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How Did My Client's Repairable Vehicle get

**RECORDED AS
A 'TOTAL LOSS'?**

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HOW DID MY CLIENT'S REPAIRABLE VEHICLE GET RECORDED AS A 'TOTAL LOSS'?

Dear Mr. McDorman:

I have a client whose car was incorrectly deemed an economic total loss by the at-fault party's insurance carrier. We completely disassembled the car, issued a complete repair plan and determined the car could be safely returned to its pre-loss condition well under the actual cash value of the car. Additionally, my client wanted her car fixed. My client switched the claim to her insurance carrier, and her insurance carrier agreed to handle the liability as a repair. We completed the safe and proper repair as outlined by the manufacturer; however, CARFAX now has the car recorded as a total loss, and the State of Texas has the vehicle documented as a non-repairable or salvage titled car. How is CARFAX allowed to report the car as a total loss?

Also, I understand that under the Texas Department of Transportation 501 guidelines, the vehicle did not meet the definition of salvage or non-repairable since its repair cost was below the actual cash value. This situation has not only destroyed the value of my client's car, but she is also now unable to get the car refinanced or obtain insurance coverage. Can you help me understand how this happened and what my client can do to resolve this troubling and unfair situation? Have you had any clients with a similar experience? If so, can you share how you resolved it and what the outcome was?

Thank you for your question. Your question is a timely one and reflects a serious problem in Texas and across the United States. The heart of this pervasive and harmful practice is the insurance carrier making the economic election to handle their liability by favoring themselves instead of the insured's contracted insurable interest. CARFAX only reports the data it receives from the data

providers. With the at-fault party's insurance carrier originally deeming the vehicle a total economic loss, there is little doubt in my mind that this carrier reported the information to CARFAX. As for the Texas Department of Transportation documenting the vehicle as a non-repairable or salvage titled vehicle, this could only happen with the insurance carrier unlawfully turning in an Owner Retained Report (VTR-436) to the Texas Department of Motor Vehicles. If the vehicle did not meet the Texas Transportation Code 501 definition of a non-repairable or salvage vehicle, the authorized agent who signed the Owner Retained Report (VTR-436) falsified the document and committed a third-degree felony. Nevertheless, we routinely see carriers perform this unlawful action.

The Texas Transportation Code defines a total loss non-repairable or salvage motor vehicle, not the insurance carrier. Texas is a 100 percent total loss threshold state and does not recognize the total loss formula to define what constitutes a non-repairable or salvage vehicle. The 100 percent threshold definition states that should the repair cost not exceed the true **actual cash value** of the vehicle (not the "adjusted value" arrived at by market valuation firms), and the vehicle is not missing a major component, then the vehicle is **not** a non-repairable or salvage vehicle. Additionally, Texas Transportation Code 501 takes the equation one step further and says that the repair cost, including parts and labor other than the cost of materials and labor for repainting and excluding sales tax on the total cost of repairs, must exceed the actual cash value of the motor vehicle immediately before being damaged. In other



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Ask The Expert

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words, before the calculation to determine if the car fits the Texas Transportation Code definition of a non-repairable or salvage vehicle, all refinishing time, paint materials and sales tax must be deducted from the final repair invoice. The accumulated dollar amount of these three components typically averages approximately 25 percent of the total estimate, so removing them drastically decreases the severity percentage. Once this value is determined, should it be less than the true actual cash value of the vehicle, the vehicle does not meet the Texas Transportation Code 501 definition of a non-repairable or salvage vehicle. Thus, determining the true **actual cash value** of the vehicle is paramount.

Several years ago, we had a similar situation with one of our clients. In September 2020, I wrote:

“We currently have a client in the same situation as your client. Our client is going through the judicial system to seek relief and damages for the carrier’s unlawful actions of deeming his repairable truck an economic total loss and then issuing an unsupported Owner Retained Report (VTR-436) to further penalize him. This unlawful issuance of the VTR-436 caused the State of Texas to deem the truck a salvage titled vehicle. This not only prohibited our client from getting insurance on his truck. It destroyed the market value of the truck. We have requested the State of Texas to provide us with a complete certified copy of the

complete motor vehicle title history. The Certified Request for Texas Motor Vehicle Information (VTR-275) will disclose who was the authorized agent with the insurance carrier who falsified the Owner Retained Report (VTR-436) and further harmed our client.”

The certified copy of the VTR-436 revealed that an insurance carrier representative wrongfully signed the document and turned it into the Texas Department of Transportation.

As I further pointed out in the September 2020 issue of *Texas Automotive* (available at bit.ly/TXA0920), during mediation of the above-referenced loss, the former judge mediator asked me to outline how this situation could have happened and asked if I see this unlawful situation occur often. My immediate response to the latter was, “Yes, your honor, I do. This problem is deep-rooted and harms many interested parties daily in Texas.” I promised in upcoming months to update readers as my client’s case progressed through the judicial system. Thus, the timeliness of your question about what we have done to resolve the issue.

Recently, after all the facts were presented in the above-referenced loss, the dispute was settled just days before going to trial with the at-fault carrier agreeing to pay our client a substantial amount for the harm they had caused him. In fact, over the past

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