

Leasing Company's Insurer Protected by \$1 Million Limit:

Xu. et al. v. Mitsui Sumitomo Insurance Company Ltd.

On November 12, 2014, in a widely followed case, the Ontario Court of Appeal confirmed that a leasing company's insurer is protected by section 267.12 of the *Insurance Act*. This provision caps that insurer's limits at \$1,000,000 less any amounts available under the lessee's policy.

Vehicle owners are vicariously liable for driver's negligence under the *Highway Traffic Act*. Amendments to the Ontario *Insurance Act* for accidents occurring on or after March 1, 2006 limited the vicarious liability of leasing and rental companies for the negligence of drivers of their vehicles.

The Legislature expressed concern that the increasing premiums paid by leasing and rental companies were impacting the ability of these companies to provide affordable leasing and rental services to the public. It made a difficult decision: it chose to place limits on the rights of persons injured in car accidents when suing leasing and rental companies.

Two changes to the *Insurance Act* came into effect March 1, 2006: (1) Section 277(1.1) changed the priority in which insurance policies are to respond to claims involving leased vehicles making an owner/lessor's insurance policy last-in-line insurance; and (2) Section 267.12 limits claims made against automobile lessors to \$1,000,000, minus any amount recovered from the lessee's insurance. In this case, the plaintiff Xu was seriously injured in a car accident on June 20, 2006.

The Appellants argued that a leasing company's insurer (as opposed to the leasing/rental company itself) should not be protected by the \$1,000,000 cap. They argued the driver of a leased vehicle can access a leasing company's insurance policy as an "unnamed insured" pursuant to section 239 of the *Insurance Act*. The Appellants noted that there are no express limits on the rights of an unnamed insured to the leasing company's insurance policy under section 267.12 of the *Insurance Act*.

The Ontario Court of Appeal held that the legislative intention behind the changes was clear. The Court noted that the goal of reducing the operating costs faced by leasing companies would be defeated if their insurers remained subject to unlimited liability.

Following *Xu. et al. v. Mitsui*, it is clear that both leasing companies and their insurers have the benefit of the \$1,000,000 cap (less any amounts available under the lessee's policy) under section 267.12 of the *Insurance Act*.

Paul Tushinski and Eric Adams of Dutton Brock LLP had the privilege of representing the respondent insurance companies in this case. If leave to appeal to the Supreme Court of Canada is sought, Dutton Brock LLP will keep its clients up to date.

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