

YOUR BEEF

Who's at fault when my car is hit from behind?

Q: I was involved in a collision on Highway 407 in April. I was in the left of two eastbound lanes with one truck behind me and another alongside. The road was slippery with rain, snow and ice.

I was driving at about 90 km/h when I lost control, was hit by the two trucks from behind, and spun around 180 degrees. The air bags on my 2005 Toyota Camry weren't deployed.

I wasn't charged by police, but my insurer says I was at fault.

Since I didn't deliberately disobey any rule or law, was hit from behind, and maybe the truck was following too closely, I suspect my insurer can't find a black sheep among the other two trucks' insurance companies and decided to blame me.

Even if the collision was caused by the road and weather conditions, I feel one of the three insurers have to find which one must bear the total payout costs and increase the premium for that driver alone.

Do I need to hire a lawyer to dispute my insurer's at-fault finding?

Bill Oetomo, Toronto

A: Toronto lawyer Greg Chang (bcbaristers.com) replies:

Fault assigned to you in a crash by your insurer can affect your claim payout and your premiums.

Insurers consult the fault

Insurers consult the fault determination rules pursuant to the Insurance Act. The FDR are a quick, uniform method for all insurers to determine fault, providing an instant result while ignoring specific factors related to your collision (i.e. weather, road conditions, visibility).

For this reader, the FDR may not apply.

That is, the situation doesn't fit nicely within the predetermined guidelines. The analysis would then have to take into account all factors, including whether a charge was laid by police, witness statements, and other factors, such as weather and speed.

To dispute an at-fault finding, you can sue your insurer to have a judge decide who's at fault, and at what proportion.

Lawsuits are expensive and time-consuming, so most don't fight their insurer for that reason. Often, the cost of bringing a lawsuit may exceed your recovery.

For example, the 2008 Ontario case of *Ip vs. Scottish & York Insurance Co.* dealt with a related situation, where the insured owner sued his insurer for refusing to renew his insurance policy because of an "at-fault" collision. The insured owner said he was not entirely at fault, while his insurer blamed him completely.

The insured owner ultimately won, but it took one year and at least two court attendances. In the end, *Ip* was awarded \$2,255 in legal costs from his insurer, which probably would cover only one-quarter to one-third of his actual legal expenses to bring the lawsuit. He was also awarded a few thousand dollars in damages for the improper at-fault designation.

In this reader's case, he can ask his insurer to explain its fault determination in writing and then decide whether he'd like to pursue the matter.

Eric Lai adds:

In Ontario, regardless of who's considered at fault in a crash, your own insurer pays your damages.

Though no charges were laid and the driver reports travelling below the posted speed limit, senior police officials advise that, for situations such as this, the investigating officer most likely would have indicated in the collision report that the crash was caused by a driver travelling "too fast for conditions" and losing control.

Got a beef about something?

Write to Eric Lai at wheels@thestar.ca.

Letters may be edited.

Letter volume prevents personal replies.