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# TEXAS

# AUTOMOTIVE™



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## CONSUMER RIGHTS AND THE \$248,000 WAY TO RELIEF WHEN CHEATED BY YOUR INSURANCE COMPANY

Dear Mr. McDorman,

I own and operate a collision facility in Texas. This past week, I read several trade publication articles about the *Collins vs. State Farm* jury verdict for \$248,000. In my view, this could not have happened at a better time to a more deserving insurance carrier. The articles mentioned that Auto Claim Specialists represented Mr. Collins. Auto Claim Specialists has also represented several of our clients over the years when their insurance carrier wrongfully deemed their vehicle an economic total loss. After defining the true actual cash value, Auto Claim Specialists were able to have the carrier switch the loss type from replace to repair. I also read that Mr. Collins wanted his vehicle repaired. What was different about Mr. Collins' loss situation that led to this remarkable verdict?

Thank you for your question. The optics in Mr. Collins' case were a little different than the loss disputes between your clients and their insurance carrier. Interestingly, the driving factor in the *Collins vs. State Farm* case was that the jury found State Farm's knowing and intentional conduct violated the Unfair Claims Settlement Practices Act, and the Texas Deceptive Trade Practices Act. It was the knowing and intentional bad conduct on the part of State Farm that led the jury to the awarding of attorney fees and actual damages.

Regarding the ability to submit the loss type repair or replace to appraisal, the Texas State Farm auto policy does not allow any loss dispute other than disputes over the actual cash value to be submitted to appraisal. Most Texas auto policies allow all covered loss disputes under the policy to be submitted to appraisal if the insurer and insured cannot agree on the loss. State Farm, sometime in or around 2017, elected to limit the Right of Appraisal to actual cash value disputes only.

***See the boxes at right for the Texas State Farm Auto Policy Limits and Loss Settlement-Comprehensive Coverage and Collision Coverage and the most common Texas Motor Vehicle Limit of Liability and Appraisal Clause for other insurance carriers.***

### STATE FARM TEXAS AUTO POLICY LIMITS AND LOSS SETTLEMENT – COMPREHENSIVE COVERAGE AND COLLISION COVERAGE:

1. **We** have the right to choose to settle with you or the owner of the covered vehicle in one of the following ways:

a. Pay the cost to repair the covered vehicle minus any applicable deductible.

(1) **We** have the right to choose one of the following to determine the cost to repair the covered vehicle:

(a) The cost agreed to by both the owner of the **covered vehicle** and **us**;

(b) A bid or repair estimate approved by us; or

(c) A Repair estimate that is written based upon or adjusted to:

(i) the prevailing competitive price;

(ii) the paintless dent repair price that is competitive in the market; or

(iii) a combination of (i) and (ii) above.

The prevailing competitive price means prices charged by a majority of the repair market in the area where the **covered vehicle** is to be repaired as determined by a survey made by **us**. If asked, we will identify some facilities that will perform the repairs at the prevailing competitive price. The estimate will include parts sufficient to restore the covered vehicle to its pre-loss condition.

You agree with us that the repair estimate may include new, used, recycled, and reconditioned parts. Any of these parts may be either original equipment manufacturer parts or non-original equipment manufacturer parts.

(2) The cost to repair the covered vehicle does not include any reduction in the value of the covered vehicle after it has been repaired, as compared to its value before it was damaged.

(3) If you and we agree, then windshield glass will be repaired instead of replaced;

b. Pay the actual cash value of the covered vehicle minus any applicable deductible.

(1) The owner of the covered vehicle and we must agree upon the actual cash value of the covered vehicle. If there is disagreement as to the actual cash value of the covered vehicle, then the disagreement will be resolved by appraisal upon written request of the owner or us, using the following procedures:

(a) The owner and we will each select a competent appraiser.

(b) The two appraisers will select a third competent appraiser. If they are unable to agree on a third appraiser within 30 days, then either the owner or we may petition a court that has jurisdiction to select the third appraiser.

(c) Each party will pay the cost of its own appraiser, attorneys, and expert witnesses,

as well as any other expenses incurred by that party. Both parties will share equally the cost of the third appraiser.

(d) The appraisers shall only determine the actual cash value of the covered vehicle. Appraisers shall have no authority to decide any other questions of fact, decide any questions of law, or conduct appraisal on a class-wide or class representative basis.

(e) A written appraisal that is both agreed upon by and signed by any two appraisers, and that also contains an explanation of how they arrived at their appraisal, will be binding on the owner of the covered vehicle and us.

(f) We do not waive any of our rights by submitting to an appraisal.

**MOST TEXAS MOTOR VEHICLE POLICIES' LIMIT OF LIABILITY AND APPRAISAL CLAUSE:**

**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.

As we see from the State Farm policy insert (“**STATE FARM TEXAS AUTO POLICY LIMITS AND LOSS SETTLEMENT – COMPREHENSIVE COVERAGE AND COLLISION COVERAGE**”), the insurer or the insured may only submit for appraisal an actual cash value dispute. A small change in contract language can have significant consequences. If State Farm had not removed the Right to Appraisal for covered losses other than actual cash value loss disputes, Mr. Collins could have submitted the loss type repair or replace to appraisal.

When the insured’s insurance policy has the limits of liability and Appraisal Clause such as listed above under “**MOST TEXAS MOTOR VEHICLE POLICIES' LIMIT OF LIABILITY AND APPRAISAL CLAUSE,**” 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. We are working vigorously with lawmakers to pass legislation requiring every personal auto policy to have a structured Right to Appraisal. Appraisal is the guardrail for indemnification of the loss when a dispute over the loss arises between the insurer and the insured. Without legislation in place requiring mandatory time sensitive appraisal rights, we can expect to see continued efforts by all insurers to limit or remove economic relief for the insured. In this respect, they can be seen as beavers to running water. They see the insured getting some economic relief for their loss and they quickly act to dam up the source of the relief.

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 the example provided. 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.

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 question and look forward to any follow-up questions that may arise.

Sincerely,  
**Robert L. McDorman**  
**TXA**



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