

**1800 PROPERTY: LOSS OF USE OF REPAIRABLE AUTOMOBILE**

In answer to question \_\_\_\_\_, if you find that (plaintiff) could not use (his) (her) automobile because of the (e.g., collision), insert the amount that will reasonably compensate (plaintiff) for the loss of its use.

You may consider the reasonable cost to rent a comparable automobile during the period of time reasonably necessary to repair the automobile (or to determine whether the automobile could be repaired), but this cost may not exceed the amount (plaintiff) spent or incurred to rent a temporary replacement.

**COMMENT**

This instruction and comment were approved in 1977 and revised in 1997. Editorial changes were made in 1992 to address gender references in the instruction.

Nashban Barrel & Container Co. v. Parsons Trucking Co., 49 Wis.2d 591, 600-601, 182 N.W.2d 448 (1971).

**Recovery for Renting a Comparable Automobile.** A plaintiff whose automobile was damaged is entitled to the reasonable value of the loss of use even though he or she did not acquire a temporary replacement vehicle. Kim v. American Family Mut. Ins. Co., 176 Wis.2d 890, 501 N.W.2d 24 (1993), see also Schrubbe v. Peninsula Veterinary Service, 204 Wis.2d 37, 552 N.W.2d 634 (Ct. App. 1996). The plaintiff in Schrubbe unsuccessfully argued that Kim stood for the proposition that the financial circumstances of each individual plaintiff must be examined before a rule of damages can be applied. In rejecting this argument, the court said that under the proper measure of damages, when a motor vehicle is damaged, the owner of the vehicle is entitled to loss of use of the motor vehicle for a reasonable period of time necessary to repair the vehicle or obtain a comparable permanent replacement. This measure of damages is available to all persons who suffer the loss of a motor vehicle without regard to whether a temporary replacement vehicle was obtained and without regard to the reasons a temporary replacement vehicle may not have been obtained. The plaintiff in Schrubbe also argued that the rule of damages varies based upon the personal wealth of the injured plaintiff. The court rejected this argument and held that the general rule is that damages are measured the same without regard to the plaintiff's wealth. The court agreed, however, that when the measure of damages includes the calculation of a reasonable time to replace, the plaintiff's ability to pay may be a factor in determining the reasonableness of the time to replace. Citing Nashban Barrel & Container Co. v. G.G. Parsons Trucking Co., supra. However, the court of appeals said it was inappropriate to evaluate the reasonable time to replace for a loss of use determination because the calves in Schrubbe were not producing income at the time of their death. Thus, the plaintiff would not suffer loss of use of the calves in the brief period necessary to acquire replacement calves in the market. Because the measure of damages in such a case does not include a reasonableness determination, the wealth of the plaintiff was not a proper consideration.

Krueger v. Steffen, 30 Wis.2d 445, 449, 141 N.W.2d 200 (1966); 8 Am. Jur. 2d Automobiles § 607-610, paragraphs 1047-1048.

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