

NO: **R119**

COUNCIL DATE: **June 7, 2010**

REGULAR COUNCIL

TO: **Mayor & Council**

DATE: **June 4, 2010**

FROM: **City Solicitor
General Manager, Finance &
Technology**

FILE: **0250-07/#4**

SUBJECT: **Motor Vehicle Accidents - Insurance Coverage and Liability**

RECOMMENDATION

The Legal Services Division and the Risk Management Division ("Staff") recommend that Council:

1. request that the Union of British Columbia Municipalities ("UBCM") petition the Government of British Columbia (the "Province") on behalf of B.C. municipalities to:
 - a. Amend the Provincial motor vehicle regulations to require that motor vehicles carry a minimum of \$5 million in third party liability insurance coverage; and
 - b. Amend the *Negligence Act* to eliminate joint and several liability for municipalities in the context of motor vehicle accidents; and
2. direct the City Clerk to forward a copy of this report and the related Council resolution to all UBCM member local governments.

BACKGROUND

The amount of third party liability insurance carried on most motor vehicles in B.C. is inadequate to cover damages related to injuries that occur as a result of serious motor vehicle accidents. As a result, plaintiffs, defendants and the insurer (e.g., ICBC) are increasingly naming municipalities as defendants in law suits in an effort to find another source of funding to recover full damages for the injured party.

Motor vehicles are only required to carry \$200,000 in third party liability insurance coverage under the Basic Autoplan administered by the Insurance Corporation of British Columbia ("ICBC"). Damages for injuries suffered from motor vehicle accidents are increasing with more being in the millions of dollars range; far exceeding the minimum liability insurance coverage.

Negligent drivers who injure innocent third parties are personally liable for the amount of damages in excess of their coverage. However, if a municipality is also found to be negligent (for example, for failing to properly maintain its roadways), then under the doctrine of joint and several liability an innocent plaintiff who is successful in being awarded damages through a law suit has the choice of collecting the full amount of the damages from the municipality, irrespective of the degree to which the municipality was

found to be contributorily negligent. For example, if a plaintiff has been awarded \$5 million in damages and the municipality is found to be even 1% responsible for the damages, the plaintiff can choose to collect the full \$5 million from the municipality. The municipality would then have to collect from the other defendants their proportionate share of the damages, which would normally require further legal action. In many circumstances, some or all of the other defendants may not have sufficient assets to cover their share of the damages in which case the municipality is out of pocket the amount that it cannot collect from the other defendants.

With the current state of the law in British Columbia and ICBC practice as discussed above, parties are motivated to sue municipalities even in situations in which the liability of the municipality is questionable or minimal. For example, the City of Surrey was recently involved in a litigation in which the City was initially sued by ICBC and an individual defendant (and not the plaintiff). In that case, the individual defendant was primarily negligent, but the amount of the claim exceeded the personal assets of this defendant and the amount of his insurance coverage. The City was included in the lawsuit as a source of "deep pockets" from which recovery could be obtained. The City could have been potentially liable for the full amount of the claim in excess of the available insurance coverage if the City was found even 1% liable.

The risk to a municipality in such circumstances is also increased as a result of the sympathy that the Court may have for the plaintiff as the Court is not aware that an individual defendant is carrying any insurance in addition to the \$200,000 basic third-party liability coverage that is required by regulation and therefore does not know whether the plaintiff will be able to recover damages unless a municipality is also found to be contributorily negligent to some degree as municipalities are known to be financially solid.

DISCUSSION

Minimum Liability Insurance Coverage:

The current state of the law in British Columbia amounts to a "downloading" of costs for motor vehicle accidents from ICBC onto municipalities and needs to be changed. By requiring motorists to carry \$5 million in third-party insurance coverage, parties will have significantly less incentive to sue municipalities on questionable claims because the primary defendant, i.e., the defendant most responsible for the accident, will have sufficient insurance to cover the damages. Damages against municipalities will be further deterred when the Courts can proceed with greater assurance that individual defendants have adequate coverage to pay damages.

Joint and Several Liability

The *Negligence Act* contains the "joint and several" liability provision to which this report has earlier referred. With a view to eliminating the "deep pockets" burden on municipalities that are exposed to paying high amounts for damages even when their level of negligence is found to be minimal, the *Negligence Act* should be amended to limit municipalities to being "severally" liable only. If this amendment were to be adopted the municipality would only pay their proportionate share of damages, but could not be required to pay the entire amount of the damages as is the case under "joint" liability.

Such an amendment would reduce the incentive for parties to sue municipalities when their role in relation to damages is questionable or minimal.

Staff holds the view that the amendments that this report is recommending should be pursued through the UBCM, in that the proposals are in the interests of all municipalities in B.C. and would be better presented in that context.

CONCLUSION

Based on the above discussion, it is recommended that Council:

- request that the Union of British Columbia Municipalities ("UBCM") petition the Government of British Columbia (the "Province") on behalf of B.C. municipalities to:
 - Amend the Provincial motor vehicle regulations to require that motor vehicles carry a minimum of \$5 million in third party liability insurance coverage; and
 - Amend the *Negligence Act* to eliminate joint liability for municipalities in the context of motor vehicle accidents; and
- direct the City Clerk to forward a copy of this report and the related Council resolution to all UBCM member local governments.

CRAIG MacFARLANE
City Solicitor

VIVIENNE WILKE
General Manager, Finance &
Technology

CM:mlg