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ABAT's Newest
BOARD MEMBER

A Right to Appraisal
GONE BAD

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A RIGHT TO APPRAISAL GONE BAD

Dear Mr. McDorman,

I own and operate a collision facility in North Texas. Several months back, one of my clients hired an independent appraiser to assist them in a dispute with their insurance carrier related to the indemnification of the repair cost.

Our final invoice to return the vehicle to its OEM pre-loss condition to the best of our ability came out to \$17,234.67. After more than three months and four attempts to get the insurer to properly indemnify the vehicle owner, the client's insurer issued a fourth supplement totaling \$9,375.34. Our client instructed us to stop communicating with their insurance carrier, place the car in production and repair the vehicle according to OEM guidelines to the best of our ability. They would pick the car up when finished and pay the difference out of pocket. Once we completed the repair, our client paid us for the difference and left. After six months, they returned to our shop. They told us the independent appraiser they hired to handle the Right to Appraisal process refunded their fee and told them there was nothing he could do to help them recover their \$7,859.33 out-of-pocket expense because he and the insurance carrier's independent appraiser could not agree on the repair methodology, parts or rate. Additionally, they could not agree on an umpire to decide on their differences, and the policy was silent on how the loss should be handled once the appraisers could not agree on an umpire. Have you ever heard of this type of situation? Does this happen often?

Thank you for explaining your client's unfortunate Right to Appraisal situation and sharing your questions. Yes, I have heard of many situations like this. We have taken on many clients' claims with similar optics over the years and have managed to get them all sorted out and the client made whole. These situations will continue to occur until we have laws in Texas to govern the auto policy appraisal process. Most of the appraisal claims we have taken over after the original independent appraisers could not bring the claim to closure were from the manipulation of the insurance carrier in the appraisal process. Some readers may be asking how this could happen. The insurance policy requires the appraisers to be independent and unbiased. However, the insurance carrier rarely chooses an appraiser who is truly an independent appraiser; instead, they select an appraiser they can control.

As long as the insurance carrier can place its thumb on the scale of indemnification, this type of bad behavior will continue, and the insured will continue to be punished for invoking a policy right. We see an example of this type of bad behavior several times a month when an insurance carrier's so-called independent appraiser tells us, "I understand this is the proper way to repair the vehicle based upon the OEM guidelines, and I know that the procedures and rate

the shop are charging is fair and reasonable to return the car safely back to it's the pre-loss condition to the best of one's human ability. However, if I agree with this, I will not get any further assignments from this carrier because they have told me not to agree on any rates or procedures outside their prevailing claim handling guidelines. Let's pick an umpire and let them rule correctly; the insured will be made whole, and I will not have to conform to the insurance carrier's harmful instructions."

When this type of situation goes terribly for the insured, the biased "independent" appraiser working with instructions and guidelines from the carrier refuses to select a competent, unbiased independent umpire to rule on the differences between the two appraisers. Sound independent? It is not, and this invasive action on the carrier's part is becoming more and more common. As citizens of Texas, we must band together to pass mandatory Right to Appraisal laws with time-sensitive triggers designed to stop the carrier from tipping the scales during the appraisal process.

As the examples above show, we – as insured citizens of Texas – need our lawmakers to pass the mandatory Right to Appraisal bill this upcoming session. Without the passing of this bill, this injustice will not only continue; it will grow even worse. As can be seen in last month's editorial, the statistics on the indemnification of auto claims have risen over the last several years.

We at Auto Claim Specialists understand your concerns about under-indemnification. Until legislators pass laws to make the Right



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Ask The Expert

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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.

Petty Details, llc

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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 have teamed up with lobbyist Andrew "Drew" Graham to educate lawmakers and help 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.

As shown above, the under-indemnification in repair procedure claims in Texas is rampant. Most of the estimates and supplements for these repair claims 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. Limiting or removing the insured's right to appraise a repair procedure is a severe safety issue. Limiting or eliminating 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.

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