DIMINISHED VALUE: Impossible to achieve?

by Dick Strom

Mark Olson, owner of Future Forensics (www.futureforensics.com), a business specializing in automotive damage investigations, was a recent guest speaker at our ACA meeting. Mark's intimate knowledge of both the collision repair and insurance industries is gleaned from 15 years of collision shop experience and two years insurance company employment before establishing his collision damage investigations company, Future Forensics.

Mark's topic of discussion was Diminished Value, that "DV word" that has at the same time the ability to raise hackles and pique intense interest from repairers of every stripe. But diminished value, a red-hot topic today, was a foreign term to this industry's vocabulary a decade ago. Well, almost so.

In my state of Washington, not the first in which a DV claim was won, King County Superior Court records include a 1920 case (MADDEN v. NIPPON AUTO CO.) in which a verdict was reached in favor of the vehicle owner based on reliable testimony that "immediately prior to the accident the value of the automobile [in question] was between $4500 and $4800, and that, immediately after the accident, its value was between $2500 and $2750… [the loss in value based on the fact that] an automobile injured in an accident and repaired has not the same value in the eyes of an intending purchaser as one not so injured, even though there may be no visible marks of injury on the automobile."

I first heard the term Diminished Value over ten years ago when a well-versed man told me before we started repairs that, because the at-fault driver had subsequently died from injuries received in the accident, this claimant's wife was having a hard time dealing with it. Though their car wasn't totaled, it would be traded for another as soon as we finished repairs and a "diminished value" assessment had been completed.

Simply stated from notes Olson provided, automotive diminished value is generally divided into three categories.

Repair-related DV is any repair-related procedures done or not done on the vehicle that cause it to fall short of same state and shape condition, that potentially could cause it to react in a subsequent collision different than it did in this one. This might include lack of 3-dimensional measurement/improper structural alignment, lack of proper corrosion protection, seam sealing, improper welding, improper sectioning, structural components that should have been replaced rather than repaired, and the like. Repair quality is not judged by comparing your work to that of other shops; nor can it be defended by a "that's the way the industry does it" mentality. The measure of repair-related DV is the cost to properly repair the vehicle, which can oftentimes exceed the cost of the original repair.

Insurance-related DV is any needed repairs that were not paid for, or denied, by the insurer. The measure of insurance-related DV is the cost to properly repair the vehicle back to the same state and

shape as it was before being damaged, so it performs the same way in the next collision as it did in this collision, and is cosmetically correct.

Inherent DV is a projection of the loss of value of a subject vehicle after a collision. Inherent DV is based on the assumption that repairs were done completely and correctly (it doesn't include repair-related DV [improper/incorrect repairs] or insurance-related diminished value [needed items for a proper repair that the insurer didn't, or wouldn't, pay for]). Inherent DV is the amount of money that would need to be taken off the retail selling price of the vehicle [for its stigma of having been damaged and repaired] with disclosure to the vehicle buyer that it has been in a collision.

Inherent DV is easily understood by supposing that if there were two identical in kind, condition, mileage and cost vehicles on a car lot - one a virgin to repair shops and the other having sustained extensive damage though repaired well - which of these two vehicles would you buy? We all know a collision damaged vehicle can't be put back together in exactly the same condition it formerly was; we might be able to make it better, or worse, than factory, but it's impossible to reconstruct it exactly the same as it was. Therefore, in the eyes of the law you can't restore the vehicle to true pre-loss/pre-accident condition. And if you can't truly return vehicles to pre-loss condition, advertising that you will eventually get you into DV hot water.

Whether or not you believe in diminished value is immaterial (few of our ACA attendees indicated they did). All across the country courts are deciding DV cases against repairers and/or insurers based on quality of repairs, fraud, and the like. Neither can you wish diminished value away. But you can lower your chances of becoming the target of a DV lawsuit through knowing, and performing, whatever it takes to bring each vehicle you repair back as close as possible to that mystical "pre-accident" condition that many shops advertise. Which brings us to one of Olson's many emphatic suggestions; that we eliminate the phrase "pre-loss" or "pre-accident" from our verbal and written word-track, especially from all our paperwork. We might substitute it with something along the line of "to the best of our ability and years of experience" or something similar, but dump the "pre-loss/pre-accident" misnomer before it drags you into court.

Olson illustrated his 'eliminate pre-accident' point by asking, "Do you R&I every nut, bolt and screw, as the manufacturer did, when you replace or repair a frame rail or other such part or panel? And do you dunk every repaired part in a tank of E-coat, as manufacturers do to prevent future rust, following repair/replacement? If you don't, you haven't repaired to pre-accident, so don't advertise that." Passing around a number of improperly repaired parts and sections he's collected in his investigations, he made his point most effectively. These samples showed how improper welding practices had rendered them unsafe; how rust continues to migrate when "hidden" parts are exposed to the elements; how incomplete plug welds can cause a lack of structural integrity in load-bearing panels; and how improperly seam sealing welded panels promotes rust.

Olson had our full attention as he stressed again and again our responsibility to return each vehicle to "same state and shape" condition. "In order to return that frame rail to same state and shape condition, you'd have to seam-seal the edges. You have to!… If you don't, water will get in and rust will

result. If that takes place, how do you stop the rust? You don't… you can't, other than to R&R that frame rail. So how do courts figure what is the DV associated with this improper repair? Very simply!… What does it cost to repair it correctly? There's no gray area here. So many of the issues repairers face are "quality of repair" issues, but in reality it's impossible for us to exactly put it back in 'pre-accident' condition. If you're telling customers you'll return their vehicles exactly to the same condition they were before being damaged, you're lying!

"Need another example? How about this: the manufacturer does 'squeeze-type resistance welding' of panels. Some of you do this, but I'm telling you not to on Ford, GM and some Damlier-Chrysler products because these companies will tell you 'don't use a squeeze-type resistance spot-welder'… an exception being Chrysler where they do allow it in specific locations on certain models. So we need to MIG weld the panels together, which is what most automotive manufacturers say you are supposed to do… punch properly spaced and sized holes, clamp or screw the panels together, weld it, and when done, corrosion protect its inside and seam-seal along the edge.

"Now, what if I told you that most of the time you don't have to use weld-thru primer. If you're using weld-thru primer, it indicates that in some of these cases you're approaching the repair incorrectly. Grinding new E-coated panels to metal eliminates the E-coat not just where the welds will be made, but also all along the surrounding surface. A better approach is to clamp or screw the pre-punched replacement panel in, and then scratch or bead-blast out the E-coat through the punch holes. How many of you have read the directions on the back of that weld-thru primer can?… [I didn't notice any hands raised, including mine]. The rules have changed, and most cans now say to remove the weld-thru primer only where you are welding."

As he passed around samples to make his point, Mark reminded us, "Around each weld and behind each spot-welded pulling stud application the metal will rust. But how many of you regularly R&I interior trim panels to assure the back side of each repaired panel is properly corrosion protected when you finish? You say you don't because the insurer won't pay for it… but did you include a line on your estimate or supplement indicating the necessity of this important step? You'll never get what you don't ask for! The fact that 'insurers may not pay for R&I interior' is beside the fact; I'm saying, from years of diminished value claim experience and close to 50 DV court trial experiences, that you have to take this step, whether paid to do so or not. But again, insurers won't pay for items you don't ask for. Do you write R&I necessary interior panels for corrosion protection into your estimates? Did you explain the necessity of this procedure to the person paying for the repair, whether insurer of consumer? Write it in your estimate; you may not get it now, but you definitely won't get it if you don't ask.

" 'Setup and measure' means placing the vehicle on a frame rack supported or clamped at its prescribed 'torque-box' locations [so engine and rear body weight will cause the vehicle to settle into the position from which crash data tolerances were measured], and measure the complete vehicle, front to rear, including remove or R&I necessary parts to achieve this end. Unless the frame data specifications you use expressly state that they are for vehicles not suspended from their torque-box locations, measuring a car on the floor [as some measuring system manufacturers advertise can be done] won't give accurate height measurements [which could also throw off length measurements].

Across the country, probably only 20% of 'set-up and measure' is actually completely and correctly performed. If you charge for or accept an insurer-generated estimate with a 'setup and measure' line included, you had better set it up on your measuring system at the points it was meant to be suspended from, and do a full measuring of the vehicle, front to rear, including those points where exhaust or other component R&I or tie-back is required, and record your hand-written or computer printout findings. Otherwise you expose yourself to a DV case."

Thanks to Mark Olson of Future Forensics for his efforts to keep the repair industry informed and out of legal troubles. As he told us at the beginning of his presentation, "Some of you aren't going to like me as a result of what I have to say here. But this isn't a popularity contest; this is material which will keep you out of legal trouble and help you remain in the collision repair business." Though we'd all like to remain in blissful denial, we all know he's right… so right in fact that my next article will cover more of the highlights of his presentation. Stay tuned.

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