Insurance Times: Courts continue to reject diminished value in auto claims
October 2, 2001, Vol. XX No. 20

DES PLAINES, Ill. — In spite of an ongoing influx of litigation, U.S. courts continue to reject class-action lawsuits involving diminished value, a concept referring to the difference between the value of a vehicle before and after it was involved in an accident.

"Courts across the country have continuously rejected the diminished value concept as a legal theory, and the trend is growing," said Robert Hurns, counsel for the National Association of Independent Insurers (NAII). "Since 1999, courts in more than a dozen states have summarily kicked out these cases, underlining the fact that insurance companies don't owe policyholders an arbitrary amount of 'value' on top of the cost of auto damage repairs."

The language used by the courts in dismissing many of these cases is "dramatic and unambiguous," Hurns added. "It's clearly stated that diminished value, particularly those in class-action cases, are a waste of time and resources. We're confident that this tenor will carry over to cases that are still pending."

NAII's most recently compiled chart indicates that diminished value cases were dismissed in the following states:

• ARIZONA – In Kenger v. GEICO, CV 1999-001522, the plaintiff alleged that a single replacement radiator was not "like kind and quality" to a Honda radiator and pleaded breach of contract, violation of the Arizona Consumer Fraud Act, violation of the Arizona Civil RICO statutes, and violation of the Arizona Insurance Code. In November 1999, the court granted the defendant's motion for summary judgment, stating "a void of evidence" to support the plaintiff's contention the competitive part was inferior.

* FLORIDA – So far, Florida courts in four separate jurisdictions have sustained the defendants' motion to dismiss in four separate cases: Morrison, et al. v. Allstate Indemnity, Siegle v. Progressive, Casas v. United Services Automobile Association, and Thames v. United Services Automobile Association. The courts were adamant about the lack of evidence against the inferiority of non-OEM parts, stating their use is expressly permitted in Florida state law, and in the Thomas case, rejected a request for a class action.

• ILLINOIS – In Rios et al. v. Allstate Ins. Co., the court denied the plaintiff's motion for class certification.

• INDIANA – In Vietez v. Meridian Mutual Insurance Company, the plaintiff asserted breach of contract and unjust enrichment. The court found that the contract language was unambiguous and that it did not provide for loss in value damages and granted a motion to dismiss in March 2000.

• LOUISIANA – In Graham, et al. v. Allstate Property and Casualty Insurance Co., et al., the trial court found that Allstate's contract clearly did not allow for diminished value and issued a ruling in favor of Allstate for no cause of action. The case was dismissed with prejudice in May 2000.

In Johnson v. Illinois National Ins. Co., the plaintiff sued for breach of contract and sought damages equal to the difference in value between the pre-damaged car and the value after the repair. The trial court ruled for the insurer, finding no coverage for diminished value in the policy. Johnson filed an appeal. NAII will file an amicus in the appeal case asking the court to uphold the trial court's ruling.

In Townsend, et al. v. State Farm Mutual Auto Ins., the plaintiff filed a class-action suit claiming the adjuster did not consider compensating him for purported diminished value. The court ruled in favor of State Farm, granting its motion for summary judgment in August 2000, stating the policy language is clear and unambiguous and does not cover diminished value.

In Entremont, et al. v. American Central Ins. Co., the trial court dismissed Entremont's diminished value lawsuit. Entremont is currently appealing in the first circuit.

• MASSACHUSETTS – In Roth v. Amica Mutual Ins. Co., the plaintiff alleged breach of contract, fraudulent misrepresentation, fraudulent inducement, negligent misrepresentation, breach of fiduciary duty, and breach of the implied covenant of good faith and fair dealing. On September 3, 1999, the court granted the defendant's motion for summary judgment on the issue of diminished value, finding the policy language clearly did not provide for it, and observed nothing in the policy precluded the insurer from using non-OEM parts. However, the court denied the defendant's motion for summary judgment on this point, stating there was an issue of material fact regarding the quality of the non-OEM fender.

• PENNSYLVANIA – In Munoz v. Allstate Ins. Co., the plaintiff's claim was based on diminished value, suing for breach of contract, breach of the implied covenant of good faith and fair dealing, breach of fiduciary duty, and bad faith. On November 15, 1999, the court sustained the defendant's preliminary objections to the plaintiff's class action

complaint, concluding the plaintiff could not reasonably expect the policy to provide for diminished value "in light of the current common practice in Pennsylvania." The Pennsylvania Superior Court heard the appeal of this case in July 2000 and ruled in favor of Allstate.

• RHODE ISLAND – In Cazabat v. Metropolitan Property and Casualty Ins. Co., plaintiff's motion for class certification alleged that "Metropolitan uniformly failed to estimate and assess the inherent diminished value when conducting the initial inspection of the first-party property damage claims of its insured's vehicles" and failed to advise policyholders in Rhode Island, Louisiana, Arkansas and Georgia that coverage was included in the contract. The court denied the plaintiff's motion for class certification and concluded that "the possible individual questions involved in the present case lead this Court to the conclusion that class certification is not the best, most efficient method for adjudication. The number of mini-trials needed for this case renders the class action unmanageable and henceforth, not superior."

• TEXAS – In Carlton v. Trinity Universal Ins. Co., plaintiff contended Trinity was obligated to pay an additional amount for the "inherent diminished value" of the car, defined as the difference between the pre-loss value of a car and its value after proper repair. On January 4, 1999, the court granted the defendant's motion for summary judgment, finding Trinity's policy did not provide for diminished value. This case is currently on appeal.

In Berry v. State Farm, an appeals court unanimously held that the Texas Insurance Code did not prohibit the use of like, kind and quality parts under the standard Texas auto insurance policy and that insurance companies were not required to pay for new OEM parts.

• WASHINGTON – In Schwendeman v. USAA Casualty Ins. Co., the court refused to accept the testimony of purported experts Paul Griglio and Charles Kendall Clarke. Plaintiff's Motion for Class Certification was denied on October 20, 2000.