

Section 6 – Direct Compensation Claims

The coverage under this Section applies only if the accident takes place in Ontario and at least one other automobile involved is insured under a motor vehicle liability policy. The policy covering the other automobile must be issued by an insurance company licensed in Ontario, or one that has filed with the Financial Services Regulatory Authority of Ontario to provide this coverage. It is called direct compensation because you will collect from us, your insurance company, even though you, or anyone else using or operating the automobile with your consent, were not entirely at fault for the accident.

We will pay the cost of damage to the automobile, its equipment, contents and for loss of use of the automobile or contents arising from an accident for which another person would have been legally responsible in the absence of section 263 of the Insurance Act (Ontario). Section 263 takes away your right to sue the other person for these losses. We will pay no more to repair or replace the automobile or property than its actual cash value at the time it was damaged, less the applicable percentage of the deductible shown on your Certificate of Automobile Insurance. If a part needed to repair the automobile is no longer available, we will pay an amount equal to the manufacturer's latest list price for the part.

Court has stated that coverages should be interpreted broadly:

Section 263 of the *Insurance Act*, “the direct compensation regime”, replaced the tort system that was used to resolve automobile damage claims prior to its enactment. The regime removed the insured’s ability to recover property damage from anyone other than from his own insurer subject to specified exceptions. In *Siena-Foods Limited v. Old Republic Insurance2*, Laskin, J.A., writing on behalf of the Court of Appeal, makes reference to two decisions to help explain the “direct compensation regime at paragraphs 22 and 23:.

[22] Two decisions help to explain s. 263 and its effect. In *Clarendon National Insurance v. Candow* (2007), 87 O.R. (3d) 728, [2007] O.J. No. 3797, [2007 ONCA 680](#), at para. 7, Juriansz J.A. explained the direct compensation scheme in s. 263:

[Section 263](#) of the [Insurance Act](#) replaced the tort system that resolved automobile damage claims prior to its enactment. In the new statutory scheme, insureds can no longer sue the tortfeasor driver whose negligence has caused damage to their cars. Rather, their own liability insurer pays for the damage, to the extent that they were not at fault, under the third party liability section of their motor vehicle liability policies. Insureds can recover the at-fault portion of their damage by purchasing collision coverage. Insurers have no right of subrogation for payments to their own insureds, but, on the other hand, do not have to pay the subrogated claims previously brought by other insurers in the tort system. The result is that the

statutory regime eliminates the transactions costs that were inherent in the tort system.

[23] And in *McCourt Cartage Ltd. (c.o.b. Laser Transport) v. Fleming Estate (Litigation Administrator of)* (1997), [1997 CanLII 12297 \(ON SC\)](#), 35 O.R. (3d) 795, [1997] O.J. No. 3933 (Gen. Div.), at para. 3, Sharpe J. explained the effect of s. 263:

Before the enactment of s. 263, the common law tort regime applied to property damage claims. The result was that where an insured had purchased collision damage cover, and where the accident was caused at least in part by the fault of another driver, two insurers became involved. The insured would claim against his own insurer under the collision coverage, and that insurer would assert a subrogated claim against the insurer of the other driver to the extent of the other driver's fault. The intended effect of s. 263 was to remove the insured's right to sue for property damage and to confer the right to claim such losses not caused by the fault of the insured against one's own insurer. In the words of Somers J. in *583809 Ontario Ltd. v. Kay*, [1995 CanLII 7080 \(ON SC\)](#), [1995] O.J. No. 1626, the section was intended

"to bring to an end claims which were really made by one insurance company against another in the names of their respective insureds strictly for the property damage that had occurred in an accident."

See also *Bassie v. Warren J. Brown Bituminous Paving Co.*, [1993] I.L.R. 2357, adopting Allan O'Donnell, *Automobile Insurance in Ontario* (1991), at p. 51:

". . . under the new system with the exceptions outlined below [none of which apply here], subrogation has been abolished. Thus, we have a "knock for knock" system whereby each insurer absorbs most of its policyholders' property damage claims without attempting to recover same from the insurers of tortfeasors causing such claims."

[31] Subsequent to the enactment of the new regime, the insured is prohibited from proceeding directly against the tortfeasor. Based on the entirety of the evidence before me, I am satisfied that section 263(1)(c) of the *I_n_s_u_r_a_n_c_e_A_c_t* is applicable to this case and that section 263(2) is to be read in a broad fashion consistent with the rules of statutory interpretation. In my view, the term "*l_o_s_s_o_f_u_s_e*" is broad enough to include car rental.

...

[33] In light of the foregoing, I find that the plaintiff is entitled to be reimbursed his cost of the rental vehicle from the date of the accident until the date he picked up the vehicle on March 20, 2019, in the amount of \$8197.92.

Section 7 (Optional Coverages) – Collision Coverages

7.1.1 Coverage for Loss of or Damage to Your Automobile We agree to pay for direct and accidental loss of, or damage to, a described automobile and its equipment caused by a peril such as fire, theft, or collision if the automobile is insured against these perils. By direct loss or damage we mean loss or damage resulting directly from a peril for which coverage has been purchased. This Section applies only to the extent that a claim for damage to an automobile and its equipment would not be covered by Section 6, Direct Compensation - Property Damage Coverage of a motor vehicle liability policy. We may inspect the described vehicle and its equipment at any reasonable time. If you do not cooperate with any reasonable arrangements for inspection, your coverages under this Section may be cancelled and any claims under this Section may be denied.

Specified Perils - we will only pay for losses caused by fire; theft or attempted theft; lightning, windstorm, hail, or rising water; earthquake; explosion; riot or civil disturbance; falling or forced landing of aircraft or parts of aircraft; or the stranding, sinking, burning, derailment or collision of any kind of transport in, or upon which a described automobile is being carried on land or water.

Comprehensive - we will pay for losses, other than those covered by Collision or Upset, including: perils listed under Specified Perils, falling or flying objects, missiles, and vandalism.

Collision or Upset - we will pay for losses caused when a described automobile is involved in a collision with another object or tips over. Object includes: another automobile that is attached to the automobile, the surface of the ground, and any object in or on the ground.

All Perils -this option combines the coverages of Collision or Upset and Comprehensive. This coverage includes loss or damage caused if a person who lives in your household steals a described automobile. Coverage also applies if an employee who drives or uses, services or repairs a described automobile, steals it.