

The official publication of the Auto Body Association of Texas (ABAT)

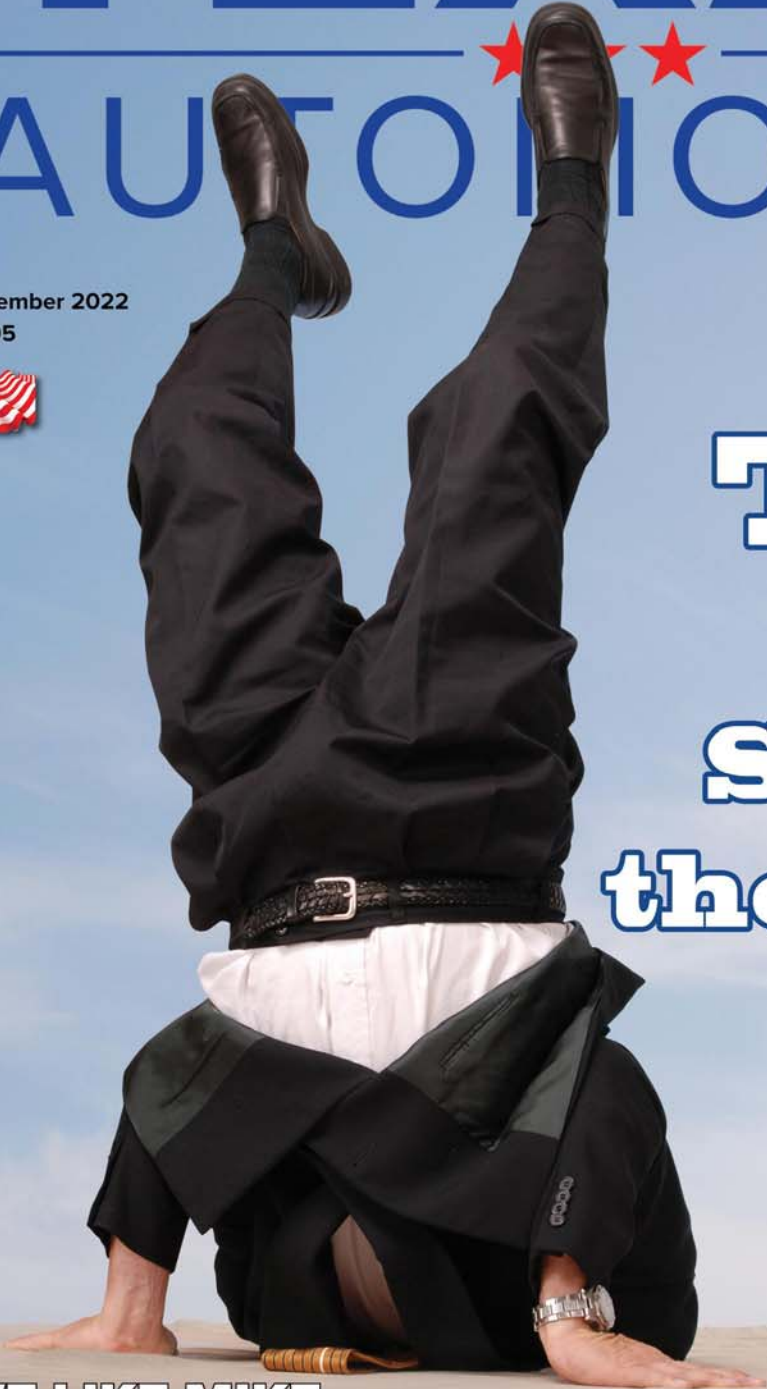
# TEXAS

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The battle over Right to Appraisal has been raging since 2014 when State Farm petitioned for – and won – the ability to remove the Appraisal Clause from their policies in the Lone Star State. Yet, GEICO’s recent petition was rejected, and advocacy groups like ABAT and Texas Watch seek to ensure that continues to be the case, guaranteeing Texas consumers maintain the ability to combat under-indemnification issues when necessary.

During the House Insurance Committee’s public hearing on Right to Appraisal in September, collision professionals joined consumer advocates in drawing a clear line in the sand to indicate their belief that mandatory Appraisal Clauses need to be included in insurance policies, while insurance industry representatives took an opposing stance. Committee Chairman Dr. Tom Oliverson directed a number of questions (many went unanswered by these two witnesses) to Cindy Wright and Marianne Baker from the Texas Department of Insurance (TDI) whose testimony confirmed our suspicions here at *Texas Automotive*: that TDI turns a blind eye to under-indemnification concerns and willfully wedges their head in the sand to avoid doing their job of protecting Texas consumers.

Over the years, it has often appeared that TDI just didn’t comprehend all the problems shops face, but the more ABAT interacts with them, the more it becomes obvious that they do *understand*; they simply don’t *care*!

“ABAT has been beating the drum of safety as we try to bring these matters to TDI’s attention, but they literally have no idea what a safe repair looks like,” lamented ABAT President Burl Richards. “It’s worse than merely going over their head...they don’t care to learn at all, yet they’re supposed to be protecting consumers and making sure insurers aren’t harming Texans.”

Although Richards indicated that TDI has “more experience” with policy language since “most of their employees come from the insurance industry,” they don’t seem to know much more about policy language than they know about safe and proper repairs. A frightening thought since the Texas Insurance Code requires TDI to “regulate the business of insurance in Texas [and] protect and ensure the fair treatment of consumers.”

Despite the fact that TDI’s website recommends consumers “ask about using an appraisal process” ([bit.ly/TDI4RTA](http://bit.ly/TDI4RTA)), Baker specified, “We do not have any specific requirements for appraisal or appraisers.

“Any requirements for appraisers and umpires would typically be in the policy form. Almost all require that they be competent and independent or something along those lines,” she claimed when asked about insurers’ requirements, and in response to the Committee seeking clarification on whether appraisers are required to be independent, Baker elaborated, “That’s correct. I’m not sure I’ve seen a policy form that did not require independence or

unbias.”

Her claim was inaccurate. Review of Texas insurance policies written by State Farm, GEICO, Farmers and Progressive all indicated that appraisers must be “competent;” none of them included any reference to “independence or unbiased” as Baker professed.

Baker also indicated that TDI is “hearing concerns about possible abuses of the process from both sides;” however, she failed to address how that’s possible given her prior insistence that appraisers must be unbiased, not to mention the fact that “the only person who can invoke the Right to Appraisal is the insurer or the insured. It’s a policyholder right and has nothing to do with the shop; the collision industry doesn’t have a side other than as an advocate for the consumer,” Robert McDorman (Auto Claim Specialists) pointed out, begging the question: How can the average consumer, who has little to no experience with claims, possibly abuse the appraisal process?

Referencing a request by a homeowner’s insurance company to remove Right to Appraisal from residential policies, Baker admitted, “If we approve that, it will be a significant change in the market,” though she neglected to acknowledge that TDI has already permitted a similarly significant change in the automotive insurance sphere since 2014.

Oliverson questioned the market share held by both State Farm and GEICO, and though Baker was unable to provide that number, TDI’s website ([bit.ly/TDItop40](http://bit.ly/TDItop40)) provides information on the top 40 insurers based on premiums and market share as of 2020. According to that information, State Farm entities control 13.87 percent of the market, while GEICO’s policies encompass a 13.25 percent market share, for a combined \$6.12 billion in premiums written.

“If they allow GEICO to remove the Appraisal Clause from their policies, nearly 30 percent of Texans would have no Right to Appraisal,” noted McDorman, who dives into the topic in-depth in this month’s “Ask the Expert” on page 22. “That’s an epic proportion which causes a buyer cartel and an unfair marketplace.”

Well, what other options do consumers have?

“They would try to negotiate with the insurance company,” Baker suggested. “After that, their only option is litigation which would require hiring a lawyer and going to Small Claims Court which is perhaps a little more challenging for a consumer than an appraisal. If you go to Small Claims Court, you might be there on your own, and the insurer will be represented by an attorney or experienced insurance professional, whereas with the appraisal, the parties are more equal; they each hire an appraiser who handles the process for them.”

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After acknowledging the challenges associated with litigation, as well as the benefit of appraisal creating a more level playing field for consumers, she indifferently repeated that consumers without Right to Appraisal can opt to go to court if attempts to negotiate with their insurer fail.

“Negotiation doesn’t work,” McDorman emphasized. “Consumers cannot negotiate their premium, and they shouldn’t have to negotiate their claim. In an ideal situation, they wouldn’t need to question whether they were being properly indemnified either, but since that’s not the world we live in, the policy needs to provide relief other than litigation. Litigation is onerous and not available to the average (or even above average) consumer.”

“So, if I take my car to the shop and the insurer says it’s too much, what happens then?” Oliverson asked. “Do they not get the repair done? Does it add an out-of-pocket expense for the consumer? Or do they move their car to a different shop?”

“That’s probably a case-by-case thing that we might not get deeply involved in,” Baker prevaricated. When asked if insurance companies are required to notify consumers about TDI’s complaint process when issuing a check, she hedged, “Off the top of my head, I’m not aware of a specific requirement that requires an insurer to notify the consumer at the time of the claim, but I think many do.”

Oliverson astutely observed: “My sense has always been that most people don’t even know how to complain or who to complain to. Have we done anything significant in the last few years to help consumers know how to find you?”

Wright claimed that TDI’s website is constantly being refreshed, and social media is used to spread the word. She also indicated that all insurance policies list TDI’s consumer helpline. When Oliverson pressed the issue, admitting, “You can tell me it’s in the policy, but I couldn’t tell you where my policies are,” Baker expressed confidence “that they *have* it...I can’t tell you for certain whether they *read* it.”

“Sure, the policy documents direct you to contact TDI if you have a problem, but it doesn’t mention that you can invoke the Appraisal Clause if you have a dispute in value; if they were forced to do that, it would be a game changer,” McDorman stressed. “Meanwhile, do you know how hard it is to get a copy of your insurance policy? No one goes to the dentist and orders ice cream, so they know you’re asking for a copy to get help from someone who understands it. It’s nearly impossible to convince them to relinquish a copy!

“The awareness is not there, and that’s part of the problem,” he added. “When we’re born, we don’t know how to breathe until the doctor spansk our butt to start our breath, and it’s the same here... If we don’t educate people on their rights, they don’t know their rights. That’s not happening here, and it’s by design. The Appraisal Clause originated as a tool to deter higher losses in litigation for the

insurer, but because we’ve used Right to Appraisal to benefit the consumer, they don’t like it.”

Another response that was like “jello running through your fingers,” as McDorman aptly described the TDI’s testimony, came from Baker when she was questioned about labor rates and explained, “Auto body shops charge what they charge based on their expenses and profit margins. And insurers evaluate how they pay based on what they do internally, [such as surveys, though] there’s no requirement for what to charge, how often to conduct a survey or what areas to survey... That’s up to the insurance companies.”

While Baker’s explanation was technically correct, she blatantly ignored the obvious conflict of interest present when a bill payer is allowed to dictate the amount they’ll pay, a conflict that often leads to the problem of under-indemnification that the entire hearing focused on. Her understanding of policy language fell short when asked if insurers may not be contracting with preferred shops that “could be performing inferior work all day long.”

“Part of the insurance contract is that you should be indemnified and your car should be returned to its pre-loss condition,” Baker shared her belief.

Yet, “Who is holding the insurance carrier accountable for indemnifying the consumer to return the vehicle to its pre-loss condition if there’s no structure for the process and practice?” McDorman queried. “They’re policing themselves, and that needs to be addressed. No one is fact-checking them or asking for evidence that they’re doing these things TDI claims they should be doing. And that’s supposed to be TDI’s job.”

Baker’s uncertainty related to Oliverson’s question about steering raised some eyebrows as well. “There are statutes for **some** insurers that prohibit steering to specific shops. They all have direct repair facilities, and **most** of them will give you the list, but you don’t necessarily have to use them, **mostly**.”

Actually, consumers don’t have to use DRP shops, period. According to TDI’s own Consumer Bill of Rights ([bit.ly/TDIcbor](http://bit.ly/TDIcbor)), “You have the right to choose the repair shop and parts for your vehicle.”

“Do the vast majority of insurers force consumers to go to a specific shop to get an initial estimate?” Oliverson wanted to know. Baker couldn’t answer.

How has State Farm’s removal of the Right to Appraisal impacted the consumer experience over the past eight years? Has the rate of appraisal requests increased? How many Texas consumers were denied the ability to evoke the Appraisal Clause? All of these questions went unanswered during TDI’s testimony, and though some of them were addressed by Richards, McDorman and other witnesses, ABAT has partnered with Texas Watch to ensure that

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all of these questions can be answered through its Consumer Complaint initiative (flip to page 6 to learn how you can participate in the fight for consumers' rights).

As Baker's testimony came to a conclusion, the Committee questioned why TDI rejected GEICO's request to approve Right to Appraisal, and she admitted, "We did not make a decision on that... We rejected that form because we asked them for information, and they did not give it all to us. They are free to refile that form if they want."

"So, TDI has not actually said, 'We think this is a bad idea.' What TDI has said is, 'We asked for information and you didn't give it to us, so we're not going to approve this until you answer our questions.' Is that correct?" Oliverson sought clarification. "That's correct," Baker agreed.

Despite acknowledging that Right to Appraisal creates equality between the vehicle owner and insurer, compared to onerous litigation that is not typically a viable option for the average person, TDI refuses to take a stand to protect Texas consumers. The testimony provided this fall makes it obvious that TDI fully recognizes the challenges consumers are facing, but they're burying their head in the dirt, without a single concern about how many

policyholders are being buried financially – or *literally* – due to unethical insurer practices.

Watch the entire hearing at [bit.ly/TXHouse9622](https://bit.ly/TXHouse9622), or read the recap at [grecpublishing.com/txa1022coverstory](https://grecpublishing.com/txa1022coverstory). **TXA**

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