

The official publication of the Auto Body Association of Texas



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ABAT STRONG:

Sales and Solutions in the
Age of Coronavirus

- Dissecting the
STIMULUS PACKAGE
- The TDI FIGHT
Isn't Over
- A LESSON From
the LOCKDOWN



“HOW WILL YOU WORK TO GET YOUR CLIENTS MADE WHOLE?”



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 over 22 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-plus 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.

Dear Mr. McDorman:

I hope you and your family are remaining safe and healthy. I know that you and ABAT have been working on addressing issues with the Texas Department of Insurance (TDI) on behalf of consumers. What are you doing to push these things forward in light of the pandemic, and how will you work to get the TDI to act during and after our present lockdown?

We are doing fine; thank you for asking. I hope you and your family are doing well, too. Thank you for your question. Our work in this regard has not slowed down during the pandemic. We are proud to say that, if anything, the slowdown in the court system has allowed our clients' legal teams time to focus on the causes of action and relief of such. I truly believe that justice is in sight!

On March 23, senior management with the Texas Department of Insurance called me seeking clarification on some previous information and further support I provided. I was assured that the unfair settlement practice scheme we have disclosed to the TDI (with supporting documents) was being taken seriously, and that many individuals inside the organization were working toward an action plan.

As a proud Texan and a staunch believer in democracy, I continue to remain optimistic that the TDI will punish these offenders of policyholder rights in due time. The evidence we turned over was so compelling that I see no way the Department cannot take action against these carriers who are boldly and blatantly denying policyholder rights at will. As of this writing, these carriers have not been held accountable for their unlawful actions. We understand and respect that the TDI has a process it must follow, and we have tried to remain patient while the evidence and facts are

being examined. However, some of our clients' statute of limitations for relief is drawing perilously close.

For our team of adjusters, appraisers and support staff, the interest of our clients and the proper indemnification of their loss are paramount. As a Public Insurance Adjuster and a steward of my clients' rights, I have a fiduciary responsibility to watch after their interest and advise them of all legal remedies available. Where necessary in the interest of time and to preserve our clients' legal rights to relief, we have referred many of our clients to law firms familiar with insurance code violations, such as the ones contained in the unfair settlement practice right of appraisal scheme that we exposed to the TDI. Because of the delay in action by the Department, many of these clients who were wrongfully denied their right of appraisal are now seeking relief for their damages through the judicial process. We are diligently working with our clients' law firms to educate them on the complex mechanics of the scheme being carried out by certain carriers in Texas and other states. The violations and damages are even bigger than I had first expected or would have known by not being a lawyer.

We have many clients who have invoked their policy right of appraisal, and their carriers have refused to honor this absolute right. On each of these claims where the carrier has underindemnified the insured and refused to honor their contractual right of appraisal, there have been additional finance charges, late fees, collection attempts, delinquent credit reporting and charge-offs as well. It continues to amaze me how these unscrupulous carriers can continue to get away with these blatant contract violations. For the life of me, I cannot figure out how the Superior Court can override the District Court when an appraisal is not granted, yet these unlawful carriers continue to be allowed to not honor the policy right of appraisal when the insured has invoked such

right. Even the District Court cannot disallow this contractual right. *In fact, a Texas Trial Court's duty to compel appraisal is so strong that it has no discretion to deny it. Mandamus will be issued where the Trial Court fails to order appraisal.*

The Purpose of the Appraisal Provision Is to Conclusively Determine the Amount of Loss

An **Appraisal Clause** binds the parties to have the extent or amount of the loss determined in a particular way. Either the insured or the insurer may demand appraisal; once a party has demanded appraisal, the demand is irrevocable and the other party must comply with the demand. An insured can enforce the appraisal provision against an unwilling insurer, and

the Trial Court has the power to appoint an umpire when the parties' appointed appraisers fail to do so. I have various legal cases on file that detail these facts; please contact me if you would like to receive them.

Once Invoked, Appraisal Is Mandatory and Must Be Enforced by the Court

The Texas Supreme Court has confirmed the mandatory nature and enforceability of **Appraisal Clauses**, a principle that has been followed for over 100 years, by stating the following:

Like any other contractual provision, Appraisal Clauses should be enforced. There may be a few times when appraisal is so expensive and coverage is so unlikely that it is worth considering beforehand whether an

appraisal is truly necessary. But unless the "amount of loss" will never be needed (a difficult prediction when litigation has yet to begin), appraisals should generally go forward without preemptive intervention by the courts.

Numerous carriers in Texas and several other states we are licensed in are acting in bad faith by picking and choosing when they either invoke the right of appraisal or deny the insured's right of appraisal. These carriers have twisted the appraisal process into something only they are allowed to use to their own expected advantage. This unlawful action is harming the insured policyholders of Texas and several other states. We are confident that courts in the counties where clients live, work and pay taxes will punish these carriers for the

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Ask the Expert

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damages and harm they have unlawfully inflicted upon their policyholders.

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 independent third-party appraisers as opposed to costly and time-consuming methods such as mediation, arbitration and litigation.

I hope I have reassured you we are still working as diligently as ever throughout this pandemic to minimize the setback for our clients and regain the unlawful loss of rights for all insureds of Texas. However, you need not wait for us to fight this battle on our own. Call or write to the TDI and your state representatives and let them know this is an issue that concerns and troubles you. 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 question and look forward to any follow-up questions that may arise. **TXA**

Sincerely,
Robert L. McDorman

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