May 26, 2026

Office of the Chief Clerk, MC: GC-CCO
Texas Department of Insurance
P.O. Box 12030
Austin, Texas 78711-2030
VIA EMAIL: *ChiefClerk@tdi.texas.gov*

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Re: Additional Comment on Proposed Rule 28 TAC §§5.9800–5.9806, Docket No. 2862

Texas Department of Insurance,

Auto Claim Specialists respectfully request that the Texas Department of Insurance study an example of how the proposed Vendor-Appointed Umpire rule would play out in real-life court settings to harm the insured. Auto Claim Specialists is involved in court proceedings involving appraisal on a regular basis and is thus an expert witness in ways the courts have consistently judged on matters of appraisal of loss and umpire appointments. After losing their appeals on appraisal issues repeatedly for many years, it is almost like the insurers have come up with the Vendor-Appointed Umpire rule as a ploy (and yes, I call it a ploy because it benefits only one side) to administratively circumvent rulings where they otherwise have no defense and always fail in the court of law.

Attached is a transcript of a recent court ruling to enforce appraisal involving the appointment of an umpire (Gillespy vs Consumer County Mutual Insurance Company, certified transcript from the 471st Judicial District Court hearing). In this court proceeding, the Court asks the counsel for the insurer, "What is the downside to the Court granting the appraisal or umpire at this point?" (p37), and "What is the point of the law that I'm missing?" (p39). The Defense goes on to argue to the court, "Well, the policy says the parties' two appraisers will select an umpire, not the court or anybody else, no disrespect." (p44). The Court then replies: "Well, actually, the sentence that I'm looking at, it says, if they cannot agree upon an umpire within 15 days, you or we may request that the selection be made by a judge having – or a court having jurisdiction." (p46). (The entire 55-page Reporter's Record is well worth the time to read.)

We have personally witnessed the same argument made by counsel for the insurer many times over the years, and each time, the court's ruling is the same. The Court acknowledges its right to enforce appraisal and appoint an unbiased umpire, and our clients end up with fair judgments and settlements.

Now imagine how this real-life court case would have proceeded had the Vendor-Appointed Umpire ploy been in place. The defense would have simply argued to the court that it is a contractual option for the umpire to be selected through the Vendor-Appointed Umpire rule, and judicial appointment of an umpire would have been administratively dodged to the detriment of the insured.

I am also attaching a recent decision (May 8, 2026) by the Texas Supreme Court on appraisal (SCOT Writ of Mandamus 25-0461). In this case, it was the insurer who invoked appraisal and the insured who refused to participate. A lower court denied the insurer's motion to compel appraisal, and the supreme court stated, "We hold that the trial court clearly abused its discretion in denying appraisal and that Insurers lack an adequate remedy by appeal. We conditionally grant insurers' petition for writ of mandamus and direct the trial court to grant Insurers' motion to compel appraisal." (p13). Thus, the appraisal clause is used not only by insureds but also by insurers to determine the true loss. In this case, is it right that the insurer can both invoke appraisal and influence umpire selection?

We applaud TDI for your initiative to consider and act on all aspects of the appraisal process. However, we are deeply concerned about the Vendor-Appointed Umpire rule and how it could be influenced and manipulated by one side to the detriment of the other. *Insureds should never have to wonder whether the ultimate fallback to protecting their interest - the umpire and umpire selection process - is truly neutral and fair.* The unbiased umpire selection process is the last line of defense for the parties. It ensures that all facts are evaluated fairly by an unbiased umpire, protecting the rights and financial interests of everyone involved (the claimant, the insured, and the insurer) under the policy.

We respectfully request that TDI take these consumer protection concerns into consideration and strongly petition that the long-standing judicial selection of the umpire option be retained as a contractual right when the parties disagree.

Sincerely,



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