



OFFICE OF INSURANCE AND SAFETY FIRE COMMISSIONER

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DIRECTIVE

08-P&C-2

TO: ALL PROPERTY & CASUALTY COMPANIES LICENSED TO CONDUCT BUSINESS IN THE STATE OF GEORGIA

FROM: JOHN W. OXENDINE
INSURANCE AND SAFETY FIRE COMMISSIONER

DATE: DECEMBER 1, 2008

RE: DIMINUTION OF VALUE – PROPERTY & PHYSICAL DAMAGE CLAIMS

On December 1, 2001, our office issued Directive No. 01-P&C-1 which notified the industry of the Georgia Supreme Court's ruling in State Farm Mutual Automobile Insurance Company v. Mabry et al., 274 Ga. 498 (2001) and directed the industry to adjust diminution of value claims accordingly. It has come to our attention that certain carriers are incorrectly suggesting to their insureds that the Department has approved a specific formula for determining diminution of value. It also has come to our attention that certain carriers are incorrectly suggesting to their insureds that the diminished value result arrived at by the carrier's use of a selected formula reflects the definitive amount to which the insured is entitled under Mabry and for which the insurer may be liable. The purpose of this Directive is to clarify the Department's position as it relates to diminution of value claims.

The Department has never promulgated or produced by regulation any formula for use in the determination of diminution of value as it relates to physical damage claims nor has the Department endorsed any specific formula or method.

The Department also has never indicated that the diminished value result obtained by a carrier's use of a particular formula or method constitutes the definitive determination of the carrier's liability to its insured. The nature of each claim demands that carriers must take into consideration all relevant information in the evaluation of diminished value claims including, but not limited to, relevant information provided by an insured regarding diminution of value.

Our original Directive only identified the court ruling and stated that diminution of value shall be assessed when determining a value on first party physical damage losses. However, defining the amount of loss associated with diminution of value is a subjective process where even experts can have a difference of opinion. For this reason, the Department has not endorsed a particular formula or method. Each claim is unique and should be evaluated as such. Every carrier has the obligation to evaluate the vehicle prior to loss and after the loss to determine the amount of diminution in value in accordance with Georgia law and applicable contractual language. Total reliance on one particular formula or method in making that evaluation may not be appropriate given the subjective nature of the claim.

Effective immediately, any insurer disseminating information and/or appraisals to their insureds shall cease using any language which implies the Department has endorsed a particular formula or method to determine diminution of value. Specifically, any insurer disseminating information and/or appraisals to their insureds shall cease using any language which implies that the Mabry decision or any other requirement of the Department supports the proposition that the diminished value result obtained by a carrier's use of a particular formula or method constitutes the definitive determination of the carrier's liability to its insured.

Any questions concerning this Directive should be addressed to the Property & Casualty Division, 916 West Tower, Floyd Building, 2 Martin Luther King, Jr. Drive, Atlanta, Georgia 30334, (404) 656-4449.



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