

ii. The source shall produce fair market values of substantially similar vehicles for at least 85 percent of all makes and models for the last 15 years and shall include all major options. A sufficient number of vehicles must be used for each year, make, and model to represent a cross-section of the market sufficient to determine fair market value.

iii. If the database uses several price ranges for the same model vehicle depending on the condition of the vehicle, it must clearly indicate what condition the vehicle is being valued at and define in detail the difference between such rating categories. Documentation of the condition of the insured vehicle must be made a part of the written valuation.

iv. At the time of request for approval the source of the database shall be revealed to the Commissioner in a manner that can be verified by the Department.

4. If it is not possible to value the insured vehicle by using the method set forth in (a)1, 2 and 3, the insurer shall determine the retail value of the vehicle by using the best available method and shall fully explain in writing to the insured how its offer was calculated.

(b) If the insurer is notified in writing within 30 calendar days of the receipt of the claim draft that the insured cannot purchase a comparable vehicle at the market value established by the insurer, the insurer shall reopen its claim file and the following procedures will apply:

1. The insurer may locate a substantially similar vehicle by the same manufacturer of the same year, make and model, with similar options, mileage, and condition as the destroyed vehicle from a licensed dealer. Such vehicle must be within a reasonable distance not to exceed 25 miles from the insured's principal place of garaging;

2. The insurer shall either pay the difference between the market value before applicable deductions and the cost or the market value as determined by (a)2 above of a substantially similar vehicle located by the insured or negotiate and effect purchase of this vehicle for the insured;

3. The insurer may elect to offer a replacement vehicle in accordance with the provisions as in (e) below; or

4. The insurer or insured may conclude the loss settlement as provided for under the appraisal section of the insurance contract in force at the time of loss. This appraisal shall be considered as binding against both parties, but shall not preclude or waive any other rights either party has under the insurance contract or under law.

(c) The insurer shall advise the insured in writing of the rights of recourse at the time the settlement draft is issued and retain a copy of the notice in its claim file.

(d) An insurer shall use the same source of settlement for all claims unless it is documented that the primary settlement source is not available in the case of a particular vehicle. At the request of the Commissioner, the insurer shall provide the Department with its primary source of valuation for vehicles.

(e) If the insurer elects to replace the vehicle, the replacement vehicle must be an immediately available, substantially similar vehicle that is both furnished and paid for by the insurer, subject to the deductible, if any, and including applicable sales tax.

(f) If the insured vehicle is a private passenger automobile of the current model year, meaning that the vehicle has not been superseded in the market place by an officially introduced succeeding model, the insurer shall utilize one of the following methods in the settlement of the loss, unless the utilization of (a) or (b) above is more favorable to the consumer.

1. Either the insurer shall pay the insured an amount equal to the reasonable purchase price on the date of the loss of a new identical vehicle, less any applicable deductible and an allowance for depreciation in accordance with the schedule below; or

2. The insurer shall provide the insured with a new identical replacement vehicle charging the insured for any applicable deductible and for depreciation in accordance with the schedule below:

Depreciation Schedule

Purchase Price	Depreciation per mile
Up to \$ 6,500	\$0.10
\$ 6,501-\$ 8,000	0.12
8,001- 10,000	0.15
10,001- 12,000	0.18
12,001- 15,000	0.21
15,001- 20,000	0.25
More than \$20,000	0.29

(g) In the event of a total loss, any parts of the insured vehicle included in its valuation which are removed by the insured or the designated representative shall have their value deducted from the final settlement figure. This section shall not be construed to grant a right of removal.

(h) The following provisions of N.J.A.C. 11:3-10.3 also shall apply to the adjustment of total losses, except that the insurer shall have a total of 14 working days to comply with the requirements of subsections (a), (b), (c), (h), (i), (j) and (k) of N.J.A.C. 11:3-10.3.

(i) This section does not prohibit an insurer from issuing a stated value policy insuring against physical damage where the amount of damages to be paid in the event of a total loss is a specified dollar amount.

(j) If the vehicle is a total loss, the insurer may require that the insured transfer ownership of the vehicle to recoup salvage as a condition of settlement.

As amended, R.1976 d.371, eff. November 22, 1976.
See: 8 N.J.R. 481(b), 8 N.J.R. 559(c).
Amended by R.1985 d.629, effective December 16, 1985.
See: 16 N.J.R. 3170(a), 17 N.J.R. 2988(a).
(a)lii added; new depreciation schedule.
Administrative correction to (e).
See: 21 N.J.R. 3173(b).
Amended by R.1987 d.249, effective June 15, 1987.
See: 18 N.J.R. 2415(a), 19 N.J.R. 1096(a).
Substantially amended.
Amended by R.1995 d.583, effective November 6, 1995.
See: 27 N.J.R. 2535(a), 27 N.J.R. 4314(a).

Case Notes

Compilation of used vehicle valuations did not automatically fall into public domain and lose its copyright protection. CCC Information Services, Inc. v. Maclean Hunter Market Reports, Inc., C.A.2 (Conn.)1994, 44 F.3d 61, certiorari denied 116 S.Ct. 72, 133 L.Ed.2d 32..

11:3-10.5 Unreasonable delay

(a) Unless a clear justification exists, physical damage claims will have a maximum payment period of 30 calendar days. A payment period is the period between the date of the receipt of the notice of loss by the insurer, and:

1. The date the settlement check is mailed; or
2. The date on which the damaged vehicle is returned to use when the insurer elects to repair or have repaired the insured vehicle; or
3. The date on which the damaged vehicle is replaced by the insurer.

(b) If any element of a physical damage claim remains unresolved more than 30 calendar days from the date of receipt of notice of loss by the insurer, the insurer shall provide the insured with a written explanation of the specific reasons for delay in the claim settlement. An updated letter of explanation shall be sent again every 30 calendar days thereafter until all elements of claim are either honored or rejected.

(c) Any letter of explanation, rejection or acceptance of any element of a claim shall contain in the upper right hand corner the date of receipt of notice of loss by the insurer and be identified as such. The letter shall also contain the identity and claim processing address of the insurer, and the insured's policy number and claim number.

Amended by R.1985 d.629, effective December 16, 1985.
See: 16 N.J.R. 3170(a), 17 N.J.R. 2988(a).
Substituted "Marketplace Regulation and Consumer Assistance Division" for "Consumer Services Division".
Amended by R.1991 d.45, effective February 4, 1991.
See: 22 N.J.R. 1678(a), 23 N.J.R. 306(b).

In (d): revised address.
Amended by R.2001 d.44, effective February 5, 2001.
See: 32 N.J.R. 3891(a), 33 N.J.R. 573(a).
Deleted (d).

Law Review and Journal Commentaries

Damages—First Party Claims—Insurance. Judith Nallin, 133 N.J.L.J. No. 12, 65 (1993).

Case Notes

Cause of action exists for insured's bad-faith refusal to pay first-party claims. Pickett v. Lloyd's, 131 N.J. 457, 621 A.2d 445 (1993).

Insurer owes duty of good faith to insured in processing first-party claim. Pickett v. Lloyd's, 131 N.J. 457, 621 A.2d 445 (1993).

Finding that insurer and agent breached duty of fair dealing by failing to timely pay claim was supported by the evidence. Pickett v. Lloyds, 252 N.J.Super. 477, 600 A.2d 148 (A.D.1991), certification granted 127 N.J. 563, 606 A.2d 373, affirmed 131 N.J. 457, 621 A.2d 445.

Insured acted reasonably in not reading proof of loss form. Pickett v. Lloyds, 252 N.J.Super. 477, 600 A.2d 148 (A.D.1991), certification granted 127 N.J. 563, 606 A.2d 373, affirmed 131 N.J. 457, 621 A.2d 445.

Insured could to recover for lost income as result of insurer's delay in paying claim. Pickett v. Lloyds, 252 N.J.Super. 477, 600 A.2d 148 (A.D.1991), certification granted 127 N.J. 563, 606 A.2d 373, affirmed 131 N.J. 457, 621 A.2d 445.

Insured who did not submit proof of loss until loss of seniority was not barred from recovery against insurer. Pickett v. Lloyds, 252 N.J.Super. 477, 600 A.2d 148 (A.D.1991), certification granted 127 N.J. 563, 606 A.2d 373, affirmed 131 N.J. 457, 621 A.2d 445.

11:3-10.6 Loss of use

In the event of the theft of the entire vehicle the insurer at the time of notification shall advise the insured of his or her right under the policy to be reimbursed for transportation expenses. The notification must be confirmed in writing immediately after receipt of notice of theft. All conditions and benefits related to this coverage as stated in the policy must be contained in the notification to the insured.

Amended by R.1985 d.629, effective December 16, 1985.
See: 16 N.J.R. 3170(a), 17 N.J.R. 2988(a).
Deleted "it shall be the duty of".

11:3-10.7 Subrogation agreements

(a) If an insured has received payment under his or her physical damage coverage that is subject to a deductible, the insured shall share, pro rata, with the insurer any net recovery received by the insurer from third parties.

(b) Net recovery shall be the total recovery less the insurer's allocated loss adjustment expenses attributable to such recovery. The formula for computing net recovery and the insured's share of recovery of the deductible may be stated as follows: