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INSURANCE LAW BULLETIN

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NO CRASH NO CASH – S.268(1.1), *INSURANCE ACT*

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S. 268(1.1) of the *Insurance Act* prohibits the receipt of accident benefits for occupants of public transit vehicles when injuries result absent a collision. That section states,

...No statutory accident benefits are payable in respect of an occupant of a public transit vehicle, in respect of an incident that occurs on or after the date this subsection comes into force, if the public transit vehicle did not collide with another automobile or any other object in the incident.

Essentially, a collision with “another automobile or any other object” is required for accident benefits to be available to occupants of public transit vehicles. The definition of “any other object” remains unclear. A collision by a public transit vehicle with “any other object” could include a pot hole, a speed bump, or the curb near a bus stop: these are examples of “objects” which a bus could collide with outside of the traditional notion of a collision such as a pedestrian, a telephone pole, or a tree. A collision with “any other object” remains debatable and would be situation specific in order to determine whether, in fact, a public transit bus had collided with an object so as to qualify injured passengers for accident benefits.

“Public Transit” is defined under S. 224(1) as:

“any service for which a fare is charged for transporting the public by automobiles operated by or on behalf of a municipality or a local board as defined in the *Municipal Affairs Act*, or under an agreement between a municipality and a person, firm or corporation, **but does not include special transportation facilities for persons with disabilities or transportation by special purpose facilities** such as school buses or ambulances” [emphasis added].

A “Public Transit Vehicle” is defined as “an automobile while being used for public transit”. Further, a fare must be charged and the transporting vehicle must be operated

by a municipality or transit board. This means that shuttle buses, such as those found in parking lots or at airports, are not bound by s. 268(1.1). As such, passengers who are injured on such vehicles in incidents without a collision are entitled to accident benefits.

The definition of “special transportation facilities for persons with disabilities” has not been entirely defined. This classification hinges largely on the definition of “facilities” and whether this term refers to an entire vehicle that provides service to disabled persons, such as a paratransit bus, or whether it can refer to a portion of a vehicle that has equipment and space for disabled passengers, such as a wheelchair lift, space for wheelchairs, and wheelchair straps on a regular city bus. The term “facilities” is used in different ways within section 224(1) of the Insurance Act. On one hand, “facilities” refers to entire vehicles such as school buses and ambulances. On the other, it appears to be used more narrowly to mean a portion of a vehicle. The situation is further complicated because the same section then goes on to define “public transit vehicle,” which suggests that “facilities” does not mean “vehicle”.

The vast majority of municipal buses are equipped with facilities for disabled passengers; however, these are not “special transportation facilities” but rather common municipal buses. Notwithstanding, the purpose of the exception to the “no crash, no cash” provision is to ensure the availability of accident benefits to the most vulnerable travellers. Therefore, the exception will likely apply to disabled persons (*i.e.*, accident benefits would be available to them) as long as they used any of the special transportation facilities available on a regular city bus.

The clearest exception to the “no crash, no cash” provision is a passenger injured aboard a paratransit bus (including DARTS and the “Community Buses” operated by Guelph Transit), a school bus, or an ambulance. These passengers do not require a collision in order to be eligible for accident benefits. Special transportation facilities for persons with disabilities must use extra caution in the boarding, transport, and exit of disabled passengers as the collision requirement of s. 268(1.1) does not exist for the use or operation of this class of transportation.