

Industry pleased with two Mass. rulings on auto diminished value

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InsuranceTimes

BOSTON — Two recent rulings by Massachusetts' highest court have laid out the road map for how auto insurers should treat inherent diminished value in their auto policies. The rulings are being hailed as victories for the insurance industry as the decisions negate the notion that inherent diminished value is even implied in the policies.

In both cases the Supreme Judicial Court of Massachusetts ruled for the defendants, Amica Mutual Insurance and Commerce Insurance.

In the Commerce case plaintiff Elena Given sustained collision damage to her car in Sept. 2000 and presented a claim to Commerce for which the company paid \$5,287 to have her car repaired to her satisfaction. Given contends that she has sustained additional damage of \$1,414.70 as a result of the alleged inherent diminished value of her car and when Commerce rejected her claim she filed a six-count complaint against Commerce in the Superior Court in the beginning of 2001.

The Superior Court Judge entered partial summary judgment in Given's favor, declaring Commerce liable under the policy for whatever inherent diminished value Given could prove at the trial. Commerce appealed and the Supreme Judicial Court overturned the ruling that would have forced the company to pay more than the actual cost of repairing the policyholder's damaged car to cover the diminished value.

Judge Ernest B. Murphy said in his decision Commerce should not be responsible for diminished value since it was not written in the policy, but this can sometimes be a tricky situation.

"The issue is whether inherent diminished value is covered in the first place," he said. "Absence of an express exclusion does not operate to create coverage."

Policy Language

Yet the language of the policy excludes any payment higher than repair or replacement costs.

"One searches this vast network of statutory and regulatory provisions in vain for any reference to the concept of inherent diminished value," he said. "For example, it does not identify any methodology by which to calculate inherent diminished value or any requirements for performing or documenting appraisals of inherent diminished value, or any steps to be taken to coordinate payment for inherent diminished value with the payment of physical repairs."

Judge Murphy said by contrast, the requirements for assessing physical damage to an automobile, performing repairs, replacing parts, documenting that repairs have been made, and making payment to the insured or the repair shop are detailed and specific.

"From the absence of any reference to inherent diminished value in this extensive regulatory scheme, it is apparent that the Commissioner of Insurance does not interpret the standard policy's collision coverage to encompass compensation for inherent diminished value in addition to the cost of repairs," he said.

In the Amica case, Suzanne Roth contended that car suffered inherent diminished value because its fender was replaced with one made by someone other than the original equipment manufacturer (OEM). She protested that only a fender from the OEM would satisfy Amica's obligation to repair the vehicle under the language of the standard policy and the applicable regulations. She claimed that all non-OEM parts are inherently inferior to OEM parts in every circumstance.

In her ruling Judge Elizabeth Donovan dispelled this notion.

"Her global generalization flies in the face of common sense, common experience, and contrary conclusions reached by the Legislature, the division and the board," she said of Roth.

Concerned Over Courts

Kirk Hansen, director of claims for the Alliance of American Insurers, said members of the insurance industry have been concerned about the erosion of the diminished value concept by courts around the country. He also said he doesn't think proper vehicle repairs affect the resale value of automobiles.

"Though there are well over 60 million automobiles in the country that have been repaired as a result of accidents, none of the price appraisal guides, such as NADA Official Used Car Guide or Kelley's Blue Book, consider prior accidents when publishing the value of used cars," he said. "There are no used car dealers that sell a class of diminished value cars."

Peter Robertson, Massachusetts counsel for the National Association of Independent Insurers, said these verdicts were in step with the rest of the country.

"Both of these cases we think are the right result," he said. "The rulings are consistent with Mass. auto policy and there isn't much more to say, but the contrary result would have had a huge rate impact because there is nothing built into the rates for those kinds of claims. We would have certainly had a lot more to say if the decision had been the other way."

Georgia has the only state supreme court that has ever supported the concept of first party diminished value. □
ide what reasons are legitimate.

"That's a classic case of the fox guarding the hen house," Haven said. □