

In 1836, Colonel William B. Davis used his sword to draw a line in the sand, inviting those who would defend the Alamo to the death to join him. Nearly 200 years later, a similar line was drawn in Texas over the inclusion of Right to Appraisal in automotive insurance policies – and while no one has been asked to lay down their life, there *are* lives at stake...the lives of Texas drivers and their families.

ABAT President Burl Richards (Burl's Collision Center; Henderson) and ABAT Board member Robert McDorman (Auto Claim Specialists) joined consumer advocates, insurance industry representatives and the Texas Department of Insurance (TDI) on September 6 as witnesses during the Texas House Committee on Insurance's public hearing to "review consumer rights and appraisal in automotive and homeowner policies."

"This appraisal issue is 100 percent a safety issue," McDorman stressed, explaining how insurers often use the

to indemnify the insured for the cost to repair the vehicle to the same condition it was prior to the accident," Thompson asserted.

"I am personally not aware of any policy stating that or any law requiring policies to include that," Richards rebutted. "That's part of the problem: Policies don't include language stating the vehicle must be repaired back to its pre-loss condition. So, when you have that void in a policy, you wind up with insurance companies that decide how to dictate these vehicles be repaired."

"When insurance companies get repair decisions wrong, it can be deadly," agreed Douglas Heller (Consumer Federation of America). "It can mean a car doesn't crumple right in the next crash. It can mean a driver – perhaps the next vehicle owner – is in serious jeopardy because an insurance company either sought to cut corners or missed something and then refused to accept or even discuss another expert's assessment."

"I am skeptical of assertions that the insurance industry is

THE RIGHT TO APPRAISAL:

concept of "prevailing practice" to deny payment on required procedures. "If 10 shops are doing it wrong and one shop does it right, that's the 'prevailing practice,' so they won't pay the shop doing the right thing for the cost of their efforts. That's absolutely absurd."

"The way we repair cars today, compared to five to 10 years ago...it's a totally different industry," Richards responded to Representative Celia Israel's (District 50) question about safety trends. "My technicians go through hundreds of hours of training to learn how to repair modern vehicles, and they're not just fixing cars; they're researching OEM repair procedures, scanning cars and performing calibrations. Meanwhile, we have insurance companies dictating these repairs for which they have zero experience or understanding. They simply do not understand the collision industry."

An earlier statement by attorney Jay Thompson, legal representation for the Association of Fire and Casualty Companies of Texas (AFACT), provided Richards the opportunity to prove his point.

"The duties of the insurance company, under the policy, is

simply prioritizing the absolute lowest common denominator bottom line to sacrifice safety, because I don't think our member companies are doing that," insisted Jon Schnautz (National Association of Mutual Insurance Companies).

Referencing Heller's earlier prediction that eliminating Right to Appraisal will lead to the need for increased litigation, Schnautz suggested that's how the process *should* work. "If those companies have made a bad decision, there's absolutely no reason they can't still be sued over that. They suffer and end up spending more."

His suggestion blatantly ignored dissenting testimony given by every other witness, including written testimony submitted by Ware Wendell (Texas Watch).

"Motorists faced with an insurance carrier bent on underpaying property damage claims have few practical remedies at hand," he wrote. "The size of the monetary damages in dispute may make court infeasible for these consumers. Fair appraisal, invoked by either party and as described above, can provide a relatively low-cost way to get an answer on the amount of loss. Carriers have a duty to indemnify fully, and a neutral appraiser

or umpire may be helpful in arriving at a sound valuation of the loss.”

“It’s very difficult for anybody to get a lawyer for very small claims and have their rights protected,” Heller offered. “Maybe that’s the goal of some companies: remove all accountability for mishandling claims and cutting corners. Appraisal creates checks and balances on the insurance companies’ process of determining how much to pay to repair a vehicle.”

“At its heart, it addresses a question: What is the cost to properly repair a vehicle?” Melissa Hamilton, public counsel for the Office of Public Insurance Counsel (OPIC), described the Right to Appraisal (and the “increasing conflict between insurers and body shops”). “If appraisal is removed as an option to resolve disputes about the cost to repair the vehicle, is there another viable option for that consumer? The short answer is ‘no.’

“When you’re looking at a dispute on cost to repair a vehicle, you’re looking at amounts like \$5,000-\$8,000, and as a consumer, that’s a large amount...but it’s probably not

process on behalf of policyholders.”

Fortunately, such an expert was on hand to provide the committee with some information on dollars and *sense* to help put it all in perspective.

“On eight out of 10 claims brought to us on total loss claims, we’re able to increase the settlement by \$4,200. These are not small numbers. These are big numbers,” McDorman explained, noting that in states where appraisal is mandatory, insurers tend to submit more accurate loss estimates. “Appraisal is about getting it right; it’s about finding the number. The Right to Appraisal should be mandatory. If there’s a loss dispute, it should be subject to appraisal.”

When asked how often he encounters consumers who want to invoke Right to Appraisal but cannot afford to do so, McDorman shared, “I’ve never had a situation where someone couldn’t afford it, but if there was a repair procedure dispute and someone couldn’t afford it, I can assure you that I would not charge them. I’d do it for free. If we can’t increase the settlement

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large enough to hire an attorney to take that case to court,” she continued. “Time is another obstacle. You need your vehicle; it’s how you get to work and take your kids to school, so you need to resolve any dispute quickly so you can get your car out of the shop. The court system becomes prohibitive because it takes a while to resolve disputes. Between costs and time, court is not a viable option for most consumers.”

Even Thompson expressed a less-than-optimistic view of the court as an effective means for dispute resolution in these scenarios.

“I’m a fan of appraisal in the sense that you can try to resolve these things more quickly. Our courts are pretty clogged up with lots of cases, so when you file one, it doesn’t mean you can get it decided very quickly.”

Committee members questioned witnesses about the cost of the appraisal, independent appraiser qualifications and how much of a difference the Right to Appraisal actually makes for consumers.

“The appraisal process is a guardrail against corner cutting, lowballing and mistakes by insurers,” Heller indicated. “An independent expert, who sees something that the insurance adjuster didn’t see or refuses to pay for, should have a voice in the

by \$1,600, we don’t charge the customer. We give them information to help get the settlement increased.”

By the time testimony concluded, the division along industry lines was apparent.

On one side:

“The easiest thing for insurers to do would be to say, ‘Fine, require appraisal, and we’ll pass through the cost,’” Schnautz proposed. “And it’s just another cost driver that makes everybody’s auto rates go up.”

On the other:

“I couldn’t live with a car not being safely repaired, just over a small fee,” McDorman expressed his passion for consumer safety.

“The appraisal process creates a structure for airing out these differences and resolving them without having to tie up judicial resources,” Heller contributed. “If we don’t allow for appraisals, we’re either forcing people into court or denying them an opportunity to ensure a fair, complete and safe repair, thereby leaving our roads less safe as a result. The decisions and efforts by some insurers to limit access to the appraisal process could have a long term effect of reducing public safety and increasing

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Ask The Expert

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aware of any policy having that exact language; however, it is common law the insurer has to restore the vehicle back to its pre-accident condition.” As a note, we concur with Mr. Thompson in that we do not have any Texas insurance policies in our library stating that the carrier has the duty to indemnify the insured for the cost to repair the vehicle to the same condition it was prior to the accident.

There is a stark difference between Mr. Thompson’s testimony versus what Texas auto policies state under the limits of liability. These disputes over the loss and entailed safety issues are the foundation for our mandatory Right to Appraisal position. As a note, Thompson began his testimony with, “I think I’ve only seen one appraisal in an auto case in several decades of practicing law, and it was not a vehicle appraisal – it was on a horse trailer.” Surely Mr. Thompson should have handled at least one automobile appraisal case before holding himself out as an expert on automobile appraisal or a fact matter expert.

It is my unwavering position that the removal of the Right to Appraisal on repair procedure disputes will be the enemy of a safe repair and become the stake in the coffin for safe roadways for us all.

In today’s world, regarding motor vehicle insurance policies, frequent changes in claim management and claim handling policies, and non-standardized GAP Addendums, we have found it is always in the best interest of the insured or claimant to have their proposed insurance settlement reviewed by an expert before accepting. There is never an upfront fee for Auto Claim Specialists to review a motor vehicle claim or proposed settlement and give their professional opinion as to the fairness of the offer.

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 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

ICYMI: Check the recap of the September 6 hearing on page 16.

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litigation.

“The appraisal process doesn’t exactly level the playing field, but it at least gives consumers an expert who works for them, not the insurer, and will identify and help close the gap between what the insurer originally offered and what the contract is supposed to ensure,” he continued. “It gives consumers some peace of mind that they received both the repairs they paid for through their policy and the safety they need for their family.”

“The Appraisal Clause is very much needed,” Richards agreed, emphasizing, “It’s necessary because policy forms are being written that allow insurance companies to dictate the repairs with no consequences. And there’s nothing in that policy that says they have to restore that vehicle back to pre-accident condition. Right to Appraisal is a faster method that gets the consumer back on the road and hopefully gets them back in a safer vehicle.”

McDorman expressed the gravity of the situation in an email to Heller after the hearing, which he shared with *Texas Automotive*:

“My unwavering position is that removing the Right to Appraisal on repair procedure disputes will be the enemy of a safe repair and become the stake in the coffin for safe roadways for us all.”

“Appraisal is about getting it right; it’s about finding the number. The Right to Appraisal should be mandatory. If there’s a loss dispute, it should be subject to appraisal.”

Two additional witnesses, TDI’s Cindy Wright and Marianne Baker, were also on hand, but rather than offering testimony, they took the floor to answer questions from the committee. Which side of the line did they stand on? Stay tuned to next month’s *Texas Automotive* as we explore TDI’s responses. Until then, the entire hearing can be viewed at bit.ly/TXHouse9622. **TXA**