

Privileged and Confidential Settlement Demand

Of Property Pursuant to the [APPLICABLE STATE] Rules of Civil Procedure

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[DATE]

[CLAIMS ADJUSTER NAME]

Sent via [FAX / EMAIL / CERTIFIED MAIL]:

[DELIVERY ADDRESS OR NUMBER]

[INSURANCE COMPANY NAME]

Re:

Our Client: [CLAIMANT NAME]

Claim Number: [CLAIM NUMBER]

Date of Loss: [DATE OF LOSS]

Dear [ADJUSTER LAST NAME OR TITLE],

This is our final attempt to settle the above-referenced loss of use claim. This firm represents [CLAIMANT NAME] with respect to their property damage claim against your insured. The purpose of this letter is to attempt to settle this claim without the necessity of incurring any additional expenses, including litigation expenses. This letter is a privileged and confidential offer to compromise pursuant to [APPLICABLE EVIDENCE / SETTLEMENT RULE (e.g., TRE 408)] and is intended solely for settlement purposes.

LEGAL BASIS FOR LOSS OF USE DAMAGES

The Supreme Court of Texas makes it clear [CLAIMANT NAME] is entitled to recover loss of use damages for the period [he/she] was deprived of the use of [his/her] vehicle. *J&D Towing, LLC v. Am. Alternative Ins. Corp.*, 478 S.W.3d 649, 656-57 (Tex. 2016). The measure of such damages is the reasonable rental value of a substitute vehicle for the period of compensatory loss. *Elias v. Mr. Yamaha, Inc.*, 33 S.W.3d 54, 61 (Tex. App.--El Paso 2000, no pet.).

To recover loss of use damages, [CLAIMANT NAME] is not required to prove that [he/she] actually rented a replacement vehicle or expended money on alternative transportation. *Jones v. Transp. & Parking Consultants, LLC*, No. 05-23-00355-CV, 2024 Tex. App. LEXIS 1978, 2024 WL 1190525, at *3 (Tex. App.--Dallas Mar. 20, 2024, no pet.) (mem. op.) (citing *Luna v. North Star Dodge Sales, Inc.*, 667 S.W.2d 115, 118 (Tex. 1984)). The reasonable rental value, whether calculated by the day, week, or month, is sufficient evidence to support the loss suffered. *Luna v. North Star Dodge Sales, Inc.*, 667 S.W.2d 115, 118 (Tex. 1984).

The period of compensatory loss of use is the amount of time the claimant was deprived of the use of the vehicle. *Elias v. Mr. Yamaha, Inc.*, 33 S.W.3d 54, 60-63 (Tex. App.--El Paso 2000, no pet.).

The reasonable rental value does not require absolute certainty. *Goose Creek Consol. Indep. Sch. Dist. v. Jarrar's Plumbing, Inc.*, 74 S.W.3d 486, 496-97 (Tex. App.--Texarkana 2002, pet. denied). The usual measure is the reasonable cost of renting a comparable replacement vehicle. *Id.*

CALCULATION OF LOSS OF USE DAMAGES

Based on the reasonable rental value of a comparable replacement vehicle in the [CITY/REGION] market, [CLAIMANT NAME] incurred loss of use damages as follows:

- Period of Loss: [START DATE] through [END DATE] ([NUMBER] days)
- Daily Rental Value: \$[DAILY RATE]
- Total Loss of Use Damages: \$[TOTAL AMOUNT]

[Optional: This calculation is supported by [rental quotes from Enterprise/Hertz/National/other rental agencies / market survey data / comparable rental rates for a YEAR MAKE MODEL], copies of which are enclosed.]

As a result of the collision, my client's [YEAR MAKE MODEL / TRIM] was unavailable during the period of compensatory loss. If my client already incurred a rental invoice for overlapping days, that amount is shown and credited below (enter \$0 / N/A if none):

Description	Amount
Loss of Use (gross) - [NUMBER] day(s) x \$[DAILY RATE]/day (comparable rental class). See attached MY-DV-PAL LOU report.	\$[TOTAL AMOUNT]
Less: rental invoice already paid / credited for overlapping days (attach invoice). Use \$0 or N/A if client did not rent.	[RENTAL INVOICE AMOUNT]
Total Loss of Use demanded	[NET LOU AMOUNT]

** In an effort to settle my client's loss of use claim, even when considering you have not presented any evidence refuting the expert's detailed report, my client will settle the loss of use claim for [SETTLEMENT OFFER AMOUNT].

THEREFORE, OUR FINAL OFFER TO SETTLE IS [SETTLEMENT OFFER AMOUNT].

If you have any questions or comments, please feel free to call my office.

Best regards,

[ATTORNEY FULL NAME, Esq.]

[ATTORNEY TITLE (e.g., Attorney at Law)]

[LAW FIRM NAME]

Enclosure: Loss of use appraisal / expert report; rental invoice (if any); supporting rental quotes / market data (if used). This sample layout is provided by MY-DV-PAL (mydvpal.com) to illustrate a common demand structure. Always customize with your firm's letterhead, facts, and governing law. Texas case citations are sample authority only.