



Division of Insurance

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**BULLETIN 03-04**

TO: All Property & Casualty Insurance Companies

FROM: Gary Steuck, Director  
South Dakota Division of Insurance

DATE: December 11, 2003

RE: Unrepaired Automobile Hail Damage Claims and Definition of Local Market Value

Many questions have arisen on how unrepaired automobile hail damage claims should be handled. We have addressed this issue in the past, but further clarification appears to be warranted. This Bulletin supercedes any prior bulletins and Director Lyon's letter of November 15, 1993 with regard to hail claims.

Most insurance policies contain the following language (or something very similar):

**LIMIT OF LIABILITY**

- A. Our limit of liability for loss will be the lesser of:
  - 1) Actual cash value of the stolen or damaged property; or
  - 2) Amount necessary to repair or replace the property.
- B. An adjustment for depreciation and physical condition will be made in determining the actual cash value at the time of the loss.

Based upon the research conducted by the Division and ISO's legal department, it became clear that the intent was that "actual cash value" meant the fair market value of the vehicle. The term "actual cash value" should not be used when discussing the repair or replacement of parts of the vehicle. The term "actual cash value" only applies to the value of the entire vehicle. The "amount necessary to repair or replace" is the actual and full amount of the estimate. Therefore, once an insurance company and the claimant have agreed upon the cost to repair the vehicle, an insurer must then either pay the cost of repair or the actual cash value of the vehicle.

Insurance companies have been questioning whether they would owe sales tax and/or labor costs on a vehicle that is not going to be repaired. It is the Division's position, based on the policy language, that labor costs are owed whether the vehicle is repaired or not. However, if the vehicle is not going to be repaired, sales tax will not be incurred, and therefore an insurance company can reduce the payment by the amount of sales tax listed on the agreed upon estimate.

All inquiries concerning this Bulletin should be addressed to:

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