

# Diminution In-Value Laws

## State-by-State Analysis

### (Auto)



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**Alabama**

*Pritchett v. State Farm Mut. Aut. Ins. Co.*, 834 So.2d 785 (Ala. Civ. App. 2002)

Insurers not obligated to pay diminished value or stigma damage losses where the policy states insurer will pay to repair or replace the damaged automobile.



**Alaska**

No relevant information at this time.

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**Arizona**

*Johnson v. State Farm Mut. Auto. Ins. Co.*, 754 P.2d 330 (Ariz. Ct. App. 1988)

Insurers not obligated to pay diminished value or stigma damage losses where insurer exercises its option under the policy to pay to repair or replace the property.



**Arkansas**

*MFA Ins. Co. v. Citizens Nat'l. Bank*, 545 S.W.2d 70 (Ark. 1977)

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. – 3<sup>rd</sup> Party Case.



**California**

*Ray v. Farmers Ins. Exch.*, 246 Cal. Rptr. 593 (Cal. Ct. App. 1988)

Insurers not obligated to pay diminished value or stigma damage losses where insurer exercises its option under the policy to pay to repair or replace the property to its pre-accident condition.



**Colorado**

*Hyden v. Farmers Ins. Exch.*, 20 P.3d 1222 (Colo. Ct. App. 2000)

“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.”



**Connecticut**

No relevant information at this time.

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**Delaware**

*O'Brien v. Progressive N. Ins. Co.*, 785 A.2d 281 (Del. 2001)

Insurers not obligated to pay diminished value or stigma damage losses where insurer exercises its option under the policy to pay to repair or replace the property; so long as the repairs have been completed in a workmanlike manner and the vehicle has been returned to substantially the same form as before the accident.



**District of Columbia**

*Am. Serv. Ctr. Assoc. v. Helton*, 867 A.2d 235 (D.C. App. 2005)

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.



**Florida**

*Siegle v. Progressive Consumers Ins. Co.*, 819 So.2d 732 (Fla. 2002)

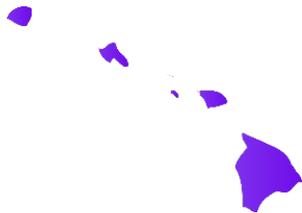
The Court found that the terms “repair,” “replace,” and “like kind or quality” in the policy were not ambiguous and the Court held that the proper interpretation of the policy language at hand did not cover diminished value. Thus, the insurer was not obligated to pay the diminished value of the loss.



**Georgia**

*State Farm Mut. Ins. Co. v. Mabry*, 556 S.E.2d 114 (Ga. 2001)

The Court held that the difference in a car’s value before and after an accident also included the difference in the car’s reputational value before and after injury.



**Hawaii**

No relevant information at this time.

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**Idaho**

No relevant information at this time.

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**Illinois**

*Haussler v. Indem. Co. of Am.*, 227 Ill. App. 504 (Ill. App. Ct. 1923)

Insurers not obligated to pay diminished value or stigma damage losses where insurer exercises its option under the policy to pay to repair or replace the property

*Sims v. Allstate Ins. Co.*, 365 Ill. App. 3d 997 (Ill. App. 5th Dist. 2006), appeal denied, 222 Ill. 2d 601 (Ill. 2006)



**Indiana**

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

Insurers not obligated to pay diminished value or stigma damage losses where insurer exercises its option under the policy to pay to repair or replace the property. Additionally, tort doctrines concerning measure of damages do not apply since the action is based on the insurance policy and it depends on the contract terms.



**Iowa**

Iowa Admin. Code R. §191-15.43(507B)

The Insurance Adjustment Bureau has rescinded diminished value provisions.



**Kansas**

*Venable v. Import Volkswagen, Inc.*, 519 P.2d 667 (Kan. 1974)

Insurers are obligated to pay diminished value or stigma damage losses. In other words the insured is entitled to be compensated for any deficiency in loss of actual value.



**Kentucky**

*Gen. Accident Fire & Life Assurance Corp. v. Judd*, 400 S.W.2d 685 (Ky. 1966)

Insurers are obligated to restore the physical condition but not the value of the damaged vehicle.



**Louisiana**

*Campbell v. Markel Am. Ins. Cos.*, 822 So. 2d 617 (La. Ct. App. 2001)

Insurers not obligated to pay diminished value or stigma damage losses where insurers exercises its option under the policy to pay or repair or replace the property. However, in *Defraites* the Court held diminution in value is recoverable, even where the vehicle has been repaired, if it can be proved the accident has depreciated the vehicles value.

*Defraites v. State Farm Mut. Auto Ins. Co.*, 864 So. 2d 254 (La. App. 2004)  
3<sup>rd</sup> Party – LSA §2800.17



**Maine**

*Hall v. Acadia Ins. Co.*, 801 A.2d 993 (Me. 2002)

Insurers not obligated to pay diminished value or stigma damage losses where insurer exercises its option under the policy to pay to repair or replace the property. The Court reasoned this is because a vehicle's diminution in value cannot be repaired.



**Maryland**

No relevant information at this time.

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**Massachusetts**

*Given v. Commerce Ins. Co.*, 440 Mass. 2007, 796 N.E.2d 1275 (Mass. 2003)

Insurers not obligated to pay diminished value or stigma damage losses where insurer exercises its option under the policy to pay to repair or replace the property, so long as it has been repaired to the insured's satisfaction.



**Michigan**

*Driscoll v. State Farm Mut. Auto. Ins. Co.*, 227 F.Supp.2d 696 (E.D. Mich. 2002)

Where the policy expressly limited coverage to the lesser of actual value or cost of repair, diminution in value was not recoverable as a result of accident.



**Minnesota**

*Ciresi v. Globe & Rutgers Fire Ins. Co.*, 244 N.W. 688 (Minn. 1932)

Insurers are obligated to pay the insured for the loss of value not fully compensated for by repair.



**Mississippi**

*Potomac Ins. Co. v. Wilkinson*, 57 So. 2d 158 (Miss. 1952)

If after repairs a loss in actual market value from the date of the collision remains, the deficiency is added as a cost of the repairs.

*Blakely v. State Farm Mut. Auto. Ins. Co.*, 406 F.3d 747 (5th Cir. 2005)(applying Mississippi law)



**Missouri**

*Lupo v. Shelter Mut. Ins. Co.*, 70 S.W.3d 16 (Mo. Ct. App. 2002)

Insurers not obligated to pay diminished value or stigma damage losses where insurer exercises its option under the policy to pay to repair or replace the property.

*Camden v. State Farm Mut. Auto. Ins. Co.*, 66 S.W.3d 78 (Mo. Ct. App. 2001)

*Williams v. Farm Bureau Mut. Ins. Co. of Mo.*, 299 S.W.2d 587 (Mo. Ct. App. 1957)

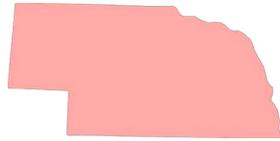
However, in *Williams* the Court held that if repairs fall short of substantial restoration, the claimant can recover the diminution in value of the vehicle measured by the difference between the reasonable market value immediately prior to the accident and the reasonable market value after the vehicle has been repaired.



**Montana**

*Eby v. Foremost Ins. Co.*, 374 P.2d 857 (Mont. 1962)

Insurers are obligated to pay diminished value or stigma damage losses because replacement means the restoration of the property to its condition prior to the injury.



**Nebraska**

*Chlopek v. Schmall*, 396 N.W.2d 103 (Neb. 1986)

Loss of market value is only recoverable when the vehicle is not repaired. If repaired, the proper measure of damages is the reasonable cost of repair and the loss of use during the time it was repaired.



**Nevada**

Nev. Admin. Code §686A.680

No cases have been decided on the issue. However, statute states that where an insurer elects to repair a vehicle it must restore the vehicle to its condition prior to the loss. The statute does not state whether payment for diminished value is required.



**New Hampshire**

No relevant information at this time.

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**New Jersey**

*Fanfarillo v. East End Motor Co.*, 411 A.2d 1167 (N.J. App. 1980)

If additional proof shows that repair will not return the vehicle to its pre-loss condition then the Plaintiff can recover the cost of repair plus the depreciation, if any.

*Kieffer v. High Point Ins. Co.*, 25 A.3d 1206 (N.J. Super. App. 2011)

However, more recently it has been held where the policy unambiguously excludes coverage for diminution in value, the insurer's liability is capped at the cost to return the vehicle to substantially the same condition immediately prior to the accident. This obligation does not include stigma damages.



**New Mexico**

*Davis v. Farmers Ins. Co. of Ariz.*, 142 P.3d 17 (N.M. App. 2006)

Follows the majority trend toward disallowing recovery of diminished value under the terms of an insurance policy.

*Hubbard v. Albuquerque Truck Ctr. Ltd.*, 125 N.M. 153 (N.M. 1998)

However, in 3<sup>rd</sup> Party cases New Mexico has held that the proper measure of damages is the lesser of repair costs plus depreciation or reduction in market value.



**New York**

*Franklin Corp. v. Prahler*, 91 A.D.3d 49, 932 N.Y.S.2d 610 (4th Dept. 2011)

Cost of repairs are recoverable to restore the vehicle to its former condition, as long as the cost of repairs does not exceed either the diminution in value or the value of the property itself. Diminution in value is recoverable where a vehicle has increased in value since being purchased and the cost of repairs after injury does not fully restore the vehicle to its pre-accident value. Finally, where the vehicle has increased in value the damages recoverable is the difference between the vehicle's market value immediately before and immediately after the injury.



**North Carolina**

*Johnson v Scholz*, 276 App. Div. 163, 93 N.Y.S.2d 334 (2d Dept. 1949)

In situations where repairs have been made, but do not restore the vehicle to its pre-accident value, the remaining diminution in value may be shown and added to the cost of repairs.



**North Dakota**

*Parker v. Hensley*, 625 S.E.2d 182 (N.C. App. 2006); N.C. Gen. Stat. Ann. §20-279.21(d)(1)

Post-repair diminished value is recoverable under an auto policy.



**Ohio**

*Sullivan v. Pulkrabek*, 611 N.W.2d 162 (N.D. 2000)

3<sup>rd</sup> Party claims only. If repairs to return the property to the condition immediately prior to the injury is impracticable or impossible, the correct measure of damages is the difference between the reasonable market values immediately prior and immediately after the injury.

*Nationwide Mut. Ins. Co. v. Shah*, 2004 Ohio 1291 (Ohio App. 5th)

In 1<sup>st</sup> Party case the Court found that the particular policy did not allow recovery of diminished value.

*State Farm Mut. Auto. Ins. Co. v. Cheeks*, 2014 WL 470874 (Ohio App. 2014)

However, in 3<sup>rd</sup> Party claims if a Plaintiff proves the value of the vehicle after repair is less than the pre-injury value, the Plaintiff or subrogated carrier may recover residual diminution in value.

*Rakich v. Anthem Blue Cross and Blue Shield*, 875 N.E.2d 993 (Ohio App. 2007)



**Oklahoma**

*Nat'l. Farmers Union Prop. & Cas. Co. v. Watson*, 298 P.2d 762 (Okla. 1956)

Insurers are obligated to pay diminished value or stigma damage losses.



**Oregon**

*Gonzales v. Farmers Ins. Co. of Oregon*, 345 Or. 382 (2008)

If the insurer does not or cannot restore the Plaintiff's vehicle to its pre-loss condition, the insurer must compensate the Plaintiff for the diminished value of the vehicle. Includes situations where repair of a damaged vehicle would be inadequate relief.



**Pennsylvania**

*Holt v. Pariser*, 54 A.2d 89, 91 (Pa. Super. 1947)

In 3<sup>rd</sup> Party claims after repairs, a Plaintiff may recover for any difference between the original value and the value after repairs.

*Horton v. Philadelphia Rapid Transit Co.*, 94 Pa. Super. 553, 555-56 (Pa. 1928)

*Bauer v. Armour & Co.*, 84 Pa. Super. 174 (Pa. 1924)



**Rhode Island**

*Pawtucket Mut. Ins. Co. v. Gay*, 786 A.2d 383 (R.I. 2001)

The option to repair is not an absolute right if repairs would not substantially restore the property to its fair market value.



**South Carolina**

*Schulmeyer v. State Farm Fire & Cas. Co.*, 579 S.E.2d 132 (S.C. 2003).

Insurers not obligated to pay diminished value or stigma damage losses where insurer exercises its option under the policy to pay to repair or replace the property.

Court distinguished from *Campbell v. Calvert Fire Ins. Co.*, 234 S.C. 583, 109 S.E.2d 572 (1959)

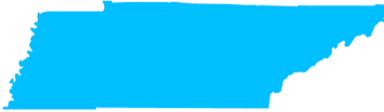
*Schulmeyer* was distinguishable from *Campbell* as the policy in *Schulmeyer* was more specific in its obligations.



**South Dakota**

*Culhane v. W. Nat'l Mut. Ins. Co.*, 704 N.W.2d 287 (S.D. 2005)

Insurers not obligated to pay diminished value or stigma damage losses where insurer exercises its option under the policy to pay to repair or replace the property.



**Tennessee**

*Black v. State Farm Mut. Auto. Ins. Co.*, 101 S.W.3d 427 (Tenn. Ct. App. 2002)

*Senter v. Tennessee Farmers Mut. Ins. Co.*, 702 S.W.2d 175 (Tenn. Ct. App. 1985)

*Black* held that insurers not obligated to pay diminished value or stigma damage losses where insurer exercises its option under the policy to pay to repair or replace the property.

*Senter* held that if repairs do not restore the fair market value of the automobile, the insured is entitled to recovery of diminished value.



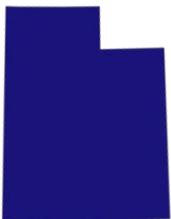
**Texas**

*Am. Mfrs. Mut. Ins. Co. v. Schaefer*, 124 S.W.3d 154 (Tex. 2003)

*Noteboom v. Farmers Texas County Mut. Ins. Co.*, 406 S.W.3d 381 (Tex. App. Ft. Worth 2013), reh'g overruled (Aug. 8, 2013)

Personal automobile policies do not require the insurer to pay for diminished value of a fully and adequately repaired vehicle.

However, damages for diminished value of car and damages for cost of repairs to care are not duplicative, for insurance purposes, if the diminished value is calculated based on a comparison of the original value of the property and the property's post-repair value.



**Utah**

*Metcalf v. Mellen*, 192 P. 676 (Utah 1920)

In 3<sup>rd</sup> Party claims a Plaintiff may recover the reasonable cost of repairs plus any depreciation in market value after the repairs.



**Vermont**

VT Bulletin 164 (8-10-11)

*Kinney v. Cloutier*, 211 A.2d 246 (Vt. 1965)

In 1<sup>st</sup> Party claims, absent specific policy language, a policy must pay for diminished value.

In 3<sup>rd</sup> Party claims when determining the difference between the value of the vehicle before and after the injury, the cost of repairs and the value of the vehicle after repairs is admissible evidence.



**Virginia**

*Bickel v. Nationwide Mut. Ins. Co.*, 143 S.E.2d 903 (Va. 1965)

Insurers not obligated to pay diminished value or stigma damage losses.

*Averett v. Shircliff*, 237 S.E.2d 92 (Va. 1977)

However, in 3<sup>rd</sup> Party claims where the vehicle is not totally destroyed the proper measure of damages is the cost of repairs plus the diminution of the vehicle's market value which results from the car having been injured after the repairs.



**Washington**

*Moeller v. Farmers Ins. Co. of Washington*, 173 Wash. 2d 264 (2011)

Auto insurance policy provided coverage for the diminished value of a post-accident, repaired vehicle; the bargain of the contract was to return the consumer to his pre-accident position with respect to the value of his car, the reasonable expectation of the insured was that, following repairs, the insured would be in the same position he or she enjoyed before the accident. Further, diminished value is a loss under the motor vehicle insurance policy.



**West Virginia**

*Ellis v. King*, 400 S.E.2d 235 (W.Va. 1990)

*Ellis* has been viewed very narrowly only for 3<sup>rd</sup> Party claims. The Court held that diminution in value is permissible only with proof of diminished value, structural damage to the vehicle, and only for a vehicle with “significant value” prior to the accident.

There are no cases for 1<sup>st</sup> Party claims.



**Wisconsin**

*Wildin v. Am. Family Mut. Ins. Co.*, 638 N.W.2d 87 (Wis. App. 2001)

In 1<sup>st</sup> Party claims an insurer may elect to only repair the vehicle and is not required to pay for the diminished value of the vehicle following repairs.

*Paulson v. Allstate Ins. Co.*, 649 N.W.2d 645 (Wis. App. 2002)

However, in 3<sup>rd</sup> Party claims if after repairs an owner proves the repairs did not restore the vehicle to its pre-injury value, repair costs and diminution in value after repairs are recoverable.

*Hellenbrand v. Hilliard*, 687 N.W.2d 37 (Wis. App. 2004)



**Wyoming**

No relevant information at this time.

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