

SEP 11 2009

AR# 25666

September 9, 2009

Mr. Joseph Yurkovich, Q.C.,
Miller Thomson, LLP
2700, 10155 – 102 Street
Edmonton, AB T5J 4G8

Dear Mr. Yurkovich:

Re: Vicarious Liability – Vehicle Leasing and Rental Companies

The *Traffic Safety Amendment Act, 2007* amended the vicarious liability of a lender, lessor or seller of a motor vehicle, and consequentially amended section 650 of the *Insurance Act* to include regulation-making authority to change the priority of payment for property damage and bodily injury caused by the operation of a leased or rented vehicle. The *Traffic Safety Amendment Act, 2009* extended the 2007 vicarious-liability amendments to “renters”. The amendments to the *Traffic Safety Act* and the *Insurance Act* are not in effect until they are proclaimed into force.

The purpose of this letter is to continue our consultation with stakeholders on the regulation required under the *Insurance Act* to support the vicarious liability amendments in the *Traffic Safety Act*.

Attached for your review is a draft regulation which amends the priority of payment rules with respect to lessors and renters.

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We would appreciate receiving your comments on the draft regulation by October 30, 2009. Based on comments received from all stakeholders, we will determine if it is necessary to have a meeting of stakeholders to review the draft regulation. Please note submissions received may be made public. Even where confidentiality is requested, freedom of information legislation may require that we make submissions available to those requesting such access.

Please contact Arthur Hagan, Deputy Superintendent of Insurance, at (780) 415-9226 if there are any questions on this draft regulation

Sincerely,



Dennis Gartner
Assistant Deputy Minister
Financial Sector Regulation and Policy

Attachment

APPENDIX

Insurance Act

MISCELLANEOUS PROVISIONS AMENDMENT REGULATION

1 The *Miscellaneous Provisions Regulation* (AR 120/2001) is amended by this Regulation.

2 The following is added after section 7:

Third party liability

7.1(1) In this section and for the purposes of section 650 of the Act,

- (a) "lessee" means a person to whom a lessor leases or grants exclusive use of a motor vehicle;
- (b) "lessor" means a lessor as defined in section 187 of the *Traffic Safety Act*;
- (c) "rentee" means a person to whom a renter rents a motor vehicle;
- (d) "renter" means a renter as defined in section 187 of the *Traffic Safety Act*.

(2) Notwithstanding section 650(1) of the Act, if a leased or rented automobile is a motor vehicle as defined in section 1(1)(x) of the *Traffic Safety Act* and section 187 of the *Traffic Safety Act* applies, the following rules determine the order in which the third party liability provisions of any available motor vehicle liability policies shall respond in respect of liability arising from or occurring in connection with the ownership or, directly or indirectly, with the use or operation of the leased or rented automobile on or after the day this section comes into force:

- (a) subject to clause (b), insurance available under a contract evidenced by an owner's policy issued to the lessor or renter is first loss insurance;
- (b) clause (a) does not apply if there is
 - (i) insurance available under a contract, other than a contract described in clause (a), evidenced by a motor vehicle liability policy under which the lessee or rentee of the automobile is entitled to indemnity as an insured named in the contract, or

(ii) insurance available under a contract, other than a contract described in clause (a), evidenced by a motor vehicle liability policy under which the driver of the leased or rented automobile is entitled to indemnity either

(A) as an insured named in the contract or as the spouse or adult interdependent partner of an insured named in the contract who resides with that insured, or

(B) as a driver named in the contract or as an additional insured

and an insurer under a contract described in this clause acknowledges in writing to an insurer under a contract described in clause (a) that the first mentioned insurer is responding to a claim or civil action on behalf of the lessee, rentee or driver;

(c) if clause (a) does not apply

(i) insurance described in subclause (b)(i) is first loss insurance;

(ii) insurance described in subclause (b)(ii) is excess to insurance referred to in subclause (b)(i);

(iii) insurance described in clause (a) is excess to insurance referred to in subclauses (b)(i) and (ii);

(d) if clause (a) applies because an insurer under a contract described in clause (b) fails to respond on behalf of the lessee, rentee or driver to a claim or civil action, that insurer is liable to indemnify an insurer under a contract described in clause (a) for any liability, costs and expenses incurred as a result of such failure.

(3) Notwithstanding section 620, the right of a person insured by but not named in an owner's policy issued to a lessor or renter to recover indemnity is limited to the maximum amount for which the lessor or renter of the motor vehicle is liable in respect of the same incident in its capacity as lessor or renter as determined by section 187 of the *Traffic Safety Act*.

(4) Section 650(2) and (3) of the Act apply to subsection (2).

3 This Regulation comes into force on _____.