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CONSUMER RIGHTS MATTER:

ABAT Calls for Appraisal Clause

Reform via HB 2534

PLUS:

- *Texas Auto Body Trade Show Update*
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HOW COULD STATE FARM UNDERVALUE MY TACOMA, DEEM IT A TOTAL LOSS AND DEDUCT FROM MY SETTLEMENT?

Dear Mr. McDorman:

Auto Claim Specialists recently helped increase the total loss settlement on my safely repairable 2009 Toyota Tacoma after State Farm elected to deem it a total loss after first authorizing it to be repaired at the collision facility. Then, to add insult to injury and harm me even further, they deducted \$1,751.96 from my settlement. When I resisted State Farm's total loss offer, objecting that it had undervalued my Tacoma and refused to repair it as it had initially agreed, the company refused to even listen to me. I was left confused and unsure how to deal with this unexpected and demoralizing situation and reached out to you at the advice of my trusted collision facility.

Auto Claim Specialists reviewed my loss statement with State Farm and recommended I invoke my policy right of appraisal in contest of the State Farm loss statement. At the end of the appraisal process, my strong hunch turned out to be true. State Farm had undervalued the actual cash value of my Tacoma by \$2,646 (or 19 percent). How could State Farm undervalue the actual cash value by such a significant percentage and then refuse to take my complaints seriously and ignore my desire to repair my truck rather than deem it a total loss? Replacing a perfectly repairable truck, while maybe in State Farm's best economic interest, was certainly not in my best interest. I have been a State Farm policyholder for well over 40 years. Do you see this type of under-indemnification often, and do carriers often place their own best financial interest ahead of the insured?

Thank you for your question. Yes, we see this type of gross under-indemnification regularly by carriers. However, State Farm often stands out as the worst of the worst. The State Farm policy gives the company broad control over the loss type and liability, and we tend to see many different loss disputes from its insureds. We appreciate your calling Auto Claim Specialists to help resolve your loss dispute. Unfortunately, due to the policy you agreed to with State Farm, we could only assist you with the actual cash value dispute. With a different carrier, we could have probably helped you get your Tacoma safely fixed.

We see many State Farm clients in the same situation as you due to their policy language. Under **Limits and Loss Settlement – Comprehensive Coverage and Collision Coverage**, the State Farm policy states the following:

1. **We have the right to choose to settle with you or the owner of the covered vehicle in one of the following ways:**
 - a. Pay the cost to repair the **covered vehicle** minus any applicable deductible.
 - b. Pay the actual cash value of the covered vehicle minus any applicable deductible.
 - c. Return the stolen **covered vehicle** to its owner and pay [...] for any direct, sudden and accidental damage that resulted from the theft.

This policy language allowed State Farm to replace your Tacoma and not follow through with the repair as previously authorized. The State Farm policy limits the insured's right to

challenge the loss type, loss settlement or any loss related to collision facility charges it paid and subsequently withheld from the settlement. We routinely see the insured blindsided by their carrier on total loss associated fees due to the collision facility that carrier agreed to pay and then subsequently deducted from the policyholder's settlement.

Unlike most policies in Texas, the State Farm Appraisal Clause is limited to the actual cash value dispute only. As we see below, the State Farm policy states:

Limits and Loss Settlement – Comprehensive Coverage and Collision Coverage

b. Pay the actual cash value of the **covered vehicle** minus any applicable deductible.

- (1) The owner of the **covered vehicle** and **we** must agree upon the actual cash value of the **covered vehicle**. If there is a 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 fact, decide any questions of law or conduct appraisal on a class-wide or class-representative basis.



Robert is a recognized Public Insurance Adjuster and Certified Vehicle Value Expert specializing in motor vehicle-related insurance claim resolution. Robert can be reached at (800) 736-6816, (817) 756-5482 or via email at AskTheExpert@autoclaimspecialists.com.

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- (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.*

As you can see, the State Farm policy you agreed to has a limited appraisal process to resolve loss disputes that can arise between you and State Farm pertaining to a covered loss. Most (if not all) other policies in Texas provide for any covered loss being subject to appraisal in the event of a loss dispute between the insurer and the insured. State Farm limits the appraisal to only disputes over the actual cash value.

You were absolutely right about questioning the State Farm repair-or-replace methodology. It should not come as a great surprise that after State Farm originally elected to repair your Tacoma and subsequently deemed it a total loss during the repair process, the Texas Department of Motor Vehicles records show that when the insurer transferred the title into its name, it elected to **NOT** title the vehicle as salvage. We routinely see carriers do this for economic reasons. The salvage auction website states that titles that are unbranded and indicate no damage history have the highest resale value.

In your situation, as it relates to the actual cash value dispute, State Farm – with the help of Audatex – had determined the market value of your Tacoma to be \$13,454. State Farm calculated by a formulated valuing methodology a salvage value on your Tacoma of \$6,500. (By the way, according to salvage sales records, your Tacoma actually sold for \$7,450, so paying you the value of a salvage title vehicle and selling it without the salvage title made the company an extra \$950. However, since your truck was always safely fixable, that \$950 really came right out of your pocket.)

Burl's Collision Center, after a thorough inspection, determined the complete repair cost including sales tax to return your Tacoma to its pre-loss condition was \$12,665.01.

Upon your providing us with the State Farm Audatex Market Valuation Report, we sent it to our subsidiary, Vehicle Value Experts, to issue a certified appraisal. The State Farm policy limit of liability under comprehensive coverage and collision coverage is the actual cash value. Vehicle Value Experts quickly identified that State Farm had undervalued the Tacoma a minimum of \$2,500. We recommended you retain Auto Claim Specialists as your public insurance adjuster agency, use Vehicle Value Experts as your independent third-party appraiser and invoke your policy right of appraisal to define the actual cash value. At the end of the appraisal process, Vehicle Value Experts and the State Farm independent third-party appraiser defined the actual cash value of your Tacoma as \$16,100.

Thus, through the appraisal process to define the actual cash value, it was realized State Farm under-indemnified you \$2,646 from the previously undisputed liability offer of \$13,454, before applicable sales tax. However, the State Farm policy does not allow you a relief to contest the under-indemnification of the \$1,751.96 liability for associated fees paid to the collision facility by State Farm and subsequently withheld from your settlement, leaving a net in the original undisputed settlement before applicable sales tax of \$894.04. Please note that the offset of the \$1,751.96 collision facility liability from the \$2,646 increase in the actual cash value

arrived at through the appraisal process is a mockery that left you under-indemnified \$1,751.96. It is our position from reviewing the collision facility's invoice relating to this claim that the charges were State Farm's valid liability. Unfortunately, and by design, these charges paid by State Farm and then wrongfully deducted from your settlement were not applicable to appraisal under the State Farm policy.

The greatest harm we see here in the handling of your claim was that your Tacoma could and should have been safely returned to its pre-loss condition as State Farm originally agreed to, but it subsequently changed its mind in the middle of the repair process. As previously outlined, State Farm has limited the right of an appraisal to actual cash value disputes only. We clearly can see, from the absolute loss you suffered on this claim, the serious problem when the right of appraisal is limited to only certain elements of the covered loss.

It is my professional experience that a motor vehicle policy with limited or restricted appraisal rights leaves insureds facing this and similar difficult 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.

The under-indemnification in total loss and repair procedure claims in Texas is rampant. Besides the higher settlements for total loss clients averaging 28 percent above the carrier's undisputed loss statement, we have also reduced clients' out-of-pocket expenses by an average of 35 percent on repair procedure disputes such as the example provided here. These under-indemnification percentages are staggering and harmful to Texas citizens.

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.

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 ones that may arise.

Sincerely,
Robert L. McDorman

TXA