



MONTANA STATE AUDITOR
MONICA LINDEEN

COMMISSIONER OF INSURANCE
COMMISSIONER OF SECURITIES

TO: Property and Casualty Insurers and Licensed Adjusters

FROM: Monica Lindeen
State Auditor and Commissioner of Insurance

DATE: March 16, 2009

SUBJECT: Advisory Memorandum
Third-party claims for loss of use of property.

A general rule of law in third-party claims is that the damaged party should be made whole when liability is reasonably clear. With regard to loss of use of personal property, the measure of damages is the reasonable rental value of comparable property for the period of time necessary to repair or replace the damaged property regardless of whether or not a rental was obtained. Mont. Code Ann. § 27-1-317; Lenz Construction Co. v. Cameron, 207 Mont. 506, 674 P.2d 1101 (1984); McPherson v. Kerr, 195 Mont. 454, 636 P.2d 852 (1981).

The long-standing position of the State Auditor's Office is that loss of use damages as the reasonable rental value of a comparable vehicle means the rental value of a vehicle of like kind and quality from the time of loss until the damaged vehicle is repaired or replaced. If a compact car was damaged, the person is entitled to a compact car rental or the rental value of a compact car even if not rented. If a truck was damaged, the person is entitled to a truck rental or the rental value of a truck even if not rented. If the vehicle is a total loss, the person is entitled to loss of use damages for the reasonable amount of time to obtain a replacement in addition to the replacement value of the vehicle.

Please do not hesitate to contact the Property and Casualty Division of Policyholder Services at 406-444-2040, if you have any questions regarding this matter.

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