Diminished Value: How Do I Get Paid?

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Disclaimer

Please be advised that nothing in this e-book is meant as legal advice and none of the information in this book should be construed as legal advice. We are not attorneys. If you have a legal question, please seek out qualified counsel.

Foreword

As an expert in diminished value, the most common question I get is “Now what do I do?”.

This book was produced in response to that question. As far as I know, there is no free guide available that focuses on automobile diminished value and how to get paid for it. With all of that in mind, I embarked on this guide to help people understand and successfully navigate a diminished value claim from start to finish.

With this e-book at your disposal, you should be able to bring your claim to a successful resolution. At the very least you’ll be able to figure out whether your claim is worth pursuit. Let’s get right to it.
Chapter 1:

First Party vs. Third Party Claims

First Party Explained

In their simplest form, claims consist of four elements:

1. The policy
2. The claimant/s
3. The adjuster
4. The insured party / policyholder

In a first party claim, the claimant and insured are the same person.

The claimant is the person making the claim / seeking money.
The insured is normally the person who purchased the insurance policy, but could be someone who is a family member, permissive driver or otherwise listed in the policy.

So do you get it? If you are seeking damages, then you are a claimant. If you are seeking damages from your own policy, then you are the insured and first party claimant.

**Examples of First Party Claims**

Keep in mind that the claim examples listed below are not all-inclusive. First party claims are claims where the damaged party claims against their own insurance.

Here are some first party claim examples:

1. **Collision Claim = Joe vs Joe’s Insurance**
   Joe accidentally put his vehicle in reverse and backed into a telephone pole. The pole sustained no damages, but Joe’s vehicle was damaged pretty badly. Luckily Joe had purchased collision insurance on his vehicle, so he can file a claim against his policy and his insurance company will pay him for the damages to his vehicle. Joe is a both the first party claimant and the policyholder in this example.

2. **Comprehensive Claim = Joe vs Joe’s Insurance**
   Joe’s vehicle was parked in his driveway and a vandal damaged it and fled the scene. The police came out and wrote a report, but the vandal was never identified. Luckily, Joe has comprehensive coverage. He files a claim for his damage under his comprehensive coverage and got paid. Joe is again both the first party claimant and the policyholder.

3. **Uninsured Motorist Claim = Joe vs Joe’s Insurance**
Joe’s vehicle was parked in his driveway and an unknown motorist lost control of their vehicle and ran off the road into Joe’s vehicle. The police came out and wrote a report, but the at-fault driver had fled the scene. Fortunately, Joe had uninsured motorist coverage and he filed a claim against his policy for the damages. Joe is once again both a claimant and insured on this first party claim.

4. Underinsured Motorist Claim = Joe vs Joe’s Insurance

Joe’s vehicle was parked in his driveway and a motorist lost control of their vehicle, struck Joe’s parked vehicle, called the police and provided insurance information. Joe filed a claim against the other person’s policy but his damages were more than the policy limits and after getting all of the money left on the other person’s insurance policy, Joe still had $5000.00 worth of damages left. Joe is very lucky. He had underinsured motorist coverage and was able to get the $5000.00 in remaining damages by filing a claim with his own insurance. He was again both the claimant and insured in this example.

Third Party Explained

You have first party down, right? Just remember that in first party claims, the insured and the claimant are the same person.

Now let’s explain a third party claim.

In a third party claim, the claimant is never the insured or policyholder. It really is that simple, with few exceptions. If the person seeking money is filing a claim against someone else’s policy, then the money seeker is a third party to the insurance policy and is making a third party claim. I hope that makes sense. See the next section for some examples that might make the difference between first and third party claims more clear to you.
Examples of Third Party Claims

Keep in mind that the examples below are not all inclusive. Third party claims occur when a damaged party files a claim against someone else’s insurance policy.

Below are some third party claim examples:

1. **Damaged vehicle = Jimmy vs Joe’s Insurance**

   Jimmy’s vehicle was damaged when Joe failed to stop his vehicle in time when traffic suddenly got slow. Jimmy filed a claim against Joe’s insurance policy and got paid. Jimmy was the claimant, Joe was the insured/policyholder. This means Jimmy had a third party claim.

2. **Injured body = Melanie vs Joe’s Insurance**

   When Jimmy got rear-ended by Joe, his sister Melanie was in the back seat and bumped her head. She had to get checked out at the ER. When Melanie got her ER bill she made a claim against Joe’s policy. Melanie has a valid third party claim, and she will likely get paid for the reasonable cost of her medical treatment.

3. **Contractual Liability = Rental Company vs Joe’s Insurance**

   While Joe’s vehicle was being repaired, he rented a car. The rental agreement he signed says that he will pay for any damages caused to the rental car while he has it rented. Joe went to the mall and while the rental was parked in the parking lot, somebody rammed a shopping buggy into the rental numerous times causing damage. When Joe returned the rental car, the rental company made a claim against Joe’s insurance and got paid for the damages. The rental company had a third party claim.
Chapter 1 Summary

If you have read this chapter and you still cannot determine whether you have a first party claim or a third party claim, then you will need to fill out this form to set up a free phone consultation where we will determine what type of claim you have. Otherwise, we will assume that you understand that first party claims are claims against your own policy and third party claims are claims against someone else’s policy.
Chapter 2:

Getting a Ballpark Figure for Diminished Value

Using formulas or calculators

Logically, now that you know the type of claim you have, you need to know how much your diminished value claim is worth.

In order to figure out how much value your vehicle has lost, you will have to do a little bit of research. There is no trick.

Over 17 years of experience proves to me that there is no static online formula or calculator that can consistently produce realistic and credible evaluations on vehicle diminished value. It is simply not possible to use a static formula for calculating market trends and lost value. Formulas and calculators are easily challenged and discredited by insurance defense attorneys because the calculators rely on input from you, and since you have a financial interest in the claim that makes the evidence shaky at best. If you have been able to recover a substantial diminished value settlement based on a formula or online
calculator, then you got lucky. To make a long story short, just don’t trust a formula or an online calculator to be good evidence of diminished value. Steer clear.

**Using the Trade-In Market**

In my experience and research, the retail and trade-in market is by far the largest market for used vehicles.

My research and experience on the subject matter reveals that only about 1 in 10 people sell their vehicle directly to another individual. Most used vehicle transactions are trade in transactions that occur when consumers purchase a new or used auto from a dealer. Because we need accuracy and the trade-in market is the largest market, we use it as the representative market for gauging changes in the value of used vehicles. The trade-in value of a vehicle is nearly always less than the actual cash value, and the trade-in value is often substantially less than the retail value.

Common sense tells us that a dealer who purchases a used vehicle must get it for a real steal because they have to re-sell the vehicle and make a profit.

On top of having to get the vehicle at a steal, dealers almost always incur expenses to certify used vehicles and clean them up for re-sell.

- Dealers sometimes offer extended warranties.

- Dealers have to store vehicles and maintain them while they attempt to sell them.

- Even more, many dealers have to pay for staff to handle financing and assist customers with the completion of the paperwork required when buying or selling a vehicle.

All of these extra costs incurred by dealers are why car lot vehicles are generally priced higher than private vehicles for sale in the classifieds or sitting in private driveways.
So what’s the point?

The point is that the trade in market is where the most credible and realistic information lies as it relates to diminished value calculations. We contact used vehicle dealers weekly and we discuss various different types of vehicles, damages, and values. Used car dealers can assist individuals by providing pre-accident and post-repair trade in offers. The problem for many individuals is sweet-talking a dealer into helping. Many times, a dealer will refuse to provide any trade in offer on a vehicle that is not actually going to be a trade. Also, we have had dealers refuse to make written trade-in offers without a physical inspection of the vehicle.

If you are successful in obtaining written trade in offers that reflect your diminished value, what do you do with the information? We suggest you take the average of all your quotes and plug it into a sample demand letter from us (for free), and then send the formal demand to the insurance company.

You never know, they may just pay you.

Special Market Factors

Certain types of vehicle consumers are more particular when it comes to vehicle condition and history so those vehicles lose a slightly higher percentage of value than others following collision repairs.

Sport coupes, luxury vehicles, rare vehicles, collectible vehicles, and antique vehicles all lose a much higher percentage of their value following collision repairs than work trucks or non-luxury family sedans or sport utility vehicles. Make sure your dealer quotes come from a dealer who specializes in the type of vehicle you own. A small used car lot may provide you a much different quote on your wrecked and repaired Mercedes than the Mercedes dealership down the road. Mercedes dealers normally won’t buy a wrecked and repaired vehicle for retail sale because it is sometimes impossible to qualify the vehicle as a certified pre-owned vehicle.
The Damage Modifier

Even if you have a Mercedes worth $20,000.00, and three Mercedes dealers provide you written quotes that show a trade in value of $20,000.00 pre-accident and a $15,000.00 post repair trade in value, if your vehicle only suffered a dent in the front fender that was repaired, then you will not likely see a $5,000.00 check.

The amount of damage your vehicle sustained directly affects the amount of lost value that it realistically has incurred. Using a simplified damage modifier is the best way for non-experts to demonstrate the relative lost value to damage relationship.

Below is a simplified damage modifier scale:

1.00  This factor reflects extensive cosmetic and structural damage. Normally this type of damage will result in a vehicle being deemed a total loss.

0.75  This factor reflects damage to the structure and cosmetic damage requiring the replacement of at least three of the vehicle’s panels or major safety/electrical components.

0.50  This factor reflects moderate damage to more than one panel, and at least some damage to the structure or a major safety / electrical component.

0.25  This factor reflects just cosmetic damage that requires the repair of at least one panel and/or replacement of a minor structural or safety / electrical component.

0.00  The factor reflects damage that can be fixed without the need for replacement or repainting of any panel, and does not require the removal and reinstallation of any safety or electrical component.
When you are estimating the actual diminished value on your vehicle, you must take the average lost value amount (determined by proper market research with appropriate specialty factors considered) and multiply it by the appropriate damage modification factor. The result of the calculation is a best guess at the loss you will incur if, at the time of sale, you can provide documentation on the extent of your damages, a copy of the repair estimate and guarantee, and a certified expert opinion on the quality of the repair that indicates that there is no problem with the repair.

Calculate Your Own Loss in 3 Steps

Here’s our three step method for you:

(Pre-requisite = Before beginning, make sure you have ignored the results of any online formula and/or calculator)

Step 1  =  List Specialty Factors
Step 2  =  Obtain Trade-In Quote Information
Step 3  =  Apply the Damage Modifier

Here’s a walkthrough based on a real world example.

This will show you how the method works one step at a time.
**Step 1:**

Simply evaluate your vehicle and list any of these that apply:

1) Luxury Brand
2) Low Mileage
3) Antique
4) Rare
5) Classic
6) Hybrid
7) Sedan
8) Coupe
9) Convertible
10) Roadster
11) SUV
12) Any other specialty factor that distinguishes the market for your vehicle.

Using the above list and based on our example vehicle I listed the following special factors:

- **Luxury Brand** – The vehicle is a 2006 Mercedes SLK350
- **Convertible** – The vehicle is a 2 door sport convertible
- **Low Mileage** – The odometer shows 45000 actual miles
Step 2:

Called five different Mercedes dealers within 300 miles of client’s home address and conducted market research with the used vehicle sales staff.

I first determined the vehicle’s trade-in value by asking the dealer what the maximum trade-in amount would be if the vehicle was in exceptional condition and had mileage of 45,000.

Then I questioned each dealer and got their average opinion about the lost value on an SLK like the one we were researching.

The data obtained indicated that 2006 Mercedes Sport Convertibles lose at least 25% of their trade-in value once they have been in a bad wreck and repaired. The data also indicated that the average trade-in value for the vehicle was $22,000.00 so 25% of $22,000 is $5,500.00.

This $5,500.00 figure is our base loss of value figure for the 2006 Mercedes SLK350 in June of 2010.

Keep in mind that there are many more steps to our official Petty Details process because we have to use an accepted method as an expert and because I have to document the value independently. For non-experts, one would simply ask appropriate dealers to give them written statements indicating an estimated lost value due to a major collision and repair, then average the opinions to get a base loss of value result.
**Step 3:**

After getting a base loss of value in step 2, I reviewed the repair estimate on the vehicle and inspected the quality of repairs. Everything was repaired excellently. There was evidence that a repair had been done, but nothing unusual or that would be considered faulty repair work. I compared the damages with the damage modification scale. The damages were extensive and could have possibly warranted a full 1.00 damage modification, but because there was no airbag deployment I gave it a 0.90.

**RESULT:** $4950.00 = Inherent Diminished Value

The result after factoring in the damage modifier was a $4,950.00 inherent diminished value finding. The entire loss was ultimately paid by the at fault party’s insurance company to the vehicle owner directly.
Chapter 3: How To Make A Demand

I have a figure, now what?

Formal Demand: Cost = Free

Okay, so after you have gotten a ballpark figure on your diminished value then you simply need to present your findings to the insurance company and let them know that you expect them to pay you for your damages.

If you don’t have a professional working for you helping you with how to demand your money, then you’ll need to write a formal demand letter. Make sure you include all the information you want the company to have and make sure your demand is clear. We suggest including a deadline date on your demand. Don’t give them forever to make their mind up.
Think about it... why would you make an open ended settlement offer? What if you end up having to litigate the matter?

Your cost will go up, right?

You don’t want the company claiming you agreed to settle for less based on an outdated demand letter do you?

If you’re worried about your letter being right and covering all the bases, simply go to our website and request that we provide you with a free demand letter. We provide them to customers daily and it gives you a great sample of how to word your request without having to reinvent the wheel.

Once you have the formal demand letter, we suggest you fax it to the claims office that is handling your claim. If you can't get a fax number, try and get an e-mail and, as a last resort, go ahead and mail it. If you have to mail something, we suggest mailing it in a manner that allows you to track its delivery (like Certified with a Return Receipt Request). After you are sure the insurance company has your demand, you have completed the first free step in your relentless pursuit of what is yours (evil laugh).
**Telephone Calls for Status:** Cost = Probably Free

You didn’t think you could get out of this without making a few phone calls did you? Don’t worry, it’s easy if you’ll follow some simple guidelines.

Technically it may not cost you anything either. If have to pay a phone bill each month anyway and your claim calls don’t make your bill more expensive this part could be considered free to most people. If it isn’t free for you, then you’ll have to estimate the cost of each call you make and add them up at the end to see what phone calls about the claim cost you. Surely the cost of telephone calls won’t make the pursuit of your claim uneconomical.

It is inevitable that you’ll have to make some calls to get a status on your claim. Wait two days after sending your demand before making follow up calls.
When you do, use the guidelines below:

1. Avoid leaving a message on a machine the first time you call for status on your demand.

Persist until you get a live person on the phone. If you simply cannot get a live person for whatever reason, then and only then, go ahead and leave a short message. Stick to the goal described in step 3 but make sure and include your claim number and a call back number with your area code. Also, if you end up having to leave a message, then call back each day until you have gotten a live person on the phone and then go to step

2. Once you have a live person on the phone, don’t be rude.

Before you give them your claim number or your full name, see if you can get them to agree to check and see if your adjuster is currently working. Be nice, but beat them to the punch and ask something like “Do you mind checking to see if my adjuster is in the office right now?”. It is important that you use this tactic. Receptionists are trained to find your claim number and route you to an adjuster as fast as possible. Beating them to the punch with a question instead of allowing them to begin asking questions and controlling the call is important in getting your adjuster on the phone.

Trust me, the receptionist can always get somebody on the phone unless they are not in the office or in a meeting.

Plus asking a person to physically look for somebody helps to get them out of “rapid response” mode and forces them to deal with you.

It is about controlling the call.

If they check and don’t find the adjuster or refuse to check, then try and get them to take a handwritten note to the adjuster’s desk. As a last resort, leave a message on the adjuster’s voice mail.

3. If you are successful in getting your adjuster on the phone, then stick with one goal and one request. . . . “Please send me a written response to my most recent letter”.

Do not underestimate the power of simplicity.
Don’t get dragged into a discussion of your diminished value.

Your standard response to any question should be a request for them to correspond with you in writing.

Can you tell I am not a proponent of verbal negotiations?

In verbal negotiations it is too easy to miscommunicate. Even skilled negotiators can mess up a settlement by saying the wrong thing. Verbal negotiations between adjusters and accident victims normally result in flared tempers and unsuccessful settlement attempts. Forcing negotiations to be in writing is the best trick I know that helps to bring a claim to a resolution.

Anytime you call the insurance company, make sure your goal and request is the same.

Stick with “Please send me a written response to my most recent letter”.

Continue until you have a written response.

Collect your money or hire a pro

So if you have a written response, then it is either a denial, an offer of settlement, or a request for more information.

If it is an offer, you'll have to decide if you should take it or not.

If you don't like the offer, then either start making counter offers and try to negotiate a settlement, give up, or hire an attorney or professional to help you bring your claim to a favorable settlement.

If the written response is a request for more information, then you'll have to decide how to respond to the request appropriately (call us or fill out our free claim consultation form and we'll give you our opinion at no charge!).

If the written response is a denial, then you either give up or take a more aggressive approach at provoking a fair settlement.
Chapter 4: Professional Help

Fine, I need professional help. What do I get?

If your claim has been denied and you are at a stand-still, then you have to decide whether to get a professional involved and fight for your money. Below are the two options that most people have, either an attorney or an independent appraiser.

Attorneys

It might be difficult to find an attorney that will take on your diminished value case.

The problem is that the average diminished value claim is only about $3,000.00. Unless you have a super expensive vehicle, then an attorney is not likely to be too interested in helping you. Experienced attorneys make over $100.00 per hour. It will take at least four or five billable hours to resolve a diminished value claim, and that is not counting the cost of a professional report or the cost if a suit is required. It's just not economical for an attorney to take a diminished value case by itself.
Don’t get me wrong, there are attorneys that can help you, but it will cost you. When I see attorneys involved in a diminished value cases it is normally because they were hired to handle an injury claim.

Anyway, what do you get if you hire an attorney?

Your attorney should hire an expert and do all of the demanding and negotiating for you. Our office specializes in helping attorneys bring low dollar claims to a resolution, so if you find an attorney that will take your case, but doesn’t know what to do, tell them to call or email us!

**Independent Appraisers**

*What will you get from a diminished value expert?*

Good question.

I can’t answer for other experts. In fact, the majority of DV experts out there simply aren’t experts in how to recover diminished value. They talk big, but
normally provide a less than stellar report and then disappear leaving you to navigate your claim alone.

That’s not the story with Petty Details, LLC. I’m the CEO and I control the quality of our product. In my opinion, what makes a really good expert (outside of having the credentials) is the level of assistance provided to their customers after the report is written and delivered.

If you opt to hire an expert, then you want to get someone that is highly experienced in both insurance claims and vehicle damages and values, and somebody that can walk you through the sometimes confusing claims process. That is why Petty Details, LLC exists and is successful. We won’t leave you hangin’.

We hold our clients’ hands through the process and even train insurance adjusters and attorneys on the best practices for resolving diminished value claims.
Chapter 5:

Dealing With A Denial

So you’ve been doing all this research on diminished value, and you’ve figured out that the at-fault party’s insurance company should pay you for the lost value your car has suffered, right? The only problem is that you got a diminished value claim denial by the insurance company. Although it may make you want to rip your hair out, don’t get discouraged! It is very common for insurance carriers to deny diminished value claims as a tactic to weed out those victims who will be frustrated enough to just give up on their claim. They use this tactic because the sad fact is that most people DO give up. You know why? Forcing an insurance company to be fair is HARD! Also, there is generally nobody to help accident victims with their small value property damage claims and insurance companies know it. So where does that leave you? Is there any hope of recovering your lost value? Read on my friend, read on. . . .

I won’t sugar coat this: It’s not simple to get paid on a diminished value claim.
In fact, recovering a fair amount for it almost always requires the help of an expert and/or attorney. Even so, if you found this article, you probably still want to give it a go on your own, so I’ll try to provide some helpful information for your pursuit.

**So what do you do when you have received a denial?**

**Send a counter demand!**

Your demand should clarify that an unfounded diminished value claim denial is not going work on you, and that you will not release their insured of liability until you have been compensated for all the damages you incurred, including your diminished value. Show them that you aren’t a chump. Become the problem claim. You found this article, so prove you have researched the matter by quoting some legalities involving diminished value. For instance, you could remind them that your claim against their insured is because of the negligent operation of a motor vehicle, and that for claims based in negligence (tort), the law clearly allows you to recover inherent diminished value (yes, in EVERY State in the US). State supreme courts rely on the “Restatement of Torts” out of the American Law Institute to address what damages a person can recover due to an auto accident.

**The Restatement of the Law of Torts, Vol. 4. Sec. 928 states:**

“Where a person is entitled to a judgment for harm to chattels (vehicles) not amounting to a total destruction in value, the damages include compensation for:

(a) The difference between the value of the chattel before the harm and the value after the harm or, at the plaintiff’s election, the reasonable cost of repair or restoration where feasible, with due allowance for any difference between the original value and the value after repairs, and

(b) the loss of use.”
So if you’ve gotten a diminished value claim denial, believe me, it is not because the law says you can’t recover it no matter what anybody says. In fact, if you have a third party claim and the insurance company / adjuster tells you that they are not required to pay diminished value by law, then they have misrepresented the facts (ask them what law). The law clearly requires payment for diminished value when it is proven, and the insurance policy they sold their customer says they will pay for damages that the person is legally liable for, so the question becomes about how you prove the amount of your lost value.

How To Prove Diminished Value After A Denial

We know.....it makes you MAD to know that your claim is being unfairly denied. Before we address that, think about how one would prove what a Rolex watch is worth, or how much a house is worth. Additionally, when you buy a vehicle and have to go register it and pay the taxes, if you disagree with what the tax office says your car is worth, what evidence will the tax office accept as proof of the value of your vehicle?

Here’s the answer…

In all instances, including inherent diminished value, the way an amount (fact issue) is proven is by “professional and competent appraisal” aka expert testimony / appraisal. In fact, insurance companies commonly use valuation companies to provide reports on the value of totaled vehicles. When the car is not totaled and a third party diminished value claim is pursued, smart companies hire an independent expert appraiser of their own for valuation assistance.
Those that aren't so smart (or ethical) either attempt to use some invalid formula to make a silly offer, or they flat out deny DV claims and hope the victim doesn't know how to force justice. Remember, damage appraisers and insurance adjusters don't generally qualify as expert witnesses regarding inherent lost market value. If somebody is giving you an amount on the lost value, ask them for their credentials and the formal appraisal which will disclose the scope and methods they used. Determining the amount of value a vehicle loses due to an accident history requires a lot of market research and meticulous record keeping.

Claims offices don’t research market values. Adjusters evaluate coverage and scope of damages, and damage appraisers estimate and report on the scope of damages for adjusters. Value appraisers are neither adjusters nor damage appraisers. Valuation experts provide reports to attorneys, adjusters, damage appraisers, and others that demonstrate the MARKET VALUE of property / vehicles. At the end of this section, I’ll provide you with the rules of evidence about who qualifies as an expert.

*Think about this…*

If an insurance company is getting an evaluation on a vehicle that has been a previous total loss or which has a salvage title, without fail the value of the vehicle is dramatically reduced (usually 50%) because of the salvage history. If you ask an adjuster why they do that, it becomes pretty hard for them to explain without acknowledging inherent diminished value. If they reduce the value of previous total loss vehicles, then claiming that an accident history doesn’t affect the value of a vehicle is hypocritical.

If insurance carriers and adjusters truly believed there is no such thing as diminished value, then they wouldn’t reduce vehicle values simply because of the history of total loss or salvage, would they?

*Don't Give Up!*
To summarize: If you get a denial on your diminished value claim, don’t give up. Write a counter demand letter and try to produce some quotes from dealers as a type of basic evidence on the amount of lost value. Remember, if you’ve gotten a diminished value claim denial on your valid third party claim, it’s because the insurance company is simply hoping you’ll give up.

Don’t.

Fight for justice, and if it gets too hard for you, reach out to a professional (LIKE US – hint, hint!).

Do you think YOU would get away with damaging somebody’s property if you caused an accident?

Don’t let the insurance company bully you or trick you into believing you don’t have a claim. One of the reasons Petty Details was founded is to help level the playing field for those who don’t give up on getting justice served. My background as a litigation and tort recovery specialist lends me a very particular set of skills that makes me a big problem for insurance companies or claims handlers who like to abuse the economics of litigation to take advantage of accident victims with smaller value claims.

If you can’t get them to pay on your own, you need an attorney or expert witness at the very least. If it comes to that, remember that expert opinion IS evidence. If you have an expert appraisal and a company argues that it is just an opinion, simply say, “so what?”.

Are they challenging the expert’s credentials or methods?

If they can’t demonstrate that the expert opinion is not valid evidence, then how will they convince a jury to ignore the evidence?
Remind them that every State has a formal rule of evidence that basically mimics the federal rule 702 below:

“A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if:

(a) the expert’s scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue;

(b) the testimony is based on sufficient facts or data;

(c) the testimony is the product of reliable principles and methods; and

(d) the expert has reliably applied the principles and methods to the facts of the case.”
Chapter 6:

Issues To Be Wary Of

Your Insurance Company Could Be Stealing From You!

Insurance companies are stealing money from their own policyholders by ignoring the common law “MADE WHOLE DOCTRINE”.

If you have been in an accident and had to use your own policy to get your vehicle repaired, then you are potentially a victim of the malicious subrogation practices by carriers like State Farm, GEICO, Farmers, USAA, AAA, CSAA, Mercury and many others. Almost every insurance carrier in California is illegally demanding money that is not theirs to take under a general subrogation provision in personal auto policies before their customers are made whole.

If you think you have been a victim of this scam, please contact my office at (214) 227-2154 and we can put you in touch with attorneys that will teach the insurance companies a lesson.
The collusion and made whole problem is happening in all states in the U.S., but it is most obvious in states like California where the required amount of financial responsibility (insurance) is low.

In California, it is possible that if somebody rear-ends you, there will only be $5000.00 available to pay for all the damages!

To make matters worse, **YOUR** insurance company will go get that $5000.00 before you have a chance to blink if you are not aware that the practice is illegal and don’t call them out on it. In fact, carriers will outright **LIE** about their rights to recover payments and tell their **OWN** customers that the company has the first right to recover money, and that they are entitled to take all available funds even if **YOU**, the customer, have not been paid for all your damages!

Take a stand and fight against unethical and malicious insurance claims practices like the rampant ignoring of the made whole doctrine California.
Body Shop Steering

After the initial shock of an auto accident and if the vehicle is not a total loss, the first thing to do is to determine where to get repairs done and get the vehicle there. Most people simply take their vehicle to a dealer facility or a body shop that is suggested by the insurance adjuster or company. Although there are always exceptions, dealer facilities and body shops that insurance carriers suggest are not normally on the top of my list for high quality repairs.

I present to you a few insider tips and questions that you should be thinking of when you select a repair facility.

1. **Ask the repair facility if they are on a direct repair program (DRP) with any insurer.**

   A direct repair program is one where the insurance company has made a “deal” with the shop to agree to use the shop’s estimate as a repair figure, and the trade-off is that the shop agrees to write the estimates in a manner that the insurance company approves, most of the time.

   **So what does this mean for the vehicle owner?**

   If the body shop is performing repairs for a company where they have a “deal” and they are agreeing to go by the insurance company’s
regulations regarding repair processes, the customer is not consulted on questionable items. For example, if there is a choice between repairing and replacing a damaged item (let’s say an inner fender), then the “deal” the shop has made will likely come into play and whichever is cheaper is normally what the shop is required to do by the contract, regardless of whether the cheaper repair is better for the customer or not. Most of the time a DRP program is focused on what is good for the bank account of the insurance company and the body shop, and not what is good for the customer (although they will tell adjusters and customers the DRP program is for the customers’ benefit).

2. Is the repair facility clean?

Just like in an office or home, if there is clutter all about, it normally translates to inefficiency and sloppiness. Look for a body shop that has all its tools organized and that has neat and tidy workstations. While there are always exceptions, most of the time, a sloppy shop performs sloppy repairs.

3. Will the boss talk to you?

If you are left dealing with a clerk or service tech, you can bet that the shop is working on a quantity vs. quality basis. If you can’t discuss the repair process with the shop manager or owner, then steer clear! They will be much more difficult to contact if there is some problem with your repair.

4. Can you get referrals?

Ask the shop for the names of some former customers and ask those people how the shop treated them and how happy they are with the repairs performed.
That’s it! The point is to make sure your shop is working for YOU and not the insurance carrier. If the shop is clean, the staff is helpful, and you are able to confirm that they have a good reputation with former customers, then I can’t imagine that you’ll have a problem with your repairs. If you do have a problem, simply pick up the phone and call our office for a free consultation and we’ll try and provide you with the information you need to make an informed decision about how to resolve your problem. We work with some awesome shops that we happily send clients to if they are looking because we know the game and the best players!

**My Attorney Says They Don’t “Do Property Damage”**

When dealing with another person’s insurance company for an accident, many attorneys will simply tell clients that they do not get involved with the property damage part of the claim and that includes diminished value and total loss settlements. In fact, MOST injury attorneys practice this policy on third party cases.
Why do they say this?

Well, normally it’s because there is no way for the attorney to make any money handling the property damages AND make sure the victim gets all their property damage money. Injury attorneys normally do a favor to victims by working on a contingency (normally 1/3 of any settlement), so that means they do not get paid up front, but only when there is a settlement and payout of damages. They don’t have to do this, and an average (not super attorney or specialist) will make at least $150.00 / hour if they bill by the hour. It is a courtesy to work on a contingency, and a bet that your claim will settle at a high enough amount to make it a worthwhile pursuit.

Think about it:

If an attorney were to take a contingency of say, a total loss settlement, then the victim does not get the full value of their vehicle. Likewise, if an attorney were to take a contingency of the damages on a repairable vehicle, there would not be enough money to actually repair the vehicle. It’s a catch 22! So DON’T hate on your attorney for not wanting to deal with the property damage, but DO understand that the attorney DOES represent you for ALL the damages incurred, even if some of the less scrupulous attorneys say otherwise. Smart and reputable attorneys find a way to live up to their obligation and help with property damages by either employing and / or suggesting an expert, or by dedicating part of their staff to the problem.

So what if your attorney says they don’t represent you for property damage? How can you call them out on their less than truthful statement?

Here’s how… explain to them that you know about the rules for splitting a cause of action.

Except in special cases, it is not allowed for someone, even an attorney, to SPLIT A CAUSE OF ACTION. A good case that shows how this works is Coomer v. CSX
Transportation, Inc., 319 S.W.3d 366, 371 (Ky. 2010). If you sue for just injury, when the case is settled, then it is over, and you can't then sue for more damages arising from the accident, so the property damages **MUST** be included in the injury suit, or you forfeit any damages you didn't ask for.

Stated a little differently for clarity... this means that you can only sue the negligent person **ONCE**, not once for the injury and once for the property damage. When an attorney is retained, it is for the accident, not just for the injury. They are tasked with pursuing the negligent party for ALL damages that they **CAUSED** due to the negligent operation of a motor vehicle, and that includes your vehicle damages, whether the attorney likes it or not.

If you are the victim of an auto accident, then one of the most frustrating things is that your VEHICLE was damaged or destroyed. I know if I didn't have my vehicle available to me, I would be severely hampered in my daily activities.
TOW TRUCKS, TAXIS, & RENTALS, OH MY!

How To Deal With A Diminished Value Claim Against A Commercial Vehicle Insurance Policy

During my auto claims career I have dealt with hundreds of claims that stemmed from the negligence of a commercial vehicle.

In particular, three types of claims are most common:

Claims involving rental vehicles, taxis, or small freight / towing truck companies.

In most cases, if one of these commonly self-insured entities has caused you damage, then you'll have a very difficult time recovering your damages.
Here’s an example of what you could run into . . .

I currently have a case on the books where my customer’s vehicle was damaged because a towing company failed to secure an item that was on the bed of a tow truck. The item fell off causing over $7K in damage and lost value to my client’s vehicle. The tow company’s risk manager told us that he would not pay for damages, and that my customer would have to sue. Then, he said if the customer won the suit, he still would simply never pay the judgment.

Why not just file a claim with their insurance, you say? Well, sure the company has an insurance policy (blanket) and they are supposed to give you the name and policy number so a claim can be filed, but they may refuse this if there is no police involvement. In that case, we could find the name of their insurance company through public info requests or online free databases, and might get a claim filed. All that being so, even if we are able to file a claim, it rarely helps to get damages paid because if the tow company is “self-insured” (which most are), then the insurance that is on file with the State is only triggered for losses over the agreed self-insured amount (normally the insurance company doesn’t have to pay until damages are more than $50K). That’s right, I’m telling you that the tow / taxi / rental company can just refuse to pay damages all while being completely in compliance with the law regarding vehicle accidents and damages.

In Texas, this law is called The Texas Motor Vehicle Safety Responsibility Act. It is all laid out starting in Chapter 601 of the Texas Transportation Code. The code does NOT require that you have insurance.

I repeat, the code does NOT require that you have insurance.

Don’t believe me?

Here it is quoted straight from the code:

“Sec. 601.051. REQUIREMENT OF FINANCIAL RESPONSIBILITY. A person may not operate a motor vehicle in this state unless financial responsibility is established for that vehicle through:
(1) a motor vehicle liability insurance policy that complies with Subchapter D;

(2) a surety bond filed under Section 601.121;

(3) a deposit under Section 601.122;

(4) a deposit under Section 601.123; or

(5) self-insurance under Section 601.124.


Most people think that the law requires that you have insurance, but that is NOT true, as you can see above. It is true that most people comply with the financial responsibility law by purchasing a liability insurance policy (option 1 above), but it is NOT required. Texas law only requires that you prove you are able to pay, IF you cause damage to another person or their property.

So, all that good technical info aside, can you make the company pay for your damages?

Maybe.

It’s a lot of work and you’ll likely need a lot of help. I’ve spent a lot of time (nearly two decades) auditing damages and values of vehicles, and handling insurance claims and damage recovery cases (subrogation) for insurance companies, attorneys, individuals, and municipalities. Even as an expert in auto damage claim recovery, I have a tough time with self-insured entities. They can and will ignore suits and judgments, so you have to know how to enforce your judgment (receivership, garnishment, asset levy) if you really want to get paid and teach the company a lesson in causing damages and refusing to pay for them.
Hear It From The Horse’s Mouth!

Check out some of the stories below of people that ended up getting professional help….

Linda G. is the owner of a Mercedes, and boy is she particular when it comes to her vehicle. Unfortunately, when we met, it was because her Mercedes had been severely damaged.

She found us on the internet and was very wary of us. She even went so far as to tell me that her husband had told her she was wasting her time and money trying to get paid for diminished value. It was very hard to convince Linda that she was not wasting her time, and let me tell you, she really spent plenty of time on the claim herself because our office received over 100 emails during the course of her case!

After a long hard fight and the initiation of a small claims suit, Linda was successful in recovering her full diminished value!

Here’s what she had to say once her case was over…

"Justin,

Thank you so much for all your help with my diminished value claim!

As you know, Progressive settled out of court. I received my check for $5,000.00 Friday …almost all of what I was asking for!!

I am thoroughly satisfied with your service. It’s nice to know that these days there REALLY ARE people out there who are honest and honestly want to make the right thing happen!!

I appreciate all your help and putting up with all my doubts and questions - your service is above and beyond quality and honesty!

YOU ROCK!!!!!!!!!!!!!!! :O)"

- Linda G.
Luxury vehicles come in many shapes and forms, and so do their owners. In December 2009, I met the owner of a 2008 Honda S2000 named Greg. His vehicle wasn’t really classified as a luxury vehicle, but the owner had luxury vehicle attitude, and that’s the point about luxury vehicles.

Owners of luxury vehicles generally take exceptional care to protect their cars of any damage, and most luxury vehicle owners wouldn’t dream of purchasing any luxury vehicle that had ever sustained any damages, even if the repairs were not evident.

The point is, luxury vehicles lose quite a bit of value when they are damaged and repaired.

Greg was going to have a bit of a fight on his hands because of the company with which he was going to have to deal. I agreed to assist and provide the expert documentation on the lost value and estimated the loss to be $4,471.00. He presented the demand and, as expected, had a rough time.

Ultimately, Greg filed a small claims suit, and wouldn’t you know it... just days before trial here is the e-mail I received:

"Justin, thank you so much for your help. The insurance company just agreed to pay $4000 for my diminished value claim. Looks like I will not need you at trial.

I appreciate all you’ve done!"

- Greg

“After 10 weeks of TRYING to negotiate - I say ‘trying’ because no matter what I said or which law I cited the insurance company did not budge with their original offer - with the insurance company for a diminished value claim, I was about to accept their offer.

Before I did, I wanted to give one last try by asking the opinion of another diminished value appraiser. The appraiser I originally hired (who actually charges more than double than what Justin charges) didn’t give me the option where he would talk with the insurance company, however, Justin instantly offered to AND the moment he got on the phone with insurance company, they agreed to negotiate, which ended in a higher settlement!"
Mr. Petty helped out the little man against the big corporation. I know who I will be hiring if I ever need a diminished value report! I will recommend him to everyone I know. THANK YOU JUSTIN!”

- Jonathan M.

“This was my first car wreck and I wasn't sure what all I needed to do. I did some research online and ended up with more questions. Petty details helped get me a diminished value check at no cost using just their free sample demand! Just helped guide me through the process. Thank you!”

- Lianna

“Started with a low offer on my total loss from an insurance company, using very unfair values. I found Petty Details they explained the process and what I could expect. 7 days after I got my report, the insurance company settled for 95% of their Evaluation and it was 22% higher than the original offer from the insurance company. Highly Recommended service.”

- William T.

“I was referred by a previous customer. They were very responsive with quick replies and answered all of my questions. They were great to work with!”

- Luanne S.

“The outcome was very close to what was predicted and I know that results were much quicker and more substantial than if I tried to do this on my own!”

- Ed R.

“Petty Details is an amazing service, I can’t imagine surviving this process without their help!”

- Diane Pierce
“Their (Petty Details) experience and passion was apparent in working and talking with them. They were spot on in their evaluation of my situation and their advice helped me obtain a satisfactory settlement from the insurance company without have to file a court case. I was very satisfied with their service and will recommend them to others.”

- Faith B.

“Based on the report of diminished value, I was able to settle my case and avoid time consuming litigation!”

- Keith Nelson, Atty

“I wanted to let you know that your services were FANTASTIC! I really appreciated the very candid advice that I received from Justin and the very professional and thorough documentation that was provided to both myself and the insurance company. I know that I would not have received the payment I was requesting without Petty Details help and assistance. I hope that I never need your services again, but if I do, you will definitely be on speed dial!”

- Melva Woods

“Petty Details helped and gave me advice on next steps all throughout the process. I truly felt like they were on my side! Everything worked out exactly the way Justin told me it would when we spoke for the first time. I am truly pleased with the service and attention to detail Petty Details gave. I would highly recommend them to anyone looking for this service!”

- Marie F.

“Very easy to use, I didn’t have to do anything - Petty Details took care of everything!”

- Tracy Farr
“My claim became very complicated by the shuffling back and forth between the repair shop and the at-fault driver's insurance company. My vehicle was 9 months old with 9,000 miles when it was struck from behind. Petty Details held my hand through the process and enabled me to keep my cool and finally get what I wanted...a significant settlement! Their help enabled me to have the know-how to trade my car in with the settlement as a down payment for a newer, fully equipped, 0% interest, sweet deal. I could not have done this by myself. Not only did they save me hours of research, but they also gave me the language so I could make the deal work!”

- Linda N.

“I had no clue as to how to obtain compensation for the diminished value of our car. Petty Details helped me get through all the hassles with ease. I would have given up if it were not for their help. Their business name is truly what they are all about. The small details are always important. Thanks Guys!”

- Kyle Koon

“Justin spent close to 2 hours on the phone with me explaining the laws behind diminished value claims and gave me many resources I could use to support my claim. Not once did he mention payment and respected the fact that I wanted to make my claim on my own and see how far I can get. His resources were more than helpful and I was able to negotiate a settlement on my own that I felt was acceptable. The fact that Justin spent 2 hours on the phone with a stranger says a lot about his ethics and had the insurance agency been uncooperative I was fully prepared to hire his assistance but as it stands his free consultation was enough, if that says anything.”

- Sean Wiseman

“Couldn't ask for anything better!”

- Galileo Tignini

“I came across Petty Details through the Internet, spoke to Jen and her husband and they provided samples and step by step process and they never guaranteed anything. They advised what I need to do and how to follow up, which I did and always emailed and faxed the insurance company and CC Petty LLC, it’s always good to leave a paper trail. The insurance company kept
ignoring my request. So I decided to step it up a notch and quoted The Tort Law...Petty Details always followed up with me either via email or phone. They showed me the direction to go and I went down that path, and won $500 - it's not about the amount but it's the principle. So Petty Details can take you to the water if you’re thirsty but it’s your decision if you are going to drink the water!”

- Joshua Baron

“Couldn't have been easier. Thank you Justin and Jennifer!”

- Mark E.

“I contacted Justin to help settle my diminished value claim. Justin and Jen were extremely helpful and proactive to help bring my claim to a quick conclusion. They were both responsive and professional and offered great advice to help me throughout the process. I hope I never have this situation again, but I'll be sure to contact Petty Details again if the need arises!”

- Eric Baltimore

There are many more stories to tell - visit our website at www.diminishedvalueexpert.com and see if you can find one like yours and remember....

Sometimes it's just in the Petty Details!