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Right to Appraisal: **BRINGING CONSUMERS IN FROM THE COLD**

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Right to Appraisal: BRINGING CONSUMERS IN FROM THE COLD

Your car is mangled, and your body aches... You just got into a minor car accident, but the initial damage may not be the most painful part of this experience!

For many vehicle owners who've been in an accident, the real agony occurs at the hands of their insurance carriers – the entity contracted to indemnify them for their loss – due to tactics designed to increase insurer profits at the expense of their

policyholders. Whether the vehicle is repairable or deemed a total loss, there's an incredibly high likelihood of receiving a settlement offer that does not truly cover the cost of repairs or the vehicle's value, leaving a large number of claimants dissatisfied.

In fact, according to the “2024 US Auto Insurance Trends Report” released by LexisNexis Risk Solutions (available at bit.ly/LNRisk24), 46 percent of consumers with total losses

were dissatisfied with the overall experience, and it would appear that the prevalence of under-indemnification schemes is becoming more recognized as 85 percent of the claimants in a study conducted by LexisNexis reported being approached by at least one attorney following their accident; of those who hired an attorney, “51 percent of claimants who hired an attorney received a higher settlement amount, and 93 percent who sought legal involvement would ‘definitely’ or ‘probably’ retain counsel for their next claim.”

But litigation is expensive and time-consuming – there’s a better way! The majority of auto insurance policies contain the Right to Appraisal (RTA), ensuring policyholders receive what is due to them without the headache of hiring an attorney and pursuing the matter in court.

“The Appraisal Clause is a policy protection that enables the consumer to address shortcomings in indemnification,” explains Society of Collision Repair Specialists (SCRS) Executive Director Aaron Schulenburg. “The Appraisal Clause allows policyholders to have a third-party appraisal done when they don’t agree with their carrier’s valuation of their vehicle value or the value of the vehicle damages. Both the carrier and the policyholder hire an independent appraiser and if the appraisers can’t agree, an umpire is selected to make the final, binding decision.”

“RTA is critical,” insists Mike Anderson (Collision Advice). “When there’s a disagreement about the difference between what a shop thinks is fair and what the insurance company is willing to pay, it’s the only path a consumer has to resolve the situation without getting a lawyer involved.”

Mark Olson (VECO Experts) describes RTA as “a low-cost, easy way to settle a value dispute. Without the Appraisal Clause, the only recourse a consumer has against their insurance company is to lawyer up, but it’s significantly less costly to hire an appraiser and possibly an umpire to value the vehicle and likely achieve a much better outcome. Insurers are experts at what they do, which includes being profitable. RTA provides consumers with an affordable way to combat that profit-driven approach to make sure they’re not being shortchanged.”

According to Schulenburg, the Appraisal Clause is “the most viable, non-litigious option that gives consumers the ability to address discrepancies with their insurance company without the burden of suing their insurer and bogging down the court system. It’s also worth noting that in most cases, consumers have difficulty finding adequate representation to pursue litigation against their insurance companies, as there is not a meaningful business case for plaintiffs’ attorneys to represent consumers for shortchanged amounts on a case-by-case basis. This is why RTA is so critical.

“It is also important because insurance department complaints are limited in what can be addressed for consumers,” he adds. “Typically, DOI complaint processes establish a need to address patterns of practice and overarching behavior, not the amount of loss or specific items that have been neglected. Appraisal options remedy that, providing the ability to address and resolve specific operations and amount of the loss.”

Unfortunately, the average American driver gets into just

three to four car accidents in their lifetime, so few are aware of this policy provision. This gives collision repair facilities an opportunity to don a hero’s cape by educating their customers about their rights, plus it ensures shops are able to collect what they’re owed for performing safe and proper repairs.

“There is an incredible amount of complexity and sophistication in performing safe, proper repairs to restore the increasing array of sophisticated technology found in modern vehicles,” Schulenburg points out. “Those challenges are made even more difficult when those responsible for indemnifying the consumer pressure repair businesses to deviate or disregard the necessary steps for repair, as documented by the vehicle manufacturer, yet this happens routinely, as we hear often from our membership across the country; businesses that thoroughly document the necessary repair steps receive incomplete claims estimates that don’t align with the repair plan or flat out refusal to recognize procedures, processes, tools or expectations. They are asked to perform repairs in a manner that conflicts with their professional expertise and commitment to the vehicle owner.”

Although many repairers think of the Appraisal Clause as only being relevant in total loss settlements, it can be equally important on repairable vehicle claims. “If a shop wants to fix a car properly, but the insurer doesn’t want to pay for all the processes and procedures necessary to do so, RTA offers a path to resolving that disagreement,” Anderson notes, acknowledging, “At times, the carrier may be correct, so this can also protect the insurer by gaining insight from an unbiased third party; however, in other instances, the insurer may refuse to pay for certain operations that need to be performed, and the appraisal process ensures the shop can perform a safe and proper repair without charging the consumer out of pocket. But it’s not about the shop getting paid – it’s about protecting the policyholder from unfair charges due to their carrier under-indemnifying them.”

“In reality, the customer always owes the money, although an insurer is often involved as a third-party payer,” Olson observes. “If a shop wants to get paid for things that insurance company refuses to pay for, the only choice is to collect the money from the consumer, so if invoking RTA helps the customer obtain the funds to fix their car, the repair facility is more likely to get paid without damaging their relationship with a customer.

“After all, the body shop is perceived as the expert,” he adds, expressing the belief that the Appraisal Clause is vastly underutilized in the collision repair world. “If a customer complains that they aren’t receiving enough from their insurer to pay for the repair, it’s an opportunity to suggest checking their policy to see if RTA is a possible remedy. If it was your car, you’d want to know all of your options. And if invoking the Appraisal Clause results in a higher settlement, you’ve now become a hero for that consumer, so who are they going to call if they’re in another wreck? Who are they going to recommend to friends and family? The person who helped them solve this huge problem, of course!”

In fact, RTA holds the potential to have such a positive

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impact on consumers and repairers that these three experts agree that ALL auto insurance policies should include the Appraisal Clause. “It is a responsibility of every state’s Department of Insurance to ensure that carriers aren’t writing them out of the policy,” Schulenburg indicates, a valuable insight since, in recent years, insurance carriers are doing exactly that.

Anderson compares the appraisal process to the judicial system. “Without it, we’d be in the wild wild west; it ensures a due process for resolving a claim. Although some carriers treat their policyholders fairly by paying a reasonable price to fix a car, this varies by region and individual, which can create issues. The Appraisal Clause utilizes appraisers and umpires to ensure consumers are being represented and receiving the treatment they deserve in these stressful situations. When insurers remove it, it leaves consumers without any option to be treated fairly.”

As a licensed public adjuster, Olson offers a historic view of RTA, explaining that it was little known in the early 2000s and started to gain steam around 2018, growing exponentially since the pandemic. “I went from doing about 12 per year to doing over 200 last year,” he shares. “But insurance companies aren’t stupid, so when they see this being utilized more often – and cutting into their profits – they start examining ways to prevent that and protect their bottom line. Some have started removing it from their policies. If something causes a problem or costs them money, they’re always going to figure out a way to prevent it from costing them money.”

Sometimes, that involves being a little crafty. “Some insurers are using ‘wiggle words’ to get around removing RTA from their policies,” Olson cautions. “They often change little words that have a major impact, like turning ‘will’ into ‘may’ or converting ‘and’ into ‘or.’ Some policies indicate that the results are ‘not binding,’ making RTA essentially useless.” He provides an example whereby one insurer has revised their standard policy language regarding the right to invoke the Appraisal Clause by adding “and if we agree,” granting them the ability to decline a policyholder’s attempt to invoke RTA.

Olson offers another insight into evasion tactics insurers use to prevent consumers from effectively using this policy protection: “One company has added a caveat that invocation of the Appraisal Clause has to occur within 60 days of proof of loss; however, many people don’t know the difference between proof of loss and the first notice of loss (FNOL), so adjusters will reject RTA requests based on FNOL, but proof of loss is a different thing entirely – it’s a signed and notarized document that includes the final invoice after the repair is completed. Insurers are very smart at what they do, so we have to be even smarter and more conscientious of their tactics to prevent them from getting away with bad faith.”

For several years, ABAT has been fighting to mandate that the Appraisal Clause be included in all Texas auto insurance policies, but they’re not the only ones! Attempts to thwart insurers’ efforts to remove this important policy protection are popping up all over the country.

“Texas is not alone in the need for mandatory RTA,” Schulenburg stresses. “States are paying close attention to this issue and attempting to address it in a variety of ways. For instance, Washington state has entertained similar legislation, and the Office of the Insurance Commissioner (OIC) produced reports that illustrate a significant and growing volume of complaints, demonstrating why such consumer-remedies are important. Multiple states and state associations are working to address the issue.”

Olson has also been watching other states’ attempts to mandate inclusion of the Appraisal Clause or to follow Oregon’s model which requires the insurer to “reimburse the insured for the reasonable appraisal costs if the final appraisal decision under the policy provision is greater than the amount of the insurer’s last offer prior to the incurrence of the appraisal costs.”

Unless these efforts are well thought out to prevent insurers from using policy language to their advantage, Olson predicts, “RTA won’t be an issue in three years. Insurance companies will either write it out of their policies altogether or find little loopholes to prevent it from being effective.”

This legislative session, ABAT is supporting Senate Bill 369 (available in its entirety at bit.ly/RTA-SB369), sponsored by Senator Charles Schwertner (R-District 5). SB369 includes similar goals and language as the bills proposed in the last two legislative sessions, including the mandate that all personal automobile insurance policies written in Texas “contain an appraisal procedure that complies with this subchapter.”

“The Appraisal Clause is vital because it gives the consumer a low-cost way to get paid what they’re owed,” Olson reiterates, praising ABAT for stepping up to the plate to advocate for consumers. “Without it, the only option is to pursue the matter in small claims court. Neither consumers nor shops want to do that, so ABAT’s fight to protect RTA demonstrates their commitment to body shops and Texas drivers.”

Anderson applauds ABAT’s efforts. “Without RTA included in the policy language, the consumer is left out in the cold – they’re left paying out of pocket or taking their car to another shop that may be cutting corners and neglecting to perform a safe repair. When there’s friction between shops and insurers, consumers deserve the right to a fair resolution, so it’s imperative that we protect the Right to Appraisal.”

“ABAT has done a tremendous amount of work educating on this issue, bringing it to the forefront of the conversation and providing meaningful insight through data,” Schulenburg agrees. “The reports and positions issued by the Texas Department of Insurance and the Office of Public Insurance Counsel are valuable assets to help demonstrate the need in Texas (and in other states). Frankly, if ABAT is successful, it will really be a win for consumers.”

Stay current on ABAT’s ongoing legislative initiatives and calls to action by visiting abat.us/current-initiatives-legislation and tune into next month’s *Texas Automotive* for insights on SB369 and its impact from leaders in the Lone Star State. **TXA**

GREATER AWARENESS NEEDED FOR POLICYHOLDER RIGHTS VIA RIGHT TO APPRAISAL

Dear Mr. McDorman,

I own and operate a collision facility in East Texas. I agree with last month's reader that the release of the Texas Department of Insurance's Appraisal Experience Data Call Report outlines and supports the need for mandatory appraisal rights in Texas. I also was surprised that less than 0.02 percent of payable personal auto claims used the Appraisal Clause. However, what I found equally surprising was that reportedly only 13 appraisals were followed by a lawsuit. Over the years, we have referred many of our clients to Auto Claim Specialists for help when there is a dispute between them and their insurer. Based on comments and feedback from our clients about their experience going through the appraisal process, the reported 13 lawsuits filed after appraisal seems oddly low. It seems I've seen at least that many or more just from clients out of my shop. Do you agree? What has been your experience?

Thank you for your comments and questions. As I wrote last month, I commend the Texas Department of Insurance (TDI) for stepping forward, requesting this data on appraisal and releasing it for public view. The 0.02 percent of reported claims that went through appraisal is concerning and shows that there should be greater awareness of the policyholder rights when the proposed settlement offer is low. I feel confident the TDI understands that, without the Right to Appraisal, the number of claims ending in litigation would be much more significant. This data call report sounds the alarm on the systematic under-indemnification scheme I have spoken about for years, underlining the need for mandatory appraisal rights. The TDI website states, "Your policy **may include** an appraisal process to resolve complaints (emphasis added)." With mandatory appraisal rights in Texas, it would state, "Your policy **includes** an appraisal process to resolve complaints."

As for the 13 reported claims during the entire July 2020 to June 2023 time period where a lawsuit followed appraisal, our records show that for the period of July 2020 to June 2021, we referred 42 clients to law firms; from July 2021 to June 2022, we referred 21 clients to law firms; and from July 2022 to June 2023, we referred 89 clients to law firms. When we refer clients to lawyers for help with their claim after their insurance carrier harms them, very few do not follow through with litigation. Thus, our number of likely lawsuits filed during this period after our clients failed to receive fair settlements following the exercise of their appraisal rights is 152 – an order of magnitude greater than the reported number of just 13 from the carriers. Hence, you are absolutely correct in being skeptical of that implausibly small reported number. Additionally,

from August 2023 through December 2024, we have referred another 80 clients to law firms. I would gladly supply our data to the TDI to compare against the data provided by the chosen 12 insurer groups if requested.

Clearly, with the TDI's Appraisal Experience Data Call Report noting an average appraisal increase of between \$2,100 and \$5,900, the Texas Watch Impact Of Auto Appraisal Report noting an average increase of \$4,078.20 and our average increase of \$4,973, the necessity for mandatory appraisal rights in Texas is indisputable. Without mandatory appraisal rights, the litigation numbers would increase through the roof, clogging up our already congested court system. 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, unjust auto claim settlements will not only continue, but likely grow even worse.

In addition to widespread and mostly unchecked under-indemnification in total loss claims, the under-indemnification in repair procedure claims in Texas is also rampant. Most of the estimates and supplements we see for repair claims have many overlooked (by design) safety and OEM-required operations needed to restore the 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 serious safety issue. The 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.

As I have written many times, we at Auto Claim Specialists understand your concerns about under-indemnification. 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

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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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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 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.

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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