

11 NCAC 04 .0418 TOTAL LOSSES ON MOTOR VEHICLES

(a) The Commissioner shall consider as prima facie violative of G.S. 58-63-15(11) the failure by an insurance company to adhere to the procedures in this Rule concerning the settlement of covered "total loss" motor vehicle claims when the failure is so frequent as to indicate a general business practice.

(b) For the purposes of this Rule, the following terms shall mean:

- (1) "Licensed Motor Vehicle Dealer" means a person who is licensed by the North Carolina Department of Transportation Division of Motor Vehicles pursuant to Chapter 20, Article 12 of the N.C. General Statutes.
- (2) "Local Market Area" means an area within a 100-mile radius of the place where the motor vehicle is principally garaged. If a substantially similar motor vehicle is unavailable within a 100-mile radius, the insurance company may increase the radius in increments of 50 miles until a substantially similar motor vehicle can be found.
- (3) "Published Regional Average Values" means values derived from printed or electronically published motor vehicle pricing guides recognized in the motor vehicle industry, including National Automobile Dealers Association Pricing Guide Book or Kelley Blue Book that analyze current and historical motor vehicle sales data taking into consideration the year, make, model and condition of the motor vehicle, motor vehicle market conditions, and geographic area to reach an average retail value of the motor vehicle.
- (4) "Substantially Similar Motor Vehicle" means a motor vehicle of the same make, model, and year of the damaged motor vehicle.

(c) When a motor vehicle is damaged in an amount which, inclusive of original and supplemental claims, equals or exceeds 75 percent of the pre-accident actual cash value as determined in accordance with Paragraph (d) of this Rule, an insurance company shall designate the motor vehicle as a "total loss" and pay the claimant the pre-accident value. In return, the insurance company shall receive possession of the legal title of the salvage of the total loss motor vehicle.

(d) If the insurance company and the claimant are unable to reach an agreement as to the actual cash value of the total loss motor vehicle, the settlement offer shall be based upon the following values:

- (1) The published regional average values of substantially similar motor vehicles; and
- (2) The retail cost of two or more substantially similar motor vehicles in the local market area when substantially similar motor vehicles are available or were available within 90 days of the accident to consumers in the local market area.

If no substantially similar motor vehicle is able to be located in the local market area, the settlement offer may be based upon quotations obtained from two or more licensed motor vehicle dealers located within the local market area.

(e) The settlement offer may be adjusted for condition, options, equipment, and mileage, less the cost of unrepaired damage that pre-existed the accident.

(f) Applicable sales tax and vehicle registration fees shall be included as part of the actual cash value settlement of the total loss motor vehicle, except where the claimant retains the salvage vehicle.

(g) The insurance company shall give consideration to evidence presented by the claimant such as receipts, photographs, or other documentation that the total loss motor vehicle owned by him or her was in a better condition prior to the accident than suggested by the insurer's settlement offer.

(h) When a motor vehicle's total loss is settled on a basis which deviates from this Rule, the deviation must be supported by documentation within the claim file detailing the total loss motor vehicle's condition and the reason for the deviation. Any deductions from the actual cash value of the total loss motor vehicle, including deduction for salvage or prior damage, shall be itemized and contain the amount of the deduction. The documentation that supports the basis for the settlement shall be shared with the claimant. The insurance company's record shall include documentation of the total loss settlement.

(i) If requested by the claimant, a total loss payment by an insurance company shall be accompanied by a written statement listing the estimates, evaluations, and any deductions used in calculating the payment, and the source of these values.

(j) No insurance company, adjuster, appraiser, agent, or any other person shall enter into any oral or written agreement(s), by and between themselves, to limit any original or supplemental claim(s) to keep the repair cost of a damaged motor vehicle below 75 percent of its pre-accident value.

(k) At the election of the claimant, or in those circumstances where the insurance company will be unable to obtain an unencumbered title to the total loss motor vehicle, the insurance company shall have the right to deduct the value

of the salvage of the total loss motor vehicle from the actual cash value calculation and leave the salvage motor vehicle with the claimant.

(l) If the insurance company makes a deduction for the salvage value of a total loss motor vehicle retained by the claimant, the insurance company shall, upon request of the claimant, furnish the claimant with the name and address of a salvage dealer who will purchase the salvage for the amount deducted.

(m) Where the insurance company has the right to elect to replace the total loss motor vehicle and does so, the replacement motor vehicle shall be substantially similar to the total loss motor vehicle and paid for by the insurance company, subject only to the deductible and to the value of any additional options and equipment chosen by the claimant.

(n) The insurance company shall be responsible for all reasonable towing and storage charges until three days after the motor vehicle's owner and storage facility are notified in writing that the insurance company shall no longer reimburse the motor vehicle's owner or storage facility for storage charges. Notification to the motor vehicle's owner shall include the name, address, and telephone number of the facility where the motor vehicle is being stored. Notification to the storage facility shall include the name, address, and, if available, telephone number of the motor vehicle's owner. Proof of mailing, as defined in Rule .0430 of this Section, shall serve as the proof that the notification required by this Rule occurred.

(o) In instances where the towing and storage charges are paid to the owner, the check or draft for the amount of such service shall be payable jointly to the owner and the towing or storage service.

(p) No insurance company shall abandon the salvage of a total loss motor vehicle to a towing or storage service without the consent of the towing or storage service involved.

History Note: Authority G.S. 20-279.2; 58-2-40; 58-63-65;
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