

Beware - New Case Bolsters Diminished Value Claims

By: [Jennifer R. Erickson](#)

The arguments and strategies for defending diminished value claims will likely shift in the upcoming months due to a recent Appellate Court ruling. For years, the only substantive case discussing diminished value ("DV") claims in Arizona was [Farmers v. RBL Inv. Co.](#) The Court in *RBL*, relying on the Restatement, held that a DV claim is compensable in Arizona but that the Plaintiff needed to show an actual and provable loss. Frequently the defense argued that there can be no actual or provable DV claim where the damaged vehicle was not sold or traded. After all, if the Plaintiff still owned the vehicle and was still using it, how could the Plaintiff have experienced a loss in value?

This was the argument made by the Defendant in [Oliver v. Henry](#), a case recently decided by Division One of the Arizona Court of Appeals. In *Oliver*, the Defendant admitted liability for an automobile accident, and his insurer paid the Plaintiff for the cost of repairs. Oliver then sued Henry seeking the diminished value of his vehicle, a 2008 Jeep Wrangler he had purchased two months prior to the accident. He presented expert testimony as to the loss in value of his vehicle even though he had not sold it; he continued to drive it and in fact, he testified that he had no immediate plans to get rid of the vehicle.

Based on long standing precedent and strategy, the defense argued that the claim for DV was not ripe since Mr. Oliver still owned the car. Moreover, there was no evidence that Mr. Henry had tried to sell his vehicle but could not because of the damages to the Jeep from the accident. Any loss of value, according to the defense, was purely speculative.

The Court disagreed and held: "Oliver was not required to sell, exchange or otherwise dispose of his damaged and subsequently repaired Jeep Wrangler in order to demonstrate an actual and provable loss in value; instead, the loss could be established through other competent means, such as expert appraisal of the pre-loss and post-repair values."

It is our expectation that you will see a significant increase in DV claims in the coming months. No longer will you be able to dispute the ripeness of these claims. Instead, the dispute will be entirely over value, and this will be through expert testimony. It will be important that you work with an expert that not only understands vehicular valuation but also is experienced and effective at testifying. If you need assistance looking an expert to evaluate and analyze a DV claim, feel free to contact us.

About the author: Jennifer Erickson is a partner at the Phoenix law firm of Jaburg Wilk. She heads the Insurance Defense department and has represented both insureds and insurance companies for more than 18 years. Jen can assist you with finding experts to support the analysis of DV claims. She can be reached at 602.248.1061 or jre@jaburgwilk.com.

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