



May 8, 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

CMRR: 9589 0710 5270 1742 5715 34

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

Texas Department of Insurance,

Auto Claim Specialists is a licensed Texas Public Insurance Adjuster specializing in automobile loss claim disputes. We submitted comments on TDI's October 2025 Informal Working Draft and renew those concerns here. We support the proposed rule's core protections and raise three targeted issues: (1) the insured, not the carrier, should elect between umpire selection mechanisms at the time of the dispute; (2) when a carrier lists a vendor under §5.9806(b)(3)(B), policyholders should be informed that the vendor is being compensated by the insurer; and (3) if the vendor option is used, the carrier should bear the full cost of the vendor-appointed umpire.

I. The Insured Should Elect the Umpire Selection Mechanism

Under proposed §5.9806(b)(3), a carrier may embed a vendor-based umpire selection mechanism in its policy at issuance before any dispute exists. Vendors seeking placement on carrier-approved lists face an institutional incentive to produce results favorable to insurers, regardless of whether any individual acts in bad faith. Litigation is currently pending against major auto valuation firms alleging exactly this kind of financial entanglement with carriers.

The mandatory judicial appointment option in §5.9806(b)(3)(A) does not cure this. When both mechanisms are in the policy, the rule is silent on which prevails if the parties disagree, which creates ambiguity that will be litigated. Most policyholders lack the resources or sophistication to invoke judicial appointment as a counter to a carrier-embedded default. To resolve this issue, the agency should leave both options in the policy but give the insured the express authority to make the election at claim time.

II. The Policy Should Disclose the Insurer's Financial Relationship with Listed Vendors

Proposed §5.9804 requires individual appraisers and umpires to be independent and disinterested, but it imposes no transparency requirements on vendor *entities* that carriers select and list in their

policies. A policyholder who receives a policy containing a vendor umpire mechanism has no way of knowing whether a vendor is financially dependent on the same insurer it will serve in a dispute.

The disclosure obligation should rest with the insurer and should appear in the policy itself, rather than at the point of dispute. This pairs directly with the election right proposed in Section I of these comments, as a policyholder can only make a meaningful choice between mechanisms if they know about the financial relationship when a claim arises. We ask that the policy say plainly that the listed vendor is compensated by the insurer.

III. The Carrier Should Bear the Cost of Any Vendor-Appointed Umpire

In a standard appraisal, each party pays its own appraiser, and the umpire cost is split equally. That allocation is fair when both parties have an equal role in selecting the umpire. It is not fair when the umpire is appointed through a vendor mechanism that the carrier embedded in the policy, selected the vendors for, and negotiated the terms of. In that situation, the carrier controls the process and should bear the cost. Requiring the insured to share in the cost of a vendor-appointed umpire compounds the structural disadvantage the insured already faces under that mechanism.

The problem is made worse by the fact that vendor costs are not disclosed to policyholders anywhere in the policy. A policyholder has no way of knowing what a given vendor charges before that vendor is invoked, and costs may vary significantly between the vendors the carrier has listed. It is not reasonable to hold a policyholder financially responsible for costs that are neither disclosed nor predictable.

IV. Proposed amendment — Add new §5.9806(b)(3)(C) and (D)

We recommend that the agency amend the proposal by adding the following consumer protections:

(C) If an appraisal provision includes an option for umpire appointment by an independent vendor under paragraph (B) of this subsection, the provision must state:

*(i) that the policyholder shall have the sole right to select which option will be used;
and*

(ii) whether each vendor listed receives compensation from the insurer or its affiliate in connection with umpire appointment services.

(D) If the policyholder elects to accept umpire appointment by an independent vendor under paragraph (B) of this subsection, the insurer shall bear the full cost of the vendor's services and the umpire's compensation.

IV. Conclusion

The provisions we propose share a common premise that policyholders should not be misled by the documents that govern their rights. If a carrier chooses to include a vendor-based umpire mechanism in its policy, the policyholder should be entitled to three protections. First, express notice that they have a choice between the vendor mechanism and judicial appointment. Second, that the vendor the carrier has listed is financially tied to the insurer. Third, that if the vendor option

is invoked, the carrier pays for it. None of these requirements are burdensome, and none require the carrier to abandon the vendor option.

Transparency and consumer protection are the core of TDI's regulatory mission. The Legislature gave TDI broad rulemaking authority under SB 458 precisely to ensure that the appraisal process works for policyholders, not just for insurers. The proposed rule is a significant step in the right direction, but these three amendments would close a remaining gap. We respectfully urge the Department to adopt them.

Sincerely,

A handwritten signature in black ink, appearing to be 'R. McDorman', written in a cursive style.

Robert McDorman
President, Auto Claim Specialists