

Chapter 5 – Bill 18: Priority and Liability of Rental Companies' Insurance Policies

1. THE SCHEME FOR ACCIDENTS AFTER MARCH 1, 2006

In motor vehicle accidents involving rented or leased vehicles, the law in Ontario sets out the following priority for third party liability coverage:

1. The first level of insurance is any motor vehicle liability policy in which the lessee/renter is the named insured.
2. The second level of insurance is any motor vehicle liability policy in which the driver is a named insured; or is the spouse of a named insured (if driver resides with spouse); or in which the driver is listed as a driver in the contract.
3. The third level or layer of excess insurance is any motor vehicle liability policy in which the owner of the automobile is a named insured.

The Ontario *Highway Traffic Act* makes the lessee (or renter) of a vehicle vicariously liable for the driving activities of the driver. A lessee's insurer is first-loss insurance in the event of a motor vehicle accident. A lessee is defined as a person who is leasing or renting the automobile for any period of time.

Section 267.12 of the *Insurance Act* creates a limit on the liability of rental companies and lessors to the greatest of:

- a) \$1,000,000;
- b) The amount of third party liability insurance required by law; or
- c) The amount determined by regulations that are to determine the maximum amounts for this clause.

This \$1,000,000 cap covers all lessors (except taxi cabs or limousines). However, it only covers vicarious liability as independent negligence remains unrestricted.

Importantly, this \$1,000,000 maximum is reduced by any amounts recovered under any third party liability provisions of the lessee, renter, or any other persons with respect to the accident. Accordingly, if the lessee has in place a policy of insurance with \$1,000,000 in third party liability limits, the rental company likely has no exposure for vicarious liability.

2. WHO COVERS WHOM

The coverages at play can become complicated, particularly when there is a driver operating a rental vehicle and where the driver is not the person who rented the vehicle. Various scenarios are summarized in the following chart, for your convenience:

Person seeking coverage	Is the person covered?
Driver seeking coverage under a renter's policy	No, coverage probably not extended to driver unless the driver is an insured under the renter's policy
Renter seeking coverage under a driver's policy	No, coverage not extended to renter unless the renter is insured under the driver's policy
Driver and renter seeking coverage under the vehicle owner's policy	Yes, but limits are \$1 million, less renter's/driver's own third party liability limits
Driver and renter seeking coverage under owner's excess policy	Debatable, but recent case law says 'no.' There is now also a specific endorsement, however, (OEF 110) which, if attached to the excess policy, results in limits of \$1 million less renter's/driver's own third party liability limits
Vehicle owner seeking coverage under renter's or driver's policy	No