

# Commissioner of Securities and Insurance

Troy Downing  
Commissioner



Office of the  
Montana State Auditor

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## ADVISORY MEMORANDUM

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To: PROPERTY AND CASUALTY INSURERS AND LICENSED ADJUSTERS

From: TROY DOWNING  
Commissioner of Securities and Insurance, Montana State Auditor

Date: July 5, 2022

### **Advisory Memorandum Regarding Third-Party Claims for Loss of Use of Property**

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#### ***Background***

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 the lost ability to use personal property (loss of use), 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).

#### ***Guidance***

The long-standing position of the State Auditor's Office with regard to two aspects of this measure of damages as it concerns vehicle claims bear repeating. First, the reasonable rental value of a comparable vehicle means the rental value of a vehicle of like kind and quality. 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.

Second, when calculating these damages, the period of time begins at the time of loss of use and runs until either the damaged vehicle is repaired and returned to the claimant or replaced. Meaning, for vehicles that are repairable but not safe and legal to drive, loss of use damages run until the repairs are complete and the vehicle returned, and not only the days the vehicle is in the repair shop. 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. The loss of use damages for a total loss run from the day of loss until payment is received for at least the undisputed amount of the loss; in order to end loss of use payments, the claimant

must be paid the undisputed amount to begin the process of obtaining a replacement vehicle, even if the total amount of loss is still being disputed.

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.

**This advisory memorandum is informational only and does not enlarge, delimit, or otherwise modify any requirements of applicable law or in any way limit the authority of CSI under applicable law. CSI encourages interested persons to consult with independent legal counsel for guidance on the application of law to any particular circumstances.**

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