

Office of Public Insurance Counsel Report to the 88th Texas Legislature



Recommendations Report | January 2023



OFFICE OF PUBLIC INSURANCE COUNSEL

David Bolduc, Acting Public Counsel

January 10, 2023

The Honorable Governor of the State of Texas
The Honorable Lieutenant Governor of the State of Texas
The Honorable Speaker of the Texas House of Representatives
The Honorable Members of the 88th Legislature

Dear Governors, Speaker, and Members of the 88th Texas Legislature:

In accordance with Tex. Ins. Code § 501.155, I am pleased to submit the recommendations report for the Office of Public Insurance Counsel (OPIC).

Tex. Ins. Code § 501.155 allows OPIC's public counsel to "recommend legislation to the legislature that the public counsel determines would positively affect the interests of insurance consumers." The recommendation contained in this report follows that statutory directive and is presented for your consideration.

Thank you for the opportunity to provide this report and information. Please contact me at dbolduc@opic.texas.gov or (512)-322-4143, if you have any questions or would like additional information.

Sincerely,

A handwritten signature in blue ink, appearing to read "David Bolduc".

David Bolduc
Acting Public Counsel



Introduction

The Texas Legislature established the Office of Public Insurance Counsel (OPIC) in 1991 and codified the agency's duties in Chapter 501 of the Texas Insurance Code. OPIC represents the interests of Texas consumers in insurance matters. OPIC fulfills its statutory duties through action on regulatory matters, consumer education and outreach, and serving as a resource for the Texas Legislature.

OPIC's Duties

Regulatory Matters. OPIC represents the interests of consumers before the Texas Department of Insurance (TDI) on regulatory matters relating to insurance rates, rules, and policy forms. OPIC makes formal comments and objections to TDI on these matters, and when prudent, intervenes as a party in rate hearings before the Commissioner of Insurance and the State Office of Administrative Hearings. OPIC also engages with TDI and stakeholders directly through informal dialogue to achieve positive results for Texas consumers on rates, rules, and policy forms.

Consumer Education and Outreach. One of OPIC's most important duties is consumer education and outreach. OPIC submits to TDI for adoption consumer bills of rights that advise consumers of their rights under Texas law. The agency is also required to develop an annual consumer report card on the quality of care, and consumer satisfaction with, Health Maintenance Organizations (HMOs) in Texas. In addition, OPIC creates informational postcards and brochures.

OPIC primarily uses its website and social media applications – Facebook and Twitter – to increase consumer education and outreach. The agency continuously develops new website content to assist consumers with insurance shopping, claims handling, and general education. OPIC also created an online policy comparison tool that helps consumers compare policies and coverage when shopping for property or auto insurance. This tool is updated and improved every year.

Also, OPIC's subject matter experts provide direct consumer assistance over the phone and email daily.

Legislative Resource. OPIC recommends legislation to the Texas Legislature that benefits insurance consumers. The agency also provides resource testimony and information on insurance issues. OPIC offered two suggestions to help consumers in the agency's Recommendations Report last session. Both passed and became law.

OPIC's Budget Structure

Tex. Ins. Code §§ 501.201-205 of the Insurance Code sets a fee of 5.7 cents assessed on certain insurance policies. Of that fee, OPIC receives about 23%, or \$808,420. The remaining \$2,662,967 goes to the State's General Revenue Fund. The other portion of OPIC's funding comes from an interagency contract with TDI for \$191,670. That \$191,670 comes from insurers' maintenance taxes, which are appropriated to TDI and passed through to OPIC via the contract. Combined, All in all, OPIC's annual operating budget is \$1,000,090.

2022 Highlights

Consumer Savings. OPIC is a small agency, with only 10 full-time employees, but we produced significant results for consumers this year. In FY 2022, OPIC analyzed over 1,200 rate, rules, and policy forms. These efforts saved consumers approximately \$22 million. This means for every \$1 OPIC received in funding, we saved consumers \$22.

Prevented Reductions in Coverage. OPIC worked with TDI and insurance companies throughout the year to prevent reductions in coverage on auto and residential property policies. OPIC reviewed hundreds of policy forms and more than 120 changes were made to protect consumers based solely on OPIC's involvement.

Legislative Recommendations

In accordance with its statutory authority under Chapter 501 of the Texas Insurance Code, OPIC produces this report to recommend legislation to the Texas Legislature that would positively affect the interests of insurance consumers. This report contains one recommendation – to require personal auto and residential insurers in Texas to preserve the consumer's right to invoke appraisal in disputes regarding the cost to repair or the amount of a total loss. This recommendation is set forth in the following pages of the report.

Recommendation 1

Require personal auto and residential property insurers in Texas to preserve the insurance consumer's right to invoke appraisal in disputes regarding the cost to repair or the amount of a total loss.

Issue

When an insurer and a consumer cannot agree, appraisal is used to quantify the cost of repair or the amount of a total loss. Generally, an insurance consumer or an insurer can invoke appraisal. Each can hire an appraiser. The appraisers review the claim and estimate the amount of loss. If their estimates differ, the two appraisers go to a third appraiser as an umpire, who decides.

Right to Appraisal

A consumer's right to appraisal as an alternative dispute resolution option has long been the market standard in Texas for both personal automobile and residential property insurance. As Texas courts recognize, it is a less expensive, more efficient alternative to litigation. It requires no lawsuits, no pleadings, no subpoenas, no lawyers, and no hearings, and efficiently determines the amount of loss. It is so useful that the Legislature mandated a specific and binding appraisal process for disputes over the amount of accepted coverage in claims against the Texas Windstorm Insurance Association (TWIA) in Tex. Ins. Code §§ 2210.573 and 2210.574.

OPIC is increasingly concerned with restrictions on appraisal in policy forms filed by top insurers. These restrictions can adversely impact consumers, who buy insurance to make sure damage to their property will be repaired or replaced. Without appraisal, they may be forced to choose between accepting the insurer's offer and paying out-of-pocket for any disputed amount, or taking on the costly and time-consuming burden of going to court, while repairs to their auto or home remain in limbo.

Filings

1. In 2014-2015, the Texas Department of Insurance (TDI) approved policy forms from a major insurer that eliminated the right to invoke appraisal for disputes over the amount of repair in auto claims.
2. In 2021, another large insurer filed amended policy forms to limit appraisal in auto claims. OPIC objected, and the filing was withdrawn.
3. In 2022, the same insurer again filed forms to limit appraisal in auto claims, OPIC objected, and the company again withdrew the filing.
4. Later in 2022, the same insurer filed forms again to limit appraisal in auto claims. OPIC objected to the filing. TDI found that the filing lacked supporting information and rejected the filing when the company involved did not supplement its filing in a timely manner.
5. Also in 2022, a large insurer filed forms to eliminate appraisal altogether on homeowners claims. OPIC objected to the filing and asked for information supporting the filing, but did not get responses that it felt supported the filing. TDI made multiple requests for more information. The insurer involved withdrew the filing pending the Legislature's review of a legislative consideration in TDI's biennial report that the Legislature establish policy form appraisal guidance.
6. Late in 2022, another insurer filed forms providing appraisal in homeowner claims only if both consumer and insurer agreed to it. OPIC objected to the filing, and the insurer withdrew it.

Pressures on Claims

Since 2015, there have been changes in the market. Costs have risen because of increasing values, inflation, and supply chain issues. Other factors, like disputes between insurers and those doing repair or loss estimation work, seem to have made disputes over property claims more frequent and more contentious.

Reasons Offered for Limiting Appraisal

Insurers seeking to limit or eliminate appraisal have offered three justifications for doing so. First, some argue that one insurer was allowed to do so in auto claims in the past. However, market conditions have changed, and what might have seemed reasonable for one narrow type of claim years ago seems less reasonable for a wide range of claims and could become a serious problem for consumers. A better approach would be to provide a fair and level playing field by mandating appraisal for all auto and homeowner insurers. This may be particularly important in private windstorm policies on the coast in light of the requirements placed on TWIA by Tex. Ins. Code §§ 2210.573 and 2210.574.

Second, some insurers complain that some repair providers abuse the process and demand excessive compensation. If this is the case, it is a problem with some providers, not with appraisal itself. It is an issue that is resolvable through appraisal, rather than being caused by it.

Third, an assertion made for eliminating appraisal altogether is that appraisal in some recent court cases did not provide finality. But the reality is that in the cases cited, lack of finality resulted from claims about insurer behavior, rather than a dispute about the amount of loss. The cases in question simply say that paying an appraisal award neither absolutely precludes nor absolutely mandates insurer liability for claims handling behavior. The fact remains that appraisal still does what it is intended to do – resolve the amount of loss.

Value of Appraisal

Restrictions on appraisal can remove an important consumer protection that saves the parties and the judicial system time and resources. Appraisal is usually the consumer's only economically realistic option for challenging the amount an insurer offers to repair or replace property. Filing a lawsuit is expensive – often more expensive than the amount of an auto repair claim. Eliminating appraisal leaves the consumer stuck in the middle of a dispute between the insurer and providers over the amount of loss, resembling the balance billing trap that health insurance consumers found themselves in before the Legislature addressed that issue.

Recommendation

Amend the Texas Insurance Code to require personal auto and residential property insurers in Texas to preserve the insurance consumer's right to invoke appraisal in disputes regarding the cost to repair and the amount of total loss.

