



Property and Casualty - Auto Bulletins

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Bulletin

No. A-9/92

Property & Casualty

- Auto

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Loss transfer

There appears to be confusion as to how the loss transfer mechanism for no-fault benefits is intended to work. Using a question-and-answer format, this bulletin describes the way the mechanism should operate.

What is loss transfer?

Loss transfer is a mechanism by which, under certain circumstances, automobile insurers who pay no-fault benefits (the first-party insurer) may be reimbursed by another insurer (the second-party insurer) for all or part a claim.

Loss transfer only operates between insurers of different classes of vehicles (see attached chart for summary) and only applies when the policyholder of the second-party insurer was at least partly at fault in an accident. The purpose of loss transfer is to balance the cost of no-fault benefits between different classes of vehicles.

When is a first-party insurer entitled to be reimbursed by the second-party insurer for no-fault benefits paid?

Situation 1 -- Motorcycles or motorized snow vehicles

The insurer of a motorcycle or a motorized snow vehicle is entitled to loss transfer when that vehicle is involved in an incident with another type of automobile, provided that:

- the other automobile is not a motorcycle, motorized snow vehicle or an off-road vehicle;
- motorcycles or motorized snow vehicles are the only types of vehicles insured under the policy; and
- the driver of the other automobile is, according to the Fault Determination Rules, fully or partially at fault in the incident.

Situation 2 -- Heavy commercial vehicles

The insurer of an automobile that is not a heavy commercial vehicle* is entitled to loss transfer from the insurer of a heavy commercial vehicle, when its driver is fully or partially at fault in the accident according to the Fault Determination Rules.

The insurer of an automobile that is not a heavy commercial vehicle* is entitled to loss transfer from the insurer of a heavy commercial vehicle, when its driver is fully or partially at fault in the accident according to the Fault Determination Rules.

*Note: a heavy commercial vehicle is defined as being over 4,500 kg gross weight and used primarily to transport materials, goods, tools or equipment.

What proportion of the benefits paid by the first-party insurer are reimbursed by the second-party insurer?

The first-party insurer is entitled to be reimbursed in proportion to the degree of fault of the vehicle driver covered by the second-party insurer. However, no transfer is available for the first \$2,000 of no-fault benefits paid out.

How is fault determined?

Fault is determined in accordance with the Fault Determination Rules set out in O. Reg. 276/90.

How does loss transfer work?

The first-party insurer provides statements to the second party insurer, of no-fault benefits paid.

The second-party insurer reimburses the first-party insurer for these benefits. The amount is calculated based on the percentage that the driver of the vehicle covered by the second-party insurer was at fault in the incident. *No reimbursement is available for the first \$2,000 in no-fault benefits paid by the first-party insurer.*

Does the second-party insurer reimburse the first-party insurer for loss adjustment expenses and other claims-related expenses incurred by the first-party insurer?

No. Reimbursement is only made for the actual benefits paid.

Is the second-party insurer entitled to withhold payment to the first-party insurer until the claim is closed?

No. Payments should be made on an ongoing basis (i.e., when invoiced by the first-party insurer) unless there is an ongoing dispute between the first-party insurer and its policyholder over benefits.

Is the second-party insurer entitled to dispute no-fault benefits paid by the first-party insurer?

The mechanism does not allow the second-party insurer to intervene in the payment of benefits between the first-party insurer and its policyholder. Any dispute over the responsibility of the second-party insurer to provide an indemnity may be disputed with the first-party insurer. Either insurer can refer such disputes to arbitration under the Arbitrations Act. *This is not an arbitration conducted by the Ontario Insurance Commission under the Insurance Act.*

When the second-party insurer is responsible for all or a substantial amount of the benefits paid/to be paid, can the first-party insurer transfer the claim to the second-party insurer?

No. Loss transfer is a reimbursement provision. Only the insurer liable for no-fault benefits under the act (first-party insurer) will pay benefits to the insured person and administer the claim.

How should the reimbursement be treated by the second-party insurer?

The reimbursement should be treated as a payment of no-fault benefits (Part B under the policy).

Is the reimbursement subject to any limit or cap?

No. Some insurers incorrectly assume that the reimbursement should be treated as third-party liability by the second-party insurer and that payments should be subject to the limits set out in that policy. In fact, since the reimbursement is for accident benefits, and since it is imposed by law upon the insurer, not its policyholder, it is **not** a third-party liability claim. When reporting loss statistics, the payment should be recorded as no-fault benefits.

Summary Chart

(See attached)

Donald C. Scott

Commissioner

July 6, 1992

Attachment (PDF):

[Loss Transfer Summary](#)



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LOSS TRANSFER SUMMARY

	Automobile insured by first-party insurer ¹	Automobile insured by second-party insurer	When does second-party insurer reimburse the first-party insurer?	How much does the second-party insurer pay?	When are payments made by the second-party insurer?
Situation 1	● motorcycle, or ● motorized snow vehicle	Any automobile <i>other than</i> a: ● motorcycle, ● off-road vehicle, or ● motorized snow vehicle	When the driver of the automobile insured by it is partially or entirely at fault in the incident, according to the Fault Determination Rules (O.Reg. 276/90). fault in the incident, according to the Fault Determination Rules. (Note: Reimbursement is not available for the first \$2,000 in no-fault benefits paid by the first-party insurer.)	The total amount of no-fault benefits paid by the first-party insurer to its insured is calculated based on the percentage that the driver of the vehicle covered by second-party insurer was at	On an ongoing basis (i.e., when invoiced by the first-party insurer)
Situation 2	Any automobile <i>other than</i> a heavy commercial vehicle (over 4,500 kg)	A heavy commercial vehicle ² (over 4,500 kg)	Same as above	Same as above	Same as above

	What issues may be disputed?	Reimbursements to be assigned to what part of policy?	Can claim be transferred to second-party insurer?
Situation 1	Disputes about the responsibility of the second-party insurer to provide reimbursement to the first-party insurer may be referred to Arbitration under the <u>Arbitrations Act</u> .	Part B (Accident Benefits)	No
Situation 2	Same as above	Same as above	No

Notes:

¹Provided that motorcycles or motorized snow vehicles are the only types of automobile insured under the policy.

²Provided that the automobile is used primarily to transport materials, goods, tools or equipment.