

What You Need to Know about
Property Damage
in **Georgia**

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R. Shane Smith

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Why I Wrote This Book

I represent people who are injured in car wrecks by someone else’s negligence or through no fault of their own. These are normally hard working people who were minding their own business and were hit by someone else who was not paying attention, was talking on a cell phone or doing something else while driving. This innocent party now has a damaged vehicle and needs to get it repaired. This book is designed to help that person get the vehicle fixed.

I get numerous calls from people who are not hurt, but cannot get their vehicles fixed because they do not know their rights, the insurance company is not helping them, or for a host of other reasons. I do not take just property damage cases – usually. The reason is that if you have to pay a lawyer to help you get your car fixed, you will not have the money to fix your car. Many times my clients ask me for help with their property damage. After years of practice, and

years of answering the same questions, I decided to write this book that explains the ins and outs of property damage in Georgia. If you are reading this in another state, things may very well be different. I would encourage you to contact a lawyer in your state. If you need help finding a lawyer in your state, just go to my website www.shane-smithlaw.com. Under the links page, you can find a listing of personal injury lawyers in your state.

About the Author

I am R. Shane Smith. I grew up in a military family and have lived all over the Eastern part of the United States. I moved to Georgia in 1991 and graduated from high school in Fayette County. I attended the University of Georgia for two years and then transferred to Georgia State University in Atlanta. While at Georgia State, I was in Army ROTC and received numerous academic awards.

After receiving my Bachelor of Science in Criminal Justice, magna cum laude, I attended Georgia State's College of Law. While there, I was active in the Student Trial Lawyers' Association. I also interned with several prosecutors' offices and worked for a local personal injury lawyer. I married my wife, Holly, in my last year of law school. I graduated in June of 2000, cum laude, and took the bar exam that July. After being admitted to the bar, I entered the United States Army and served in the Judge Advocate General's Corps.

My first duty station was Ft. Campbell, Kentucky, home of the 101st Airborne (Air Assault) Division. While there, I did legal aid for a year and then began to defend soldiers in criminal cases, handling primarily the sexual assault cases in our multistate region. The army moved my family to Ft. Benning, Georgia, several years later; I once again served my country by defending its soldiers. I handled the most serious felony cases in our multistate area.

In January of 2004, I left the army and began serving in private practice, practicing only personal injury law. At the time, I worked at a major personal injury firm in Atlanta. After several years with that company, I decided to leave and start my own firm.

I have handled hundreds of personal injury cases to completion. Before starting my own practice, I had successfully handled to completion over 500 cases. Since then I have handled many more. What does that mean to one of my clients? It means I know personal injury cases. I know about car wrecks and their impact on my clients. I know about the law in this area. While to my clients the experience of a car accident is new, to me it is familiar. I have talked many clients through the settlement of their property damage and have trained my assistants to help with this process also. This book is designed to help someone who is not a lawyer to know his or her rights; because, I can assure you that the insurance company you are dealing with, whether it is yours or the at-fault party's, knows what you are entitled to and what they have to do.

Not Legal Advice

The State Bar of Georgia requires that I inform you that this book is not legal advice. I am not your lawyer. I cannot become your lawyer unless and until we sign a contract to retain my services. While the information in this book can detail your rights and offer suggestions, I cannot advise you on your case specifically unless we discuss your case. This book is not legal advice about your case; if you need legal advice, please contact an attorney to discuss your specific case.

What this Book Is Not

This is not a book about a personal injury claim. This book does not cover what to do about your injuries or injuries to your loved ones. If you were hurt in an accident, then I would encourage you to visit my website at www.shanesmithlaw.com or call my firm at (770) HURT 999 or (770) 487-8999. You can also order my other book *10 Mistakes That Can Ruin Your Georgia Wreck Case*, which can give you some advice to avoid common pitfalls. My staff and I would also be happy to talk or meet with you about your specific case.

This is called the personal injury claim, which is the damage to you. This personal injury claim covers your pain and suffering, your medical bills, your expenses, and your lost wages. This is the type of case that my firm handles. We help our client deal with the entire situation from start to finish, whether it takes a few weeks, months, or years.

Introduction

First, whenever you are in a car accident and there is damage to your vehicle and you are injured, you have two separate claims. The first is the damage to your vehicle. This is called the property damage claim. Many people handle this entirely on their own, without lawyers.

The key is that you do not sign any release without reading and understanding it. Once you sign a release, that is the end of the claim. A property damage release should say “Property Damage Release” on it. If it says “General Release” then you are settling everything, including your personal injury claim. Make sure you know what you are signing. I once had someone call me to tell me that he had signed for an advance on his settlement –when he had in fact signed a general release settling his case. This mistake cost him thousands of dollars and legally I could not help him.

When it is paid to you, the check should say “Property Damage” on it or something similar to that. I also advise clients to have the insurance company pay the body shop directly, if at all possible. That way the funds never go into your hands and go directly to the body shop. The benefit to this is that if there is a problem and the damage is more severe than the adjuster originally thought, the body shop will take it up directly with the insurance company and you will not have to be involved in any negotiation. The property damage claim covers several things, and covers the cost to repair your vehicle or the market value of your vehicle—whichever is larger. This means that if the insurance company can repair your vehicle cheaper than what it is worth, they will do so.

You have the right to take your car to any body shop you want. If the estimate given to you by the insurance company is different than the estimate the body shop has, I encourage you to have the body shop call your insurance company directly. That way they can negotiate with the insurance company and you do not have to. I would caution you against taking it to a shop and telling them to work on the vehicle prior to the adjuster authorizing it. This is an easy way to cause great difficulty and make it harder for us to close your property damage claim. An insurance adjuster is likely to claim that some of your damage is pre-existing or prior to this incident; therefore, they do not want to pay for the coverage. I would always encourage you to have the adjuster from the insurance company come and look at your vehicle prior to any work being done on it.

Sometimes clients ask me about aftermarket or second-hand parts and whether an insurance company is able to use older parts in the vehicle. Unfortunately, the law does allow them to do this. The rationale behind the law is that the parts are not new in your car; therefore, you are not entitled to new parts in your car again.

Diminished Value

Many times I am asked about diminished value claims. A diminished value is the decrease in the value of your car because it was in a wreck. What is this diminished value worth? That is a very difficult question. The insurance company has a formula they will use which basically says that unless there was major frame damage to the vehicle, the value of the vehicle is not diminished very much. The Supreme Court of Georgia has said, and John Oxidine, the Georgia Insurance Commissioner, has also said, that this formula is not required by the court. However, the insurance companies continue to use it. If you would wish to dispute the diminished value portion of your property damage claim, you have several options. Option one is merely to argue with the insurance company. This is not generally effective and they will refer to the formula and imply that it is fair. Please find a copy of Mr. Oxidine's letter in Appendix B of this book. Option number two is to attempt to get an estimate from a car dealer or your

own dealership showing what they would have offered you prior to the collision if you had tried to trade your vehicle in and what they would offer you now, knowing that it has been in a wreck. The gap would be the diminished value portion of your claim. A third option is to pay an appraiser to do a diminished value estimate of your vehicle. These normally range in price from \$250 to \$350 per claim. Should you wish to pursue this option, please contact my office and I will provide you with several names of people we have used in the past. These estimators usually provide a detailed report indicating how much value your vehicle has lost. It is very helpful in arguing about diminished value because it gives you a way to demonstrate the lost value from an independent appraiser.

“What Is My Totaled Car Worth?”

Unfortunately, there are accidents severe enough to total a vehicle. This means that the market price of the car or truck is lower than the cost to repair it. This is extremely common in older vehicles. The insurance company always has to offer you the market price of the car. It does not matter how much is owed on the vehicle, or whether you have any emotional attachment to your car. The insurance company and a jury would be instructed not to provide any additional value to the vehicle even if you had it for twenty years and it was your high school graduation present. The law in Georgia states that they must only provide you with what the car was worth on the open market. In theory, you should be able to take their check and go buy a car exactly like the one you had.

Many times, it is difficult to figure out the exact value of a car. Several years ago, Kelly Bluebook was a controlling factor in determining the

market private party sale price of a vehicle. Another source is the NADA ratings. This is a listing from dealerships of what they feel a car is worth. It includes codes for depreciation for excessive mileage, as well as options, so everything is calculated into the price. You can ask the insurance company to fax you a copy of the market value report. This is normally the NADA report on your vehicle. This can be used to ensure that they are comparing your car to a similar car and that there is not some serious discrepancy between the two. One thing you would check is to verify that the mileage costs are similar. Are the options on the car similar? If your vehicle is a specialty vehicle of some sort, is that included in the formula? This way you can see whether the price they are quoting you is fair. Another starting point to try is to go online and check Kelly Bluebook or an online car website and see if you can find a similar car to your vehicle and what it is selling for. A caveat to this is the insurance company has to pay what these vehicles are moving for and not for the selling price. This can sometimes become a tricky issue when a car is listed at one price at Carmax and the dealer is telling you that it actually sold for several thousand dollars less.

One thing that has become quite common as car leases or car loans have been extended over time, is that many times you will owe more than what your car is worth. This is a bad situation. The insurance company does not have to offer you more money just because you owe more on your car than what it is worth. There are not many options when this happens. If you are fortunate enough to have purchased gap insurance, this will pay the difference between the two vehicles.

You must notify your gap insurance carrier. They will negotiate with the bank to pay this amount. If this occurs, once you notify them, you only have to follow up with them. Option number two if you do not have any gap insurance, is if the insurance company will send the check to the bank and the remainder will be an unsecured loan on which they will then attempt to collect from you. A third option is to contact the bank, and ask if the remainder of your loan can be rolled over into a new car loan so that you can get a new car.

Rental Insurance

The common perception is that if somebody hits your vehicle you are entitled to a rental vehicle. This is not exactly the case. You are entitled to loss of use or reimbursement of rental expenses. The reason I say reimbursement is because some insurance companies will not put you in a rental car. They will then force you to rent a car and submit the expenses to them for reimbursement. Be careful doing this. Prior to renting the car, you need to ensure that the insurance is right and will pay the full cost of the vehicle. In other words, if the car costs thirty dollars a day, you need to ensure that the insurance company will reimburse you thirty dollars a day. Sometimes, their rates are lower. You will then have to ask the insurance company which company they work with that has rates that are below the amount. Sometimes, the insurance or the rental car companies require a credit card to rent a car. This is the rental

car company's procedure. We cannot force them to issue you a car without a credit card.

Another issue that comes up with renting a car is the insurance the rental car company will try to force you into purchasing at the desk. This extra expense is generally unnecessary if you have full coverage prior to the collision. If you have full coverage, this means your vehicle had full coverage whether it was your fault or someone else's. This type of insurance normally will roll over to a rental vehicle. Just check with your insurance company. If you did not have this type of insurance and only had liability, then you will have to get some sort of insurance to drive the rental vehicle. Otherwise, the vehicle will not be protected if you caused the wreck. The reason the insurance company does not have to pay for this type of insurance is because you did not have it before. The only difference was that it was your vehicle not the rental company's. If you did not have full coverage, one option to check is with your credit card company. Many times if you pay with a major credit card, a perk that you receive is that they will cover the vehicle if there is a collision. Check with your credit card company and see if you have this option. If for some reason you do not have to rent a vehicle, you can ask the insurance company for loss of use for the time period your car was being repaired. This is normally somewhere between ten and thirty dollars per day. This is only available if you did not have a rental car.

“What If I Do Not Want the Insurance Company to Total My Car?”

Sometimes when the damage to an older vehicle is merely cosmetic, the insurance company will want to total the car and my clients would prefer to keep the car because they can still drive it around, and they do not wish to purchase a new vehicle. This is called a salvage title situation. If you can convince the insurance company to issue you a check without salvaging the car, that is the preferred way to deal with it. This way, you will not have a salvage title and you will have a clear title. Many times, they are unwilling to do this. If that happens and they give you a salvage title, it is very difficult to clear the title up. You must get the damage repaired and then submit it to the state of Georgia for them to say that the car is safe. This is a multi-step process and can be a hassle. The insurance company will also reduce the amount they give you by the salvage value of your car. That is

the amount for which they can sell the car for scrap metal. This is typically several hundred dollars.

“Should I File My Own Insurance?”

Sometimes clients wish to file their own insurance. There is nothing wrong with this at all. The only issue is that sometimes your insurance company will require that you pay a deductible until they get it back from the other party’s insurance. We generally recommend this route when the defendant’s insurance company is claiming that you bear a significant portion of the responsibility for the wreck. If they are claiming this and you agree on their property damage settlement, you could be hurting your personal injury claim. If you file on your own insurance, your insurance company will go after the defendant’s insurance company for the amount they had to pay to fix your car. When, and if, they collect this amount, they should then refund this deductible to you. This process can take several months.

If the other person had insurance with one of the more difficult or lower value insurance carriers, then I would recommend filing on

your own insurance. If the other side wants to argue that they cannot reach their insured or their insured says something different than the report, then file on your own insurance.

“Do I Have to Get My Car Repaired?”

The short answer to this is no. A longer answer to this is that you should. You are free to get your car repaired or not, or take the money from the insurance company or not. However, you should be aware that insurance adjusters are taught only to value the visible damage to your vehicle. This means they do not get underneath the vehicle, they do not look behind crushed panels for any further damage. This means the first initial estimate is almost always low. If you do not have your car repaired, they will pay you only for the visible damage. This means that sometime in the future if your car has other mechanical problems related to this accident, it will be unrepaired; at that point, we will be unable to pay you any additional money. I always encourage clients to get their vehicles fixed.

“Can I Choose My Own Shop?”

You can certainly choose your own shop. You have the right to have any shop repair your vehicle for you. The difficulty will come in if your shop says something that conflicts with the adjuster. Initially, the adjuster will provide an estimate on the damage to your car. If your shop thinks the damage is greater, they need to call the insurance company adjuster and talk to them about the additional damage prior to starting work on the vehicle. You do not want to be stuck between the body shop and the adjuster.

I recommend to my clients that the shop call the adjuster and get approval for the additional costs. This is normally called a supplemental report or supplemental estimate. This is usually not a big deal. The difficulty can sometimes be when your shop wants to use new parts from the manufacturer and the adjuster wants you to use cheaper off brand parts or used parts. The main argument for used

parts is that the parts were not new in your vehicle so you are not entitled to new ones now. However, this is not much comfort to most consumers, since they do not know the history of the car the parts were in.

Seat Belts and Inspection

Are your seatbelts still working properly? Most seatbelts are designed only to work in one major collision. After that, the internal parts will not work exactly right. You would need to talk to an engineer to figure out why, but like a bicycle or motorcycle helmet, they are only good for one major collision. After this, you have to have them inspected or replaced. It is not actually the belt that is damaged, but the locking mechanism in the shoulder belts. This is the part that locks when a collision occurs. There is a pendulum inside and it works only one time.

Airbag Deployment

Airbags are not designed to deploy in every collision. This is contrary to what I thought and had heard when I was younger. I believed that in every significant impact, the airbags would deploy, saving me from getting jerked around in the car. This is not actually the case.

The designers of airbags have designed them in such a way that they only deploy in a specific set of circumstances and under certain speeds. Normally this is a direct front-end collision for front airbags. Typically, they are not supposed to deploy from a glancing impact. This is an area of the law though, where each case is very specific. If you need advice about this, you should speak to an attorney.

DUI and Property Damage

Our society has decided that if you drink and drive, then you are responsible for your actions. The court system levies extra punishment on someone for driving under the influence (DUI) or driving while intoxicated (DWI). These are called punitive damages. It is possible to get some punitive damages against a DUI or DWI driver even if you were not injured. The case law or courts in Georgia have stated that punitive damages are available in a property- damage-only case.

As a caution – I have never seen punitive damages paid when an attorney was not involved in the case. This might be because only attorneys know to demand them from the insurance company. If you were hit by a DUI or DWI driver, ask the adjuster about punitive damages. After getting his response, call an attorney to talk about what he offers. The amount depends on the type of DUI the driver

has, the amount of his breath analyzer test (known as a BAC), and whether there are any prior DUIs in his driving history records.

“What If I’m Hurt?”

The quick answer is get medical treatment. Do not wait for an adjuster to approve it. Do not wait for them to recommend a doctor – they will not. Additionally, every day you wait will help their argument that you were not hurt that seriously because otherwise you would have gotten medical care.

If you are injured, you have a personal injury claim for your damages. This includes pain and suffering, medical bills, and lost wages. Make sure you get the care you need to get better. If you have questions, check out my other book: *10 Mistakes That Can Ruin Your Georgia Wreck Case*. You can order it free on my website at www.shanesmithlaw.com if you live in Georgia. Anyone else can find it on Amazon.

New Items in or on the Vehicle

Many times, as part of the regular maintenance of a vehicle, we have had to add new tires or a new radio or a new radiator or something like that. The insurance companies unfortunately do not have to reimburse you for regular maintenance items. A law does not require them to do so and they will not. This means that if you just repaired the radiator of your vehicle and then your front end gets crushed, you will not be receiving any more money than if your radiator was not repaired. That is a general rule. If you have the receipt, you could still submit it to the insurance company and bargain for more money. Fancy rims or wheels on a vehicle do not increase the underlying value.

However, many times in the past, when I had a vehicle that was totaled and the insurance company did not want to reimburse my client for an accessory such as a new stereo or fancy rims, we have contacted

insurance companies to see if they care whether that particular item remains in the vehicle. The answer is almost universally, “No, as long as there are tires on the car or a radio in it.” Clients have then taken out the new radio and put in the factory radio if they still have it or even a cheaper model. I have also had clients go and buy four cheap tires and rims and put them on the vehicle and take the more expensive ones away. Of course, you should only do this with permission.

Towing

The insurance company will almost always agree to reimburse the towing company and storage yard for your vehicle as long as the costs are reasonable. Where we come into difficulty is when a vehicle has been in a storage yard for an extended period of time. The insurance company then will not want to reimburse for the full amount. Georgia has a law that states you must attempt to minimize your damages. This has been interpreted to show that if you just allow your vehicle to be towed to a storage yard and do not at any point move it and it stays there for an extended period of time, the insurance company can refuse to reimburse you for that amount. Whether or not you believe this law is fair, it is the law in Georgia. For this reason, we ask you to get your accident report as quickly as possible so that we can set up your claim and get an adjuster out there to look at your car. Many times, they will ask us if they can move the car to

a no-fee lot. I would always encourage you to do that. There is no harm to us and it minimizes this worrying issue.

Excess delay can also be an issue in the repairing of your vehicle. While your vehicle is in a body shop, I would encourage you to check on it every several days so that you are informed that your vehicle is not just sitting there for an extended period of time. If the body shop tells you that your vehicle will be there for awhile waiting on parts or something like that, please tell them to contact the insurance company directly to notify them so that your rental can be reimbursed. It is very difficult to get a rental contract extended over the weekend when we first become involved at three o'clock on Friday. Failure to do this may result in you being stuck with rental charges or extended towing charges. This is never a good thing. We want to help you minimize any risk you may have.

“What Do I Do with the Check?”

If the insurance company sends you a check for the value of your vehicle and it seems low, it probably is. Do not just go cash the check. If it is for repairs, make sure it will pay to fix the car. If it will not, please contact the insurance company. Better yet, have your body shop contact the insurance company directly. They will then either issue you a supplemental check or tell you to void the check you have and they will pay the body shop directly. If they are talking about the value of your car, and they say it is totaled, once you cash that check, the property damage portion is done. There is nothing we can do to help you. Please do not cash any check unless you are satisfied with the amount. Also, ensure that the check or the check stub says “Property Damage Release” or “Property Damage.” You do not want a case settled accidentally through an insurance company’s technical trick.

Items in the Car

If items you have are broken in the collision while they were in your vehicle, then you are entitled to get those fixed. This could include a laptop or even glasses on your face. If your glasses fly off and break, then that is part of the property damage claim and needs to be submitted to your insurance adjuster. I recommend that you do this as soon as possible. If you had a fragile item in your car and it was broken during the collision, submit it to your insurance company. That is the only way it will be reimbursed.

Recorded Statements

It is not at all uncommon for an insurance adjuster to ask you in the initial interview for some sort of a recorded statement to get your version of what happened. If you have an attorney then they should not do a recorded statement without talking to that attorney. I would caution you to make sure that you don't guess on any facts. Just say what you know and "I don't know" is an okay answer.

If you were hurt in the wreck, do not discuss your injuries with the insurance companies. Wait to talk to your attorney before talking to them. You should only talk to them about the property damage to your vehicle. Insurance companies will occasionally try a cash-out settlement. What this means is that they will offer you a slightly higher amount than what your car is worth, in an attempt to close out your case. This does not take into account any medical bills, lost wages, pain and suffering, or anywhere near the full value of your

claim. This is just a way for them to close out your case on their books. That is why we recommend you check to make sure the check from the insurance company says “Property Damage” on it—not a general release, and that you do not sign any paperwork anywhere that says anything about a release unless it says “Property Damage Release” only. I would still advise you to fax it to my office and let me review it.

“What If I Owe More than My Car Is Worth?”

This is the situation that usually occurs when someone has either rolled a prior car purchase into the vehicle, put no money down on a new car, owned a car a very short period of time, or just plain made a bad deal when buying the car. Unfortunately, it does not matter what you owe when determining what the car is worth. If you owe more than the car is worth, you will be responsible for the difference between what is paid on the car by the insurance company and what you owe. This would now become an “unsecured debt” and they will try to collect. I normally advise clients to see if the loan company will allow you to roll the outstanding amount into a new car loan. Sometimes they will and sometimes they will not.

Another thing to look for is GAP Insurance. This is insurance that pays for the difference in value in the car and what you owe if it is totaled. This normally costs about \$500. I have never seen it offered except when you purchase a new car. I typically recommend this if you are rolling a prior loan into this one, or if you are financing for an extended period of time with little or no money down.

You can negotiate with your loan company. They know it is an unsecured debt now; and, if you can pay most of it in cash, they may listen. Otherwise, try to work out a payment plan with them.

Conclusion

I hope that this book has addressed many of your questions regarding property damage and your recent motor vehicle collision. If you have any other questions, please feel free to call my office; we would be happy to discuss them with you. I do not generally negotiate property damage claims. That being said, if you have a serious question, please contact me; I will be happy to assist you in any way I can to protect your rights. My firm will try to get the property damage portion of any claim resolved as quickly as possible so that you can get closer to your normal life. We know how difficult it is getting to and from a doctor or to and from work without a car. Just remember, the law in Georgia requires the insurance company only to put you back into a similar vehicle; at the same time, they need to pay you for what your vehicle was worth. Rarely, if ever, is anyone happy from a property damage settlement.

The law in Georgia does not pay for the people in this particular incident. If the lack of a vehicle makes it difficult to get to your doctor, please contact us and let us know. Also, please contact the doctor's office to see if there is an alternative method of care that can be arranged. We look forward to helping you with your personal injury case and will be glad to answer any questions you may have. Please remember not to talk to the insurance company about your injuries. I hope you found this report and the information contained in it to be useful. Should you have any specific questions, please contact me directly.

Sincerely,

R. Shane Smith

Appendix A
Sample Property Damage Demand Letter

March 13, 2008

CERTIFIED MAIL/RETURN RECEIPT REQUESTED

Insurance Adjuster
Address

Re: Name
Claim No.:
Date of Loss:

Dear Adjuster:

I am attempting to resolve the property damage portion of this claim with your company. The offer made by your company is significantly below the fair market value of the vehicle just prior to the collision. As you know, Georgia law provides that the measure of damages to a motor vehicle is the difference between the fair market value immediately before damage and immediately after damage. Valley Coaches, Inc. v. Street, 160 Ga. App. 25, 286 S.E.2d, 313 (1981). Further, as the owner of the vehicle, is recognized by Georgia law as competent to provide evidence as to the vehicle's value with adequate foundation. Central Chevrolet Co., Inc. v. Ballentine Motors of Augusta, Inc., 112 Ga. App. 618, 145 S.E.2d, 750 (1965); Valley Coaches, Inc. v. Street, *Supra*.

Enclosed you will find a printout from Kelley Blue Book indicating the fair market value of my car (list type) in (list condition) condition with (number of miles) miles at (list amount of value of car from source *www.kbb.com*, car max, autotrader or other source) \$. Further (add anything about new parts or things added to car) (ex. a new transmission was installed in the vehicle by the dealer on June 13, 2007 at 91,611 miles) which would obviously increase the fair market value of the vehicle.

We are willing to resolve the property damage portion of this claim by signing over the title to the vehicle – thereby providing Insurance Company with the salvage value of the vehicle – in consideration for payment of \$(amount asking for).

Demand is hereby made upon Insurance Company, the insurer in this case, for payment in the amount of \$(amount asking for) for the total loss of our vehicle. This demand is submitted to Insurance Company pursuant to O.C.G.A. §33-4-7 which reads as follows:

- (a) In the event of a loss because of injury to or destruction of property covered by a motor vehicle liability insurance policy, the insurer issuing such policy has an affirmative duty to adjust that loss fairly and promptly, to make a reasonable effort to investigate and evaluate the claim, and, when liability is reasonably clear, to make a good faith effort to settle with the claimant potentially entitled to recover against the insured under such policy.

Any insurer who breaches this duty may be liable to pay the claimant, in addition to the loss, not more than 50% of the liability of the insured for the loss or \$5,000.00, whichever is greater, and all reasonable attorney's fees for the prosecution of the action.

- (b) An insurer breaches the duty of sub-section (a) of this code section when, after investigation of the claim, liability has become reasonably clear and the insurer in bad faith offers less than the amount reasonably owed under all the circumstances of which the insurer is aware.
- (c) A claimant shall be entitled to recover under sub-section (a) of this code section if the claimant or the claimant's attorney has delivered to the insurer a demand letter, by statutory overnight delivery or certified mail, return receipt requested, offering to settle for an amount certain, the insurer has refused or declined to do so within sixty days of receipt of such demand, thereby compelling the claimant to institute or continue suit to recover, and the claimant ultimately recovers an amount equal to or in excess of the claimant's demand.
- (d) At the expiration of the sixty days set forth in sub-section (c), the claimant may serve the insurer issuing such policy by service of the complaint in accordance with law. The insurer shall be an unnamed party, not

disclosed to the jury, until there has been a verdict resulting in recovery equal to or in excess of the claimant's demand. If that occurs, the trial shall be recommenced in order for the trier of fact to receive evidence to make a determination as to whether bad faith existed in the handling or adjustment of the attempted settlement of the claim or action in question.

- (e) The action for bad faith shall not be abated by payment after the sixty day period nor shall the testimony or opinion of an expert witness be the sole basis for a summary judgment or directed verdict on the issue of bad faith.
- (f) The amount of recovery, including reasonable attorneys fees, if any, shall be determined by the trier of fact and included in a separate judgment against the insurer rendered in the action; provided, however, the attorney's fees shall be fixed on the basis of competent expert evidence as to the reasonable value of the services based on the time spent and legal and factual issues involved in accordance with prevailing fees in the locality where the action is pending; provided, further, the trial court shall have the discretion, if it finds the jury verdict fixing attorney's fees to be greatly excessive or inadequate, to review and amend the portion of the verdict fixing attorney's fees without the necessity of disapproving the entire verdict. The limitations contained in this code

section in reference to the amount of attorney's fees are not controlling as to the fees which may be agreed upon by the plaintiff and his or her attorney for the services of the attorney.

- (g) In any action brought pursuant to sub-section (b) of this code section, and within twenty days of bringing such action, the plaintiff shall, in addition to service of process in accordance with code section 9-II-4, mail to the Commissioner of Insurance and the Consumer's Insurance Advocate a copy of the demand and complaint by first class mail. Failure to comply with this sub-section may be cured by delivering same.

Also, pursuant to O.C.G.A. §33-3-28, this is to request that you provide a written statement disclosing each known policy of insurance issued by Insurance Company or any insurance company providing coverage which may be applicable to this incident, the name of each insured, and the limits of liability coverage on each such policy. Please be advised that this request also includes a request for disclosure of each and every excess liability or umbrella policy which may be applicable to this loss.

Sincerely yours,

Your Name

Appendix B

John Oxidine's Letter on Diminished Value of Vehicles



NEWS RELEASE

JOHN OXENDINE
COMMISSIONER OF INSURANCE
SAFETY FIRE COMMISSIONER
INDUSTRIAL LOAN COMMISSIONER
COMPTROLLER GENERAL

Seventh Floor, West Tower
2 Martin Luther King Jr. Dr.
Atlanta, Georgia 30334
www.gainsurance.org

For Immediate Release
December 5, 2008

Contact: Glenn Allen or Wayne Whitaker
404-651-7902
inscomm@oci.ga.gov

OXENDINE: NO FORMULA FOR DIMINISHED VALUE

Atlanta – Insurance Commissioner John W. Oxendine issued a directive today informing automobile insurance companies licensed to conduct business in Georgia about the proper handling of diminished value claims.

Oxendine ordered all auto insurance companies to cease using any language that implies that the Georgia Insurance Department has endorsed or approved a particular formula for determining diminution of value in physical damage automobile claims.

Diminished value refers to the loss of value in a vehicle that has been damaged and repaired. The Commissioner issued a previous directive in 2001 regarding the Georgia Supreme Court ruling that set precedent for diminished value claims.

Now the Commissioner wants to be sure that companies understand there is no single formula for determining the amount of diminished value to be paid in a particular claim.

“There seems to be some misunderstanding in the industry that a particular formula exists for diminished value,” Oxendine said. “I want to clarify the matter by reminding insurers that my office has never issued any regulation requiring the use of a specific formula for determining diminished value, so each claim should be evaluated on its own merits.”

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