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c 12 Motor Vehicle Accident Claims Amendment Act, 1983

Ontario

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CHAPTER 12

**An Act to amend the
Motor Vehicle Accident Claims Act**

Assented to February 23rd, 1983

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1.—(1) Section 1 of the *Motor Vehicle Accident Claims Act*, being chapter 298 of the Revised Statutes of Ontario, 1980, is amended by relettering clause (a) as clause (aa) and by adding thereto the following clause: s. 1,
amended

(a) “designated insurer” means an insurer named as a designated insurer under subsection (2) and its estate.

(2) The said section 1 is further amended by adding thereto the following subsection: s. 1,
amended

(2) Where the Lieutenant Governor in Council is of the opinion that an insurer is not paying or is unable to pay, within a reasonable period of time, claims made against the insurer or claims for which final judgments have been given, the Lieutenant Governor in Council may, by regulation, name the insurer as a designated insurer for the purposes of this Act. Designated
insurer

2.—(1) Subsection 4 (1) of the said Act, as amended by the Statutes of Ontario, 1981, chapter 66, Schedule, is further amended by striking out “provided that only that amount by which the judgment exceeds \$100 is payable out of the Fund” in the tenth and eleventh lines. s. 4 (1),
amended

(2) Section 4 of the said Act is amended by adding thereto the following subsection: s. 4,
amended

(1a) In the case of loss or damage to property, only the amount by which the loss or damage exceeds \$100 shall be paid out of the Fund under this section. Deductible

s. 4a,
enacted

3. The said Act is amended by adding thereto the following section:

Application
in respect of
designated
insurer

4a.—(1) Where the death of or personal injury to or loss of or damage to property of any person is occasioned in Ontario by a motor vehicle insured under a motor vehicle liability policy issued by a designated insurer, any person who would have a cause of action against the owner or driver of such motor vehicle in respect of such death, personal injury, loss or property damage, except a person entitled to make an application under subsection 5 (1), may make application, in a form prescribed by the Minister, for payment out of the Fund of the damages in respect of such death, personal injury, loss or property damage.

Deductible

(2) In the case of loss or damage to property, only the amount by which the loss or damage exceeds \$100 shall be paid out of the Fund under this section.

Payment out
of Fund
authorized

(3) The Minister may, in respect of an application made under subsection (1), make payment out of the Fund of an amount that he considers proper in all the circumstances if,

- (a) the receiver or liquidator of the designated insurer irrevocably agrees to the validity and amount of the claim; and
- (b) the applicant executes a release and direction for payment in a form prescribed by the Minister to permit the Minister to claim from the designated insurer the amount paid by him to the applicant.

s. 7 (1),
amended

4.—(1) Subsection 7 (1) of the said Act is amended by adding at the end thereof “and the assignment shall be absolute in its form and effect notwithstanding that the amount paid out of the Fund is less than the amount of the judgment”.

s. 7,
amended

(2) Section 7 of the said Act is amended by adding thereto the following subsection:

Non-appli-
cation of
subss. (2, 3)

(4) Subsections (2) and (3) do not apply where the judgment debtor was insured under a motor vehicle liability policy issued by a designated insurer at the time of the accident that gave rise to the judgment.

s. 8,
amended

5. Section 8 of the said Act is amended by adding thereto the following subsection:

(2) Subsection (1) does not apply to a judgment debtor who was insured under a motor vehicle liability policy issued by a designated insurer at the time of the accident that gave rise to the judgment.

Non-application of subs. (1)

6. Section 20 of the said Act is repealed and the following substituted therefor:

s. 20, re-enacted

20.—(1) No payment shall be made out of the Fund in respect of a claim or judgment for damages or in respect of a judgment against the Superintendent of an amount paid or payable by an insurer by reason of the existence of a policy of insurance within the meaning of the *Insurance Act*, other than a policy of life insurance, and no amount sought to be paid out of the Fund shall be sought in lieu of making a claim or receiving a payment that is payable by reason of the existence of a policy of insurance within the meaning of the *Insurance Act*, other than a policy of life insurance.

Payments in relation to amounts payable by insurer, etc., prohibited R.S.O. 1980, c. 218

(2) Notwithstanding subsection (1), payments may be made out of the Fund in respect of a claim or judgment for damages where the claim or judgment is against a person who at the time of the accident that gave rise to the claim or judgment was insured under a motor vehicle liability policy issued by a designated insurer, but any amount paid in respect of the claim or judgment by the designated insurer shall be deducted from the amount payable out of the Fund.

Claims and judgments against persons insured by designated insurers

(3) Notwithstanding subsections (1) and (2), no amount shall be paid out of the Fund to reimburse or otherwise indemnify an insurer in respect of any amount paid or payable by the insurer by reason of the existence of a policy of insurance within the meaning of the *Insurance Act*.

No payments by insurers

7. The said Act is further amended by adding thereto the following section:

s. 21a, enacted

21a.—(1) This section applies only to payments out of the Fund made by reason of an insurer being named a designated insurer.

Application

(2) Where a payment is made out of the Fund by reason of an insurer being named as a designated insurer, the limits payable out of the Fund shall be those prescribed by this section and not those prescribed by section 21.

Limits payable in respect of designated insurer

(3) In respect of any application for payment of damages arising out of motor vehicle accidents occurring in Ontario on or after the 1st day of March, 1981, the Minister shall not pay out of the Fund more than the total amount of \$200,000, exclu-

Idem

sive of costs, for all damages on account of injury or death to one or more persons, or loss of or damage to property occasioned in Ontario by any one motor vehicle insured with a designated insurer and arising out of any one accident, provided that any claims arising out of any loss of or damage to property shall have priority over any claims arising out of any bodily injury or death to the extent of \$10,000.

Idem

(4) In respect of any application for payment of damages arising out of motor vehicle accidents occurring in Ontario on or after the 1st day of January, 1977, and before the 1st day of March, 1981, the Minister shall not pay out of the Fund more than the total amount of \$100,000, exclusive of costs, for all damages on account of injury or death to one or more persons, or loss of or damage to property occasioned in Ontario by any one motor vehicle insured with a designated insurer and arising out of any one accident, provided that any claims arising out of any loss of or damage to property shall have priority over any claims arising out of any bodily injury or death to the extent of \$5,000.

Idem

(5) In respect of any application for payment of damages arising out of motor vehicle accidents occurring in Ontario on or after the 1st day of September, 1969, and before the 1st day of January, 1977, the Minister shall not pay out of the Fund more than the total amount of \$50,000, exclusive of costs, for all damages on account of injury or death to one or more persons, or loss of or damage to property occasioned in Ontario by any one motor vehicle insured with a designated insurer and arising out of any one accident, provided that any claims arising out of any loss of or damage to property shall have priority over any claims arising out of any bodily injury or death to the extent of \$5,000.

Additional
payment

(6) Where a payment has been made out of the Fund by reason of an insurer being named as a designated insurer and the amount of the judgment, excluding interest thereon, exceeds the limits of the Fund as determined under subsections (3) to (5), upon receiving the final payment by the designated insurer, the Minister shall pay to the original judgment creditor an additional amount determined in accordance with the following formula:

$$A = (J - F) \times \frac{R}{J}$$

where,

A = The amount to be paid to the original judgment creditor under this subsection.

F = The amount paid out of the Fund.

J = The lesser of,

(a) the amount of the judgment, excluding interest thereon and costs therein; or

(b) the liability limit of the motor vehicle liability policy issued by the designated insurer.

R = The total amount recovered from the designated insurer with respect to the judgment by the Minister.

(7) Where any amount is recovered from any other source in partial discharge of the judgment debt, the maximum amount prescribed in this section shall be reduced by the amount so paid, and any amount paid out of the Fund in excess of the amount authorized by this section may be recovered by action brought by the Minister. Partial discharge of judgment debt

(8) The Minister shall not pay out of the Fund any amount for interest on a judgment or interest on costs. Interest

8. This Act comes into force on the day it receives Royal Assent. Commencement

9. The short title of this Act is the *Motor Vehicle Accident Claims Amendment Act, 1983*. Short title

