

CACI No. 3903J: Damage to Personal Property (Economic Damage): Cost of repair plus diminution in value

An attorney who represents vehicle owners in property damage claims against insurers sent the committee the following complaint about CACI No. 3903J, *Damage to Personal Property (Economic Damage)*:

This document... is to call to your attention what I consider to be a major tool used by the automobile insurance industry to defraud consumers and victims in California, and that is the California Judicial Counsel's [sic] CACI Jury Instruction 3903J, which deals with damage to personal property. Over the last seven years, I have repeatedly seen this jury instruction cited by the insurance company and/or their attorneys in the denial of claims as well as seeing the CACI Jury Instruction 3903J utilized in the litigation of cases by the Courts.

The basis of his objection was that insurance adjusters assert "that the claimant cannot recover both repair costs and diminished value based on CACI [No. 3903J]."

In addressing this complaint, the committee was considerably perplexed. In fact, CACI No. 3903J currently includes the following optional paragraph at the end:

[If you find that [name of plaintiff]'s [item of personal property] cannot be completely repaired, the damages are the difference between its value before the harm and its value after the repairs have been made, plus the reasonable cost of making the repairs. The total amount awarded must not exceed the [item of personal property]'s value before the harm occurred.]

The committee could not understand how this language could possibly be construed to deny recovery of both cost of repair and diminution in value on appropriate facts. Nevertheless, the committee decided to propose a few changes to the instruction that it considered to be minor to make it clear that both recoveries could be possible.

First, the committee proposes moving this paragraph up to earlier in the instruction, to follow the introductory paragraph. Second, the committee proposes changing "cannot be completely repaired" to "can be repaired, but after repairs it will be worth less than it was before the harm." The thinking was that "completely repaired" was ambiguous in that property might be "completely" repaired in the sense of restoration to its prior state, without having its full prior value restored.²¹ In making these changes, the committee did not believe that it was changing the legal meaning of the instruction in any way.

But it appears that the "completely repaired" language is the source of the difficulty experienced with the instruction. The committee did receive comments from representatives of the insurance industry objecting to the change. The comments seem to indicate that the insurance industry assumes that property can always be repaired with no diminution of value. It appears that the "completely repaired" language in CACI No. 3903J was construed to support this position.

The committee now believes that its proposed revised language is not just a minor clarification, but an important revision. A motor vehicle that has been involved in an accident can often be "completely repaired" in the sense that it will be up and running with all of the same parts that it had before the accident. But it may not have the same value. For example, there may be a CARFAX report indicating that the car has been in an accident. This report may lower the market value of the vehicle. The insured-owner should be entitled to try to convince a jury that the repairs, though perhaps "complete" in some sense of the word, did not restore the property to its full prior value.

Commentator	Comment	Committee Response
<p>Russell Kerr, Kerr and Sheldon, Fountain Valley</p>	<p>The current version of CACI Jury Instruction 3903J is confusing and inadequate because it only addresses diminished value if an item of property "cannot be completely repaired." It thus incorrectly focuses jurors' attention on the adequacy of repairs rather than on the correct legal issue of whether an item of property is worth less due to the stigma of its accident history.</p> <p>The proposed revision remedies this shortcoming by also addressing diminished value for property that "can be repaired, but after repairs will be worth less." The proposed revision provides a more easily understood instruction on damages for diminished value when property can be restored to its former state, but still sustains depreciation in its former value. (<i>Merchant Shippers Association v. Kellogg Express and Draying Co.</i> (1946) 28 Cal.2d 594, 600.)</p> <p>The proposed revision remedies the main shortcoming of CACI Instruction 3903J by addressing damage to property which can be repaired, <i>but after repairs it will be worth less</i>; whereas the current Instruction 3903J only addresses damages for depreciation when property <i>cannot be completely repaired</i>.</p>	<p>See response to Association of California Insurance Companies, above. No further response is necessary.</p>
<p>State Bar Litigation Section, Jury Instructions Committee, by Reuben Ginsberg, Chair</p>	<p>We agree with the revisions to the instruction, but we suggest that the verb tense in the second paragraph of the Directions for Use should match that in the instruction:</p> <p>"Give the optional second paragraph if the property <u>was can be repaired</u>, but the value after repair was <u>would be less than before the harm occurred</u>."</p>	<p>The committee has made the suggested revision.</p>
<p>Montie S. Day, Attorney at Law, Henderson, Nevada</p>	<p>I commend you on the work and the proposed changes to this material jury instruction."</p>	<p>No response is necessary.</p>