



Do I Need Rental Car Insurance?

by *Maya Krishnaratne, B.A., (Hons.), LL.B.*



Maya practises civil litigation, with a focus on insurance defence litigation, and represents clients in both tort actions and accident benefits disputes. Her direct line is 416-446-5841

When you rent a car, the rental company always offers you their insurance. What does this insurance cover, and do you need it? The answer: It depends.

There are two types of insurance the company will offer you:

1. Collision Damage Waiver/Loss Damage Waiver – insurance that covers some loss or damage to the rental vehicle. This is insurance coverage for property damage.

You should only purchase this type of insurance from the rental company if you are not already covered for damage to rental vehicles under a personal automobile policy or a credit card. If you don't already have insurance under your personal vehicle's auto policy or a credit card, and you don't purchase it from the rental company, you will be personally responsible for any damage caused to the rental vehicle while you are renting it. For example, if you are in a fender bender during the course of your rental, and you have neither the company's coverage nor your own, you will have to pay for the damage caused.

This type of insurance is not mandatory and it's a personal choice whether to risk not purchasing it.

If you aren't sure whether you have coverage for rental car property damage, call your insurance company or credit card company beforehand to find out. Otherwise, you will be faced with making a last minute decision when picking up the rental car, unsure of whether you should purchase the rental company's insurance or not. You should not purchase it if your own insurance or credit card covers you.

2. Third Party Liability – insurance that covers bodily injury or death to any person or damage to property other than the rented vehicle.

Every automobile in Canada must be insured with the minimum required third party liability insurance of \$200,000. If you are in an accident and injure somebody, you will be covered at least up to \$200,000 by the rental company's third party liability insurance.

The rental company may offer you a top-up at an additional premium. It's not mandatory that you take it, but if you refuse it and then are in an accident causing injury to someone in excess of \$200,000, you will be personally exposed to the excess.

However, if you have your own auto insurance, there's a chance that your own policy covers you for more than the minimum \$200,000. It's common to carry third party liability insurance of \$1,000,000. In this case, it would be redundant to purchase the additional insurance from the rental company. Call your own insurance company beforehand to find out. The rental company will ask for your insurance details if you do have your own insurance coverage.

Credit cards don't usually offer third party liability insurance, so it will either be your own insurance company, the rental company's insurance company, or a combination of both that covers you for third party liability.

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Wills and Estates

Will Kits: A Small Price Now, but an Expensive Disaster Later...

by Alleen Sakarian, B.A. (Hons.), LL.B.

The basic objective of having a Will is to ensure that your wishes are clear regarding who is responsible for your estate and who benefits from your estate. So why gamble with Will kits that offer a one-size-fits-all form? Many may answer, "It's cheap." This is a point that I cannot dispute. Indeed, the forms sold online are cheap and may even offer some peace of mind that your simple wishes at least are written down somewhere....And that's better than nothing, right? WRONG!

The truth is that Will kits often create much bigger and more expensive problems. Improper signing is a recurring issue with Will kits. Often, only one witness signs or the witness is an improper one; sometimes the testator does not even sign their own Will! Improper signing can bring into question the validity of a Will and open it up to challenge from a beneficiary or someone classified as a "dependent," whether or not they are named in the Will. Unfortunately, these are common occurrences and may result in having to make an application to court to prove

the validity of the Will or, in certain other cases, estate litigation – both scenarios will cost more than having a proper Will made with a lawyer.

There is no substitute for competent legal advice regarding the making and signing of your Will. A lawyer will listen to your wishes and offer options regarding how to structure your Will. Finally, a lawyer can help you see the bigger picture beyond your Will and offer broader estate planning insight about proper asset designation for further tax savings. This approach is in no way a one-size-fits-all solution, nor should it be.

Alleen practises in the areas of real estate, wills, estates, and corporate law, with particular emphasis on medical, dental, and professional corporations. Her direct line is 416-446-3307.



Employment

Limiting Termination Pay

by Carrie Kennedy, B.A., LL.B.

Terminating employment can be costly. Employers are bound, at a minimum, to provide notice of termination or pay in lieu of notice in accordance with the Employment Standards Act, 2000, but they may be liable for much more under the common law. Notice under the ESA is capped at eight weeks (provided severance is not also payable). The common law is much more generous. For example, while someone employed for eight years is entitled to eight weeks notice under the ESA, they could receive four times that much in a wrongful dismissal action due to the common law.

An employer can avoid the generous common law notice periods by drafting employment offers and contracts which include a specific and clear term that, upon termination of the employment without cause, the employee will receive only the notice provided for in the ESA.

The term must be clear because any ambiguity will be interpreted against the employer. Further, the term must, at a minimum, require the employer to comply with the ESA, otherwise it will be void and common law notice will prevail.

One clear term in an employment contract, therefore, could greatly reduce the cost of terminating employment.

Carrie practises in the areas of commercial litigation, bankruptcy and insolvency, debt recovery, real estate litigation, and employment law. Her direct line is 416-446-5098.



Personal Injury

Should a Claimant Refuse to Attend an Examination under Oath?

by Wendy Cornacchia, Licensed Paralegal

Under Section 33 of the Statutory Accident Benefits Schedule (SABS), an auto insurer can request that a person applying for accident benefits (ABs) attend an “examination under oath” (EUO) to determine the facts upon which ABs may be owing or outstanding. Although not required, a lawyer or licensed paralegal may attend with the insured to make sure that the representative of the auto insurer asks only relevant questions.

Because the auto insurer can deny the payment of ABs until the insured person complies with an EUO, the insured’s representative has to determine if a request is appropriate, and, if not, what the consequences will be for failing to attend. Although the first reaction of a representative may be to not allow their client to attend an EUO after the commencement of proceedings, failing to do so may jeopardize their client’s right to past and future ABs. There is no time limit imposed on an insurer to request an EUO—the insurer may still be entitled to do so even after a claim has been issued or an application for arbitration has been filed.

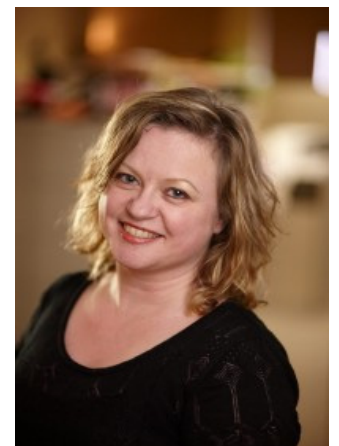
From the auto insurer’s perspective, it would be best to request an EUO at the outset of a claim for SABS, when little is known about the insured’s circumstances. More often, however, an auto insurer will request an EUO after benefits have been paid for some period of time and then terminated. This is typically the point at which an application for mediation has been filed with the Financial Services Commission of Ontario (FSCO) or at some stage later in the proceeding. Because of the frequency of this issue arising, both the courts and FSCO have addressed the appropriateness and timeliness of an insurer’s request for an EUO.

In the FSCO decision of *Balanki and Zurich*, the in-

surer requested that the insured attend an EUO more than two years after the accident and after arbitration proceedings were commenced. In this case, the arbitrator did not allow the EUO—however, this decision was not due to the timing of the request in relation to the arbitration date or the past denial of benefits, but instead on the basis that no new information had come to light, making the examination needless. This decision reveals that an insurer may be risking the opportunity for an EUO if requested at a late stage, when the facts supporting a claim have stabilized.

To avoid being disentitled to an EUO, an insurer needs to make the request timely: ideally, at the outset of the claim and preferably while benefits are still being paid. Should an insurer fail to make the request in a timely manner, a lawyer or paralegal may be properly advising their client when they refuse their attendance.

Wendy is a paralegal licensed with the Law Society of Upper Canada. At DSF she is responsible for handling serious injury claims, including both the no fault and tort portions. She works with David Derfel, a partner in our personal injury group. Her direct line is 416-446-5837



More Join the Team!

Devry Smith Frank *LLP* is pleased to welcome eight new members to its family.

Melody Anderson has joined DSF in the position of licensed paralegal. She works with our collections, banking, and commercial litigation teams.

Rafaela Paiva is our new law clerk, supporting the business and commercial real estate teams.

Todd Slonim joins our ever-growing family law team. Todd received his B.A. from the University of Calgary and obtained his LL.B. from Cardiff Law School in Wales. Todd has practised exclusively in family law since 2005.

Leonard I. Bernstein joins DSF as our new lawyer. Leonard articulated at the firm and presently practises in the areas of business law and commercial litigation.

Katerina Minaeva joined DSF as an articling student for 2012 after spending one summer as our law student. She received her J.D. from the University of Western Ontario, Faculty of Law.

Eldad Gerb joined DSF as an articling student for 2012. Eldad received his J.D. from the Suffolk University Law School in Boston, Massachusetts.

Denise Jensen joins us as our new clerk for wills and estates team.

Maureen McKay is our newest lawyer and will be joining DSF's corporate and business law group. Maureen received her B.A. from the University of Toronto and obtained her LL.B from Osgoode Hall Law School.

DSF in the Community

Devry Smith Frank *LLP* was a proud sponsor of Charity Ball for Hope, presenting Prohibition Night on September 15, 2012. Charity Ball for Hope is a non-profit organization aiding specific development projects in Canada and Sri Lanka for disadvantaged children, youth, and women. Our lawyers were there to give our full support. We want to thank all who participated.



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From its genesis in 1964, Devry Smith Frank *LLP* has grown into a professional corps of 47 lawyers, 6 licensed paralegals, 30 law clerks and a complement of highly skilled and dedicated staff, offering a broad range of legal services to our individual, business and institutional clients.

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