

The official publication of the Auto Body Association of Texas and the Houston Auto Body Association

# TEXAS

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## AUTOMOTIVE™

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# *SAFETY*

## *Can't Wait:*

**Members Speak in Support  
of House Bill 1348**

**Plus:**

**Todd Tracy vs. Airbags  
ABAT Events Update**



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Robert is a recognized Public Insurance Adjuster and Certified Vehicle Value Expert specializing in motor vehicle-related insurance claim resolution. As the general manager of Auto Claim Specialists, Robert expertly leads this National Public Insurance Adjuster Agency, which is currently licensed in 11 different states and specializes in providing automotive-related claim liquidation techniques, strategies and motor vehicle valuation services to all parties, including individual consumers, body shops, auto dealers, repair facilities, towing and storage operations, lenders, finance companies, banks, legal professionals, governmental agencies and others. The firm's consistent success can be attributed to Robert's 35+ years of automotive industry knowledge, practical hands-on experience and multiple certifications, including licensure by the Texas Department of Insurance as a Public Insurance Adjuster. Auto Claim Specialists clients can absolutely trust that they will be provided with analytical, sophisticated, state-of-the-art, comprehensive, accurate, unbiased and up-to-date data and information that all parties can rely upon as both factual and objective. Robert can be reached at (800) 736-6816, (817) 756-5482 or [asktheexpert@autoclaimspecialists.com](mailto:asktheexpert@autoclaimspecialists.com).

## WHAT IS THE PREVAILING RATE, AND HOW IS IT DETERMINED?

Dear Mr. McDorman:

I operate a collision facility in Weatherford. We are OEM-certified for each make and model that we repair. Most carriers honor our posted body labor and refinishing rates. However, we recently had a carrier inform us that they were only required to pay the lower "prevailing" Labor Rate for body labor and refinish for the claim in question, and anything above this would be the responsibility of the insured. Your September 2018 article, "Shop Rates vs. 'Prevailing Competitive Rates,'" reminded me of my situation. In the article, you stated, "I have raised this concern in a recent meeting with the Texas Department of Insurance."

My questions are: What is the prevailing Labor Rate? How is the prevailing Labor Rate determined? What was the Texas Department of Insurance's response to your question regarding the prevailing Labor Rate?

These are great questions; please allow me to answer them. The prevailing Labor Rate is an industry standard for the average rate in a specific area. I understand the prevailing Labor Rate is based on the average Labor Rate from a selected group of collision facilities in a specific area. The prevailing Labor Rate from carrier to carrier is determined by their own systematic methods; to my knowledge, these assumptions and calculation methods are not disclosed. Also, the policy language in reference to the prevailing Labor Rate varies from carrier to carrier. However, the insured has the right to request such methodology, documents and data to support the carriers' prevailing Labor Rate calculation used to satisfy their liability and indemnify that insured. Any such assertions on behalf of the carrier or their representatives as to what they are (or not) liable for must be supported and documented as a policy right of the insured. As the writer of the contract, the carrier has the burden of proof, and that company must support said methodology and assertions about their perceived prevailing Labor Rate calculation and be held accountable for any gaps and/or misrepresentations.

Whenever there is subjectivity (such as what

I'm addressing here), we must research why the difference exists, receive the proper documents and employ credible resources to identify the discrepancies. I reached out to the people behind the Variable Rate System ([nationalautobodyresearch.com](http://nationalautobodyresearch.com)), which is an unbiased leading authority on the subject of collision facility-related charges. It is my understanding that the Variable Rate System has been retained by one or more state regulatory agencies as an unbiased authority to assist in identifying the true prevailing rate on every related charge in the collision industry. The Variable Rate System shows the prevailing competitive rates within a 50-mile radius of Weatherford for a collision facility with one or more certifications as \$50 for both body and refinishing (on average). The same survey model for all of Texas reflects the average body rate as \$51 for both body and refinishing.

As noted by the Variable Rate System, the average body rate is \$50 and refinish time is \$50. Based on the System – the only unbiased prevailing competitive rate survey we have available for the claim in question – the carrier has escaped liability for your higher body and paint rates by using their prevailing Labor Rate method to calculate the loss. In regard to the claim that is the subject of your letter, the carrier failed to make the insured whole when they elected to use their self-subscribed prevailing Labor Rates for body labor and refinishing.

What is happening here is the insurance carrier is using a prevailing Labor Rate to administer claims that are not accurate, credible or supported by facts. In each case, the insured has to pay the difference between the true prevailing Labor Rate and the insurance carrier's perceived prevailing Labor Rate. On each of these instances, the insurance carrier has escaped liability and not made the insured whole.

It is crystal clear to me as a public insurance adjuster that any time the market-certified shop rate is X, the carrier pays Y based upon their self-prescribed prevailing Labor Rate of Y. Should the amount difference from X and Y be greater than Y, the claimant and/or insured has been under-indemnified for said loss and has not been made



## Ask the Expert

whole.

During 2018, I attended several meetings with the Texas Department of Insurance (TDI). When the prevailing Labor Rate was brought up during these meetings, we were told repeatedly by the TDI management that the Department does not recognize a prevailing Labor Rate, it is up to individual shops to set their rates and insurers only owe what is "fair and reasonable" (which is determined by "a finder of fact").

In closing, the insured should always request written proof with supporting documentation from their insurance carrier for any application of a calculation or systematic internal method that is used to determine liability or loss. This is their right as a policyholder.

Please call me should you have any questions relating to a motor vehicle insurance claim. I thank you for your letter and look forward to any follow-up questions that may arise.

Sincerely,  
Robert L. McDorman **TXA**



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