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DIMINUTION IN VALUE CASES IN ALL 50 STATES

When an automobile is damaged in an accident and then repaired, the resale value may be less than a comparable automobile that has not been damaged. In other words, the damage results in a reduction or *"diminution"* in the resale value of the automobile. An insured's claim for this reduction in value may be made against a third party that negligently caused the damage to the insured's automobile, or it may arise from a first-party claim against the insured's own physical damage coverage. The term "diminished value" can be confusing. There are three types of diminished value:

1. *Immediate Diminished Value*: This is the loss of value which results immediately after an accident before any repairs are made. It is the difference in market value immediately before and after an accident caused by a negligent tortfeasor.
2. *Inherent Diminished Value*: Also known as "residual diminished value", this refers to the loss of value of an automobile that remains after it is completely and professionally repaired. It is the loss of value that results from the simple fact that the vehicle has been in an accident. This type of diminished value is also known as "stigma damage." Given two identical vehicles on a car lot, the one never damaged is preferable to the one that has been damaged and repaired.
3. *Repair-Related Diminished Value*: This refers to the additional loss of value to a vehicle that results from incomplete or poorly performed repairs. It could include simple cosmetic damages which remain after repair or major mechanical or structural deficiencies.

The most common and widely used form of diminished value is Inherent Diminished Value. This is the diminished value referred to and made the subject of this chart. In addition, there are two types of diminished value claims, both of which are discussed in this chart:

1. *First-Party Claims*: These are claims made by the vehicle owner/policyholder against his or her own insurance company to recover the difference in the value of the vehicle before the collision and value of the vehicle after the damage caused by collision had been repaired. This type of claim is usually governed by contract law and the terms of the insurance policy. When a vehicle is damaged, a policyholder generally expects to be "made whole" by its first-party property insurer, but an insurer is legally responsible only to pay according to the terms of the policy.
2. *Third-Party Claims*: These are claims made by the owner of a vehicle against a third-party tortfeasor (person other than the insured and insurer) for negligently causing damage to the owner's vehicle. This type of claim is governed by tort law.

First-Party Claims

In the typical first-party claim, property damage is traditionally determined based on an amount which is the least of actual cash value (ACV), repair, or depreciation. With first-party coverage, auto carriers have historically taken the position that current vehicle policies were never intended to cover diminished value. Typical policy language provides coverage for "*direct and accidental loss of, or damage to, the vehicle*." The industry argument is that diminished value is an *indirect* loss and would not be covered. In 2001, the Georgia Supreme Court decided a case which challenged this viewpoint. In *State Farm Mut. Auto. Ins. Co.*

v. Mabry, 556 S.E.2d 114 (Ga. 2001)—sometimes regarded as the first diminution in value case—the Georgia Supreme Court interpreted "loss" to include residual diminished value (after repairs were property and professionally completed to the vehicle). State Farm was ordered to pay $150 million in attorneys' fees and settlement costs and to develop a claims handling procedure to evaluate and pay first-party diminished value claims. The court held that the issue as to whether diminution in value of an automobile occurs even when physical damage is properly repaired is one of fact when an insured sues its auto carrier to recover for diminution in value.

On November 29, 2001—the day after the Georgia decision in *Mabry*—the Wisconsin Court of Appeals decided Wisconsin's own first-party diminution in value case. In *Wildin v. American Family Mut. Ins. Co*., 638 N.W.2d 87 (Wis. Ct. App. 2001). The court affirmed a trial court's grant of the insurer's motion to dismiss the insured's complaint against the insurer for failure to pay residual diminished value in addition to repair costs. The insured argued that despite the repairs, no repair could have restored the vehicle to pre-loss condition because of unibody structure and/or frame damage. The court disagreed with the insured, holding that the policy language only required the carrier to pay for all necessary "repairs" and "repair," given its ordinarily understood meaning, and this did not mean the carrier had to restore the vehicle to its pre-loss *value*.

Diminished value litigation swept the country, and carriers responded by tweaking their policy language. Some included diminished value exclusions, while others added endorsements which clearly set forth that the definition of "loss" did not include any difference in the residual market value of the vehicle after repairs.

In arriving at the correct measure of damages in a first-party claim to recover under an automobile collision policy, such a claim is not a suit for damages, but a contract claim based on the terms of the insurance policy. Therefore, the measure of damages applied in a lawsuit based upon an alleged tort is not the correct rule to be applied. The language and terms of the insurance policy sued upon must prevail, and such language, so far as applicable to the question, must determine the rule as to the measure of damages to be followed. With regard to first-party claims, the Insurance Services Office (ISO) contract language (specifically the Limit of Liability Condition) arguably appears to cover only the Actual Cash Value (ACV) of the damage or the actual cost to repair the damage. There is often nothing in the policy language that would contractually cover any reduction in market value, even if the insured were able to prove the amount of reduction in value. On the other hand, the policy clearly allows the insurer to deduct for "betterment" or depreciation, although the burden of proof is on the insurer to demonstrate such depreciation or betterment. In physical damage claims, the policy allows the carrier to deduct for an *"improvement"* in value (*i.e.*, betterment) due to repairs with newer parts, but will not compensate the insured for a reduction in value due to the same accident. There is a disparity among the various states regarding recovery of diminution in value in first-party cases. Insurance claims professionals should be aware of when and how the laws of each state deal with diminution in value. Georgia is in the minority of states that require insurers to pay the diminished value as well as the cost of repair of an automobile when the policy covers "actual loss or damage", even if the insured does not make a claim for the diminished value.

In some states, a distinction is made between "diminished value" and "stigma damages." "Diminished value" is what a vehicle suffers when it sustains physical damage in an accident but, due to the nature of the damages, cannot be fully restored (via repairs) to its pre-loss condition. An example is weakened steel in the vehicle. "Stigma damages" occur when a vehicle has been fully restored to its pre-loss condition, but it carries an intangible taint due to its having been involved in an accident. *Moeller v. Farmers Ins. Co. of Washington*, 267 P.3d 998 (Wash. 2011). Stigma damages are generally disfavored. Some states have resolved this question through statute, while many others have authorized policy language that expressly excludes diminished value coverage.

Where a policy gives the insurer the option of compensating loss by either money *or* repair *or* replacement - but, does not allow a combination of the three, the *majority rule* is that payment of diminished value is not required by a "repair or replace" policy because repair unambiguously encompasses only a concept of tangible, physical value, *see, e.g., Sims v. Allstate Ins. Co.,* 851 N.E.2d 701 (Ill. App. 2006), or because a reading that encompassed value would eliminate an insurer's option to either repair or compensate with money. *See, e.g., O'Brien v. Progressive N. Ins. Co.,* 785 A.2d 281 (Del. Super. 2001). The *minority rule* is that, because the average insurance consumer would read a "repair or replace" policy to provide coverage of equal value when a car is repaired, replaced, or "totaled," the coverage provision encompasses diminished value loss, and the limits of liability and payment of loss provisions do not unambiguously exclude it. *Moeller,* supra.

Third-Party Claims

Unlike first-party claims, a third-party diminished value claim involves a tort claim and/or lawsuit filed by a vehicle owner or subrogated carrier against a tortfeasor responsible for causing damages in an accident. Each state evolved its own law of damages over time. In Wisconsin, for example, the tort measure of damages to repairable property was the lesser of (1) repairs costs, or (2) the difference between fair market value of the property immediately before and immediately after the loss. In Wisconsin, the Supreme Court rejected the blanket "lower of the two" rule and announced that in certain cases, it is possible to have both types of damages. *Hellenbrand v. Hilliard*, 687 N.W.2d 37 (Wis. App. 2004). The Supreme Court noted that, despite having previously assumed that if property is repairable, then repairing the property makes the plaintiff whole, it relied on a "collapsed basement" case to extrapolate that the mandated disclosure of an adverse condition to prospective purchasers could impair market value of the property. If an owner proves that repairs did not restore the vehicle to its pre-injury value, residual diminution in value could be recovered as an element of tort property damages.

In third-party claims for property damage to automobiles because of a collision for which a third party was at fault, the measure of damages is traditionally—but not always—the difference between the market value before and after the collision (*"diminution of value"*) or the reasonable repair value – whichever is greater. Such third-party diminution claims have generally been found by the courts to be covered by automobile insurance since the measure of damage in tort claims (which the insurer promises to pay) is the difference in the value of the property before the loss and the value of the property after the loss. For example, Texas court cases have found that legal liability for third-party damages includes diminution in value. *Ludt v. McCollum*, 762 S.W.2d 575 (Tex. 1988); *Terminix Int'l, Inc. v. Lucci*, 670 S.W.2d 657 (Tex. App. 1984). In New Jersey, however, the measure of damages is the difference between the market value of the vehicle before and after the damage occurred. However, if the vehicle is not substantially damaged and it can be repaired at a cost less than the difference between its market value before and after the damage occurred, the plaintiff's damages would be limited to the cost of the repairs. *Jones v. Lahn,* 63 A.2d 804 (N.J. 1949). Both the cost of repair and diminution in value have traditionally been regarded as acceptable methods of proving the amount of damage to property in third-party cases. In *R & Y, Inc. v. Municipality of Anchorage*, 34 P.3d 289 (Alaska 2001), the Alaska Supreme Court used *"diminution in value"* as a method of establishing tort damages. The *Restatement of Torts* § 928 states as follows:

> "*Where a person is entitled to a judgment for harm to chattels 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 repairs or restoration where feasible, with due allowance for any difference between the original value and the value after repairs*."

The following states allow recovery for diminution in value of a damaged vehicle in a third-party claim. **Arizona:** *Farmers Ins. Co. v. R.B.L. Investment, Inc.,* 675 P.2d 1381 (Ariz. 1983); **Colorado**: *Trujillo v. Wilson,* 189 P.2d 147 (Colo. 1948); *Airborne v. Denver Air Center,* 832 P.2d 1086 (Colo. App. 1992); **Florida:** *McHale v. Farm Bureau Mut. Ins. Co.,* 409 So.2d 238 (Fla. 1982); **Georgia:** *Perma Ad Ideas v. Mayville,* 282 S.E.2d 128 (Ga. 1981); **Illinois:** *Trailmobile Division v. Higgs,* 297 N.E.2d 598 (Ill. 1973); **Indiana:** *Wiese-GMC v. Wells,* 626 N.E.2d 595 (Ind. 1993); **Iowa:** *Halferty v. Hawkeye Dodge,* 158 N.W.2d 750 (Iowa 1968); **Kansas**: *Broadie v. Randall,* 216 P. 1103 (Kan. 1923); **Louisiana:** *Orillac v. Solomon,* 765 So.2d 1185 (La. 2000); **Maryland:** *Fred Frederick v. Krause,* 277 A.2d 464 (Md. 1971); **New Mexico:** *Hubbard v. Albuquerque,* 958 P.2d 111 (N.M. 1998); **New York:** *Rosenfield v. Choberka,* 529 N.Y.S.2d 455 (N.Y. 1988); **Oregon:** *EAM Advertising Agency v. Helies,* 954 P.2d 812 (Or. App. 1998); **South Carolina:** *Newman v. Brown,* 90 S.E.2d 649 (S.C. 1955); and **Virginia:** *Averett v. Shircliff,* 237 S.E.2d 92 (Va. 1977). It should be remembered that diminution in value of a vehicle after repairs have been conducted can be difficult to prove and, in some states, the burden is quite high. *EAM Advertising Agency v. Helies,* supra. In some cases, it may be necessary to actually sell it in its damaged condition in order to establish its post-crash market value or, at a minimum, engage an expert appraiser to provide a detailed report.

Formula for Determining Diminished Value Claims

In states where diminished value claims are allowed and pursued, expert testimony on the value of a vehicle remains the main avenue for proving such claims. However, an industry which thrives on simplicity and predictability has made efforts to arrive at a functional uniform formula for calculating such claims. In *State Farm Mut. Auto. Ins. Co. v. Mabry*, 556 S.E.2d 114 (Ga. 2001), the Georgia Supreme Court reviewed a class action suit involving thousands of individual first-party

inherent diminished value claims and took the initiative to arrive at a formula known as "The 17(c) Formula." State Farm sampled thousands of claims from the class to determine the best of many formulas available at that time. The 17(c) formula, based upon a previous regulation issued by the Georgia Insurance Commissioner's office and used by Safeco, Progressive, Nationwide, and Crawford & Co., resulted in the lowest calculation and was the easiest to calculate. Under the 17(c) formula, a vehicle's Base Loss in Value (10% of the National Automobile Dealers Association (NADA) retail value) is multiplied by mileage and subjective damage modifiers (severe, major, moderate, minor, and no structural damage) based on the vehicle's mileage and the amount of damage it sustained. So, for example, if a vehicle valued at $16,000 with 50,000 miles sustained moderate damage, its diminished value would be calculated as: $1600 x.50 (moderate damage modifier) x.60 (mileage modifier) for a diminished value of $480. However, this formula was for use in a class action suit and hasn't been formally adopted for general use. Many contend it arbitrarily assigns different modifiers based on mileage and damage and that a vehicle's NADA value already takes mileage into consideration, making the mileage modifier a double penalty. In addition, it is felt that the damage modifier should be based on the cost to repair, not some arbitrary scale of 0-1. Many people also contended that a vehicle must be physically inspected in order to determine its post-accident value, and the 17(c) formula is not based on a physical inspection. Despite its flaws, the 17(c) formula offers an easy and uniform way of assessing diminished value and is used by many insurers in Georgia today. The Georgia Court of Appeals has held that it is not bad faith for a first-party insurer to use this formula to calculate a diminished value claim. *Amica Mut. Ins. Co. v. Sanders*, 779 S.E.2d 459 (Ga. App. 2015).

Other states, such as North Carolina, on the other hand, uses a variety of methods to determine diminished value, including the ClaimCoach.com system and the Classic Car Appraisal Service (Don Peterson) methodology, in addition the 17(c) formula mentioned above. North Carolina has actually passed a statute which outlines the procedure for a policyholder to have a first-party diminished value claim. N.C. Gen. Stat. Ann. § 20-279.21(d)(1) provides that, if an insurer's and policyholder's estimate of diminished value differs by more than $2,000 or 25% of the vehicle's fair market retail value, then each party selects an independent appraiser to appraise the loss. If they cannot agree on a number, then a third-party umpire is called to determine the diminished value, whose report is binding on the parties. Though time-consuming, this method avoids the criticism of the 17(c) formula and keeps the parties out of court. The correct way to prove diminished value claims was followed in *Canal Ins. Co. v. Tullis*, 515 S.E.2d 649 (Ga. App. 1999), involves two options: (1) the difference of the fair market value pre- and post-collisions; and (2) the reasonable cost of repairs, together with loss of use and the value of any additional permanent impairment, provided that the aggregate of such amount does not exceed the fair market value before the collision.

The following is a summary of how the first-party and third-party Inherent Diminished Value Claims are treated in all 50 states.

STATE	FIRST-PARTY	THIRD-PARTY
ALABAMA	An insurer may not be required to compensate the insured for the difference in the vehicle's value before the collision and the vehicle's value after the damage caused by the collision have been repaired. *Pritchett v. State Farm Mut. Auto. Ins. Co*., 834 So.2d 785 (Ala. App. 2002). Where a policy of insurance provides that the insurer's liability for loss or damage to the property insured shall not exceed "what it would cost to *repair or replace* the auto or parts thereof with others of like kind and quality" the insured is entitled to recover only the cost of such repairs or replacements. *Home Ins. Co. of New York v. Tumlin*, 2 So.2d 435, 437 (Ala. 1941).	There appear to be no case decisions allowing for recovery of the residual diminution in value of a repaired vehicle in a third-party claim.

STATE	FIRST-PARTY	THIRD-PARTY
ALASKA	Courts use diminution in value in establishing the amount owed in a condemnation proceeding, but currently no Alaska cases are available that deal with a claim for the loss of value of an auto repair by an insurer. *Jackovich Revocable Trust v. State, Dep't of Transp.,* 54 P.3d 294 (Alaska 2002).	A residual diminished value claim is for the difference between the pre-accident value of a vehicle and its value after repairs. In *Willett v. State of Alaska,* 826 P.2d 1142 (1992), a criminal mischief case, the court acknowledged that *Restatement (Second) of Torts* § 928 has interpreted such that where repairs have not restored damaged property to its original value, recovery has been allowed for both cost of repairs and the difference in market value before the damage and after the repair. While it does not directly authorize diminution in value damages in Alaska, it does recognize the claim in other jurisdictions.
ARIZONA	Arizona does not allow for first-party recovery, as the courts have determined that an insured's measure of damages is not the difference in the market value of the auto immediately before and after the collision. *Johnson v. State Farm Mut. Auto. Ins. Co.*, 754 P.2d 330 (Ariz. App. 1988).	Courts agree with jurisdictions that have "generally held that the measure of compensation to the owner of a negligently damaged motor vehicle may include the cost of repair and proven residual diminution in fair market value." *Farmers Ins. Co. of Arizona v. R.B.L. Inv. Co.,* 138 Ariz. 562, 564, 675 P.2d 1381, 1383 (Ariz. Ct. App. 1983). "When the property is repaired or restored, however, the measure of damages includes the cost of repair with due allowance for any difference between the value of the property before the damages and the value after repairs, as well as the loss of use." *Oliver v. Henry*, 227 Ariz. 514, 516-17, 260 P.3d 314, 316-17 (Ct. App. 2011) (citing *Restatement (Second) of Torts* § 928 (1977)).
ARKANSAS	Courts have stated that Arkansas has maintained that the "measure of damages to personal property is the difference in the fair market value of the property immediately before and immediately after the occurrence," and that "the reasonable cost of repairs may be considered in determining this difference." *Daughhetee v. Shipley*, 669 S.W.2d 886 (Ark. 1984).	The measure of damages is the difference between the value of the vehicle immediately before and after the accident. However, when proving damages for a vehicle not a total loss, the difference in fair market value may be established by the reasonable cost of repairing the damaged property. *Crooms v. Capps*, 274 S.W.3d 364 (Ark. App. 2008). If repairs do not substantially restore vehicle to its former condition and value, the proper measure of damages is the difference in value before the accident and after the accident and repairs. *MFA Ins. Co. v. Citizens Nat. Bank of Hope*, 545 S.W.2d 70 (Ark. 1977).

STATE	FIRST-PARTY	THIRD-PARTY
CALIFORNIA	Depends on policy language. Courts have held that, where damaged auto was repaired to "its pre-accident safe, mechanical, and cosmetic condition," an insurer's obligation to repair to "like kind and quality" is discharged according to the insurance policy. A court will not rewrite an otherwise unambiguous limitation of collision coverage to provide for a risk not bargained for. When carrier repairs car to its pre-accident condition, it's not also required to pay for any loss of value to vehicle, which can occur after a seriously damaged vehicle is fully repaired. (Croskey, *et al*., Cal. Practice Guide: Insurance Litigation, *supra,* ¶ 6:2025, p. 6G-4.). "To hold [the insurer] liable for the automobile's diminution in value... would render essentially meaningless its clear right to elect to repair rather than to pay the actual cash value of the vehicle at the time of loss." *Ray v. Farmers Ins. Exch.,* 200 Cal. App.3d 1411 (Cal. App. Dist. 3, 1988). If a policy covers "damages for property damage for which an insured person is legally liable because of an accident." "Property damage" is defined as "physical damage to tangible property, including destruction or loss of its use." Although diminution in value is not itself a form of physical damage, it is an accepted way of measuring damage and, therefore, should be paid. *Copelan v. Infinity Ins. Co.*, 2018 WL 2714588 (9th Cir. 2018). An insurance policy which states that "…at [defendant's] option" it may "pay for a loss less any depreciation" or, alternatively, "repair or replace any damaged or stolen property with like kind and quality less any depreciation" expressly excludes coverage for "any diminution in the value" If an insurer opts to repair a vehicle rather than declare it a loss and pay its pre-accident value, the insurer's obligation to insured is discharged if those repairs return the car to its "pre-accident safe, mechanical, and cosmetic condition." This does not require restoration to "pristine factory condition" or to its pre-accident market value. *Foster v. Interinsurance Exchange*, 2018 WL 1980943 (Cal. App. 2018). Where insurance policy contains no provision requiring carrier to pursue insured's diminished value claim or wait to assert its subro claim, there's no bad faith or breach of contract. Insurer doesn't need to consider diminished value in electing to repair vehicle. *Carson v. Mercury Ins. Co.*, 210 Cal. App.4th 409 (Cal. App. 2012) (finding insurance company's "failure to take into account vehicle's depreciation in value when opting to repair vehicle cannot be deemed against public policy or covenant of good faith"). *Copelan v. Infinity Ins. Co.*, 192 F. Supp.3d 1063 (C.D. Cal. 2016).	This issue is confusing in California. While no court decisions regarding recovery allowed for diminution in value of a damaged vehicle in a third-party claim, the new jury instruction for auto property damage seems to allow a jury to award it. Recovery for third-party property damages is limited to the difference between the FMV of the vehicle before the loss and its value after the loss. *Ray v. Farmers Ins. Exch.*, 200 Cal. App.3d 1411 (Cal. App. Dist. 3, 1988); *Moran v. California Dep't of Motor Vehicles*, 139 Cal. App.4th 688 (Cal. App. Dist. 4, 2006). The California Jury Instruction (CACI-3903J, 2017), reads in part as follows: *However, if you find that the [e.g., automobile] can be repaired, but after repairs it will be worth less than it was before the harm, the damages are (1) the difference between its value before the harm and its lesser value after the repairs have been made plus (2) the reasonable cost of making the repairs. The total amount awarded may not exceed the [e.g., automobile] value before the harm occurred.*

STATE	FIRST-PARTY	THIRD-PARTY
COLORADO	"When an automobile insurer promises to provide an insured with a vehicle 'of like kind and quality,' the insurer must provide the insured, through repair, replacement, and/or compensation, the means of acquiring a vehicle substantially similar in function and value to that which the insured had prior to his or her accident." *Hyden v. Farmers Ins. Exch.*, 20 P.3d 1222 (Colo. App. 2000).	Courts have held that "the measure of damage is the difference between its value immediately before its damage and immediately thereafter, together with any expense of reasonable efforts to preserve or restore it." *Trujillo v. Wilson*, 117 Colo. 430, 434, 189 P.2d 147, 150 (Colo. 1948); *Larson v. Long,* 219 P. 1066 (Colo. 1923) (permitting "admission of evidence of the [diminution] in value of defendant's car because of its having been in the accident" because such "[diminution] is an element of damage").
CONNECTICUT	The court has discretion to select the repair measure which stands in as a substitution for diminution in value caused by damage to property. There are currently no cases available dealing with insurance recovery as differentiated from tort recovery. *Willow Springs Condominium Ass'n, Inc. v. Seventh BRT Dev. Corp.*, 245 Conn. 1 (Conn. 1998).	Plaintiff is entitled to recover the reasonable repair costs and any residual diminution in value. *Littlejohn v. Elionsky,* 36 A.2d 52 (Conn. 1944); *Stults v. Palmer,* 141 Conn. 709 (1954); *Damico v. Dalton*, 1 Conn. App. 186 (1984); *Papenheim v. Lovell*, 530 N.W.2d 52 668, 672 (Iowa 1995); *Alexander v. Bailey*, 55 Conn. L. Rptr. 653 (2013); *Chenevert v. Turek*, 2013 WL 6671512 (Conn. 2013); *Corridino v. Kovaks, et al.,* 2013 WL 8118969 (Conn. 2013); *Sheldon v. Soucy*, 2014 WL 1814279 (Conn. 2014); *Bartnick v. Stehr*, 2014 WL 5094332 (Conn. 2014).
DELAWARE	Delaware Superior Court briefly determined that the majority of jurisdictions requiring the insurer to pay for diminution in value is the better view. However, the Delaware Supreme Court overruled that decision by holding that: "We conclude that the language '*repair and replace*' is not ambiguous and that this language does not contemplate payment for diminution of value." *Delledonne v. State Farm Mutual Ins. Co.,* 621 A.2d 350, 352 (Del. Super. Ct. 1992); *O'Brien v. Progressive Northern Ins. Co.*, 785 A.2d 281 (Del. 2001).	No court decisions regarding recovery allowed for diminution in value of a damaged vehicle in a third-party claim.
DISTRICT OF COLUMBIA	D.C. courts have allowed for a tort remedy, but they have not addressed the issue when it involves the coverage available under an insurance policy. Other jurisdictions were referenced when they determined that "recovery may be had for both the reasonable cost of repair and the residual diminution in value after repair, provided that the award does not exceed the gross diminution in value." *American Service Center Associates v. Helton*, 867 A.2d 235 (D.C. 2005).	No court decisions regarding recovery allowed for diminution in value of a damaged vehicle in a third-party claim.

STATE	FIRST-PARTY	THIRD-PARTY
FLORIDA	Courts have held that that an auto collision policy which provides that the insurer must repair or replace the damaged vehicle "with other of like kind and quality" does not require the insurer "to compensate the insured in money for any diminution in market value after the insurer completes a first-rate repair which returns the vehicle to its pre-accident level of performance, appearance, and function." *Siegle v. Progressive Consumers Ins. Co.*, 819 So.2d 732 (Fla. 2002).	Florida courts have held that "the cost of the repairs made plus the diminution in value will ordinarily be the proper measure of damages, with the burden on the plaintiff to prove in addition to the cost of repairs, that he suffered the additional damage of diminution of value by the vehicle having been involved in the accident." *McHale v. Farm Bureau Mut. Ins. Co.*, 409 So.2d 238, 239 (Fla. Dist. Ct. App. 1982); *Airtech Serv., Inc. v. MacDonald Constr. Co.*, 150 So.2d 465 (Fla. App. 1963). In *McHale*, Florida's Third District Court of Appeal describes *Airtech* as "not a 'cost-of-repair' case, but a 'total destruction' case." *McHale*, 409 So.2d at 239. It is not necessary for the vehicle to be sold before damage for diminished value is realized and can be recovered. *Meakin v. Dreier*, 209 So.2d 252 (Fla. App. 1968).
GEORGIA	The Georgia Supreme Court decided what is probably the seminal case in the country regarding first-party diminution in value cases. In *State Farm Mut. Auto. Ins. Co. v. Mabry*, 556 S.E.2d 114 (Ga. 2001), the court determined that the public policy of Georgia requires insurers to pay the diminished value, as well as the cost of repair of an auto, even if the insured does not make a claim for the diminished value, if the terms of the policy are like those of State Farm's. The court held State Farm had a duty to evaluate all first-party physical damage claims for the existence of diminution in value. In an action by the owner of personal property, such as an automobile, to recover for loss or damage sustained by him because of a tortious injury thereto, the measure of damages is to be determined under general principles of law. In a suit on a contract, as a policy of insurance, whereby the owner is insured against actual loss or damage to an automobile by collision, the measure of the insurer's liability will be determined according to the terms of the contract. In a more recent case, the insured could seek both costs of repair to a building and any post-repair diminution in building's value resulting from damage. *Royal Capital Dev., LLC v. Maryland Cas. Co.*, 728 S.E.2d 234 (Ga. 2012).	Damages to a motor vehicle may be proven either by showing difference between fair market value of vehicle before collision and market value after collision, or by proof of reasonable value of labor and material used for necessary repairs that are the direct and proximate result of collision, together with loss of use, plus the value of any permanent impairment in the value of the vehicle. *Myers v. Thornton*, 480 S.E.2d 334 (Ga. App.1997). Georgia courts have found that in a third-party action "[t]he measure of damages in an action to recover for injuries to a motor vehicle… is the difference between the value of the vehicle before and after the collision or other negligence" or in a case where the owner repairs the vehicle, damage can be shown by "the reasonable value of labor and material used for the repairs and the value of any depreciation (permanent impairment) after the vehicle was repaired, provided the aggregate of these amounts does not exceed the value of the vehicle before the injury." *Perma Ad Ideas of Am., Inc. v. Mayville*, 158 Ga. App. 707 (1981).

STATE	FIRST-PARTY	THIRD-PARTY
HAWAII	Hawaii courts have used diminution in value to establish value for the purposes of condemnation, along with using diminution as the method of establishing values for loss to real property. *County of Kauai v. Pacific Standard Life Ins. Co*., 653 P.2d 766 (Haw. 1982); *Clog Holdings, N.V. v. Bailey,* 992 P.2d 69 (Haw. 2000), *Opinion Ordered Depublished* (April 20, 2000).	No court decisions regarding recovery allowed for diminution in value of a damaged vehicle in a third-party claim.
IDAHO	Idaho courts have addressed diminution by speaking to the requirement, in a suit against a title company, to show some diminution in value of the real property. *Boel v. Stewart Title Guaranty Co.,* 43 P.3d 768 (Idaho 2002).	No court decisions regarding recovery allowed for diminution in value of a damaged vehicle in a third-party claim.
ILLINOIS	Evidence of diminution in value will lead to coverage for property damage even though there was no physical injury. Alleged diminution in value of homes from installation of plumbing system was not "physical injury to tangible property," within meaning policies. *Traveler's Ins. Co. v. Eljer Mfg., Inc.,* 757 N.E.2d 481 (Ill. 2001). Illinois courts have also held that "[t]o expand the ordinary meaning of 'repair or replace... with other of like kind and quality' to include an intangible, diminished-value element would be ignoring the policy's language or giving the policy's text, a meaning never intended." *Sims v. Allstate Ins. Co.,* 851 N.E.2d 701 (Ill. App. 2006). The term "like kind and quality," means "sufficient to restore a vehicle to its pre-loss condition." Use of non-OEM parts would not necessarily constitute a breach of the "like kind and quality" promise. *Avery v. State Farm Mut. Auto. Ins. Co.*, 835 N.E.2d 801 (Ill. 2005).	Illinois courts have stated that "[t]he measure of damages for a repairable injury to personal property, is ordinarily the cost of making the repair and the value of the use of the property while the owner is necessarily deprived of it by reason of the repair. If the property is worth less after it is repaired than its value before the injury, the measure of damages is the difference in the market value before the injury and in its repaired condition in addition to the reasonable cost of repairs." *Trailmobile Div. of Pullman, Inc. v. Higgs*, 12 Ill. App. 3d 323 (1973).

STATE	FIRST-PARTY	THIRD-PARTY
INDIANA	Indiana Supreme Court has found that diminution in value may not be recovered by the insured of an auto policy and noted that a policy may provide that the insurer may choose to pay either the actual cash value of the vehicle or the amount necessary to repair, not some combination of the two. *Allgood v. Meridian Security Ins. Co.*, 836 N.E.2d 243 (Ind. 2005).	A plaintiff in a third-party claim is entitled to recover both the cost of repair and inherent or "residual" diminished value. Evidence of the FMV of the vehicle *after* repairs is required. *Shield Global Partners-G1, LLC v. Forster*, 2020 WL 811645 (Ind. App. 2020). Indiana courts have adopted the measure of damages as in the *Restatement (Second) of Torts*, stating that "the fundamental measure of damages in a situation where an item of personal property is damaged, but not destroyed, is the reduction in fair market value caused by the negligence of the tortfeasor." *Wiese-GMC, Inc. v. Wells*, 626 N.E.2d 595 (Ind. Ct. App. 1993). This includes the residual diminished value remaining after a vehicle is repaired but still hasn't been restored to its pre-accident fair market value due to the fact that the vehicle has been in an accident. *Dado v. Jeeninga*, 743 N.E.2d 291, 294 (Ind. App. 2001); *Wiese–GMC, Inc. v. Wells*, 626 N.E.2d 595 (Ind. App. 1993), *trans. denied; Restatement (Second) of Torts* § 928 (1977). In suit for DIV under UIM policy, court said that because UIM policy was paying on behalf of uninsured tortfeasor, it also owed DIV damages. *Dunn v. Meridian Mut. Ins. Co.,* 836 N.E.2d 249 (Ind. 2005).
IOWA	Diminished value policy provisions rescinded by Insurance Adjustment Bureau 4/28/04, effective 4/7/04. Iowa Admin. Code R. § 191-15.43(507B).	Diminished value after repairs may be recovered if supported by expert testimony and the evidence, and the amount of diminished value damages lies within the sound discretion of the court or jury. *Hawkeye Motors, Inc. v. McDowell*, 541 N.W.2d 914 (Iowa App. 1995).
KANSAS	10th Circuit decision (Kansas law) says that a commercial inland marine policy covers post repair diminution in value of dealer's automobiles that were damaged by hail and such coverage was not defeated by "loss of market" exclusion. *Boyd Motors, Inc. v. Employers Ins. of Wausau*, 880 F.2d 270 (10th Cir. 1989).	When the repair of an injury does not restore the property to its original condition and value but is a reasonable effort to make it as nearly usable as practicable, and as repaired is not as valuable as it was before the injury, the cost of the repair together with the difference in value of the repaired property and its value before injury might in some cases be a fair measure of the loss sustained. *Broadie v. Randall,* 216 P. 1103 (Kan. 1923). Diminution in value damages are coverable if the value after repairs is less than it was before the accident. *Venable v. Import Volkswagen, Inc.,* 519 P.2d 667 (Kan. 1974).

STATE	FIRST-PARTY	THIRD-PARTY
KENTUCKY	An insurer is required to restore the physical condition but not the value of the damaged automobile, which was previously followed by the Court of Appeals in *Tomes v. Nationwide Ins. Co.*, 825 S.W.2d 284 (Ky. App. 1991) and *General Accident Fire & Life Assurance Corp. v. Judd*, 400 S.W.2d 685 (Ky. 1966).	In 2018, the Court of Appeals applied the DIV rule with regard to real property to third-party vehicle damages. *Muncie v. Wiesemann*, 548 S.W.3d 877 (Ky. 2018). The recovery shall be the difference in value of the property before the injury occurred, and the value immediately after it is completed. The after-value shall take into account stigma damages, if any. *Conrad v. Shrout*, 2018 WL 3814610 (Ky. App. 2018).
LOUISIANA	The Louisiana Court of Appeals has held that "the insurer's obligation is satisfied once payment is made for the full and adequate physical repair of a damaged vehicle…" *Campbell v. Markel American Ins. Co.*, 822 So.2d 617 (La. App. 2001). Class action against Prudential for failure to pay its insureds for post-repair diminished value. Court said insurer was not required to compensate insured for post-repair diminished value of her damaged vehicle under "repair or replace" language in policy limits. *Manguno v. Prudential Prop. & Cas. Ins. Co.*, 276 F.3d 720 (5th Cir. 2002) (Louisiana law). Another Court of Appeals case required proof of diminution: "diminution in value of a vehicle involved in an accident is an element of recoverable damages if sufficiently established… where the measure of damages is the cost of repair, additional damages for depreciation may be recovered for the diminution in value due to the vehicle's involvement in an accident." *Defraites v. State Farm Mut. Auto. Ins. Co.,* 864 So.2d 254 (La. App. 2004). Collision policy which says insurer will repair or replace does not provide coverage for diminished value. *Campbell v. Markel American Ins. Co.*, 822 So.2d 617 (2001); *Townsend v. State Farm Mutual Auto. Ins. Co.*, 793 So.2d 473 (La. App. 2001).	As of 2010, L.S.A. § 2800.17 ("liability for the diminution in the value of a damaged automobile") governs third-party liability for the diminution in the value of a damaged vehicle and provides: *Whenever a motor vehicle is damaged through the negligence of a third-party without being destroyed, and if the owner can prove by a preponderance of the evidence that, if the vehicle were repaired to its pre-loss condition, its fair market value would be less than its value before it was damaged, the owner of the damaged vehicle shall be entitled to recover as additional damages an amount equal to the diminution in the value of the vehicle. Notwithstanding, the total damages recovered by the owner shall not exceed the fair market value of the vehicle prior to when it was damaged, and the amount paid for the diminution of value shall be considered in determining whether a vehicle is a total loss pursuant to R.S. 32:702*. L.S.A. § 2800.17; <u>see</u> <u>also</u>, *Orillac v. Solomon*, 765 So.2d 1185 (La. 2000). Diminution in value due to flood damage to vehicle recoverable when, despite repairs, flood-damaged vehicle suffered from residual odor. *Rich v. Liberty Mutual Ins. Co.*, 798 So.2d 1201 (La. App. 2001).

STATE	FIRST-PARTY	THIRD-PARTY
MAINE	An insurer's liability for a loss under the policy extends only to the loss that can be repaired as that term is commonly understood. Because diminution in value is a loss that cannot be repaired, an ordinary person would reasonably conclude that a claim for diminished value is not covered by the policy. No coverage for DV because it is a loss that cannot be repaired, the principle being that a value that cannot be restored is uninsurable (*e.g.,* akin to the sentimental value of a family heirloom). *Hall v. Acadia Ins. Co.*, 801 A.2d 993 (Me. 2002). An owner or subrogated carrier may recover the difference in the value of auto before and after the accident. However, an auto insurance policy, which obligates the insurer to pay lesser of either actual cash value of vehicle at time of loss or amount necessary to repair or replace vehicle, does not mandate liability for diminution in vehicle's value due to accident despite repair, given that policy's use of term "repair" was unambiguous, and such diminution was not loss that could be repaired. *Collins v. Kelley*, 179 A. 65 (Me. 1935).	No court decisions regarding recovery allowed for diminution in value of a damaged vehicle in a third-party claim.
MARYLAND	Diminution of value has been found to be appropriate as a measure of damages in a condemnation case. *Reichs Ford Road Joint Venture v. State Roads Comm'n of the State Hwy. Admin.,* 880 A.2d 307 (Md. 2005).	Maryland courts have determined that "if [a] plaintiff can prove that after repairs his vehicle has a diminished market value, then he can recover in addition to the cost of repairs the diminution in market value, provided the two together do not exceed the diminution in value prior to the repairs." *Fred Frederick Motors, Inc. v. Krause*, 277 A.2d 464 (Md. 1971).

STATE	FIRST-PARTY	THIRD-PARTY
MASSACHUSETTS	Courts have stated that they will use usual standards of contract interpretation and have held that "[n]o 'objectively reasonable insured, reading the relevant policy language' would conclude that these terms include compensation for diminution in market value or for anything else beyond restoration of the vehicle's pre-collision physical condition." *Given v. Commerce Ins. Co.*, 440 Mass. 207 (Mass. 2003). In *Roth v. Amica Mut. Ins. Co*., 796 N.E.2d 1281 (Mass. 2003), the court followed *Given,* but noted that, "[i]n an appropriate case, a plaintiff may successfully claim damages based on an insurer's specification of [use of] a substandard non-OEM part, or successfully demonstrate that the insurer's duty to repair or replace can only be satisfied by the designation of a particular OEM part to repair the specific damage to that vehicle. There are parts of some vehicles where unique dimensions or specifications of the part are such that only a replacement part from the original manufacturer will suffice to restore the vehicle to its proper functioning condition." *Roth* ruled that DV is not covered, *Given* contradicted this ruling by stating that DV was "inherent" in physical damage claims. As a result, Deputy Commissioner and General Counsel Daniel R. Judson of the Massachusetts Division of Insurance issued a May 2002 advisory opinion that stated that the Division's position was that the standard auto insurance policy does not provide coverage "for so-called 'inherent diminished value,' nor has the Division ever intended the language to provide such coverage." Judson added that there are no statutes or regulations requiring insurers to pay claims for diminished value, or rates to include a premium charge for diminished value.	Inherent diminished value is not owed to a third party on a repaired vehicle. *Martins v. Vermont Mutual Ins. Co.,* 2019 WL 3818293 (D. Mass. 2019) (unpublished).
MICHIGAN	Insurers' obligation under auto policies to "repair or replace" did not require payment for diminution in value of vehicle as result of accident, where provisions expressly limited coverage to lesser of actual value or cost of repair. *Driscoll v. State Farm Mut. Auto. Ins. Co.*, 227 F. Supp.2d 696 (E.D. Mich. 2002).	No court decisions regarding recovery allowed for diminution in value of a damaged vehicle in a third-party claim.
MINNESOTA	Policy required insurer to compensate insured for the loss of value (depreciation) not fully compensated for by repair. *Ciresi v. Globe & Rutgers Fire Ins. Co.*, 244 N.W. 688 (Minn. 1932).	No court decisions regarding recovery allowed for diminution in value of a damaged vehicle in a third-party claim.

STATE	FIRST-PARTY	THIRD-PARTY
MISSISSIPPI	Mississippi courts have held that if, despite repairs, there remains a loss in actual market value, that deficiency is added to the cost of the repairs; and that the measure of loss to an auto damaged, but not destroyed by a collision, is the difference between its reasonable market value immediately prior to the collision and its reasonable market value after all reasonable and feasible repairs have been made. *Potomac Ins. Co. v. Wilkinson*, 57 So.2d 158 (Miss. 1952); *Calvert Fire Ins. Co. v. Newman,* 124 So.2d 686 (Miss. 1960).	Cost of repair of damaged vehicle may be recovered in third-party claim, as well as remaining diminution in pre-tort value after proposed repairs, but in no event, may cost of repair be recovered to extent it exceeds total diminution in pre-tort value, in case of one holding personalty for sale rather than for personal use. *Ishee v. Dukes Ford Co.*, 380 So.2d 760 (Miss. 1980). Recovery for residual diminution in value allowed, but doubtful that an owner's testimony could constitute sufficient proof. *Thomas v. Global Boat Builders & Repairmen, Inc.,* 482 So.2d 1112 (Miss. 1986). But see, *Regency Nissan, Inc. v. Jenkins*, 678 So.2d 95 (Miss. 1995), *as modified on reh'g* (Aug. 22, 1996) (suggesting that owner should be able to testify to property value).
MISSOURI	If policy language is unambiguous regarding no coverage for diminution, the diminished value is not a covered loss and the insurer's liability was capped at either the actual cash value of the auto or the cost to repair or replace the damaged auto itself or with parts or property of like kind and quality. *Lupo v. Shelter Mut. Ins. Co.*, 70 S.W.3d 16 (Mo. App. 2002). However, the Missouri Court of Appeals has held that "If the insurer, permitted to undertake repairs, falls short of substantial restoration of function, appearance and value, the insured, upon proper showing, can recover damages in an amount equal to the difference between the reasonable market value of the insured automobile immediately prior to the upset and its reasonable market value when tendered to plaintiff after repairs." *Williams v. Farm Bureau Mut. Ins. Co. of Mo.*, 299 S.W.2d 587 (Mo. Ct. App. 1957).	Although proper measure of damages in an automobile collision case is generally the difference between the market value of automobile before collision and its value after collision, that is not the only measure of damages allowable; also allowable are the cost of repairs and the difference between the market value of the car before the collision and its value after the repairs. *Rook v. John F. Oliver Trucking Co.*, 556 S.W.2d 200 (Mo. App. 1977); *Hood v. M. F. A. Mutual Insurance Co.*, 379 S.W.2d 806 (Mo. App. 1964); *Langdon v. Koch*, 393 S.W.2d 66 (Mo. App. 1965). There may be other items of loss, such as cost of preservation and diminution of damage and loss of use, which would be added to the total damage suffered by the owner. and the amount, if any, of the deterioration of the repaired car, being the difference in the reasonable market value of the car immediately before the accident and the reasonable market value of the same after it had been repaired. *Gilwee v. Pabst Brewing Co.*, 193 S.W. 886 (Mo. App. 1917).

STATE	FIRST-PARTY	THIRD-PARTY
MONTANA	Where the policy limits the insurance company's liability to the actual cost of replacement of the property damaged or destroyed, "replacement" means the restoration of the property to its condition prior to the injury. Such restoration may or may not be accomplished by repair or replacement of broken or damaged parts. There is not a complete restoration of the property unless there has been no diminution in value after repair of the car. Courts have differed in their construction of similar limitation clauses and will probably continue to do so, so long as policies are couched in language tending toward uncertainty and confusion. *Eby v. Foremost Ins. Co.*, 374 P.2d 857 (Mont. 1962).	No court decisions regarding recovery directly allow recovery of diminution in value of a damaged vehicle in a third-party claim. In *Hop v. Safeco Ins. Co. of Illinois*, 261 P.3d 981 (Mont. 2011), the Supreme Court intimated that the availability of third-party recovery of inherent diminution in value damages is still an open question in Montana, finding in that particular case, that the diminution in value claim was not ripe for adjudication because the Supreme Court had not yet addressed the question of whether insurers in Montana have an obligation to pay residual diminished value claims.
NEBRASKA	Where damage to vehicle can, at a reasonable cost, be repaired and the property restored to substantially its condition immediately before damage occurred, and cost of repair does not exceed difference in market value of the property before and after injury, then measure of damages is reasonable cost of repair plus reasonable value of loss of use of the property for the reasonable amount of time required to complete repair. Loss of market value is only recoverable when vehicle is not repaired. *Chlopek v. Schmall*, 396 N.W.2d 103 (Neb. 1986).	No court decisions regarding recovery allowed for diminution in value of a damaged vehicle in a third-party claim.
NEVADA	Currently no applicable Nevada court decisions can be found regarding recovery allowed for diminution in value in a first-party claim. However, Nevada statutory law provides that when an insurer elects to repair a vehicle, the only requirement is that the insurer restores the damaged vehicle to its condition before the loss. No mention is made of payment for residual diminished value. Nev. Admin. Code § 686A.680.	No court decisions regarding recovery allowed for diminution in value of a damaged vehicle in a third-party claim.
NEW HAMPSHIRE	Currently no applicable New Hampshire court decisions can be found regarding recovery allowed for diminution in value in a first-party claim.	No court decisions regarding recovery allowed for diminution in value of a damaged vehicle in a third-party claim.

STATE	FIRST-PARTY	THIRD-PARTY
NEW JERSEY	Depends on policy language. Early case law says that actual cash value of an auto loss is established as fair market value and have applied principles holding that when the cost to repair a vehicle is proven, but there exists additional proof showing that even with the repair, the vehicle has depreciated, the plaintiff is entitled to the reasonable cost of repair plus the depreciation, if any. *Fanfarillo v. East End Motor Co.,* 411 A.2d 1167 (N.J. App. 1980). Where policy unambiguously excludes coverage for diminution of value the insurer's liability is capped at the cost of returning the damaged vehicle to substantially the same physical, operating, and mechanical condition as existed immediately before the loss. Insurer's obligation does not include liability for any inherent diminished value caused by conditions or defects that are not subject to repair or replacement, such as a stigma on resale resulting from "market psychology" that a vehicle that has been damaged and repaired is worth less than a similar one that has never been damaged. *Kieffer v. High Point Ins. Co.*, 25 A.3d 1206 (N.J. Super. App. 2011).	Measure of damages, when auto is damaged, is the difference between the reasonable market value of auto before and after the tortious injury *and the* cost of repair *and* the depreciated value of vehicle because of having been in an accident, is the appropriate measure of damages, so long as total does not exceed the diminution in market value and does not exceed the pre-accident market value of the vehicle. *Fanfarillo v. E. End Motor Co.*, 411 A.2d 1167 (N.J. Super. 1980). In *Fanfarillo,* the value before the theft was $7,900 and after the theft $5,000, a difference of $2,900. There was also evidence that the vehicle as repaired was worth only $7,500, so that the jury could have found total damages to the vehicle of $2,313 ($1,913 for the cost of repair and $400 depreciated value).
NEW MEXICO	The New Mexico Court of Appeals has followed the majority trend toward disallowing recovery for the diminished market value under the terms of plaintiff's policy of insurance. *Davis v. Farmers Ins. Co. of Ariz.,* 142 P.3d 17 (N.M. App. 2006).	New Mexico has held that "damage awards should provide full and just compensation for the injured party", and that such compensation is tantamount to the concept of making the injured person whole. It has also been stated that the proper measure of damages for personal property damage will be whichever is less - repair costs plus depreciation or reduction in market value. *Hubbard v. Albuquerque Truck Ctr. Ltd.*, 125 N.M. 153 (1998).

STATE	FIRST-PARTY	THIRD-PARTY
NEW YORK	In *Edwards v. Maryland Motor Car Ins. Co.,* 197 N.Y.S. 460 (N.Y. App. Div. 1922), the court held that diminution in value is damage embraced within the clause of the policy insuring the plaintiff against direct loss or damage by the peril of theft. The policy contained language that the insurance company had the option to "repair, rebuild, or replace the property lost or damaged with other of like kind and quality." The court found that "diminution in value is damage embraced within the clause of the policy insuring plaintiff 'against direct loss or damage' by the perils of 'theft, robbery or pilferage.'" The court went on to state that the liability is not severed by making the insurance company liable for actual cost of repairs or replacement. The court notes that this case allowed recovery for diminished value by finding coverage in another section of the insurance policy and not due to any obligation to repair the auto with like kind and quality.	In *Miller v. Sanchez*, 6 Misc.3d 479, 789 N.Y.S.2d 850 (N.Y. City Civ. Ct. 2004), the court accepted the difference in value as the proper measure of tort damages. If the auto is of the type that appreciates in value, such as with rare automobiles, or is otherwise unique or brand new, third-party diminution of value damages for a motor vehicle are recoverable in addition to the cost of repairs even if the repairs restore the vehicle to its pre-accident condition. Cost of repairs and residual diminution in value are the proper measure of damages. It is not the diminution in value based on the value of the car before the accident and immediately after the accident. *Franklin Corp. v. Prahler*, 932 N.Y.S.2d 610 (N.Y. App. 2011); *Rosenfield v. Choberka*, 529 N.Y.S.2d 455 (N.Y. 1988) (vehicle "a few weeks" old); *Parkoff v. Stavsky*, 2013 WL 4528799 (N.Y. App. 2013) (Mercedes-Benz with only 398 miles); *Johnson v. Scholz,* 93 N.Y.S. (N.Y. Sup. 2011) (collector automobile). See also *Jacobson v. Purdue*, 2018 N.Y. Slip Op. 52001 (N.Y. Sup. 2018).

STATE	FIRST-PARTY	THIRD-PARTY
NORTH CAROLINA	North Carolina courts have essentially found that the measure of damages is the fair market value of the car immediately before the collision and the fair market value after the accident: "where the insurer elects to repair the damaged automobile and represents, at least tacitly, that it will place the vehicle in the condition that it was in previously, the insured has no choice but to acquiesce, and the original contract of the parties is converted into a new one, under which the insurer is bound to repair the automobile and restore it to its former condition." *Pierce v. American Fidelity Fire Ins. Co.*, 83 S.E.2d 493 (N.C. 1954). North Carolina uses a variety of methods to determine diminished value, including the ClaimCoach.com system and the Classic Car Appraisal Service (Don Peterson) methodology, in addition the 17(c) formula mentioned in the introduction to this chart. North Carolina has actually passed a statute which outlines the procedure for a policyholder to have a first-party diminished value claim. N.C. Gen. Stat. Ann. § 20-279.21(d)(1) provides that, if an insurer's and policyholder's estimate of diminished value differs by more than $2,000 or 25% of the vehicle's fair market retail value, then each party selects an independent appraiser to appraise the loss. If they cannot agree on a number, then a third-party umpire is called to determine the diminished value, whose report is binding on the parties. Though time-consuming, this method avoids criticism of the 17(c) formula and keeps parties out of court.	The measure of damage for injury to personal property is the difference between the market value of the property immediately before the injury and the market value immediately after the injury. *DeLaney v. Henderson-Gilmer Co.*, 135 S.E. 791 (N.C. 1926). Evidence of the reasonable value of repairs to a damaged vehicle, and the reasonable market value of the vehicle as repaired, are admissible to show the difference in its value before and after it was injured. *U. S. Fid. & Guar. Co. v. P. & F. Motor Express*, 18 S.E.2d 116 (1942). North Carolina Jury Pattern Instructions provide that, "The plaintiff's actual property damages are equal to the difference between the fair market value of the property immediately before it was damaged and its fair market value immediately after it was damaged." If evidence of repair is introduced: "Evidence of [estimates of the cost to repair] (and) [the actual cost of repairing] the damage to the plaintiff's property may be considered by you in determining the difference in fair market value immediately before and immediately after the damage occurred." Property Damages--Diminution in Market Value., N.C. Pattern Jury Inst. - Motor Veh. § 106.62. 11 N.C. Admin. Code 4.0421(5) also discusses claims handling and claims settlement practices which constitute unfair claim settlement practices and provides as follows: *(5) If a release or full payment of claim is executed by a third-party claimant, involving a repair to a motor vehicle, it shall not bar the right of the third-party claimant to promptly assert a claim for diminished value, which diminished value was directly caused by the accident and which diminished value could not be determined or known until after the repair or attempted repair of the motor vehicle. Claims asserted within 30 days after repair for diminished value shall be considered promptly asserted.* MWL takes the position that, regardless of the insurance code, the Statute of Limitations for property damage is three (3) years. As of the publication of this chart, there have been no cases on point wherein the court has reduced the three (3) year statute based on the (conflicting) insurance code. However, to be safe, the claim should be made immediately so as to ensure a timely response.

STATE	FIRST-PARTY	THIRD-PARTY
NORTH DAKOTA	No court decisions regarding recovery allowed for diminution in value of a damaged vehicle in a first-party claim.	Section 32-03-09.1 states: "The measure of damages for injury to property caused by the breach of an obligation not arising from contract is presumed to be the reasonable cost of repairs necessary to restore the property to the condition it was in immediately before the injury was inflicted and the reasonable value of the loss of use pending restoration of the property, unless restoration of the property within a reasonable period of time is impossible or impracticable, in which case the measure of damages is presumed to be the difference between the market value of the property immediately before and immediately after the injury and the reasonable value of the loss of use pending replacement of the property." *Sullivan v. Pulkrabek,* 611 N.W.2d 162 (N.D. 2000).
OHIO	Ohio case law has held in particular cases that the insured was not allowed to recover diminution in value of a damaged auto under the particular policy, and that that there was no cause of action for diminished value of an auto. *Nationwide Mut. Ins. Co. v. Shah*, 2004 Ohio 1291 (Ohio App. Dist. 5, 2004); *Kent v. Cincinnati Ins. Co.*, No. CA2001-04-100 (Ohio App. Dist. 12, 2001).	When a plaintiff proves that the value of his auto after repair is less than the pre-injury value of the auto, the plaintiff or subrogated carrier may also recover the residual diminution in value in addition to the cost of repair, provided that the plaintiff may not recover damages in excess of the difference between the market value of the auto immediately before and after the injury. *State Farm Mutual Auto. Ins. Co. v. Cheeks,* 2014 WL 470874 (Ohio App. 2014); *Rakich v. Anthem Blue Cross and Blue Shield,* 875 N.E.2d 993 (Ohio App. 2007).
OKLAHOMA	Oklahoma has held that "unless the collision resulted in a total loss of the automobile plaintiff's measure of recovery was the difference between the fair market value of his automobile in the condition in which it was immediately prior to the collision, and its value thereafter. If the collision resulted in a total loss of the auto his measure of recovery was the fair market value thereof in the condition in which it was immediately before the collision." *Phoenix Ins. Co., Hartford, Conn. v. Diffie*, 270 P.2d 634 (Okla. 1954).	Oklahoma statute provides, *"For the breach of an obligation not arising from contract, the measure of damages, except where otherwise expressly provided by this chapter, is the amount which will compensate for all detriment proximately caused thereby, whether it could have been anticipated or not."* Okla. Stat. Ann. tit. 23, § 61. In cases where it is shown that repairs failed to bring damaged item of personal property up to the condition it was in prior to the damage, the cost of repairs made plus post-repair diminution in value of the property will ordinarily be the proper measure of damages. *Brennen v. Aston*, 84 P.3d 99 (Okla. 2003).

STATE	FIRST-PARTY	THIRD-PARTY
OREGON	The Oregon Supreme Court has stated that the insured was entitled to the difference between the pre-loss and post-loss value of the vehicle and the proper repair of the auto may not accomplish this result, and that a complete restoration of the property has not occurred unless there has been no diminution in value after repair of the auto. *Dunmire Motor Co. v. Oregon Mut. Fire Ins. Co.*, 114 P.2d 1005 (Or. 1941). In a more modern case, the clash was over the meaning of "repair" in an insurance contract. Insured argued that to "repair" a vehicle, the insurer must restore the truck to a pre-accident condition, and if that's not possible, then insurer must pay for the associated diminution in the vehicle's value. The insurer argued that "repair" means a restoration of the function and appearance of the insured property. The Oregon Supreme Court found that "repair" in an auto insurance policy requires the insurer to restore the insured to a pre-loss condition via payment of money, repair of vehicle, or replacement of vehicle. If insurer is unable to repair the vehicle to a pre-loss condition, the resulting diminution of value is a loss to the insured which was caused by a collision, for which the insurer was payable under the insurance policy. *Gonzales v. Farmers Ins. Co. of Oregon*, 196 P.3d 1 (Or. 2008).	Court of Appeals of Oregon acknowledged potential acceptance of evidence of diminished value but found that such evidence was not presented. *EAM Advertising Agency v. Helies*, 954 P.2d 812 (Or. App. 1998).
PENNSYLVANIA	The Supreme Court specifically noted that, with regard to remedial damage to realty, a plaintiff may recover only the cost of repair or restoration without regard to diminution in value of the property and also stated in a separate case that it was unaware of any circumstances where an insurance company reimbursed the insured for diminished value. The Court held that such payment would not be the norm and could not form the basis for a reasonable expectation by the public. *Lobozzo v. Adam Eidemiller, Inc*., 263 A.2d 432 (Pa. 1970); *Munoz v. Allstate Ins. Co.,* No. 9906-2855 (Pa. Comm. Pl. 1999).	When the vehicle is not a total loss, the plaintiff may recover (a) the difference between the market value of the vehicle 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. *Holt v. Pariser*, 54 A.2d 89, 91 (Pa. Super. 1947); *Horton v. Philadelphia Rapid Transit Co.,* 94 Pa. Super. 553, 555-56 (Pa. 1928); *Bauer v. Armour & Co.,* 84 Pa. Super. 174 (Pa. 1924).

STATE	FIRST-PARTY	THIRD-PARTY
RHODE ISLAND	A Rhode Island Superior Court denied an insurer's summary judgment as to diminution in value in a case addressing policy language, finding that an ambiguity existed as to whether "the cost of repair or replace the property with other of like kind and quality" includes damages for the inherent diminished value of an auto resulting from the vehicle being in an accident. The Court held where a dispute existed with respect to the parties' intent, there existed a genuine issue of material fact that must be resolved by the jury. *Cazabat v. Metropolitan Property & Casualty Ins. Co.,* 2000 WL 1910089 (R.I. Super. Ct. 2000).	No court decisions regarding recovery allowed for diminution in value of a damaged vehicle in a third-party claim.
SOUTH CAROLINA	Where the policy language clearly "expressly limits coverage to the lesser of the actual value or the cost of repair" the South Carolina Supreme Court has held that "[t]hese are alternatives, which do not include an additional obligation to pay for diminished value when the cost of repair is chosen." The Court also would not read into the cost of repair an additional requirement to also pay for diminished value since, to do so, would render the limitation provision meaningless. *Schulmeyer v. State Farm Fire & Cas. Co.,* 579 S.E.2d 132 (S.C. 2003).	South Carolina has held that "the cost of the repairs made… plus the (remaining) diminution in value of the property will ordinarily be the proper measure of damages." *Newman v. Brown*, 228 S.C. 472, 477, 90 S.E.2d 649, 652 (1955).
SOUTH DAKOTA	The South Dakota Supreme Court followed the majority rule and refused to allow recovery of diminished value after the full repair of a vehicle and applied the clear language of the insurance policy. *Culhane v. Western Nat'l Mut. Ins. Co*., 704 N.W.2d 287 (S.D. 2005).	No court decisions regarding recovery allowed for diminution in value of a damaged vehicle in a third-party claim.
TENNESSEE	The Tennessee Court of Appeals refused to apply diminution in value in Tennessee auto policies finding the wording unambiguous and limiting the insured to repairs. *Black v. State Farm Mut. Auto. Ins. Co.*, 101 S.W.3d 427 (Tenn. App. 2002); *Senter v. Tennessee Farmers Mut. Ins. Co*., 702 S.W.2d 175 (Tenn. App. 1985).	The measure of third-party damages is either repair costs or the difference in market value immediately before and after the accident. It is not both. There is no definitive case law indicating that a diminution in value measured after the repair is a recognized element of allowable damages in Tennessee. *GEICO v. Bloodworth,* 2007 WL 1966022 (Tenn. App. 2007). Although *Bloodworth* did not specifically pronounce that post-repair diminution in value claims are viable in Tennessee (it was a class action suit and the issue had to do with certification as such), it did say that in in order to prove residual diminution in value, the owner has to prove (1) the vehicle's pre-accident condition and value (taking into consideration, *e.g.,* other damage to the vehicle); (2) the vehicle's post-accident value; and (3) proof that the repair did not restore the vehicle to substantially the same value it had before the accident. *Government Employees Ins. Co. v. Bloodworth*, 2007 WL 1966022 (Tenn. App. 2007).

STATE	FIRST-PARTY	THIRD-PARTY
TEXAS	Texas courts have refused to allow recovery of diminution in value and have stated that "[w]here an insurer has fully, completely, and adequately 'repaired or replaced the property with other of like kind and quality' any reduction in market value of the vehicle due to factors that are not subject to repair or replacement cannot be deemed a component part of the cost of repair or replacement." *American Manufacturers Mut. Ins. Co. v. Schaefer*, 124 S.W.3d 154 (Tex. 2003). The Texas Department of Insurance Bulletin B-0027-00 (2000) has also held: *"The position of the Department is that an insurer is not obligated to pay a first party claimant for diminished value when an automobile is completely repaired to its pre-damage condition. The language of the insurance policy does not require payment for, or refer to, diminished value."* A vehicle's diminution in market value due to additional mileage and the marketplace perception that a fully repaired vehicle was inferior was not part of the insurer's obligation to repair the vehicle after a theft under the policy. Because the vehicle was fully repaired, the insurer was not required to pay its inherent diminished value, *i.e.,* the difference between the value before the loss and after repair. Where an insurer has fully, completely, and adequately repaired or replaced the property with other of like kind and quality, any reduction in market value of the vehicle due to factors that are not subject to "repair or replacement" cannot be deemed a component part of the cost of repair or replacement. *Carlton v. Trinity Universal Ins. Co.*, 32 S.W.3d 454 (Tex. App. 2000).	No court decisions specifically allowing for recovery diminution in value of damaged vehicle in a third-party claim in addition to cost of repair to damaged vehicle. In action for damage to a vehicle, owner or subrogated insurer may sue for *either* diminution of market value or cost of repair to damaged vehicle. *Jones v. Wallingsford*, 921 S.W.2d 463 (Tex. App. 1996) (Note this case concerns *Immediate Diminished Value* rather than *Inherent Diminished Value*.) A plaintiff whose property has not been destroyed may recover either (1) market value measured by difference in immediate pre-injury value of property and immediate post-injury value before repairs, or (2) cost-of-repair and loss-of-use damages, including lost profits, but recovery of both remedies constitutes a double recovery. *Texas Farm Bureau Mut. Ins. Co. v. Wilde*, 385 S.W.3d 733 (Tex. App. 2012) *abrogated on other grounds by J & D Towing, LLC v. Am. Alternative Ins. Corp.*, 478 S.W.3d 649 (Tex. 2016). However, there are cases allowing for recovery of diminution in value in other settings. *Royce Homes, L.P. v. Humphrey*, 244 S.W.3d 570 (Tex. App., 2008) (water damage to new home under construction), *Ludt v. McCollum*, 762 S.W.2d 575 (Tex. 1988); *Terminix Int'l, Inc. v. Lucci*, 670 S.W.2d 657 (Tex. App. 1984) (case involved permanent reduction to home due to foundation problems. Court held that an award of diminished value is recoverable in addition to costs of repair, assuming the permanent reduction in value refers to that reduction occurring even after repairs are made). In Texas, residual damages to market value of real estate are referred to as "stigma damages." *Houston Unlimited, Inc. Metal Processing v. Mel Acres Ranch*, 443 S.W.3d 820 (Tex. 2014); see also, *Ludt v. McCollum*, 762 S.W.2d 575 (Tex. 1988). Texas law is clear that no double recoveries are allowed. Under certain circumstances, a plaintiff may recover for both diminution in value and cost of repairs, if there is no double recovery. Diminution in value does not duplicate cost of repairs if the diminution is based on a comparison of original value of property and value *after repairs are made. Parkway Co. v. Woodruff*, 901 S.W.2d 434, 441 (Tex. 1995). Note: Texas Department of Insurance Bulletin B-0027-00 states—without providing any authority or precedent—that "*An insurer also may be obligated to pay a third-party claimant for any loss of market value of the claimant's automobile, regardless of the completeness of the repair, in a liability claim that the third party claimant may have against a policyholder*." It doesn't apply to vehicle that is a total loss.

STATE	FIRST-PARTY	THIRD-PARTY
UTAH	No court decisions regarding recovery allowed for diminution in value of a damaged vehicle in a first-party claim.	In an action for damages to an auto, plaintiff, being entitled to recover the difference in the market value of his auto immediately before and after the injury, can recover not only the reasonable cost of repairs, but also any depreciation in market value after repairs were completed. *Metcalf v. Mellen*, 192 P. 676 (Utah 1920).
VERMONT	Absent specific policy language in a claim made by an insured to the contrary, a policy must pay for diminished value. When evaluating such diminished value claims, insurers must take into account all relevant information which would include, but not be limited to, all relevant information provided by an insured or third-party claimant regarding a claim for diminution in value. While the Department has not mandated a particular method for adjusting such claims, insurers must be able to articulate a fair and equitable process and standards for such an adjustment. VT Bulletin 164 (8-10-11).	The usual measure of damages in cases involving property damage to an auto is the difference between market value of auto immediately before accident and its market value immediately afterwards. In determining the difference between value of auto before and after accident, or its depreciation as result of injury, evidence is admissible as to the reasonable cost of repairs made necessary thereby, and as to the value of automobile as repaired. *Kinney v. Cloutier*, 211 A.2d 246 (Vt. 1965). Measure of damages for damage to a vehicle is fair market value before the injury less fair market value after the injury. *Wells v. Vill. of Orleans, Inc.*, 315 A.2d 463 (Vt. 1974). No other court decisions regarding recovery allowed for diminution in value of a damaged vehicle in a third-party claim.
VIRGINIA	The Virginia Supreme Court has refused to compensate an insured for the loss of his new car warranty where the policy did not make such an agreement and the diminution in value was not recoverable under the policy. *Bickel v. Nationwide Mut. Ins. Co.*, 143 S.E.2d 903 (Va. 1965).	Where an auto has been damaged but not destroyed and it is reasonably susceptible of repairs, the measure of damages is the cost of repairs and any diminution of the auto's market value which results from the car having been injured after the repairs; that is, the cost of repairs plus any amount of depreciation in value of the vehicle as repaired. *Averett v. Shircliff*, 237 S.E.2d 92 (Va. 1977).

STATE	FIRST-PARTY	THIRD-PARTY
WASHINGTON	In *Moeller v. Farmers Ins. Co. of Washington*, 267 P.3d 998 (Wash. 2011), the court decided a case of first impression holding that an auto policy provided first-party coverage for diminished value following post-accident repairs. In other words, to repair a vehicle so that it is in substantially the same *functional condition* it was pre-accident, or if instead the policy requires Farmers to repair a vehicle so that it has the same *value* it had pre-accident. The policy in this case said liability for loss cannot exceed "[t]he amount which it would cost to *repair or replace* damaged [...] property with other of like kind and quality, or with new property less an adjustment for physical deterioration and/or depreciation." Farmers argued that "diminished value" loss was excluded by its limits of liability and payment of loss provisions and that a car is either a total loss, or it is repairable, and that an insurer meets its obligation to repair when it returns the vehicle to a good and useable condition. The court ruled that because the average consumer would read a "repair or replace" policy to provide coverage of equal value when a car is repaired, replaced, or "totaled," the coverage provision encompasses diminished value loss, and the limits of liability and payment of loss provisions do not unambiguously exclude it.	*Washington Practice Series, Pattern Jury Charges* states that the measure of damages to personal property is: The lesser of the following: (1) The reasonable value of necessary repairs to any property that was damaged; or (2) The difference between the fair cash market value of the property immediately before the occurrence and the fair cash market value of the unrepaired property immediately after the occurrence. 6 Wash. Prac., Wash. Pattern Jury Instr. Civ. WPI 30.11 (6th ed.). No other court decisions, statutes, administrative regulations or other authority regarding allowing or disallowing claims for diminution in value of a damaged vehicle in a third-party claim.

STATE	FIRST-PARTY	THIRD-PARTY
WEST VIRGINIA	An informational letter from the West Virginia Offices of the Insurance Commissioner dated November 2001, withdrew a previous information letter dated August 2001, which outlined policy exclusions for diminished value, first-party or third-party. West Virginia Informational Letter No. 137 (Aug. 2001). This informational letter was originally written in response to *Ellis v. King*, 400 S.E.2d 235 (W.V. App. 1990). However, according to a 2/2/15 telephone conversation with Victor Mullins, Associate Counsel with the West Virginia Insurance Commissioner's Office, the August 2001 informational letter went a little too far, suggesting the *Ellis* holding extended to first-party claims, when this is not the case. It would appear that there currently is no authority authorizing first-party claims for diminution in value under auto policies. No court decisions regarding recovery allowed for diminution in value of a damaged vehicle in a third-party claim.	The West Virginia Supreme Court, stated that "[i]f the vehicle looked and operated substantially the same after the accident but its market value had been diminished by the fact of being in an accident, then to be adequately compensated, the injured party must receive, in addition to the cost of repairs, the diminution in market value stemming from the injury", but this should be narrowly construed with proof of the diminished value, structural damage to the vehicle, and only for a vehicle with "significant value" prior to the accident. The Supreme Court created an exception to the general rule permitting only cost of repair or diminution in value for motor vehicles which were structurally damaged and continued to suffer a residual loss of value even after they were repaired. *Ellis v. King,* 400 S.E.2d 235 (W. Va. 1990). If the owner of a vehicle which is damaged and subsequently repaired can show a diminution in value based upon structural damage after repair, then *recovery is permitted for that diminution in addition to the cost of repair,* but the total shall not exceed the market value of the vehicle before it was damaged. *Brooks v. City of Huntington*, 768 S.E.2d 97, (W.Va. 2014).
WISCONSIN	Insurance policy limits of liability provision permitted insurer to choose to repair vehicle, even if all possible repairs would not restore vehicle to its pre-collision market value. Insurer is not required to pay for diminished value following adequate repairs. *Wildin v. Am. Family Mut. Ins. Co.*, 638 N.W.2d 87 (Wis. App. 2001). On November 29, 2001—the day after the seminal Georgia decision in *State Farm Mut. Auto. Ins. Co. v. Mabry*, 556 S.E.2d 114 (Ga. 2001)—the Wisconsin Court of Appeals decided Wisconsin's own first-party diminution in value case. In *Wildin*, the court affirmed a trial court's grant of the insurer's motion to dismiss the insured's complaint against the insurer for failure to pay residual diminished value in addition to repair costs. The insured argued that despite the repairs, no repair could have restored the vehicle to pre-loss condition because of unibody structure and/or frame damage. The court disagreed with the insured, holding that the policy language only required the carrier to pay for all necessary "repairs" and "repair," given its ordinarily understood meaning, and this did not mean the carrier had to restore the vehicle to its pre-loss *value*.	Plaintiffs may be "entitled to either the reasonable cost of repairs or the diminution in fair market value of the vehicle, whichever is less." However, an owner is entitled to cost-of-repair damages and loss-of-value-after-repair damages if the owner proves that the repairs to the vehicle did not restore the vehicle to its pre-injury value. *Paulson v. Allstate Ins. Co.,* 649 N.W.2d 645 (Wis. App. 2002); *Hellenbrand v. Hilliard*, 687 N.W.2d 37 (Wis. App. 2004).

STATE	FIRST-PARTY	THIRD-PARTY
WYOMING	In a construction defect claim, the Wyoming Supreme Court has found that diminution in value was an element of damage in an inverse condemnation case. *Miller v. Campbell County*, 901 P.2d 1107 (Wyo. 1995).	No court decisions regarding recovery allowed for diminution in value of a damaged vehicle in a third-party claim.