



## DIMINISHED VALUE CLAIMS: **NEW YORK**

### **SUMMARY** New York Claims

**Statute of Limitations:** 3 years

**Third Party Diminished Value Claim:** Yes, but conflicting court rulings make New York a challenging state for third party diminished value claims.

**First Party Diminished Value Claim:** No, most insurance policies will exclude diminished value

**New York Property Damage  
Minimum Limits:** \$10,000 in coverage

**Uninsured Motorist Coverage for  
Diminished Value:** No coverage

**Underinsured Motorist Coverage for  
Diminished Value:** No coverage

**New York Small Claims Court Limit:** \$10,000, attorney representation and appeals are permitted.

If your vehicle was damaged in an accident in the state of New York and underwent repairs, its resale value is likely to be less than what it was before the crash. This holds true even if your vehicle was perfectly repaired and looks as good as new.

#### **NEW YORK DIMINISHED VALUE LAW**

New York lacks reported case law supporting diminished value compensation for vehicles that depreciate in value, however, New York courts do recognize that an injured party should be made whole.

In *Franklin Corp v. Prahler* the court states, "...there can be no doubt that, under a general theory of damages, a plaintiff is entitled to be made whole."

It is well settled that the purpose of awarding damages in a tort action is to make the plaintiff whole (see generally *Campagnola v. Mulholland, Minion & Roe*, 76 NY2d 38, 42). *Franklin Corp. v. Prahler*, SUPREME COURT OF THE STATE OF NEW YORK, Appellate Division, Fourth Judicial Department (decided 11/10/2011)

Where a vehicle, like any other piece of personal property, has increased in value and is subsequently damaged by the negligence of the defendant, the plaintiff should be entitled to recover the cost of that diminution in value. Otherwise, the plaintiff will not be made whole.

In our view, PJI 2:311 was intended to cover the situation in *Gass* (264 NY at 143-144), where personal property has depreciated from its original market value and is then damaged by the negligence of the defendant. The plaintiff in such a case will be entitled to recover the costs of repairs or the diminution in value, whichever is less.

Case in favor of diminished value in New York.

*Rosenfield v. Choberka*, 140 Misc. 2d 9, 14 (N.Y. Sup. Ct. 1988) ("It has long been recognized in this regard that the purpose for an award of damages is "to make the owner whole in each case" (*Ward v. New York Cent. R.R. Co.*, 47 N.Y. 29, 33); and among the "well-settled" rules relating to damages recoverable in tort actions is that "[t]he person responsible for the injury must respond for all damages resulting directly from and as a natural consequence of the wrongful act

according to common experience and in the usual course of events" (*Steitz v. Gifford*, 280 N.Y. 15, 20). Application of those basic principles to the facts before us permits only of the conclusion that where, as here, the repair of the plaintiff's car does not make her whole, she is entitled to an award that will do so. In this instance that entitlement is to the reasonable cost for repairing the physical damage to the plaintiff's automobile, together with the difference in its market value before the accident and after it is repaired. To hold otherwise would permit a tort-feasor to carelessly damage a new, or reasonably new car, and escape the full consequence of his act by tender of the cost of repair alone, even though measured by modern market conditions, the owner suffered a loss in value exceeding the repair cost.")

#### **HOW TO FILE A DIMINISHED VALUE CLAIM IN NEW YORK**

**Step 1.** Prove your loss. You must supply evidence that you have lost value. An independent, unbiased appraisal will provide the documentation necessary to determine the diminished value of a vehicle.

**Step 2.** Submit your proof to the insurance company. You'll need to submit a diminished value appraisal and demand letter to the at-fault insurance company for review.

**Step 3.** Claim settlement. Once you submit a diminished value appraisal report, most insurance companies will make a settlement offer. The insurance company may pay the claim in full, make a lower offer, or deny the claim.