



The \$1 Million Liability Cap in British Columbia: Practical Implications for Rental Car Companies Doing Business in British Columbia

There are several recent changes to the legislation governing motor vehicle claims in British Columbia. This article addresses the new \$1 million vicarious liability cap and its practical implications for rental car companies doing business in British Columbia.

In June 2007, motor vehicle insurance legislation in British Columbia was given a major overhaul. Motor vehicle insurance provisions formerly contained in the Insurance Act and the Insurance (Motor Vehicle) Act were merged under the Insurance (Vehicle) Act.

Further, on November 8, 2007, B.C. Regulation 341/2007 proclaimed in force the sections of the Miscellaneous Statutes Amendment Act (No.2), 2007 (Bill 35) which changed the provisions of the Motor Vehicle Act and the Insurance (Vehicle) Act dealing with the vicarious liability of motor vehicle lessors, which includes rental car companies. The purpose of Bill 35 is to limit the vicarious liability of vehicle lessors to \$1 million. While this may seem like good news for rental car companies, the practical effect of the new legislation is likely to be less significant than it seems.

Section 86 of the Motor Vehicle Act imposes vicarious liability on vehicle owners and lessors for loss or damage to another individual or property, if the vehicle was being driven with the owner's consent.

S.82.1 has been added to the Insurance (Vehicle) Act limiting lessors liability to \$1 million. Rental car companies are lessors under this new legislation. Section 82.1 states:

82.1 (1) In an action to recover for loss or damage to persons or property arising out of the use or operation of a leased motor vehicle on a highway in British Columbia, the maximum amount for which the lessor of the motor vehicle is liable, in that lessor's capacity as lessor of the motor vehicle, in respect of any one incident is the amount determined under subsection (2).

(2) The maximum amount for the purposes of subsection (1) is the greatest of the following amounts:

- (a) \$1 000 000;
- (b) the amount established, or determined in the manner prescribed, by regulation;
- (c) the amount of third party liability insurance coverage required by law to be carried in respect of the motor vehicle.

Since there is currently no amount established by regulation, and the amount of third party liability insurance coverage required by law is \$200,000, the limit on vicarious liability under this section is \$1 million.

The effect of section 86 of the Motor Vehicle Act and section 82.1 of the Insurance (Vehicle) Act is to cap the vicarious liability of vehicle lessors, including rental car companies, at \$1 million. However, there are important limitations on the effectiveness of this cap.

First, the \$1 million cap only applies to limit the vicarious liability of lessors imposed by s. 86 of the Motor Vehicle Act. It does not apply to independent fault on the part of the lessor. For example, if a rental car company were sued for improper maintenance of its vehicles, its exposure for such negligence would still be unlimited.

Second, if a rental car company has liability insurance in excess of \$1 million (which is common in Canada), the negligent driver, if driving the rented vehicle with the consent of the rental company, will likely have access to this excess insurance.

Under section 63 of the Insurance (Vehicle) Act Regulation, an individual who drives a vehicle described in an owner's certificate with the consent of the owner, is an "insured" for the purposes of third party liability coverage. Therefore, the driver of a rented vehicle will have access to \$200,000 of compulsory liability insurance provided under the owner's certificate.

Coverage for excess (optional) insurance beyond the compulsory \$200,000 is governed by section 61(1) of the Insurance (Vehicle) Act:

61(1) An optional insurance contract may only

a) extend coverage that is specified in a certificate or a policy to a limit that is in excess of that provided by the certificate or policy for every insured, [...] on the same terms and conditions.

Under section 61(1), an optional insurance policy (i.e. excess and/or umbrella policy) must provide coverage to the same insureds covered by the owner's certificate. By operation of section 61(1), excess coverage is extended to a driver who operates the vehicle with the consent of the owner.

Therefore, under the new legislation, the driver, who has the owner's consent to operate the rental vehicle, is an unnamed insured under the owner's mandatory and optional insurance policies. If the excess policy provides more than \$1 million coverage, coverage for the driver could be triggered up to the limits of that policy.

In Ontario, legislators have partially addressed this issue by imposing priority rules, which set out which policies must respond first to any loss. Under the Ontario Insurance Act, if a vehicle is leased or rented, and is involved in an accident, the renter's insurance policy must respond first, then the driver's policy (if different from the renter). The owner's policy, that of the rental car company, responds only as excess insurance to that carried by the renter and/or driver, and therefore is less likely to respond to a claim.

Such a priority system has not been established in British Columbia. Owners' policies (i.e. the rental car company's policies) are primary under the British Columbia legislation. Given that most rental car companies have insurance in excess of \$1 million that would respond to a claim, the \$1 million cap on vicarious liability may have no practical effect on excess insurers of rental car companies for claims in British Columbia.

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