

Technical Notes — August '08' - Diminished Value Claim after an Accident



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This month’s article concerns a “diminished value” (DV) claim after an auto accident. Most of us don’t drive our Corvettes very often. When we do, “caution” is the operative word. However, no matter how little we drive we are always at risk on the roadway. And worse, we live in a state where uninsured motorists are all around us. Thus, even though Corvette owners generally carry pretty extensive auto insurance, in the event of an accident, actual losses may not be fully covered. It’s a concept called Diminished Value and I’m going to discuss some ideas that just might save you money if your toy gets smacked. But first, I am not an attorney and cannot tell you what you must do or what meets every situation. Like most ads for the tax deductibility of home loans, the caveat “consult your financial advisor” applies to the extent that you may wish to get professional advice if you are in an accident.

Diminished value is the monetary difference between a car’s pre-accident value and its value after the accident. There are two types: (1) **Immediate**, that is your car is worth less until it’s repaired and (2) **Inherent**, that is your car is worth less because it has a significant damage history. It’s the latter we are discussing. In an accident that is not your fault, you can, and should, attempt to recover inherent monetary losses equal to the value of your car. The reason you need to recover more money than just what’s necessary to repair your vehicle is simple. It has been estimated that 55% of consumers would not buy a car that had been in an accident and 81% would not have a car that had been in a wreck unless they were given a large discount.

Look at this ad from an Orlando Toyota dealer requesting cars for trade in. Potentially, you can trade in a 10 year old Corvette with 99,500 miles if it has never been in an accident, but they would not even consider a near new 2006 C6 that has had a minor fender bender and been repaired meticulously.



Amazing, huh? But this concept is really not foreign to Corvette owners. Just look at any Corvette Trader, NCRS Drive-line, or any other magazine specializing in used ‘Vette sales and you’ll see the following quote: “Never been hit...” The simple law of most financial transactions is that damaged merchandise is not worth as much as that which has been undamaged. Unfortunately, this is the case of high priced sports cars, even if the car has had a high quality repair. People are just suspicious and want to take precautions in case the repair comes back to haunt them after the purchase.

Despite claims by some agencies on the Internet, many insurance companies, although required to consider DV claims, will not pay inherent value loss on first party claims. So, if you get hit by an uninsured motorist and get your car fixed by your own company, you may find it tough sledding trying to file a DV claim. First party claims can also be state dependent. A court ruling in Georgia sets a precedent to pay first party claims, whereas a like ruling in Florida appears to lift the burden of first party claims from insurers. The Texas Department of Insurance’s ruling is clear: “The position of the Department is that an insurer is not obligated to pay a first party claimant for diminished value when an automobile is completely repaired to its pre-damage condition.” From personal discussions with my insurance company, I’m told that first party claims are very unlikely to be successful and my company is consistently rated one of the best in the business.

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Only three states, Georgia, Kansas and North Carolina have laws pertaining to third party diminished value claims. That is, a claim filed against the other party's insurance company. The Georgia Insurance Commissioner's Office does provide a formula to calculate Diminished Value: **Loss of Value = 10% of ACV x Damage Modifier x Mileage Modifier** where ACV (actual cash value) is the NADA sale value. Note that 10% of the sale value is the maximum you can recover with this formula. Many specialists who handle DV claims berate this formula as grossly inaccurate. Consumer groups, who claim that inherent diminished value can be up to 18% of a car's pre-accident value, support that sentiment.

So, what's the procedure if something awful like an accident happens to your baby? What I'm about to give you is a rough outline of a diminished value claim. Each case is different and is very dependent on what state has jurisdiction, how much damage was done to your car, how well the repair was made, who is the insurance company, how much coverage the other driver carries, and so forth.

Let's establish some ground rules for this discussion. First, the players are you, your insurance company, the other fellow's insurance company and some sort of Appraisal Company. I am specifically excluding the word "lawyer." The full-up legal resolution is always available in the United States. However, it could involve the witness stand, hours of your time and months getting the issue resolved. Our specific case took only a couple of weeks and someone else does your bickering for you.

We'll stick to a Florida accident for obvious reasons. Let's also assume you are not at fault, **in any way**, for the accident and that the other driver carries full insurance for his vehicle. Finally, we'll say that this happens to your relatively new model C6 where you have normal, not agreed value, insurance. If you are at fault in the accident or have agreed value insurance on your 'Vette, as far as I can tell, you have little chance of a diminished value claim. Also, if the other driver is uninsured, underinsured, or cannot be located by the police, I seriously doubt you'll be able to successfully recover any additional money from you own insurance company other than that to repair your vehicle. That would be a first party claim.

Assuming your case meets all the criteria above, all you have to do is establish a dollar amount. That's simple, right? You can ask the used car sales manager at Gibbs, Hall or Wilson Chevrolet to tell you how much less they would give you for your car in its repaired state compared to what they would have given you if you had not been hit. Armed with that figure, you can then notify the other guy's insurance company that you want the difference paid to you in cash to cover the inherent diminished value to your Corvette? Not so fast... Although every professional sales person knows about the diminished value concept, their respective dealerships rarely let them get embroiled in this sort of legal conflict. Secondly, in Florida, there are no specific formulas or Blue Book values for damaged vehicles on which to base a diminished value claim.

What factors influence the dollar amount of a DV claim? First, the extent of damage is important. A bent frame or replaced engine is "significant damage history." Clearly, a broken headlight is not. Unfortunately, too much damage may actually hurt a DV claim. Suppose you have an older Corvette, like a C3 with a high mileage engine. If you get hit hard enough to require a new engine, the insurance company may contend that your inherent value increased after the accident! Remember, a "numbers matching" argument in such a case is useless unless the car would qualify for an Agreed Value policy. Repair quality is also a large factor. Let's say your left front fender is damaged and your insurance company will only pay for a Bondo-job versus replacing it. You may have a stronger claim because that repair may be more noticeable to a trained eye. Other considerations for the DV claim value are timeliness of the claim, vehicle age, vehicle price, etc.

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To prosecute your case without a lawyer, your only other real option is a professional appraiser and better yet, one very knowledgeable with high-priced exotic, sports cars. Unfortunately, you also need your checkbook. That's right, you pay up front and hope they are successful convincing the other guy's insurance company that you have suffered inherent diminished value to your vehicle. In the single case of which I am familiar, the appraiser does this sort of thing for a living, charges \$350 up front, and goes over your car with a fine-tooth comb. He takes high-resolution photos of every single area of the repair and paint job at a range of just a few inches. His report is pages long and includes a CD-ROM of all the photos. In the report he specifies the noticeable flaws to the repair and indicates that if you were to trade the vehicle in to a dealer, they would notice these indications of a serious accident as well. He also quotes sources as to the reduction in value due to the accident. These sources are generally not available to everyday people.

Nevertheless, do not expect to get everything you think you deserve. Clearly, you will take your Corvette to a body shop that will do a high quality repair. But, that is a two-edged sword. After the repair it will show less noticeable damage to you and therefore, any future prospective buyer. But lack of flaws to the repair provides less "meat" for your claim. Secondly, this is a negotiation. If you have ever dealt with an insurance company, you know they rarely capitulate to "Joe Citizen" in the first round. Fortunately, you've paid your money to the appraiser. So, make him earn it. They will argue with the insurance company when they first low-ball you, and they will, believe me. They can make the case much better than you and they will be at arms length throughout the discussions.

In the case in which I am familiar, I did perceive a much greater willingness of the other party's insurance company because the claimant was courteous throughout the proceedings. If you attempt monetary recovery on your own, especially with accident damage to your near-brand new Corvette, there would be a risk of "flying off the handle." That would certainly not help your position. Remember, the other guy's insurance company wants the claim settled completely. They need your signature to do that. However, if you get testy with them, the answer could come back, "fine, take us to court." Unfortunately, once they've said that, it's entirely your burden. Your insurance company may have coordinated with the other party's company to do what the law requires, to return your car back to its pre-accident condition. They are not required to assist you return it to the exact same financial value and certainly no responsibility to pursue this sort of claim on your behalf.

Let's talk specialty insurance for a moment. Diminished Value is usually not a player when you own a very old Corvette whose value is way above that of normal depreciation tables or you own a late model, highly modified car into which you have poured thousands more dollars. In these cases, you probably should have "Agreed Value" insurance. Be careful here – agreed value is the key, not stated value, which provides you little protection. If you have an accident, no matter whose fault it is, and try to claim diminished value, you will have a difficult time. Agreed Value is with your insurance company and therefore, your claim would be a first party. The other guy's insurance company will use actual cash value and your diminished value starting point will be laughable.

So, in summary, I would advise you to talk to your insurance company and clarify their position on 'diminished value' as it relates to your specific car. You may also want to explore other insurance options if you are uneasy with your coverage. And finally, if you do have an accident, and diminished value comes into play, you may want to seriously consider professional assistance to make your claim. The long-term savings may well be worth it.