



## Current Articles 2006 – January

### Bill 18 amends Ontario auto and leased vehicles

In August, 1997, a passenger in a leased automobile was catastrophically injured when the car, in which she was riding, slid off the road and the passenger was thrown from the vehicle. The driver (lessee) was at fault and convicted of dangerous driving. The passenger, a 22 year old female was rendered a quadriplegic and was awarded a settlement in excess of \$13 million dollars.

Under Ontario's Highway Traffic Act, a car's owner is liable for damages when negligence is involved. In other words the owner (lessor) can be held vicariously liable for damages caused by the lessee or anyone driving with the lessee's consent.

If the long term lease agreement required the lessee to insure the vehicle with a Third Party Liability limit of \$1,000,000 and such a policy was in effect, then it follows that the lessee's insurer will only pay the limit of the policy, namely the \$1,000,000. The balance could become the responsibility of the leasing company.

Does it make sense that if I lease a car and arrange for a policy with a limit of \$1,000,000, that the leasing company should be held liable for a vehicle that is totally out of their control save for the fact that the leasing company owns the vehicle. As an alternative to leasing the car, I could purchase the vehicle and finance the purchase through the bank. Yet the bank would not be held liable as a lienholder!

Ontario and one other province are the only provinces that can hold the lessor liable. Many U.S. States had similar problems which resulted in State legislative changes as major leasing companies began to leave such states before the amendments were put in place.

Well, Bill 18 will place amendments in the *Compulsory Automobile Insurance Act*, the *Highway Traffic Act* and the *Ontario Insurance Act*.

The changes to the first two Acts are minimal and basically re-define the definition of leasing and lessee. The amendments to the Insurance Act the definition of "owner" are expanded to also include the lessee of a vehicle.

A new provision is added that would limit the liability of the lessor in respect of damages for bodily injury or death arising directly or indirectly from the use or operation of a motor vehicle that is leased. The limit of liability is the maximum of:

- a) \$1 million
- b) the amount of third party liability insurance required by law to be carried in respect of the Motor vehicle; and
- c) the amount determined by regulations

## **MINUS**

Amounts that are recovered for loss or damage from bodily injury or death under the third party liability provisions of motor vehicle liability policies issued to persons other than the lessor. (In other words, the lessee's policy)

The Insurance Act prescribes the order of payment where an at-fault vehicle is a leased vehicle as follows:

- 1) Payment from the policy under which the lessee is an insured named in the contract (lessee's policy) pays first.
- 2) Insurance providing the driver with "drive other automobile coverage" (driver's policy) would pay in excess of the lessee's policy.
- 3) Insurance under which the owner of the automobile is entitled to indemnity (lessor's policy) is excess to the driver's policy and lessee's policy

By limiting the liability to the lessor to \$1,000,000 any excess amount may be the responsibility of the lessee! It is anticipated that for long term leases there will be available an additional layer of liability coverage (lessee's policy). Do your client's leased vehicles have a sufficient limit of liability considering these amendments? Also another great opportunity to offer a personal umbrella policy.

**James E. Bonnay,**  
C.I.P., C.C.I.B.  
Insurance Consultant

Phone 905-333-1727  
Fax 905-333-0683  
E-mail - jamesbonnay@cogeco.ca