

Resolving Damage Disputes

Below are a few questions to consider when hearing cases with disputed damages. As always, your decision should be based on the arguments made and evidence submitted for review.

This document has been designed to outline questions from the Respondent’s perspective first, since damages are not at issue unless specifically disputed by the Respondent.

Please also note that this document is designed for informational purposes only and should not be considered authority on any specific claim.

Disputed Issue	Respondent	Applicant
Rental		
Rental Duration	Does the Respondent argue and support its disputed number of days? Does the Respondent consider if the vehicle was drivable?	Do labor hours divided by factor approximate days including weekends, holidays, and supplements? Does the Applicant provide evidence to prove and support rental days?
Daily Rate	Does the Respondent argue and support its dispute with the rate/car? Does the Respondent owe basic transportation or another standard?	Does the rental car meet the jurisdictional requirement? Does the Applicant prove and support the rental car/daily rate as reasonable?
Storage		
Storage Duration	Does the evidence support the Respondent’s dispute on why the Applicant’s number of days is unreasonable? Consider the salvage invoice documentation regarding when the call was made for pickup, when the vehicle was cleared for pickup, and the date it was actually picked up.	Does the Applicant support that the number of storage days is reasonable? Consider the salvage invoice documentation regarding when the call was made for pickup, when the vehicle was cleared for pickup, and the date it was actually picked up. If there are significant gaps in the dates, was an explanation provided, such as: severe injury, fatality, the vehicle was impounded, or other extenuating circumstance?
Daily Rate	Does the Respondent support that this is not in the range of prevailing rates in the area?	Does the Applicant support that the rate paid was reasonable?

Towing		
No Bill	Does Respondent argue that no bill is in evidence at all or is it a “clearinghouse” bill for towing dispatches? It is your discretion to allow whether a tow bill is from the actual towing company.	Does the Applicant include a bill in damages supports OR does the evidence support that a tow was reasonable/necessary?
Mileage	Does the Respondent make and support a strong argument that the tow could/should have been shorter?	Does the Applicant have a plausible reason for a tow that may seem too far?
Charge	Has the Respondent argued and submitted a statute as evidence?	Is there a statute that sets a schedule for tow charges or any other aspects of a tow?
Total Loss		
Value	Has the Respondent proven that the Applicant deviated from the correct equipment or vendor’s guidelines for rating the condition of the vehicle? Has the Respondent included its appraiser’s comments to support its condition rating? Does the Respondent support any other reductions (i.e., prior damage) to the value?	Does the Applicant have accurate information entered into its valuation software? Equipment, mileage, tows, condition, year, make, model? Has the Applicant included its appraiser’s comments and photos to support its condition rating? Do the comparable vehicles match the loss vehicle, and are they from the same general area? Is there support for any refurbishments made to the vehicle? Is prior damage accurately addressed?
Total vs. Repair	Has the Respondent included calculations to show that the vehicle would not be considered a total loss in this jurisdiction? Remember: A total loss threshold sets the maximum repairs. Estimates below the threshold should include comments on expected supplements, tear down, or any salvage bids to support totaling the vehicle.	Is there a statute or case law that mandates a threshold to total versus repair? Has either party included the applicable statute for your review? Has the Applicant included an explanation as to why it chose to total the vehicle (examples: open items on the estimate, adjuster notes explaining expected supplements)? Do the photos show an obvious total loss? Are there structural issues with the vehicle that would require it to be totaled? Was the vehicle torn down at the time of the inspection?
Parts		
OEM vs. Alternative	Did the Respondent run a parts	Did the Applicant use any

	search close to the estimate/repair dates? Does the Respondent have any statute or case law mandating the use of other than OEM parts?	alternative parts in the repair? Has the Applicant shown it searched for alternate parts or explained why it did not use alternative parts? Was the age and mileage of the vehicle considered? Were the parts proven to be available during repairs? Does the vehicle meet the common practice of using OEM parts on newer model vehicles with low mileage?
Labor Rate	What supporting documentation is provided by the Respondent to support the lower labor rate? If the Respondent uses the repair estimate it wrote to support a lower rate, does it show that the body shop agreed to the lower rate?	Does the Applicant support the rate paid with estimate of completed repairs? Is there an agreed-upon price with the shop listed on estimate?
Betterment	Does the Respondent prove the equipment has depreciated? Who completed an inspection? Is life expectancy taken into account? Are there photos showing wear?	Does the Applicant explain paying the full cost of the equipment and not taking betterment based on age and/or mileage?
Labor Hours	What evidence does the Respondent submit to prove that the labor hours should have been reduced?	Does the Applicant comment on the need for the resulting labor hours for the operation?
Paint Procedures	Does the Respondent prove that it was not necessary or not the responsibility of the at-fault party? Is there evidence to support certain procedure(s) were not necessary?	Does the Applicant prove that the paint procedure was necessary?
Diminution in Value		
	Does the Respondent assert an affirmative defense to jurisdiction based on the Applicant's vehicle being a lease? If yes, was evidence submitted to support this argument? Does the Respondent assert an affirmative defense to jurisdiction based on the jurisdiction not recognizing automobile diminished value damages? If yes, was evidence (case law or statute) submitted to prove the	If the Applicant is an insurer, has it provided proof of payment to its insured for DIV, and are there supports included to justify the amount? Is the Applicant a self-insured owner of the vehicle used primarily for business purposes? Has the Applicant submitted evidence to support that the claim arose in a jurisdiction that has clearly addressed the circumstances permitting diminished value damages by

	<p>argument?</p> <p>If the Respondent disputed the amount of DIV damages claimed, does it submit evidence that supports a lesser amount or no award at all?</p>	<p>statute or settled judicial precedent directly analyzing automobile diminished value damages?</p> <p>Has the Applicant supported the amount of DIV with sufficient evidence such as an appraisal, formula, or expert report?</p>
Damage Supports Not Shared		
	<p>Does the Respondent claim the Applicant's filing is its first notice or that the Applicant did not send a subrogation notice with supports prior to arbitration?</p>	<p>Has the Applicant submitted evidence to prove its damages?</p> <p>Are the Applicant's damages reasonable?</p>
Resolving Damages – Loss of Use		
	<p>Does the Respondent's evidence support that loss of use is not recoverable within the applicable loss state? Does their evidence support a rental company, or that a company with fleet vehicles is not entitled to recover loss of use damages within the applicable loss state? Does the Respondent's evidence support a specific number of days for loss of use and/or a daily rate?</p>	<p>Does the Applicant's evidence support that the loss state allows for the recovery of loss of use damages? Does their evidence support the number of days sought for loss of use and the daily rate allowed for loss of use? Does the Applicant's evidence support their policy has loss of use coverage?</p>