



Case Study

Auto Accidents & Third-Party Property Damage

— by Jennifer Krumm

Are vehicle owners entitled to damages for diminution in value?

Imagine: Your insured negligently rear-ends a BMW owned by Jack Smith. The repairs to Smith's vehicle are going to be \$3,000, so your company offers to pay Smith \$3,000 to cover his losses. However, in addition to paying for the repairs, Smith wants your company to give him \$5,000 to cover the BMW's "diminution in value." You reject Smith's request, thinking that there is no way Smith is going to get \$5,000 in lost value to a car that has been fixed according to industry standards. Smith then hires an attorney, who sends you a written demand for the \$5,000. Again, you reject the demand. Ten days later, your insured gets served with a lawsuit. Are Smith and his attorney out of their minds?

Unfortunately, the answer is no. In Oregon, the general measure of damages to personal property such as a vehicle is the property's fair market value before and after the accident. Mock v. Terry, 251 Or. 511, 446 P.2d 514 (1968). Out of fear that a vehicle involved in an accident will never be as safe or structurally sound as it was before the accident, many buyers are wary about purchasing such a vehicle even after the damage has been fixed according to industry standards. Because of this fear — legitimate or not — the mere fact that a vehicle has been involved in an accident can affect its fair market value. Thus, vehicle owners are commonly awarded damages for diminution of value.

Diminution of value lawsuits are becoming increasingly popular in Oregon for two main reasons. First, Oregon consumers are especially aware of their right to receive damages for diminution of value because of aggressive advertising campaigns by auto repair centers such as Leif's Auto and Collision Centers. These campaigns include television and radio advertisements that advise consumers of their legal rights and offer to help the consumers exercise those rights.

Second, most diminution in value claims involve less than \$5,500 because the payment of repair costs often does not result in a release. Thus, plaintiffs can usually get attorney fees under ORS 20.080. To be awarded attorney fees under that statute, the plaintiff simply needs to make a written demand for \$5,500 or less at least 10 days before filing suit. If the defendant fails to respond to the offer, or offers less than the plaintiff is ultimately awarded, the plaintiff can be awarded his reasonable attorney fees.

If you find yourself faced with a claim for diminution in value, the first thing that you should do is gather all available information about the vehicle, including photographs and property damage estimates. Then hire an expert to look at the photographs and property damage assessments and assess the diminution in value damages. Finally, if the claim involves less than \$5,500 and you have received a written demand from the claimant, make a written offer for the most you feel you can justify, plus a little bit. ❖

— *If you have any questions, or if you would like more information about this topic, please call Jennifer Krumm or Jeff Eberhard at 503-227-2424.*

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