

The official publication of the Auto Body Association of Texas

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NOVEMBER 2020

A SAFETY NET

To A Proper Repair?

A Consumer's Perspective and More



2020 **SKEET SHOOT** *Highlights*

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IS THERE A SAFETY NET TO A PROPER REPAIR?



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 25 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:

This is Dale Barton from Tyler. You recently, once again, helped me resolve an insurance claim dispute on my wife's 2017 MINI Cooper. As before, you saw to it I was completely indemnified for the loss. Now that we have resolved the loss dispute, I feel compelled to ask you about the appraisal process we used to have my car returned to its pre-loss OEM condition and hold Allstate accountable for the loss. I chose to ask you this question through your monthly *Texas Automotive* editorial with the hope that your explanation could assist others in a similar situation and help keep them from settling for substandard, possibly unsafe repairs.

When I called you for help with my loss dispute, Allstate had already issued a final loss statement/repair plan to return my vehicle back to its pre-loss condition for \$1,226.33. My shop of choice for well over 25 years, Burl's Collision Center, issued a repair plan to return my vehicle back safely and properly to its pre-loss OEM condition for \$5,094.58. Allstate assured me they had properly indemnified me for the loss with its \$1,226.33 repair plan. Based upon the difference between the two repair plans, I was facing \$3,868.25 out of pocket to have Burl's Collision Center perform the necessary and required repairs to my vehicle. Please understand there was never a doubt in my mind that Burl's was going to be the facility to safely repair my wife's vehicle. However, the large out-of-pocket expense before the completion of the repair didn't seem fair. Therefore, I retained Auto Claim Specialists as my public insurance adjuster to address this indemnification issue and Vehicle Value Experts as my independent third-party appraisal firm to issue a loss statement/repair plan.

As a result of going through the appraisal process, my independent appraiser and the independent appraisal firm for Allstate came to a binding agreement of \$6,465.67 to return my vehicle safely and properly to its pre-loss OEM condition. This amount included what would have been supplemental charges at

Burl's after the complete disassembly process. In fact, after the completion of the repair and the finalization of the appraisal process, my loss was in fact \$6,465.67, and Allstate has made me whole for the loss. My question is twofold: How could the Allstate appraiser issue a loss statement/repair plan for only \$1,226.33 when the unbiased qualified independent appraisers came to a binding agreement for \$6,465.67, and does each policy in Texas have provisions in place to prevent this type of gross under-indemnification of the insured? Do you see this often?

Thank you for your question, Mr. Barton, and we appreciate your continued business. Your question is a particularly good one, as this is a sensitive issue here in Texas. Yes, we see this type of situation daily in our office, and there has been an alarming spike in this type of loss dispute since the pandemic began. As in your situation, generally what we see is the insurance carrier's appraisers who write the loss statements/repair estimates have very little knowledge of how to compose a safe and proper repair plan. They have limited knowledge of the collision repair process, have spent little or no time working in the collision industry and refuse to accept the advice, knowledge, education, certification and hands-on experience of the certified collision facility as to the safe and proper method to return the vehicle to its pre-loss OEM condition.

In most situations such as yours, the insureds do not know and are not being informed that they have options inside the four corners of their policy to combat the inexperienced, underqualified and potentially dangerous carrier appraiser repair plan methodology. With that being the case, many individuals end up taking their vehicle to a less than desirable, uncertified collision facility that then performs the repairs based on the under-indemnified and, in most cases, unsafe repair plan as written by the clueless insurance appraiser.

However, the problem is deeper rooted than just the under-indemnification of the loss. The insurance carriers use statistics from their under-indemnified, improper and, in most cases, unsafe repair plans as a weapon to penalize collision facilities that invest significant resources on education, certification and quality equipment to

The biased, manipulative and overly profit-minded insurance carrier should never be given the absolute right over the liquidity of the insured's loss.

perform truly safe and proper repairs. The statistical results of this scheme are referred to in the policy as the prevailing rate or practice. So, in other words, if it is documented and recorded by the carriers that more collision facilities accept the under-qualified carrier appraiser's repair plan as the safe and proper loss statement/repair plan, they can – through their own initiative – make improper and potentially dangerous repair methodology the “prevailing practice.” This borders on being diabolical!

When the deceitfully claimed and concocted “prevailing practice” is the tool used by the carrier to measure the loss liability, and the insured chooses a qualified and certified collision facility to perform the OEM required operations to return the vehicle to its pre-loss condition, the loss statement difference between the two is clearly an indemnification issue. The **Appraisal Clause** is not only a mechanism to prevent the insured from being under-indemnified for their loss; it is an invaluable tool to make sure that when there is a dispute between the carrier and the collision facility over the proper repair methodology, independent, experienced and unbiased appraisers can be brought in to determine the safe and proper processes to liquidate the loss.

As an example, and as you now clearly see from your own experience, the Allstate policy is friendly to the rights of the insured to contest the inexperienced or malicious appraiser's repair plan methodology or loss statement. The Allstate Motor Vehicle policy **Appraisal Clause** reads as follows:

Allstate Appraisal Clause:

If we and you do not agree on the amount of loss, either may demand an appraisal of the loss. In this event, each party will select a competent appraiser. The two appraisers will select an umpire. The appraisers will state separately the actual cash value and the amount of loss. If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will be binding.

Each party will:

1. Pay its chosen appraiser; and
2. Bear the expenses of the appraisal and umpire equally

We do not waive any of our rights under this policy by agreeing to an appraisal.

In most policies in Texas, when a dispute over the loss occurs, the loss dispute is subject to the **Appraisal Clause**. However, the State Farm policy limits the insured or insurer's policy right of an appraisal to only the loss dispute over the actual cash value (ACV) of the covered vehicle by stating:

Appraisers shall have no authority to decide any other questions of fact, decide any questions of law or conduct appraisal on a class-wide or class-representative basis.

If you had been insured with State Farm and were presented with the same situation, your right of appraisal in contest of the loss regarding the proper repair process and procedure for your vehicle would not have been available. As we see below, the Texas State Farm Motor Vehicle **Appraisal Clause** reads:

- (1) The owner of the **covered vehicle** and **we** must agree upon the actual cash value of the **covered vehicle**. If there is disagreement as to the actual cash value of the **covered vehicle**, then the disagreement will be resolved by appraisal upon written request of the owner or **us**, using the following procedures:*
 - (a) The owner and **we** will each select a competent appraiser.*
 - (b) The two appraisers will select a third competent appraiser. If they are unable to agree on a third appraiser within 30 days, then either the owner or **we** may petition a court that has jurisdiction to select the third appraiser.*
 - (c) Each party will pay the cost of its own appraiser, attorneys and expert witnesses, as well as any other expenses incurred by that party. Both parties will share equally the cost of the third appraiser.*
 - (d) The appraisers shall only determine the actual cash value of the **covered vehicle**. Appraisers shall have no authority to decide any other questions of law, or conduct appraisal on a class-wide or class-representative basis.*
 - (e) A written appraisal that is both agreed upon by and signed by any two appraisers, and that also contains an explanation of how they arrived at their appraisal, will be binding on the owner of the **covered vehicle** and **us**.*
 - (f) **We** do not waive any of our rights by submitting to an appraisal.*

Thus, the State Farm policy has limited the right of appraisal to actual cash value disputes only. The State Farm policy even goes one step further to limit the insured's right to contest the under-indemnified or unsafe State Farm written repair plan as stated in the policy language below:

***You** agree with **us** that the repair estimate may include new, used, recycled and reconditioned parts. Any of these parts may be either original equipment manufacturer parts or non-original equipment manufacturer parts.*

The **Appraisal Clause** language shown in your Allstate policy is the standard **Appraisal Clause** language we see in most motor vehicle policies in Texas. Fortunately, the State Farm **Appraisal Clause**

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National News

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execute on our delivery in a way that is going to feel very unique to other online events. We've put quite a bit of effort into developing our delivery in a way that is still going to retain the feel of a national-level event, videoing our speakers' presentations live and in person rather than a more typical 'Zoom-based' platform. I think it presents some interesting opportunities that in-person events aren't always able to offer."

"Attendees can expect the same unique content they would have in classroom settings now delivered to the convenience of their own facility," noted SCRS in a statement. "This is an opportunity to involve the entire staff within a collision business to acclaimed national-level education while capitalizing on information designed to re-energize any team member with knowledge and implementable solutions to real-world problems."

For a full list of RDE sessions and speakers, visit rde.scrs.com/courses. More information on SCRS is available at scrs.com. **TXA**

Ask the Expert

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language that severely limits the insured's right to contest a loss is not the norm, nor should it ever become so. In fact, it should be changed to match the other carrier policies.

It is my professional opinion that a motor vehicle policy with limited or restricted appraisal rights leaves insureds facing similar situations such as yours having their vehicle unsafely repaired more times than not due to the inability to contest the loss and hold the carrier accountable to a safely and amicably by unbiased, experienced and 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 keep in mind 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.

TXA

Sincerely,
Robert L. McDorman



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A CONSUMER SPEAKS

In several issues of *Texas Automotive*, ABAT Board member Robert McDorman (Auto Claim Specialists) has written at length about the importance of the Appraisal Clause as a tool that consumers can use when disputes arise between insurers and shops during the repair process. In this month's must-read cover story, Robert details how the Appraisal Clause recently helped one of my customers, Dale Barton, settle a dispute with Allstate and leave my facility with a properly repaired vehicle. Additionally, this issue includes a special article on Dale in which he shares his personal views on the situation and what consumers can do to become better educated and protected.

In my opinion, the Appraisal Clause is one of the most valuable pieces of ammunition available to vehicle owners and our industry. The shop is the place repairing the vehicle, and its experience should weigh in the decision. But through the Appraisal Clause, an unbiased independent party – not the bill payer or the person profiting from the repair – makes the determination. I'm okay with that; I believe in the work my shop does, and I provide the necessary supporting documentation. Best of all, the Appraisal Clause helps the customer avoid being forced to pursue costly litigation.

Although I'm unable to give my customers claim advice because

I'm not a licensed adjuster, I am able to recommend the Appraisal Clause to them and inform them of their rights. I can also recommend Auto Claim Specialists to assist my customers in getting what they deserve. It's a shame that some insurance adjusters refuse to negotiate with me in the customer's best interest, but the Appraisal Clause is there for when these unfortunate situations arise.

Thank goodness Dale had the provision in his policy that allowed him to go through the Appraisal Clause. The Texas Department of Insurance (TDI) recommends that a customer should utilize this process if they can't come to an agreement between the insurer and the shop. Unfortunately, TDI has allowed State Farm to carry on in Texas without making this provision available to policyholders. State Farm only allows the Appraisal Clause when it comes to a disagreement on the actual cash value (ACV) of a vehicle; they won't allow it for a disagreement over the actual repairs. This



Burl Richards
ABAT President

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President's Message

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deprives the customer of pursuing this critical route when they face an issue with their repair. TDI is supposed to be looking out for what's best for consumers; it is my belief that they are dropping the ball when it comes to State Farm.

I encourage everyone to read this issue for both industry insights into the Appraisal Clause and my customer's firsthand experiences. *Texas Automotive* will be featuring other interviews with customers in upcoming issues. If you have a customer who would like to share their stories about issues they've encountered with insurers, please contact *Texas Automotive* Editorial Director Joel Gausten at joel@grecopublishing.com or (603) 680-4324.

ABAT will always put the consumer first, and now they will have a say in this magazine. Stay tuned.

TXA

Burl Richards

burl@burlscollision.com

Executive Director's Message

Continued from page 7

same way, but each region's outcome can be very different. There are some hallmarks for success, and it's all in the hands of the members. Take our new chapter in College Station, for example. We hosted a meeting there on a Thursday; by Friday, they had a group email going. Within three weeks, they had conducted a full survey with results and already had another meeting. They used ABAT and me to handle administrative duties to accomplish some of this. I was thrilled to take on the workload, because THIS is what we are here for.

How can WE HELP YOU? Reach out to me directly, and let's make moves in your market.

TXA

Jill Juggle

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REPAIRS AND THE APPRAISAL CLAUSE: *A Customer's Perspective*



Dale Barton with the repaired MINI Cooper Clubman

When a recent auto collision caused damage to Tyler resident Dale Barton's wife's 2017 MINI Cooper Clubman, he immediately knew he'd be taking it to Burl's Collision Center in Henderson – his body shop of choice for 25 years – for repairs.

"The first time I used Burl's shop, I had done some research into who was the best in our area," explains Barton, who was living in Kilgore at the time. "I saw that he was the guy to go to. He made a great first impression, and he did the work well. It's very important to know who's working on the car and the fact that they pledge to do a good job and do it right the first time."

Unfortunately, his latest trip to Burl's Collision Center resulted in a disagreement between the shop and Allstate – Barton's insurer since 1996 – over how to properly repair the vehicle. Barton, who has continued to use Burl's over the years due to the facility's OEM certifications and investments in proper equipment, stood by the shop's position on the matter throughout the process.

"This was about doing the repair the right way versus doing it the wrong way. Generally, when customers have an accident or have a car that needs to be repaired, they're looking at it from a perspective of, 'Well, I'm going to have to either pay for a rental car or get one. I'm in a hurry; this is going to interrupt my schedule.' None of that is part of my mentality. I would rather take enough time to get the repair done right than hurry up and try to fix it."

At the suggestion of Burl's Collision Center owner (and ABAT

President) Burl Richards, Barton elected to utilize the Appraisal Clause in his Allstate policy. With the help of Robert McDorman of Auto Claim Specialists*, the Appraisal Clause process led to Barton driving away with a properly repaired vehicle while being made whole for his loss.

"Robert knows what he's doing; he knows things are going to turn out the way he predicts they'll turn out. It did in my case. This is a win for me, a win for Burl's Collision and a win for Auto Claim Specialists. I have no ill will toward Allstate; they approved of the way Burl and Robert said was the right way to repair my vehicle, so I'm a happy customer."

Pleased to finally have his vehicle back to pre-accident condition, Barton encourages his fellow consumers to take their time in selecting a repair facility that has the same level of expertise, experience, OEM certifications and state-of-the-art equipment as Burl's Collision Center.

"As consumers, we're bombarded by either TV or other media with ads for these big collision repair shops. I'm sure some of them are very good, but you can't go in with the attitude of, 'I don't care who fixes my car; I'm in a hurry.' It's better to do your own research, find somebody who's been to the shop before and base your decision on that."

Read this month's Ask the Expert by Robert McDorman for his perspectives on the Appraisal Clause and Barton's repair. **TXA*