

The official publication of the Auto Body Association of Texas

# TEXAS

## AUTOMOTIVE™



FEBRUARY 2020

\$5.95

### GAME OVER:

*Will the TDI Act on*  
**UNFAIR SETTLEMENT  
PRACTICE VIOLATIONS?**

**PLUS**

**2020 vs. 2000**

**Burl Richards on the  
Appraisal Clause**

**ABAT Goes Virtual**

[www.grecopublishing.com](http://www.grecopublishing.com)



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 24 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).

## Ask the Expert

# GAME OVER: WILL THE TDI ACT ON UNFAIR SETTLEMENT PRACTICE VIOLATIONS?

Dear Mr. McDorman:

I am writing you in response to your January 2020 article, "Who Enforces Policyholder Rights?" We have referred our clients to you over the last five years for inherent diminished values, total losses, repair procedure disputes and various other motor vehicle insurance claim issues. Auto Claim Specialists has always helped our clients be made whole for their loss while helping us work on many vehicles that would not have been repaired without your involvement.

Recently, we referred a client to you who was GEICO insured. GEICO had agreed to repair our client's vehicle. After we began the repair process and turned in a supplement, GEICO reversed its agreement to repair and deemed the vehicle a total loss. GEICO then refused to pay any of our fees associated with the repair authorization prior to its reversed decision to deem the vehicle a total loss. Our client informed us that the insurer had deducted our fees from its settlement. We are seeing this type of action from various carriers more frequently. We keep hoping the Texas Department of Insurance will take formal action and issue some type of sanctions against the carriers that blatantly violate their policyholders' rights. In the January 2020 editorial, a reader asked, "Who, if anyone, is responsible for enforcing policyholder rights?" This article gave us hope that the end is near for carriers that make up the rules as they go along and snub policyholder rights. Has the Texas Department of Insurance responded back to you concerning the unfair settlement practice violations that Auto Claim Specialists identified and reported?

Thank you for the referrals to us and for your question. The client retained Auto Claim Specialists to assist them with their loss settlement. After reviewing the settlement offer, it was discovered that GEICO had in fact under-indemnified the client. At the client's request, Auto Claim Specialists invoked their policy right of appraisal in contest of the loss.

The client retained Vehicle Value Experts as their independent third-party appraiser. It was determined and agreed by the independent third-party appraisers that the vehicle had been undervalued by 21.2 percent. The independent appraisers entered into a binding agreement as to the actual cash value. The binding agreement stated that GEICO was liable over and above the undisputed original liability loss settlement for this additional 21.2 percent. As of this writing, GEICO has refused to satisfy the **BINDING** agreed loss settlement arrived at through the appraisal process. We currently have several other open GEICO files with binding loss settlements between its independent third-party appraiser and the insured's third-party appraiser where the company refused to properly indemnify the insured for their loss – even after the loss has been properly determined according to terms of its own contract.

The GEICO policy right of appraisal is an absolute policy right of the insurer or the insured once invoked by either party. Both parties are required to retain independent third-party appraisers. The final agreed decision between two of the appraisers is binding on the parties. The Texas GEICO MOTOR VEHICLE APPRAISAL provision states the following:

### APPRAISAL

*If we and you do not agree on the amount of loss, either may demand an appraisal of the loss. In this event, each party will select a competent appraiser. The two appraisers will select an umpire. The appraisers will state separately the **actual cash value** and the amount of the loss. If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will be binding.*

*Each party will:*

- 1. pay its chosen appraiser; and*
- 2. bear the expenses of the umpire equally.*

*We do not waive any of our rights under this policy by agreeing to an appraisal.*

GEICO's decision to not satisfy the binding agreement between the appraisers is alarming, to say the least. In the January editorial, I disclosed how Auto Claim Specialists has identified a widespread unfair claims settlement practice being committed

by certain Texas carriers. Many Texas policyholders are being harmed by their carrier's denial of their policy rights. Last September, Auto Claim Specialists began turning over information, audio files, claim numbers and supporting documents to the Texas Department of Insurance in support of this allegation. We respectfully requested that the TDI issue an immediate Cease and Desist Order from the Commission instructing carriers with an appraisal provision in their policies to stop denying the insureds' right of appraisal following the discovery of under-indemnification given a reasonable time period for discovery. We further requested a bulletin from the Commission stating that this unlawful act has been brought to the TDI's attention.

**In early January, I was told by the Texas Department of Insurance that it had received all documents and responses from the parties, and that this topic has been placed on its agenda to address and finalize within the next 60 days. We have been disappointed, if not surprised, that a policy violation so flagrant and seemingly cut and dried is taking so long to be addressed. All we have been seeking is enforced compliance for a vital contractual right written into almost all insurance policies – the right of appraisal. As of now, we – along with our clients – are still hoping that the days of ignored and snubbed policyholder rights will be coming to an end shortly in Texas!**

As I've mentioned previously in this forum, the spirit of the **Appraisal Clause** is to resolve loss disputes fairly and in a timely and cost-effective manner. Through the **Appraisal Clause**, loss disputes can be resolved relatively quickly, economically, equitably and amicably by unbiased, experienced independent third-party appraisers as opposed to costly and time-consuming methods, such as mediation, arbitration and litigation.

To limit, deny or prohibit the appraisal process to resolve disputes over the loss would be detrimental to the insurer or the insured due to the subjectivity of these types of claims. The Supreme Court has held that if the insured has suffered no prejudice due to delay, then it makes little sense to prohibit appraisal when it can provide a more efficient and cost-effective alternative to litigation.

Please call me should you have any questions relating to the policy or covered loss. We have most insurance policies in our library. Always keep in mind that a safe repair is a quality repair, and quality equates to value. I thank you for your questions and look forward to any follow-up questions that may arise.

Sincerely,  
Robert L. McDorman  
TXA

**TASCO**  
Auto Color

**Automotive Paint, Supplies, and Equipment**

Largest Texas Owned Paint Distributor Representing Texas and Louisiana

20 locations serving Texas and 5 locations serving Louisiana

[www.tascoautocolor.com](http://www.tascoautocolor.com) • (800) 842-7608