

September 26-29, 2024 | Sheraton Boston Hotel



09/28/2024

Rental Cars & the Loss Damage Waiver

8:45 AM - 9:45 AM

Laura Poulin

1 CEU

Sponsored by Plymouth Rock Assurance

Rental Cars & the Loss Damage Waiver



Laura J Poulin
Massachusetts Association of Insurance Agents
Milford, MA 01757
Lpoulin@massagent.com

This program is designed to provide accurate and authoritative information in regard to the subject matter covered. It is provided with the understanding that the publisher is not engaged in rendering legal, accounting, or other professional service. If legal advice or other expert assistance is required, the services of a competent professional person should be sought.

With special thanks to the Insurance Services Office, Inc and the Massachusetts Automobile Insurance Bureau for advance information, continued support, and permission to use their forms and information.



Courts have generally upheld the ability of insurers to **decline claims related to things within the rental agreement that are not covered by the policy**; however, court have **upheld the responsibility of the renter** to abide by the agreement to assume responsibility for these uncovered things under a car rental agreement.

No coverage, but the Renter is still responsible.



Loss Damage Waiver

- ❖ The LDW/CDW is not actually an insurance policy
- ❖ Typically, it is a **waiver of the rental company's requirement** in the rental contract that the renter brings the vehicle back in the same condition as when it left their lot.
- ❖ When the renter purchases the LDW/CDW The rental company is removing that provision from the contract **on a conditional basis**.
 - For example, coverage often voids if *the driver has a single drink before driving; if they ask someone to drive in their place and that person is not an authorized driver; if the driver is under the age specified in the rental contract; or if the car is taken on unpaved roads.*
- ❖ Unfortunately, there are many ways to void the LDW/CDW, and they vary from one agreement to the next.



Possible issues...



Loss Valuation

- ! **Contract:** Responsible for the "full value" of the vehicle
- **Policy:** Pays the lesser of the "actual cash value" of the vehicle or the amount "necessary" to repair or replace the damaged property.

Loss Settlement

- ! **Rental Company:** Effect the repairs immediately
- **Insurer:** Has the right to "*...inspect and appraise the damaged property before its repair or disposal*"

Type of loss

- ! **Contract:** Responsible for ANY "loss" in value beyond normal wear and tear regardless of fault
- **Policy:** Covers covered loss, not every and anything possible

Indirect loss

- ! **Contract:** Responsible for responsible for the rental company's loss of rental income on the damaged unit regardless of availability of substitute vehicles
- **Policy:** Coverage limited to *expense for which Insured is legally responsible*, typically limited to a specific dollar amount



Be aware that car rental contracts may vary from state to state and there may be statutory exceptions (e.g., the State of NY) that may govern. In addition, these provisions can change at any time, so it is important to review the laws and contracts in effect in your jurisdiction at any point in time.



Possible issues...



Diminished value

- ! **Contract:** Responsible for a 'subjective' amount' and often regardless of whether the vehicle is repaired or not
- **Policy:** Depending on policy edition, there is there is little, if any, coverage.
- If state law says that the insured's obligations must be paid, who determines the extent of those obligations?

Administrative Expenses

- ! **Contract:** Responsible for other indirect expenses including excessive towing, labor, and storage charges, appraisal, claims adjustment, and unspecified "administrative" expenses.
- **Policy:** Typically NOT covered by the auto policy.

Other Insurance

- ! **Contract:** Requires first dollar payment
- **Policy:** Typically excess
- **State Statutes:** May dictate coverage is excess over dealer but not rental agencies or primary for liability but not physical damage coverage

Type of vehicle, territory, use

- **Policy:** Coverage may not apply to motorcycles or other non-private passenger type vehicles
- **Policy:** Coverage may be limited to the U.S., its territories and possessions, Puerto Rico, and Canada
- **Policy:** Coverage may exclude certain types of business use



Having both insurance and the damage waiver can again be advantageous. The Policy can fill in where the LDW does not apply.