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## “Top 10 Reasons to Purchase the Rental Car Damage Waiver”

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**Abstract:** Although damage waiver fees are generally considered outrageous, most consumers should consider purchasing the waiver for short-term rentals. This article addresses the types of losses and expenses that a consumer can incur that may not be covered by their auto insurance or credit card coverage.

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Although most collision damage waiver (CDW) or loss damage waiver (LDW) fees are considered outrageous, **most consumers should consider purchasing the CDW/LDW** for short-term rentals. This is becoming increasingly the case as rental car companies charge ever-higher fees and penalties for losses and expenses not covered by most auto policies or credit cards. The following are ten reasons to purchase the rental car damage waiver:

### 1. Loss Valuation

The value of a rental car, according to virtually all rental agreements, is determined solely at the discretion of the rental company and may be significantly different from the market value "ACV" basis used by most auto policies. The "industry standard" (ISO) personal auto insurance policy covers the lesser of the "actual cash value" (market value) of the vehicle or the amount "necessary" to repair or replace the damaged property.

The rental agreement may very well contractually obligate the consumer to reimburse the rental agency for the "full value" (whatever that is) of the vehicle. If the renter's insurance policy has a "betterment" clause, the insurer might not pay the "full value" and the renter could be responsible for the difference.

### 2. Loss Settlement

As implied above, there may very well be disagreement over the value of the vehicle or the amount charged for labor and materials to repair the property—an Appraisal clause may be invoked by the insurer with its accompanying costs covered partially by the insured/renter.

More importantly, the auto insurer has the right to "...inspect and appraise the damaged property before its repair or disposal"—the rental company may choose to make the repairs immediately, potentially resulting in a lack of auto insurance coverage because of failure to comply with the condition cited above.

In a recent claim involving farm equipment under a similar policy provision, the insurer denied coverage when the farmer had the property repaired immediately in order to minimize lost production and the insurer never had the opportunity to appraise the damage.

### **3. Loss Payment**

The rental agreement may require immediate reimbursement for damages and it is not uncommon for the rental company to charge the consumer's credit card for the full value of the vehicle and other expenses. This can create a significant debt, "max" out the card's credit limit (perhaps shortening a vacation or business trip), result in litigation, etc.

### **4. Loss Damage Waivers (LDW)**

The rental agreement usually requires reimbursement for more than collision, making the consumer responsible for ANY "loss" in value beyond normal wear and tear regardless of fault. Most auto policies must include collision coverage on at least one insured owned vehicle for collision coverage to transfer to the rental car. Since many consumers buy only state-mandated liability insurance, they may have no physical damage coverage to transfer to the rental car.

If the rental agreement includes a Loss (not just Collision) Damage Waiver (LDW), the policy must also include comprehensive coverage to protect the consumer for non-collision damage such as theft or vandalism. Even so, keep in mind that the renter's contractual liability under the rental agreement may be almost absolute, so it's possible the auto policy may not respond to all losses.

*(Note: Likewise, the auto policy might respond to losses not covered by the LDW such as use off paved roads, use while intoxicated, use by unlisted drivers such as valet parking (see below), etc. Therefore it is important to have BOTH auto insurance and LDW coverage.)*

### **5. Indirect Losses**

The consumer most likely will be responsible for the rental company's loss of rental income on the damaged unit. Most auto policies have, at best, daily and maximum caps for this indirect loss and some may pay only for loss of income resulting from theft, not collision or other causes of loss.

In addition, many rental companies will not divulge their fleet utilization logs for competitive reasons or their rental agreements may make the renter responsible for loss of use without regard to fleet utilization rates. If so, the renter may be charged even though unused rental vehicles are sitting on the lot. In one case, a renter was hit with a \$2,000 loss of use charge. Insurers may not be willing to pay for charges they don't feel represent a true loss of income by the rental company.

Most alarmingly, rental car companies are increasingly inclined to charge for "diminution of value," an indirect loss that is not covered by most auto policies' physical damage section (nor most credit card coverages). We have seen documented examples of these charges for amounts in excess of \$5,000 - \$7,000 and heard of one that was allegedly \$15,000 on an upscale SUV rental.

### **6. Administrative Expenses**

The rental contract may make the consumer liable for various "administrative" or loss-related expenses such as towing (e.g., one renter was charged for a 230-mile tow), storage, appraisal, claims adjustment, etc. None of these expenses are typically covered by auto policies.

### **7. Other Insurance**

Coverage under an auto policy is typically excess over: (1) any coverage provided by the owner of the auto, perhaps including self-insured plans, (2) any other applicable physical damage insurance, and (3) any other

source of recovery applicable to the loss—CDW/LDW, travel policies, credit card coverages, etc. (what if the credit card coverage says it's excess over the auto policy?). The potential controversy over who pays what is obvious and can result in litigation.

In addition, keep in mind that many states have statutes, proprietary policy forms, and/or case law precedents that may govern this and other rental car exposures. For example, in determining which insurance is primary (pays first) and which is excess, states vary significantly. By purchasing the damage waiver, this distinction becomes unimportant to the renter.

In one final example, a consumer was given a loaner vehicle from a Cadillac dealer while his car was being serviced. He proceeded to total the vehicle in an accident to the tune of \$37,000. His personal auto insurer refused to pay on the basis that their auto policy provided excess coverage over the dealer's garage insurance policy, offering only to pay a portion of the dealer's deductible. The garage insurer paid the entire claim, then sued the customer for \$37,000.

When the consumer turned the suit in to his auto insurer, the claim was denied under the liability section of his policy, citing a "care, custody or control" exclusion. While this involved a dealer loaner auto, the same result could have been reached in this state if the auto was a rental.

## **8. Excluded Vehicles & Territories**

Personal auto policies typically do not provide physical damage coverage for motorcycles, motorhomes, and other motor vehicles that are not private passenger cars, pickup trucks, or vans, and use of covered vehicles is limited to the U.S., its territories and possessions, Puerto Rico, and Canada (the rental agreement may also exclude operation outside a specific geographical area, in which case the auto policy could provide coverage not provided for under an LDW).

In addition, if a consumer is renting a trailer (U-Haul, camper trailer, etc.), auto coverage is typically limited to only \$500 - \$1,500. The consumer usually has no choice but to rely on the rental company's damage waiver for coverage under these circumstances.

## **9. Excluded Uses & Drivers**

The personal auto policy may have limitations on the use of vehicles that are not otherwise excluded by the rental agreement damage waiver—for example, some auto policies provide no physical damage coverage for the business use of nonowned pickup trucks or vans.

Also, some auto policies may include an exclusionary endorsement for certain individuals or may apply only to designated individuals that can be covered by listing them on the rental agreement. In contrast, the damage waiver usually only applies to designated individuals (with certain omnibus "insureds" such as spouses), so having both an auto policy and the damage waiver can again be advantageous.

One often overlooked issue where a large coverage gap might exist is using valet parking at a hotel or restaurant during a personal or business trip. Most auto policies cover damage to nonowned autos if you have physical damage coverage on at least one declared auto. However, this coverage may extend only to a nonowned auto "while in the custody of or being operated by you or any 'family member'...."

If the rental car is being valet parked, it's certainly not being operated by you. The question is whether it is still technically in your custody. Does custody mean possession or entrustment? Is the rental car in your custody from the moment you rent it or only when you have physical control? It's a matter of law and contract interpretation. That's why it is probably not a good idea to valet park a rental car.

The Catch-22 is that, even if you purchase the rental car damage waiver, most rental agreements void the coverage if the vehicle is being driven by an unauthorized driver. As discussed above, the only authorized drivers are those identified by name on the rental agreement and perhaps a spouse or co-worker. Hotel or restaurant valets? Highly unlikely.

## 10. Additional and/or Future Costs

The personal auto policy will most certainly include a physical damage deductible in the range of \$100-\$500 or more, while the rental agency's LDW may not. In addition, payment for damage to a rental car may result in a significant premium increase on the renter's auto policy via surcharges or loss of credits.

### Conclusion

All auto insurance policies are not created equal, despite what you might be led to believe by some "low-cost" auto insurance advertising. In particular, coverage and claims practices for the use of nonowned auto like rental cars can vary dramatically from one insurer to another. Equally important, virtually all rental car companies draft their own rental agreements and can make charges and assessments that are not covered by any auto policy. Although damage waiver fees are generally considered outrageous, most consumers should consider purchasing the waiver for short-term rentals.

### Disclaimer

The above information is based on the "ISO standard" Personal Auto Policy in force in most states at the time of publication and typical rental car agreements. Be aware that these contracts may vary from state to state and there may be statutory exceptions (e.g., the State of NY) that may govern. In addition, these provisions can change at any time, so it is important to review the laws and contracts in effect in your jurisdiction at any point in time. Due to the brevity of this article, we cannot analyze every possible loss exposure and exception to the general guidelines above.

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