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CARRIERS WRONGFULLY REDUCING SETTLEMENT BY THE SALVAGE VALUE IS HAPPENING EVERYWHERE

Dear Mr. McDorman,

I own and operate a collision facility in Southeast Texas. I read the reader's question and your answer in the August edition, "In the last several months, several insurance carriers have abandoned vehicles at our shop. The insurance carrier refused to send us the title in each of these instances." We are having a similar issue with our clients. However, in our situation, the insurance carrier is having Copart or IAA pay our charges, pick up the vehicle and then deduct such charges from the insured's settlement. Have you also seen these kinds of activities in other parts of Texas?

Thank you for your comments and questions. Yes, we also see this type of egregious behavior across the United States. As stated last month, it is my professional opinion the first line of defense the insured has in these types of situations is to review the total loss proposed settlement offer to make sure the insurance carrier has appropriately defined the actual cash value. If the insured will email us the market valuation report, settlement summary and pictures of the damaged vehicle, we will review the settlement at no cost. If we determine that the insurance carrier has likely under-indemnified the proposed settlement, we will offer suggestions to the insured to see to it they are made whole for their loss. Should the proposed offer be inline with the current market, we can also discuss options available to the insured to mitigate their loss. The first step is to obtain a certified actual cash value appraisal. As I have spoken and written about for many years, the actual cash value of the loss vehicle is the fence post on how liability should be handled according to the policy.

When the carrier selects to reduce their liability, lowering the insured's settlement by the salvage value and not honoring reasonable fees due to the collision or tow facility as a covered liability, it is a rocky road for the carrier. Over the years, when our clients' insurance carriers have wrongfully deducted the shop charges from their settlement, we have successfully seen that these charges are reimbursed. As a note, the insurance carrier is only liable to the insured for the liability limits as outlined in the policy and declaration page. As mentioned above, the insured should always check the proposed settlement to ensure the insurance carrier has appropriately identified the actual cash value.

In most of the Texas insurance policies in our library, the limits of liability states that the limits of liability for loss to a covered auto, non-owned auto or custom parts or equipment is the lowest of: A) the actual cash value of the stolen or damaged property at the time of the loss reduced by the applicable deductible; B) the amount necessary to replace the stolen or damaged property

reduced by the applicable deductible; C) the amount necessary to repair the damaged property to its pre-loss condition reduced by the applicable deductible; or D) the stated amount shown on the declarations page for that covered auto.

As we can see in the policy language listed above, once the insurance carrier has reached the policy limits of liability, the carrier has the right to not honor the insured policy requirement to preserve the loss vehicle after the loss expense. To take this one step further, when the insurance carrier realizes they cannot reduce their liability enough to cover the collision facilities' fees to pick up the loss vehicle, we see the insurance carrier electing to abandon the car at the shop. However, we routinely see the carrier's error in this process. Our position at Auto Claim Specialists is that these types of loss disputes should be subject to appraisal.

As discussed above, should the carrier not properly indemnify the insured by not recognizing the actual cash value of the loss vehicle, use an unsupported salvage value and/or reduce their liability by deducting the salvage from the insured's settlement, it becomes a rocky road and a mixed bag of tricks for the carrier. In each of our clients' claims where the carrier elected to travel down this rocky road, we have referred the insured to lawyers familiar with these types of situations after we have defined the actual cash value. In each of these instances, the carrier suffered severe monetary punishment at the dismissal of the litigation. Defining the actual cash value will identify the carrier's liability.

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 secure mandatory contractual appraisal rights for all insured Texans.



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.

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Ask The Expert

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We, the insureds, are many, and I am confident that if we join forces and do all that we can, we will be successful in securing our right and our children's right to contest insurance settlement offers that would result in underpayment of losses and/or shoddy and dangerous repairs.

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 appraise a repair procedure is a safety issue. Insurance carriers limiting or eliminating the Right to Appraisal in a repair procedure dispute will be the nail in the coffin for safe roadways in Texas.

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 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

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