

# DIGEST OF INSURANCE LAW

## SASKATCHEWAN

Not Revised for this Edition

### CIVIL JUDICIAL SYSTEM

Courts of Original Jurisdiction. Court of Queen's Bench has original trial jurisdiction in all actions. Small Claims Court has corresponding original jurisdiction in most personal actions not exceeding \$10,000 for corporations or individuals. *The Small Claims Act, 1997*, effective February 16, 1998. The monetary limit is set by regulation. For Small Claims Court, appeal lies to Court of Queen's Bench. For Queen's Bench Court, appeal lies to Court of Appeal which sits at Saskatoon and Regina. With certain limitations, appeal lies from Court of Appeal to Supreme Court of Canada.

Judicial Districts. Saskatchewan has 1 district and 13 Judicial Centers. Action may be commenced at any Judicial Center but under certain circumstances venue may be changed by defendant. There are 46 judges of Court of Queen's Bench who go on circuit holding court at stated intervals in several Judicial Centers.

### LAW

#### Abbreviations

- A.C. – Appeal Cases (English).
- D.L.R. – Dominion Law Reports.
- I.L.R. – Insurance Law Reports.
- R.S.S. – Revised Statutes of Saskatchewan.
- Sask. R. – Saskatchewan Reports.
- S.C.R. – Supreme Court of Canada Reports.
- W.W.R. – Western Weekly Reports.

### ACCIDENT INSURANCE

Governed by contract.

#### ACCIDENTAL MEANS

Accident policy covers risk of injury by accidental means and not merely accidental injury. Where insured suffers fatal coronary thrombosis while endeavoring to extract his vehicle from snow bank into which he accidentally drove his vehicle and became stuck, death did not occur by accidental means as he could have abandoned vehicle in safety. *Smith v. British Pacific Life Ins. Co.*, [1965] I.L.R. para. 1-138. Contrast with, where in-

sured cannot abandon his vehicle because of inclement weather and suffers fatal carbon monoxide poisoning because of decision to remain with vehicle, death caused by accidental means. *Sklar v. S.G.I.O.*, [1965] I.L.R. para. 1-139.

Where pre-existing disease factors in accident causing injury or death, it is considered merely a condition within which accident operated: accident is sole cause of injury or death. Thus, where hospitalization of insured for bone fracture as result of fall on ice aggravated pre-existing gastro ulcer and abnormal stomach and heart condition, injury or death flowing from fall and required hospitalization caused solely by accidental fall. *Marks v. Commercial Travellers Acc. Ass'n*, [1956] I.L.R. para. 1-228. As well, where death of insured caused by coronary thrombosis (from which recovery probable if no intervening accident) aggravated by inhalation of insecticide fumes, death is solely caused by inhalation. *Milashenko v. Co-Op Fire and Continental Cas.*, (1968) 1 D.L.R.3d 89; 66 W.W.R. 577; *rev'd*, (1970), 11 D.L.R.3d 128.

### ADJUSTERS

Adjuster is defined as person other than practicing solicitor, trustee of property insured, salaried employee of licensed insurer acting on behalf of this insurer, or expert giving advice or evidence, who holds himself out as adjuster or investigator or who directly or indirectly solicits right to negotiate settlement of or investigate claim under contract of insurance or fidelity or guarantee bond issued by insurer.

No person shall act as adjuster unless he is holder of subsisting annual adjuster's license or annual representative's license of licensed adjuster, which may be obtained by application to superintendent upon prescribed form and supported by affidavit. Representative's license may be obtained by application to superintendent upon prescribed form and supported by certificate of licensed adjuster for whom he will be acting. Superintendent has broad discretion respecting granting and suspending licenses, but this discretion is reviewable by advisory board upon written application by applicant or licensee.



## AGENTS

Agent is defined as person, other than an officer or salaried employee of insurer, who solicits, negotiates or effects for or on behalf of any insurer a contract of insurance; for compensation, acts in solicitation or negotiation of insurance; for compensation, transmits for person other than himself, an application for or policy of insurance to or from insurer; or retains as compensation any portion of premium received by him.

No person shall act or hold self out as agent and no insurer shall deal with any person as agent unless he is holder of annual subsisting agent's license or salesman's license. Application for agent's license shall be made to Superintendent of Insurance upon prescribed form, accompanied by prescribed fee, and supported by affidavit of applicant and certificate of good business reputation. There are four available classes of agent license: 1) Life insurance, or life accident or sickness insurance where transacted by same insurer; 2) Accident and sickness; 3) Hail; 4) All insurance except life. Application for salesman's license shall be to superintendent upon his prescribed form, accompanied by his prescribed fee and supported by certificate of licensed agent for whom applicant will be acting.

*The Saskatchewan Insurance Act* imposes trust obligations upon agent in possession of premium funds and personal liability toward insured where he has effected contract with unlicensed insurer.

## AUTOMOBILE INSURANCE

See also "GOVERNMENT AUTOMOBILE INSURANCE."

Insurer is obliged by statutory terms of its license, where motor vehicle liability policy has been issued in Saskatchewan, to appear in every jurisdiction of Canada where action commenced against insured or insurer arising out of automobile accident in that jurisdiction and is obliged to not raise any defense which would not be available to it had policy been issued in jurisdiction of action. Insurer has irrevocable attorney to appear and defend in any province of Canada in which action is brought against insured arising out of ownership, use or operation of motor vehicle.

Most Saskatchewan registered vehicles are statutorily required to carry first loss liability and accident insurance provided by Government. Most private automobile insurance policies are therefore excess liability policies and/or accident policies covering that portion of loss and risks not covered by required Government policy. All forms of application, policy, endorsement, renewal or continuation certificate in respect of automobile insurance, must be approved by Superintendent of Insur-

ance. Superintendent may further approve policy to be used as excess liability policy and/or accident policy covering risks which are not covered or are in excess of coverage provided by required Government policy.

Unless limited by endorsement approved by Superintendent, every Motor Vehicle Liability policy insures: named insured, and any person operating automobile with his consent, against liability imposed by law to maximum of \$200,000, toward persons other than immediate family travelling as passengers, named or unnamed insured, worker's compensation claimants, and repairmen in employment of named insured during their repair of automobile; for property damage, bodily injury, and death arising out of ownership, use or operation in Canada or United States, of specified vehicle by named or unnamed insured. By approved endorsement, insurer may exclude liability for: 1) persons engaged in selling or repairing automobiles, 2) loss to property carried upon or in automobile, 3) liability occurring while automobile is attached to specified machinery or apparatus which is being operated, 4) liability while automobile is being rented or used as public conveyance for hire, 5) liability occurring while automobile is used to carry explosives or radioactive materials. There is \$200,000 limit of liability for all loss arising from any one accident, all claims considered in the aggregate.

By statute, claimant of insured in action in Saskatchewan may within one year after judgment against insured, commence action upon policy against insurer. In defense of such claim, insurer may raise only defense of default or surrender by insured to that portion of claim exceeding \$200,000, or to any claim of passenger other than passenger for hire. By statute, insurer may avail itself of third-party proceedings to claimant's action against insured.

As well as being liable for loss in excess of the \$200,000 limit, by interaction of terms of *The Automobile Accident Insurance Act* and *The Saskatchewan Insurance Act*, excess liability insurer is liable for loss occurring during period when insured or unnamed insured is in breach of statutory condition of his Government insurance, but is not in breach of statutory conditions of excess policy. Statutory conditions of Government policy and excess policy correspond except that former prohibits insured from operating unless both qualified, and authorized, and prohibits operation in breach of Vehicle Administration Act or its regulations, while latter does not.

Government policy deems conviction under the *Criminal Code* for driving while under influence of alcohol or drugs or refusing to take breathalyzer test as conclusive proof of breach of policy condition, while

under excess policy such conviction is not conclusive proof.

Motor Vehicle Law. Operation and use of motor vehicles in Saskatchewan is governed by *The Highways and Transportation Act, 1997*, *The Vehicle Administration Act*, *The Highway Traffic Act*, all regulations thereto and by-laws of respective municipalities.

The legislation provides *inter alia* as follows: 1) No action shall be brought for recovery of damages occasioned by motor vehicle after expiration of two years from time when damages were sustained or a death is caused; 2) Requirement to wear seat belts and apportionment of damages to plaintiffs who fail to wear seat belts; 3) Except in action involving collision of two vehicles, onus of disproving negligence or improper conduct is upon operator of vehicle; 4) Where accident does not result in personal injury or property damage operator must advise person in charge of any damaged property of name and address, vehicle and operator license numbers, together with particulars of automobile insurance carried; 5) Where bodily injury or death, unidentified motor vehicle, motor vehicle towed or accident apparently involving person under influence of intoxicant, must report to police officer as soon as possible and provide information required to complete accident report; 6) Motor vehicle must not be operated at speed in excess of that posted which upon open highway is normally 100 Kilometers per hour; 7) Owner is vicariously responsible for all offenses committed by operator of his vehicle operating vehicle with consent; 8) Minimum legal operating age is 16 years; 9) "Non-resident" includes person who has been resident of Saskatchewan for period not exceeding 3 months.

### BURGLARY INSURANCE

Governed by contract.

### CONTRIBUTORY NEGLIGENCE

By *The Contributory Negligence Act* where, by fault of two or more persons damage or loss is caused to one of them, liability to make good damage or loss shall be in proportion to degree in which each person was at fault, provided that, having regard to all circumstances of case it is not possible to establish different degrees of fault, liability shall be apportioned equally. Where two or more persons are found liable for injury they shall be jointly and severally liable to person suffering injury but they shall be liable to make contribution to and indemnify each other to the degree they are each found at fault.

### DEATH

For marital purposes only, Saskatchewan spouse may petition Queen's Bench Court for declaration of presumption of death on grounds of seven years' absence of other and Petitioner's belief, after reasonable inquiry, that missing spouse is dead. Where two or more persons meet their death under circumstances which make it impossible to determine which survived other, it is presumed that beneficiary under life insurance policy did not survive insured. Action for death may be maintained by personal representative of deceased. Action must be brought within one year from date of furnishing insurer with evidence of proof of loss. The action is for benefit of wife, husband, parent and child of deceased. Damages are apportioned.

### FINANCIAL RESPONSIBILITY

Where judgment is recovered in any court in Canada for damages on account of death or injury to anyone, or damage to property in excess of Fifty dollars (\$50), occasioned by motor vehicle, and person against whom judgment is rendered fails to satisfy it within thirty days, that person shall have his driver's license and registration of all motor cars registered in his name suspended. Such suspension shall continue in force until: (a) judgment has been satisfied (subject to prescribed limits for bodily injury and property damage); and (b) person gives proof of financial responsibility.

Non-resident Motorists. Person who is not resident of Saskatchewan may give proof of financial responsibility in same manner as resident, or by filing certificate of insurance issued by insurer authorized to transact business in state or province in which such person resides, provided insurer has filed with Superintendent of Insurance: (a) power of attorney authorizing Superintendent of Insurance to accept service of process for insurer; (b) undertaking to appear in any such action or proceeding of which it has knowledge; (c) undertaking not to set up any defense which might not be set up under laws of Province of Saskatchewan relating to motor vehicle liability policies; and (d) undertaking to satisfy any judgment recovered in Saskatchewan.

### FIRE INSURANCE

*The Saskatchewan Insurance Act* provides for certain uniform or statutory conditions and no variation shall be binding on insured.

Notwithstanding terms of mortgage, or agreement of sale, mortgagor or purchaser can place any necessary fire insurance in any company doing business in Saskatchewan. Insurance policy typically contains clause entitling mortgagee to proceeds if insured property de-

stroyed. Mortgagee may be added as plaintiff, even after expiry of limitation period. *Springside v. Wawanesa* (1994), 123 Sask. R. 41.

Insurance may be terminated by giving to insured fifteen days notice by registered mail or five days notice by personal service. Proof of loss must be made by insured as soon as possible after loss. Loss is payable within sixty days after completion of proof of loss, unless contract provides for shorter period. In event of dispute as to amount of loss statute provides for determination of same by appraisal. Action must be commenced within one year after loss or damage occurs. Provision is made that where there is imperfect compliance with statutory condition as to proof of loss, resulting in forfeiture or avoidance of insurance, the Court, where such forfeiture is regarded as inequitable, may relieve against same.

Where two or more policies are placed on same property, rateable contribution is excluded only by consent of other insurer.

No term or condition is deemed waived by insurer unless in writing signed by authorized person.

## GOVERNMENT AUTOMOBILE INSURANCE

See also "AUTOMOBILE INSURANCE."

*The Automobile Accident Insurance Act* provides minimum insurance against loss from personal injury, collision, property damage, fire and theft, regardless of negligence. Insurance is compulsory and is operated by Government of Saskatchewan. All registered Saskatchewan vehicles are covered. Premiums are collected along with vehicle and operator's license fee.

**Personal Injury.** Personal injury provisions establish compensation for victims of all accidents caused by automobiles operated within Saskatchewan and for Saskatchewan residents traveling in Saskatchewan automobiles operated within Canada or United States. In case of death, spouse receives a minimum of \$45,000, plus amount calculated by formula for dependants under age 21.

No-fault benefits under *The Automobile Accident Insurance Act*. With limited exceptions, no person has right to bring a civil action in respect of personal injuries caused by a moving vehicle. Thus, right of action in battery no longer exists if the plaintiff was purposefully struck by a vehicle operated by the defendant, *Litigation Guardian of Donaghy v. Schutte* (1999), 181 Sask. R. 272 (Q.B.), and no right of action for personal injury exists under *The Consumer Protection Act* if plaintiff is injured due to improper manufacture of seat belt. *Kunz v. General Motors of Canada, Ltd.* (1999), 178 Sask. R.

292 (Q.B.). Legislated scheme of benefits payable to the victim, if eligibility can be established. Regardless of fault, benefits for rehabilitation, income replacement, death, permanent impairment, and necessary expenses are available. Where victim resident in Saskatchewan, entitlement to benefits exists if accident occurs in Canada or United States. If accident occurs in Saskatchewan, non-residents may be entitled to benefits where, *inter alia*, they were not responsible for the accident or if agreement exists between their jurisdiction of residence and Saskatchewan.

Applications for benefits must be made within two years from date of accident or attainment of age of majority, or two years after medical discovery of latent injury, so long as discovery is made within two years of date of accident.

Innocent victims of automobile accidents are *prima facie* entitled to at least recovery benefits under Government insurance. Owners or operators, however, may lose protection in certain circumstances, such as operating vehicle without license or in manner contrary to law, or where under influence of intoxicating substances.

**Amendments - Tort Election.** Legislative changes to *The Automobile Accident Insurance Act* give choice of loss recovery under no-fault or tort. Tort election indicates intention to obtain tort coverage and to waive no-fault benefits respecting accidents occurring after election form received by insurer. Tort election can be revoked explicitly or implicitly, by ceasing to be resident of Saskatchewan.

Tort claimant may not bring action for bodily injury or property damage against any no-fault beneficiary who is owner, operator or passenger of vehicle involved in accident other than for damage in excess of insurance benefits provided. Respecting non-economic loss, no claim exists unless no-fault beneficiary convicted of Criminal Code offense. In determining past and future income loss, court will deduct from any award any amounts received or entitled to be received from government, government agency or public insurance scheme which reduced loss and all benefits received under *The Automobile Accident Insurance Act*. Liability for non-economic loss limited to amount awarded by court less \$5,000.

Bodily injury benefits for tort claimants apply to injuries received in Canada, United States or in travel between. No entitlement to no-fault benefits other than death benefit. Reimbursement for all authorized medical services, subject to maximum benefit amounts: \$20,000 unless catastrophic injury, in which case maximum benefit is \$150,000. If tort claimant entitled to benefits under *The Automobile Accident Insurance Act*, and re-

ceives judgment or settlement for less than estimated value of future payment of benefits, amount of future benefits reduced in proportion to amount judgment or settlement bears to estimated value of future payments.

**Collision Insurance.** Owner's certificate insures persons named therein against loss of, or damage to designated vehicle, and caused by any peril occurring in Canada or United States. Insurer is not liable for any amount in excess of actual cash value of vehicle at time loss of damage occurs. All vehicles properly licensed and driven by licensed drivers are covered. In case of private passenger cars, deductible provision varies depending on the premium elected and vehicle type.

**Public Liability.** Protection is provided up to \$200,000 with respect to claims for bodily injury, or death and property damage. In any one accident, claims for bodily injury or death have priority over claims for property damage to the extent of \$190,000 and conversely claims for property damage shall have priority over claims for bodily injury or death to the extent of \$10,000.

**Fire and Theft.** Protection is provided for damage caused by fire and theft occurring in Canada or United States or upon vessel between ports of these countries. Deductible is as discussed above: Collision Insurance

**Renewals.** General rule is certificate will expire on last day of month prior to month in which insurance first purchased (*i.e.*, staggered renewal).

## HUSBAND AND WIFE

No community property rights exist in Saskatchewan. *The Family Property Act* provides that, on application by spouse, the Court of Queen's Bench may order equal distribution of property owned by one or both spouses or by one or both spouses and third person, excluding value of pre-marriage property or income therefrom, unless equal distribution would be inequitable in circumstances. Property dealt with by interspousal contract is also exempt. *The Family Property Act* also applies to same sex couples that have been living as spouses for a period of not less than two years.

## INSURANCE CONTRACT GENERALLY

Where subject matter of contract is property within Saskatchewan, or person domiciled or resident therein, contract of insurance, if delivered in Saskatchewan, or committed to post office or any carrier, messenger or agent to be delivered to insured in Saskatchewan, shall be deemed to be contract made within Saskatchewan, and contract shall be construed according to law of Province of Saskatchewan and no agreement, condition or stipulation can be made to contrary.

All terms and conditions of contract must be set out in full in policy or by a writing securely attached to it. Application of insured shall not be deemed part of contract except insofar as Court may determine that it contains material representations by which insurer was induced to enter into contract. No insurance contract shall contain any term providing that such contract shall be avoided by reason of any statement in application therefor, unless such term is limited to cases in which such statement is material to contract, and no contract shall be avoided by reason of inaccuracy of any such statement unless material to contract. Question of materiality in any contract of insurance shall be for the trier of fact.

Procedure of arbitration is provided for disagreements between insurer and insured. Imperfect compliance with statutory condition as to proof of loss may not result in forfeiture or avoidance of insurance where court feels it would be inequitable and relieves against forfeiture. See, for example, *Creative Touch Millwork v. Royal* (1992), 94 Sask. R. 81. Waivers of terms or conditions must be in writing and signed by person authorized by insurer, and any act in relation to appraisals or proof is not waiver either by insurer or insured. Delivery of any contract of insurance, other than life insurance, makes contract binding, as if premium had been paid, although not in fact paid. It is duty of insurer to furnish forms for proof of loss upon being notified of claim. No action shall be brought until expiration of sixty days (or such shorter period as may be prescribed by contract of insurance) after furnishing of proof of loss or happening of event upon which insurance money is to become payable. Limitation periods for actions for recovery under fire insurance and life insurance contracts are, respectively, one year after loss and one year after proof of loss. Where several actions are brought for recovery of money payable under contract of insurance, court may consolidate actions.

Except for motor vehicle insurance, where insured fails to satisfy judgment against him/her for an insured claim, execution creditor has right of action against insurer to recover amount not exceeding face amount of policy.

All fire and hail policies must be signed by agent, resident in Saskatchewan.

Where head office of licensed insurer is situated outside Saskatchewan, notice or process in any action in Saskatchewan may be served upon person appointed attorney of insurer or on Superintendent of Insurance in Saskatchewan and it is deemed service upon insurer. Insurer may give notice to insured by mailing it to address provided in his application for insurance or in subsequent correspondence with insurer, subject to any statutory conditions or expressly provided modes. Simi-

larly, insured may give notice by letter to chief office of insurer in Saskatchewan or registered mail to insurer, its manager or agent.

Other than life insurance, Government of Saskatchewan writes all kinds of insurance in competition with private insurance companies.

### **MOTOR CARRIERS**

Regulations are made by Highway Traffic Board

governing security to be furnished by all carriers, nature of merchandise carried, capacities, routes, rates, schedules, etc. Operators must secure permit and furnish security covering injury to passengers or property and payment of all funds payable. Common carrier liability applies.

### **NO-FAULT INSURANCE**

See "GOVERNMENT AUTOMOBILE INSURANCE."