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An Industry Roundtable Discussion

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State Farm Suit Escalates

“Who Enforces Policyholder Rights?”

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AUTO CLAIM SPECIALISTS

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Robert is a recognized Public Insurance Adjuster and Certified Vehicle Value Expert specializing in motor vehicle-related insurance claim resolution. As the general manager of Auto Claim Specialists, Robert expertly leads this National Public Insurance Adjuster Agency, which is currently licensed in 24 different states and specializes in providing automotive-related claim liquidation techniques, strategies and motor vehicle valuation services to all parties, including individual consumers, body shops, auto dealers, repair facilities, towing and storage operations, lenders, finance companies, banks, legal professionals, governmental agencies and others. The firm's consistent success can be attributed to Robert's 35+ years of automotive industry knowledge, practical hands-on experience and multiple certifications, including licensure by the Texas Department of Insurance as a Public Insurance Adjuster. Auto Claim Specialists clients can absolutely trust that they will be provided with analytical, sophisticated, state-of-the-art, comprehensive, accurate, unbiased and up-to-date data and information that all parties can rely upon as both factual and objective. Robert can be reached at (800) 736-6816, (817) 756-5482 or asktheexpert@autoclaimspecialists.com.

Ask the Expert

“WHO ENFORCES POLICYHOLDER RIGHTS?”

Dear Mr. McDorman:

In your September 2019 article (“How Many Times Does This Happen”), a reader referred one of their clients to you with a 2014 Maserati Ghibli. The stated OEM blueprint to return the vehicle back to its pre-loss condition was \$9,084.43. The carrier deemed the vehicle a total loss even though their own assessed value was \$23,581. With your assistance, the collision facility was able to return the Maserati back to its pre-loss OEM condition and collect \$1,743 in storage and blueprint fees, and the client received an additional \$6,682.94. How were you able to do this? This exact situation routinely happens at our facility, and I am regularly told by the carrier’s management when questioning their claims management decisions that the company has the absolute right to liquidate a claim in any manner it wishes. Is this true? Who, if anyone, is responsible for enforcing policyholder rights?

Thank you for your questions. Please allow me to answer the most important question first. **Who enforces the policyholder rights?** The Texas Department of Insurance has the responsibility to protect the insured. The agency is responsible for enforcing the Texas Insurance Code, regulating the insurance business, protecting consumers, ensuring fair competition among companies and fostering the stability of the insurance market. As for your question about whether it is true or not that carriers can liquidate claims in any manner they wish, the answer is more complicated. Are they legally able to do so? Absolutely not. Legally, they are bound by their contractual obligations and state regulations and statutes. Are they effectively able to do so? Do they have any fear of or respect for regulators responsible for looking after policyholder rights? I would have to say the jury is still out on this question.

The liable carrier for the aforementioned claim was GEICO. In relation to the insured’s policy right of repair or replace, the GEICO policy stated the Limit of Liability would be the lesser of the actual

cash value or the amount necessary to repair or replace the property with another of like kind and quality. As the insured’s public insurance adjuster, I brought this to the attention of the insurer’s management. I was informed that the carrier reserves the absolute right to deem a vehicle a total loss at its discretion. I vigorously contested this claim and again pointed GEICO management to its policy. The company refused to follow the insured’s policy right and deemed the vehicle a total loss. We often see such improper actions and defiance on the part of select carriers. Unlawful as it may be, the bad behavior continues to worsen, and denials of insured policy rights continue to expand.

After the denial of the policyholders’ rights to replace, Auto Claim Specialists, on behalf of the client, invoked his right of appraisal in contest of the loss. Vehicle Value Experts was named as the client’s independent third-party appraiser. In this instance, GEICO (which is not always the case with a number of carriers as of late) honored the policyholder’s right of appraisal, named its independent third-party appraiser and notified Auto Claim Specialists. Vehicle Value Experts and the GEICO independent third-party appraiser then agreed that the actual cash value of the Maserati was \$28,900 plus applicable sales tax minus the deductible. The net settlement increase was \$5,651.44 (or 23.2 percent). We see similar results many times a day in our office.

The final settlement for the vehicle was \$29,988.25 after the deductible. GEICO deducted the retention value of \$14,220.88. GEICO issued the insured and their lender a check for \$15,767.37. After the \$9,084.43 payment to return the car to its OEM pre-loss condition, our client applied the remaining \$6,682.94 to his loan. Also, GEICO paid the collision facility \$1,743.00 in storage and blueprint fees.

GEICO could have returned this vehicle back to its OEM pre-loss condition for \$9,084.43. Instead, it paid \$15,767.37 and \$1,743.00 in storage and blueprint fees for a total of \$17,510.37. Sometimes greed does not pay – but sadly, too often it does.

Auto Claim Specialists has identified a widespread unfair claims settlement practice being

committed by certain Texas carriers. Many Texas policyholders are being harmed by their carrier's denial of their policy rights. On September 13, Auto Claim Specialists began turning over information, audio files, claim numbers and supporting documents to the Texas Department of Insurance in support of this allegation. We respectfully requested that the Texas Department of Insurance issue an immediate cease and desist order from the Commissioner instructing carriers with an appraisal provision in the policy to stop denying the insured's right of appraisal following the discovery of under-indemnification given a reasonable time period for discovery. We further requested a bulletin from the Commissioner stating the unlawful act mentioned above has been brought to the attention of the Texas Department of Insurance.

We have been told by the Texas Department of Insurance that this topic has been placed on its agenda to address in the near future. We can all hope that the days of ignored and snubbed policyholder rights are coming to an end in Texas!

Over the years, we have handled thousands of complex appraisal clause assignments. The catalyst for an unsatisfactory claim-handling situation is typically inexperience, a refusal to listen to or comprehend the facts, greed, disrespect, stubbornness, ignorance

and an inability or unwillingness to learn and/or change. The appraisal process in most policies allows the insured a means for relief by granting the insured the right to remove the inexperienced claim handler's ability to mismanage the claim and place it in the hands of experienced professionals to adequately assess and manage the loss.

The spirit of the **Appraisal Clause** is to resolve loss disputes fairly and to do so in a timely and cost-effective manner. 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 costly and time-consuming methods such as mediation, arbitration and litigation.

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

Sincerely,
Robert L. McDorman



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