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M E M O R A N D U M

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TO: Interested Persons
FROM: Luisa Altmann, Research Analyst, 303-866-3518
SUBJECT: Rental Vehicle Loss of Use Laws

Summary

This memorandum provides an overview of the recovery of damages for loss of use by rental vehicle companies and various state laws that prohibit or limit the recovery of these damages.

Background

When a rental vehicle is damaged, car rental companies may recover from the renter a variety of damages established to compensate the company for the damage. These often include an estimate of the repair costs, any towing costs, various administrative fees, and what is referred to as “loss of use.” These loss of use damages are designed to account for the amount of money the company loses by having to repair the car instead of renting it out.

A renter’s personal automobile insurance or credit card coverage will often cover many of these associated charges. However, this coverage does not always include loss of use, at which point a renter is responsible for paying the damages out-of-pocket.

Colorado Law

Colorado statutes do not specifically address the recovery of damages for loss of use. In 2012, the Colorado Supreme Court heard a case in which the plaintiff, Ms. Judith Koenig, was involved in an accident in a car she had rented. PurCo Fleet Services, a risk management company that specializes in loss prevention for car rental companies, sued Ms. Koenig to collect damages related to the incident, which included loss of use damages. Ms. Koenig argued that PurCo could prevail on its loss of use damages claim only if it suffered actual lost profits; however, the Supreme Court ruled in favor of PurCo Fleet Services and ruled that PurCo was entitled to recover loss of use damages irrespective of its actual lost profits.¹

¹*Koenig v. PurCo Fleet Services, Inc.*, Case No. 10SC159 (CO S. Ct., Sep. 10, 2012).

States That Prohibit the Recovery of Loss of Use Damages

At least two states, New York and Wisconsin, prohibit rental car companies from recovering loss of use damages from drivers under any circumstance.

New York. New York law states that damages incurred by rental vehicle companies for the loss of use of a rental vehicle and related administrative fees shall not be recovered from authorized drivers.²

Wisconsin. Wisconsin law prohibits rental car companies from holding a renter or authorized driver liable for the loss of use of the vehicle or any administrative fees.³

States That Limit the Recovery of Loss of Use Damages

At least nine states limit in some way the amount of loss of use damages that rental car companies may claim and recover. At least three states, including Maine, Minnesota, and North Dakota, specifically require that private automobile insurance policies provide coverage for loss of use damages related to rental vehicles.

California. California law limits the amount that a rental car company may charge for an administrative fee, which includes all costs and expenses incident to the damage, loss, repair, or replacement of the rented vehicle, to not more than:

- \$0 if the total estimated cost for parts and labor is \$100 or less;
- \$50 if the total estimated cost for parts and labor is more than \$100, but not more than \$500;
- \$100 if the total estimated cost for parts and labor is more than \$500, but not more than \$1,500; or
- \$150 if the total estimated cost for parts and labor exceeds \$1,500.⁴

Hawaii. Charging a motor vehicle rental lessee more than a reasonable estimate of the actual income lost for the loss of use of a rental vehicle is considered to be an unfair or deceptive trade practice under Hawaii state law.⁵

Indiana. Indiana law allows rental companies and renters to agree that the renter will be responsible for the loss of use of the rented vehicle, if the renter is liable for damage, but limits the loss of use amount that a rental company may hold a renter liable for in two ways. First, the total amount of a renter's liability to a rental company resulting from damage to a rented vehicle may not exceed the sum of: the estimated cost of replacement parts; the estimated cost of labor to repair or replace damaged vehicle parts, with certain restrictions; the loss of use of the rented vehicle; and actual charges for towing, storage, and impound fees. Under this formula, the loss of use charges may not exceed the product of the rental rate stated in the rental agreement for the particular vehicle rented, excluding optional charges, and the total of the estimated time for replacement and estimated time for repair.

²N.Y. Bus. Law § 396-z (6)(d).

³Wis. Stat. § 344.574 (2)(b)(2).

⁴Cal. Civil Code § 1939.05 (d).

⁵Haw. Rev. Stat. § 437D-15 (7).

Second, Indiana law states that in no circumstance may the total liability for the rental company's loss of use exceed the product of the rental rate stated in the rental agreement for the particular vehicle rented, excluding all optional charges, and 80 percent of the period from the date of the accident to the date the vehicle is ready to be returned to rental service. The law also states that a renter is not liable to a rental company for the loss of use of a damaged vehicle unless the rental company uses its best efforts to repair and return the vehicle to rental service.⁶

Iowa. Iowa law states that a claim made for loss of use by a rental car company may not exceed the daily rental rate as agreed to by the customer, excluding optional charges, multiplied by the total of the estimated time for replacement and the estimated time for repair, divided by eight. The law also limits administrative fees to the reasonable administrative costs associated with processing the damage claim.⁷

Maine. Maine law requires that all personal automobile insurance policies that provide liability, collision, and/or comprehensive coverage also provide coverage for the obligation of the insured for actual damage to a covered rental vehicle, including charges for verifiable and actual loss of use not to exceed 30 days.⁸

Minnesota. Minnesota law requires that all private automobile insurance policies provide coverage for damages and loss of use to a rental vehicle under the property damage liability portion of the plan. The law also limits the compensation for loss of use to a period no longer than 14 days.⁹

Missouri. Missouri law requires that any claim resulting from damage to or loss of a rental vehicle shall be reasonably and rationally related to the actual loss incurred. The law states that loss of use charges by a rental car company may not exceed a reasonable estimate of the actual income lost.¹⁰

North Dakota. North Dakota law allows rental car companies to collect 60 percent of the daily rental fee applicable to the contract that was in force when the car was damaged for each day that the damaged vehicle is out of service because of the damage, but not to exceed 15 days. State law also requires that all motor vehicle liability policies provide coverage for damages and loss of use to a rental vehicle under the property damage liability portion of the policy.¹¹

Utah. Utah law states that no rental car company may hold any authorized driver liable for any damage, including loss of use and any costs and expenses incident to the damage or loss, except under certain conditions involving illegal or unauthorized activity.¹²

⁶Ind. Code § 24-4-9-14.

⁷Iowa Code § 516D.5.

⁸Me. Rev. Stat. Ann. tit. 24-A, § 2927 (2).

⁹Minn. Stat. § 65B.49 (5a).

¹⁰Mo. Rev. Stat. § 407.735 (3).

¹¹N.D. Cent. Code § 26.1-40-17.1.

¹²Utah Code § 31A-22-312.