

## DIMINISHED VALUE, LOSS OF USE, AND TOTAL DESTRUCTION CLAIMS

Moderate damage to a vehicle, especially an exotic, almost always results in the following claims: Repairs, Diminished Value, and Loss Of use. The following explains diminished value and loss of use claims, as well as claims for a totally destroyed vehicle. A Ferrari will be used in this explanation.

### VEHICLE DAMAGED AND REPAIRED

#### DIMINISHED VALUE-WHAT IS IT?

If two identical Ferraris (same year, model, color, and options) were being sold for \$250,000.00, and one had been moderately damaged *but perfectly repaired so that it was just as good a vehicle as the other Ferrari that had never been damaged*, which would you buy? Almost everyone would only buy the undamaged Ferrari, for various reasons: How do I know that the damaged Ferrari was perfectly repaired? Or, I don't have to buy a repaired Ferrari when I can buy for the same price an identical vehicle that has never been damaged; Or, I am concerned about its resale value. But if you decide to buy the Ferrari for \$200,000.00 and take your chances, the car has diminished in value \$50,000.00 (\$250,000.00 - \$200,000.00) as a result of the damage to it. This is the economic theory and reality of diminished value.

#### THE CONCEPT OF VALUE

Remember, the damaged and repaired Ferrari is just as pristine a vehicle as the undamaged Ferrari. One vehicle is just as good as the other. So, why won't people buy the damaged and repaired car for the same price as the undamaged one? The reason must not reside in the vehicles themselves because equally pristine cars would not result in favoritism. The answer must, and indeed does, lie apart from the vehicles. The answer is: The value of any object rests not in the object itself, but in the minds of the sellers and buyers. Horses, beaver hats, and buggy whip prices fluctuate with the desires of the sellers and buyers at different times in history. What one must have today may be worth nothing tomorrow. Knowing that value exists in the mind and not the item explains why prices vary for two identical items with different histories but identical inherent worth. Thus the correct answer to the question "why did you pay that much or little for something" is: Because I wanted to. And the answer to the question of "how can the damaged and repaired Ferrari diminish \$50,000.00 when it's just as good a vehicle as the undamaged Ferrari" is: Because that's all the buying public wanted to pay.

#### THE LAW

So, based on the economic model above, the law<sup>1</sup> defines diminished value as the difference between the market value of a vehicle immediately before an accident (\$250,000.00)

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<sup>1</sup> I will apply only Texas law for diminished value, loss of use, and totally destroyed vehicles. However, because the laws of the various states and countries are presumably based on the same economic concepts, the laws of other states and countries may be identical or similar to Texas law. Of course the vehicle owner must always determine the correct law to be applied.

and the market value of the vehicle immediately following its repair (\$200,000.00). Market value is defined as the amount that would be paid by a willing buyer to a willing seller when neither, respectively, must buy or sell. A vehicle's market value may be established before the accident and after its repair with evidence of auction and retail purchases of that vehicle type from sources such as Kelley Blue Book, NADA, auctions, appropriate dealerships, and private sales.

### LOSS OF USE

In addition to diminished value, the owner of a vehicle may be compensated for the loss of its use. The predominant view is that an owner must elect one of two remedies for loss of use: rental value or lost net profit. However, the owner should always check the applicable state law to determine whether the election must be made or whether the owner can claim both remedies.

### RENTAL VALUE

An owner may obtain the rental value (for example, \$1,000.00/day for a Ferrari) for the identical vehicle or a vehicle in the same class as the damaged vehicle, times the number of days (for example, 180 days) required to repair it ( $\$1,000.00/\text{day} \times 180 \text{ days} = \$180,000.00$ ). A vehicle's rental value is obtained from agencies that rent the identical or same class of vehicle as the owner's damaged vehicle.

### NET PROFIT

During the period that an owner has lost use of a vehicle, the owner may obtain lost net profit that the vehicle would have generated had it not been damaged. Normally, a vehicle's lost net profit is determined by the owner, accountant, or economic expert.

### VEHICLE TOTALLY DESTROYED

#### MARKET VALUE

When a vehicle has been totally destroyed, an owner may recover the difference of the vehicle's market value immediately before the vehicle was destroyed (for example \$250,000.00 for a Ferrari) and immediately following its destruction (for example a \$25,000.00 salvage value;  $\$250,000.00 - \$25,000.00 = \$225,000.00$ ).

#### LOSS OF USE

For decades an owner could not be compensated for the loss of use of a vehicle that had been totally destroyed. Now, in addition to its market value at the time of the accident, an owner may obtain the vehicle's rental value (\$1,000.00/day) of the destroyed vehicle or a vehicle in its class, times the reasonable period of time (for example, 100 days) required to replace the vehicle ( $\$1,000.00/\text{day} \times 100 \text{ days} = \$100,000.00$ ), and/or lost net profit for the reasonable period of time required to replace the vehicle. A vehicle is totally destroyed when its repair cost exceeds the vehicle's market value immediately before the damage occurred.

## SUMMARY

In summary, the possible claims for a Ferrari after it has been damaged and repaired or totally destroyed are:

### DAMAGED AND REPAIRED VEHICLE

#### DIMINISHED VALUE

Vehicle's market value (\$250,000.00) immediately before it is damaged minus the vehicle's market value immediately after its repair (\$200,000.00) = \$50,000.00; and

#### LOSS OF USE

Rental fee (\$1,000.00/day) of the damaged vehicle or a vehicle in its class times the loss of use period (180 days) = \$180,000.00, and/or

The vehicle's lost net profit.

### TOTALLY DESTROYED VEHICLE

#### MARKET VALUE

Market value immediately before the vehicle's destruction (\$250,000.00) minus its market value immediately after its destruction (\$25,000.00) = \$225,000.00; and

#### LOSS OF USE

Rental fee (\$1,000.00/day) for the totally destroyed vehicle or a vehicle in its class times the reasonable period of time (100 days) required to replace the vehicle = \$100,000.00, and/or

The vehicle's lost net profit for the reasonable number of days required to replace it.

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