

AUTOMOBILE INSURANCE IN THE PROVINCE
OF ONTARIO

BY

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INTRODUCTION

During 1936, 138 insurers reported automobile insurance premiums written in Ontario amounting to \$7,920,609—or slightly under \$8,000,000 (after deducting return premiums and reinsurance premiums ceded to licensed companies). Of this total the Non-Marine Underwriters at Lloyd's reported some \$709,000, slightly under 9 per cent; Mutual companies reported approximately \$362,500—slightly more than 4½ per cent, and the remainder of 86½ per cent was reported by stock companies.

While, \$8,000,000 of premium income appears quite small when compared with the premium income of various states of the United States, it must be remembered that the province-wide private passenger public liability and property damage premiums combined only averaged a little under \$18.00 per car.

The total automobile insurance net premiums reported in Ontario for 1935 was \$7,017,028, so that the increase in business during 1936 amounted to more than \$900,000 compared with 1935, representing an increase of almost 13 per cent. Of the total premiums written almost 75 per cent is represented by private passenger motorists; and speaking of private passenger motorists, approximately 75 per cent of their insurance premiums are made up of public liability and property damage insurance.

UNIFORM AUTOMOBILE INSURANCE ACT

On September 1st, 1932, the so-called Uniform Automobile Insurance Act came into force in six provinces of Canada (including Ontario). Shortly afterwards two other provinces followed and by October 1st, 1933, this Act was in force in all provinces of Canada (excluding Quebec).

For reference purposes I shall refer to the Ontario sections. In this province the so-called Uniform Act is Part VI of The Insurance Act, commencing with section 169 and ending at section 183½, comprising in all some twenty-six complete sections.

Included in the eight definitions contained in section 169 of the Act is the definition of "Automobile" which is defined as:

"'Automobile' includes all self-propelled vehicles, their trailers, accessories and equipment, but not railway rolling stock, watercraft or aircraft of any kind."

and "Automobile insurance" which is also defined as follows:

"'Automobile Insurance' means insurance against liability for loss or damage to persons or property caused by an automobile or the use or operation thereof, and against loss of or damage to an automobile."

Pursuant to section 171 of the Act a written signed application, signed by the applicant, must be obtained with respect to all automobile insurance contracts made for a period exceeding fourteen days with one exception, namely, in cases where an automobile is insured against fire only, under a fire insurance policy, the automobile insurance provisions do not apply.

By section 173(3) of the Act the insured is entitled to the policy of automobile insurance or a true copy thereof as will be seen from the following wording:

"Notwithstanding any agreement, the insurer shall deliver or mail to the insured named therein the policy or a true copy thereof and every endorsement or amendment of the policy or a true copy thereof."

No insurer is entitled to issue or deliver an automobile policy in the province unless such insurer has filed its form of policy with the Superintendent of Insurance (section 176).

Early in 1932, before the so-called Uniform Act became effective, a Committee of Underwriters was appointed by the Superintendent of Insurance to prepare and recommend "Standard" forms of application, policy and endorsement. The Committee consists of eleven members, five members representing companies which are members of the Canadian Underwriters' Association, five members representing so-called non-tariff or independent companies (including Mutuels and Lloyd's) and one member representing The Ontario Fire and Casualty Agents' Association. In addition to the eleven members mentioned, the Superintendent of Insurance is Chairman of this Committee, and the writer Secretary. The Ontario Superintendent is also Chairman of the Stand-

ing Committee on automobile insurance legislation and forms of the Association of Superintendents of Insurance, so that when an insurance form is adopted in Ontario, it is automatically adopted in the other provinces (excluding only Quebec, where this Uniform Act is not in force).

Through the recommendation of the Committee of Underwriters, which Committee has held upwards of one hundred and twenty-five meetings of the "full Committee" since inception, some forty forms comprising application, endorsement and policy forms have been adopted as "mandatory Standard" forms in the eight provinces and no insurance company is permitted to use any other forms in substitution for the Standard forms. All companies transacting business in the eight provinces have received these forms and for the purpose of complying with the Act, these forms are deemed to be on file with the Superintendent of Insurance in each of such eight provinces, thereby eliminating the necessity otherwise of companies filing their forms with the Superintendent for approval. Of course, if for some particular reason a company desires to issue a special form not covered by the "Standard" forms, then it becomes necessary for the company to submit its form to the Superintendent for approval.

The advantage of this method is apparent, when one considers that in the eight provinces where the Act is uniform, Standard forms are used by all insurance companies, so that whatever competition arises between companies as regards premium rates, Mr. John Citizen knows that competition generally does not extend to the coverage afforded by his contract.

Section 183*b* of the Ontario Act sets forth the coverage of a driver's policy. Since a car owner cannot obtain a driver's policy very few of these contracts are issued. The owner of a motor vehicle ordinarily is covered against public liability and property damage liability on the owner's form of policy. The coverage in this respect is statutory as will be seen from the following reference: (Ontario section 183*a*.)

"183*a*—(1) Every owner's policy shall insure the person named therein, and every other person who, with his consent, uses any automobile designated in the policy, against the liability imposed by law upon the insured named therein or upon any such other person for loss or damage:

- (a) arising from the ownership, use or operation of any such automobile within Canada or the United States of America, or upon a vessel plying between ports within those countries; and
 - (b) resulting from
 - (i) bodily injury to or death of any person; or
 - (ii) damage to property; or
 - (iii) both.
- (2) Any person insured by but not named in a policy may recover indemnity in the same manner and to the same extent as if named therein as the insured, and for that purpose shall be deemed to be a party to the contract and to have given consideration therefor.

An owner may have his policy endorsed to cover the operation of cars not owned called "Drive other cars Endorsement".

Prior to July 1st, 1935, section 183*a* commenced with the words:

"Every owner's policy shall insure the person named therein, and every other person who, with his consent, uses or is responsible for the use of any automobile designated in the policy. . . ."

By an amendment effective July 1st, 1935, the words given above reading "or is responsible for the use of" were deleted, since these words provided insurance to the employer in cases where the employee owner's insured car was used on the business of the employer or firm with which such employee was employed. If the employer was responsible for the use of the employee's car in his business then the owner's policy covered the owner's or driver's legal liability (such driver operating with the consent of the owner) and, in addition, any liability imposed on the employer under "master and servant". The words "or is responsible for the use of" now being deleted from the statutory coverage, the employer is no longer deemed to be protected by the employee's policy. Such employer should take out a special policy covering the non-ownership liability to protect himself against claims which may arise from automobiles of others being used on his business.

By section 41*a* (2) of The Highway Traffic Act of Ontario the owner or driver of a motor vehicle on a highway is not liable for the injuries sustained by a guest riding in his car or getting on to

or alighting from such motor vehicle (provided, of course, that such passenger has paid no compensation). The common law liability in this respect was taken away by the above-mentioned statute but apparently the injured guest of the driver may still sue the employer in certain cases, if it can be shown that the automobile at the time of accident (caused by the negligent operation of the driver) was being used on the firm's business. It would, therefore, appear that section 41*a* (2) of The Highway Traffic Act did not take away the common law right to sue the employer under the master and servant rule.

So far as an owner's policy is concerned and the extended insurance to the unnamed driver operating the motor vehicle with the consent of the named insured, it is generally conceded that the insurance contract would be voidable in this respect, except that the Uniform Act is intended to give the person driving with the consent of the named insured the benefit of the insurance protection. Ordinarily, at common law, it may be assumed that an insurance company could not make a contract of insurance with an unknown person who has given no consideration for the insurance protection. The Uniform Act is intended to validate the extended insurance afforded to the driver (not the owner) driving with the owner's consent in the statutory coverage of an owner's policy referred to above and as to the "rights of the unnamed insured" given in subsection (2) of the same section. Also, in the "Interpretation" section "Insured" is defined as a person insured by a contract whether named or not. It should be pointed out, however, that the Superintendent of Insurance may approve a form of motor vehicle liability policy appropriate to insure a limited or restricted use of the automobile and in that case the statutory conditions shall be deemed to be amended so far as is necessary to give effect to the terms and conditions of the policy so approved and the provisions of the sections dealing with the statutory coverage of an owner's policy or a driver's policy shall not apply (Ontario section 174(3)).

Ordinarily the Superintendent would not be expected to approve of a restricted form of motor vehicle liability policy so far as an individual car owner is concerned as these special provisions were enacted to take care of the unusual type of risk.

The Uniform Act in addition provides that an owner's or a

driver's policy shall (1) provide additional service to the insured such as investigation of accidents, including negotiations with the claimant; and (2) defend in the name and on behalf of the insured and at the cost of the insurer any civil action which may at any time be brought against the insured on account of loss or damage to persons or property; and (3) pay all costs taxed against the insured in any civil action defended by the insurer and any interest accruing after entry of judgment upon that part of the judgment which is within the limits of the insurer's liability; and (4) in case the injury be to a person, reimburse the insured for outlay for such medical aid as may be immediately necessary at the time.

Six exceptions from liability under owner's and driver's policies are specifically referred to in the Uniform Act (Ontario section 183*d*) the last three of which may be removed or waived by an endorsement on the policy and in consideration of an additional stated premium.

Briefly, these six exclusions from liability are:

- (a) liability covered by any workmen's compensation law upon the insured; or
- (b) for loss or damage resulting from bodily injury to or the death of the insured, or the son, daughter, wife, husband, mother, father, brother or sister of the insured; or
- (c) to any person, not the owner of the automobile, engaged in the business of an automobile garage, repair shop or service station or as an automobile dealer, for loss or damage sustained while engaged in the operation or repair of the automobile; or
- (d) passenger hazard liability; or
- (e) for loss or damage to property carried in or upon the automobile or owned by, or in the care, custody or control of the insured; or
- (f) for loss or damage resulting from bodily injury to or the death of any employee of the insured while engaged in the operation or repair of the automobile.

Concerning the last three exclusions, which as previously mentioned may be removed by endorsement, exclusion (d) passenger hazard liability may be removed with respect to a private passenger car owner for \$1.00. Since the owner or driver of a motor vehicle is not liable for loss or damage (by express provision of

The Highway Traffic Act) for injuries or death to gratuitous passengers on the highway, the owner of a motor vehicle may still wish to have the so-called passenger hazard protection in case of an accident involving a "guest" passenger occurred outside of Ontario or on private property off the highway in Ontario where the owner or driver might still be liable for damages.

The Uniform Act also requires that owner's and driver's policies shall contain certain conditions to be printed therein known as "Statutory Conditions" which are in the nature of statutory provisions or agreements between the insurer and the insured. Such conditions are usually printed on the third page of the contract.

It must be pointed out that up to the limits of legal liability set forth in the Act as minimum limits of liability, i.e. \$5,000 (exclusive of interest and costs) for loss or damage resulting from bodily injury to or the death of any one person and, subject to such limit for any one person so injured or killed, \$10,000 (exclusive of interest and costs) for loss or damage resulting from bodily injury to or death of two or more persons in any one accident and \$1,000 (exclusive of interest and costs) for legal liability for damage to property of others, owner's and driver's policies are absolute liability policies so far as the claimant is concerned. In this connection the Uniform Act states in part that "no act or default of the insured before or after such event (accident) in violation of the provisions of this Part or of the terms of the contract, and no violation of the Criminal Code or of any law or statute of any province, state or country, by the owner or driver of the automobile, shall prejudice the right of any person, entitled under subsection 1, to have the insurance money applied upon his judgment or claim, or be available to the insurer as a defence to such action".

In case of such violation by the insured, notwithstanding that the claimant is protected, the insured shall be liable to pay or reimburse the insurer, upon demand, any amount which the insurer has paid by reason of the provisions of this section which it would not otherwise be liable to pay.

EXPERIENCE OF COMPANIES :

For 1936, losses incurred to premiums earned amounted to 62½ per cent for all automobile insurance written in the province. In the "Final Report" of the late Hon. Mr. Justice Hodgins, the

Commissioner for the Royal Commission on Automobile Insurance Premium Rates held during 1929 and 1930, is contained the following reference at page 58:

“ . . . there seems to me to be no reason why the companies cannot, for the future, reduce the expense to 45 per cent of the gross premium rate.”

Since the above-quoted statement was published an increase of 2 per cent has been made in premium taxes and, if we add this 2 per cent to the 45 per cent referred to, the adjusted provision for expenses will be 47 per cent, leaving 53 per cent of the gross premium as provision for loss-cost. In view of the fact that automobile losses incurred to premiums earned in Ontario were reported for 1936 as 62½ per cent, would indicate that the Canadian Underwriters' Association was reasonably justified in its recent increase of automobile insurance premium rates effective April 1st, 1937 (which revision is reported to produce an increase of slightly less than 5 per cent). Under section 69*a* of The Insurance Act of Ontario all insurers transacting automobile insurance in the province are required to file punch cards of their automobile experience in Ontario with the designated statistical agency monthly prepared from a “Standard” mandatory statistical plan. Such results are tabulated and filed with the Superintendent periodically by the statistical agency and while the Superintendent is required to approve automobile insurance contracts he is not required to approve insurance premium rates. If this situation should ever change the Superintendent is in a position to determine at any time from the experience filed the reasonableness of automobile insurance premium rates promulgated in the province.

It has been argued that if we have standardization of automobile insurance contracts why then should we have such a wide variation in premium rates between various classes of companies? The answer, I think, is that so long as companies are free to quote such rates as they please in such a highly competitive market and with so many companies in the field we can expect little else.

Results for 1936 in the province did not appear to be profitable and only time will tell how the experience will work out in 1937, but if trend means anything one cannot expect the experience to show much better results for 1937 unless something is done to reduce the accident frequency and high average amount of public liability claims.