



New York City Transit
Department of Law, General Law



Memorandum

Date: January 16, 2008
To: [REDACTED]
From: [REDACTED]
Subject: Your Claim Number: [REDACTED]

Recently, NYCT has started to include a claim for "loss of use" when NYCT and MaBSTOA buses have been taken out of service due to an accident with a third party.

Case law supports the position that the rental value of a replacement vehicle may provide a measure of loss of use damages despite the fact that a substitute vehicle had not actually been hired.

In the case of Mountain View Coach Lines, Inc. v. Storms 102 A.D. 2d 663, the court determined that the loss of use claim was still valid even if the plaintiff did not hire a substitute bus but instead used one it maintained in reserve. "There is no logical or practical reason why a distinction should be drawn between cases in which a substitute vehicle is actually hired and those in which a plaintiff utilizes a spare."

In addition, in the case of KLM v. United Technologies Corporation 610 F2d 1052, a federal case which applied New York law, the court held that "such loss of use is compensable regardless of whether there is any proof of financial loss."

We believe that these cases support our claim for loss of use in this matter and request that your company review this matter and enter into negotiations with NYCT for our loss of use claim.

In an attempt to determine a dollar amount for the loss of use, the Authority contacted two private bus companies, (Academy 718.967.9700 and Adirondack Trailways 800.225.6815) and requested a quote for chartering a bus for a day. Academy quoted a price of \$805.00 and Adirondack quoted a price of \$1,159.00. Both quotes were based on a 15 hour a day schedule.

These quotes are based on travel from New York City to Atlantic City. Charter buses are not allowed to operate within city limits as a replacement vehicle due to franchise infringement law. As such the Authority decided to use the lowest quote of \$805.00 and divided in half since our days are based on 7 hour schedule, and arrived at the figure of \$400.00 per day.

ie;	total hrs. of repair	÷	by one business day	total	×	charter fee,	total
	74.6 hours		7 hrs.	10.66		\$400.00	\$4,264.00

Should you require further information, please feel free to contact me at the above listed number. Thank you for your consideration.