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Damages Pt. 3 – Diminished Value of Vehicle Due to Traffic Accident

In this week's installment in the series on damages, the lawyers here at Pavlack Law address the issue of determining how much an injured party should be compensated for property damaged by the acts of a tortfeasor. Specifically, this post addresses compensation for the diminished value of an automobile after a car crash. While the specifics of this post are about motor vehicles, the concepts discussed herein are more widely applicable to damage of any piece of personal property.

The single most common instance in which a person is seeking recovery of damages to property is in the automobile accident context. According to the most recent statistics available through the United States Census Bureau, there were 10.8 million motor vehicle accidents in 2009 alone. There is no question that where a person suffers injury to his or her automobile due to the tortious acts of another the injured person is entitled to payment for the damages to his or her vehicle. The typical response to such damages is to pay to repair the vehicle. This is so typical that the thought that this alone might not be sufficient does not even cross the minds of most people.

In order to understand why there might be more damage to the vehicle than is compensated for by just repairing the damage let us look to the purpose of tort

law remedies. As Indiana courts have stated, "Tort law seeks to make the wronged party whole." So the question then is why is not simply repairing the car after the crash sufficient to make the wronged party whole? The answer to this question is based – unlike much of the law – in common sense. The value of a car that has been in an accident is not the same as one which had never been in such an accident regardless of the quality of repairs. This is an omnipresent fact in our society as there is an absolute plethora of websites and other sources advertised on TV telling would-be buyers that they must check the car's history before purchasing that car. One primary reasons for checking the history of the vehicle is to ensure that it has not been in an accident. In light of this fact it is clear that paying just to repair the vehicle has not provided full compensation so as to make the injured party whole.

Indiana case law supports the fact that simply paying for the repairs of a vehicle is not sufficient to fully compensate a wronged person. This concept was first addressed by an Indiana court in the 1993 decision *Wiese-GMC, Inc. v. Wells*. In *Wells* the Court of Appeals was asked to determine whether a victim of a car accident was entitled to compensation for the diminished value of his automobile. The court looked to prior Indiana case law and the Restatement of Torts, Second for guidance. The Restatements of the Law are treatises developed by the American Law Institute, which attempt to summarize the state of law on a specific set of topics for guidance and reference by judges and attorneys. The Restatement of Torts, Second § 928 Harm to Chattels provides:

> When one 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 his election in an appropriate case, the reasonable cost of repair or restoration, with due allowance for any difference between the original value and the value after repairs, and
>
> (b) the loss of use.

The Court of Appeals, using the Restatement, summarized the law stating, "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 tort feasor."

The court went on to identify three ways that the reduction in fair market

value could be proven. The first way is to prove the value of the vehicle prior to the accident and the value after the accident. In this approach the plaintiff would be award the difference in value. The second approach is the repair cost where repair will restore the full value of the damaged property. In this approach the repair cost alone would be sufficient. However, this would apply to only the most minor of accidents as most any level of accident will have an impact on the market value of the automobile. The third means to prove the diminishment in value is to show a combination of the cost to repair and the decreased value after the repairs. In *Wells*, the appellate court determined that the trial court had not fully considered the reduction in fair market value of the vehicle and thus remanded the case for further proceedings.

The Court of Appeals was asked once again to address this issue in the 2001 case, *Dado v. Jeeninga*. While the court in *Dado* provided a more modern application of the holding in *Wells*, it did not substantially change the law in this area. It was not until 2005 that the Indiana Supreme Court would finally weigh in on the matter in twin opinions released on the same day. The two cases were *Allgood v. Meridian Security Insurance Company* and *Dunn v. Meridian Mutual Insurance Company*. Each case was a putative class action seeking to recover the unpaid diminished value of automobiles after accidents.

In *Allgood* – a case known intimately by Pavlack Law as the firm's owner and namesake Eric Pavlack was an attorney on the case – the plaintiff sought to recover the unpaid diminished value from her insurer under the collision coverage portion of her automobile policy. The plaintiff's case was dismissed by the Marion County trial court. On appeal, the Court of Appeals reversed the trial court and found for the plaintiff. Upon rehearing the Court of Appeals affirmed its prior decision to reverse the trial court. The Supreme Court, however, found that while the recovery of tort damages in Indiana "includes diminution in value," the specific facts of the case required that the case be governed by contract law and not tort law. Specifically, the nature of the action and the language of the insurance policy resulted in a bar to plaintiff's claim for diminished value.

In *Dunn*, like *Allgood*, the Court of Appeals found in favor of the plaintiff. In this case the plaintiff sought to recover against his insurer for diminished value under the uninsured motorist portion of his policy. Due to the nature of uninsured motorist coverage as providing a recovery against ones own insurance policy for the liability of a tortfeasor the case was governed by tort law and not contract law. As such the plaintiff was able to recover the diminished value of his vehicle after the accident.

Analyzing the *Wells*, *Dado*, *Allgood*, and *Dunn* cases draws a clear picture

that there are certainly occasions in which a person who is the victim of a car crash is able to recover for the diminished value of his or her vehicle. However, *Allgood* juxtaposed to *Dunn* draws a more complex picture of determining in what scenario a person may recover such costs from an insurer. Due to the complexity in this area of law it is wise to consult an attorney who is experienced in this area of law and has litigated these types of cases at the highest levels and who has experience zealously defending the rights of injured persons.

Join us again for our next post in our series on damages.

- Pt. 1 – Introduction to Damages and Loss of Consortium
- Pt. 2 – Duty to Mitigate Damages
- Pt. 4 – Damages for Negligently Inflicted Emotional Distress
- Pt. 5 – Assessing Damages When Injured Person is Partially at Fault
- Pt. 6 – Availability of Prejudgment Interest
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- Pt. 9 – Damages for the Loss of Chance of Survival from Medical Malpractice
- Pt. 10 – Punitive Damages Under Indiana Law
- Pt. 11 – Wrongful Death
- Pt. 12 – Contract Damages

Sources

- *See* United States Census Bureau Table 1103 - Motor Vehicle Accidents--Number and Deaths.

- *Grimes v. Jones*, 567 N.E.2d 858, 860 (Ind. Ct. App. 1991) ("Tort law seeks to make the wronged party whole . . . .").

- *Wiese-GMC, Inc. v. Wells*, 626 N.E.2d 595 (Ind. Ct. App. 1993).

- Restatement of Torts, Second § 928 Harm to Chattels: *see* below for full text.

- *Dado v. Jeeninga*, 743 N.E.2d 291 (Ind. Ct. App. 2001).

- *Allgood v. Meridian Sec. Ins. Co.*, 807 N.E.2d 131 (Ind. Ct. App. 2004), *aff'd on reh'g* 812 N.E.2d 1065.

- *Allgood v. Meridian Sec. Ins. Co.*, 836 N.E.2d 243 (Ind. 2005).

- *Dunn v. Meridian Mut. Ins. Co.*, 810 N.E.2d 739 (Ind. Ct. App. 2004).
- *Dunn v. Meridian Mut. Ins. Co.*, 836 N.E.2d 249 (Ind. 2005).

Restatement of Torts, Second § 928 Harm to Chattels

When one 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 his election in an appropriate case, the reasonable cost of repair or restoration, with due allowance for any difference between the original value and the value after repairs, and

(b) the loss of use.

Official Comment on Clause (a):

a. The full value of a chattel that has been tortiously harmed but that has not been converted or made completely worthless cannot be obtained by the owner; he cannot abandon it and recover its value in damages. He can recover only the difference in its value before and after the harm, except that if, after the harm, it appears to be economical to repair the chattel, he can elect to recover the cost of repairs, together with the value of the loss of use during the repairs or other losses that may have resulted during that time.

Due allowance is made for increase in value of the chattel as a result of new materials used. This does not require a deduction for the increase in value if the increase has not been realized and is not likely to be realized by the owner, as when, instead of selling it while it retains its increased value, he continues to keep and use it and its usefulness to him is not increased.

The risk of reasonable but unsuccessful attempts to repair is upon the tortfeasor (see § 919), so that the damages recoverable may be greater if repairs are unsuccessful than the difference between the value of the subject matter before and after the tort. If it does not appear to a reasonable person to be prudent to repair or replace the damaged part, the damages are the full value of the subject matter at the time of the tort, less the junk value of the remains. Ordinarily, when the cost of repairs would be materially greater than the exchange value of the chattel before the harm, it would not be prudent to make the repairs. If, however, the chattel has peculiar value to the owner, as when a family portrait having substantially no

exchange value has been harmed or when there would be serious delay or inconvenience in obtaining another chattel, it may be reasonable to make repairs at an expense greater than the cost of another chattel. If the harm consists of causing a chattel to be inaccessible, as when an automobile is mired in a ditch or a tool dropped down a well, damages include an amount reasonably spent to restore the chattel to its original position. On value in general, see § 911.

Official Comment on Clause (b):

b. In addition to damages for the diminution of the value of the subject matter or other similar elements of damages, the plaintiff is entitled to recover for any loss of which the defendant's act is the legal cause, either because the plaintiff is unable to use the subject matter until it is repaired or replaced or otherwise. On the elements to be considered in determining the value of the use, see § 931.