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In re: SB 203

Written comments for the Insurance Committee of the Connecticut General Assembly.

I practice law in the area of diminished value. Through recent searches and general comment throughout the Connecticut Bar Association's, My firm is perhaps one of the few practitioners in this field of law. It's not a very big field, but it is a growing one as consumers find that their cars are not worth as much after a motor vehicle accident. Which is typical as the market awareness changes with the advent of vehicle history reports like Carfax, etc.

I give you these comments after significant experience handling cases of this kind. There may be a place for a law regarding diminished value, but the bill as raised needs significant amendment to protect the rights of the consumer, judicial economy, consideration for executive branch waste, and adherence to the long standing legal principles of stare decisis and precedence.

Please consider the following substantial and technical recommendations:

- 1) The difference between inherent diminished value and repair related diminished value - the current proposed law does not distinguish between the two. Repair related diminished value, where an insurance company insists on the use of after market parts or repair processes that the repair shop considers to be below the appropriate standard, is one section of the concept that should be clarified juxtaposed to inherent diminished value. The current language is unclear as to each, since the liability attaches directly to the inherent diminished value, but then is possibly exacerbated by the acts of the insured's insurance company, not the proximate cause of the insured in the accident itself.
- 2) The measure of damages - Any good diminished value law must provide for the measure of damages. Connecticut law has a long standing deeply rooted tort law, that the object of the measure of damages in tort is to make the tortfeasor (victim) whole. The measure of damages is clearly spelled out in *Littlejohn v. Eliensky*, 130 Conn 541, namely "The difference in the value of property before and after the loss, with interest from the date of loss." This would be the hallmark of any codification and during this process you might consider clarification when an individual elects to not repair the car (see below).
- 3) The inefficiency of possibly trying a case in two forums - There are currently some administrative processes that have come about during various insurance

disputes. These cases usually have other forms of damages such as personal injury and property damage, which will be heard by an Article Fifth court. To separate this process between an administrative procedure and a judicial one, would cause huge amounts of inefficiency and inconsistent legal results. Effectively we would be trying the case twice for the same cause of action, adding cost, time, and wasting the State's (and our) resources. Ordinarily, this section of loss is merely added as an additional form of damage to a standard legal Complaint. No new contemplated administrative process is needed, nor is it prudent.

- 4) The possibility of inconsistent legal results - the creation of an administrative process would also lead to the possibility of inconsistent results on the same case. One forum could find the defendant liable, while the other does not. This is not the goal of our system of laws and the foundation of common law as a whole.
- 5) The impossibility to adequately formalize the infinite number of factors that go into determining diminished value - Part of the proposed law creates the possibility for a formulaic method to determine the diminished value of a particular automobile involved in a particular accident. This would prove impossible, and though experiences across the country, most likely undervalue the claim. We currently already have a system for determining the methods and entities acceptable. Automobile appraisers have been determining the value of vehicles for years, and with the proper experience have been making these determinations as it relates to diminished value. Judges have been qualifying individuals versed in these fields as their experience allows. We currently have an automobile appraisal licensure program.
- 6) We currently have substantial and adequate law currently on the books on this topic - Current law from Littlejohn 130 Conn. 541 and its progeny, notably Cassella, 2010 Conn. Super. LEXIS 3207, provides a basis for these claims. The proposed language has the possibility to throw settled law into flux.
- 7) A possible problem with the current wording of the language might spark the following question- Can an insurer make a determination that they are liable for damages, but believe that there is not diminished value and therefore will not trigger the liability portion of the policy? There is a possible interpretation which would make the purpose of the entire law moot.
- 8) To strengthen this law, you would need to add a section of statutory recognition that diminished value is covered under the liability section/ or a requirement that the liability section of insurance contracts cover for this loss.
- 9) To clarify this law we would want to answer the question, Does a person suffer a diminished value loss if they elect to not repair the vehicle? Fairness, equity and legal thinking would require compensation to make the tortfeasor whole. Statutory wording could clarify this field.
- 10) Possible solutions include, among the suggestions above, wording/ notification in the adjustment of every third party claim which tells the

tortfeasee they have a right to diminished value and to contact an attorney to help them with such a claim. Maybe a kind of insurance miranda rights for consumers.

I would be willing to sit down with you craft a diminished value law that works within the system and provide my experience to create legislation that is fair and equitable to the people of Connecticut, and that creates efficient resolution of claims with as little economic waste as possible.

Sincerely,

Matthew Forrest, Esq.
Principle Attorney at Forrest Law