

## **Court Rules for Defense in Cherokee County Diminished-Value Action**

By Edward February 28, 2023

Bovis Kyle attorney Edward “Ward” Pankowski obtained a verdict in favor of the defense in a recent diminished-value lawsuit. With the defendant having stipulated to liability, the plaintiff sought over \$5,000 in total damages, including court costs and expert witness fees. Employing an innovative new formula, the defense argued plaintiff’s damages amounted to only \$633.33.

Following trial, the court found for the defense, awarding the \$633.33 in principal plus \$432.00 in court costs, for a total of \$1,065.33. The court’s opinion noted the detailed explanation of defendant’s valuation, writing, “[Defendant’s expert] explained each modifier, and why he determined it would increase or decrease diminished value.”

Ward credited the victory to working closely with his expert to develop incisive cross-examination questions that ultimately persuaded the court to write, “Defendant has the better valuation Plaintiff failed to meet her burden of proof.”

Ward added that, while some lawyers, and even some defense attorneys, see diminished value as not worth taking, he holds a different view. “My team and I come prepared in every matter that we have, because there are no small cases. And this was a big victory.” Specifically, although the dollars in issue were low in this case, validating the formula and approach to diminished-value claims was extremely valuable and will scale up in more significant exposure cases.