

# Attorney Challenging First-Party Diminution of Value Claims Sanctioned by Ninth Circuit

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For years, plaintiff's attorney Montie S. Day has sued California auto insurers, arguing that the policy exclusion precluding coverage for first-party diminution of value damages claims is unenforceable. On November 30, 2023, the Ninth Circuit Court of Appeals in *Uyanik v. Wawanesa* (an unpublished decision) affirmed the Northern District of California Court's dismissal of Ali Uyanik's (Day's client) first amended complaint and sanctioned Mr. Day \$5,000 for pursuing a frivolous appeal. The Court held that Uyanik's breach of contract claim was "grounded in the plainly incorrect assertion that California law requires insurance providers to cover all losses, including diminution of vehicle value and loss of vehicle use, because policy exclusions are 'void and unenforceable under California law as against public policy and contradict[] the statutes passed by the California Legislature.'" The Court of Appeal also held that Uyanik's fraud claim failed because bald allegations that Wawanesa sold insurance policies but didn't intend to indemnify insureds for all loss did not meet Rule 9(b)'s heightened pleading standards and Uyanik's CLRA claim failed because "the CLRA does not apply to insurance."

In awarding sanctions against Day, and not his client, the Ninth Circuit stated: "Day should have known that the legal claims and arguments that he asserted were frivolous based on the prior cases that he has handled." The court took the unusual step of sanctioning Mr. Day personally in view of his past history of filing similar lawsuits.

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