

## INSURANCE ISSUES

A claim for diminished value of a vehicle repaired after an accident is not covered under Section C of the Alberta Standard Auto Policy, SPF No. 1.

### ***Dion v Security National Insurance Company, 2018 ABPC 242***

#### **FACTS AND ISSUES:**

The Plaintiff Dion was insured by the Defendant, Security National Insurance Company (SNIC) pursuant to an Alberta Standard Automobile Policy S.P.F. No. 1, which provided insurance coverage to the Dion for a 2008 Cadillac Escalade SUV. Dion, while driving the insured vehicle, was involved in a collision with a moose on September 6, 2015, between Fox Creek and Valleyview, Alberta. Dion's vehicle was damaged, and SNIC undertook and paid for repairs to the vehicle. Dion claimed that the repairs done to the vehicle were inadequate, and also claimed that he had suffered additional loss by way of diminished value of his vehicle as a result of it having been involved in this accident. He also claimed for additional mileage, other travel expenses and car rental expenses.

SNIC brought an application for summary dismissal of the claim for diminished value. They argued that the policy did not provide coverage for diminished value of the SUV. Specifically, they relied on Statutory Condition 4(5) which provides as follows:

The Insurer shall not be liable for more than the actual cash value of the automobile at the time any loss or damage occurs, and the loss or damage shall be ascertained or estimated according to that actual cash value with proper deduction for depreciation, however caused, and shall not exceed the amount that it would cost to repair or replace the automobile, or any part thereof, with material of like kind and quality ...

The issue was as to whether or not a claim for diminished value was an insured loss under Section C of the SPF No. 1.

SNIC also sought to pre-emptively prevent Dion's expert on diminished value (Grieve) from being qualified to give expert evidence, arguing that his evidence had been not been accepted in previous cases and that he had a financial interest in the outcome of the case.

**HELD: For the Defendant Insurer; claim for diminished value summarily dismissed.**

The Court held that a claim for diminished value of a vehicle repaired after a

collision is excluded from coverage under Section C of the SPF No. 1:

[25] I agree with the court in **Taylor**, that even if this diminished value claim were capable of being proven, such a loss is not covered by the subject policy of insurance as it is excluded by those words in Statutory Condition 4(5), that the liability of the insurer “shall not exceed the amount that it would cost to repair or replace the automobile, or any part thereof, with material of like kind and quality”. A claim for diminished value is a claim for additional depreciation arising from the accident and not a claim relating to the actual cash value of the vehicle immediately before the accident or the cost of repairs. Therefore, it is not a claim that can be made against a party’s own insurer pursuant to SECTION C of the Alberta Standard Automobile Policy S.P.F. No. 1. Regardless of whether any claim for depreciation is related to a value of total loss or repair, the liability of the insurer is capped at an amount not to exceed the cost of repair or replacement of the automobile with material of like kind and quality.

[26] Furthermore, Barbara Billingsley, *General Principles of Canadian Insurance Law*, 2nd ed (Markham, Ont. : LexisNexis Canada, 2014) at 275, refers to *Leger v Royal Insurance Co*, 1968 CanLII 733 (NB CA), 70 DLR (2d) 344 (NBCA) and states:

“Canadian courts have made it clear that, regardless of whether an open policy provides coverage on the basis of actual cash value or on the value of replacement cost, a proper valuation of property on the date of loss should not take into account possible future events”.

The Court declined to find that Dion’s expert was not qualified:

1. The Court found that even if an expert has been disqualified previously, or may have a financial interest in the outcome, that does not mean that an expert should be disqualified from giving evidence in subsequent litigation:

[34] While the Defendant cited previous cases in which Mr. Grieve has been involved where in some instances his expertise regarding diminished value has not been accepted, or he has been found to have had a vested financial interest in the outcome of the decision, those are not issues that have been raised specifically in this application. Simply because an expert may have been disqualified at a previous trial because of a financial interest in the outcome, or because his area of expertise in a particular area was not accepted, does not mean that subsequently that expert should be disqualified in future litigation from giving, or attempting to give, expert opinion evidence. In **White Burgess**, the issue regarding lack of qualification of the expert was very case specific, which is not the situation in this application. That is to say, in *White Burgess*, the application was to disqualify the expert in that case. Here, the request is to disqualify this expert in the area of his alleged expertise, that is diminished value.

2. Also, the Court held that a motions judge’s role is not to weigh evidence or assess credibility.

## COMMENTARY:

Given the relatively small quantum of these claims, the only published cases involving Diminished Value in Alberta have been before the Provincial Court. Judges in these decisions have approached the quantification of Diminished Value in a number of ways. The Hon. Judge Skitsko has awarded damages for diminished value based on a trifurcation of this head of damages into three distinct types of damages:

1. Inherent diminished value;
2. Repair-related diminished value; and
3. Insurance diminished value.

While he has rejected claims for inherent diminished value and insurance-related diminished value, Judge Skitsko has awarded repair related diminished value in all of his reported decisions. Those repair-related damages have been assessed in each case based on Judge Skitsko's consideration of a plurality of factors, including the severity of the damage done to a vehicle in an accident, the nature of the repairs performed to that vehicle and that vehicle's actual cash value.

In an appeal to one of Judge Skitskos rulings, Justice Crighton explained that Diminished Value is a single head of special damages that must be proven by appropriate expert evidence. Those damages cannot, as is the case with general damages, be calculated by a judge based on a consideration of a plurality of factors.

### Calgary

400 - 444 7 AVE SW  
Calgary AB T2P 0X8  
**T** 403-260-8500  
**F** 403-264-7084  
1-877-260-6515

### Edmonton

2500 - 10175 101 ST NW  
Edmonton AB T5J 0H3  
**T** 780-423-3003  
**F** 780-428-9329  
1-800-222-6479

### Yellowknife

601 - 4920 52 ST  
Yellowknife NT X1A 3T1  
**T** 867-920-4542  
**F** 867-873-4790  
1-800-753-1294

© 2018 Field LLP. All rights reserved.

Information made available in this publication is for informational purposes only. It is NOT LEGAL ADVICE and should not be perceived as legal advice. You must not rely upon this information in making any decision or taking (or choosing not to take) any action. This information does not replace professional legal advice – and must not be used to replace or delay seeking professional legal advice. Any views expressed in this site are those of the authors and not the law firm of Field LLP. The act of accessing, printing or reading this publication or downloading any of the content does not create a solicitor-client relationship, and any unsolicited information or communications sent to the authors or Field LLP (by any means) is not protected by solicitor-client privilege.

"Field Law", the logo and "Because Clarity Matters" are registered trademarks of Field LLP. "Field Law" is a registered trade name of Field LLP."

[Manage Preferences](#)

