

DEPARTMENT OF INSURANCE

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GEORGE NICHOLS III, COMMISSIONER
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The following Advisory Opinion is to advise the reader of the current position of the Kentucky Department of Insurance ("the Department") on the specified issue. The Advisory Opinion is not legally binding on either the Department or the reader.

Kentucky Department of Insurance

Advisory Opinion 98-05

In re: Damages for motor vehicle loss of use and settlement of claims for motor vehicles

RELEVANT FACTS AND STATUTES: This advisory opinion is a supplementary interpretation of KRS 304.39-115 regarding loss of use of a motor vehicle and of 806 KAR 12:095 (Section 7) Standards for Prompt, Fair, and Equitable Settlements Applicable to Motor Vehicle Insurance.

The Department has received an increasing number of complaints from third party claimants regarding total loss automobile settlements and the loss of use portion of their claim. Typically these complaints involve an initial offer to settle the total loss automobile claim which is accompanied by a demand from the insurer that the claimant immediately return the rental car which has been provided by the insurer pursuant to KRS 304.39-115. This practice may place individuals and families at an unfair disadvantage, as without transportation, they may be unable to evaluate their loss and enter into good faith negotiations. They may be pressured or forced into accepting an offer that does not accurately represent the diminution in value they have suffered.

THE DEPARTMENT'S POSITION: This advisory opinion shall serve as a reminder to all carriers conducting property and casualty business in this state of 806 KAR 12:095 (Section 7) Standards for Prompt, Fair, and Equitable Settlements Applicable to Motor Vehicle Insurance. It is the opinion of this Department that third party total loss offers and settlements should be based on the cost of a comparable motor vehicle in the local market just as first party total loss offers and settlements are. The determination of the difference between the fair market value of the vehicle immediately before and immediately after the loss should include the same considerations. "Comparable" means the same manufacturer, same year, similar body style, options, customization, tire tread, mileage and condition. This is not, however, an exclusive list of factors to consider in determining the cost of a comparable motor vehicle in the local market. The comparison should be fully documented in the claim file.

KRS 304.39-115 provides that the claim for loss of use of a motor vehicle is limited to reasonable and necessary expenses for the time necessary to repair or replace the motor vehicle. The claim for loss of use does not automatically terminate' upon the communication of an offer by an insurer to the claimant. This is especially so if the offer is not properly based upon a comparable motor vehicle in the claimant's local market.

The Department will begin enforcing this interpretation immediately. Naturally, the Department will also focus on this issue in market conduct examinations.

George Nichols III

Commissioner

Date: 12/15/98