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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 22 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

By Robert L. McDorman

“WHAT WOULD BE THE NEXT STEP IN THE BATTLE?”

Dear Mr. McDorman:

I have been following your recent *Texas Automotive* editorials in reference to Auto Claim Specialists having identified a widespread unfair claims settlement practice being committed by certain Texas carriers related to their not honoring the policy right of appraisal when their estimates of loss are in dispute. We routinely see this type of action from various carriers. When this happens, we always recommend to our clients that they issue a formal complaint to the Texas Department of Insurance. However, we have never actually seen the TDI take an action against a carrier to remedy this situation. We keep hoping the Department will take formal action and issue some type of sanctions against the carriers that blatantly violate their policyholder rights. In your February 2020 article, “Will the TDI Act on Unfair Settlement Practice Violations?” you wrote, “In early January, I was told by the Texas Department of Insurance that they had received all documents and responses from the parties and that this topic has been placed on its agenda to address and finalize within the next 60 days.” Has the TDI responded back to you concerning this matter? If the TDI fails to address this issue in a way that helps Texans get relief from under-indemnification, what would be the next step in this battle?

Thank you for your interest in the carrier scheme Auto Claim Specialists uncovered in Texas in which select carriers are refusing the insured's right of appraisal, refusing to fund the loss settlement after a binding agreement has been reached by the independent third-party appraisers and other various bad faith and contract violations. We have been in contact with the TDI several times since that article. The Department last reached out to me on February 12 seeking additional support for our complaint against various carriers that have refused the insureds' policy right of appraisal. We provided the requested information on that same day.

The information, documents and audio files we have provided are so compelling that I cannot begin to imagine that the TDI will not act appropriately to protect the insureds' rights and put a stop to this injustice and harm to Texas citizens. The scheme

clearly identifies a pattern of bad faith and policy violations. The policy right of appraisal is an absolute policy right of the insurer or the insured once invoked by either party. Both parties are required to retain independent third-party appraisers. The final agreed decision between two of the appraisers is binding on the parties.

As an example of the magnitude of the scheme against the insured, we currently have 20 clients (10 GEICO, four Progressive and six USAA) with cases in which liability was accepted, original undisputed liability was funded, the insured invoked their policy right of appraisal in contest of the loss and the insurer rejected such policy right. In each of these 20 claims, we analyzed the undisputed loss settlement and discovered that the algorithm used to arrive at the loss settlement did not arrive at the true actual cash value (ACV), thus under-indemnifying the insured and not making them whole. We advised each of these clients of their policy right of appraisal to resolve the dispute over their unsatisfactory loss settlement offer. In support of our advice, we sent them to the “Automobile Insurance Made Easy” section of the TDI website, which advises the insured what to do if they have a dispute over the loss with their carrier. The TDI advises the insured to invoke their policy right of appraisal should there be a dispute over a loss. Each of these 20 insured followed the TDI's advice and invoked their policy right of appraisal in contest of the loss. On each of the 20 claims, GEICO, Progressive and USAA refused to honor the policy right of appraisal.

During the same time period as these 20 cases, we have represented 21 policyholders of the same three carriers (seven GEICO, nine Progressive and five USAA) where the carrier funded the undisputed loss, the insured later invoked their policy right of appraisal in a contest of the loss and the carrier honored the insured right of appraisal. The average settlement increase on these 21 claims was \$2,487, or 17 percent. That is correct; GEICO, Progressive and USAA under-indemnified these clients on average by 17 percent. If these insureds had not come to us to analyze their settlements, they would have never known of this abuse of trust.

Let's discuss the 20 clients who took the same course of action as the 21 policyholders but for some inexplicable reason had their policy right of appraisal rejected. Based upon our preliminary analysis, we believe their level of under-indemnification is even greater than 17 percent. The decision on the part of

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Ask the Expert

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these three carriers to deny them their policy rights is alarming, to say the least. We have over 100 other potential clients who wish to dispute their loss but are waiting to see if appraisal is really a viable means to achieve fair settlement.

To limit, deny or prohibit the appraisal process to resolve disputes over the loss would be detrimental to the insurer or the insured due to the subjectivity of these type claims. The Supreme Court has held that if the insured has suffered no prejudice due to delay, it makes little sense to prohibit appraisal when it can provide a more efficient, timely and cost-effective alternative to litigation.

I remain optimistic that the TDI will punish these offenders of policyholder rights. We understand that the Department has a process it must follow, and we have tried to remain patient while the evidence has been examined. However, based upon what we have been told, the process should be coming to closure soon.

Auto Claim Specialists is licensed as a Public Insurance Adjuster in over 22 states. We have noticed, documented and identified several Texas insurance carriers disregarding their own stated policy rights when it works out against their favor. GEICO, Progressive and USAA are not alone. Numerous carriers in Texas are acting in bad faith by picking and choosing whether they invoke the right of appraisal or deny the insured's right of appraisal. These carriers have twisted the appraisal process into one they are allowed to use to their own expected advantage. This unlawful action is harming the insured

policyholders of Texas.

The under-indemnification in total loss and repair procedure claims in Texas is rampant. We have been increasing the total loss settlement for the eight out of 10 contacts who we end up retaining as clients an average of 28 percent. We have also reduced clients' out-of-pocket expenses an average of 35 percent on repair procedure disputes. These under-indemnification percentages are staggering and harmful to Texas citizens. **We are optimistic that should this issue not be resolved appropriately by the TDI, the right legal team will arrive at a theory to cover their legal fees to pursue these types of claims and put a stop to this injustice. Our files are voluminous and well documented regarding these infractions.**

The spirit of the **Appraisal Clause** is to resolve loss disputes fairly and 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 and 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 that 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 ones that may arise.



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INSURERS NEED TO STOP PLAYING GAMES WITH APPRAISALS

Texas Watch has fought for the rights of consumers and taken on the insurance lobby at the Texas Capitol for over two decades. Auto repair professionals hear ridiculous excuses from insurance adjusters every day about why they can't pay for this part or that part or why they feel repairs don't need to be made as safely as the manufacturer requires. We've also seen a lot from the insurance industry throughout our time in this fight, but a new scheme takes the cake.

Appraisal clauses have been in insurance policies for over a century. The appraisal process is intended to resolve

The insurer can say, "This is our last and best offer. Take it or else we'll send this to appraisal." It doesn't matter if that offer is pennies on the dollar; the policyholder is now faced with additional expense and delay late in the dispute. That isn't right.

The flipside of that coin is when the policyholder invokes appraisal early in the process but the insurer comes back and says, "You should have started appraisal earlier. You waited too long. Too bad, so sad, but you have waived that right. The end." That isn't right either. You're damned if you do and damned if you don't. I think of it as a game of "pin the tail on the donkey" that



Ware Wendell

We pay 100 cents on the dollar for our insurance coverage, and we deserve full and prompt payment in return from our insurance companies.

disputes over the value or amount of a loss. It exists to help the policyholder and insurance company come to an agreement on things like the cost to repair or replace a damaged fender or roof after coverage has been established.

Problems arise when insurance companies play games with the timing of the appraisal process and use it as a weapon against unsuspecting policyholders. We have heard reports of insurers waiting until deep in the litigation process to invoke appraisal. Mind you, the policyholder has tried for months, or even years, to get the insurance carrier to pay their claim at that point. They have gone to the trouble of hiring an attorney and engaged in the discovery process where both sides exchange documents and information. Now, they may find themselves in court-ordered mediation.

the insurance companies force you to play – except they get to spin you around and around and around as much as they like before you have to hit the mark. This isn't the way insurance is supposed to work.

Insurance companies already have a lot of power over us. They write the policies and endorsements; we don't get to negotiate the contracts. We are forced to buy their products in order to drive legally on the roads we pay for. They control the claims process, and we have to pay in full for our premiums each and every time to get coverage. They hold the cards, and they hold our money.

Because of this, consumers need protection from abusive insurance tactics. The Texas Department of Insurance should take enforcement action against carriers that are weaponizing the claims and appraisal

processes. And we should have clear deadlines on when the policyholder or the insurance company may invoke appraisal. House Bill 4223 (authored by Rep. Yvonne Davis) during the last legislative session would have done just that, requiring parties to invoke appraisal within 60 days after notice of a dispute is given. That is the kind of clarity and common-sense reform we need in our law. Texas Watch strongly supported this legislation, helping it to clear the House Judiciary & Civil Jurisprudence Committee unanimously. We will support it again this session in the hope of getting it across the final finish line.

We pay 100 cents on the dollar for our insurance coverage, and we deserve full and prompt payment in return from our insurance companies. We don't need excuses and gamesmanship. Help us end these abusive insurance tactics by joining the fight.

Texas Watch is a non-partisan, non-profit citizen advocacy organization that fights for the rights of consumers. Ware Wendell is an attorney who serves as the organization's executive director. Learn more at TexasWatch.org and follow them on Facebook, Twitter, YouTube and Instagram.