



MATTHIESEN, WICKERT & LEHRER, S.C.
Hartford, WI ❖ New Orleans, LA ❖ Orange County, CA
❖ Austin, TX ❖ Jacksonville, FL ❖ Boston, MA
Phone: (800) 637-9176
gwickert@mw-law.com
www.mw-law.com

RENTAL CAR COMPANY PHYSICAL DAMAGE AND LOSS OF USE CLAIMS IN ALL 50 STATES

This chart addresses both the right of a car rental company or other lessor of vehicles to recover physical damages and loss of use damages directly from the renter—which would be considered a contractual claim governed heavily by the terms of the rental agreement and applicable state law—and recovery from third-party tortfeasors, negligent drivers, or other actors who cause damage to a rental car. This chart focuses on loss of use claims, however. Recovery of loss of use is a key element of auto property subrogation. States differ as to whether and when they allow a vehicle owner to recover from a responsible tortfeasor the value of loss of use of a vehicle during the period of time it is being repaired or replaced. This is third-party loss of use, as opposed to first-party loss of use, which is an insured’s claim against its auto insurer for the reasonable rental value of a damaged vehicle while it is being repaired. This chart deals only with third-party loss of use claims. The rule of damages at common law was that the owner was allowed only to recover the difference between the market value of a chattel before and after the damage was caused. Over time, courts began to allow damages for the loss of use of damaged vehicles or property. This was damage for the defendant’s wrongful interference with the owner’s right to use and enjoy his or her property. While a few jurisdictions still bristle at the notion of allowing recovery for such an esoteric item of damage as the “right to use” property, the modern trend has clearly swung in favor of allowing such damages. When loss of use claims for damage to a commercial vehicle such as rental cars began to surface, courts across the country had to reevaluate loss of use as an item of damage and determine whether to extend it to an element of damage which is closely related to but still quite different from loss of profits.

RECOVERY FROM RENTER

The terms of a rental agreement that require a renter to return the vehicle in the same condition as when it was rented are aggressively enforced. In states where it is permitted, this includes recovery of the cost of physical repairs, loss of use damages, towing and storage costs, and administrative fees. The right to recover these contractual damages must be clearly stated within the rental agreement to be enforceable. Under common law (aside from any written rental agreement), the owner of a vehicle is usually entitled to recover the actual cost of repairs, allowing for all discounts. It is usually not permissible to recover the estimated cost of repairs if the actual cost is less. Loss of use damages can also be recovered by the car rental company from the renter under common law, unless a state enacts a law, or the contract provides otherwise. Loss of use is the value of being unable to use the vehicle during the period it is out of service for repair. Loss of use is not loss of profits. Loss of use equates to the loss of the right to see, touch, sit in, display, sell, rent, or use the vehicle in any other legitimate way. Loss of use damages sought from the renter may be recoverable under the renter’s personal auto insurance.

Recovery of loss of use from a car rental company customer (*i.e.*, the renter) is a controversial subject. A rental contract often requires the renter to be responsible for administrative and “loss of use” fees—damages suffered by the car rental company when its car is in the shop instead of out on the road. The right to recover loss of use is covered in the rental agreement. A typical rental agreement contains a close similar this this:

3. Damage to/Loss of the Car. If you do not accept Loss Damage Waiver, or if the car is lost or damaged as a direct or indirect result of a violation of paragraph 14, or damaged as a result of an act of nature, you are responsible and you will pay us for all loss of or damage to the car regardless of cause, or who, or what caused it. If the car is damaged, you will pay our estimated repair cost, or if, in our sole discretion, we determine to sell the car in its damaged condition, you will pay the difference between the car's retail fair market value before it was damaged and the sale proceeds, except in Canada or as otherwise required by law. In Canada, you will pay the greater of the car's retail fair market value or its value on our books of account (also known as depreciated book value) before theft or, in the case of damage, the sales proceeds. Depreciated book value may be higher than retail fair market value. Where permitted by law, you authorize us to charge you for the actual cost of repair or replacement of lost or damaged items such as glass, mirrors, tires, and antenna, as part of your rental charges at the time of return. If the car is stolen and not recovered, you will pay us the car's fair market value before it was stolen. As part of our loss, you'll also pay for loss of use of the car, without regard to our fleet utilization, plus an administrative fee, plus towing and storage charges, if any ("Incidental Loss"). If your responsibility is covered by any insurance, credit card benefit, travel insurance or such other insurance or benefits, you authorize us to contact the benefit provider directly on your behalf and you assign all of your benefits directly to us to recover all consequential and incidental damages, including but not limited to the repairs of the car plus diminished value or the fair market retail value of the car (less salvage value plus costs incurred in the salvage-sale), and all Incidental Loss and administrative fees. If we collect our loss from a third party after we have collected our loss from you, we will refund the difference, if any, between what you paid us and what we collected from the third party. If the law of a jurisdiction covering this rental requires conditions on LDW that are different than the terms of the Rental Agreement, such as if your liability for ordinary negligence is limited by such law, that law prevails. You understand that you are not authorized to repair or have the car repaired without our express prior written consent. If you repair or have the car repaired without our consent, you will pay the estimated cost to restore the car to the condition it was in prior to your rental. If we authorize you to have the car repaired and the cost of repair is our responsibility, we will reimburse you for those repairs only if you give us the repair receipt.

Loss of use coverage can be purchased on a personal auto policy. Sometimes referred to as rental car coverage, this coverage can be an added option or endorsement to a policy upon the payment of an additional premium. However, this does not cover the renter for a contractual loss of use reimbursement claim made by a car rental company. It typically pays up to a certain dollar amount per day for a rental vehicle while the insured's vehicle is being repaired. Some car rental coverage, particularly the kind offered on a renter's credit card or personal auto insurance policy, doesn't cover loss of use. Although loss of use is a legitimate legal claim in some states, this type of recovery is not allowed in other states. These claims can be contentious, and often difficult to prove because a car rental company certainly has other vehicles it can rent in place of the damage vehicle.

Most states do not regulate or otherwise control the recovery of physical damage or loss of use damage by a car rental company from its renter. The terms of the rental agreement are held to apply and are enforceable. The terms by which the renter agrees to return the vehicle in the same condition are enforceable, and costs of repairs, loss of use, administrative fees, etc. are recoverable if called for in the rental contract. Even theft of the rental car is sometimes the responsibility of the renter if it's stated in the rental contract.

Many states have special rules and laws governing the recovery of loss of use by a rental car company or fleet operator. Examples of regulated states are **California, Illinois, Indiana, Iowa, Missouri, New York, Nevada, Utah** and **Wisconsin**. For example, **California** provides that loss of use is not recoverable by a rental car company from a renter or authorized driver, but it may be recovered from third parties who cause damage to rental vehicles. Amazingly, this is true even though the rental car company has other vehicles available for rent. Cal. Civil Code § 1939.05. Section 1939.05 limits the amounts and types of damage a car rental company can recover from its customer. Many states have addressed no special rules or limitations to recover third-party loss of use damages by a car rental company or fleet operator. **Wisconsin** law does not allow a car rental company to collect for loss of use, administrative fees, or any other charges not specifically permitted by the statute, or any amounts already collected from a renter or authorized driver. Wis. Stat. Ann. § 344.574. It does allow recovery of such damages from a third party.

Some states have case decisions that affect the ability of car rental company to recover loss of use damages from its renter. For example, in 2012 the **Colorado** Supreme Court sided with PurCo Fleet Services in its seven-year battle to obtain loss of use fees from a customer who damaged her rental after colliding with a deer in Durango.

Koenig v. PurCo Fleet Services, Inc., 285 P.3d 979 (Colo. 2012). The court ruled that the company was “entitled to recover loss of use damages irrespective of its actual lost profits.” The ruling applies only to car rentals in Colorado. Three states — **New York, California and Wisconsin** — have enacted statutes which provide limits on the amount that car rental companies can recover from renters for loss of use on a damage claim.

When a rental car company suffers damage to a vehicle in its fleet, the issue becomes multifarious, with recovery from the renter under the contract mingling with the right to recover in tort from the third-party tortfeasor. Some argue that a rental car company’s ability to recover damages for loss of the vehicle’s use during the time it is being repaired, and in an amount equal to the reasonable rental value of a substitute vehicle, depends on and subject to the ability of the rental car company to prove: (1) it suffered actual lost profits; and (2) it would have rented the damaged vehicle had it not been damaged.

Collision Damage Waiver (CDW)

In order to provide the renter protection from liability for physical damage to the rental car, including loss of use and other charges, which would otherwise be payable by the renter under the terms of the rental agreement, car rental companies allow the renter to pay an additional charge in order to purchase the car rental company’s agreement to waive any right to recovery collision damage from the renter. This is known as a “collision damage waiver” (CDC), “loss damage waiver” or a “physical damage waiver.” When renting the vehicle, the renter elects or declines the CDW which is the car rental company’s waiver of its right to look to the renter for payment of collision-type damage. If the lessee accepts the waiver, the risk of any collision-type loss is shifted from the renter to the car rental company. However, every CDW is different, with some covering only the rental car’s bodywork but not things like windows and mirrors, engine, interior, lost keys, etc. Collision damage waiver agreements also vary from company to company.

In the late 1980’s, the National Association of Insurance Commissioners (NAIC) adopted the “Collision Damage Waiver Model Act” (CDWMA) in order to limit and regulate a car rental company’s ability to impose liability on a renter outside of the CDW. The CDW is clause within the rental agreement which provides a level of protection for the renter. The car rental company waives its right to recover damage to the rental car from the renter, in exchange for a fee added to the rental charge. If the car is damaged then the renter is not responsible for some or all repairs, as well as for any loss of use fees that may accrue while the rental car is being repaired. CDW’s were first sold in the 1970s. They transferred the risk of collision-related losses back to the car rental company in exchange for a small fee. If the CDW was not purchased and the rental car was in a collision, the renter could be liable for a small deductible. Over time, car rental companies began to raise the “deductible” for which a renter was liable and the CDW fee rose along with it. Of course, renters did not need a CDW if their own personal auto insurance covered the rental agreement. The CDW isn’t really insurance. It is more like a two-party contract in which the company waives its right to damages from the renter. Over time, car rental companies began to shift third-party liability for personal injuries and property damage to the renter.

The CDWMA prohibits passing on liability for damages to the rental vehicle to the renter unless there was an intentional act, the driver was intoxicated, the driver was in a “speed contest”, the renter tried to defraud the company, or the vehicle was involved in a criminal act. It has had great difficulty in becoming adopted by the various states. The 1988 version of the model was introduced in the U.S. House of Representatives but failed to pass. Today, not a single state has adopted the CDWMA. Approximately half of the states have some kind of legislation addressing CDWs, mostly in the form of disclosure rules, while the other half allow unregulated use of CDWs.

RECOVERY FROM THIRD PARTY

In evaluating whether or not a rental car company can recover damages from a third-party tortfeasor for loss of use of a rental car which has been damaged in an accident, the law of the applicable jurisdiction must be consulted to determine the following:

1. Are loss of use damages recoverable at all when a motor vehicle is damaged?
2. If so, are loss of use damages recoverable when the vehicle is totaled, repaired, or both?

3. Are loss of use damages recoverable for a commercial vehicle and if so, how are the damages measured?
4. Must the owner prove that there was no similar replacement vehicle available to rent in order to recover loss of use damages?
5. How are loss of use damages measured? Reasonable rental value? Loss of profits? Other?
6. Are there any cases which specifically extend the right to recover loss of use damages to a car rental company?

The recovery of *third-party loss of use damages* varies greatly from state to state. The law which specifically addresses the right of a rental car company to recovery loss of use/lost profits damages from a third-party tortfeasor is hard to find and is an issue not addressed directly in most states for some reason. Therefore, extrapolations and parallels must be drawn between cases allowing loss of use/lost profit damages where a different type of “commercial vehicle” such as a dump truck, tractor-trailer, or other specialized commercial vehicle is involved. Where loss of use damages flowing from loss of a commercial vehicle is involved, some states require an actual rental car to have been purchased, while others do not. Some states allow recovery where there is repairable damage to the vehicle, but not when the vehicle is a total loss. For example, for many years, Texas allowed only an owner whose vehicle was repairable to recover for the loss of use of the vehicle during repair, while the owner of a vehicle which was totally destroyed was not allowed to recover. In 2016, the **Texas** Supreme Court changed the rules and allowed recovery of loss of use damages when damaged personal property was a total loss. In *J & D Towing, LLC v. Am. Alternative Ins. Corp.*, 478 S.W.3d 649 (Tex. 2016), the court noted that a majority of jurisdictions within the U.S. permitted loss of use damages in partial-destruction cases but prohibited them in total-destruction cases. However, the court noted that case law and treatises have shifted away from this distinction, because the owner of totally destroyed personal property may suffer loss of use damages to the same extent that the owner of partially destroyed personal property. The court said the distinction was “illogical.” States which allow recovery often require the plaintiff to prove damages for loss of use of a repairable car by establishing the reasonable rental value of a substitute car for the time reasonably required to repair or replace it.

When a commercial vehicle such as a tractor-trailer, taxicab, or rental vehicle is involved, the landscape changes. A cab company, for example, would argue that, as a result of an accident, it loses the use of one of its taxicabs and, therefore, the leasing income from that vehicle during the time it takes to purchase and outfit a replacement taxicab. In 2012, the **Alabama** Supreme Court determined for the first time that loss of use damages could be recovered by a commercial taxicab owner even when the taxicab was totaled because to do otherwise would allow for an element of damages for a damaged commercial vehicle that is repairable that it does not allow for a damaged commercial vehicle that is a total loss. *Ex parte S & M, LLC*, 120 So.3d 509 (Ala. 2012). Most states have held that if, in addition to damages to a commercial vehicle, the commercial vehicle owner has lost its use for a period of time while the vehicle is undergoing repairs, that owner is entitled to recover the value of the use of the vehicle to himself during the period reasonably required for making actual repairs, or repairs which could have been made with ordinary diligence. In **Kentucky** and **Mississippi**, for example, one whose commercial vehicle has been damaged solely by reason of negligence of another is allowed to recover loss of use for a period of time reasonably required to repair it. *Dean Truck Line, Inc. v. Greyhound Corp.*, 186 So.2d 240 (Miss. 1966). **Texas** has the second-highest number of vehicles on the road among U.S. states and it only first decided the extent of its loss of use damages rules in 2016. This area of the law is still a work in progress. In some states, such as **Tennessee**, case law rather than statutory law provides the answer. In Tennessee, case law allows for recovery of third-party loss of use damages by a car rental company when a rental vehicle is damaged, for the time necessary for the vehicle to be repaired. *Tire Shredders v. ERM*, 15 S.W.3d 849 (Tenn. 1999).

Calculation of Third-Party Loss of Use Damages

There is a great deal of disagreement as to how a car rental company or other commercial vehicle owner can calculate loss of use damages. Even within the car rental industry, there is widespread disagreement as to how loss of use damages are to be determined. At Enterprise, the largest car rental company, loss of use is based on the total number of labor hours from the repair estimate, divided by four, which the company says is a conservative estimate of labor hours that can be incorporated into each workday, and then multiplied by the daily rental rate. PurCo Fleet Services, a risk management company specializing in car rental loss prevention, calculates loss of use based on the number of days needed for repair, times the daily rate on the contract. Courts across the country have been just as disparate in their damage determinations.

As an example of courts disagreeing among themselves within individual states, in **New York**, the Third Department Appellate Division has refused to award commercial loss of use damages when no substitute chattel has actually been rented. *Mountain View Coach Lines v. Gehr*, 80 A.D.2d 949, 439 N.Y.S.2d 632 (N.Y.A.D. 3 Dept. 1981). In direct contrast to this rule, and on indistinguishable facts involving the same plaintiff bus company, the Second Department has allowed recovery for loss of use regardless of whether or not a substitute was actually obtained. *Mountain View Coach Lines v Storms*, 102 A.D.2d 663, 476 N.Y.S.2d 918 (N.Y.A.D. 2 Dept. 1984).

Car rental companies calculate their loss of use according to a formula that often uses a theoretical rate. But these calculations are often challenged. Some argue that a rental car company's ability to recover damages for loss of the vehicle's use during the time it is being repaired and in an amount equal to the reasonable rental value of a substitute vehicle during that time, is dependent on and subject to the ability of the rental car company to prove that (1) it suffered actual lost profits and (2) it would have rented out the damaged vehicle had it not been damaged. Third-party loss of use claims by rental car companies are allowed in some states and not in others. Within individual states, courts will disagree among themselves as to when, whether, and how loss of use claims are to be awarded and calculated.

Restatement (Second) of Torts § 931(a)

The *Restatements* of the Law are secondary sources that seek to “restate” the legal rules that constitute the common law in a particular area. They are written by the American Law Institute (ALI), a prestigious legal organization composed of noted professors, judges, and lawyers. The ALI has completed *Restatements* in 15 areas of law including Torts, Contracts, Property, Conflict of Laws, Foreign Relations Law, and Products Liability. With regard to loss of use damages, *Restatement (Second) of Torts § 931* governs damages for one who prevents the use of another's chattels, such as a vehicle. It states:

If one is entitled to a judgment for the detention of, or for preventing the use of, land or chattels, the damages include compensation for: (a) the value of the use during the period of detention or prevention or the value of the use of or the amount paid for a substitute, and (b) harm to the subject matter or other harm of which the detention is the legal cause.

In the comment to this *Restatement*, it reads:

The owner of the subject matter is entitled to recover as damages for the loss of the value of the use, at least the rental value of the chattel or land during the period of deprivation. This is true even though the owner in fact has suffered no harm through the deprivation, as when he was not using the subject matter at the time or had a substitute that he used without additional expense to him. The use to which the chattel or land is commonly put and the time of year in which the detention or deprivation occurs are, however, to be taken into consideration as far as these factors bear upon the value of the use to the owner or the rental value.

This illustrates that reasonable rental value is an appropriate measure of damages even when the chattel owner “was not using the subject matter at the time or had a substitute that he used without additional expense to him.”

Koenig v. PurCo Fleet Services, Inc.

A case which illustrates well the variables involved in rental car company loss of use damage claims is *Koenig v. PurCo Fleet Services, Inc.*, 285 P.3d 979 (Colo. 2012). The **Colorado** Supreme Court looked to the *Restatement (Second) of Torts § 931(a)* when it issued the first appellate decision in the country addressing the issue of lost profits in the context of car rental. Although this case involved the effort of a car rental company to recover loss of use damages from its renter—rather than a third-party tortfeasor—it wandered into a discussion of loss of use damage calculations generally and is, therefore, helpful in the third-party context as well. The *Koenig* decision follows the “*Restatements of the Law*” discussed above. *Koenig* is persuasive authority for any jurisdiction and any judge who considers the question of lost profits for a car rental company. The court ruled that car rental companies can recover loss of use damages even if they do not suffer any financial losses. The concept of loss to a rental car company is an interesting one. The notions of *lost profits* and *reasonable rental value* both capture the same loss—that is, an owner's loss caused by the deprivation of a chattel—but measure the loss differently. *Denver Bldg. & Constr. Trades Council v. Shore*, 287 P.2d 267 (Colo. 1955). The position that if a plaintiff made a profit it could not have been damaged is “argument in a circle” according to the court in *Shore*:

This is argument in a circle, since there is no way of determining the extent of profit which plaintiff would have realized had he not encountered the delay caused by the unlawful interference of the defendants. Defendants would propose loss of profits as the basis of recovery and then attempt to show that plaintiff failed in his proof. Should it appear that plaintiff had actually suffered a loss on the contract project, or made no profit at all, would defendants agree that the measure of damages is the difference between such deficit and the amount of profit normally accruing from similar contracts? We believe not. Many factors not involved here enter into profit realization. It is impossible to allocate to each of several heavy machines on the job the proportion of the over-all profit attributable to the agency of each thereof. Apparently for this reason the rule has generally been adopted that where through unlawful or wrongful acts of defendants heavy equipment has been kept idle and the work expected to be accomplished thereby delayed, the fair rental value of such equipment during the period of prevention of its use is generally adopted as a proper measure for determination of the extent of damage. *Id.* at 272.

A well-recognized treatise on damages— *McCormick, Damages*, § 124—recognizes the following criteria for determination of the value of use:

1. The rental value or the amount which could have been realized by renting out the article during the period;
2. The cost of hiring a substitute; and
3. The ordinary profits that could have been made from the use of the vehicle.

The following chart examines the ability of a rental car company to seek damages for loss of use/lost profits from the renter or a third-party tortfeasor when a vehicle from that company’s rental car company’s fleet is damaged, but not destroyed. For more information on subrogating auto property subrogation claims, see our book, “*Automobile Insurance Subrogation In All 50 States*” published by Juris Publishers. For questions relating to automobile insurance subrogation, please contact Gary Wickert at gwickert@mw-law.com.

STATE	RECOVERY FROM RENTER	RECOVERY FROM THIRD-PARTY
ALABAMA	<p>Recovery of physical damage and loss of use are not prohibited or otherwise regulated. Terms of rental agreement control.</p> <p>Collision Damage Waivers not regulated. CDW which states that renter is responsible for part of the damage is enforceable.</p>	<p>Case law allows for commercial vehicles (taxi and truck-tractor). Nothing specifically for rental cars. In general, a vehicle owner can recover for loss of use to vehicle while being repaired. Few cases specifically speak to recovery for loss of use by a commercial company or rental car company. <i>Hannah v. Brown</i>, 400 So.2d 410 (Ala. App. 1981); <i>Alford v. Jones</i>, 531 So.2d 659 (Ala. 1988). With regard to a damaged commercial vehicle (taxicab) that is not repairable, the recovery of reasonable loss of use damages is allowed during the time reasonably required to procure a suitable replacement vehicle. <i>Ex parte S & M, LLC</i>, 120 So.3d 509 (Ala. 2012) (overruling <i>Hunt v. Ward</i>, 79 So.2d 20 (Ala. 1955) and <i>Fuller v. Martin</i>, 125 So.2d 4 (Ala. App. 1960); <i>Lary v. Valiant Insurance Co.</i>, 864 So.2d 1105 (Ala. App. 2003). Lost profits damages are generally not recoverable for a period of time a commercial vehicle is out of commission for repairs. <i>Wilson and Co. v. Sims</i>, 34 So.2d 689 (Ala. 1948); <i>L & N R.R. v. Bond Transfer & Storage Co., Inc.</i>, 190 So.2d 696 (Ala. 1966); <i>Merrill v. Badgett</i>, 385 So.2d 1316 (Ala. App. 1980). However, an award for lost profits is allowed in certain circumstances such as when no substitute commercial vehicle can be reasonably obtained while plaintiff’s vehicle is being repaired. <i>Etno, Inc. v. Rivers</i>, 644 So.2d 3 (Ala. App. 1994); <i>S & M, LLC v. Burchel</i>, 120 So.3d 505 (Ala. Civ. App. 2012). In <i>Dean v. Johnston</i>, 281 Ala. 602 (Ala. 1968), the court held that the measure of damages for an injury to a commercial vehicle is the amount of money which would remunerate the plaintiff for necessary repairs in substantially restoring the vehicle to its former condition and the <i>reasonable value of its use or hire</i> during the time required to make such repairs and fit it for business.</p>

STATE	RECOVERY FROM RENTER	RECOVERY FROM THIRD-PARTY
ALASKA	<p>Recovery of physical damage and loss of use are not prohibited or otherwise regulated. Terms of rental agreement control.</p> <p>Collision Damage Waivers not regulated. However, where CDW excluded driving while intoxicated, court held contract to be one of adhesion. <i>Lauvetz v. Alaska Sales and Service d/b/a/ National Car Rental</i>, 828 P.2d 162 (Alaska 1991).</p>	<p>Case law allows for recovery of loss of use by owner of commercial vehicles (dump truck). Nothing specifically for rental cars. Alaska courts have noted informally that there are four methods of measuring loss of use (lost profit, cost of renting substitute chattel, rental value of the plaintiff's own chattel, or interest) and any of them may be used in order to most accurately compensate the plaintiff. <i>Alaska Constr. Equip., Inc. v. Star Trucking, Inc.</i>, 128 P.3d 164 (Alaska 2006) (involving commercial dump truck).</p>
ARIZONA	<p>Recovery of physical damage and loss of use are not prohibited or otherwise regulated. Terms of rental agreement control.</p> <p>Collision Damage Waivers not regulated. CDW which states that renter is responsible for part of the damage is enforceable.</p>	<p>Case law allows for loss of use recovery by owner of commercial truck leasing company (dump truck). Nothing specifically for rental cars. Proof of the fact of damages must be higher than proof of the extent of the damages. <i>Hercules Drayage Co., Inc. v. Chanco Leasing Corp.</i>, 540 P.2d 724 (Ariz. App. 1975). In <i>Hercules</i>, the court allowed loss of use (used interchangeably with loss of profits in the decision) based on the president of a truck leasing drayage (logistics term which involves shipping goods short distances via ground freight) company showing the jury on a piece of paper. He determined the profit per truckload per day for the projected 90 working days the truck could have been used until a replacement truck could be obtained. The Hercules company was in the business of transporting volcanic cinder from Yuma to the San Diego area, so the fact that they were damaged by the taking of the truck is beyond question. Where vehicle from dealer's lot was damaged, dealer was awarded interest expense while the car was in the repair shop and couldn't be sold. <i>Farmers Ins. Co. v. R.B.L. Investment Co.</i>, 675 P.2d 1381 (Ariz. App. 1983).</p>

STATE	RECOVERY FROM RENTER	RECOVERY FROM THIRD-PARTY
ARKANSAS	<p>Recovery of physical damage and loss of use are not prohibited or otherwise regulated. Terms of rental agreement control.</p> <p>Collision Damage Waivers not regulated. CDW which states that renter is responsible for part of the damage is enforceable.</p>	<p>Case law and statutory law allow for owner of commercial vehicle to recovery loss of use damages (dump truck and tractor-trailer). Nothing specifically for rental cars. Where the owner and driver of a gravel truck involved in a collision brought an action against the owner and operator of other vehicle for loss of use during time the gravel truck was being repaired, the Arkansas Supreme Court held that loss of use of the truck was a compensable element of damages and that loss of profits could be included as an element in damages for loss of use. <i>Sharp v. Great Southern Coaches, Inc.</i>, 510 S.W.2d 266 (Ark. 1974). The court recognized the following criteria for determining loss of use:</p> <ol style="list-style-type: none"> 1. The rental value or the amount which could have been realized by renting out the article during the period; 2. The cost of hiring a substitute; and 3. The ordinary profits that could have been made from the use of the vehicle. <p>In <i>Jones v. Herrin</i>, 481 S.W.2d 362 (Ark. 1974), the Supreme Court said no lost profit recovery allowed during repair period. However, in <i>Stevens v. Mid-Continent Investments, Inc.</i>, 517 S.W.2d 208 (Ark. 1974), court reversed itself saying this was unjust when plaintiff uses the vehicle in its business and allowed income loss during repair period. It is allowed when vehicle is partially damaged (<i>Sharp v. Great Southern Coaches, Inc.</i> 510 S.W.2dd 266 (Ark 1974)) and then vehicle is completely destroyed (<i>Stevens, supra.</i>). Lost profits from a vehicle used in a business are compensable. <i>Id.</i></p> <p>Statute specifically allows for third-party loss of use to owner’s vehicle. Ark. Stat. § 27-53-401.</p>
CALIFORNIA	<p>Car rental company can recover actual costs of repair (based on crash book estimates) or the ACV. Loss of use is not recoverable from a renter or authorized driver. There are also limits on the amount of administrative fees the renter is liable for. Cal. Civil Code § 1939.05.</p>	<p>Case law allows for owner of commercial vehicle (airplane). Nothing specifically for rental cars. When owner of a negligently destroyed commercial vehicle has suffered injury by being deprived of use of vehicle during period required for replacement, he is entitled, upon proper pleading and proof, to recover for loss of use in order to compensate for all the detriment proximately caused by the wrongful destruction. Owner proved equivalent aircraft were not immediately available, that it would require four or five months to replace the aircraft, that its reasonable rental value was \$1,200 per month, and that the loss of business profits for the period reasonably required for replacement was \$5,000. <i>Reynolds v. Bank of America National T. & S. Ass’n</i>, 53 Cal.2d 49 (Cal. 1959). The measure of special damages allowable to a trucking company whose truck is wrecked while the company was fulfilling a contract was the reasonable rental value of substitute trucks, whether other trucks were actually rented or not. <i>Meyers v. Bradford</i>, 201 P. 471 (Cal. App. 1921). Loss of use of a totally destroyed commercial vehicle may be recoverable in order to compensate for all detriment proximately caused by the wrongful destruction. <i>Reynolds v. Bank of Am. Nat’l T. & S. Ass’n</i>, 345 P.2d 926, 928 (Cal. 1959) (Airplane).</p>

STATE	RECOVERY FROM RENTER	RECOVERY FROM THIRD-PARTY
<p style="text-align: center;">COLORADO</p>	<p>Recovery of physical damage is not prohibited or otherwise regulated. Terms of rental agreement control.</p> <p>Car rental companies are specifically allowed to recover loss of use damages against renter even if they do not suffer any financial losses. Nothing in third-party context.</p> <p><i>Koenig v. PurCo Fleet Services, Inc.</i>, 285 P.3d 979 (Colo. 2012).</p>	<p>Reasonable rental value is a proper measure of damages when a commercial entity is wrongfully deprived of the use of its chattel. <i>Denver Bldg. & Const. Trades Council v. Shore</i>, 287 P.2d 267 (Colo. 1955). In <i>Denver</i>, a construction contractor claimed third-party loss of use damages for heavy equipment kept idle as a result of a work stoppage. The court concluded that reasonable rental value provided a yardstick by which an accurate determination of damages could be made.</p> <p>In <i>Koenig v. PurCo Fleet Services, Inc.</i>, 285 P.3d 979 (Colo. 2012), loss of use of a rental car was discussed and the court held that loss of use is an “intrinsic” loss when there is a rental car that has been damaged. Although this case involved the effort of a car rental company to recover loss of use damages from its renter—rather than a third-party tortfeasor—it wandered into a discussion of loss of use damage calculations generally and is, therefore, helpful in the third-party context. The car rental company does not need to separately show lost profits or that this particular car was needed for a particular customer. Instead, the loss of that car in and of itself had value that is a natural part of any damage claim, quite apart from physical damage itself. Loss of a car can’t be valueless. The fact that the company has other vehicles they could use does not negate the value of the vehicle they lost. If you take the position argued by some carriers that the loss of this car has no value, then anyone can take anyone’s property and as long as the property owner has a substitute, there is no value to that deprivation. Damages can be shown by lost profits or the reasonable rental value of the damaged vehicle, whether or not there was an available replacement. <i>Buchanan v. Leonard, Wiebold & Bartlett</i>, 127 F. Supp. 120 (D. Colo. 1954).</p>
<p style="text-align: center;">CONNECTICUT</p>	<p>Recovery of physical damage and loss of use are not prohibited or otherwise regulated. Terms of rental agreement control.</p> <p>Collision Damage Waivers not regulated. CDW which states that renter is responsible for part of the damage is enforceable.</p> <p>Charging the renter’s credit card for damage done to the rental car is not allowed under the state consumer protection act (CUTPA). <i>Votto v. American Car Rental, Inc.</i>, 871 A.2d 981 (Conn. 2005).</p>	<p>Loss of use damages exist to compensate for the deprivation of the owner’s right to use its chattel as the owner sees fit. This right has a value, and its deprivation necessarily entails what economists call “opportunity cost.” Any particular allocation of a resource necessarily costs the owner the opportunity to put that resource to other, competing uses. When a tortfeasor by its negligence forces a thing’s owner to allocate that chattel to the singularly unsatisfying use of sitting in a repair shop for a while, that tortfeasor forecloses the owner’s opportunity to put the chattel to some productive use. The opportunity cost exists irrespective of the normal use to which the owner allocates the damaged item. <i>Cook v. Packard Motor Car Co. of New York</i>, 92 A. 413 (Conn. 1914). It is possible that compensation for the damage to the car plus loss of use could exceed the value of the vehicle. <i>Dolittle v. Otis Elevator Co.</i>, 118 A.818 (Conn. 1922).</p> <p>Rental value is not a generally accepted measure of loss of use, though actual expenditure (from actual rental) may be used as a persuasive value of loss of use. <i>Hansen v. Costello</i>, 5 A.2d 880 (1939).</p>

STATE	RECOVERY FROM RENTER	RECOVERY FROM THIRD-PARTY
DELAWARE	<p>Recovery of physical damage and loss of use are not prohibited or otherwise regulated. Terms of rental agreement control.</p> <p>Collision Damage Waivers not regulated.</p>	<p>Nothing specifically with regard to car rental companies, but loss of use and loss of profits recoverable. Recovery of loss of use of vehicle used in plaintiff's employment. Loss of use equal to the rental value for the period of time the vehicle was being repaired was allowed. Loss of profits is also recoverable. <i>Parker v. Stauffer</i>, 1991 WL 14130 (Del. Super. 1991). Loss of use damages for vehicle sitting on dealer's lot is allowed. <i>Ganc v. Corrosion Control Corp.</i>, 1992 WL 1182140 (Del. Ct. Comm. Pleas 1992).</p>
DISTRICT OF COLUMBIA	<p>Recovery of physical damage and loss of use are not prohibited or otherwise regulated. Terms of rental agreement control.</p> <p>Collision Damage Waivers not regulated.</p>	<p>Loss of use generally allowed but no specific authority to car rental companies. For commercial vehicles, loss of use is allowed during the time reasonable required to obtain a suitable replacement vehicle. <i>Gamble v. Smith</i>, 386 A.2d 692 (D.C. App. 1978).</p>
FLORIDA	<p>Recovery of physical damage and loss of use are not prohibited or otherwise regulated. Terms of rental agreement control.</p> <p>Collision Damage Waivers not regulated.</p>	<p>Loss of use damages allowed generally. Nothing specifically governing recovery by car rental companies. Damages may amount to the reasonable rental value of a substitute vehicle during repairs, regardless of whether a rental vehicle was actually obtained or whether the vehicle is a pleasure vehicle. <i>Meakin v. Dreier</i>, 209 So.2d 252 (Fla.2d Dist. 1968); <i>Alonso v. Fernandez</i>, 379 So.2d 685, 687 (Fla. App. 1980); <i>Badillo v. Hill</i>, 570 So.2d 1067 (Fla. App. 1990).</p> <p>When the measure of damages involves the loss of use of property used in a business, "profits" allegedly lost because of the loss of use of the property is a concept subject to too many variables to be properly used as a measure of the value of loss of use of the property and the best evidence of lost use value of property is the actual or theoretical reasonable rental value of similar property. <i>Maryland Cas. Co. v. Fla. Produce Distributors, Inc.</i>, 498 So.2d 1383 (Fla. Dist. Ct. App. 1986).</p>
GEORGIA	<p>Recovery of physical damage and loss of use are not prohibited or otherwise regulated. Terms of rental agreement control.</p> <p>Collision Damage Waivers not regulated.</p>	<p>Loss of use and loss of profits recoverable generally, but nothing specific with regard to car rental companies. Recovery for loss of use of the insured vehicle (the time insured was deprived of its use) is appropriate. <i>Atlanta Furniture Co. v. Walker</i>, 181 S.E. 498 (Ga. 1935); <i>Lamb v. Mathis</i>, 359 S.E.2d 214 (Ga. 1987). Lost profits of a commercial venture are not recoverable if they are too speculative, remote, and uncertain. However, lost profits are capable of recovery if a business can perform a "reasonably accurate computation." Businesses with clearly defined experience as to profit and loss will generally be able to accurately compute their lost profits, while a new business will not, due to a lack of such a track record. <i>Molly Pitcher Canning Co. v. Cent. of Ga. Ry. Co.</i>, 253 S.E.2d 392 (Ga. App. 1979).</p>

STATE	RECOVERY FROM RENTER	RECOVERY FROM THIRD-PARTY
HAWAII	<p>Recovery of physical damage regulated by statute. Car rental company cannot require any payment for damages to or loss of use of the rental vehicle, upon the lessee's return of the vehicle in a damaged condition, until after the cost of the damage to the vehicle and liability therefor is agreed to between the lessor and lessee or is determined pursuant to law. Ga. Stat. § 437D-12.</p> <p>Loss of use damage not otherwise regulated or prohibited.</p> <p>Collision Damage Waivers must be conspicuously displayed at rental area of each rental location, in plain language and printing, containing all of the information required by Ga. Stat. § 437D-5(a)(1), (2), (5), and (6). Ga. Stat. § 437D-9.</p>	<p>No decisions regarding recovery of loss of use by a rental company from a third-party tortfeasor. Only bailment decisions against renter. Loss of use damages must be limited to a period of time reasonably necessary for securing a replacement. The economic loss to the owner who is deprived of a vehicle because it has been totally demolished is the same as the loss to the owner who is deprived of a vehicle during the period required for repair. <i>United Truck Rental Equipment Leasing, Inc. v. Kleenco Corp.</i>, 929 P.2d 99, 109 (Hawaii App. 1996). A substitute vehicle need not actually be rented. <i>Fukida v. Hon/Hawaii Serv. & Repair</i>, 33 P.3d 204 (Haw. 2001). Lost profits damages and loss of use damages are not synonymous. Loss of profits [are] measured by the amount of profit that a plaintiff could prove would have been generated had the plaintiff not been deprived of the use of the property, less the amount of profit actually generated during the deprivation. Loss of use, on the other hand, is the loss of an incident of ownership—the right to use. <i>United Truck Rental Equip. Leasing, Inc. v. Kleenco Corp.</i>, <u>supra</u>. Loss of use may also be calculated by lost profits, but the replacement cost and lost profits are mutually exclusive methods of calculation and both cannot be recovered. Loss of profits [are] measured by the amount of profit that a plaintiff could prove would have been generated had the plaintiff not been deprived of the use of the property, less the amount of profit actually generated during the deprivation. Loss of use, on the other hand, is the loss of an incident of ownership-the right to use. <i>American Tel. & Tel. Co. v. Connecticut Light & Power Co.</i>, 470 F.Supp. 105, 108 (Haw. 1979); <i>United Truck Rental Equip. Leasing, Inc. v. Kleenco Corp.</i>, <u>supra</u>.</p>
IDAHO	<p>Recovery of physical damage and loss of use are not prohibited or otherwise regulated. Terms of rental agreement control.</p> <p>Collision Damage Waivers not regulated.</p>	<p>Case law allows for loss of use damages for owner of commercial vehicle (manure spreader). Nothing specifically for rental cars. Loss of use may be calculated by: 1) replacement (recovery of the difference in the vehicle's value before and after the accident, plus damages for loss of use), and 2) Repair (recovery of the reasonable cost of necessary repairs, including interest if borrowing is necessary, diminished value after the repairs, and damages for loss of use). <i>Spreader Specialists, Inc. v. Monroc, Inc.</i>, 752 P.2d 617 (Idaho App. 1987), overruled on other grounds by <i>Walton, Inc. v. Jensen</i>, 979 P.2d 118 (Idaho App. 1999).</p>

STATE	RECOVERY FROM RENTER	RECOVERY FROM THIRD-PARTY
ILLINOIS	<p>Illinois statutes regulate and limit the physical damage the company can recover from the renter to the lesser of the actual and reasonable cost of repairs or the FMV of rental car. Total liability cannot exceed \$40,000. Diminution in value recoverable. Nothing prohibits recovery of loss of use damages from renter. Ill. Stat. Ch. 605 § 5/6-305.2.</p> <p>Collision Damage Waiver must appear in bold 10-pt. font in rental contract with a specific statement set forth in statute. Must be agreed to in writing. Must also be posted in rental office, including terms, price, coverage, and exceptions. Ill. Stat. Ch. 625 § 27/20.</p> <p>CDW is only a waiver of a right by the car rental company, not insurance. <i>Chabraja v. Avis Rent-A-Car</i>, 549 N.E.2d 782 (Ill. 1989).</p>	<p>There is no statutory limit on recovery from third parties for vehicle damage. Case law allows for owner of commercial truck (tractor-trailer) to recover loss of use. Nothing specifically for rental cars. With commercial vehicles, if feasible to rent a replacement vehicle while the commercial vehicle is undergoing repairs, the cost of renting a replacement is a reasonable measure of damages. However, net profits loss is an appropriate alternative measure of damages for loss of use of vehicle while undergoing repairs. The determination of net profits lost should be based on either normal income which would be necessarily lost over a similar period if the vehicle was unavailable or on the business which vehicle owner in fact lost due to loss of use of the vehicle during that period of time, deducting from either of such measures the cost of operating the vehicle over that period of time. <i>Plesniak v. Wiegand</i>, 335 N.E.2d 131 (Ill. App. 1975). Net profits loss, which is suffered by vehicle owner's rental business and which is necessarily sustained while vehicle is undergoing repairs, is an appropriate alternative measure of damages for loss of use of vehicle while undergoing repairs. <i>Plesniak v. Wiegand</i>, <u>supra</u>; <i>Koch v. Pearson</i>, 1920 WL 1234 (Ill. App. 1920).</p>

STATE	RECOVERY FROM RENTER	RECOVERY FROM THIRD-PARTY
INDIANA	<p>Physical damage recovery limited by statute to (1) estimated cost of parts less discounts, (2) estimated cost of labor less all discounts, (3) estimated cost of labor, limited to the product of the rate for labor usually paid by the rental company to repair vehicle parts of the type that were damaged and the estimated time for repair, and (4) actual charges for towing and storage. Ind. Code § 24-4-14(a).</p> <p>Loss of use is recoverable in an amount equal to the daily rental rate of the vehicle (excluding all optional charges) multiplied by the total estimated days for repair. However, loss of use claims may not exceed a sum equal to 80% of the daily rental rate multiplied by the number of days from the date of the accident to the date the vehicle is ready to return to service. The daily rate in all weekly and monthly rentals should be stated in the rental agreement. A vehicle rental company may not demand payment for damage to a vehicle until the costs and the liability are agreed to by the renter or are determined by a court. Ind. Code § 24-4-9-13. Attorney's fees are not recoverable even if called for in rental agreement. <i>Harbour v. Arelco, Inc.</i>, 678 N.E.2d 381 (Ind. 1997). But in 2003, statute amended to allow for attorneys' fees if agreed to in contract. Ind. Code § 24-4-9-13.</p>	<p>Case law allows for owner of commercial truck (tractor-trailer) to recover loss of use. Nothing specifically for rental cars. Loss of use is often measured by the reasonable rental value of a replacement vehicle. <i>Persinger v. Lucas</i>, 512 N.E.2d 865 (Ind. App. 1987). Loss of use also may be measured by lost profits when they are sufficiently ascertainable. <i>Ashland Pipeline Co. v. Indiana Bell Telephone Co.</i>, 505 N.E.2d 483, 490 (Ind. App. 1987) (telephone company awarded lost profits where underground telephone cable was negligently severed). The damage is its rental value, if it has a rental value, but, if not, then the value of its use to the injured party for the time he was deprived of its use is the measure of damages. <i>Fisher v. Carey</i>, 119 N.E. 376 (Ind. App. 1918). Lost profits may be used to determine the loss of use value of tractor-trailer damages in accident. <i>New York Cent. R. Co. v. Churchill</i>, 218 N.E.2d 372 (Ind. App. 1966).</p>

STATE	RECOVERY FROM RENTER	RECOVERY FROM THIRD-PARTY
IOWA	<p>Car rental company is allowed to recover from an authorized driver for damages and loss of use reasonably related to the actual loss incurred, plus administrative expenses. Loss of use damages limited to the daily rate found in the rental agreement, excluding optional charges, multiplied by the estimated time for replacement or repair. For the purpose of computing loss of use, eight hours of estimated time for repair or replacement equals one day's down time. Iowa Code § 516D.5.</p>	<p>Case law allows for commercial vehicles (tractor-trailer) to recover reasonable rental costs, but not loss of profits. Nothing specifically for rental cars. When the motor vehicle is totally destroyed or the reasonable cost of repair exceeds the difference in reasonable market value before and after the injury, the measure of damages is the lost market value plus the reasonable value of the use of the vehicle for the time reasonably required to obtain a replacement. When the injury to the motor vehicle can be repaired so that, when repaired, it will be in as good condition as it was in before the injury, and the cost of repair does not exceed the difference in market value of the vehicle before and after the injury, then the measure of damages is the reasonable cost of repair plus the reasonable value of the use of the vehicle for the time reasonably required to complete its repair. When the motor vehicle cannot by repair be placed in as good condition as it was in before the injury, then the measure of damages is the difference between its reasonable market value before and after the injury, plus the reasonable value of the use of the vehicle for the time reasonably required to repair or replace it. If loss of use leads also to loss of profits, they are speculative as much or as little as other claims of lost profits and the question of speculation becomes in the end a question whether the evidence of loss is sufficient in each case. <i>Long v. McAllister</i>, 319 N.W.2d 256 (Iowa 1982).</p> <p>Recovery allowed for reasonable value of use of the vehicle (reasonable rental cost of replacement) while being repaired with ordinary diligence, not loss of profits. When there is evidence of rental value, that is the proper measure of the loss of use, not the loss of profits for a given period. <i>Knaus Truck Lines v. Commercial Freight Lines</i>, 29 N.W.2d 204 (Iowa 1947).</p>
KANSAS	<p>Not prohibited. Terms of CDW must be prominently displayed in rental agreement. K.S.A. § 50-657.</p> <p>CDW must appear in rental agreement in 10-pt. font and recite language found in statute. K.S.A. § 50-657. Car rental employee may not make false, misleading statements, suggest CDW is mandatory, or fail to state at time of sale that CDW may duplicate renter's own personal auto coverage. K.S.A. § 50-658.</p>	<p>Loss of use generally allowed in Kansas. Nothing specifically for car rental companies. Owner may recover loss of use for damage to a vehicle for the period necessary for the vehicle to be repaired. The following Kansas case stand for such a proposition: <i>Nolan v. Auto Transporters</i>, 597 P.2d 614 (Kan. 1979); <i>Warren v. Heartland Automotive Services</i>, 144 P.3d 73 (Kan. App. 2006).</p>

STATE	RECOVERY FROM RENTER	RECOVERY FROM THIRD-PARTY
KENTUCKY	<p>Recovery of physical damage and loss of use are not prohibited or otherwise regulated. Terms of rental agreement control.</p> <p>Collision Damage Waivers not regulated.</p>	<p>Loss of use is recoverable and limited to the time necessary to repair or replace the motor vehicle. K.R.S. § 304.39-115.</p>
LOUISIANA	<p>Recovery of physical damage and loss of use are not prohibited or otherwise regulated. Terms of rental agreement control.</p> <p>CDW must appear in rental agreement in 10-pt. font and recite language found in statute. La. Stat. § 22:2091.5.</p> <p>Collision and comprehensive coverage in renter's personal auto policy automatically extends to cover temporary substitute motor vehicle. La. Stat. § 22:681.</p> <p>Car rental employee may not make false, misleading statements, suggest CDW is mandatory, or fail to state at time of sale that CDW may duplicate renter's own personal auto coverage. La. Stat. § 22:2091.6.</p>	<p>Nothing specifically granting car rental company right to recover. Generally, loss of use may be recovered for damage to a rental vehicle for the period of time necessary for the vehicle to be repaired. <i>Romco v. Broussard</i>, 528 So.2d 231 (La. 1988).</p>
MAINE	<p>Recovery of physical damage and loss of use are not prohibited or otherwise regulated. Terms of rental agreement control.</p> <p>Collision Damage Waivers not regulated.</p>	<p>Damages are limited to rental costs of a replacement vehicle, and for a reasonable amount of time (case law supports 30 days for a commercial vehicle). 14 M.S.R.A. § 1454; <i>Flynn Const. Co. v. Poulin</i>, 570 A.2d 1200 (Me. 1990). No case law or statutory support for lost profits as a measure of loss of use damages.</p>

STATE	RECOVERY FROM RENTER	RECOVERY FROM THIRD-PARTY
MARYLAND	<p>Recovery of physical damage and loss of use are not prohibited or otherwise regulated. Terms of rental agreement control.</p> <p>Collision Damage Waivers regulated by statute. Md. Stat. § 14-2101.</p>	<p>Recovery for loss of use allowed generally. Nothing specifically allowing rental car companies to recover. The owner or subrogated carrier may recover a reasonable allowance for loss of use of the vehicle. <i>Taylor v. King</i>, 213 A.2d 504 (Md. 1965). Loss of use may be recovered for a period of time reasonable to get the vehicle repaired. Loss of use can be recovered for expenses in procuring a necessary substitute or for the value of the use of a substitute until a replacement vehicle can be obtained. <i>Weishaar v. Canestrone</i>, 217 A.2d 525 (Md. App. 1966).</p> <p>No case law or statutory support for lost profits as a measure of loss of use damages. However, Maryland does acknowledge that economic loss includes the loss of profits resulting from loss of use, which may be persuasive. <i>Village of Cross Keys, Inc. v. Gypsum</i>, 556 A.2d 1126 (Md. 1989); <i>A.J. Decoster Co. v. Westinghouse</i>, 634 A.2d 1330, 1332 (Md. 1994); <i>Lloyd v. Gen. Motors Corp.</i>, 916 A.2d 257, 291 (Md. 2007).</p>
MASSACHUSETTS	<p>Recovery of physical damage and loss of use are not prohibited or otherwise regulated. Terms of rental agreement control.</p> <p>Collision Damage Waivers regulated by statute. Mass Stat. ch. 90 § 32E1/2.</p>	<p>Owner of damaged vehicle used in his business entitled to recover the cost to hire a replacement vehicle during repairs, but no cases involving car rental companies. Limited to the time reasonably necessary to make repairs – owners of a commercial vehicle must take reasonable action to limit or mitigate damages. <i>Urico v. Parnell Oil Co.</i>, 552 F. Supp. 499 (D. Mass. 1982), <i>aff'd</i>, 708 F.2d 852 (1st Cir. 1983) (applying Massachusetts law). There is no direct support for lost profits as a measure of loss of use; however, the same is not strictly barred. “A plaintiff may be entitled to loss of use damages extending beyond the time actually necessary to make repairs, depending on the reasonableness of his efforts to minimize his damages. Financial situation of the plaintiff, the cause inability to minimize his loss, role played by defendant in contributing to the difficulty in which the plaintiff finds himself at the time mitigation would be required, and the relative ability of both parties to prevent the aggravated loss are all factors considered.” <i>Urico v. Parnell Oil Co.</i>, <i>supra</i>.</p> <p>Owner of damaged vehicle used in his business entitled to recover the cost to hire a replacement vehicle during repairs. <i>Antokol v. Barber</i>, 143 N.E. 350 (Mass. 1924).</p>
MICHIGAN	<p>Even if Property Protection Insurance (PPI) coverage (no-fault) covers accident-related damage to a rental car, the renter’s personal auto policy will likely not cover renter’s liability for physical damage, repair costs, and loss of use damage.</p> <p>Recovery of physical damage and loss of use are not prohibited or otherwise regulated. Terms of rental agreement control.</p>	<p>Property Protection Insurance (PPI) benefits consist of the lesser of reasonable repair costs or replacement costs less depreciation and, if applicable, the value of loss of use. Due to no-fault laws traditional loss of use damages not recoverable from third party.</p>

STATE	RECOVERY FROM RENTER	RECOVERY FROM THIRD-PARTY
MINNESOTA	<p>Personal auto policies required to cover physical damage to and loss of use of rental car. Car rental company cannot demand payment from renter with Minnesota auto policy. Notice of this fact must be in 10-pt. bold type in rental agreement. Business auto policies are required to cover loss of use. Compensation for the loss of use of a damaged rented motor vehicle is limited to a period no longer than 14 days. Minn. Stat. § 65B.49(5a).</p> <p>Collision Damage Waivers regulated by statute. Minn. Stat. § 65B.49(5a).</p>	<p>Owner of a commercial vehicle may recover damages from loss of use of that vehicle while it is being repaired. When one seeks recovery of damages for loss of use, or for rental value, he must show the value, which includes the question of the time reasonably necessary to make the needed repairs. <i>Allen v. Brown</i>, 198 N.W. 137 (Minn. 1924).</p> <p>The Supreme Court of Minnesota adopted the <i>Restatement of Torts</i> § 928 in allowing the owner to recover diminished value after repairs, along with the cost of repair. <i>Kopischke v. Chicago, St. Paul Railway Company</i>, 40 N.W.2d 834 (Minn. 1950).</p>
MISSISSIPPI	<p>Recovery of physical damage and loss of use are not prohibited or otherwise regulated. Terms of rental agreement control.</p> <p>Collision Damage Waivers not regulated.</p>	<p>Case law allows for owner of commercial vehicle (commercial spray foam rig). Nothing specifically for rental cars. One whose commercial vehicle has been damaged solely from negligence of another may recover loss of use for a period of time reasonably required to repair it. <i>Dean Truck Line, Inc. v. Greyhound Corp.</i>, 186 So.2d 240 (Miss. 1966). While damages for loss of use of a commercial vehicle should normally be measured by the cost of hiring another vehicle, where the owner can show that no substitute vehicle was available for rent, loss of profits is the proper element of damages to be recovered. <i>National Dairy Products Corp. v. Jumper</i>, 130 So.2d 922 (Miss. 1961). The reasonable value of a replacement vehicle may be recovered even though no other vehicle was actually hired. <i>Pelican Trucking Company v. Rossetti</i>, 170 So.2d 573 (Miss. 1965).</p>

STATE	RECOVERY FROM RENTER	RECOVERY FROM THIRD-PARTY
MISSOURI	<p>Recovery of physical damage and loss of use are not prohibited or otherwise regulated. Terms of rental agreement control. Amount of damaged limited to ACV or actual cost to repair, whichever is less. Independent appraisal company, renter's insurance company or repair facility that will actually do the repair work must do the estimate. Mo. Stat. § 407.735(3).</p> <p>A vehicle rental company may recover for loss of use. However, any charge for loss of use must not exceed the reasonable estimate of the actual income lost. Mo. Stat. § 407.735(3).</p>	<p>Owner can recover both costs of replacing a specialized commercial spray foam rig and lost profits for loss of use of rig between accident and time company could build a replacement, since loss of profits associated with the time period company was without use of rig was distinct from cost of replacement. Owner could not afford to buy a new rig immediately after accident and a rental suited to company's business was not available on rental market. The goal of awarding damages is to compensate a party for a legally recognized loss, and a party should be fully compensated for its loss, but not recover a windfall. <i>Gateway Foam Insulators, Inc. v. Jokerst Paving & Contracting, Inc.</i>, 279 S.W.3d 179 (Mo. 2009).</p>
MONTANA	<p>Recovery of physical damage and loss of use are not prohibited or otherwise regulated. Terms of rental agreement control.</p> <p>Collision Damage Waivers not regulated.</p>	<p>Nothing specifically stating car rental company can recover loss of use. Generally, owner can recover loss of use damages for being deprived of the use of damaged vehicle, but only for the period of time reasonably necessary in making repairs. <i>Stahl v. Farmers Union Oil Co. of Richland</i>, 399 P.2d 763 (Mont. 1965). The proper measure for loss of use damages is the reasonable rental value of a comparable vehicle for the period of time necessary for replacement, regardless of whether another vehicle is actually rented. <i>Lenz Constr. Co. v. Cameron</i>, 674 P.2d 1101 (Mont. 1984). Another case says the applicable time period is the amount of time necessary to find a replacement vehicle. <i>Hop v. Safeco Ins. Co. of Illinois</i>, 261 P.3d 981 (Mont. 2011).</p>
NEBRASKA	<p>Recovery of physical damage and loss of use are not prohibited or otherwise regulated. Terms of rental agreement control.</p> <p>Collision Damage Waivers not regulated.</p>	<p>Award of damages for loss of use of totally destroyed commercial vehicle in the amount of loss of profit until vehicle could be replaced was improper, as proper measure was fair rental value. <i>Chlopek v. Schmall</i>, 224 Neb. 78 (Neb. 1986).</p>

STATE	RECOVERY FROM RENTER	RECOVERY FROM THIRD-PARTY
NEVADA	<p>Physical damage recovery limited by statute. Limited to FMV or costs of repairs less discounts, estimated cost for labor, and estimated cost of repair, all on crash book times. Physical damage cannot be processed on renter's credit card unless renter agrees to amount after the accident, and it is processed on separate charge slip. Cannot be recovered if the damages have already been collected from physical damage insurer or third-party liability carrier. Renter presumed to have no liability for theft if he produces ignition key and theft reported within 24 hours. This statute does not limit recover from third-party tortfeasor. Nev. Stat. § 482.31535.</p> <p>Car rental company allowed to recover loss of use damage and administrative fees (limited by statute) from renter. Such damages accrue on a daily basis, at the renter's daily rental fee, exclusive of optional charges. This daily rate is then applied during the estimated period of time necessary to repair or replace the vehicle, with eight hours constituting a day. Nev. Stat. § 482.3154(d).</p>	<p>A party may recover loss of use damages for the time period in which that party has lost use of her personal vehicle as a result of damages to her auto, and these damages may be measured by reasonable rental car costs for a reasonable period within which to repair the vehicle; however, a party need not actually rent a vehicle to recover loss of use damages if that party is financially unable to rent a substitute vehicle. Loss of use is awarded for the inconvenience of loss of use based on individual circumstances, to which the party can testify. Expert testimony is not required. Rental car costs are probative of loss of use damages, even though the owner does not actually rent a replacement vehicle if he is financially unable to. <i>Dugan v. Gotsopoulos</i>, 22 P.3d 205 (Nev. 2001).</p>
NEW HAMPSHIRE	<p>Recovery of physical damage and loss of use are not prohibited or otherwise regulated. Terms of rental agreement control.</p> <p>Collision Damage Waivers not regulated.</p>	<p>Nothing specifically stating car rental company can recover loss of use. Generally, value of reasonable use of a vehicle for business purposes would be the cost of other reasonable substitute means of transportation in excess of what the expense of the operation of the plaintiff's own vehicle would have been. <i>Rogers v. Nelson</i>, 80 A.2d 391 (N.H. 1951). However, in one case the only evidence was the reasonable value of the car at \$20 per day. In that case, the jury properly found that where the evidence failed to show the owner needed the vehicle or was inconvenienced by its loss, no loss of use damages were incurred. <i>Gelinas v. Mackey</i>, 465 A.2d 498 (N.H. 1983).</p>

STATE	RECOVERY FROM RENTER	RECOVERY FROM THIRD-PARTY
NEW JERSEY	<p>Recovery of physical damage and loss of use are not prohibited or otherwise regulated. Terms of rental agreement control.</p> <p>Collision Damage Waivers not regulated.</p>	<p>Nothing specifically stating car rental company can recover loss of use. Generally, damages may include loss of use of a vehicle during the time necessary to complete repairs, where the owner is temporarily deprived of the use of his vehicle. <i>Camaraza v. Bellavia Buick Corp.</i>, 523 A.2d 669 (N.J. Super. 1987).</p> <p>Section 11:3-10.6 of the New Jersey Administrative Code governs loss of use when the vehicle is stolen.</p>
NEW MEXICO	<p>Recovery of physical damage and loss of use are not prohibited or otherwise regulated. Terms of rental agreement control.</p> <p>Collision Damage Waivers not regulated.</p>	<p>Nothing specifically addressing right of car rental company to recover loss of use. Generally, loss of use damages allowed for the amount of time needed to repair the vehicle. <i>Curtis v. Schwartzman Packing Co.</i>, 299 P.2d 776 (N.M. 1956). Loss of use damages are measured by the actual rental costs reasonably incurred if a substitute vehicle were to be rented, even if it was not actually rented. <i>Cress v. Scott</i>, 868 P.2d 648 (N.M. 1994). Jury instructions define “loss of use” as the “reasonable rental value of similar property during the period reasonably required for the repair of the damaged property.” N.M.R.A. Rule 13-1818.</p> <p>Loss of use is recoverable even in the absence of actual rental. <i>Cress v. Scott</i>, <u>supra</u>.</p> <p>The court allowed a jury instruction that would allow an award of damages for total loss of a vehicle or repair costs plus loss of use, but not both. <i>Curtis v. Schwartzman Packing Co.</i>, 299 P.2d 776 (N.M. 1956).</p>

STATE	RECOVERY FROM RENTER	RECOVERY FROM THIRD-PARTY
NEW YORK	<p>A car rental company may hold an authorized driver liable for FMV or repair costs. However, if based on a physical survey after-hours or by automation it must be made within ten (10) days, must be only for actual and reasonable costs, and must be assessed and billed separately from the rental agreement. Loss of use damages and related administrative fees may not be recovered from authorized drivers. N.Y. Gen. Bus. Law § 396-z.</p>	<p>Case law allows for owner of commercial vehicle (airplane and bus). Nothing specifically for rental cars. Deprivation of the use of commercial chattel causes harm to the chattel owner because the owner lost the right to use its chattel. Loss of use damages exist to compensate for the deprivation of the owner’s right to use its chattel as the owner sees fit. This right has a value, and its deprivation necessarily entails what economists call “opportunity cost.” Any particular allocation of a resource necessarily costs the owner the opportunity to put that resource to other, competing uses. When a tortfeasor by its negligence forces a thing’s owner to allocate that chattel to the singularly unsatisfying use of sitting in a repair shop for a while, that tortfeasor forecloses the owner’s opportunity to put the chattel to some productive use. <i>Kuwait Airways Corp. v. Ogden Allied Aviation Services</i>, 726 F.Supp. 1389, 1396 (E.D.N.Y.,1989) (damage to aircraft).</p> <p>Loss of use damages allowed by owner of bus. <i>Mountain View Coach Lines v. Storms</i>, No. 836 E, 102 A.D.2d 663, 476 N.Y.S.2d 918 (N.Y.A.D. 2 Dept., June 18, 1984). New York does not require an actual replacement rental vehicle. <i>Pittari v. Madison Ave. Coach Co.</i>, 68 N.Y.S.2d 741 (N.Y. 1947).</p> <p>An owner of a commercial vehicle may recover loss of use damages. The appropriate measure of such damages is based on rental value and the owner need not prove that a substitute was required to cover the loss -of the damaged chattel. <i>Koninklijke Luchtvaart Maatschaapij, N. V. v. United Technologies Corp.</i>, 610 F.2d 1052 (2nd Cir. 1979). In <i>CTI Int’l, Inc. v. Lloyds Underwriters</i>, 735 F.2d 679 (2nd Cir. 1984), the court tried to reconcile the two <i>Mountain View Coach Lines</i> decisions above. The 2nd Circuit retreated from <i>Koninklijke</i> and held that there was no loss of use damage for a container company because there were empty containers available and, therefore, there could have been no loss of income.</p> <p>The consensus in New York appears to be that loss of use damages for commercial vehicles is allowed, and the plaintiff does not have to prove that he did not have a replacement vehicle on hand or couldn’t lease a replacement.</p>
NORTH CAROLINA	<p>Recovery of physical damage and loss of use are not prohibited or otherwise regulated. Terms of rental agreement control.</p> <p>Collision Damage Waivers not regulated.</p>	<p>Case law allows for owner of commercial vehicle (tractor-trailer). Nothing specifically for rental cars. When a vehicle is negligently damaged, whether it is totally destroyed or it can be economically repaired, the plaintiff will be entitled to recover for the loss of its use during the time he was necessarily deprived of it. <i>Roberts v. Pilot Freight Carriers, Inc.</i>, 160 S.E.2d 712 (N.C. 1968). Where loss of business profits is direct and necessary result of wrongful conduct, and such profits are capable of being shown with reasonable degree of certainty, lost profits constitute proper element of damage. <i>Reliable Trucking Co. v. Payne</i>, 233 N.C. 637 (N.C. 1951) (tractor-trailer).</p>

STATE	RECOVERY FROM RENTER	RECOVERY FROM THIRD-PARTY
NORTH DAKOTA	<p>Renter’s personal auto policy must cover damage to vehicles rented for 30 days or less, unconditioned by fault. Carriers must notify insureds about this feature. N.D. Code § 26.1-40-17.1.</p> <p>Statute allows recovery for loss of use, but limits claims to 60% of the daily rental rate, not to exceed 15 days. N.D. Code § 26.1-40-17.1.</p> <p>Collision Damage Waivers not regulated.</p>	<p>Nothing specifically speaking to car rental company’s right to recover loss of use. However, damages allowed include the reasonable value of the loss of use pending restoration of the property, unless restoration of the property within a reasonable period of time is impossible or impracticable, in which case the measure of damages is presumed to be the difference between the market value of the property immediately before and immediately after the injury and the reasonable value of the loss of use pending replacement of the property. N.D. Code § 32-03-09.1.</p>
OHIO	<p>Recovery of physical damage and loss of use are not prohibited or otherwise regulated. Terms of rental agreement control.</p> <p>Collision Damage Waivers not regulated.</p>	<p>Nothing specifically speaking to car rental company’s right to recover loss of use. Generally, when a vehicle has been negligently damaged in part and is capable of being repaired within a reasonable period of time, the owner may recover two elements of damage: the loss in value (measured by the difference in value of the vehicle immediately before and immediately after the damage); and the loss of the use of the vehicle for such reasonable period of time as is necessary to make the repairs (measured by the reasonable rental value of a vehicle of like kind). <i>Hayes Freight Lines, Inc. v. Tarver</i>, 73 N.E.2d 192 (Ohio 1947); <i>Perry v. Harris</i>, 197 N.E.2d 416 (Ohio 1964). It is reversible error to use the gross earnings of the damaged vehicle or the reasonable value to the owner himself. <i>Cincinnati Traction Co. v. Feldkamp</i>, 1924 WL 2169 (Ohio App. 1924); <i>Pettijohn v. Clark</i>, 277 N.E.2d 455 (Ohio App. 1971); <i>Kreiner & Peters Co., L.P.A. v. Pirman</i>, 2000 WL 1010951 (Ohio App. 2000).</p>
OKLAHOMA	<p>Recovery of physical damage and loss of use are not prohibited or otherwise regulated. Terms of rental agreement control.</p> <p>Collision Damage Waivers not regulated.</p>	<p>Rental car company can likely recover loss of use damages but may have to show that it didn’t have replacement vehicle. Owner of specially-equipped commercial truck can recover damages for loss of use, but in order to do so was required to show that he could not have rented a similar truck while the replacement truck was being delivered and to show that the 79–day waiting period for delivery of the replacement truck was reasonable. If a plaintiff could have rented a substitute vehicle, the rental cost is the measure of his damage even though no other vehicle was rented. Ordinarily the measure of damages for loss of use of a business vehicle is not the profits which the owner would have earned from its use during the time he was deprived of it; it is the cost of renting a similar vehicle during a reasonable period for repairs. To recover lost profits plaintiff must show (1) that he made a reasonable effort to obtain a substitute vehicle for the time required to repair or replace the damaged one, and (2) that he was unable to obtain one in the area reasonably related to his business. In the absence of such a showing, he may not recover lost profits. <i>DTS Tank Service, Inc. v. Vanderveen</i>, 683 P.2d 1345 (Okla. 1984).</p>

STATE	RECOVERY FROM RENTER	RECOVERY FROM THIRD-PARTY
OREGON	<p>Recovery of physical damage and loss of use are not prohibited or otherwise regulated. Terms of rental agreement control.</p> <p>Collision Damage Waivers regulated by statute. Or. Stat. § 646.859.</p>	<p>Case law allows for owner of commercial vehicle (tractor-trailer). Nothing specifically for rental cars. Loss of profits, if properly proven, is an acceptable measure of loss of use of a commercial vehicle (Peterbilt truck tractor). <i>Bullock v. Hass</i>, 571 P.2d 902 (Or. 1977). A vehicle owner is entitled to recovery for loss of use damages. This is true even when a rental vehicle is not obtained. <i>Graf v. Don Rasmussen Co.</i>, 592 P.2d 250 (Or. App. 1979). However, the plaintiff will not be compensated for any unnecessary delays in repairs. The measure of damages is the reasonable rental value of a similar vehicle for a reasonable repair period.</p>
PENNSYLVANIA	<p>Recovery of physical damage and loss of use are not prohibited or otherwise regulated. Terms of rental agreement control.</p> <p>Collision Damage Waivers not regulated.</p>	<p>When a fleet is involved, such as with a rental car company, the owner is still entitled to reasonable loss of use damages. <i>Benson v. Budget Rent A Car Sys. Inc.</i>, 2011 WL 4528334 (E.D. Pa. 2011). However, a person claiming loss of use damages when the property is not repairable must show that the method of acquiring a replacement for the property and the time taken for the replacement were reasonable. <i>Kintner v. Claverack Rural Electric Co-Operative, Inc.</i>, 478 A.2d 858 (Pa. Super. 1984). In <i>Benson v. Budget Rent a Car System, Inc.</i>, the rental car company located replacement vehicles within one day but argued it should be entitled to recover loss of use damages until the vehicle is repaired and sold at auction (capped at 30 days). There is no hard and fast rule – only that the loss of use period must be reasonable.</p>
RHODE ISLAND	<p>Physical damage to rental vehicle must be covered by renter’s personal auto policy. R.I. Stat. § 27-7-6.</p> <p>Recovery of physical damage and loss of use are not otherwise prohibited or otherwise regulated. Terms of rental agreement control.</p> <p>Collision Damage Waivers regulated by statute. R.I. Stat. § 31-34-7.</p>	<p>Lost profits allowed under certain circumstances but no cases involving loss of use recovery by a car rental company. Damages for loss of use are recoverable. <i>Longo v. Monast</i>, 40 A.2d 433 (R.I. 1944). Where there is evidence that plaintiff used his auto daily going to and from his employment, that about two months was required to repair automobile and that plaintiff had to hire another automobile for 43 days for his transportation, his testimony as to what he paid per day for use of the replacement auto is admissible as <i>prima facie</i> proof of damages for loss of use of auto. Loss of use is properly recovered even when a rental vehicle is supplied for free by a third party.</p>
SOUTH CAROLINA	<p>Recovery of physical damage and loss of use are not prohibited or otherwise regulated. Terms of rental agreement control.</p> <p>Collision Damage Waivers not regulated.</p>	<p>Nothing directly dealing with the right of a car rental company to recover loss of use damages. Generally, when a vehicle is damaged, the cost to repair it or depreciation in the vehicle’s value (cost to repair may constitute a part of the measure of depreciation), together with the value of the loss of use of the vehicle is recoverable against the tortfeasor. <i>Newman v. Brown</i>, 90 S.E.2d 649 (S.C. 1955); <i>Coleman v. Levkoff</i>, 122 S.E. 875 (S.C. 1924). Loss of profits by the owner may also be recoverable under the proper circumstances. <i>Charles v. Texas Co.</i>, 18 S.E.2d 719 (S.C. 1942).</p>

STATE	RECOVERY FROM RENTER	RECOVERY FROM THIRD-PARTY
SOUTH DAKOTA	<p>Recovery of physical damage and loss of use are not prohibited or otherwise regulated. Terms of rental agreement control.</p> <p>Collision Damage Waivers not regulated.</p>	<p>Nothing directly dealing with the right of a car rental company to recover loss of use damages. Generally, loss of use is recoverable for the period of time a vehicle is being repaired. <i>Joseph v. Kerkvliet</i>, 642 N.W.2d 533 (S.D. 2002).</p>
TENNESSEE	<p>Recovery of physical damage and loss of use are not prohibited or otherwise regulated. Terms of rental agreement control.</p> <p>Collision Damage Waivers regulated by statute. Tenn. Stat. § 56-7-1110. Rental agreement must advise renters that the purchaser of the insurance coverage or collision damage waiver offered may be covered for such claims on the purchaser's personal motor vehicle insurance policy, and that if such insurance coverage exists under the renter's personal insurance policy, and the coverage is confirmed, the renter may require the rental car company to submit any claims to the renter's personal insurance carrier as the renter's agent.</p>	<p>No law specifically dealing with recovering loss of use for loss of rental vehicle. Where no other vehicle is available, lost profits may be recovered if proved with certainty, but an award of lost profits is erroneous in the absence of a showing that no other vehicle could be had. <i>Lance Prods., Inc. v. Commerce Union Bank</i>, 764 S.W.2d 207 (Tenn. App. 1988). As a general rule, lost profits are not recoverable when the plaintiff's personal property has been completely destroyed and is not capable of being repaired. However, lost profits were recoverable when a shredding machine was in use when it was destroyed by a fire. Courts recognize the logic of a recovery of loss of use until a commercial vehicle can be replaced while rejecting the recovery when there was "no evidence that plaintiff could not have bought a new car promptly after the accident." <i>Tire Shredders v. ERM</i>, 15 S.W.3d 849 (Tenn. 1999).</p>

STATE	RECOVERY FROM RENTER	RECOVERY FROM THIRD-PARTY
TEXAS	<p>Recovery of physical damage and loss of use are not prohibited or otherwise regulated. Terms of rental agreement control.</p> <p>Collision Damage Waivers regulated by statute. Tex. Bus. & Com. Code §§ 91.051 to . 91.056.</p>	<p>Case law allows for owner of commercial vehicle (airplane and bus). Nothing specifically for rental cars. Recovery for loss of use arising out of damage to truck should have been supported by evidence of period of time plaintiff was deprived of use of vehicle in making repairs and reasonable expense for hire or replacement of truck during period, less cost of maintenance and depreciation that would have occurred during period had vehicle not been damaged, or if recovery was based upon loss of profit from truck's operation, probable income during time reasonably necessary to repair truck should have been shown less all reasonable costs of operation, maintenance and depreciation. <i>Alexander Schroeder Lumber Co. v. Merritt</i>, 323 S.W.2d 163 (Tex. Civ. App. 1959).</p> <p>Where there is a claim for lost rentals, there is at least an issue whether the lost rentals can be recovered when the rental property was totally destroyed. <i>American Jet, Inc. v. Leyendecker</i>, 683 S.W.2d 121 (Tex. Civ. App. 1984).</p>
UTAH	<p>Car rental company can recover collision damages and loss of use damages from renter if (1) it discloses all charges and costs incidental to the basic daily rental rate and (2) the renter is provided with clear written notice on the rental agreement and in the rental company's place of business Utah Code Ann. §31A-22-312(1).</p>	<p>A vehicle owner is also entitled to recover the cost of preserving the car and any loss of use for a reasonable period of time until it can be repaired. <i>Metcalf v. Mellen</i>, 192 P. 676 (Utah 1920). In the alternative, the plaintiff can recovery the reasonable cost of repair of the vehicle and the diminution of value of the vehicle after the repairs are completed. Recovery for loss of use of a vehicle is not contingent upon having rented a replacement vehicle. <i>Castillo v. Atlanta Casualty Co.</i>, 939 P.2d 1204 (Utah App. 1997). This is because to do so would condition recovery of this element of damage on a person's ability to pay for a rental vehicle, which the law will not condone.</p>
VERMONT	<p>Recovery of physical damage and loss of use are not prohibited or otherwise regulated. Terms of rental agreement control.</p> <p>Collision Damage Waivers not regulated.</p>	<p>No law specifically dealing with recovering loss of use for loss of rental vehicle. Loss of use for damage to a vehicle is recoverable. <i>Wheeling & Harding v. Town of Townshend</i>, 42 Vt. 15 (Vt. 1869); <i>Lyman v. C. W. James</i>, 87 Vt. 486 (Vt. 1914). Vermont's Administrative Code specifically deals with third-party liability carriers' duties when faced with loss of use claims. 4-3 Vt. Code R. § 7. Loss of profits are not recoverable unless expected profits are not too speculative, uncertain, and remote. <i>Madowitz v. Woods at Killington Owners' Ass'n, Inc.</i>, 93 A.3d 571 (Vt. 2014).</p>
VIRGINIA	<p>Recovery of physical damage and loss of use are not prohibited or otherwise regulated. Terms of rental agreement control.</p> <p>Collision Damage Waivers regulated by statute. Va. Code § 59.1-207.31.</p>	<p>Recovery of damages for loss of use are allowed and may be calculated by the reasonable cost actually incurred in hiring a comparable substitute vehicle for the time in which the individual is deprived of the use of the motor vehicle. Va. Stat. § 8.01-66. There is no support that loss of use can be recovered if a rental vehicle is not actually obtained, as the statute provides that the damages are calculated by the cost <u>actually incurred</u>.</p>

STATE	RECOVERY FROM RENTER	RECOVERY FROM THIRD-PARTY
WASHINGTON	<p>Recovery of physical damage and loss of use are not prohibited or otherwise regulated. Terms of rental agreement control.</p> <p>Collision Damage Waivers not regulated.</p>	<p>Case law allows for owner of commercial vehicle (commercial truck). Nothing specifically for rental cars. Damages for loss of use of a vehicle which owner uses in the production of income may be measured by: (1) lost profit; (2) cost of renting a substitute chattel; (3) rental value of the plaintiff's own chattel; or (4) interest. <i>Straka Trucking, Inc. v. Estate of Peterson</i>, 989 P.2d 1181 (Wash. App. 1999).</p>
WEST VIRGINIA	<p>Recovery of physical damage and loss of use are not prohibited or otherwise regulated. Terms of rental agreement control.</p> <p>Collision Damage Waivers not regulated.</p>	<p>Case law allows for owner of commercial vehicle. Nothing specifically for rental cars. An owner is not entitled to recover amount which he would have earned with the commercial truck, but only amount which it would have cost plaintiff to replace truck by renting one in its place. However, while damages for loss of use of a commercial vehicle should normally be measured by the cost of hiring another vehicle, where the owner can show that no substitute vehicle was available for rent, loss of profits is the proper element of damages to be recovered. <i>Somerville v. Dellosa</i>, 56 S.E.2d 756 (W. Va. 1949); <i>Ellis v. King</i>, 400 S.E.2d 235 (W. Va. 1990).</p>
WISCONSIN	<p>A car rental company can recover the FMV of the rental car or repair costs. Wis. Stat. § 344.574(2). It must allow renter and his insurer to inspect the unrepaired car within two days of the accident notification and obtain two estimates. Wis. Stat. § 344.574(4). It may not hold renter liable if it recovers from another driver. Damages limited to the lesser of: (a) the actual and reasonable costs of repair, including discounts, or (b) the FMV of the rental car according to the customary market for the sale of vehicles.</p> <p>Car rental company may not hold a renter or authorized user responsible for loss of use of the rental vehicle. Wis. Stat. § 344.574(2)(b).</p>	<p>Nothing specifically regarding rental cars. Loss of use is generally recoverable in Wisconsin. <i>Hellenbrand v. Hilliard</i>, 687 N.W.2d 37 (Wis. App. 2004). The time period for measuring loss of use damages is normally the time the vehicle is out of service. <i>Id.</i> The time period does not necessarily end when the owner purchases a new vehicle. <i>Id.</i> The owner is entitled to loss of use damages relating to the time period <i>after</i> he returned his rental vehicle and until his repaired vehicle is returned to him, even if he purchases a new vehicle in the interim. <i>Id.</i></p> <p>Loss of use is recoverable even when the owner does not obtain a replacement rental vehicle. <i>Kim v. American Family Mutual Ins. Co.</i>, 501 N.W.2d 24 (Wis. 1993).</p> <p>Loss of use is recoverable even when the vehicle is not repairable. <i>Nashban Barrel & Container Co. v. G. G. Parsons Trucking Co.</i>, 182 N.W.2d 448 (Wis. 1971).</p>

STATE	RECOVERY FROM RENTER	RECOVERY FROM THIRD-PARTY
WYOMING	<p>Recovery of physical damage and loss of use are not prohibited or otherwise regulated. Terms of rental agreement control.</p> <p>Collision Damage Waivers not regulated.</p>	<p>Loss of use is recoverable in Wyoming. <i>Farmers Home Administration v. Redland</i>, 695 P.2d 1031 (Wyo. 1985). Rental value is a practical measure used in determining damages for loss of use. <i>Wheatland Irrigation Dist. v. McGuire</i>, 562 P.2d 287 (Wyo. 1977). Another method may be to prove rental or useable value of the vehicle lost. <i>Id.</i> The fact finder must have sufficient evidence in which it can reasonably determine the amount of the loss with some degree of certainty. <i>Id.</i> There shouldn't be any speculation when determining loss of use damages. <i>Colorado Kenworth v. Archie Meek Transp. Co.</i>, 495 P.2d 1183 (Wyo. 1972).</p> <p>A usual method of proof to sustain this type of loss is the cost of hiring or renting another vehicle. <i>Id.</i> This may be interpreted to allow for loss of use even when another vehicle is not rented.</p> <p>There is no caselaw expressly disallowing recovery for loss of use on a total loss claim. Accordingly, there is a strong argument that such a claim can be sustained.</p>

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