work on the letter in one hour, I will schedule another appointment with you.

I look forward to seeing you soon.

With best personal regards,

YOUR NAME