

CONSUMER RIGHTS MATTER: ABAT CALLS FOR APPRAISAL CLAUSE REFORM VIA HB 2534

The spirit of the Appraisal Clause is to resolve loss disputes fairly and 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 and independent third-party appraisers as opposed to more costly and time-consuming methods, such as mediation, arbitration and litigation.

If you're a regular reader of *Texas Automotive*, then you've come across the above words more than once in the "Ask the Expert" features by ABAT Board member Robert L. McDorman (Auto Claim Specialists). Now, with a powerful new bill working its way through the Legislature, this statement could soon become more relevant than ever.

Sponsored by Representative Travis Clardy (R-Nacogdoches), House Bill 2534 seeks to amend the Texas Insurance Code to establish that "a personal automobile insurance policy **must** contain an appraisal procedure." [Emphasis added.] Additional provisions include (but are not limited to) the following:

- An insurer or the named insured may demand an appraisal no later than the 90th day after the date a proof of loss is filed with the insurer if the insurer and insured do not agree on the amount of the loss. Each party shall appoint a competent appraiser and notify the other party of that appraiser's identity no later than the 15th day after the date an appraisal is demanded.
- If, at the end of the appraisal process, the amount of loss is determined to be more than one dollar greater than the amount of the insurer's proposed undisputed loss statement, the insurer shall refund the named insured's reasonable out-of-pocket expenses for the insured's appraiser's fees and expenses. If, at the end of the appraisal process, the insurer's proposed undisputed loss statement is determined to be just, the named insured shall refund the insurer its appraiser's fees and expenses. All other appraisal expenses, including umpire expenses, are shared evenly between the parties.

"ABAT will always stand in full support of the consumer, and House Bill 2534 is one of the truest consumer-protection bills ever introduced in Texas," comments ABAT President Burl Richards. "A collision repair facility can't invoke the Appraisal Clause; this legislation has nothing to do with the financial

standing of the collision repair industry. This bill simply provides the consumer with the means to address a dispute with their insurer without having to pay for an attorney and spend time in court. The Appraisal Clause process puts the decision in the hands of unbiased appraisers and an umpire, and that decision is binding. I've never had a customer invoke the Appraisal Clause and have an award less than the insurance company's estimate."

Ware Wendell, executive director of the non-partisan citizen advocacy organization Texas Watch (texaswatch.org), is another consumer representative who is actively promoting the bill for the benefit of the motoring public.

"It's really important that consumers get what they pay for when they purchase insurance. We are required, as a condition of insurance coverage, to pay 100 cents on the dollar for our insurance premiums. If we're even a dollar short, we don't have insurance coverage. They require us to do everything the right way in order to qualify for insurance coverage, and we think it's only fair, right and just that insurance companies step up to the plate and do everything that we need them to do when we have a claim.

"Sometimes, I think insurance companies forget that it's our money," he adds. "We give them our money in the form of premiums, and we expect them to take good care of that money, to invest it wisely and manage it – and for there to be that money available to pay us in our time of need under the policy. House Bill 2534 is really common-sense legislation. It's making sure the insurance appraisal process is actually fair, that it's truly a two-way street and that there's no gamesmanship being used in that appraisal process. Appraisal, properly understood, is a way to resolve a dispute before litigation and to really get to the right number in terms of the amount or the value of the loss."

Fully embracing consumers' need for legitimate and across-the-board Appraisal Clause options, Texas Watch has gone into high gear. The group's extensive activities in recent times include producing "#NoMoreGames: Appraisal Fairness Now," a special consumer-facing YouTube video in support of House Bill 2534 (as well as its companion, Senate Bill 1706, sponsored by Senator Cesar Blanco). The video received nearly 3,000 views in just the first three days of its posting. Additionally, an online form has been made available at texaswatch.org/no-more-games for Texas citizens to fill out and send to lawmakers.

"What we have on our side is *people*," Wendell observes. "We have professionals in terms of body shops that are doing the job the right way and who are leaders in terms of safety [...] What we need is an outcry from the public in Texas. We need citizens to stand up and say, 'I want to have rights when I have a dispute with my insurance company. I want the claims process to be fair; I want to have the ability to recover my full policy benefits and not be [beaten down] into accepting 50 cents on the dollar just because

the insurance company has all the money and all the lawyers.' We need people to take action."

In ABAT Lobbyist Jacob Smith's mind, House Bill 2534 is easy legislation for lawmakers to get behind.

"What we're asking for is already in 97 percent of all auto policies in the state; we're just asking that it is mandated in all policies so people don't have to guess if they have this dispute resolution in their particular policy. The Appraisal Clause is not something that's unique to the auto industry; it's in a lot of insurance policies. It's a great process that brings in a third-party umpire to determine who was accurate and who wasn't."

Additionally, Smith believes that the bill provides a much-needed alternative to consumers having to address matters in courts that are severely backed up due to COVID-19. Having the ability to find a quicker resolution through an umpire as opposed to retaining a lawyer is a welcome relief to consumers who are already overwhelmed by everyday living under the weight of the pandemic.

After years in the field fighting for the rights of Texas insurance consumers, McDorman is adamant that the Appraisal Clause should be a mandatory element of all auto insurance policies sold in the state. However, he is also aware that House Bill 2534 could face resistance from those who benefit most from the status quo.

"The more success the appraisal process has, the most likely it is for the carrier to remove it as a relief mechanism for the consumer. It is my professional opinion that a motor vehicle policy with limited or restricted appraisal rights leaves insureds facing harmful loss dispute situations more times than not. The biased, manipulative and overly profit-minded insurance carrier should never be given the absolute right over the liquidity of the insured's loss. Protection of the party's appraisal rights should be mandatory on all elements of the covered loss."

Unfortunately, the Texas Department of Insurance has been notoriously reluctant to take a proper stand on the Appraisal Clause issue. As of this writing, the page on the TDI's website in regard to auto insurance complaints (tdi.texas.gov/consumer/auto-insurance-complaint.html) advises consumers that their policies "may include an appraisal process to resolve complaints." [Emphasis added.] Wendell is quick to share his past experiences in attempting to bring Appraisal Clause-related issues to TDI's attention.

"Unfortunately, through the years, we've seen the TDI take a hands-off approach to many disputes [...] More times than not, what they hear back from the TDI is, 'You know what? This is a factual dispute; this is a legal matter. You're going to have to go through that process.'"

Ironically, the Texas Supreme Court appears to be in support of consumers using the appraisal process. In his 2019 opinion in *Barbara Technologies Corporation vs. State Farm Lloyds*, Supreme Court Justice Paul W. Green shone a positive light on the method: "Access to the appraisal process to resolve disputes is an important tool in the insurance claim context, curbing costs and adding efficiency in resolving insurance claims."

As House Bill 2534 gains momentum, McDorman stresses that it is *not* anti-insurance legislation. If anything, the bill's

90-day timeframe for participants to pursue appraisal serves to expedite the process for insureds *and* carriers.

"I see carriers having a little heartburn with the timeline that's in the bill, but that timeline is meant to deter either party from dragging out this process. It's designed to protect both parties – the insurer and the insured. This is in no way a one-sided bill."

On March 22, ABAT hosted a special Zoom meeting to update members on the association's efforts in support of both House Bill 2534 and House Bill 1131 (which was covered in last month's *Texas Automotive* cover story). Wendell and Representative Clardy joined ABAT Executive Director Jill Tuggle in the informative discussion.

Representative Clardy noted that House Bill 2534 "levels the playing field" between insurers and insureds and would ensure that customers "get a fair value" and that "the repairs were properly done and paid for" under Texas auto insurance policies.

"One of my biggest frustrations is that the Texas Department of Insurance acts like they don't have the authority to enforce the current laws, which is why we're going forward with the new laws," he added.

Although ABAT's bills stand a strong chance of earning support from those who put the consumer first, Representative Clardy cautioned that lawmakers are currently dealing with a vastly different legislative session than the previous go-around. In addition to grappling with the COVID-19 recovery (plus the ongoing logistical restrictions of the pandemic), the Legislature is overwhelmed by the "chilling effect" of the recent weather emergency. Representative Clardy also noted that the Senate is traditionally a more "insurance-favorable body" than the House. Despite these roadblocks, he urged meeting attendees to increase their efforts in gaining support for both bills and keeping them front and center during a very crowded and fractured session. Both bills have been referred to the House Committee on Insurance, while Smith is currently working on getting hearings scheduled.

With more static in Austin than perhaps ever before, it is critical that ABAT members and their consumers make their voices heard during this session. In Wendell's mind, success under current circumstances will come down to shops making a greater effort to inform their customers of the reasons for these bills and encourage them to get their area representatives on board.

"I think it's important to remember how influential you are [and] how many connections you have to your community. You're the ones who support the Little League team. You're the ones who throw the barbecue picnics for charity in your community. You're the ones who come into contact with dozens and hundreds of people every single day in the form of your customers."

"For so many years, we have told ourselves and really believed that we don't stand a chance against the insurance companies and that they're so much bigger than us," commented Tuggle during the March 22 virtual meeting. "Not until we embarked on this legislative journey did I realize that our voice really does matter [...] No matter how in bed anybody is with an insurance company or a lobbyist, nothing trumps the constituents' voice."

The complete text of House Bill 2534 is available at bit.ly/HB_2534. TXA