



AMENDMENTS TO ALBERTA INSURANCE AND TRAFFIC SAFETY LEGISLATION RAISE ISSUES REGARDING THIRD PARTY LIABILITY COVERAGE

By Joe Oppenheim, Associate, Insurance & Risk Management



On March 1, 2011, important amendments to Alberta's *Traffic Safety Act* and *Insurance Act* came into force that affect liability and priority of insurance with respect to accidents involving rented or leased vehicles in Alberta. The principal results of these amendments are that insurers of persons renting or leasing vehicles became first loss payors, which means that their policy is first to respond to a claim before any other policy that covers the same peril. Furthermore, there is a cap of \$1 million with respect to the vicarious liability incurred by the rental and leasing companies, which becomes proportionately lowered by every dollar that is payable

by other insurers.

These amendments were likely designed to relieve pressure on lease and rental companies, who were exposed to unlimited vicarious liability flowing from accidents involving their customers, and who were obligated to insure against that risk. Prior to March 1, 2011, consumers' policies were excess to that of the rental and leasing car companies, whose policy limits were rarely exhausted. In that regime, consumers were not likely to become personally exposed. However, these amendments require consumers to re-assess their risk and exposure.

Consider this example. A rental car customer with personal policy limits of \$200,000 is at fault in a motor vehicle accident causing \$2 million in damages to a third party. The customer's policy will cover the first \$200,000. The rental car company's policy will be liable for only \$800,000 (\$1 million cap less the amount payable by the customer's policy). This would leave the customer personally exposed for the remaining \$1 million. This risk is magnified for businesses who rent or lease vehicles on a regular basis for use by employees. At law, employers are responsible for loss to third parties that result from the activity of their employees while carrying out their employers' business. An employer's vicarious liability is not capped.

We urge our clients to review their third party liability coverage and consult their insurance brokers to ensure that they are adequately insured in light of these legislative amendments.