Buckle up: Alberta's new guidelines on motor vehicle protection products and potential for captive insurance

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On Oct. 10, 2024 the Office of the Alberta Superintendent of Insurance published Interpretation Bulletin No. 05-2024 (the Bulletin) setting out the Superintendent's position with respect to products commonly marketed by automobile dealerships in conjunction with the sale of motor vehicles. The Bulletin comes on the heels of a similar bulletin published by the British Columbia Financial Services Authority earlier this year.

We have been engaged to assist several industry stakeholders of all kinds with the fall out from these bulletins and wish to share some practical insights with you here. For simplicity, we will focus on Alberta when doing so.

In short, the Bulletin makes it clear that certain products that may have been considered "warranty" products by industry stakeholders fall within the definition of "insurance" under the *Insurance Act,* R.S.A. 2000, c. I-3 (the Insurance Act) and will be regulated as such.

The Bulletin follows the Superintendent's comprehensive review of insurance products that pose a "material risk" of financial harm to consumers. As mentioned, it also follows similar guidance published earlier this year by the British Columbia Financial Services Authority, British Columbia's regulator of insurance companies, in Bulletin No. 24-008.

The Bulletin applies to motor vehicle warranty contracts, motor vehicle dealership loyalty programs and motor vehicle protection products (collectively referred to as the "products"). When these products meet the definition of "insurance", they are subject to the Insurance Act and must be underwritten by a licensed insurance company and sold through a licensed insurance agent, though certain classes of insurance may be sold by businesses holding a "restricted certificate of authority".

Practically, this means that the way in which some of these products are sold will have to change to comply with Alberta's insurance laws. For example, in many instances where a warranty company relied on the historical practice of being an obligor under a warranty contract and then purchased a contractual liability insurance policy (a CLIP) from a licensed insurer to insure the warranty company's obligations under the warranty

contract, if that product is now clearly considered and regulated as automobile insurance, the contract will have to be between the customer and an insurer licensed in Alberta for the class of automobile insurance.

We note that the Superintendent removed the Bulletin from its website shortly after publication. It is expected to be re-published without substantive changes and this alert will be updated as necessary.

Background

"Insurance" is defined in section 1 of the *Insurance Act* as "the undertaking by one person to indemnify another against loss or liability for loss in respect of certain risks or perils to which the object of the insurance might be exposed, or to pay a sum of money or other thing of value on the happening of a certain event."

The Superintendent's office recently undertook a thorough review of automobile-adjacent products and found that many of these products had the hallmarks of a contract of insurance, such as:

1. An insurable interest;
2. Terms of coverage;
3. Consideration pain in exchange for coverage;
4. The requirement of a fortuitous event to trigger payment; and
5. A promise to compensate another on the happening of such a fortuitous event.

Pursuant to the Insurance Act, no insurer may carry on business in Alberta unless they hold a valid and subsisting licence; however, certain classifications of insurance may be sold by prescribed businesses holding an insurance agency license called a "restricted certificate of authority" (a Restricted License). The Restricted License essentially authorizes the business to transact that type of insurance only. Such businesses include, for example, automobile dealerships, equipment dealers, and vehicle rental agencies. Restricted insurance types include, but are not limited to, equipment warranty insurance and guaranteed asset protection (GAP) insurance.

Motor vehicle warranty contracts

The Bulletin clarifies that the Superintendent distinguishes between two types of motor vehicle warranty contracts: (1) warranties and extended warranties sold by manufacturers (or their wholly owned subsidiary); and (2) third party extended motor vehicle warranties, typically sold by motor vehicle dealership.

Warranties sold by manufacturers are not insurance and are instead subject to the provisions of the *Consumer Protection Act,* 2000, c. C-26.3. In the event an insurer was to provide insurance as to cover any risk, peril, damage, or loss *beyond* deficiencies in the workmanship or materials of a motor vehicle, such products are contracts of insurance and are subject to the licensing requirements in the *Insurance Act.*

Similarly, extended vehicle warranty contracts sold by third parties, such as automative dealers, **are contracts of insurance**; however, warranty contracts providing coverage

"solely for those inherent deficiencies in the workmanship arising from the person's service or repairs of a motor vehicle", are **not** considered insurance.

Other products

The Bulletin helpfully describes and classifies other products sold in this space and we have organized some content from the Bulletin in chart form below for ease of reference:

Type of product	Insurance	When not insurance
Motor vehicle dealership loyalty programs: Typically, these products are sold at dealerships in conjunction with the purchase, lease, or finance of a new or used motor vehicle. The price is typically described as a membership fee. These products provide a dealership discount to consumers on a future replacement motor vehicle should an event occur that results in damage or total loss of the original motor vehicle.	Since these products indemnify consumers for part of the cost of purchasing a replacement motor vehicle only on the happening of a certain risk or peril, such as theft or collision, this is insurance, and these products must be developed, sold, and underwritten in compliance with the Insurance Act.	**Exception**: A debt waiver underwritten by the financing company is not insurance. For example, vehicle finance companies sometimes agree to waive up to a certain amount of a vehicle loan in the instance that the vehicle is written off, and the insurance payment is less than the outstanding loan amount.
Ancillary motor vehicle protection products (VPPs): There are a variety of motor VPPs available in the marketplace that are ancillary to the primary automobile insurance policy.	**Examples of VPPs that are insurance:** • Deductible reimbursement and/or monetary credits given in the event of loss, damage, or theft of a motor vehicle • Non-manufacturer tire and rim warranties providing for tire and rim replacement. This does not include warranties provided by the motor vehicle manufacturer for tires and rims it included in the motor vehicle's assembly	**Exception:** The Superintendent does not consider roadside **service plans**, or motor vehicle service plans that provide solely for planned maintenance or routine service of a motor vehicle, or minor repairs that are routine to the ownership of a motor vehicle, to be contracts of insurance. Examples of such services/repairs include: • Oil changes • Windshield repairs • Tire and rim repairs • Wiper blade replacements • Air filter replacements

	• Glass protection products promising to pay some or all of the cost of a windshield replacement • Products intended to deter theft that include a promise to make a payment in the event of the theft and/or non-recovery of the motor vehicle (or part thereof), such as theft-deterrent etching or tagging and catalytic converter anti-theft devices, that include a promise to pay if the product fails • Key fob replacement coverage • Payment for a motor vehicle rental provided in conjunction with a VPP that is insurance	• Scuff, sing, chip, cut, tear, and scratch repairs

An Alberta captive insurance company play for some?

Where a stakeholder finds itself having to restructure the distribution of automobile warranty products as a result of the bulletins discussed herein, and as a result is looking for a compliant way to continue to earn revenue from such products, there may be a way for them to establish an Alberta-domiciled captive insurance company to assume the risks of, and earn premiums paid for, such products.

We would be pleased to discuss this possibility so please do not hesitate to contact us to do so.

Key takeaways

- Alberta's automobile warranty industry stakeholders may not be able to rely on historical assumptions about the way in which they are permitted to distribute certain automotive warranties in the province.
- Some automobile warranty products previously not thought of as insurance are, indeed, considered and regulated as automobile insurance in Alberta and may have to be underwritten directly by a licensed insurer unless an exemption is available.

- Industry stakeholders may now need to explore new ways of earning revenue from the distribution of these products, including the possibility of establishing an Alberta-domiciled captive insurance company to do so.

For more information on this topic, or if you're looking for more information on how to establish a captive insurance company to assume the risks and earn premiums paid for, reach out to any of the authors or key contacts below.

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