Bulletin

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Property & Casualty

– Auto

Changes Respecting Vicarious Liability, and Elimination of Designated Assessment Centres under Bill 164 Statutory Accident Benefits Schedule

To the attention of all insurance companies licensed

to transact automobile insurance in Ontario

With this Bulletin, the Financial Services Commission of Ontario (FSCO) is highlighting amendments made to the *Compulsory Automobile Insurance Act*, the *Highway Traffic Act* and the *Insurance Act* under the *Budget Measures Act, 2005 (No. 2)* dealing with vicarious liability, and further follow-up amendments to the *Statutory Accident Benefits Schedule - Accidents After December 31, 1993 and Before November 1, 1996* (Bill 164) to eliminate the involvement of Designated Assessment Centres (DACs).

Vicarious Liability

The objectives of the vicarious liability changes are to ensure that motor vehicle liability policies carried by the customers of leasing and rental companies are first in line for liability for any damages arising from accidents caused by the negligent operation of a leased or rented motor vehicle, and to limit the vicarious liability of leasing and rental companies for damages for bodily injury and death caused by their customers.

These amendments change the law with respect to vicarious liability of lessors (defined to include leasing and rental companies) and lessees (defined to include persons who lease or rent a motor vehicle) and change the order in which insurers respond to liability claims arising from accidents involving a leased or rented vehicle. The amendments also limit the vicarious liability of the leasing or rental company with respect to liability claims for bodily injury or death arising out of the use of a leased or rented vehicle to a cap (generally $1 million, subject to reduction as described below).

Definition of "Lessee"

Under the *Compulsory Automobile Insurance Act*, the definition of "lessee" has been expanded to include persons who are renting a motor vehicle for a period of 30 days or more. The former definition applies to leasing only. This provision confirms the requirement for both longer term lessees and longer term renters to insure their leased or rented vehicles.

Highway Traffic Act

The *Highway Traffic Act* has been amended to create a definition for "lessee" that includes persons who lease or rent a vehicle. Amendments to this Act also make the lessee vicariously liable for any loss or damage caused by the negligent operation of the vehicle unless it was in the possession of a person without the lessee's consent. Owners will still be vicariously liable for the negligent operation of the vehicle unless it was in the possession of a person without consent.

Limit on Vicarious Liability

The amendments to the *Insurance Act* limit the vicarious liability of leasing and rental companies when the motor vehicle is under the control of the customer at the time of an accident. The amendments limit the liability of the leasing or rental company with respect to damages for bodily injury or death arising from the operation of a leased or rented automobile to a maximum of the greatest of the following:

a) $1 million;

b) the amount of third party liability insurance required by law; and

c) any amount determined by regulations.

This maximum amount is reduced by any amounts that are recovered under the third party liability provisions of any motor vehicle policies issued to the customer or any other persons with respect to the same accident. This maximum amount is not reduced by amounts paid under uninsured automobile coverage or by the Motor Vehicle Accident Claims Fund or any other amounts determined or prescribed by regulation.

The vicarious liability limitation does not apply to taxicabs, limousines for hire or livery vehicles.

Priority Rules

The *Insurance Act* has also been amended respecting the order in which motor vehicle liability policies respond to liability claims for all damages, including bodily injury, death, and property damage, where a leased or rented vehicle is at fault in an accident. The new order requires that the liability section of a motor vehicle policy of a lessee or renter who is a named insured in the contract (lessee’s policy) pays first. Insurance under which the driver may be entitled to indemnity (for example, a driver’s policy or "drive other automobile coverage") would pay in excess of the lessee’s policy. Third in this order is the insurance of the owner of the vehicle, which would pay only in excess of the driver’s and lessee’s policies.

These new priority rules do not apply to claims for Direct Compensation - Property Damage.

These amendments also confirm the applicability of the existing provisions regarding rateable proportion where there are multiple policies available to pay a claim.

Other Changes to the Definition of "Owner"

The amendments to the *Insurance Act* also include a change in the definition of "owner" for certain purposes to include the lessee or renter of the vehicle.

Overall Effect of Vicarious Liability Changes

With respect to long term leases, the amendments provide that the lessee’s policy (and driver’s policy, if any) pay first in the event of liability arising out of the use and operation of a leased vehicle. The lessor’s policy would respond only for any excess and would be subject to a liability cap (generally $1 million) minus any amounts recovered under the lessee's or other persons' policies with respect to the same accident.

With a rental vehicle, if the person who rents the vehicle has an Ontario motor vehicle liability policy for his or her own personal vehicles, this policy may be required to respond first for any liability claims arising from the use of the rental vehicle. The rental company's policy would respond where liability claims exceed the liability limit on the renter's own policy or in situations where the renter is not entitled to coverage under a motor vehicle liability policy.

Effective Date

The effective date of these amendments is March 1, 2006. Please ensure that your claims, underwriting, and any other staff who may be affected by these amendments are informed of the changes and that any operational changes required to implement this new framework are in place for the effective date.

Amendments to the *Statutory Accident Benefits Schedule - Accidents After December 31, 1993 and Before November 1, 1996*

The changes to the *Statutory Accident Benefits Schedule - Accidents After December 31, 1993 and Before November 1, 1996* (Bill 164 SABS) are further regulation amendments extending the elimination of the involvement of DACs to ongoing claims under the former Bill 164 system. The regulation amendments provide for the same requirements and procedures for insurer examinations as for accidents occurring on or after November 1, 1996 as previously outlined in Bulletin A-08/05 dated October 28, 2005. The regulation amendments also change the definition of spouse for the purposes of the Bill 164 SABS to include same-sex spouses. These amendments are effective on March 1, 2006.

Copies of Legislation and Regulation Changes

The amendments to the *Compulsory Automobile Insurance Act*, the *Highway Traffic Act* and the *Insurance Act* can be downloaded from the Ontario e-laws website at www.e-laws.gov.on.ca. The regulation amending Bill 164 SABS (Regulation 776/93) was filed as Regulation 26/06 and can also be downloaded from the e-laws website. This regulation will also appear in *The Ontario Gazette* on February 25, 2006.

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