

## LOSS OF USE IN ALL 50 STATES

Recovery of loss of use is a key element of automobile property subrogation. States differ as to whether and when a vehicle owner is allowed to recover the value of loss of use of a vehicle as an element of damage from a responsible tortfeasor during the period of time the vehicle is being repaired or replaced. This is known as third-party loss of use damages. Loss of use may refer to the inability to use a vehicle, living quarters, business facility, or equipment due to damage caused by the negligence of a third party. However, where automobile insurance is involved, we are usually talking about vehicle damages in a collision, and loss of use would be the amount claimed for the reasonable rental value of another vehicle during the period of time a vehicle is being repaired, or in some instances, a new vehicle being purchased. This period of time must usually be “reasonable,” meaning the damages will be limited to a period in which it would reasonably take to have the vehicle repaired. This chart covers the ability of a vehicle owner (or a subrogated carrier) to seek recovery of damages for *third-party loss of use*.

### First-Party Loss of Use

This chart doesn’t address or discuss the ability of a person to make a claim for loss of use payments from an automobile insurance policy. First-party loss of use claims involve an insured making a direct claim against his or her automobile insurer following a collision, even if someone else was responsible for the collision. First-party loss of use calculations and formulas vary from state to state. First-party loss of use claims are sometimes determined by a three-part formula that calculates the number of days the vehicle was out of service multiplied by the daily rental rate of a similar property.

1. One day is equal to four labor hours, representing the average number of hours that a vehicle is worked on per day.
2. Two weekend days are added for every five repair days, assuming every repair begins on a Monday to allow for the fewest weekends possible.
3. Three administrative days are allowed to obtain an estimate, take the vehicle to the shop, and retrieve the vehicle.

For example, if the estimate requires 26 labor hours, then the formula works as follows: 26 labor hours divided by 4 = 6.5; add 2 weekend days = 8.5; add 3 administrative days = 11.5; multiply 11.5 by a daily rental rate \$100.00 = a loss of use charge of \$1,150.00. A third-party loss of use claim is different.

### Third-Party Loss of Use

When a third-party tortfeasor negligently or intentionally causes damages to a vehicle, the owner usually has a right to sue that person or entity to recover for the physical damage to his or her vehicle. In most states, the owner also has the right to recover damages in tort for “loss of use” of the damaged vehicle. The calculation of loss of use damages will depend on the state. However, some states have said that damages for loss of use of a vehicle 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. *Straka Trucking, Inc. v. Estate of Peterson*, 989 P.2d 1181 (Wash. App. 1999).

States such as Texas provide that a person whose vehicle is totally destroyed may only recover the value of the lost vehicle, while a person whose vehicle is repaired may also recover the loss of use of the vehicle. Such states may allow 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.

Third-party (liability) claims for loss of use also vary and depend greatly on state law. Some states have not set forth rules, formulas, or calculations to be used in awarding damages, but simply require that they be causally related to the negligence of the third-party tortfeasor.

### Rental Car Company and Fleet Loss of Use

Many states have special rules and laws governing the recovery of loss of use by a rental car company or fleet operator. For example, California provides that where a waiver loss is signed, loss of use is not recoverable from a renter or authorized driver. Where there is no damage waiver signed (and the terms of the waiver may alter this), California statutes provide that:

*A claim against a renter resulting from damage or loss, excluding loss of use, to a rental vehicle shall be reasonably and rationally related to the actual loss incurred. A rental company shall mitigate damages where possible and shall not assert or collect a claim for physical damage which exceeds the actual costs of the repairs performed or the estimated cost of repairs, if the rental company chooses not to repair the vehicle, including all discounts and price reductions. However, if the vehicle is a total loss vehicle, the claim shall not exceed the total loss vehicle value established in accordance with procedures that are customarily used by insurance companies when paying claims on total loss vehicles, less the proceeds from salvaging the vehicle, if those proceeds are retained by the rental company.* Cal. Civil Code § 1939.07(a)

However, it may be recovered from third parties who cause damage to rental vehicles. This is true even though the rental car company has other vehicles available for rent. Cal. Civil Code §§ 1939.07 and 1939.09. When there is a third-party recovery (subrogation) by the rental car company, § 1939(c) provides that “A rental company shall not recover from an authorized driver for an item described in § 1939.03 (“Agreement for renter responsibility”) to the extent the rental company obtains recovery from another person.” Loss of use of property is different from loss of property. For instance, assume that a vehicle is stolen from its owner. The value of the loss of use of the car is the rental value of a substitute vehicle; the value of the loss of the vehicle is its replacement cost. The nature of loss of use damages is described in California law as: “The measure of damages for the loss of use of personal property may be determined with reference to the rental value of similar property which the plaintiff can hire for use during the period when he is deprived of the use of his own property.” *Collin v. American Empire Ins. Co.*, 21 Cal.App.4<sup>th</sup> 787 (Cal. App. 1994).

At the same time, many states have not addressed any special rules or limitations for the recovery of 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. 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 period of time necessary for the vehicle to be repaired. *Tire Shredders v. ERM*, 15 S.W.3d 849 (Tenn. 1999).

The following chart does not cover or discuss loss of use damages recoverable by a rental car company or fleet operator, although such rights of recovery are sometimes subsumed within a state’s laws regarding recovery of damages for “lost profits.”

### Calculating Loss of Use

Some states have established formulas, calculations, and/or rules with regard to calculating reasonable loss of use damage claims; others do not. Some states limit loss of use damages by declaring that they cannot exceed the value of the vehicle; others have no limit at all. **Georgia**, for example, allows loss of use damage for the time the insured was deprived of the use of the vehicle. *Atlanta Furniture Co. v. Walker*, 181 S.E. 498 (Ga. 1935). In **Indiana**, loss of use is calculated by a vehicle’s rental value – if the property does not have a rental value, loss of use is calculated by the value of its use to the injured party for the time he was deprived of its use. *Weddle v. I.R.C.*

& D Warehouse Corp., 85 N.E.2d 501 (Ind. App. 1949). In **Kansas**, loss of use is limited to the period reasonably necessary to complete the repairs (when feasible), but in any case, the amount recovered may not exceed the value of the vehicle before the injury. *Venable v. Imperial Volkswagen, Inc.* 519 P.2d 667 (Kan. 1974). Some states—like Texas in *Balderas-Ramirez v. Felder* (Tex. App. 2017), *rev. denied* (Apr. 6, 2018)—require that the loss of use damages be “reasonable.” Other states have no such requirement.

### Loss of Profits

A vehicle owner who uses a vehicle in the production of income is sometimes entitled to a claim for profits lost when the vehicle is unavailable during a reasonable period for repair or replacement as a result of tortious destruction or damage. The claim may be that inability to use the chattel reduced the plaintiff’s income or that it increased his expenses, either way reducing his net profit, which is recoverable if the proof is adequate. *Straka Trucking, Inc. v. Estate of Peterson.* 989 P.2d 1181 (1999). Some states do not allow for recovery of lost profits. Still others allow it as long as the evidence provides some reasonable basis for estimating the amount of lost profits. *Pac. Office Automation, Inc. v. Duran*, 2017 WL 629245 (Ariz. App. 2017); *Maryland Cas. Co. v. Fla. Produce Distributors, Inc.*, 498 So.2d 1383 (Fla. App. 1986).

If you have any questions or would like to discuss recovery of loss of use damages, please contact Ashton Kirsch at [akirsch@mwl-law.com](mailto:akirsch@mwl-law.com).

| STATE   | LOSS OF USE   | LOST PROFITS   | COMMENTS  |
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| ALABAMA | <p>Yes. Loss of use (reasonable value of use or rental car) is recoverable while owner is deprived of the vehicle’s use. <i>Hunt v. Ward</i>, 262 Ala. 379, 79 So.2d 20 (1955). Loss of use recoverable regardless of whether the vehicle is repairable or not. <i>Ex parte S &amp; M, LLC</i>, 120 So.3d 509 (Ala. 2012).</p> <p>Owner of vehicle that has been totally destroyed may recover loss of use damages in addition to the fair market value of the vehicle prior to accident. <i>Id.</i></p> <p>No case law information regarding whether rental vehicle must actually be rented in order to use a rental vehicle as a loss of use calculation.</p> | <p>No. Lost profits damages 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 &amp; N R.R. v. Bond Transfer &amp; Storage Co., Inc.</i>, 190 So.2d 696 (Ala. 1966); <i>Merrill v. Badgett</i>, 385 So.2d 1316 (Ala. App. 1980).</p> <p>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>S &amp; M, LLC v. Burchel</i>, 120 So.3d 505 (Ala. Civ. App. 2012). However, upon Supreme Court of Alabama’s review, the recoverability of lost profits wasn’t discussed. <i>Ex parte S &amp; M, LLC, supra.</i></p> | <p>Purpose of compensatory damages is “to make the plaintiff whole by reimbursing him or her for the loss or harm suffered.” <i>Ex parte Goldsen</i>, 783 So.2d 53 (Ala. 2000).</p> |

| STATE   | LOSS OF USE   | LOST PROFITS   | COMMENTS |
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| ALASKA  | <p>Yes. Loss of use damages are recoverable for the reasonable period of time required to make repairs to the damaged vehicle. No distinction between cases in which the property is totally destroyed or repairable. <i>Burgess Const. Co. v. Hancock</i>, 514 P.2d 236 (Alaska 1973).</p> <p>Rental value of the damaged vehicle is a permissible standard to measure loss of use, if applicable. <i>Id.</i></p> <p>No case law information regarding whether a rental vehicle must actually be rented in order to use a rental value as a loss of use calculation.</p> <p>Loss of use is also recoverable when the vehicle is destroyed and is not able to be repaired – this is calculated by a reasonable view of the time it takes to replace the destroyed vehicle. <i>Alaska Const. Equip., Inc. v. Star Trucking, Inc.</i>, 128 P.3d 164, 169 (Alaska 2006).</p> | <p>Possibly. 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 Const. Equip., Inc. v. Star Trucking, Inc.</i>, <i>supra</i>.</p>                |          |
| ARIZONA | <p>Yes. Loss of use is recoverable. <i>Farmers Ins. Co. v. R.B.L. Inv. Co.</i>, 675 P.2d 1381, (1983).</p> <p>Arizona courts have not set a standard for calculation of loss of use damages, but follows the Restatement of Torts. <i>Aztlan Lodge No. 1 v. Ruffner</i>, 155 Ariz. 163, 745 P.2d 611 (1987); <i>City of Phoenix v. Bellamy</i>, 153 Ariz. 363, 366, 736 P.2d 1178 (App. 1987), which uses rental value to calculate loss of use damages. R.B.L. at 1384. Case law tends to support that reasonable evidence of rental value alone would be sufficient without actual vehicle rental.</p> <p>No Arizona case specifically speaks on loss of use for total loss vehicles. In lieu of Arizona case law, the Restatement allows loss of use when vehicle is a total loss. <i>Restatement (First) of Torts</i> § 927 (Comment on Claus (b)).</p>               | <p>Yes. As long as the evidence provides some reasonable basis for estimating the amount of lost profits. <i>Gilmore v. Cohen</i>, 95 Ariz. 34, 386 P.2d 81 (1963); <i>Martin v. LaFon</i>, 100 P.2d 182 (1940); <i>Hercules Drayage Co. v. Chanco Leasing Corp.</i>, 540 P.2d 724, 727 (Ariz. App. 1975); <i>Pac. Office Automation, Inc. v. Duran</i>, 2017 WL 629245 (Ariz. App. 2017).</p> |          |

| STATE      | LOSS OF USE  | LOST PROFITS   | COMMENTS  |
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| ARKANSAS   | <p>Yes. Loss of use is recoverable and can be determined by:</p> <ol style="list-style-type: none"> <li>1) The rental value or the amount which could have been realized by renting out the article during the period;</li> <li>2) The cost of hiring a substitute; or</li> <li>3) The ordinary profits that could have been made from the use of the vehicle.</li> </ol> <p><i>Sharp v. Great S. Coaches, Inc.</i>, 510 S.W.2d 266, 267 (Ark. 1974).</p> <p>No direct authority exists as to business vehicles regarding whether a substitute must actually be rented. Arkansas does recognize that other states allow for this measure without actual rental, however, this may demonstrate a trend to do so in Arkansas as well. <i>Stevens v. Mid-Continent Investments, Inc.</i>, 517 S.W.2d 208, 209 (Ark. 1974).</p> <p>Loss of use damages are not limited to vehicles which are only partially damaged, nor does the statute exclude recovery when a vehicle is totally destroyed. In the event of a totally destroyed vehicle, courts will apply the measure of loss of use to be the prior and subsequent value following the accident. <i>Fryar v. Sanders</i>, 784 S.W.2d 168, 170 (Ark. 1990).</p> | <p>Yes. Ordinary profits that could have been realized is an option to recover loss of use. <i>Sharp v. Great S. Coaches, Inc.</i>, <u>supra</u>.</p>  |   |
| CALIFORNIA | <p>Yes. Loss of use is calculated by referencing the rental value of similar property which the plaintiff can hire for use during the period when he is deprived of the use of his own property. 23 Cal. Jur.3d, Damages, § 69, pp. 129-130; <i>Collin v. Am. Empire Ins. Co.</i>, 21 Cal.App.4th 787, 818, (Cal. App. 1994).</p> <p>A substitute vehicle doesn't actually need to be rented in order to use rental value as a measure of loss of use. <i>Malinson v. Black</i>, 188 P.2d 788 (Cal. App. 1948).</p> <p>Upon proper pleading and proof, 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. &amp; S. Ass'n</i>, 345 P.2d 926, 928 (Cal. 1959) (Airplane).</p>   | <p>Yes. As long as it does not result in a double recovery and can be proven with testimony. If full profits are recovered, that includes compensation for loss of use. If evidence of lost profits is not available, loss of use may be shown by what it would have cost to rent comparable equipment. <i>Tremeroli v. Austin Trailer Equip. Co.</i>, 102 Cal.App.2d 464, 483 (Cal. App. 1951).</p> | <p>Cannot recover loss of use if absent proof that vehicle is or was intended to actually be used. <i>Metz v. Soares</i>, 142 Cal.App.4th 1250, 1255, (2006).</p> <p>To recover loss of use, the owner must prove the reasonable cost to rent a similar vehicle for the amount of time reasonably necessary to repair or replace the vehicle. Judicial Council Of California Civil Jury Instruction 3903M, Judicial Council of California Civil Jury Instruction 3903M.</p> |

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| COLORADO    | <p>Yes. An owner may recover for the loss of use of a vehicle for the length of time reasonably needed for repair, even if the property is not actually repaired (as long as the time needed is reasonably proven). <i>Airborne, Inc. v. Denver Air Ctr., Inc.</i>, 832 P.2d 1086, 1089 (Colo. App. 1992).</p> <p>A vehicle need not actually be rented to use rental value as loss of use value. <i>Cf. Francis v. Steve Johnson Pontiac–GMC–Jeep, Inc.</i>, 724 P.2d 84 (Colo. App. 1986).</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>  | <p>Yes. Loss profit damages may be calculated by the reasonable rental value of a chattel or alternatively, net lost profits that could have been earned by using the chattel. Plaintiff may elect which measure of recovery to pursue to make them whole. <i>Koenig v. PurCo Fleet Services, Inc.</i>, 285 P.3d 979 (Colo. 2012).</p> |          |
| CONNECTICUT | <p>Yes. Loss of use is considered an element of property damage (“property damage means injury to or destruction of tangible property, including loss of use thereof”). Conn. Agencies Regs. § 38a-334-2. However, “rental value will not furnish the measure of damages for loss of use of an automobile. For the rental value of an automobile includes necessarily a substantial sum for wear and tear and depreciation. No definite general rule can be laid down except that the award by verdict or judgment should be for fair and reasonable compensation, according to the circumstances of each case.” <i>Hawkins v. Garford Trucking Co.</i>, 114 A. 94, 95 (Conn. 1921), <u>citing</u> <i>Cook v. Packard Motor Car Co. of New York</i>, 92 A. 413 (Conn. 1914).</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> <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> | <p>No authority beyond precedent to look at each case individually.</p>  |          |

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| DELAWARE             | <p>Yes. Based on 21 Del. C. § 2118(a)(4), which includes “loss of use of the motor vehicle” as compensation for damages to the motor vehicle. However, no published case law authority exists for this contention, and courts often look to the liability policy for any language regarding loss of use.</p> <p>Loss of use is currently recoverable when damages are proved by the depreciated market value of the vehicle; therefore, rental value of a substitute vehicle is not currently applicable in Delaware. <i>Teitsworth v. Kempinski</i>, 127 A.2d 237, 238 (Del. 1956). However, unpublished case law exists in Delaware holding that failure to actually procure a replacement vehicle does not preclude recovery for loss of use. The case law cites to several other jurisdictions for this support, so a strong argument may be made in Delaware, in the absence of published authority, that rental value may be used as a measure of damages without the vehicle actually being 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, especially with favorable policy language.</p> | No applicable authority exists for recovery of lost revenue/profits as a measure of loss of use. |  |
| DISTRICT OF COLUMBIA | <p>Yes. Loss of use is calculated by the time needed for repairs and is accepted in the absence of any evidence to show the time claimed is unreasonable or unusual. <i>Brooks Transp. Co. v. McCutcheon</i>, 154 F.2d 841, 843 (D.C. Cir. 1946). Vehicle owner’s recovery for loss of use must be limited to a period of time reasonably necessary to repair or replace the car. <i>Gamble v. Smith</i>, 386 A.2d 692 (D.C. App. 1978).</p> <p>Rental value is not the measure of loss of use value, but it may be used as evidence of loss of use and actual rental is not required. <i>Brandon v. Capital Transit Co.</i>, 71 A.2d 621 (D.C. 1950).</p> <p>For commercial vehicles, loss of use is allowed during the time reasonable required to obtain a suitable replacement vehicle. <i>Gamble v. Smith</i>, <u>supra</u>.</p>  | No applicable authority exists for recovery of lost revenue/profits as a measure of loss of use. | Loss of use during the time reasonably required for repairs is as much a proximate result of defendant’s negligence as is the cost of repairs, but...it cannot in reason be said that loss of use due to the owner’s financial inability to pay for the repairs is a proximate result of such negligence. <i>Brandon v. Capital Transit Co.</i> , <u>supra</u> . |



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| FLORIDA | <p>Yes. Florida courts have noted that the <i>Restatement (Second) of Torts</i> loss of use provision applies to tort actions involving a damaged motor vehicle so as to include a separate claim for loss of use damages. 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 automobile. <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).</p> <p>Loss of use damages are only available when an owner suffers a complete deprivation of their property, which includes time for repair when the property cannot be used. <i>AT &amp; T Corp. v. Lanzo Const. Co.</i>, 74 F.Supp.2d 1223 (S.D. Fla. 1999).</p> <p>Loss of use recovery does not require actual rental of another vehicle. <i>Meakin v Dreier</i>, <u>supra</u>.</p> <p>Courts have determined that loss of use special damages may be awarded in the event of a total loss. <i>Wajay Bakery, Inc. v Carolina Freight Carriers Corp.</i>, 177 So.2d 544 (Fla. App. 1965).</p>   | <p>No. 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>  | <p>The Florida Supreme Court’s Standard Jury Instructions for civil cases provides for loss of use in property damage claims, noting that the jury should also “take into consideration any loss to (claimant) [for towing or storage charges and] by being deprived of the use of [his] [her] [its] (name property) during the period reasonably required for its [replacement] [repair].”</p> <p><i>Florida Standard Jury Instructions: 501.2 Personal Injury and Property Damages: Elements</i></p> <p>Standard Jury instructions available <a href="#">HERE</a>.</p> |
| GEORGIA | <p>Yes. 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).</p> <p>However, “the difference in ascertainment of damages as between a total loss and a repairable vehicle serves to provide fair, reasonable, and adequate compensation for the [damage] inflicted in that <i>the maximum recovery for a repairable automobile including loss of use may not exceed [the fair market] value before the [damage].</i>” (Emphasis supplied.) <i>Firestone Tire, etc., Co. v. Jackson Transp. Co.</i>, 191 S.E.2d 110 (Ga. 1972); <i>Boral Bricks, Inc. v. Old S. Transp. Mgmt., Inc.</i>, 402 S.E.2d 777, 777–78 (Ga. App. 1991).</p> <p>While hire of a substitute vehicle is an acceptable value of property damage claimed, courts have not illustrated whether that vehicle must actually be hired. <i>Archer v. Monroe</i>, 302 S.E.2d 583, 585 (Ga. App. 1983).</p> <p>There is no recovery for loss of use when a vehicle has been substantially destroyed or is not substantially repairable. <i>Boral Bricks, Inc. v. Old South Transp. Management, Inc.</i>, <u>supra</u>.</p> | <p>Yes. If there is a reasonably accurate calculation.</p> <p>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> | <p>Evidence of rental value must not be based upon hearsay. <i>Columbus Dodge, Inc. v. Garlock</i>, 266 S.E.2d 311, 313 (Ga. App. 1980).</p>   |



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| HAWAII | <p>Yes. Loss of use is calculated by the cost of a replacement vehicle, but the insured is not required to actually rent the vehicle. <i>Fukida v. Hon/Hawaii Serv. &amp; Repair</i>, 33 P.3d 204 (Haw. 2001). When the vehicle is totaled, the owner may recover for the loss of use for the period of time reasonably necessary for securing a replacement. <i>United Truck Rental Equip. Leasing, Inc. v. Kleenco Corp.</i>, 929 P.2d 99 (Haw. App. 1996).</p> <p>A substitute vehicle need not actually be rented. <i>Fukida v. Hon/Hawaii Serv. &amp; Repair</i>, <u>supra</u>.</p> <p>Damages for loss of use may also be recovered when the vehicle is totally destroyed, since economic loss to the owner for the loss of use is the same. <i>United Truck Rental Equip. Leasing, Inc. v. Kleenco Corp.</i>, <u>supra</u>. (Damages are generally limited to period of time reasonably necessary to obtain a replacement). <i>Ludlow v. Lowe's Companies, Inc.</i>, No. 12-00476 KSC, 2014 WL 12580233, at *8 (D. Haw. Jan. 17, 2014), <i>aff'd sub nom.</i>, <i>Ludlow v. Lowe's Home Centers, LLC</i>, 713 F. App'x 673 (9th Cir. 2018).</p> | <p>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. &amp; Tel. Co. v. Connecticut Light &amp; 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>Yes. Collision damage may be calculated by:</p> <ol style="list-style-type: none"> <li>1) Replacement (recovery of the difference in the vehicle's value before and after the accident, plus damages for loss of use).</li> <li>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).</li> </ol> <p><i>Spreader Specialists, Inc. v. Monroc, Inc.</i>, 752 P.2d 617 (Idaho App. 1987), <i>overruled on other grounds by Walton, Inc. v. Jensen</i>, 979 P.2d 118 (Idaho App. 1999).</p> <p>Rental value is not a measure of loss of use in Idaho, so whether a rental vehicle was actually procured is not relevant here.</p> <p>Loss of use does not appear to be recoverable for completely destroyed vehicles; the measure of damages for totally destroyed property is the value of the property at the time and place of its destruction. <i>Skaggs Drug Centers, Inc. v. City of Idaho Falls</i>, 407 P.2d 695, 699 (1965).</p>  | <p>Loss of use calculation, including the ability to recover lost profits, is not further supported by case law or statute but for any calculation, reasonable evidence must be presented to support it.</p>  |          |

| STATE    | LOSS OF USE  | LOST PROFITS  | COMMENTS  |
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| ILLINOIS | <p>Yes. Individuals may recover for:</p> <ol style="list-style-type: none"> <li>1) reasonable cost of repairs, as long as the cost of repairs does not exceed the diminution in the value of the vehicle resulting from the collision and without repairs having been made;</li> <li>2) diminution in the value of the car even after the repairs; and</li> <li>3) loss of use of the car for the time reasonably necessary for the repairs to be made. Loss of use is calculated by the rental value of another vehicle, regardless of whether another vehicle is actually rented.</li> </ol> <p><i>Fairchild v. Keene</i>, 416 N.E.2d 748, 749 (Ill. App. 1981).</p> <p>Actual rental of a substitute vehicle is not required, as long as credible testimony of the value is available. <i>Welter v. Schell</i>, 252 Ill. App. 586, 589 (Ill. App. Ct. 1929).</p> <p>There is no recovery for loss of use when a vehicle has been substantially destroyed or is not substantially repairable. <i>Latham v. Cleveland, C. C. &amp; St. L. R. Co.</i>, 164 Ill. App. 559 (Ill. App. 1911).</p> | <p>Yes. 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, 139 (Ill. App. 1975).</p> |   |
| INDIANA  | <p>Yes. Loss of use is calculated by a vehicle's rental value – if the property does not have a rental value, loss of use is calculated by the value of its use to the injured party for the time he was deprived of its use. <i>Weddle v. I.R.C. &amp; D Warehouse Corp.</i>, 85 N.E.2d 501 (Ind. App. 1949).</p> <p>No case law requiring that a vehicle actually be rented in order to determine the rental value of a replacement. <i>Weddle v. I.R.C. &amp; D Warehouse Corp.</i>, <u>supra</u>.</p> <p>When reviewing for loss of use damages, courts see no distinction between repairable or unrepairable damage, as the property owners in both cases have lost the same thing, use of the property. However, owners must make an attempt to mitigate their damages and recovery will be limited to the reasonable time necessary to replace the property. <i>New York Cent. R. Co. v. Churchill</i>, 218 N.E.2d 372 (Ind. App. 1966).</p>  | <p>There is no authority to apply the measure of lost profits to loss of use in the automobile arena. However, generally, “[w]here loss of use of real property involves a known and established business the value of such loss of use of property may be determined from loss of profits, if profits can be shown with reasonable certainty.” <i>Maddox v. Yocum</i>, 52 N.E.2d 636 (Ind. App. 1944).</p>   | <p>Loss of use damages are recoverable for a commercial vehicle even if totally destroyed. <i>New York Cent. R. Co. v. Churchill</i>, <u>supra</u>.</p> |

| STATE | LOSS OF USE   | LOST PROFITS   | COMMENTS  |
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| IOWA  | <p>Yes. Iowa courts have included recovery for loss of use in several situations:</p> <ol style="list-style-type: none"> <li>1) When the 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.</li> <li>2) 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.</li> <li>3) When the 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.</li> </ol> <p><i>Long v. McAllister</i>, 319 N.W.2d 256, 261 (Iowa 1982).</p> <p>Rental value is not a generally accepted measure of loss of use in Iowa, so whether a rental vehicle was actually procured is not relevant here.</p> <p>There is no recovery for loss of use when a vehicle has been substantially destroyed or is not substantially repairable. <i>Pfingsten v. Westenhaver</i>, 244 P.2d 395 (Cal. 1952) (California case governing Iowa law).</p> | <p>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, 210 (Iowa 1947).</p> <p>There is no authority for the measure of damages for loss of use when the rental figure is not available.</p> | <p>Iowa courts believe that loss of use is an important element in providing full compensation to the vehicle owner. Loss of use damages will be incurred as readily when a vehicle is totally destroyed or when it cannot be restored by repair to its prior condition as when the vehicle can be restored by repair. Just as loss of use damages are necessary for full compensation when the vehicle can be restored to its prior condition, they are warranted when the vehicle is destroyed or cannot be so restored. No logical basis exists for cutting them off when the total reaches the vehicle's market value before the injury. <i>Long v. McAllister</i>, <u>supra</u>.</p> |

| STATE    | LOSS OF USE   | LOST PROFITS  | COMMENTS   |
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| KANSAS   | <p>Yes. Loss of use is limited to the period reasonably necessary to complete the repairs (when feasible), but in any case, the amount recovered may not exceed the value of the vehicle before the injury. <i>Venable v. Imperial Volkswagen, Inc.</i> 519 P.2d 667 (Kan. 1974).</p> <p>Damages for loss of use of a motor vehicle may be measured by the cost of renting a substitute vehicle while repairs are being made. 8 Am. Jur.2d, Automobiles and Highway Traffic § 1047, p. 608; <i>Nelson v. Hy-Grade Construction &amp; Materials, Inc.</i>, 527 P.2d 1059 (Kan. 1974).</p> <p>Property owner need not actually rent a substitute vehicle to use the value as a measure of loss of use. <i>Warren v. Heartland Auto. Services, Inc.</i>, 144 P.3d 73 (Kan. App. 2006).</p> <p>Generally, loss of use damages not available on totally destroyed vehicles; however, courts have found that some special circumstances may exist where recovery is available for loss of use, such as when the vehicle was specially constructed for the performance of a particular service and a substitute vehicle is not available. <i>Peterson v. Bachar</i>, 392 P.2d 853 (Kan. 1964). Therefore, in the absence of additional authority, loss of use should be pursued even on completely destroyed vehicles.</p> | <p>Yes. Loss of profits from earnings or the use of the vehicle may be allowed as an element of damages for the complete demolition of the vehicle if they are not too speculative...but it must be shown that the owner could not obtain a suitable substitute vehicle, or that there was a loss of time in their ability to obtain a substitute vehicle. <i>Peterson v. Bachar</i>, <u>supra</u>.</p>   | <p>Loss of use damages should not be allowed if the plaintiff could provide evidence of the reasonable rental value of similar property but fails to do so. <i>Warren v. Heartland Auto. Servs., Inc.</i>, <u>supra</u>.</p> |
| KENTUCKY | <p>Yes. Pursuant to K.R.S. § 304.39-115, “loss of use of a motor vehicle, regardless of the type of use, shall be recognized as an element of damage in any property damage liability claim. Such a claim for loss of use of a motor vehicle shall be limited to reasonable and necessary expenses for the time necessary to repair or replace the motor vehicle.” Direct evidence of reasonable and necessary expenses (such as substitute vehicle rental costs) is required. <i>In re Greyhound Lines Trial Grp.</i>, No. CV 05-239, 2008 WL 11343421, at *3 (E.D. Ky. Oct. 22, 2008).</p> <p>Evidence of a rental vehicle value is sufficient, and the failure of an owner to hire another vehicle during the process of repair does not preclude loss of use recovery. <i>Pope’s Admr. V. Terrill</i>, 214 S.W.2d 276 (Ky. 1948).</p> <p>Whether vehicle is partially or totally destroyed is unimportant for loss of use damages. <i>Daniel v. Kerby</i>, 420 S.W.2d 393 (Ky. 1967).</p>   | <p>No support for lost profits as a measure of loss of use. “The legislature’s inclusion of the word ‘necessary’ makes sense given that one purpose of the statute was to allow loss of use compensation where the vehicle had been damaged beyond repair, thereby necessitating replacement.” <i>Am. Premier Ins.</i>, 159 S.W.3d at 348 (Ky. 2004). “Had the legislature intended otherwise, it easily could have omitted the word ‘necessary’....[t]herefore, because the plain language requires that any loss of use expense be ‘necessary.’” <i>State Farm Mut. Auto. Ins. Co. v. Norcold, Inc.</i>, 143 F. Supp.3d 586, 591 (E.D. Ky. 2015), <i>aff’d</i>, 849 F.3d 328 (6th Cir. 2017).</p> |  |

| STATE     | LOSS OF USE  | LOST PROFITS   | COMMENTS |
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| LOUISIANA | <p>Yes. Loss of use may be recovered for the period necessary for the vehicle to be repaired. <i>Romco, Inc. v. Broussard</i>, 528 So.2d 1309 (La. App. 1988) writ denied, 533 So.2d 356 (La. 1988). Damages for loss of use are measured by the rental cost of a substitute vehicle. <i>Alexander v. Qwik Change Car Center, Inc.</i>, 352 So.2d 188 (La. 1977).</p> <p>Loss of use value recoverable, even though no substitute vehicle is rented. <i>Guidry v. Covington</i>, 225 So.2d 311 (La. App. 1969).</p> <p>There is no recovery for loss of use when a vehicle has been substantially destroyed or is not substantially repairable. <i>Skinner v. Scott</i>, 116 So.2d 696 (La. 1959). However, it may be possible to recover loss of use for the time needed to determine whether repairs are possible. <i>Alexander v. Liberty Mut. Ins. Co.</i>, 341 So.2d 1273 (La. 1977).</p> | No case law or statutory support for lost profits as a measure of loss of use damages. |          |
| MAINE     | <p>Yes. However, 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).</p> <p>No case law information regarding whether a rental vehicle must actually be rented in order to use a rental value as a loss of use calculation.</p> <p>Reasonable rental costs for loss of use are recoverable even on destroyed vehicles. <i>Flynn Const. Co. v. Poulin</i>, <u>supra</u>.</p>   | No case law or statutory support for lost profits as a measure of loss of use damages. |          |

| STATE         | LOSS OF USE  | LOST PROFITS   | COMMENTS |
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| MARYLAND      | <p>Yes. A measure of damages may include a reasonable allowance for loss of use of the vehicle. <i>Taylor v. King</i>, 213 A.2d 504 (Md. 1965). “Damages are supposed to compensate the injured person for the wrong which has been done him.” <i>Restatement, Torts</i>, § 910. “If his loss is greater than the market value of the chattel at the time of its destruction, an owner should, on principle, be allowed additional items which will adequately compensate him unless some of those claimed items are so speculative as to create danger of injustice to the defendant.” <i>Weishaar v. Canestrone</i>, 217 A.2d 525, 530-31 (Md. App. 1966).</p> <p>No case law information regarding whether a rental vehicle must actually be rented in order to use a rental value as a loss of use calculation.</p> <p>There is no recovery for loss of use when a vehicle has been substantially destroyed or is not substantially repairable. <i>Barnes v. United R. &amp; Electric Co.</i>, 116 A. 855 (Md. 1922).</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>Yes. “The loss of use of the automobile during the period of repair is as much the natural and necessary consequence of the tortious act of the defendant described in the declaration as is the cost of the repair. It is as plain as is the loss of time of an individual arising from personal injuries, or the loss of use of any chattel arising from wrongful act... the fair value of the loss of use of the plaintiff’s automobile while being repaired was the hire paid for the one to take its place” <i>Antokol v. Barber</i>, 143 N.E. 350, 352 (Mass. 1924).</p> <p>Recovery for loss of use must be 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).</p> <p>Measure of the amount to rent a substitute vehicle as loss of use is not allowed. <i>Antokol v Barber</i>, <u>supra</u>.</p> <p>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, especially with favorable policy language.</p> | <p>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. This, in turn, depends on a number of factual circumstances, including the financial situation of the plaintiff, the cause of the plaintiff’s inability to minimize his loss, the role played by the 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.” <i>Urico v. Parnell Oil Co.</i>, <u>supra</u>.</p> |          |

| STATE     | LOSS OF USE   | LOST PROFITS   | COMMENTS |
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| MICHIGAN  | <p>Yes. The plaintiff may present the reasonable value of the use of their car while it is being repaired. <i>Andries v. Everitt, Metzger, Flanders Co.</i>, 142 N.W. 1067 (Mich. 1913). No other guidance is provided on how to calculate loss of use damages.</p> <p>No case law information regarding whether a rental vehicle must actually be rented in order to use a rental value as a loss of use calculation.</p> <p>There is no case law 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, especially with favorable policy language.</p>   | <p>No case law or statutory support for lost profits as a measure of loss of use damages.</p>  |          |
| MINNESOTA | <p>Yes. "When one asks 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, 137 (Minn. 1924).</p> <p>The measure of damages suffered as the result of harm to a commercial vehicle includes the reasonable value of the benefit which would have been derived from its use during the period it was undergoing repairs. <i>Hanson v. Hall</i>, 279 N.W. 227, 230 (Minn. 1938). Rental value is not a generally accepted measure of loss of use in Minnesota, so whether a rental vehicle was actually procured is not relevant here.</p> <p>Loss of use recoverable even no substitute rental vehicle was obtained. <i>Trout Auto Livery Co. v. People's Gas Light &amp; Coke Co.</i>, 168 Ill. App. 56, 60 (Ill. App. Ct. 1912).</p> <p>Loss of use is appropriate even when the vehicle is destroyed, along with the difference in reasonable market value immediately before and after the incident. <i>Kopischke v. Chicago, St. P.M. &amp; O.R. Co.</i>, 40 N.W.2d 834 (Minn. 1950).</p> | <p>Yes. Generally, to recover for loss of use it must be shown that a substitute vehicle could not be hired. If the vehicle cannot be replaced while it is being repaired, the measure of the value of use of a commercial vehicle is determined by the income derived from its use at the time of the tort. <i>Longworth v. McGrath</i>, 738, 143 A. 845 (Conn. 1928); <i>Trout Auto Livery Co. v. People's Gas Light &amp; Coke Co.</i>, <u>supra</u>.; <i>Cincinnati Traction Co. v. Feldkamp</i>, 19 Ohio App. 421 (1924); <i>Hanson v. Hall</i>, <u>supra</u>.</p> <p>"Lost profits, provided they are foreseeable by the seller, are clearly recoverable under § 336.2-714(3), and were long recognized as a form of compensable damage prior to adoption of the Uniform Commercial Code." <i>Bemidji Sales Barn, Inc. v. Chatfield</i>, 250 N.W.2d 185, 188 (Minn. 1977).</p> |          |



| STATE       | LOSS OF USE  | LOST PROFITS   | COMMENTS   |
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| MISSISSIPPI | <p>Yes. Loss of use of a repairable vehicle is measured by the reasonable rental value of a similar unit. <i>National Dairy Products Corp. v. Jumper</i>, 130 So.2d 922 (Miss. 1961).</p> <p>Reasonable value of replacement vehicle may be recovered even though no other vehicle was actually obtained. <i>Pelican Trucking Co. v. Rossetti</i>, 170 So.2d 573 (Miss. 1965).</p> <p>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, especially with favorable policy language.</p>  | <p>Yes. While damages for loss of use of a vehicle should normally be measured by the cost of hiring another vehicle, if the owner can show that no substitute vehicle was available, loss of profits may be recovered as long as there is sufficient evidence to measure the lost profits. <i>National Dairy Products Corp. v Jumper</i>, <u>supra</u>.</p> | <p>One whose business vehicle has been damaged solely by reason of negligence of another is allowed to recover loss of use for period reasonably required to repair it. <i>Dean Truck Line, Inc. v. Greyhound Corp.</i>, 186 So.2d 240 (Miss. 1966).</p> |
| MISSOURI    | <p>Yes. The calculation of loss of use damages is the cost of hiring/renting a replacement vehicle during the time reasonably required for repairs, but the plaintiff has the burden of proof of the damages' reasonableness. <i>Stallman v. Hill</i>, 510 S.W.2d 796 (Mo. App. 1974).</p> <p>There is no direct case law addressing whether a vehicle must actually be rented in order to use that value as a measure of loss of use; however, it appears that testimony as to loss of use value is accepted in other areas, such as reasons why a replacement vehicle is not available to rent. <i>Conley v. Kansas City Rys. Co.</i>, 259 S.W. 153, 155 (Mo. App. 1921). Therefore, it is appropriate to pursue evidence of a rental vehicle value as a measure of loss of use even when the vehicle itself is not rented.</p> <p>There is no recovery for loss of use when a vehicle has been substantially destroyed or is not substantially repairable. <i>German v. Centaur Lime Co.</i>, 295 SW 475 (Mo. App. 1927).</p> | <p>Yes. sometimes. Lost profits cannot be recovered unless it can be shown that no replacement vehicle was available. <i>Conley v. Kansas City Rys. Co.</i>, <u>supra</u>.</p>   | <p>If personal property used in business is entirely destroyed by the negligence of the owner, the recovery of the full value of the destroyed property excludes recovery for loss of use. <i>Orr v. Williams</i>, 379 S.W.2d 181 (Mo. App. 1964).</p>   |

| STATE    | LOSS OF USE  | LOST PROFITS  | COMMENTS  |
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| MONTANA  | <p>Yes. The owner can recover loss of use damages for being deprived of the use of the damaged vehicle, but only for the period of time reasonably necessary in making repairs or purchasing a replacement. <i>Gammel v. Dees</i>, 498 P.2d 1204 (Mont. 1972).</p> <p>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 Const. 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>McPherson v. Kerr</i>, 636 P.2d 1101 (Mont. 1981).</p> <p>Loss of use is recoverable for the period of time reasonably necessary for replacement when the vehicle is a total loss. <i>Gammel v. Dees</i>, <u>supra</u>; <i>Lenz Const. Co. v. Cameron</i>, <u>supra</u>.</p> | <p>Yes. Plaintiff may be entitled to lost earning during the time reasonably required by him to repair or replace vehicle. <i>McPherson v. Kerr</i>, <u>supra</u>. Lost profits/business interruption claim cannot be speculative. <i>Lenz Const. v. Cameron</i>, <u>supra</u>.</p> |   |
| NEBRASKA | <p>Yes. Loss of use is measured by the fair rental value of a similar vehicle or the amount actually paid for the rental, whichever is less. When a damaged vehicle can be repaired, the measure of damages is reasonable cost of repair plus reasonable value of loss of use for the amount of time required to complete repair. When a damaged vehicle cannot be repaired, the measure of damages is lost market value plus reasonable value of loss of use of the property for the reasonable amount of time required to obtain a replacement. <i>Chlopek v. Schmall</i>, 396 N.W.2d 103 (Neb. 1986).</p>   | <p>Yes. In some situations. When property used for commercial or business purposes cannot be rented, loss of profits may establish reasonable value of loss of use for the purpose of assessment of damages. <i>Chlopek v. Schmall</i>, <u>supra</u>.</p>                           | <p>No case law requiring the actual rental of a replacement vehicle to recover loss of use. When vehicle can be repaired, measure loss of use damage using the fair rental value of a replacement vehicle. <u>See</u> <i>Husebo v. Ambrosia, Ltd.</i>, 283 N.W.2d 45, 48 (Neb. 1979); <i>Watson Bros. Transp. Co. v. Chicago, St. P., M. &amp; O. Ry. Co.</i>, 25 N.W.2d 396 (Neb. 1947).</p> |
| NEVADA   | <p>Yes. Loss of use damages may be recovered for the time period for which an individual cannot use their vehicle. Damages are measured by the reasonable rental car costs for the reasonable time period it takes to repair the vehicle. Actual rental of a vehicle is not required in order to recover loss of use damages. <i>Dugan v. Gotsopoulos</i>, 22 P.3d 205 (Nev. 2001).</p> <p>No case law or statutory authority available on whether loss of use is recoverable when vehicle is a total loss.</p>  | <p>No case law or statutory support for lost profits as a measure of loss of use damages.</p>   |   |

| STATE         | LOSS OF USE  | LOST PROFITS  | COMMENTS |
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| NEW HAMPSHIRE | <p>Yes. Loss of use is measured by the cost of a rental vehicle during the reasonable time required for repairs. <i>Copadis v. Haymond</i>, 47 A.2d 120, 122 (N.H. 1946).</p> <p>Loss of use not recoverable in instances of total destruction in value. <i>Id.</i></p> <p>When vehicle is total loss, the lost value of a reasonable use for business purposes would be the cost of other reasonable substitute means of transportation in excess of what expense of the operation of the plaintiff's own car would've been. <i>Rogers v. Nelson</i>, 80 A.2d 391 (N.H. 1951).</p>  | <p>No case law or statutory support for lost profits as a measure of loss of use damages.</p>   |          |
| NEW JERSEY    | <p>Yes. Loss of use damages are recoverable for the time reasonably necessary to compete repairs to the vehicle. Damages may be calculated based on rental value of a substitute vehicle but may also include "personal inconvenience" suffered due to the lack of a vehicle. <i>Camaraza v. Bellavia Buick Corp.</i>, 523 A.2d 669 (N.J. Super 1987).</p> <p>A plaintiff should not be barred from recovery for loss of use of a vehicle simply because he has not rented a substitute vehicle. <i>Id.</i></p> <p>Where a vehicle is totally destroyed, loss of use damages may be awarded for time period required to purchase a replacement vehicle. <i>Bartlett v. Garrett</i>, 325 A.2d 866 (N.J. Super. 1974).</p>   | <p>Possibly. Evidence of lost profits was not admissible since the plaintiff had not provided evidence that a similar vehicle could not be hired. <i>Francischini v. McMullen</i>, 142 A. 651 (N.J. Sup. Ct. 1928). Therefore, it seems possible that lost profits may be claimed as a calculation for loss of use if proof is provided that a similar vehicle cannot be rented. The measure of damages is the amount that will compensate the plaintiff for "all detriment." <i>Hintz v. Roberts</i>, 98 N.J.L. at 770-771, 121 A. at 712 (1923); <i>Graves v. Baltimore &amp; N.Y.R. Co.</i>, 69 A. 971 (N.J. Super. 1908), and in some cases, loss of earnings or business profits are allowed as damages if the loss is the proximate result of the damage to the motor vehicle. <i>Nightengale v. Public Service Co-ord. Transport</i>, 149 A. 526 (N.J. Super. 1930).</p> |          |
| NEW MEXICO    | <p>Yes. 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> | <p>No case law or statutory support for lost profits as a measure of loss of use damages.</p>   |          |

| STATE    | LOSS OF USE  | LOST PROFITS  | COMMENTS  |
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| NEW YORK | <p>Yes. Where the property has a usable value, the loss of use damage is determined according to the fair market rental value of the property. <i>Franjo Transp., Inc. v. B &amp; K Fleet Serv., Inc.</i>, 226 A.D.2d 674 (N.Y. 1996).</p> <p>N.Y. Pattern Jury Instr. Civil 2:310.</p> <p>Cannot recover loss of use when the vehicle is a total loss. <i>Cecere v. Harquail</i>, 481 N.Y.S.2d 533 (N.Y. 1984).</p> | <p>Yes. If not speculative.</p> <p>Loss of revenue from business interruption is not recoverable in damages where the claim is based upon lost profits, revenues or labor productivity which are “speculative” in nature. <i>Koch v. Consol. Edison Co. of New York</i>, 468 N.E.2d 1 (N.Y. 1984).</p> <p>Proof of lost profits might specific enough to warrant recovery in damages. <i>Milliken &amp; Co. v. Consol. Edison Co. of New York</i>, 644 N.E.2d 268 (N.Y. 1994).</p> <p>The burden of establishing a loss of revenue claim with certainty is a heavy one and depends in part upon whether the missed revenue is merely delayed, or permanently lost. <i>Sanwep Rest. Corp. v. Consol. Edison Co. of N.Y.</i>, 611 N.Y.S.2d 177 (N.Y. 1994).</p> | <p>Loss of use damages can be recovered even where there is no actual rental of a substitute vehicle. <i>Horton v. State</i>, 272 N.Y.S.2d 312 (N.Y. Ct. of Claims 1966).</p> <p>There is a split of authority among Appellate Divisions whether loss of use is recoverable if a commercial plaintiff has other vehicles in reserve and does not hire a substitute vehicle. 2nd Department allows for such a recovery. <i>Mountain View Coach Lines, Inc. v. Storms</i>, 102 A.D.2d 663 (2d Dep’t 1984). 3rd department does not. <i>Mountain View Coach Lines, Inc. v. Gehr</i>, 80 A.D.2d 949 (3d Dep’t 1981).</p> <p>Federal Court has tried to predict how the NY Ct. of Appeals would resolve the conflict and held that it would likely follow 2nd Department approach, as permitting recovery is more consistent with settled principles of tort doctrine. <i>Kuwait Airways Corp. v. Ogdan Allied Aviation Services</i>, 726 F.Supp. 1389 (E.D.N.Y.1989).</p> |

| STATE          | LOSS OF USE  | LOST PROFITS  | COMMENTS  |
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| NORTH CAROLINA | <p>Yes. If vehicle can be economically repaired, then plaintiff is entitled to recovery for the loss of 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).</p> <p>If vehicle is destroyed or repairs not feasible, the owner is entitled to damages for loss of use for a period reasonably necessary to acquire a new vehicle. Damages limited to a reasonable time necessary to acquire a new vehicle. <i>Id.</i></p> <p>Measure of damages for loss of use is not loss profits during time deprived of vehicle, rather the cost of renting a similar vehicle during a reasonable period for repairs. <i>Id.</i></p>   | <p>Yes. If reasonably certain. Where the profits lost are the direct and necessary result of defendant's tortious conduct, and are reasonably definite and certain, they are recoverable; those which are speculative and contingent, are not. <i>Kitchen Lumber Co. v. Tallassee Power Co.</i>, 174 S.E. 427 (N.C. 1934).</p>  | <p>If owner trades vehicle in for new equipment instead of economically repairing, he will not be precluded from recovering damages for loss of use during time reasonably required to purchase new equipment or to make the repairs, whichever is shorter. <i>Roberts v. Pilot Freight Carriers, Inc.</i>, <u>supra</u>.</p> <p>Owner need not actually rent replacement vehicle in order to recover loss of use damages. <i>Id.</i></p>   |
| NORTH DAKOTA   | <p>Yes. The measure of damages for injury to property is presumed to be the reasonable cost of repairs necessary to restore the property to the condition it was in immediately before the injury was inflicted and 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.C.C. § 32-03-09.1.</p> <p>No case law or statutory support for the recovery of loss of use damages without the actual rental of a substitute vehicle.</p> | <p>Yes, damages for lost profits are recoverable where they are reasonable and not speculative. <i>Leingang v. City of Mandan Weed Bd.</i>, 468 N.W.2d 397 (N.D. 1991).</p> <p>In cases where the amount of damages may be hard to prove, "the amount of damages is to be left to the sound discretion of the finder of facts." <i>Keller v. Bolding</i>, 678 N.W.2d 578 (N.D. 2004).</p> | <p>Additional damage rewards for loss of use and lost profits are allowed if they "can be established by competent evidence." <i>Robert v. Aircraft Inv. Co.</i>, 575 N.W.2d 672 (N.D. 1998).</p> <p>Evidence of past profits is generally an appropriate method to calculate estimated future profits. However, there are many different methods that may be used, and whichever method is used must be reasonably accurate and provide a fair basis for calculating the damages. <i>Langer v. Bartholomay</i>, 745 N.W.2d 649, 660 (N.D. 2008).</p> |

| STATE    | LOSS OF USE  | LOST PROFITS  | COMMENTS  |
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| OHIO     | <p>Yes. When a vehicle is damaged only to the extent that it is repairable within a reasonable time, the owner may also recover for the loss of use of vehicle for the reasonable time necessary to make the repairs. <i>Hayes Freight Lines v. Tarver</i>, 73 N.E.2d 192 (Ohio 1947).</p> <p>Loss of use may not be recovered if a vehicle is totaled and the owner has recovered the full value of the vehicle. <i>Id.</i></p> <p>The injured party elects the proper measure of damages. The preferred method of figuring damages is replacement rental cost. If there is no vehicle available for hire, the value of use to the owner becomes the appropriate measure of damages. <i>Indorf v. B. J. Mcadams, Inc.</i>, 1982 WL 5567 (Ohio Ct. App. 1982).</p>   | <p>Yes. You can recover profits lost as a result of a defendant's tortious conduct if such damages may naturally be expected to follow from the wrongful act and if the damages are reasonably ascertainable. <i>Michigan Millers Mut. Ins. Co. v. Christian</i>, 794 N.E.2d 68 (Ohio 2003).</p> <p>Further, lost profits resulting from an auto accident caused by another's negligence are certainly cognizable damages. <i>Id.</i></p> | <p>Lost profits may be established with reasonable certainty either directly or through an expert witness. <i>Michigan Millers Mutual Ins. Co. v. Christian</i>, <u>supra</u>.</p>  |
| OKLAHOMA | <p>Yes. Damages for loss of use are allowed (1) during a time period reasonably required for replacement and repair, including a reasonable time to determine if the vehicle is repairable, and (2) in a reasonable amount equal to that which was actually expended. <i>DTS Tank Serv., Inc. v. Vanderveen</i>, 683 P.2d 1345 (Okla. 1984); <i>Chambers v. Cunningham</i>, 5 P.2d 378 (Okla. 1931).</p> <p>Loss of use damages are equal to the rental or useable value of the vehicle during the time the owner is without the vehicle. <i>Brennen v. Aston</i>, 84 P.3d 99 (Okla. 2003).</p> <p>A person whose vehicle is totaled can receive compensation for loss of use from the time the vehicle is destroyed until the time it is replaced. <i>DTS Tank Serv., Inc. v. Vanderveen</i>, <u>supra</u>.</p> | <p>Yes. Loss profits can be recovered if you can show by a preponderance of the evidence that such damages were suffered. <i>Boatsman v. Southwestern Bell Yellow Pages, Inc.</i>, 30 P.3d 1174 (Okla. 2001).</p> <p>Uncertainty as to the amount of profit loss does not prevent the recovery of lost profits. <i>Ferrell Const. Co. v. Russell Creek Coal Co.</i>, 645 P.2d 1005 (Okla. 1982).</p>                                      | <p>For loss of use during the time an owner seeks a replacement vehicle, owner must show that he could not have rented a similar vehicle while the replacement vehicle is being delivered. <i>DTS Tank Serv., Inc. v. Vanderveen</i>, <u>supra</u>.</p> |
| OREGON   | <p>Yes. A vehicle owner is entitled to recover for loss of use of a vehicle for the time reasonable to make repairs. <i>Graf v. Don Rasmussen Co.</i>, 592 P.2d 250 (Or. App. 1979).</p> <p>The measure of damages is the reasonable rental value of a similar vehicle for a reasonable repair period. <i>Scott v. Elliott</i>, 451 P.2d 474 (Or. 1969).</p> <p>No case law or statutory authority directly on point regarding recovery of loss of use when vehicle is a total loss.</p>   | <p>Yes. Loss of profits, if properly proven, is an acceptable measure of the loss of use of a commercial vehicle. <i>Bullock v. Hass</i>, 571 P.2d 902 (Or. 1977).</p> <p>Loss of profits are properly proven to the extent that the evidence affords a sufficient basis for estimating the amount of such profits with reasonable certainty. <i>Hardwick v. Dravo Equip. Co.</i>, 569 P.2d 588 (Or. 1977).</p>                           | <p>A rental vehicle doesn't have to be obtained in order to receive loss of use damages. <i>Graf v. Don Rasmussen Co.</i>, <u>supra</u>.</p>  |



| STATE          | LOSS OF USE   | LOST PROFITS  | COMMENTS   |
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| PENNSYLVANIA   | <p>Yes. The owner of a vehicle which is damaged, whether repairable or not, may recover loss of use in addition to other damages claimed relating to the loss. This is calculated by the time needed to obtain a functional substitute on the market, not necessarily the time for repair or rebuilding. <i>Nelson v. Johnson</i>, 55 Pa. D. &amp; C.2d 21, 32 (Pa. Com. Pl. 1970).</p> <p>Any reasonable expense naturally and proximately resulting from loss of, or damage to, property, even though not actually paid out, usually is a proper element of recovery. This likely includes the cost of renting a substitute vehicle. <i>Id.</i></p> | <p>Yes. If reasonably certain. A plaintiff seeking damages for anticipated lost profits must offer evidence providing a basis for estimating them “with reasonable certainty.” <i>Exton Drive-In, Inc. v. Home Indemnity Co.</i>, 261 A.2d 319 (Pa. 1969).</p> <p>Although a new business with no record of profitability cannot usually satisfy this standard, there is an exception for new businesses that can show a “significant interest” in its product or service before the contract breach occurred. <i>Delahanty v. First Pa. Bank, N.A.</i>, 464 A.2d 1243 (Pa. 1983).</p>  |  |
| RHODE ISLAND   | <p>Yes. A plaintiff’s loss of use of his vehicle is an element of damage for the jury to consider. <i>Longo v. Monast</i>, 40 A.2d 433 (R.I. 1944); <u>see also</u> <i>Petroleum Heat &amp; Power Co. v. United Elec. Rys. Co.</i>, 150 A. 259 (R.I. 1930).</p> <p>A plaintiff’s testimony as to what he paid per day for use of a replacement vehicle is admissible as <i>prima facie</i> proof of damages for loss of use of a vehicle. <i>Longo v. Monast</i>, <u>supra</u>.</p> <p>No case law or statutory authority on point regarding recovery of loss of use when vehicle is a total loss.</p>  | <p>Yes. Plaintiff may recover lost profits when plaintiff’s business has been interrupted. <i>Troutbrook Farm, Inc. v. DeWitt</i>, 611 A.2d 820 (R.I. 1992)</p> <p>One must be able to prove the amount of lost profits and the cost and expenses involved in generating that income with reasonable certainty. <i>Long v. Atl. PBS, Inc.</i>, 681 A.2d 249 (R.I. 1996).</p> <p>Mathematical precision is not required to calculate lost profits, but such losses must be supported with some rational model on how the losses were computed. <i>Abbey Medical/Abbey Rents, Inc. v. Mignacca</i>, 471 A.2d 189 (R.I. 1984).</p> | <p>Loss of use is recoverable even when a rental vehicle is supplied for free by a third party. <i>Scott v. S. Ry. Co.</i>, 97 S.E.2d 73 (R.I. 1957).</p> <p>Lost profits may be demonstrated by showing history of one’s business operations. <i>Smith Dev. Corp. v. Bilow Enterprises, Inc.</i>, 308 A.2d 477 (R.I. 1973).</p>   |
| SOUTH CAROLINA | <p>Yes. A jury may award a plaintiff for the loss of use of a vehicle for the reasonable length of time that it was being repaired. <i>Fuller v. E. Fire &amp; Cas. Ins. Co.</i>, 124 S.E.2d 602 (S.C. 1962).</p> <p>Where a plaintiff’s vehicle is totally demolished, no loss of use damage may be recovered. <i>Vanderford v. Smith</i>, 111 S.E.2d 777 (S.C. 1960).</p> <p>No case law or statutory authority supporting loss of use damages being recoverable without having actually rented substitute vehicle.</p>   | <p>Yes. Lost profits are recoverable if plaintiff can present evidence of a fair and reasonable approximation of the lost profits. <i>Petty v. Weyerhaeuser Co.</i>, 342 S.E.2d 611 (S.C. App. 1986).</p> <p>Evidence supporting lost profits “must consist of actual facts from which a reasonably accurate conclusion regarding the cause of the loss and the amount of the loss can be logically and rationally drawn” <i>Drews Co. v. Ledwith-Wolfe Assoc.</i>, 371 S.E.2d 532 (S.C. 1988).</p>   | <p>In calculating lost profits, plaintiff must use net profits rather than expected gross profits. However, where a plaintiff seeks damages to his business and reputation, the court can utilize gross revenues to estimate damages if operating costs cannot be reasonably reduced by a plaintiff. <i>Id.</i> quoting 3 A.L.R.3d 689 (1965) &amp; 22 Am.Jur.2d Damages § 178 (1965).</p> |



| STATE        | LOSS OF USE  | LOST PROFITS   | COMMENTS   |
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| SOUTH DAKOTA | <p>Yes. "When a motor vehicle has been damaged by the negligence of another, the proper measure of damages is the cost of repairs and the value of its use during the time it is being repaired." <i>Joseph v. Kerkvliet</i>, 642 N.W.2d 533 (S.D. 2002); <u>see also</u> <i>Thormahlen v. Foos</i>, 163 N.W.2d 350 (S.D. 1968).</p> <p>When property is totally destroyed in an accident, the appropriate measure of damages is only the full market value. <i>Joseph v. Kerkvliet</i>, <u>supra</u>.</p> <p>No case or statutory authority directly on point answering whether actual rental of substitute vehicle is required to recover loss of use. However, <u>see</u> <i>Landeen v. Yonker, Inc.</i>, 175 N.W.2d 50, 51 (S.D. 1970) ("Damages are usually measured by the rental value of the item involved or by the reasonable cost of hiring a replacement item for the required period. Only such expense as is reasonably incurred is recoverable.")</p> | <p>Yes. A plaintiff's lost profits may be recovered; however, the evidence must show with reasonable certainty both the occurrence and extent of the loss of profits. <i>Hepper v. Triple U Enterprises, Inc.</i>, 388 N.W.2d 525 (S.D. 1986).</p>   | <p>Plaintiff's testimony as to the certain amount of profits lost was enough to satisfy the reasonably certain standard. <i>Drier v. Perfection, Inc.</i>, 259 N.W.2d 496 (S.D. 1977).</p>   |
| TENNESSEE    | <p>Yes. Loss of use damages are available to a plaintiff only when the vehicle is repairable. <i>Prewitt v. Brown</i>, 525 S.W.3d 616 (Tenn. Ct. App. 2017).</p> <p>Tennessee courts have recognized an exception to the above rule when commercial property has sustained irreparable damage and cannot be replaced within a reasonable time. <i>Tire Shredders, Inc. v. ERM-N. Cent., Inc.</i>, 15 S.W.3d 849 (Tenn. Ct. App. 1999).</p> <p>In determining the amount of loss of use, you may consider the reasonable rental cost of the property for that period of time and the use or lack of use the plaintiff would have made of it except for the incident. <i>Id.</i></p>   | <p>Yes. A plaintiff can recover lost profits when the plaintiff's personal property has been negligently destroyed by the defendant and the property cannot be replaced within a reasonable period of time. <i>Waggoner Motors, Inc. v. Waverly Church of Christ</i>, 159 S.W.3d 42 (Tenn. Ct. App. 2004).</p> <p>Lost profits are not recoverable when the plaintiff's property has been completely destroyed and is not capable of being repaired. <i>Tire Shredders, Inc. v. ERM-North Cent., Inc.</i>, <u>supra</u>.</p> | <p>Loss of use damages must be true losses and not something the damaged party could have reasonably avoided. <i>Scott v. Houston</i>, 2010 WL 680984 (Tenn. Ct. App. 2010).</p> <p>Loss of use or lost profits damages are recoverable for the reasonable amount of time that it takes to put a replacement vehicle into service that can equally perform as opposed to simply being "replaced." <i>DKB Trucking Co., LLC v. JNJ Express, Inc.</i>, 2012 WL 3866462 (Tenn. Ct. App. 2012). (Damaged truck up to date with all Federal/State guidelines to haul hazardous waste. Replacement vehicle had to meet these same guidelines).</p> |

| STATE   | LOSS OF USE   | LOST PROFITS  | COMMENTS   |
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| TEXAS   | <p>Yes. Plaintiff must establish the reasonable rental value of a substitute car for the time reasonably required to repair or replace it. <i>Luna v. N. Star Dodge Sales, Inc.</i>, 667 S.W.2d 115 (Tex. 1984).</p> <p>The period of compensatory loss of use will be the amount of time plaintiff was deprived of the use of his vehicle. <i>Id.</i></p> <p>Texas allows loss of use damages in total-destruction cases. <i>J&amp;D Towing, LLC v. Am. Alternative Ins. Corp.</i>, 478 S.W.3d 649 (Tex. 2016). The loss of use damages must be “reasonable.” <i>Balderas-Ramirez v. Felder</i> (Tex. App. 2017), <i>rev. denied</i> (Apr. 6, 2018).</p>   | <p>Yes. lost profits are available where “the property cannot be used during the repair or replacement period. <i>J&amp;D Towing, LLC v. Am. Alternative Ins. Corp.</i>, <i>supra</i>.</p> <p>Loss profits must be proven with reasonable certainty. <i>Tex. Instruments, Inc. v. Teletron Energy Mgmt., Inc.</i>, 877 S.W.2d 276 (Tex. 1994).</p> <p>A claim for loss profits must not be hypothetical or hopeful - but substantial in the circumstances. <i>Id.</i></p> | <p>Plaintiff need not rent a replacement vehicle to recover loss of use. <i>Luna v. N. Star Dodge Sales, Inc.</i>, <i>supra</i>.</p> |
| UTAH    | <p>Yes. Can recover any loss of use for a reasonable period of time until the vehicle can be repaired. <i>Metcalf v. Mellen</i>, 192 P. 676 (Utah 1920).</p> <p>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.3d 1204 (Utah Ct. App. 1997). However, must prove the extent of damage by showing how much the vehicle would have been used (how many days replacement needed). <i>Id.</i> Loss of use “should not be calculated simply by reference to the number of days that the vehicle sits idle, absent evidence that the vehicle would have been in use for the entire period.” <i>Id.</i></p> <p>In <i>Castillo</i>, the court did not reference the fact that the vehicle was a total loss, leading to the assumption that loss of use is recoverable on total loss claims when the amount of days for replacement is proven. <i>Id.</i> Also see <i>Castillo</i> case, footnote 8.</p> | <p>Yes. [Utah courts] have recognized that lost profits may be recovered when the evidence submitted provides a basis for estimating them with reasonable certainty. <i>Acculog, Inc. v. Peterson</i>, 629 P.2d 728 (Utah 1984).</p> <p>While the evidence must not be so indefinite as to allow the jury to speculate as to their amount, some degree of uncertainty is tolerable. <i>Id.</i></p>  |  |
| VERMONT | <p>Yes. 4-3 Vt. Code R. § 7 provides that loss of use damages may be recovered for the reasonably-incurred cost of transportation or for the reasonably-incurred rental cost of a substitute vehicle.</p> <p>If vehicle cannot be economically repaired, such expense for loss of use shall be paid until the claimant can reasonably obtain a replacement motor vehicle. <i>Id.</i></p> <p>Plaintiff need not rent a replacement vehicle to recover loss of use. <i>Id.</i></p>  | <p>No. 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> <p>Evidence of expected profits from a new business are considered too speculative. <i>Id.</i></p>   |  |

| STATE      | LOSS OF USE  | LOST PROFITS  | COMMENTS   |
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| VIRGINIA   | <p>Yes. Va. Stat. § 8.01-66 outlines that 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.</p> <p>Virginia standard jury instructions for determining damages in negligence actions include the loss of use statute as support for calculation of damages to the vehicle damaged in order to fully and fairly compensate the individuals for the damages sustained. VAPRAC JI §23.1</p> <p>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>   | <p>Potentially. Loss of future profits is recoverable when caused by wrongful conduct, which results in the interruption or destruction of an established business, provided the lost profits are capable of reasonable ascertainment and are not uncertain, speculative, or remote. <i>United Constr. Workers v. Laburnum Constr. Corp.</i>, 75 S.E.2d 694 (Va. 1953).</p> <p>Plaintiff is not required to prove exact amount of profits lost but must present enough evidence for a jury to rule on a reasonable estimate of the damages. <i>Goldstein v. Kaestner</i>, 413 S.E.2d 347 (Va. 1992).</p>  | <p>Two years of annual profits found to be insufficient evidence in support of lost profit damages. <i>United Const. Workers v. Laburnum Const. Corp.</i>, <u>supra</u>.</p> |
| WASHINGTON | <p>Yes. R.C.W.A. § 4.56.250(1)(a) defines economic damages as including “loss of use of property.” <i>Holmes v. Raffo</i>, 374 P.2d 536 (Wash. 1962) (approving damages for loss of use of a vehicle). Damages to compensate for this loss may only take into account the reasonable time in which the vehicle should have been repaired. 5 Berry, <i>Law of Automobiles</i> § 5.233 (1935); <i>Madden v. Nippon Auto Co.</i>, 206 P. 569 (Wash. 1922).</p> <p>Right to compensation for loss of use of a vehicle is not dependent upon owner having hired a substitute vehicle during period when his vehicle was being repaired. <i>Id.</i> Even though plaintiff did not rent a substitute vehicle, he was nevertheless entitled to receive as general damages such sum as would compensate him for his inconvenience, and proof of what it reasonably would have cost to hire a substitute vehicle was sufficient to present question of such damages to jury. <i>Id.</i></p> <p>Loss of use is recoverable even when the vehicle is a total loss, however this is limited to the period between the date of accident, and the date on which the owner was paid for the cost of the vehicle. <i>Straka Trucking, Inc. v. Estate of Peterson</i>, 989 P.2d 1181 (Wash. 1999).</p> | <p>Yes. Principles for mitigation of damages would cause lost profits claim to exist only when there was no available rental vehicle. Damages for loss of use of a chattel 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, supra.</i>; <i>Ackerman v. Tonkoff</i>, 435 P.2d 31 (Wash. 1967).</p> <p>Moreover, the owner who uses a chattel in the production of income is always entitled to claim profits lost when the chattel is unavailable during a reasonable period for repair <i>or replacement</i> as a result of tortious <i>destruction</i> [or] damage. The claim may be that inability to use the chattel reduced the plaintiff’s income or that it increased his expenses, either way reducing his net profit, which is recoverable if the proof is adequate. Any such claim is subject to normal rules for special damages, duplication of damages, and mitigation of damages. <i>Id.</i></p> <p>Recovery of lost profits allowed where a reasonable estimation of damages can be made based on an analysis of the profits of an identical or similar business under substantially the same market conditions. <i>No Ka Oi Corp. v. Nat’l 60 Minute Tune, Inc.</i>, 863 P.2d 79 (Wash. 1993).</p> | <p>Expert testimony alone is enough basis for an award of lost profits. <i>No Ka Oi Corp. v. Nat’l 60 Minute Tune, Inc.</i>, <u>supra</u>.</p>                               |

| STATE         | LOSS OF USE   | LOST PROFITS   | COMMENTS  |
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| WEST VIRGINIA | <p>Yes. Loss of use damages are recoverable. <i>Ellis v. King</i>, 400 S.E.2d 235 (W.Va. 1990). Loss of use is measured by rental value. <i>O'Dell v. McKenzie</i>, 145 S.E.2d 388 (W.Va. 1965). It is recoverable for the period of time during which the owner is deprived of his vehicle. <i>Hardman Trucking v. Poling Trucking Co.</i>, 346 S.E.2d 551 (W.Va. 1986).</p> <p>There is no authority requiring that a replacement vehicle actually be rented in order claim loss of use, instead the relevant caselaw appears to support such a claim for the cost of a hypothetical rental. <i>Somerville v. Dellosa</i>, 56 S.E.2d 756, 763 (W.Va. 1949).</p> <p>Loss of use is recoverable whether or not the vehicle is repaired or totaled. <i>Ellis v. King</i>, 400 S.E.2d 235 (W.Va. 1990).</p>   | <p>Yes. Loss of profits is recoverable when no replacement vehicle is available. The Court has established stringent prerequisites to such recovery: "In order to recover for loss of profits as the result of a tort, they must be such as would be expected to follow naturally the wrongful act and are certain both in their nature and the cause from which they proceed." <i>Ohio-West Virginia Co. v. Chesapeake &amp; Ohio Railway.</i>, 124 S.E. 96 (W.Va. 1928); <u>see also</u>, <i>Stewart v. Pollack-Forsch Co.</i>, 143 S.E. 98 (W.Va. 1928); <i>Shatzer v. Freeport Coal Co.</i>, 107 S.E. 2d 503 (W.Va. 1959). In a case where a vehicle owner might lessen his damages by renting a replacement, "the plaintiff would not be entitled to recover the vehicle's earnings, but only the amount it would have cost him to replace the vehicle...If that had been shown to be impossible then the earnings of the vehicle, not including those of its driver, would have been relevant on the question of damages." <i>Somerville v. Dellosa</i>, <u>supra</u>.</p> | <p>Damages for annoyance and inconvenience may also be recovered when measuring damages for loss of use to property." <i>Ellis v. King</i>, <u>supra</u>.</p> |
| WISCONSIN     | <p>Yes. Loss of use is 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 &amp; Container Co. v. G. G. Parsons Trucking Co.</i>, 182 N.W.2d 448 (Wis. 1971).</p> | <p>Yes. Lost profits are the appropriate measure of damages when a functionally equivalent rental vehicle is proven to not be available. <i>Balcsik v. Fil-mor Express, Inc.</i>, 756 N.W.2d 478 (Wis. 2008). The Plaintiff must show the anticipation of a profit with reasonable certainty. <i>Krueger v. Steffan</i>, 141 N.W.2d 200 (Wis. 1966).</p>   |   |

| STATE   | LOSS OF USE   | LOST PROFITS   | COMMENTS |
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| WYOMING | <p>Yes. 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> | <p>Probably. The court has not ruled directly on this issue, however the Court has hinted at its applicability with the necessary proofs. The party claiming loss of use must show with reasonable certainty the claimed amount of damages. <i>Colorado Kenworth, Inc. v. Archie Meek Transp. Co.</i>, <u>supra</u>.</p> |          |

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