

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

DONALDSON TWYMAN,)	
Plaintiff,)	
)	
v.)	No. 16-cv-04182
)	
S&M AUTO BROKERS, INC., SAED)	
IHMOUD and MOHAMMED IHMOUD)	Honorable Virginia M. Kendall
)	
Defendants.)	

**PLAINTIFF'S MOTION FOR LEAVE *INSTANTER* TO
SUPPLEMENT THE MOTION TO DISMISS RECORD
WITH PROGRESSIVE INSURANCE DOCUMENTS
CONCLUSIVELY PROVING THE FX37 WAS IN A MAJOR ACCIDENT**

DONALDSON TWYMAN, by his undersigned counsel, moves for Leave to File, *Instanter*, to Supplement the Motion to Dismiss Record with Progressive Insurance Documents Conclusively Proving the FX37 was in a Major Accident. In support of this Motion, Plaintiff states:

1. Defendants have based their entire defense that the FX37 automobile, that is the subject of this case, was never in a major accident. That is one of the primary arguments in support of Defendants' motion to dismiss. They claim that the FX37 was never in a major accident, that they did not misrepresent that it was not in an accident and therefore, cannot possibly be liable for punitive damages sufficient to meet the diversity jurisdiction threshold.

2. Plaintiff had to serve a large number of third-party subpoenas to identify the insurance carrier of one of the prior owners. That company was Progressive Insurance. Immediately upon learning the identity of the insurance carrier, Plaintiff served Progressive with a document subpoena on September 13, 2016, with a return date of October 4, 2016.

3. Progressive finally produced documents in response to the subpoena today, a representative sample of which are attached hereto. Those documents, including color photographs, conclusively prove that the FX37 was in major accident and that much of the damage remains to this day. See Exhibit A attached hereto.

4. Plaintiff could not submit these documents into the motion to dismiss record before today because they had not been produced.

5. Plaintiff believes it is important for these materials to be made part of the motion to dismiss record to further establish that: a) the car suffered severe accident damage further substantiating the just over \$28,000 diminished value claim; b) this is an appropriate punitive damages case; and c) Plaintiff's counsel was fully justified in alleging in the complaint that the FX37 was in a major accident and, contrary to Defendants' claims, took appropriate third-party document discovery to substantiate that allegation.

WHEREFORE, Plaintiff Donaldson Twyman requests leave, *instanter*, to supplement the motion to dismiss record with Exhibit A attached hereto

DONALDSON TWYMAN

By: /s/ Peter Lubin
One of his attorneys

Peter S. Lubin
Andrew C. Murphy
DITOMMASO ♦ LUBIN, P.C.
17 W 220 22nd Street – Suite 410
Oakbrook Terrace, IL 60181
(630) 333-0000
psl@ditommasolaw.com
acm@ditommasolaw.com

CERTIFICATE OF SERVICE

I, Peter S. Lubin, the undersigned attorney, hereby certify that I served a true and correct copy of the foregoing PLAINTIFF'S MOTION FOR LEAVE *INSTANTER* TO SUPPLEMENT THE MOTION TO DISMISS RECORD WITH PROGRESSIVE INSURANCE DOCUMENTS CONCLUSIVELY PROVING THE FX37 WAS IN A MAJOR ACCIDENT upon:

Joel A. Brodsky
Law Office of Joel A. Brodsky
8 S. Michigan Ave., Suite 3200
Chicago, IL 60603
jbrodsky@joelbrodskylaw.com

via the Court's CM/ECF System.

Dated: October 14, 2016

/s/ Peter Lubin

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

DONALDSON TWYMAN,
Plaintiff,

v.

S&M AUTO BROKERS, INC., SAED
IHMOUD and MOHAMMED IHMOUD,
Defendants.

No. 16-cv-04182

Honorable Virginia Kendall

Magistrate Judge Sheila Finnegan

DECLARATION CERTIFYING
AUTHENTICITY OF RECORDS PRODUCED
IN RESPONSE TO SUBPOENA

I, Shaynii Gonzalez, certify that I have reviewed the records that I have
(name)
produced in response to the subpoena I received in this matter and that these records are true and
correct originals or duplicates of the records that I generated or received.

I certify under penalty of perjury that the foregoing is true and correct.

Shaynii Gonzalez
The Progressive Corporation
Legal Department
6300 Wilson Mills Road
Mayfield Village, OH 44143

Executed on this 14 day of October, 2016

Date: 12/ 8/2014 12:00 PM
 Estimate ID: 14-1456963-01
 Estimate Version: 0
 Committed
 Profile ID: * Qns:AllexceptAM

PROGRESSIVE

900 SOUTH AVE SUITE 102, STATEN ISLAND, NY 10314
 (917) 525-7844

TRACK YOUR CLAIM AND VIEW YOUR ESTIMATE ONLINE AT PROGRESSIVE.COM.

PLEASE CONTACT KIM ADAMS AT 917-525-7844 FOR ANY QUESTIONS REGARDING THE ESTIMATE.

Damage Assessed By: KIM ADAMS IA-1319623

Claim Rep: JOSEPH CASSON
 (440) 910-1603

Classification:

* Product Type: Auto
 * Date of Loss: 12/ 1/2014
 Contact Date: 12/ 3/2014
 * Deductible: 500.00
 Claim Paid: Y
 Days to Repair: 12 DAYS ECD 12/19/14
 * Claim Number: 14-1456963-01

Insured: ZOYA GORNOPOLSKY
 Claimant: ZOYA GORNOPOLSKY
 Address: 4113 OCTOBER ROAD, RICHMOND, VA 23234
 Telephone: Home Phone: (917) 499-6383
 Owner: ZOYA GORNOPOLSKY
 Address: 4113 OCTOBER ROAD, RICHMOND, VA 23234
 Telephone: Home Phone: (917) 499-6383

Mitchell Service: 911153

Description: 2013 Infiniti FX37
 Body Style: 4D Ut
 VIN: JN8CS1MW8DM170265
 Mileage: 17,013
 OEM/ALT: A
 Color: Moonlight White Metallic
 Options: PASSENGER AIRBAG, DRIVER AIRBAG, POWER DRIVER SEAT, POWER LOCK, POWER WINDOW
 REAR WINDOW DEFOGGER, CRUISE CONTROL, TILT STEERING COLUMN, LEATHER SEAT
 POWER PASSENGER SEAT, TELESCOPIC STEERING COLUMN, PREMIUM SOUND SYSTEM
 ANTI-LOCK BRAKE SYS., TRACTION CONTROL, FOG LIGHTS, ALUM/ALLOY WHEELS
 REARVIEW CAMERA, AUXILIARY INPUT, HIGH INTENSITY DISCHARGE HEADLIGHTS
 IPOD ADAPTER, LEATHER STEERING WHEEL, SATELLITE RADIO, FRONT AIR DAM
 TINTED GLASS, AUTO AIR CONDITION, TRIP COMPUTER, SUBWOOFER
 UNIVERSAL GARAGE DOOR OPENER, VARIABLE ASSISTED STEERING, SIDE AIRBAGS
 ANTI-THEFT SYSTEM, AUTOMATIC HEADLIGHTS
 INTERIOR AUTOMATIC DAY/NIGHT OR ELECTROCHROMATIC MIRROR
 SIDE HEAD CURTAIN AIRBAGS, AM/FM STEREO CD/MP3 PLAYER, ELECTRONIC PARKING AID
 ELECTRONIC STABILITY CONTROL, FRONT HEATED BUCKET SEATS
 FRONT SEATS WITH POWER LUMBAR SUPPORT, INTERIOR AIR FILTER, KEYLESS ENTRY SYSTEM
 POWER DISC BRAKES, POWER HEATED EXTERIOR MIRRORS, REAR SPOILER
 REAR WINDOW DIVERSITY ANTENNA, REAR WINDOW WIPER, STEERING WHEEL AUDIO CONTROLS
 SUNROOF/MOONROOF (POWER)

Vehicle Production Date: 6/12
 Drive Train: 3.7L Inj 6 Cyl AWD
 License: WUA6427 VA
 Search Code: EELMHURST2

Line Item	Entry Number	Labor Type	Operation	Line Item Description	Part Type/ Part Number	Dollar Amount	Labor Units
Information Labels							
1	104083	BDY	REMOVE/REPLACE	Inform Label Emission Control	14805-3WY0A	2.02	0.1*
2	102300	BDY	REMOVE/REPLACE	Inform Label Oil Level Caution	99053-1CA0A	2.45	0.1*
3	102750	BDY	REMOVE/REPLACE	Inform Label Paint Caution	ORDER FROM DEALER	9.00	0.1*
Front Bumper							
4		BDY	OVERHAUL	Frt Bumper Cover Assy			1.0 #
5	103140	BDY	REMOVE/REPLACE	Frt Up'r Bumper Cover	FBM22-3EV0H	489.08	INC #

ESTIMATE RECALL NUMBER: 12/08/2014 11:54:56 14-1456963-01

Mitchell Data Version: OEM: OCT_14_V1113

MAPP:OCT_14_V1116

Software Version: 7.1.169

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PROG002

Date: 12/ 8/2014 12:00 PM
 Estimate ID: 14-1456963-01
 Estimate Version: 0
 Committed
 Profile ID: * Qns:AllexceptAM

6		REF	REFINISH	Frnt Upr Bumper Cover				C 2.8
7	103141	BDY	REMOVE/REPLACE	Frnt Lwr Bumper Cover	62026-1CB0A	165.45	INC #	
8	103142	BDY	REMOVE/INSTALL	Frnt Upr Bumper Seal	Existing		INC r	
9	103163	BDY	REMOVE/REPLACE	Frnt Bumper License Plate Bracket	96210-1CA0B	36.30	INC	
10	103164	BDY	REMOVE/REPLACE	R Frnt Bumper Fog Lamp Bezel	62256-3EV0A	64.15	INC #	
11	103165	BDY	REMOVE/INSTALL	L Frnt Bumper Fog Lamp Bezel	Existing		INC #r	
12	103167	BDY	REMOVE/REPLACE	L Frnt Bumper Stiffener	62059-1CA0A	114.57	INC #	
13		BDY	REMOVE/INSTALL	Frnt Bumper Cover			INC #	
14	103170	BDY	REMOVE/REPLACE	Frnt Bumper Impact Absorber	62090-1CA0A	80.10	INC	
15	103171	BDY	REMOVE/REPLACE	Frnt Bumper Reinforcement Bar (Alum)	62030-1CA0A	374.75	0.4 #	
16	103161	BDY	REMOVE/REPLACE	L Frnt Parking Sensor Unit	25994-1BA3E	236.38	0.1 #	
<u>Grille</u>								
17	103414	BDY	REMOVE/REPLACE	Grille Assembly	62070-3EV0A	447.78	INC #	
18	103416	BDY	REMOVE/INSTALL	Front View Camera	Existing		0.2 #r	
<u>Front Lamps</u>								
19	104460	BDY	REMOVE/REPLACE	R Frnt Combination Lamp Assembly	26010-1CA0E	1,325.32	INC #	
20		BDY	CHECK/ADJUST	Headlamps			0.4	
21	104461	BDY	REMOVE/REPLACE	L Frnt Combination Lamp Assembly	Remanufactured	1,121.00	INC #	
22	102613	BDY	REMOVE/INSTALL	L Frnt Fog Lamp			INC #	
23	103077	BDY	REMOVE/REPLACE	R Frnt Fog Lamp Assembly	26150-8998B	183.25	INC #	
<u>Hood</u>								
24	101259	BDY	REMOVE/REPLACE	Hood Panel	FEA0M-1CAMA	1,009.75	1.3	
25		REF	REFINISH	Hood Outside			C 2.7	
26		REF	REFINISH	Add For Hood Underside			C 1.4	
27	101261	BDY	REMOVE/REPLACE	R Hood Hinge	65400-1CA0A	38.88	0.2 #	
28		REF	REFINISH	R Hinge			C 0.5	
29		BDY	REMOVE/INSTALL	Hood Assy			INC	
30		BDY	REMOVE/INSTALL	R Fender Assy			0.8 #	
31	101262	BDY	REMOVE/REPLACE	L Hood Hinge	65401-1CA0A	39.97	0.2 #	
32		REF	REFINISH	L Hinge			C 0.5	
33		BDY	REMOVE/INSTALL	L Fender Assy			0.8 #	
34	100907	BDY	REMOVE/REPLACE	Hood Catch	65670-1CA0A	89.68	INC	
<u>Cooling</u>								
35	103079	BDY	REMOVE/REPLACE	Cooling Radiator	** Non-OEM	236.00	INC #	
36		MCH	REMOVE/INSTALL	A/C Condenser -M			INC	
37		MCH	REMOVE/REPLACE	Evacuate & Recharge A/C -M			1.4	
<u>A/C /Heater/Ventilation</u>								
38	101042	MCH	REMOVE/REPLACE	A/C Condenser -M	** Non-OEM	176.00	INC	
39	103101	BDY	REMOVE/INSTALL	R Upr Seal	Existing		r	
40	103102	BDY	REMOVE/INSTALL	L Upr Seal	Existing		r	
41	102428	BDY	REMOVE/REPLACE	R Lwr Seal	92184-1CA0B	4.77		
42	102429	BDY	REMOVE/INSTALL	L Lwr Seal	Existing		r	
<u>Front Fender</u>								
43	101055	BDY	REPAIR	R Fender Panel	Existing		0.5* #	
44		REF	REFINISH/REPAIR	R Fender Panel			C 1.6*	
45				MODIFIED REFINISH WITH FULL CLEAR COAT				
46	101056	BDY	REPAIR	L Fender Panel	Existing		1.5* #	
47		REF	REFINISH	L Fender Outside			C 1.7	
48	101060	BDY	REMOVE/REPLACE	L Fender Front Liner	63845-1CA0A	d102.23	INC #	
49	101357	BDY	REMOVE/INSTALL	R Air Duct			0.2 #	
50	101358	BDY	REMOVE/INSTALL	L Air Duct			0.2 #	
51	101064	BDY	REMOVE/REPLACE	R Fender Wheel Opening Mldg	63860-1CB0B	124.92	INC #	
52	101053	BDY	REMOVE/REPLACE	L Fender Wheel Opening Mldg	63861-1CB0B	124.92	INC #	
<u>Front Inner Structure</u>								
53	101113	BDY	REMOVE/REPLACE	Frnt Body Radiator Support (Com)	Used/Recycled	445.00	* 8.4 #	
54		MCH	REMOVE/REPLACE	Add To R&R Mechanical Components -M			2.2 #	
55				*** OEM OVERSTOCK, \$445 SHOP COST + 25% MARKUP				
56				KEystone/LKQ QUOTE #5645208, CONFIRMED PRICE/AVAIL				
57				Line Markup %25.00		111.25		
58	100409	BDY	REMOVE/INSTALL	R Frnt Body Headlamp Mtg Brkt	Existing		0.2 r	
59	100410	BDY	REMOVE/INSTALL	L Frnt Body Headlamp Mtg Brkt	Existing		0.2 r	
60	100415	BDY	REMOVE/REPLACE	Frnt Body Hood Latch Support	62550-1CA0A	41.35	INC	
61	100416	BDY	REMOVE/REPLACE	Upr Frnt Body Retainer	62290-1CA0A	24.18	0.2	
62				BENT				
<u>Steering Pump</u>								
63	102480	MCH	REMOVE/REPLACE	Steering Oil Cooler -M	49720-1CA0A	328.52	1.5	

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Date: 12/ 8/2014 12:00 PM
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64	102815	BDY	REMOVE/INSTALL	Air Cleaner Duct	<u>Air Cleaner</u>	Existing	INC	r
65	102099	BDY	REMOVE/INSTALL	Battery	<u>Electrical</u>	Existing	0.4	r
66				R&I FOR REFINISH PROCESSES				
67	103601	BDY	REMOVE/INSTALL	High Note Horn Assy		Existing	0.3	#r
68	100832	BDY	REMOVE/REPLACE	Low Note Horn Assy		25620-1CA0A	104.17	INC #
69				CRACKED				
70	103252	BDY	REMOVE/REPLACE	W/Shield Washer Reservoir Assy	<u>Windshield</u>	28910-3FY0A	147.52	INC
71	100490	BDY	REMOVE/INSTALL	R Rocker Cover	<u>Rocker/Pillars/Floor</u>		0.4	
72				R&I ROCKER/MUDGUARD FOR FENDER REFINISH				
73	100491	BDY	REMOVE/INSTALL	L Rocker Cover			0.4	
74				R&I ROCKER/MUDGUARD FOR FENDER REFINISH				
75		REF	ADD'L OPR	THREE STAGE			5.4	
76				** Paint Code QAA - White Pearl Tricoat				
77			ADD'L COST	Paint/Materials	<u>Additional Costs & Materials</u>		727.45	*
78			ADD'L COST	Hazardous Waste Disposal			4.75	*
79	900500	BDY *	REPAIR	RESET ELECTRONICS		Existing	0.3*	
80	900500	FRM *	REPAIR	SET-UP & MEASURE	<u>MANUAL ENTRIES</u>	Existing	2.0*	
81	900500	FRM *	REPAIR	PULL TIME/CORRECT UNIBODY MISALIGNMENT		Existing	1.0*	
82	900500	BDY *	REPAIR	COVER CAR FOR OVERSPRAY		Sublet	5.00	* INC*
83	900500	BDY *	REPAIR	RUSTPROOFING/ANTI-CORROSION COMPOUND - 1		Sublet	9.95	* 0.1*
84	900500	BDY *	REMOVE/REPLACE	FLEX ADDITIVE 1 PANEL		Sublet	6.95	* 0.0*
85	900500	BDY *	REPAIR	Wiring		Existing	0.5*	
86				INSPECT/REPAIR WIRING				
87	900500	BDY *	REPAIR	PINCH WELD REPAIR/REFINISH		Existing	0.5*	
88	900500	BDY *	REPAIR	TINT PAINT		Existing	0.5*	
89	900500	BDY *	REPAIR	COLOR SAND & BUFF		Sublet	1.2*	
90				0.3hr per panel x 4 panels				

* - Judgment Item

- Labor Note Applies

d - Discontinued by the Manufacturer

** Non-OEM - Non-Original Equipment Manufacturer Replacement Part

C - Included in Clear Coat / Three Stage Calc

r - CEG R&R Time Used For This Labor Operation

ABC PARTS INT.
 135 ROOSEVELT AVE.
 MINEOLA
 NY 11501
 (516) 248-4900 (800) 794-2639

KEYSTONE INSURANCE
 149 LAFAYETTE DR.
 SYOSSET
 NY 11791
 (516) 364-1355 (866) 431-7213

35	** RAD13078	236.00	21	** IN2502145R	1,121.00
38	** 6G3772	176.00			

Remarks

-- VEH IN GOOD CONDITION
 -- A/P WITH JOE
 -- SHOP HAS DIRECTION TO PAY, AUTH TO RPR & DR

Prior Damage:

- RT CORNER REAR BUMPER, R TAIL LAMP COLL DMG
 - W/S BUSTED ON PSNGR SIDE

ESTIMATE RECALL NUMBER: 12/08/2014 11:54:56 14-1456963-01

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PROG004

[illegible]**PROG005**

Date: 12/ 8/2014 12:00 PM
Estimate ID: 14-1456963-01
Estimate Version: 0
Committed
Profile ID: * Qns:AllexceptAM

THIS IS A DAMAGE ASSESSMENT ONLY - NOT AN AUTHORIZATION TO REPAIR.
BASED ON DAMAGE VISIBLE OR CERTAIN AT TIME IT WAS WRITTEN.

IF FRAME OR UNIBODY REPAIR IS INCLUDED ON THIS ESTIMATE, THE AMOUNT
SHOWN INCLUDES TIME OR ALLOWANCE FOR MEASURING BEFORE, DURING AND
AFTER THOSE REPAIRS.

THE OWNER OF THE VEHICLE MAY SELECT THE REPAIR FACILITY OF HIS/HER
CHOICE.

TO ENSURE PROPER AND PROMPT PAYMENT FOR ADDITIONAL DAMAGE DISCOVERED
DURING THE COURSE OF REPAIRS, CONTACT PROGRESSIVE FOR SUPPLEMENT
HANDLING PROCEDURES.

REPAIR SHOP MANAGER'S/AUTHORIZED REPRESENTATIVE'S SIGNATURE INDICATING
AGREEMENT ON COST OF REPAIRS, TOWING/STORAGE CHARGES, AND TO COMPLETE
ALL LISTED REPAIRS: _____

ESTIMATED COMPLETION DATE: _____

LIFETIME GUARANTEE FOR SHEET METAL AND PLASTIC BODY PARTS

The replacement parts written on the estimate are intended to return
your vehicle to its pre-loss condition with proper installation.
After repair, if any sheet metal or plastic body part included in the
estimate fails to return your vehicle to its pre-loss condition
(assuming proper installation). In terms of form, fit, finish,
durability or functionality, Progressive will arrange and pay for the
replacement of the part, to the extent not covered by a
manufacturer's or other warranty. This service will be performed at
no cost to you, (including associated repair and rental car costs.)
To obtain service under this guarantee, call Progressive at
1-800-274-4641.

This guarantee applies as long as you own or lease the vehicle. This
guarantee is not transferable and terminates if you sell or otherwise
transfer your vehicle.

THIS GUARANTEE DOES NOT COVER NORMAL WEAR AND TEAR OR DAMAGE CAUSED BY
IMPROPER MAINTENANCE, NEGLIGENCE, ABUSE OR SUBSEQUENT ACCIDENT.

THIS GUARANTEE IS LIMITED TO ARRANGING FOR THE SELECTION OF REPAIR
PARTS THAT WILL RETURN YOUR VEHICLE TO ITS PRE-LOSS CONDITION.
ACCORDINGLY, PROGRESSIVE WILL NOT BE LIABLE FOR ANY INDIRECT,
INCIDENTAL OR CONSEQUENTIAL DAMAGES THAT RESULT FROM THE INSTALLATION
OR USE OF THESE PARTS

Part Type Terms and Abbreviations

NEW and OEM or part number displayed -- These refer to a new, original
equipment manufacturer part.
NON-OEM and A/M and QUAL REPL -- These refer to an after-market part,
which is a new, non-original equipment manufacturer part.
USED/RECYCLED and LKQ -- These refer to a used OEM part.
REMANUFACTURED and RECOND. and RECORE -- These refer to used/recycled
OEM parts that have been refurbished.

ESTIMATE RECALL NUMBER: 12/08/2014 11:54:56 14-1456963-01

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PROG006

Date: 12/ 8/2014 12:00 PM
Estimate ID: 14-1456963-01
Estimate Version: 0
Committed
Profile ID: * Qns:AllexceptAM

Event Log

File Created: 12/08/2014 10:24:27 AM
Estimate Started: 12/08/2014 11:02:11 AM
Estimate Printed: 12/08/2014 11:55:00 AM
Estimate Committed: 12/08/2014 11:54:56 AM
Estimate Uploaded: 12/08/2014 12:00:28 PM

ESTIMATE RECALL NUMBER: 12/08/2014 11:54:56 14-1456963-01

Mitchell Data Version: OEM: OCT_14_V1113

MAPP:OCT_14_V1116

Software Version:

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PROG007



PROG066



PROG067



PROG068



PROG053



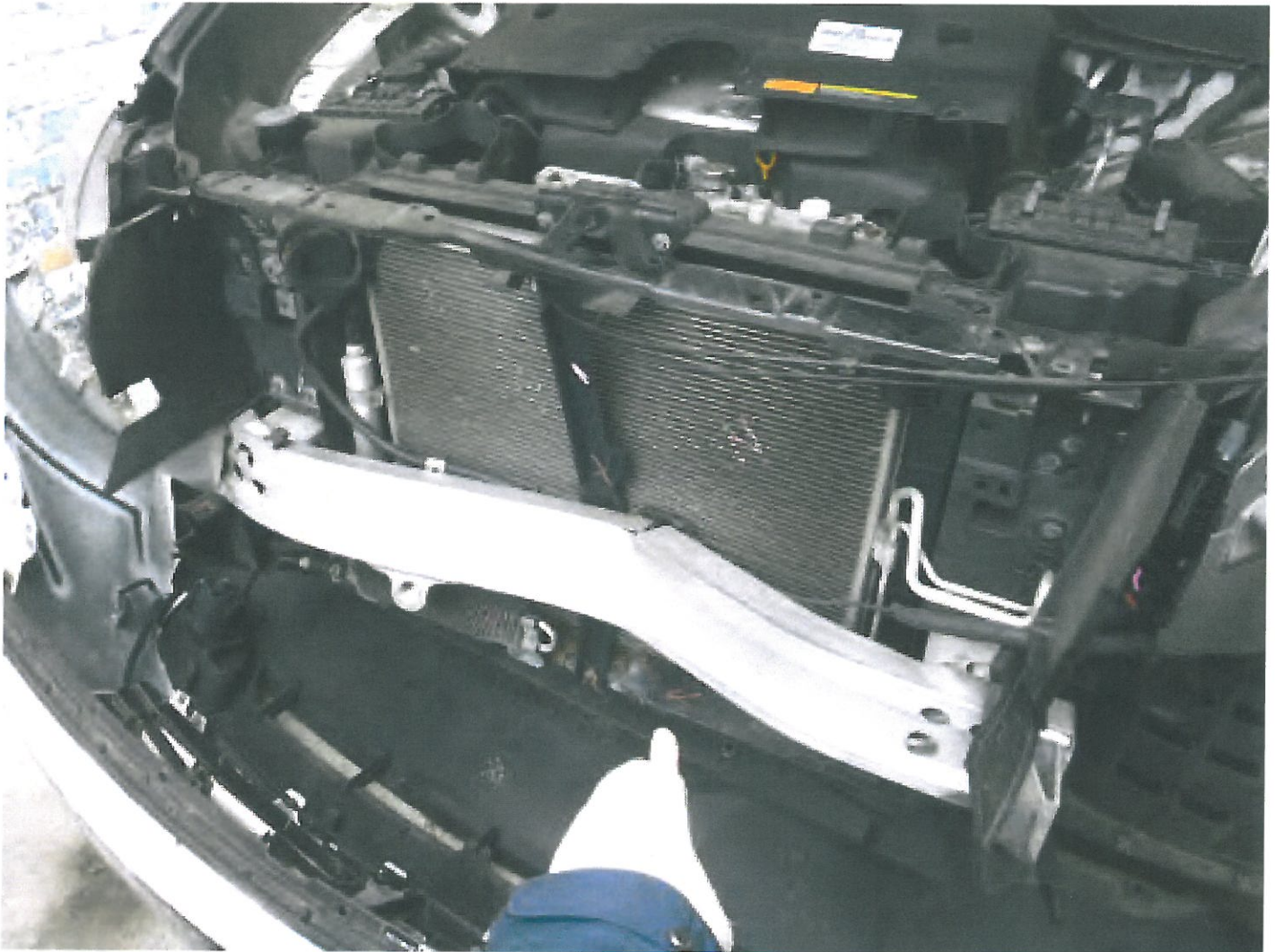
PROG054



PROG055



PROG024



PROG026



PROG029



PROG044



PROG045



PROG046



PROG048