



Current Articles 2006 – October

A New Auto Policy is coming!

Bill 18 was passed and effective March 1, 2006. This Bill created “gaps” for someone who rents a vehicle on a short-term basis – less than 30 days. In my opinion it was my understanding that Bill 18 was to amend the responsibility of a lessor of a long-term leased vehicle. But the words used and the amendments to the Insurance Act, Compulsory Insurance Act and the Highway Traffic Act were not consistent and therefore the “legal eagles” had it apply to short-term rentals and hence the problem.

The “gap” that Bill 18 created was when an insured rented a vehicle for less than 30 days. This rented vehicle would be considered an “Other Auto” as defined in his OAP 1. However, the “Other Auto” provision will only apply to the Insured and spouse. If your insured that has rented a vehicle for less than 30 days should allow someone else to drive, the person who rented the vehicle will be held liable for bodily injury or death caused by the negligent driver. The current OAP 1 will not cover this situation. All of your insured’s have been exposed to this situation since Mar. 1, 2006! It may be true that some insurers, who may not be aware of the full impact of this legislation, may kindly cover such a situation, but you cannot count on it!

As of August 17, 2006 a final draft approved by the Superintendent of Financial Services may invoke their amendments into another version of the OAP 1.

In addition to the conditions applicable to “Other Autos” a new section has been added for “Other Autos that are Rented or Leased.” This new section will cover the vicarious liability of the person who rents the auto and loans it to someone else who causes an accident. It will only supply Liability Coverage! The wording will state:

“Automobiles, other than the described automobile, are covered as described in this subsection when rented by you, or your spouse who lives with you, for periods of not more than 30 days, but only with respect to liability of the person renting the automobile arising from the negligence of the driver of that automobile, and only if the driver is not an excluded driver under this policy.”

With regard to section 3.3.5 –Rented or Leased Automobiles, it establishes a priority of payment... If a claim is made against a driver, renter or owner of a rented automobile, coverage may be available under more than one motor vehicle liability policy. The following rules govern the order in which the policies will respond:

1. The insurance available to the person **who rented the automobile** will respond first.
2. The insurance available to **the driver** of the rented automobile will respond next.
3. The insurance available to the owner of the rented automobile responds last.

All above policies will be subject to their applicable limits.

Several endorsements have also been amended. One of which is the OPCF 5C- Permission To Rent or Lease (unspecified lessees – short term leases only). This endorsement has added Clause © which states: *“The sub-limit of coverage for liability of the **renter or lessee or driver** is \$1,000,000, or the lessor’s primary policy liability limit, whichever is less.”* This is in compliance with Bill 18 limiting the lessor’s liability to \$1,000,000 less any applicable insurance from the lessee or driver.

This has certainly not been an easy topic to digest or understand. There are still several unanswered questions. Can an insurer of the lessee subrogate against the driver? Can an insurer of the lessor subrogate against the lessee and/or driver?

Although there have been no revisions or drafts to date, you can also expect changes to Garage Auto policies, Non- Owned Auto, etc.

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