

When Damages Are In Dispute, Don't Panic!

Your survival guide for the most common damage disputes

Evaluating the Case

An important thing to remember prior to hearing any case is to keep an open mind. Rarely can it be said that there is an industry standard for any type of repair, procedure, or cost. It may be customary to allow or disallow a certain repair, procedure, or cost, but it is not typical for there to be an industry standard. Your company may have a guideline for such repairs, procedures, or costs, but that does not mean that this guideline is accepted as an industry standard.

OEM Versus Aftermarket, Remanufactured, and LKQ Parts

When the applicant repairs its vehicle, it will often abide by its company policy requirements, as well as the wishes of its insured. The applicant has every right to repair its vehicle as it wishes; however, the respondent is typically only required to reimburse for fair and reasonable damages. Reasonable damages may include the use of other than new, OEM parts for the repair depending on the part being replaced, year of the vehicle, and/or model of the vehicle. In the event the respondent does not agree with the applicant's choice of parts, the respondent should provide evidence to support the availability of less expensive parts. Reasonable evidence would include specific availability of the less expensive part, such as the date, description, cost, and location relative to the repair shop's location. As with any dispute, the applicant should explain and support its repairs, which can be done with adjuster and estimate notes. Detailed photos are always an excellent and welcome addition. Your decision should be based on the evidence available for review.

How Much Rental Should I Award?

The appropriate amount of rental for each award depends greatly on many different factors. In general, the rental is typically calculated based on the labor hours on the estimate itself. For example, if there are 13.5 body hours, 3.4 paint hours, and 5.0 frame hours on the estimate, the total labor hours would equal 21.9. How each company calculates the rental varies by region, so consider this when rendering your decision. If the vehicle is not safely drivable, three or more additional days could apply. Supplements would generally add additional days. Weekend and holiday downtime should also be considered. The most important thing to consider would be the adjuster and estimate notes. Unforeseen delays are often documented within the notes, so be sure to review all evidence before you calculate rental. As always, the applicant should explain and support its rental demand. The appropriate daily rate for the replacement vehicle is often disputed. When allowing a daily rate, consider the size and class of the loss vehicle, as well as rental rates in the jurisdiction. Upgrades should be explained by the applicant.

Some jurisdictions allow loss of use payments even if a replacement vehicle is not actually rented. Typically, a respondent's liability for loss of use is limited to the time it will take to effect repairs or complete the total loss. Rental and loss of use are generally not owed for a concurrent period of time. For example, if repairs took 10 days and a company paid 10 days of rental plus three days' loss of use, the loss of use portion is likely not recoverable.

Total Loss Evaluation Sources

In the insurance industry, there are many acceptable ways to determine the value of a vehicle, and companies are not required to use the same method. If the total loss documentation and breakdown of damages supports the actual cash value (ACV) used, the value should be considered. Some jurisdictions do require a specific method be used to determine the ACV. In this situation, case law or statute should

be submitted as evidence to support the evaluation method used. Salvage information is very important evidence to consider. Towing, storage, tear down charges, and sale-related charges are often broken down and explained on the salvage receipt. Use your discretion when allowing salvage-related fees such as sales commission. Remember that these fees, if reasonable, should be allowed. Complete and accurate information always carries a lot of weight.

Invoices, Shop Charges, Color Sand and Buff, and Color Tint

There are many times when parts, prices, or sublet charges are disputed because there was no invoice in the subrogation documents. Providing invoices is always encouraged, especially for obscure or non-standard repairs. However, invoices are not required to prove damages in arbitration if there is other information in the filing that supports the repair and/or amount. For example, if a sublet alignment is being disputed, but the evidence supports the vehicle was pushed into a curb, the completion of an alignment would be considered reasonable. Reasonable damages that are supported by the overall scope of the case and/or other evidence can be awarded based on the secondary means of support. For example, vehicle photos that show a hard impact and major damage might be sufficient to support a sublet repair for the frame/unibody. Minor part price increases are a normal and frequent occurrence in the collision repair industry. Operations such as color tint, blending, and color sand and buff are considered reasonable for most vehicles. If the invoice itself is not available, an entry in the adjuster's notes will often suffice.

Diminution in Value (DV)

With the advent of companies like CARFAX, more vehicle owners are seeking recovery of DV to their vehicles. DV claims, however, have been permitted in a minority of jurisdictions and only a few states require first-party payments of DV damages. There is no published judicial decision that permits a lessor to recover DV damages against an at fault tortfeasor. Arbitration Forums, Inc., as a neutral third party, and you as a neutral arbitrator, should not invoke your personal opinion regarding the existence of DV. First, the applicant would need to submit evidence to support that for the jurisdiction where the loss occurred, that DV damages can be recovered under the circumstances of the claim. Second, the applicant would then need to submit evidence to support the amount sought for DV. It is then up to the respondent to present evidence to refute that the jurisdiction does not allow for the recovery of DV damages. Article Second (b) of the Automobile Subrogation Arbitration Agreement can be asserted as an affirmative defense to the claim in jurisdictions where the Applicant's DV claim does not currently exist in law or equity. If the claim is permitted, a Respondent must submit evidence to support that the value established by the Applicant for DV is not valid. Remember, it is not up to the arbitrator to adjust the claim and determine the amount owed for DV. It is up to the Applicant to support the amount it is seeking for DV and for the Respondent to provide documentation to support its position in regard to the amount that might be owed, if any, for DV.

Disputing Damages Without an Inspection

To lend further clarification to this issue, a company does not have to inspect the vehicle in order to dispute damages. The respondent has the right to dispute any or all damages based on its own opinion. There are certain situations where the inspecting company is in a better position to argue damages, since it is basing its opinion on a physical inspection. Not inspecting the vehicle should in no way preclude a company from arguing damages. Photographs are an excellent source of evidence, but they are two-dimensional and often do not reveal the true depth of the damages. Remember to carefully review each estimate. Does one estimate contain supplemental damages while the other does not?

Betterment

When considering the application of betterment, it is customary for the part in question to be inspected to determine if the part shows signs of wear. Betterment is commonly applied to batteries, suspension

components and tires (wear and tear items). When considering betterment on a tire, it is customary for the tread depth to be measured, to determine if the tire shows signs of wear and if the application of betterment is warranted. The Respondent would need to provide evidence to show how they determined the application of betterment was appropriate and how they calculated their reduction for betterment. It is not up to the Arbitrator to determine the amount of betterment that should be applied.

Final Thoughts...

With the advent of new vehicle types, materials, and repair techniques, the world of collision repair is fluid and always evolving. The purpose of this article is to provide a foundation on which to decide damage disputes. The above-mentioned items are listed as guidelines for the arbitrator to consider when deciding a damage dispute. As with liability cases, there is not an “always” or “never” scenario, and each case needs to be decided based on the individual merits, contentions, and evidence presented by the companies involved in that specific dispute. Hopefully, you will find this guide helpful in deciding damages disputes.