



STATE OF ALASKA
DEPARTMENT OF
COMMERCE
COMMUNITY AND
ECONOMIC DEVELOPMENT

Division of Insurance

Sean Parnell, Governor
Susan K. Bell, Commissioner
Linda S. Hall, Director

BULLETIN B 11-04

**TO: ALL PROPERTY AND CASUALTY INSURERS AND OTHER PERSONS
ADJUSTING AND SETTLING MOTOR VEHICLE CLAIMS IN THE STATE OF
ALASKA AND OTHER INTERESTED PARTIES**

**RE: STANDARDS FOR PROMPT, FAIR, AND EQUITABLE SETTLEMENTS OF
MOTOR VEHICLE CLAIMS**

The Division of Insurance (division) issued Bulletin B 10-04 to address standards for the settlement of motor vehicle claims under 3 AAC 26.080. Since Bulletin B 10-04 was issued, the division has received additional questions from insurers and other interested parties who have requested clarification of parts of Bulletin B 10-04. This bulletin provides additional guidance for settling claims under 3 AAC 26.080. It does not replace any of the guidance already provided in Bulletin B 10-04, but is intended to clarify the portions of Bulletin B 10-04 that have raised questions.

Taxes and Fees

Bulletin B 10-04 states that a settlement offer must include all applicable taxes, license fees, and other fees incidental to the transfer of ownership of the motor vehicle. *All applicable* taxes and fees are those the claimant has incurred or will incur that are related to obtaining ownership of a motor vehicle. A receipt from the claimant or a tax, license, or fee schedule from the Division of Motor Vehicles, a city or borough, or other entity collecting the tax or fee may be used to determine the amount that must be included in the settlement offer.

Destination or Delivery Charges

Bulletin B 10-04 states that a settlement offer must include destination or delivery charges. These charges are to be included in a settlement offer if the claimant has incurred or will incur destination or delivery charges in addition to the purchase price of the vehicle. A receipt from the claimant or a quote from a shipping firm may be used to determine the amount that must be included in the settlement offer.

Cost of a Comparable Motor Vehicle

Most of the questions received by the division after Bulletin B 10-04 was issued were related to why the division omitted the third method of determining the cost of a comparable motor vehicle from the bulletin, as most insurers and valuation companies use the third method described in 3 AAC 26.080(a)(1)(B)(iii).

When the insurer is making a cash settlement, rather than offering an actual vehicle, 3 AAC 26.080(a)(1)(B)(iii) states that the cost shall be determined by a basis that is allowable under the coverage but deviates from one of the two methods previously described in Bulletin B 10-04, if the deviation is supported by documentation describing the particulars of the condition of the

motor vehicle. If the policy contains a provision that describes how the cost will be determined, that provision would apply. Stated amount coverage is an example that would be allowed under this method.

To comply with the requirement that the basis for determining the cost is one that is allowable under the coverage, the policy must describe the process that the insurer will use to determine the cost and the language must be filed in accordance with the form filing requirements of AS 21.42 and 3 AAC 31.200 – 3 AAC 31.250. The filing must demonstrate that the proposed methodology is a deviation from 3 AAC 26.080(a)(1)(B)(i) or (ii) and that it results in an amount that would be the actual cost to purchase a comparable vehicle. It must also describe how the local market area, as defined in 3 AAC 26.300(7), is incorporated into the proposed methodology, how the taxes, license fees, destination or delivery charges, and other fees will be determined and the time period that will be used to find comparable vehicles that are available in the local market area.

If the policy does not contain a description of the methodology used to determine actual cash value or replacement cost, 3 AAC 26.080(a)(1)(B)(iii) allows a deviation from the cost determined under the two methods described in Bulletin B 10-04 based on the condition of the particular motor vehicle that was damaged. This means that the insurer or valuation company must begin with either

- 1) the cost of a comparable motor vehicle in the local market area of the claimant if a comparable vehicle is available in that area, or
- 2) an average of two or more cost quotations for a comparable motor vehicle from two or more qualified dealers located in the local market area if a comparable vehicle is not available in that area,

and then adjust the settlement offer based on the conditions of the motor vehicle being replaced and the comparable motor vehicle used in either of the above two methods. For example, if the settlement offer is based on the first method (the cost of a comparable motor vehicle in the local market area), but the damaged vehicle had leather seats and the comparable motor vehicle has cloth seats, the insurer may adjust the settlement offer to account for leather seats in the damaged vehicle. Or if using the second method, suppose the damaged vehicle was two years old but had higher than average mileage and the dealer cost quotations were for two-year old vehicles with significantly lower mileage than the damaged vehicle. The insurer must start with the dealer cost quote obtained under the second method and may then adjust the settlement offer for the difference in mileage between the damaged vehicle and the comparable vehicle.

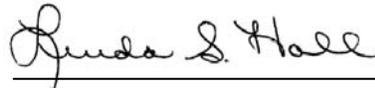
Another comment received by the division in relationship to 3 AAC 26.080(a)(1)(B) was that the statement in Bulletin B10-04 that the settlement cost of a cash offer must be the cost of a comparable vehicle “with no cost to the first party claimant” was incorrect. While the wording of 3 AAC 26.080(a)(1)(B) does not include the exact language “at no cost to the first party claimant” as does 3 AAC 26.080(a)(1)(A) when the settlement is a replacement vehicle, 3 AAC 26.080(a)(1)(B) requires that the cash settlement offer be “the actual cost to purchase a comparable motor vehicle.” If the cash settlement offer is the *actual cost* to purchase a comparable motor vehicle, then there should be no cost to the first party claimant for purchasing a comparable motor vehicle less any applicable deductible.

Cost of a Comparable Motor Vehicle When It Is Available in the Local Market Area

A second concern raised was the statement that vehicles that are advertised in the newspapers in the local market area may be included in the determination of the cash settlement offer under the first method, 3 AAC 26.080(a)(1)(B)(i), but they must be vehicles that are actually available for the consumer to purchase and not vehicles that were advertised in the past and are no longer available. A vehicle that was available for purchase one week earlier may no longer be available for purchase two weeks later when the settlement offer is being finalized. The division recognizes this and will not require insurers, at the time the settlement offer is finalized, to survey the market again to know whether the comparable motor vehicles are still for sale. However, the motor vehicles used to determine the cost of a comparable motor vehicle must be ones that were available for the consumer to purchase after the time of the occurrence giving rise to the claim and before the time the settlement is finalized. Only if there were no comparable motor vehicles for sale during this time period may the insurer use a vehicle that was available for purchase before the occurrence; but, to be considered available for sale, the insurer may look back no further than 90 days before the occurrence giving rise to the claim.

If you have questions regarding this bulletin, please contact the Division of Insurance, P.O. Box 110805, Juneau, AK 99811-0805; (907) 465-2515; or via electronic mail at insurance@alaska.gov

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Linda S. Hall
Director