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TEXAS

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Doing It Differently: *The Fight for Appraisal Expands*

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Doing It Differently:

The Fight for Appraisal Expands

Texans deserve to drive safe vehicles, even after their car is damaged in an accident; however, proper vehicle repairs can be costly, and it's all-too-common for insurance carriers to use unfair methodologies to undervalue both repairable and total loss vehicles, thereby under-indemnifying their policyholders. This is no surprise to collision repairers who repeatedly witness this tragic situation, and for years, shops have taken this burden on their shoulders, encouraging customers to utilize the Appraisal Clause in their policies to get a fairer shake.

Unfortunately, in 2015, the Texas Department of Insurance (TDI) permitted State Farm to eliminate the Appraisal Clause from its Texas policies, and in 2022, GEICO sought a similar removal, which was only rejected due to a lack of sufficient information being provided by the insurer. Recently, two additional insurers submitted policy change applications to TDI, requesting approval to remove the Right to Appraisal for repair procedure disputes from their policies. Those requests have since been rescinded.

Over the past three years, this battle has grown as it's become evident that mandatory Right to Appraisal is in the best interests of Texas policyholders. Repair facilities aren't alone in seeking to rectify this injustice; they've often been joined by consumer advocacy groups in the fight to ensure vehicle owners are properly indemnified in the event of a loss. While ABAT has played a significant role in drawing attention to this matter, people *are* finally paying attention! As more and more individuals from various industries recognize the need for the Appraisal Clause, the fight has shifted to include consumers, legislators and more.

Where did this battle begin? In 2021, ABAT took up arms for Right to Appraisal by filing legislation that would mandate all automotive insurance policies include the Appraisal Clause, and although that bill died in a Senate committee, the charge continued with the next legislative session in 2023, led by Board member and consumer champion Robert McDorman (Auto Claim Specialists).

"The appraisal issue is 100 percent a safety issue," McDorman insists. "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. 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."

McDorman was joined by ABAT President Burl Richards in discussing the matter at the Texas House Committee on Insurance's public hearing in late 2022. "The Right to Appraisal is important because it puts the consumer back on equal footing and gives the consumer an opportunity to have their car repaired properly," Richards explains.

Again and again, ABAT leaders and members have appeared in public forums to educate politicians on the significance of including the Appraisal Clause in all Texas automotive policies. They educated legislators in Austin during Collision Day at the Capitol. They wrote letters and made calls, stressing the importance of proper indemnification. And their efforts seemed to make an impact.

In its Texas House Insurance Committee Report, the committee wrote, "A consumer's right to invoke appraisal in disputes regarding the cost of repairs or the amount of a total loss has been the market standard in Texas for both personal automobile and residential property insurance," promising to continue monitoring the situation.

When the Office of Public Insurance Counsel (OPIC) released its Report to the 88th Texas Legislature, OPIC expressed increasing concern with "restrictions on appraisal in policy forms filed by top insurers [which] can adversely impact consumers, who buy insurance to make sure damage to their property will be repaired or replaced. Without appraisal, they may be forced to choose between accepting the insurer's offer and paying out-of-pocket for any disputed amount, or taking on the costly and time-consuming burden of going to court."

Even the Texas Department of Insurance (TDI) acknowledged the need for legislators to "establish policy form appraisal guidance" in its 2022 Biennial Report! Most recently, TDI issued a data call on appraisal in an attempt to better understand how and when appraisal is used as well as what impact it has (stay tuned to *Texas Automotive* for more details once they become available).

Over the years, consumer advocacy group Texas Watch has participated in this ongoing battle for consumer rights in various ways, campaigning for the Right to Appraisal and inviting McDorman to share his thoughts on the importance of appraisal on the organization's podcast. "A large amount of the insurance companies' estimates or repair plans are grossly under-indemnified when it comes to the repair procedures, and that often constitutes an unsafe repair," McDorman explained. "Although manufacturers issue position statements saying certain operations absolutely should be done, we routinely see the insurance carrier refusing to recognize that because it's not the 'prevailing practice' in the market. That means if nine out of 10 shops are doing it wrong because they're not certified in that brand or don't have the right qualifications, they won't pay the one shop doing it right. It's a serious problem because the technology and materials on today's cars equates to more sophisticated repairs – and there's no one better to tell a shop how to fix the car than the manufacturer!"

Last year, Texas Watch compiled a report based on collected data, "Impact of Auto Appraisal" (available at bit.ly/TXW-RTA). "Fair auto insurance appraisal allows cars to be repaired safely or vehicles to be valued accurately in the event of a total loss," the report stresses, going on to analyze 1,246 auto insurance claims settled through independent appraisers and break down the figures in a number of insightful ways.

Invoking the Right to Appraisal on repair claims resulted in an average increase of \$5,307.35 for Texas consumers, while appraisal increased the average total loss claim by \$3,889.27. When all of those claims were combined, the total amount by which the settlements were increased was \$5,081,431.83.

Yet, that's a small sample of the claims that are typically filed in the Lone Star State each year. Based on the TDI's 2023 Annual Report, automotive insurers collected over \$26.5 billion in written premiums from Texas consumers for over 21 million vehicles in 2022 (and from 2022 to 2023, Texas drivers saw an average premium increase of 25 percent). According to the Insurance Information

Institute, 4.9 percent of collision insurance policyholders had a claim in 2022, which translates into an estimated one million claims made by Texans, so the likelihood that under-indemnification amounts are *significantly* higher seems a near certainty.

With so many consumers sharing this type of negative experience, it's no wonder that one of them finally joined the fight for mandatory Right to Appraisal. After a jury determined last summer that State Farm had unfairly withheld money owed from their policyholder's settlement and knowingly engaged in wrongdoing, Texas consumer Joe Collins decided to donate his winnings to the cause, in support of the fight for mandatory appraisal rights in all Texas insurance policies (full story at greco-publishing.com/txa0124coverstory).

That's when McDorman got a new idea. "We have been fighting and fighting, but we just haven't gotten where we need to be, so it's time to do something different," he suggests. Exploring the possibility of filing an administrative action, he interviewed several highly qualified lawyers who specialize in the field, ultimately hiring Joe Matetich (Matetich Law) to evaluate that option. After examining the situation closely, Matetich recommended that the legislative route is most logical.

But although this fight originated with McDorman and ABAT, it has grown beyond them. "It started as our bill, but really it's the people's bill," McDorman asserts. "It's much bigger than the association now."

Legislators will still rely on McDorman's expertise to draft the proposed bill, but while ABAT will support the proposal for mandatory Right to Appraisal, Auto Claim Specialists has hired its own lobbyist to work on drafting a bill for the 2025 legislative session. Drew Graham (Graham Public Affairs) is already hard at work, seeking a sponsor for the initiative. He will be working closely with ABAT Lobbyist Jacob Smith (Longleaf Consulting) to get the bill passed this time around.

"We're getting organized and prepared for the 2025 session to make sure the bill is drafted and submitted early to ensure it stands the best possible chance of making it all the way to the governor's desk," Graham shares confidently. "We will work hard to educate legislators, while other entities will continue focusing on helping consumers understand why this initiative is in their best interest."

One of those entities is Texas Watch whose aid has been enlisted to help gather more data and promote this endeavor to Texas consumers. "All of us fought our hearts out at the Texas Capitol [in

2023] for auto safety," recalls Texas Watch Executive Director Ware Wendell. "The appraisal bills made it to the last day and the last hour in the Senate. We cannot let the momentum die. We must keep up the fight, and this is the logical next step. Texas Watch appreciates everyone who is taking up the charge. It is so important to protect Texans on our roads. Safe repairs save lives!"

McDorman (and Texas drivers) are relying on body shops to continue wearing that mantle for safety that they've always worn. "Keep educating your customers and helping them understand their policy rights," McDorman encourages. Shops can also take their support a step further by making a donation to help fund this ongoing battle at gofundme.com/f/texas-mandatory-contractual-right-to-appraisal-for-all.

"What we've done so far has definitely made a difference," McDorman stresses. "Other industries have taken notice and are recognizing the benefits of the Right to Appraisal. Legislators greeted me by name during the last session. Everyone we've talked to has truly begun to understand why appraisal makes sense, and we've gained a lot of support. By bringing it to the public's attention over and over, we've gone from a place where people were laughing at us to a point where legislators are acknowledging the problem and asking for advice on how to fix it. It's obvious that our efforts have taken us in the right direction, and now we just need to keep building on that momentum. I'm confident that the shift we're making for the upcoming session is exactly what we need to take it across the finish line." **TXA**

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ABAT is seeking 82 political champions to pass a Right to Appraisal Bill in Texas. Visit abat.us/rta to learn more about making a donation to the RTA Champion campaign!

WHY IS THE MANDATORY RIGHT TO APPRAISAL IN TEXAS SO IMPORTANT?

Dear Mr. McDorman,

I own and operate a collision facility in North Texas. I, like your questioning reader last month, have referred many clients to you over the years, and you were able to help each one resolve the loss dispute with their insurance carrier without the carrier refusing the Right to Appraisal. Each client we have referred to you with under-indemnification and policy coverage issues has come away delighted with the ultimate outcome. I have seen how you are working diligently to help get a mandatory appraisal bill passed in Texas. Thank you!

It was alarming to hear that Progressive and Home State County Mutual filed a policy change request with the Texas Department of Insurance (TDI) to remove the insured's Right to Appraisal on a repair procedure dispute. Are there any updates on this you can share with the readers? Can you also share some statistics on how long these claims are taking to resolve and the average under-indemnification in repair procedure and total loss claims with the readers? I believe these statistics would help all interested parties understand how vital the mandatory appraisal bill is and why certain insurance carriers are trying to remove the Right to Appraisal for repair procedure disputes from their insurance policy (like State Farm was successful at doing).

Thank you for your comments and questions. As I wrote in the May issue and the previous several months, Progressive and Home State County Mutual Insurance have submitted policy change applications to the TDI requesting approval to remove the Right to Appraisal for repair procedure disputes from their policies. Many general agencies write coverage under Home State County Mutual. I understand that Progressive and Home State County Mutual later rescinded their application requests with this modification in May when it became apparent they would not be approved at this critical point in time.

Regarding your questions related to the statistical data we harvest, I have posted below the average results we have achieved for our clients who have come to us for help with the under-indemnification of their repair procedure loss. These averages do not include the hundreds of claims we have moved to the judicial process. These numbers are only for claims where we have invoked the Right to Appraisal for our clients, and the insurance carrier honored this contractual policy right to resolve the dispute.

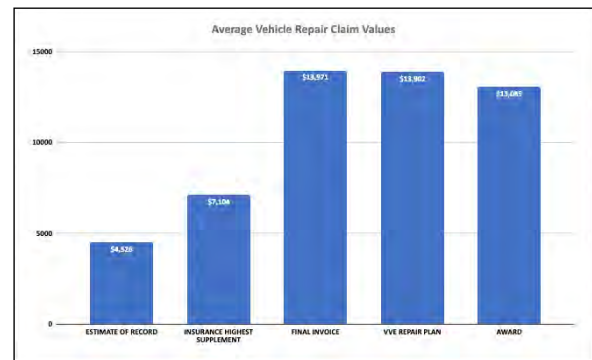
First, the average timelines for Texas repair procedure appraisal claims that did not go to litigation:

- Date of Loss to Filed Right to Appraisal: 99 days
- Filed Right to Appraisal to Date Carrier Appraiser Appointed: 70 days
- Date Carrier Appraiser Appointed to Date Settled Right to Appraisal: 103 days

Next, average results from these repair procedure appraisal claims:

- Average Insurance Carrier Estimate of Record: \$4,526
- Average Insurance Carrier Highest Supplement: \$7,104
- Average Collision Facility Final Invoice: \$13,971
- Average Vehicle Value Experts Repair Plan: \$13,902
- Average Right To Appraisal Award: \$13,085

TEXAS REPAIR PROCEDURE NON-LITIGATION UNDER-INDEMNIFICATION GRAPH



Under-indemnification in repair procedure claims in Texas is rampant. Most of the above-referenced averages on estimates and supplements had many overlooked (by design) safety and OEM-required operations needed to restore the loss vehicle to its pre-loss condition to the best of one's human ability. Besides the higher settlements we have obtained for our clients with repair procedure disputes, we have increased total loss settlements on average by \$4,200 or 28 percent above the carrier's proposed final offer. These under-indemnification percentages are staggering and harmful to Texas citizens. I believe limiting or removing the insured's Right to Appraisal of a repair procedure is a safety issue. The limiting or eliminating of the Right to Appraisal by the insurance carrier in a repair procedure dispute will be the nail in the coffin for safe roadways in Texas.

As I have often said, appraisal is the guardrail for indemnification of the loss when a dispute arises between the insurer and the insured. Without legislation 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 when it comes to under-indemnification of a covered loss. In this respect, the insurance carrier can best be seen as a mama bear protecting her cubs and willing to fight anyone trying to take them away. Once they see the insured getting some economic relief for their loss, they quickly act to prevent the insured from getting such relief. Mandatory Right to Appraisal would stop this atrocity. Legislators should come together and pass the mandatory Right to Appraisal bill and put a stop to this before it gets out of hand.

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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.

Ask The Expert

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Until legislators pass laws to make the Right to Appraisal mandatory in Texas for all motor vehicle policies, we have no choice but to continue to advise our clients who have been harmed and cheated by their insurance carriers to fight like the third monkey in line to get onto Noah's Ark when it has already begun to rain, and we will help. In my professional opinion, the more times these systematic under-indemnification schemes are exposed and monetary punishment is levied, the quicker change will come to help us all.

Our position at Auto Claim Specialists is that the Right to Appraisal should be a mandatory contractual right in every policy. For the 89th Texas Legislative panel, we will team up with our lobbyist, Andrew "Drew" Graham, to educate lawmakers and help us secure mandatory contractual appraisal rights for all insured Texans. We, the insureds, are many, and I am confident that if we join forces and all do what we can, we can be successful in securing our rights and our children's rights to contest insurance settlement offers that would result in underpayment of losses and/or shoddy and dangerous repairs.

The spirit of the Appraisal Clause is to

resolve loss disputes fairly and to do so in a timely and cost-effective manner. Invoking 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 remember that 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

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folks who are amazing at what they do every single day. Big shout out to all the sponsors who help us make this competition happen and who donate tools and prizes to recognize our winners. It's such a big deal that a picture of the BIG SHOTS winners will appear on the cover of an upcoming edition of *Texas Automotive*, so be sure to brush your hair if you have any left!

A big part of attending this show really boils down to surrounding yourself with other industry experts and being able to have those conversations that help you hone your skills. The Texas Auto Body Trade Show is an excellent opportunity to do exactly that. Stop by a refinish manufacturer's booth to get some tips on your paint gun technique, or learn more about glue pulling to hone your skill set as a body technician if you're interested in saving time, using less filler and producing cleaner work.

Get on over to the Irving Convention Center on July 12-13 for the 2024 Texas Auto Body Trade Show! If you're a part of this industry, you cannot afford to miss this event – you're going to have access to information and tools to help you succeed in your business when you return to the shop on Monday. Our focus is on delivering the things that matter most to auto body professionals at the original auto body trade show in Texas, hosted by ABAT, an association made up of body shops that want to make this industry better for all of us. You cannot find this type of Texas-sized opportunity anywhere else, so come on out! ABAT's team (our Board of Directors and ABAT Executive Director Jill Tuggle) along with our vendors put a lot into making this show everything you need it to be – it truly is a labor of love – but what really makes it so successful is the industry professionals who show up and participate. That means you! Register now at abat.us/tradeshaw.

Bud Richards

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