

Schedule “A”

Regulations Respecting Non-Owned Automobile Insurance Liability made by the Governor in Council under subsections 148(4) and 148D(9) of Chapter 231 of the Revised Statutes of Nova Scotia, 1989, the *Insurance Act*

Citation

- 1** These regulations may be cited as the *Non-Owned Automobile Insurance Liability Regulations*.

Definitions

- 2** In these regulations,

“Act” means the *Insurance Act*;

“lessee” means a person to whom a motor vehicle is leased;

“rentee” means a person to whom a motor vehicle is rented.

Application to direct compensation for property damage

- 3** These regulations do not apply to an insured’s right of recovery for direct compensation for property damage under Section 138A of the Act.

Priority of payment for insurance held by lessor or renter

- 4** (1) The order in which the third party liability provisions of any motor vehicle liability policies apply in respect of the following liability must be determined in accordance with this Section and Section 5:
- (a) liability that arises from or occurs in connection with the ownership of a leased or rented automobile; or
 - (b) liability that, directly or indirectly, arises from or occurs in connection with the use or operation of a leased or rented automobile.
- (2) Except as provided in subsection (3), insurance available under a contract

evidenced by an owner's policy issued to a lessor or renter is first loss insurance.

- (3) Subsection (2) does not apply if there is insurance available under any of the following contracts:
- (a) a contract evidenced by a motor vehicle liability policy under which the lessee or rentee of the automobile is entitled to indemnity as an insured named in the contract; or
 - (b) a contract evidenced by a motor vehicle liability policy under which the driver of the leased or rented automobile is entitled to indemnity as any of the following:
 - (i) an person who is a partner, officer or employee of an insured named in an approved standard policy form (NSPF 6) for non-owned automobiles that is part of the contract,
 - (ii) an insured named in the contract,
 - (iii) the spouse or adult interdependent partner of an insured named in the contract who resides with that insured,
 - (iv) an unnamed insured.
- (4) Subject to subsection (5), if subsection (3) applies, then the priority of pay among insurers is as follows:
- (a) insurance described in subclause (3)(b)(i) is first loss insurance;
 - (b) insurance described in clause (3)(a) is excess insurance to the insurance identified as first loss insurance in clause (a);
 - (c) insurance described in subclause (3)(b)(ii) is excess insurance to insurance identified as excess in clause (b);
 - (d) insurance described in subclause (3)(b)(iii) is excess insurance to insurance identified as excess in clause (c);
 - (e) insurance described in subclause (3)(b)(iv) is excess insurance to insurance identified as excess in clause (d);

- (f) insurance described in subsection (2) is excess insurance to insurance described in subsection (3).
- (5) If more than 1 person is entitled to indemnity under a contract evidenced by a single motor vehicle liability policy, each person is deemed, for the purposes of subsection (4), to be entitled to indemnity under a separate contract evidenced by a motor vehicle liability policy.
- (6) If an insurer under a contract described in subsection (3) fails to respond to a claim or civil action on behalf of a lessee, rentee or driver,
 - (a) an insurer under a contract described in subsection (2) must respond to the claim; and
 - (b) the insurer under a contract described in subsection (3) who failed to respond is liable to indemnify all of the following for any liability, costs and expenses incurred as a result of the failure:
 - (i) any insurer who responds to the claim or civil action under clause (a),
 - (ii) any insurer who responds to the claim or civil action under a contract described in subsection (3), if the insurance described in the contract of the insurer who responds is excess insurance in accordance with subsection (4) to the insurance available under the contract of the insurer who fails to respond.

Rateable proportion applies if priority not determined under Section 4

5 If more than 1 insurer under contracts described in these regulations is required to respond to a claim or civil action on behalf of a lessee, rentee or driver and the priority among the insurance available under those contracts is not determined by Section 4, each insurer is liable only for its rateable proportion, as defined in subsection 148(3) of the Act, of any liability, expense, loss or damage.

Acknowledging response to claim

6 An insurer who responds to a claim or civil action under a contract described in subsection 4(3) must acknowledge in writing to an insurer under a contract described in subsection 4(2) that the first-mentioned insurer is responding to a claim or civil action on behalf of the lessee, rentee or driver.

Rights of unnamed insured

7 Despite Section 118 of the Act respecting the rights of unnamed insured, a person

insured by but not named in an owner's policy issued to a lessor or renter may recover indemnity only to the maximum amount for which the lessor or renter is liable in respect of the same incident in its capacity as lessor or renter as determined under subsection 148D(4) of the Act.

Public passenger vehicle exemption

- 8** Subsection 148D(4) of the Act does not apply in respect of a motor vehicle that is a public passenger vehicle as defined in the *Motor Carrier Act*.