### Trial News

### **Special Focus: Insurance Law**

# The Future of Collision Repair and Diminished Value: Exotic Vehicles, Carbon Fiber, and the Evolution of "Irreparable Physical Damage."

by Paul M Veillon and Mark Olson uto manufacturing technology is Revolving faster than collision repair facilities and courts can match. Carbon fiber and other materials besides plastic and steel are the future of high-end and, eventually, production vehicles. Body shops cannot presently make proper repairs to advanced materials, so vehicle owners risk high repair costs or unsafe repairs. The technology is emerging first in exotic imports - vehicles that are the most susceptible to diminished value. Washington collision repair and diminished value law can adapt to the new breed of claims arising with advanced materials if attorneys and appraisers understand the differences between these materials and traditional plastic and steel.

### The Present Legal Landscape for Collision Repair and Diminished Value

them dry at temperatures body shops cannot use without damaging the car's electrical components. Most cars leave even the best body shops different than they left the factory - in some state worse than *true* preloss condition. But without any reference to after-market paint, corrosion protection, or welds in the *Moeller* opinion itself, the scope of "irreparable physical damage" is relatively vague, and establishing it requires expert testimony.

Washington tort law makes no distinction between "diminished value" and "stigma damage." *Ibrahim v. AIU Ins. Co.*, 177 Wn. App. 504 (2013). But a UIM carrier does not have to pay for stigma depreciation. *Id.* UIM is important because most liability policies cannot pay for collision repair, loss of use, *and* diminished value for Lamborghinis, Ferraris, McLarens, or other exotic imports. cle under control warrants carbon fiber construction. A collision repair shop cannot repair a damaged Lamborghini front bumper the way it would repair a plastic or other composite part, e.g., a Corvette hood. An improperly repaired carbon fiber bumper cover can have tragic consequences.

When a Lamborghini suffers collision damage, "Lamborghini has established its own repair service that has the right equipment and technical staff to properly deal with the advanced composite material. In some cases, staff will even fly out to fix the cars, avoiding the hassle of shipping them back to Lamborghini's factory in Sant'Agata Bolognese, Italy." MOTOR AUTHORITY, September 2014.

Lamborghini's "flying doctor" is currently the only suitable means of repairing carbon fiber auto components for the with a newer vehicle - will face a gap in the technology and insurance resources available to safely repair their vehicles after a collision.

### "Irreparable Physical Damage" to Carbon Fiber and Other Exotic Diminished Value Issues

No repair to a carbon fiber component can restore a Lamborghini to its "true" preloss condition. The "flying doctor" repair process should restore the safety and function of the component, but the material itself will be different from its manufactured state. Much like repaired metal changes at the molecular level, so too do the carbon fiber crystals, strands, and sheets change. Carbon fiber, unlike metal, is fault intolerant, so consumers in the preowned vehicle market are sensible to demand a discount for a wreck-history Lamborghini compared to its clean-history counterpart. Carbon fiber microscopy is not the only diminished value issue for exotic vehicles. Ferrari has the most sophisticated paint facility in the world. Each Lamborghini is simultaneously hand-painted by two technicians who circulate around the vehicle, each applying a layer in turn, to offset the subtle differences in each painter's technique and ensure a uniform finish. A parking lot door ding, key scratch, or "minor" rear-end collision produces diminished value, not just stigma damage, because consumers of these rolling works of art understand the difference between the manufacturing and repair process.

#### Claims

A tort plaintiff is owed the reasonable cost to repair damaged property. RCW 4.56.250(1)(a); WPI 30.01.02. "Depreciation" is also a damage element. WPI 30.12. "Irreparable physical damage," e.g., "weakened metal," produces "diminished value." Moeller v. Famers, 155 Wn. App. 133, aff'd, 169 Wn.2d 2001. "Stigma damage" is "depreciation," but not "diminished value." Id. "Stigma damage" is collisiondriven depreciation despite the vehicle's leaving the body shop identical to its factory condition. A good example would be a collision that shows up on CarFax, but only involves a broken lamp replaced with a new, factory part. Reduced demand after a wreck and repair produces both "diminished value" (rational) and "stigma damage" (real, but irrational).

The *Moeller* opinion refers to weakened or fatigued *metal* following collision repair, but the Court offered no guidance about what else constitutes "irreparable physical damage." Most wrecks cause permanent damage. Take the *Moeller* example: if a body shop straightens bent structural metal, the damage and repair changes (weakens, fatigues) the metal at the molecular level. But also consider that factories weld cars together using robots, and body shops do not; and factories dip cars in corrosion protection, solutions, and primers, and then paint them with robots and bake

### Evolving Auto Manufacturing Technology Focuses on Carbon Fiber

"Carbon fiber" is a material comprised mostly of carbon atoms bonded together in a crystal structure. Manufacturers bundle several thousand carbon fibers together, weave the bundles into sheets, and apply a resin to form a "carbon fiber reinforced polymer." The resulting material has nearly the strength of steel but the weight of plastic. The material is a critical component of wind turbines and modern aircraft. Lamborghini is the leading carbon fiber brand, and it is developing collision repair techniques to match.

Major auto manufacturers that produce custom exotic and high-end production autos - Fiat (Ferrari, Alfa-Romeo, Maserati), Volkswagen (Lamborghini, Bentley, Bugatti, Porsche), BMW (plus Mini & Rolls Royce), Daimler AG (Mercedes and Smart), and even Toyota (Lexus), Nissan (Infinity), and Honda (Acura) - are using some carbon-fiber components rather than plastic or metal. **Carbon Fiber Collision Repair "Lag" and Safety Implications for Vehicle Owners (Your Clients)** 

Lamborghini engineering is exceptional. For instance, the front "bumper cover" is a critical safety element producing down force on the front suspension at high speed. The material strength required to produce that down force and keep the vehiAventador LP700-4 and the Alfa Romeo coun

4C. A recent carbon fiber bumper claim required shipping the part to Love Field in Dallas for repairs by an FAA-approved carbon fiber technician also certified to repair the nose cone of a Boeing 737. The 137 mpg BMW i3 hybrid is a production carbon fiber vehicle, and almost any collision requiring the "flying doctor" for a \$40-45,000 vehicle would total it.

Neither collision repair facilities nor insurance companies are prepared for the pace at which auto manufacturers are introducing carbon fiber technology. The material is the next revolution in manufacturing, and repair techniques and insurance collision repair software must catch up or else consumers - beginning with the ultraelite, but eventually encompassing anyone

Again, the distinction between "irrepara-

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# APPEALS

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# BUILT BUILT

### Lost In Translation: The Needs of Spanish Language Policyholders

(Continued from page 1)

Hilda sent a copy of the police report, which showed no insurance for the tortfeasor. This was not good enough for the insurer, which demanded more proof. Hilda tried to track the tortfeasor down to get more information and eventually found that he had a lawyer—whose information she promptly sent to her insurance company. The insurer refused to pay unless Hilda provided "conclusive proof" that the tortfeasor was uninsured.

We took the case and filed claims for breach of contract, violation of the Insurance Fair Conduct Act,<sup>2</sup> violation of the Consumer Protection Act,<sup>3</sup> insurance bad faith, and negligent claims handling. The case settled very quickly, which was not a surprise. After all, this was a case that involved the breach of virtually all of the most important duties that an insurer owes a policyholder. We believed that the insurer had:

- failed to explain the coverages in a way that the policyholder could understand;<sup>4</sup>
- failed to fully and fairly investigate, ser linemuch less do so within the time-frames set forth in the claims-handling regulations;<sup>5</sup>
  misrepresented the conditions for obtaining UIM benefits by demanding shall ing "conclusive" proof;<sup>6</sup>

- forced Hilda to choose between the prospect of an unknown, foreignseeming legal proceeding, or giving up on the benefits to which she was entitled;<sup>7</sup> and, obviously,
- failed to pay what it promised in the insurance policy.

To be sure, there are some insurance companies that are making efforts to have Spanish-speaking representatives assist their insureds. But my message to you is that there is a great need for trial lawyers to reach out to the Spanish-speaking community, to help them understand their rights as policyholders, and to fight to keep insurers honest in these kinds of claims.

There are hundreds or thousands of Hildas out there. Their cases are important, compelling, and potentially very rewarding.

**Isaac Ruiz**, EAGLE member, is a partner at Keller Rohrback L.L.P. in Seattle. He is the current chair of the Washington State Association for Justice Insurance Section.

<sup>1</sup> En Farmers creemos que estar listo es ser listo, <u>http://www.segurosfarmers.com/</u> <u>listo.aspx</u> (accessed Apr. 8, 2015). <sup>2</sup> RCW 48.30.015. provisions of an insurance policy or insurance contract under which a claim is presented."); *Anderson v. State Farm Mut. Ins. Co.*, 101 Wn. App. 323, 330, 2 P.3d 1029 (2000).

<sup>5</sup> WAC 284-30-330(4) (an insurer may not deny a claim without conducting a reasonable investigation); *Coventry Assocs. v. Am. States Ins. Co.*, 136 Wn.2d 269, 279– 80, 961 P.2d 933 (1998). <sup>6</sup> WAC 284-30-330(1) (an insurer may not misrepresent pertinent facts or policy provisions).

<sup>7</sup> WAC 284-30-330(7) (an insurer may not compel a first-party claimant to initiate or submit to litigation, arbitration, or appraisal to recover amounts due under an insurance policy by offering substantially less than the amounts ultimately recovered in such actions or proceedings).

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ble physical damage" and "stigma damage" makes no difference in a tort claim, but the majority of diminished value claims exceeding \$30-\$50,000 *on top of* collision repair costs and loss of use require some contribution from the owner's own UIM for full compensation. UIM diminished value claims for carbon fiber and exotic vehicles are at a higher risk for denial - perhaps due to bad faith repair options and then retain a diminished value appraiser who understands the carbon fiber repair process and how to explain the differences between the vehicle's factory and post-repair condition. Simply discussing the market's distaste for a "tainted" vehicle will not be enough. Attorneys who handle exotic diminished value claims must understand the technology just as well to ensure their clients obtain safe repairs and, in the diminished value phase, educate judges, juries, and adjusters to avoid "stigma damage" red herrings.

<sup>3</sup> RCW 19.86.010 to .920.

<sup>4</sup> WAC 284-30-350(1) ("No insurer shall fail to disclose to first party claimants all pertinent benefits, coverages or other

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Conclusion

Lamborghini owners and, over time, a growing diversity of vehicle owners should carefully consider their collision **Paul Veillon** is a WSAJ Eagle Member and solo practitioner at Galileo Law PLLC in Seattle.

**Mark Olson** is an experienced diminished value appraiser and owner of VeriFacts Automotive, a company that works with auto manufacturers and collision repair facilities to promote proper repair training, equipment, and techniques.



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