

# Are Third-Party Diminished Value Damages Claims Covered in California?

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Auto insurers are often asked by their insureds and third-party claimants to pay for what are known as “diminished value” damages in connection with car accidents. Generally speaking, “diminished value” is the loss of market value of the damaged vehicle caused by the accident. Cars that have been involved in accidents are generally worth less than cars that have not. That is one of the reasons Carfax reports exist, identifying whether a particular vehicle has been involved in a significant accident.

For first-party property damage claims, which are generally submitted under the policy’s collision coverage, the law and policies are uniformly clear. Insurance companies do not pay for diminished value, and exclusions to that effect are valid and enforceable. See *Baldwin v. AAA N. Cal., Nev. & Utah Ins. Exch.*, 1 Cal. App. 5th 545, 554-55 (2016). Indeed, even before insurers inserted specific diminished value exclusions for first party-property damage claims, courts were generally hostile to such claims. See *Ray v. Farmers Ins. Exch.*, 200 Cal. App. 3d 1411, 1417 (1988).

None of that is particularly new or interesting. The interesting issue, and on which there is little law, is whether a *third-party* liability insurer is required to pay for diminished value damages when its insured is at fault for a car accident. It has been our experience that many carriers currently pay third-party diminished value claims under the property damage liability coverage because there is no exclusion for such damages. But that doesn’t mean diminished value damages are covered on third-party claims. Under third-party liability coverage, “property damage” is typically defined as “physical damage to tangible property, including destruction or loss of its use.” Courts interpreting California law have held that “stigma” or “inherent diminished value” is not covered under this definition. See *Copelan v. Infinity Ins. Co.*, 728 F. App’x 724, 725 (9th Cir. 2018); *Copelan v. Infinity Ins. Co.*, 359 F. Supp. 3d 926, 928 (C.D. Cal. 2019) (holding no third-party liability coverage for stigma damages); *Hennessy v. Infinity Ins. Co.*, 358 F. Supp. 3d 1074, 1079 (C.D. Cal. 2019) (same). These cases note, however, that if the vehicle sustains physical damage such that the vehicle cannot be repaired to its pre-loss condition, the policy may provide coverage for diminished value damages.

It appears that a significant number of insurers in California are paying third-party diminished value claims which involve nothing more than “stigma” or “inherent diminished value” damages. Typically, the insured will present the liability carrier with a Carfax report, or a report from one of the many

companies that generate an “inherent diminished value” report without ever inspecting the vehicle. At least under existing California law, these claims may not be covered. If, on the other hand, an auto body repair shop opines that the vehicle cannot be repaired to its pre-loss condition, only then would diminished value damages be owed in the context of a third-party liability claim.

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