

DIMINUTION-IN-VALUE: PAYING MORE FOR LESS

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After an accident, an automobile, depending upon the circumstances, may sustain a loss in its resale value. This is referred to in the insurance industry as “diminution-in-value.” For a host of public policy reasons, paying this subjective element of damages under the standard automobile insurance policy is not warranted.

Once a vehicle is repaired it is no longer damaged in a physical sense. Diminution-in-value, by contrast, is not concrete but is speculative since a car inevitably loses its value in any event, sometimes rapidly. For the courts to require payment of this intangible element of damages, even for the occasional imperfections of the repair process, would be to unjustifiably increase the cost of claims, and hence of auto insurance, to the public. The settlement value of a damaged vehicle would no longer be measured by objective standards. Claims of discriminatory settlements on the part of insurers could abound. Diminution in value can be negligible in older vehicles. Moreover, state-of-the-art auto body repair techniques render it minimal in any event. The only arguable instance of true diminution is when a “branded title” statute¹ requires disclosure of damage upon sale of a used vehicle. This can occur even when physical and cosmetic restoration is flawless.

Traditional principles of insurance case law do not generally force insurers to pay this novel element of damage.

Under the applicable NAIC model, an “unfair claims settlement practice” is defined to include an insurer “not attempting in good faith to effectuate prompt, fair and equitable settlement of claims in which liability has become reasonably clear.”² It is far from clear, however, that diminution-in-value is payable in an auto loss situation, particularly first-party. The case of *Pappenheim v. Lovell*,³ where payment of diminished value was compelled, involved a third-party tort situation, rather than the first-party contractually determined one present in an insurance policy. In the latter, there are such features as deductibles, which are the subject of arms-length negotiations between the insurer and insured.

Auto physical damage provisions in auto policies typically pay for “direct and accidental loss” to the vehicle. Words in an insurance policy are not given a strained or irrational reading to create ambiguity where none exists.⁴

In ordinary parlance, “direct” has been defined as “stemming immediately from a source.”⁵ “Accidental” has been defined as “occurring unexpectedly or by chance.”⁶ A “loss” is “[t]he amount of financial detriment caused by an insured’s person’s death or an insured property’s damage, for which the insurer becomes liable.”⁷ A “direct loss” is “[a] loss that results immediately and proximately from an event.”⁸ “Repair” has been defined as “to restore by replacing a part or putting together what is torn or broken.”⁹ In an Iowa case interpreting “property damage” in a homeowner’s policy, it was held that physical injury or destruction was required.¹⁰

For these reasons, courts have found persuasive the analysis that coverage for diminution-in-value may be excluded.¹¹

Indeed, the courts recently appear to have finally administered the *coup-de-grace* to diminution in value in first-party situations. In *Siegle v. Progressive Consumers Ins. Co.*¹² and *Pritchett v. State Farm Mutual Ins. Co.*,¹³ the latter a class action, it was held the policy obligation of an insurer to repair or replace the damaged vehicle “with other of like, kind and quality” did not compel payment of diminution-in-value.¹⁴

However, given the nature of our judicial system today, in which *stare decisis* is not recognized as much as in the past, claims for diminution-in-value will doubtless continue to be pressed and litigated, in the increasingly popular class action format.

Endnotes

1. An example of such a statute is Iowa Code §321.69 (2002) requiring disclosure to a subsequent purchaser of \$5,000 worth of damage or more.

2. National Association of Insurance Commissioners, Unfair Claim Settlement Practices Act, §(4D).
3. 530 N.W.2d 666 (Iowa 1995), *appeal after remand*, 553 N.W.2d 328 (Iowa 1996).
4. *Morgan v. American Family Ins. Co.*, 534 N.W.2d 92, 99 (Iowa 1995).
5. Webster's New Collegiate Dictionary 320 (1981).
6. Webster's New Collegiate Dictionary 7 (1981).
7. Black's Law Dictionary 956 (7th ed. 1999).
8. Black's Law Dictionary 957 (7th ed. 1999).
9. Webster's New Collegiate Dictionary 972 (1981).
10. *Continental Ins. Co. v. Bones*, 596 N.W.2d 552, 558 (Iowa 1999).
11. *See, e.g., Townsend v. State Farm Mut. Auto Ins. Co.*, 793 So.2d 473 (La. Ct. App. 2001), *Carlton v. Trinity Universal Ins. Co.*, 32 S.W.3d 454 (Tex. Ct. App. 2000); L.S. Tellier, *Measure of Recovery by Insured Under Automobile Collision Insurance Policy*, 43 A.L.R.2d 327 (1955).
12. *Siegle v. Progressive Consumers Ins. Co.*, 819 So.2d 732 (Fla. 2002).
13. *Pritchett v. State Farm Mut. Ins. Co.*, 834 So.2d 785 (Ala. 2002).
14. *Accord Driscoll v. State Farm Mut. Ins. Co.*, 227 F.Supp.2d 696 (E.D. Mich. 2002); *but see, State Farm Mut. Ins. Co. v. Mabry*, 556 S.E.2d 114 (Ga. 2001). ☞