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### COMMISSIONER'S BULLETIN # B-0027-00

April 06, 2000

**TO: ALL COMPANIES, CORPORATIONS, EXCHANGES, MUTUALS, RECIPROCALLS, ASSOCIATIONS, LLOYDS, OR OTHER INSURERS WRITING PROPERTY AND CASUALTY INSURANCE IN THE STATE OF TEXAS AND TO OTHER AGENTS AND REPRESENTATIVES AND THE PUBLIC GENERALLY**

#### RE: PAYMENT OF DIMINISHED VALUE TO POLICYHOLDERS

The purpose of this bulletin is to clarify the position of the Texas Department of Insurance (Department) to admitted insurers writing private passenger automobile insurance and to the public on the issue concerning first party claims for diminished value.

When an automobile is completely repaired to its pre-damage condition, there is sometimes a question of whether an insurer is obligated to pay the first party claimant for the diminished value of the automobile. A policyholder may claim that the automobile's market value after complete repair is less than its market value before the damage. The policyholder then claims that the insurer is obligated to pay for the difference in market value, which is referred to as diminished value.

The standard Texas policy for private passenger automobiles, adopted by the Department under Texas Insurance Code Article 5.06, provides that an automobile insurer's contractual liability for first party claims for a loss to a covered vehicle under Collision or Other Than Collision (Comprehensive) Coverage is the lesser of the following three options, less any applicable deductible:

1. Actual cash value of the stolen or damaged property;
2. Amount necessary to repair or replace the property with other of like kind and quality; or
3. Amount stated in the declarations of the policy.

Option (1), to pay the actual cash value, applies when the insurer elects to declare the covered automobile a total loss. Option (2), to repair or replace, obligates the insurer to pay the total cost necessary to repair or replace property with parts of like kind and quality, minus any applicable deductible.

The position of the Department is that an insurer is not obligated to pay a first party claimant for diminished value when an automobile is completely repaired to its pre-damage condition. The language of the insurance policy does not require payment for, or refer to, diminished value.

This bulletin is not intended to preclude the use of loss of market value as a measure that an insurer and first party claimant may use to settle other disputes. For example, if an automobile was repaired properly but the vehicle still does not function as it did before the accident, the insurer and policyholder may agree to use loss of the automobile's market value as a measure of damages to settle the dispute.

An insurer also may be obligated to pay a third party claimant for any loss of market value of the claimant's automobile, regardless of the completeness of the repair, in a liability claim that the third party claimant may have against a policyholder. Further, an insurer may be obligated to pay a first party claimant under the uninsured/underinsured motorist coverage provisions of the policy, for any loss of market value of the first party claimant's automobile, regardless of the completeness of the repair.

Questions regarding this bulletin should be directed to the undersigned at 512/322-3430.

Sincerely,

David Durden  
Associate Commissioner  
Property & Casualty Program, MC104-5A

DD:dh

For more information contact: [ChiefClerk@tdi.texas.gov](mailto:ChiefClerk@tdi.texas.gov)

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