

Paving The Way Forward: Automobile Claims and Diminished Value

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The long awaited *King et al v. Satchwell et al.*, 2013 ABPC 358, decision of the Honourable Judge Skitsko on diminished value has been released. This decision, argued by Field Law's own Alex Yiu, has helped to clarify several legal issues being disputed in this hotly contested area of law.

Skitsko J. enunciated three types of diminished value claims: inherent, repair, and insurance. He considered inherent diminished value to be value lost due to stigma, repair diminished value to be value lost due to repairs not returning a vehicle to pre-accident condition, and insurance diminished value to be value lost due to the use of lesser parts. The most significant determinations arising from this decision, at least for insurers, relate to the evidentiary standard required for proving a claim in inherent diminished value and to quantifying damages for repair diminished value.

Inherent Diminished Value

Skitsko J. considered the lay and expert evidence proffered by the self-represented plaintiffs, and the expert evidence of the Defendants. In particular, the Court heard testimony from the plaintiffs' chief expert appraiser, Mr. Ed Grieve of Diminished Value of Canada Ltd., and from the Defendants' expert appraiser, engineer, and economist. Upon hearing the testimony of Mr. Grieve, and the critique of Mr. Grieve's methodology for calculating diminished value from the Defendants' expert economist, Mr. Pearce Shewchuk, Skitsko J. found that the evidence of Mr. Grieve was unreliable and could not form the basis for a claim in inherent diminished value. As Mr. Grieve's evidence was rejected, Skitsko J. declined to address the Plaintiffs' claim for inherent diminished value.

In further commentary, Skitsko J. noted that in order for a party to prove inherent diminished value it would be, "insufficient to express an opinion that the vehicle is worth less simply due to the 'stigma' that it carries as a result of an accident." He also adopted the House of Lords' commentary in stating, that he "does not think in the ordinary case the burden of proof... would be discharged by calling an individual to prove his idiosyncratic view of the particular loss in a particular case." In short, Skitsko J. is of the view that without reliable evidence, an individual's experience – indeed their "common sense" view – is insufficient to prove inherent diminished value on a balance of probabilities. The burden remains with the Plaintiff to quantify their claim of inherent diminished value with actual evidence.

Repair Diminished Value

While Skitsko J. declined to address the claim for inherent diminished value, he came to the factually driven conclusion that the vehicle's C pillars, even with appropriate repairs, were not back to their pre-accident level. The weakened C pillars, along with some minor paint imperfections, and weld issues, were sufficient for Skitsko J. to find that repair diminished value existed on the facts. Skitsko J. enunciated several factors to be used in the quantification of repair diminished value, namely: age, prestige, nature of damage (structural/safety), reporting requirements, and the quality of repairs. In looking at these issues and weighing each, Skitsko J. awarded the Plaintiffs \$3,500.00, approximately 12.55% of the market value of the vehicle.

People

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Next Steps for Insurers

As noted by Judge Skitsko, the door has been left open for future interpretation on the issue of inherent diminished value. Having said this, Judge Skitsko's ruling will no doubt have significant persuasive value in the Alberta Courts.

At this juncture, of immediate concern to insurers is the Court's conclusion that there is an onerous evidentiary burden on a Plaintiff for proving a claim of inherent diminished value. While it is unclear what the minimum standard for proving such a claim will be in Alberta, at present, according to Skitsko J., Mr. Grieve's evidence alone is not sufficient, and it is quite doubtful that 'industry experience' alone, regardless of an expert's qualifications, will be sufficient.

In future or on-going diminished value claims, we are recommending insurers take a strong position against inherent diminished value claims, particularly where no structural damage was caused to the motor vehicle. However, we are also advising insurers to be wary of claims for repair diminished value where a vehicle can be proven to be fall below its pre-accident condition, particularly where the damage constitutes a structural or safety issue. Given the Court's rejection of Mr. Grieve's evidence, any plaintiff seeking to prove repair-related diminished value would need to obtain an engineer or perhaps an auto appraisal expert to prove structural damage.

We leave insurers with a reminder that the award of damages in this case was founded "not on the basis of the formulas and conclusions proffered by Mr. Grieve but on the facts that prove structural damage." If the facts are that the vehicle is provably reduced in quality as a result of the accident, and this relates to a safety or structural issue, the Court will likely now look to award damages. If you have ongoing claims relating to diminished value please feel free to contact John Gilbert of our Calgary office and either would be happy to aid you in navigating this developing area of law.