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AUTOMOTIVE™



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ABAT Fights for Safe Repairs and Fair Appraisal at the Capitol

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READER REPORTS LATEST UNDER-INDEMNIFICATION SCHEME

Dear Mr. McDorman,

I own and operate several collision facilities in North Texas, and we have begun to see a rise in insurance carriers deeming safely repairable vehicles a total loss and abandoning these vehicles at our facility. As an example, on a recent job, the insurance carrier had issued their liability estimate and accepted and approved a later supplement, but then deemed the vehicle an economic total loss once the third supplement was presented. What is most troubling about this situation is that our original repair plan presented to the insurance carrier was within \$200 of the total cost in supplement three. After the insurance carrier deemed the safely repairable vehicle an economic total loss, they then informed our client that if we did not reduce our charges for work performed, return the ordered parts from the original liability estimate and second supplement and allow the insurance carrier to pick up the vehicle at their financial terms, they would deduct the presumed salvage value from the presumed Actual Cash Value and abandon the salvage. My question is twofold: One, have you also been seeing this type of aggressive behavior against policyholders? And two, what are my clients' options for relief in debacles such as this?

Thank you for your very timely questions. Although we have seen this type of loss dispute often in the past in each state where we are licensed and do business, over the last several months, we also have seen a sharp increase in this type of behavior on the part of the insurance carriers. In situations such as this, we always suggest the insured first provide us with the proposed settlement breakdown, supporting documents from the carrier and the complete repair plan from the collision facility. After we receive these, we will send them to an expert appraisal firm, such as Vehicle Value Experts, to verify the proper pre- and post-actual cash value of the loss vehicle. Next, we will review the complete repair plan provided to us. If there is a dispute over the covered loss type, in most policies in Texas, the insured can invoke their Appraisal Clause to resolve the dispute and see to it that they are properly indemnified for their loss. We are vigorously working with lawmakers to pass legislation requiring every personal auto policy to have a structured Right to Appraisal in the policy. Appraisal is the guardrail for indemnification when a dispute over the loss arises between the insurer and the insured. How we handle these types of loss disputes concerning repair or replace will vary from carrier to carrier depending on the language in the policy; however, in most Texas motor vehicle insurance policies, the limit of liability is for the lesser of the two (repair or replace) as shown below. Additionally, most Texas motor vehicle

insurance policies have the following Right to Appraisal language. Again, we have been working diligently with lawmakers to pass legislation requiring *every* personal auto policy to have the Right to Appraisal for all loss types.

LIMIT OF LIABILITY

1. Our limit of liability for loss will be the lesser of the:
 - a. Actual cash value of the stolen or damaged property;
 - b. Amount necessary to repair or replace the property with other of like kind and quality;
 - c. Amount stated in the Declarations of this policy.

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 **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. When the insured's insurance policy has the limits

continued on pg. 20



Robert is a recognized Public Insurance Adjuster and Certified Vehicle Value Expert specializing in motor vehicle-related insurance claim resolution. Robert can be reached at (800) 736-6816, (817) 756-5482 or via email at AskTheExpert@autoclaimspecialists.com.

Ask The Expert

continued from pg. 18

of liability and Appraisal Clause listed above, their right to relief if a dispute arises over the loss almost always has a positive outcome. The Right of Appraisal is always the first line of defense against under-indemnification in loss disputes. Appraisal is about finding the right number; however, the Right to Appraisal is only available to the insured and not to a claimant who has filed a claim with the at-fault party's insurance company.

The under-indemnification in total loss and repair procedure claims in Texas is rampant. Besides the higher settlements for total loss clients averaging 28 percent above the carrier's undisputed loss statement, we have also reduced clients' out-of-pocket expenses on repair procedure disputes such as in the example provided above. These under-indemnification percentages are staggering and harmful to Texas citizens. The spirit of the Appraisal Clause is to resolve loss disputes fairly and to do so in a timely and cost-effective manner. The invoking of the Appraisal Clause removes inexperienced and biased carrier appraisers and claims handlers from the process, undermining their management's many tricks to undervalue the loss settlement and under-indemnify the insured. 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 more costly and

time-consuming methods, such as mediation, arbitration and litigation. It is my professional opinion that removal or limiting of the Right to Appraisal in a motor vehicle repair procedure loss dispute will be the nail 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 that a safe repair is a quality repair and quality equates to value. I thank you for your question and look forward to any follow-up questions that may arise.

Sincerely,
Robert L. McDorman
TXA

President's Message

continued from pg. 4

And it's not just us at ABAT who see how important this is. Once we educate our legislators, many of them take up that mantle and explain the issue to their peers in the legislature. We're so grateful to advocates like Representative Travis Clardy, who is sponsoring both of our bills in the House, and Senator Bryan Hughes, the sponsor of Senate Bill 554, the Appraisal bill's counterpart in the Senate.

We've got the support of Texas Watch, a consumer advocacy group that has helped us tremendously in campaigning to spread the message to legislators in Texas to help them understand the importance of safe repairs for their constituents. They've also done a wonderful job in helping us advocate for the importance of Right to Appraisal to prevent consumers from being under-indemnified by their insurance carriers.

And YOU. Shops all across Texas have come together, calling and emailing their legislators to explain why these issues are so important, helping them understand why we need to make the effort to protect Texas drivers and keep Texas roadways safe.

We've got a lot of people on board who now understand just how important this legislation truly is, and we'd love to get

to a place where we can sit down with some competent insurance lobbyists to discuss doing the right thing and developing some sort of policy reform that will protect the consumer. And I believe we'll eventually get there if we keep pushing.

But it's not going to happen overnight. None of this has happened overnight, and that's okay. Things that are worthwhile take some time and effort, and right now, I'm feeling really good about our chances. When we first started this process, we knew how small the chances of getting our bill passed the first time would be, but we started the process anyway, and we've seen so much progress in each session since then. If we keep pulling together and doing what's right for our customers and our businesses, I'm convinced that the fourth time is going to be the charm, but it's not possible unless you are all getting involved and fighting for the change we want to see. Go to texaswatch.org/fair-appraisal to don your gloves and support House Bill 1437, House Bill 1321 and Senate Bill 554 today!

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