



# STATE OF CONNECTICUT

## INSURANCE DEPARTMENT

BULLETIN CL-1-07

July 20, 2007

TO: COMPANIES LICENSED IN THE STATE OF CONNECTICUT TO WRITE AUTO  
LIABILITY INSURANCE  
RE: LOSS OF USE PAYMENTS UNDER CONN. AGENCIES REGS. SECTION 38a-334-1, ET  
SEQ.

In order to clarify Connecticut law regarding "loss of use" payments in third party auto claims, Bulletin CL-1 issued March 17, 1987 is hereby withdrawn and this Bulletin is issued in its place.

An insurer's obligation to undertake to pay loss of use when adjusting third party automobile property damage claims in which liability has become reasonably clear is found in Connecticut's insurance regulations, specifically Conn. Agencies Regs. Section 38a-334-1, et seq. (the "Minimum Provisions Regulations") as well as case law from the Connecticut Supreme Court.

"Property damage" is defined in the Minimum Provisions Regulations as "injury to or destruction of tangible property, *including loss of use thereof.*" (Emphasis added.) In addition, the Minimum Provisions Regulations require that "[t]he insurer shall *undertake* to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages because of bodily injury or property damage caused by accident, and arising out of the ownership, maintenance and use of a motor vehicle owned or long-term leased by the named insured . . ." (Emphasis added.) As defined in the Minimum Provisions Regulations, loss of use is an inherent part of property damage and the regulations require liability insurers to "undertake" to pay such damage. It should be noted that "undertake" is defined in Webster's II New Riverside Dictionary (1988) as "to take upon oneself; decide or agree to do." Thus, the Minimum Provisions Regulations require that insurance companies take it upon themselves to pay loss of use payments on behalf of their insureds.

In addition, Connecticut law by regulation and case law requires that loss of use payments are to be made even if the claimant has not actually incurred expenses such as rental costs. Specifically, Conn. Agencies Regs. Section 38a-10-2(f) defines loss of use as "the amount representing the reasonable value to the claimant for the deprivation of the use of the claimant's vehicle during the period reasonably required to make repairs or replace the vehicle, regardless of whether the claimant has incurred expenses." That regulation would apply if a dispute concerning the value of loss of use was arbitrated pursuant to Conn. Agencies Regs. Section 38a-10-1, et seq. Also, the Connecticut Supreme Court in Anderson v. Gengras Motors, Inc., 141 Conn. 688 (1954) held that loss of use payments for the period of necessary deprivation of use are to be paid even if there is no rental.

The Department periodically has received questions on the loss of use requirement. To answer some of those questions:

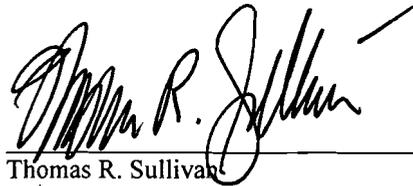
- The regulations do not require loss of use payments where liability for property damage does not exist or where a loss of use payment has been offered but refused.
- The regulations do not require loss of use payments when in fact there is no loss of use, such as when the vehicle is not taken to a shop to be repaired and continues to be driveable.
- In accordance with Anderson v. Gengras, supra., and the language of applicable regulations, merely offering to pay for rental or simply discussing loss of use is not sufficient to comply; the Minimum Provisions Regulation requires that the insurer "undertake to pay" for loss of use.
- The Insurance Department does not have the legal authority to establish a precise value of loss of use on a case by case basis. In the event regulatory action by the Department is required, the Department would look at rental costs for similar vehicles in the claimant's approximate geographic area.

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- If a reasonably equivalent rental vehicle is offered and accepted by the claimant for the reasonable period of time in which the claimant's vehicle is being repaired or replaced, it is the Department's position that the obligation to pay for loss of use has been satisfied.

A handwritten signature in black ink, appearing to read "Thomas R. Sullivan", written over a horizontal line.

Thomas R. Sullivan  
Insurance Commissioner