

## **Pro-Text**

By Dan Reith

### **Government Legislation Is Changing Auto Insurance Again**

True story: A man rents a car from a rental car agency. He declines to purchase the additional insurance cover offered by the agent. Assumption is that he carries the requisite cover under his own personal auto insurance policy. This man is then in an accident, for which he is 100% at fault; the third party is injured, sues, and the court awards \$13 million. It is determined that the driver of the rented vehicle, who declined to buy insurance from the rental car agency, had no car insurance of his own. So, who pays the court award? Simple, under a little known doctrine of vicarious liability, the rental car agency is held by the courts to be responsible to pay the award.

This legal precedent could have a far reaching impact. However, the provincial government of Ontario has instead, rightly or wrongly, taken action by the introduction of Bill 18. What Bill 18 does is quietly change some of the rules and responsibilities that fall under automobile insurance in Ontario. These changes effect those who rent a car, on a short term basis, 30 consecutive days or less, for personal use and well as those who may, from time to time, rent one for business purposes.

As a result of these changes one needs to review, with their insurance provider, how their specific coverage will respond in the event of an accident while in the care and control of a rental car. Here is what you need to know:

Effective January 1, 2007 a new policy, OPA #1, was introduced by the Financial Services Commission of Ontario. If you have had your policy renewal since that time, you will be in possession of the new policy wordings. It is section 2.2.4 that provides for vicarious liability if you rent a vehicle for 30 days or less and another person is driving the rental vehicle. That means, because you rented the car and allowed someone else to drive it, your actions established the situation and therefore, you, rather, your insurance, is now legally liable for any loss.

Section 3.3.5 changes the priority of payments. This relates to the payment of Accident Benefits and what policy pays for injured parties' income replacement, rehabilitation, etc.

If insurance is available to the person who rented the automobile, the policy providing the insurance will respond first.

If insurance is available to the driver of the rented vehicle, the policy providing the insurance will respond next.

If insurance is available to the owner of the rented vehicle, the policy providing that insurance would respond last.

With respect to commercial auto insurance policy wordings, that is for vehicles owned by a business and or used for commercial enterprise, Bill 18 makes amendments to seven common policy endorsements and cover areas.

There are some areas where you can be held personally liable and where there could be gaps in available coverage.

If you rented a vehicle that was over 4,500 kilograms in weight, your personal auto insurance policy, OPA#1, would not come into effect due to the weight limitation in the policy. Therefore, the priority of payments would fall to the lessor's policy and it would respond to a maximum of \$1,000,000 for bodily injury and death. If this was a serious accident, with damages over the \$1,000,000, then you could be personally liable for any amount in excess of the \$1,000,000 cap. Any personal umbrella policy that you may have in force at the time would not respond. There is currently no avenue or coverage available to cover the gap. The Financial Services Commission of Ontario is aware of the problem and is looking for ways to create a method to obtain additional protection.

As for businesses that rent vehicles of 4,500 kilograms or greater, there is some protection available. Make certain that the rental agreement reads in the company name, assuming your commercial property policy carries non-owned automobile insurance, that way the non-owned cover will respond for any loss greater than the \$1,000,000 cap under the lessor's policy. This will only happen if the named insured on the business property policy is also the name on the rental agreement.

Note: the impact of Bill 18 only applies in Ontario.

If you have any questions on how your rental of a car or truck may impact you, contact your insurance provider before making that reservation.