

Diminished Value A Claim Whose Time Has Come

A new customer has his five week-old Mercedes C Class Sedan towed to your shop after a significant rear end impact. The damages amount to over fifty percent of the pre-accident value of the vehicle. After you repair the vehicle, it has a retail value significantly lower than the day prior to the collision and an indeterminate trade-in value. The dealer really doesn't want the vehicle since it cannot be sold as a "Certified Used" vehicle but would likely be sold at auction after appropriate disclosures are made. Upon release of the vehicle to your customer, have you really given a full service if you haven't advised your customer that they may well have an additional claim against the negligent party who caused the "loss"?

Diminished Value losses have grown substantially over the last few years - just pop in the term "Diminished Value" into a Google search if you do not believe me. However, I would venture a guess that these claims are brought in only about 1-2% of the collisions that occur. This seems to be especially true in the Northeast where the insurance industry is so strong and the courts seem to universally favor the status quo. Having litigated numerous DV Claims in various counties throughout the State of New Jersey, I can tell you that the first reaction by a sitting judge is an incredulous look and the statement/question-"You want what?" After a three to five minute explanation the judge generally comes around to the idea but the skeptical nature remains throughout the proceeding. Why? Because judges are trained to



follow the written law and thinking outside the box is something that does not come easily to them. There has been a paucity of written law on this topic because the claims and losses are generally not for amounts that would warrant appellate practice. Almost all written law arises out of the Appellate Courts where the law interpreted by the lower or trial court is tested by a panel of judges and a written opinion is produced which can potentially be reviewed by the Supreme Court.

In spite of the negatives and the difficult road to obtain a diminished value recovery, I have been able to maintain a nearly 95% success rate. This is due to the overwhelming evidence that a significantly damaged vehicle has a reduced value even after a good repair job. While not all the cases resolve for 100% of the claimed damages, most do so in the 80 – 90% range.

There have been a number of opinions which have touched on the viability of a Diminished Value Claim in New Jersey.

In Premier XXI Claims Management v. Rigstad, 381 NJ Super. 281, (App. Div. 2005), the Appellate Court held that an appropriate measure of damages is the difference in the value of the vehicle immediately before the collision and immediately thereafter. The court cited Jones v. Lahn, 1 NJ 358(1949), which stated, “[t]he general rule is that, in the absence of the total destruction of an automobile the measure of the damages is the difference in its value immediately before and after the injury.” Initially our courts admitted the cost of the repair of a vehicle only as proof of the difference in value. Citing Hintz v. Roberts, 98 N.J.L. 768(E. & A. 1923). The Appellate Court in Premier did throw the defendant a glimmer of hope by indicating, “[i]f the property is not substantially destroyed and the injury is susceptible of repair at a reasonable expense, and the property can be repaired at less expense than the difference in its value before and after injury, then this repair expense is to be taken as the measure of damages”. Therefore, much of the dispute can and does come down to the value of the vehicle both before and after the collision and whether the vehicle was “substantially destroyed.”

Another weapon of the defense is to attack the opinions of the plaintiff’s expert who is called to testify as to before and after collision values of the vehicle. While before collision value is relatively easy using NADA, Edmunds, etc., the after accident value can be problematic. There is no exact science for determining the after-collision value of a vehicle. There is no testing system in place for coming up with an exact amount and this fact is used by the defense to attack the opinions of the

expert. A frequent defense is that the plaintiff’s damages are speculative and that they should not be awarded as they are of an unliquidated (incapable of being exactly quantified) amount. While there is some validity to this statement, I believe that if the plaintiff were to sell the vehicle the day he received it back from the body shop, the amount of damages would then be the subject of a disputed claim as to whether the sale price was a bona fide sale price or something less. Doesn’t that price depend on the negotiation skills of the seller?

Increasingly the information age continues to be so much more relevant to all our lives. Would you buy a used car today without checking Car Fax? As this occurs judges and the courts must become aware of the effects of this rapid exchange of information and the ability of the consuming public to know what they are buying. This knowledge creates a substantial loss to the person who has already been victimized by the negligence of another driver. Perform a public service by informing your customer of his rights to be fully compensated for the loss of the full value of his vehicle. Should you or your customers have any questions related to the “diminished value” of their vehicle, please have them contact me.

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