

To: Corporate Services Committee

From: Beverly Hendry, Commissioner,  
Corporate Services Department

Report Number: CORP-16-58

Date of Report: June 16, 2016

Date of Meeting: June 20, 2016

Subject: Designated Driving Services: Insurance Requirements Interim  
Report

File: D-2200

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## **1.0 Purpose**

This report responds to City Council's ('Council') May 24, 2016 direction for staff to meet with representatives of local insurance agencies and Designated Driving (D.D.) Services to further investigate the type and level of insurance required for D.D. Services and to provide an interim report to the Corporate Services Committee ('Committee') by its June 20, 2016 meeting.

## **2.0 Recommendation**

That the Corporate Services Committee recommend to City Council:

That staff monitor the availability of a \$2 million Commercial General Liability insurance policy and report back to the Corporate Services Committee at its September 12, 2016 meeting with a final recommendation on the appropriate insurance requirements for Designated Driving Brokers.

## **3.0 Executive Summary**

At its May 24, 2016 meeting, Council directed staff to further investigate the appropriate type and level of insurance required for D.D. Services and to provide an interim report to Committee by June 20, 2016. Staff undertook two separate stakeholder meetings with Insurance Brokers and the Designated Driver Industry on June 3 and June 7 respectively. An assessment conducted by staff identified that while insurance requirements for D.D. Brokers in Designated Driving Services By-law 111-2015 ('By-law 111-2015') were appropriate, the Insurance Industry was not presently offering the two additional endorsements/coverages in conjunction with a \$2 million Commercial General Liability (C.G.L.) insurance policy as required by By-law 111-2015. This report recommends that staff continue to liaise with all stakeholders, monitor the availability of a \$2 million C.G.L.

insurance policy, and report back to the Corporate Services Committee at its September 12, 2016 meeting.

The following are reference documents appended to this report:

- **Attachment 1** - Applicable definitions in Designated Driving Services By-law 111-2015
- **Attachment 2** - Frequently Asked Questions: D.D. Services and Insurance

## **4.0 Input From Other Sources**

The following stakeholders were consulted in the preparation of this report:

- Finance Services - Risk Management and Insurance
- Legal Services
- Insurance Brokers in Oshawa
- Designated Driver Industry
- Insurance Corporation of British Columbia (I.C.B.C.)

## **5.0 Analysis**

### **5.1 Background**

At its May 9, 2016 meeting, Committee received delegations and correspondence from Dave Hare of Petley-Hare Limited, an insurance brokerage operating in Durham Region, and several members of the D.D. Industry raising concerns over the established insurance requirements for D.D. Brokers pursuant to By-law 111-2015. Delegates stated that, to their knowledge, they were unable to find an insurer that would offer a \$2 million C.G.L insurance policy in conjunction with the following two (2) additional endorsements for D.D. Brokers:

- Non-owned Automobile Liability
- Legal Liability for Damage to Automobiles in the Care, Custody or Control of the Insured

Council provided the following direction to staff at its May 24, 2016 meeting:

1. That Correspondence CORP-16-43 from Dave Hare, Petley-Hare Limited expressing concerns with Designated Driving Services By-law 111-2015 concerning the \$2M Commercial General Liability and Correspondence CORP-16-45 from Patricia and Giovanni Bandiera requesting Council repeal Designated Driving Services By-law 111-2015, be received for information; and,
2. That staff be directed to meet with representatives of local insurance agencies and Designated Driving Services to further investigate the type and level of insurance with an interim report to the Corporate Services Committee at the June 20, 2016 meeting; and;
3. That staff be directed to investigate the licensing recommended or required with a report back to the Corporate Services Committee at the September 12, 2016 meeting; and,
4. That the implementation of By-law 111-2015 be delayed to November 1, 2016.

This report responds to Council's second direction.

## **5.2 Current Insurance Framework for the Designated Driver Industry**

By-law 111-2015 establishes a regulatory framework for the D.D. Industry for the purposes of health and safety and consumer protection. In addition to other standards that address health and safety and consumer protection, By-law 111-2015 requires D.D. Brokers to maintain a Commercial General Liability insurance policy that:

- a) Includes a limit of liability of not less than two million dollars (\$2,000,000.00) per accident or occurrence
- b) Names the D.D. Broker and/or Owners as Named Insured(s)
- c) Insures all Designated Drivers who are employees of the D.D. Broker
- d) Includes additional endorsements of:
  - i. Non-owned Automobile Liability
  - ii. Legal Liability for Damage to Automobiles in the Care, Custody or Control of the Insured
- e) Requires that the City be notified of the cancellation of the C.G.L. policy by the insurer no fewer than fifteen (15) days prior to such cancellation.

**Table 1** provides a general overview of the insurance requirements for D.D. Brokers as established in By-law 111-2015. Section 5.3 provides a more detailed description of C.G.L. insurance policy.

**Table 1 D.D. Brokers and Required Insurance Coverage**

Insurance Coverage	Type of Coverage	Coverage Provided
Commercial General Liability Insurance (C.G.L.)	Insurance Policy	C.G.L. insurance is designed to protect a business against claims that arise out of the Insured's business operations that are generally <b>not</b> related to the operation of an automobile.
Non-Owned Automobile Liability	Additional Endorsement	An additional endorsement on a C.G.L. policy that provides coverage for claims that arise against the insured and/or employee for the use or operation of any automobile not owned in whole or in part or licensed in the name of the insured and/or employee.  Non-owned Automobile Liability Insurance is liability coverage for a vehicle used on behalf of a D.D. Broker but is not owned by the D.D. Broker; it provides coverage for employees who periodically use their personal vehicles on behalf of a D.D. Broker
Legal Liability for Damage to Automobiles in the Care, Custody or Control of the Insured	Additional Endorsement	An additional endorsement on a C.G.L. policy that provides liability coverage for the Insured for loss or damage arising from the care, custody or control of any automobile not owned in whole or in part by or licensed in the name of the Insured.

**5.3 Commercial General Liability Coverage**

A Commercial General Liability insurance policy is designed to respond to 'claims' that arise out of the Insured's business operations that are generally **not** related to the operation of an automobile. Coverage is provided for the Insured for a specified amount in instances when the Insured becomes obligated to pay for compensatory damages due to:

- **Bodily Injury** - For example, the client sues the D.D. Broker and/or Designated Driver because the client trips and falls while the Designated Driver is assisting the client up the steps to the client's house.
- **Property Damage** - For example, the client sues the D.D. Broker and/or Designated Driver because the Designated Driver damaged the client's assistive walking device while unloading it from the trunk of the client's vehicle.
- **Personal Injury** - For example, the client sues the D.D. Broker and/or Designated Driver because the client claims the Designated Driver wrongfully entered the vehicle and drove it without the client's permission.

Additional insurance coverages can be purchased under a C.G.L. insurance policy. Such coverages are commonly referred to as Additional Endorsements.

#### 5.4 Principal Issue: Additional Endorsements

The insurance requirements detailed in Section 5.2 were developed through discussions with members of the Insurance Industry and comparisons with similar industries. The present insurance framework represents the ideal level of insurance coverage for D.D. Brokers, their employees, and the public/customer. While the required insurance framework is offered for other business operations, staff are aware that the insurance requirements, as defined in Section 5.2, are not presently available to the D.D. Industry. Specifically, the C.G.L. insurance coverage **is available** to the D.D. Industry; however, the two (2) additional endorsements are not presently available **in conjunction** with the C.G.L. insurance coverage.

#### 5.5 Consultation Process

As per Council's May 24, 2016 direction, staff met with Insurance Brokers and members of the D.D. Industry to discuss their concerns. Sections 5.5.1 and 5.5.2 provide a summary of input received from stakeholders.

##### 5.5.1 Consultation with Insurance Brokers

Staff met with local insurance brokers on June 3, 2016 to discuss options and availabilities of appropriate insurance products for the D.D. Industry. Two (2) local insurance brokers attended and the following is a summary of input received:

- Insurance brokers are not aware of any insurance company that will presently offer a C.G.L. insurance policy **in conjunction** with the two (2) additional endorsements as specified in Section 5.2.
- A \$2 million C.G.L. insurance policy is available to D.D. Brokers and their employees and Designated Drivers operating as independent contractors for D.D. Brokers. Details of the policy from one insurance company are as follows:
  - The minimum premium for the \$2 million C.G.L. insurance policy for D.D. Brokers and their employees is approximately \$1000.
  - The premium is based on annual gross sales figures, and therefore, the higher the annual gross sales figure, the higher the premium.
- The province of British Columbia, through the Insurance Corporation of British Columbia<sup>1</sup>, offers a Valet insurance policy for D.D. Services which prevents the client's automobile insurance from being impacted if an accident occurs while a Designated Driver is operating the client's vehicle. It is important to note that this product is not available in Ontario.

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<sup>1</sup> The Insurance Corporation of British Columbia is a government-owned monopoly insurer which provides mandatory standard auto insurance to all registered vehicle owners in the province of British Columbia. Additional coverages can be purchased from private insurers or from the I.C.B.C.

### 5.5.2 Consultation with D.D. Brokers

Staff met with D.D. Brokers on June 7, 2016 to discuss options, availabilities, and their concerns regarding the appropriate level of insurance for the D.D. Industry. Seven (7) D.D. Brokers attended the consultation meeting and the following is a summary of input received:

- Two (2) of the D.D. Brokers attending the meeting reported having C.G.L. insurance coverage for their companies.
- Some D.D. Brokers expressed concerns regarding the cost associated with a requirement to maintain a C.G.L. insurance policy and that costs would be too prohibitive for Designated Drivers operating as independent contractors.
- Some D.D. Brokers were concerned that costs would impact the affordability of the service as D.D. Brokers would be compelled to charge higher fares. The increase in fares could potentially discourage impaired drivers from using their services.

### 5.6 Preliminary Assessment of Insurance Options and Recommended Insurance Framework

The primary objective of regulating the D.D. Industry, as stated earlier, is to establish minimum standards that address consumer protection and health and safety concerns for the general public and the D.D. Industry. Accordingly, staff have determined that establishing insurance requirements for D.D. Brokers is essential for addressing this objective.

The assessment of feedback from both the Insurance and D.D. Industries supports amending the insurance requirements for D.D. Brokers established in By-law 111-2015. Specifically, it is not presently possible for D.D. Brokers to comply with the By-law's insurance requirements considering insurance companies are not offering D.D. Brokers the option to acquire the two (2) additional endorsements<sup>2</sup> in conjunction with a \$2 million C.G.L. insurance policy. The assessment supports removing the requirement for D.D. Brokers to obtain the two (2) aforementioned additional endorsements and instead, require D.D. Brokers to only obtain \$2 million C.G.L. coverage. **Table 2** provides a summary of staff's recommendations.

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<sup>2</sup> Non-owned Automobile Liability and Legal Liability for Damage to Automobiles in the Care, Custody or Control of the Insured

**Table 2 Proposed Insurance Requirements for D.D. Brokers**

Insurance Coverage	Current Requirements	Proposed Requirements
<b>Commercial General Liability Coverage:</b> Commercial General Liability Insurance of not less than two million dollars (\$2,000,000.00) per accident or occurrence		
<b>Additional Endorsement:</b> Non-owned Automobile Liability		
<b>Additional Endorsement:</b> Legal Liability for Damage to Automobiles in the Care, Custody or Control of the Insured		

**5.6.1 Insurance Coverage under Proposed Insurance Framework**

The proposed insurance framework could potentially provide the following coverages detailed in the examples<sup>3</sup> below. Given that insurance policies vary in their levels of coverages and conditions, it is important to note that the following is for general reference purposes only and does not constitute advice on how insurance coverages will respond to each scenario.

**a) Accident involving Client’s Vehicle:** For example, the Designated Driver is involved in a collision in their client’s vehicle.

**Applicable Insurance Policy Providing Coverage:** Client’s Standard Automobile insurance policy responds to claims:

- for damage to the Client’s vehicle;
- for injury to occupants of the Client’s vehicle<sup>4</sup>; and
- for threshold injury claims presented by occupants of the third-party vehicle involved in the accident.

**Individuals Covered:** Table 3 details the parties that would be covered under the Client’s Standard Automobile insurance policy in the event of an accident involving the client’s vehicle.

<sup>3</sup> The examples provided represent a limited number of scenarios where applicable insurance coverages could apply.

<sup>4</sup> If an occupant is a Named Insured on their own automobile insurance policy, they would make a claim for injury with their own insurer.

**Table 3 Individuals Covered: Accident Involving Client’s Vehicle**

Client	D.D. Broker	Designated Driver (Employee)	Designated Driver (Contractor)
	Not applicable		

**b) Accident involving D.D. Support Vehicle:** For example, the Designated Driver operating the D.D. Support Vehicle is involved in a collision while delivering his/her fellow Designated Driver to a client.

**Applicable Insurance Policy Providing Coverage:** Designated Driver’s automobile insurance policy<sup>5</sup> responds to claims:

- for damage to the D.D. Support Vehicle;
- for injury to occupants of the D.D. Support Vehicle<sup>6</sup>; and
- for threshold injury claims presented by occupants of the third-party vehicle involved in the accident.

**Individuals Covered:** Table 4 details the parties that would be covered under the Designated Driver’s Automobile insurance policy<sup>7</sup> in the event of an accident involving the D.D. Support Vehicle.

**Table 4 Individuals Covered: Accident Involving a D.D. Support Vehicle**

Client	D.D. Broker	Designated Driver (Employee)	Designated Driver (Contractor)
Not applicable	Not applicable		

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<sup>5</sup> D.D. Support Vehicle insurance policy could include commercial vehicle insurance or a standard automobile insurance policy with a business rating.

<sup>6</sup> If an occupant is a Named Insured on their own automobile insurance policy, they would make a claim for injury with that insurer.

<sup>7</sup> D.D. Support Vehicle insurance policy could include commercial vehicle insurance or a standard automobile insurance policy with a business rating.

c) **Non-Automobile Related Claims:** For example, the client successfully sues the D.D. Broker and/or Designated Driver, an employee of the D.D. Broker, because the client trips and falls while the Designated Driver is assisting the client up the steps to the client’s house.

**Applicable Insurance Policy Providing Coverage:** D.D. Broker’s \$2 million C.G.L. insurance policy or the \$2 million C.G.L. insurance policy of the Designated Driver Contractor. Responds to claims for Bodily Injury presented by Client or any third party.

**Individuals Covered:** Table 5 details the parties that would be covered under the D.D. Broker’s or the Designated Driver Contractor’s \$2 million C.G.L. insurance policy in the event of a non-automobile related claim.

**Table 5 Individuals Covered: Non-Automobile Related Claims**

Client	D.D. Broker	Designated Driver (Employee)	Designated Driver (Contractor)
Not applicable			

**5.6.2 Proposed Insurance Requirement: \$2 Million C.G.L. for D.D. Brokers**

The proposed requirement for D.D. Brokers to maintain a \$2 million C.G.L. insurance policy will primarily protect D.D. Brokers and their employees from non-automobile related claims arising from their business operations. An ancillary benefit to this insurance requirement is that it provides a level of consumer protection as the consumer can potentially access a remedy in the event they are successful in a civil action against the D.D. Broker and/or their employees for non-automobile related claims.

Staff’s assessment has determined that requiring D.D. Brokers to maintain \$2 million C.G.L. insurance coverage is appropriate for the following reasons:

- The proposed insurance requirements provide a level of protection for the D.D. Industry and the consumer.
- The presence of such a policy is in keeping with good business practices and the associated costs do not appear prohibitive.
- A \$2 million C.G.L. insurance policy has no territorial restrictions and may be used for licensing purposes in other municipalities/jurisdictions that establish similar licensing regimes for D.D. Services in the future.

While requiring D.D. Brokers to maintain a \$2 million C.G.L. insurance policy constitutes the ideal type and level of insurance at this time, the availability of such a policy is presently limited. Therefore, it is recommended that staff continue to liaise with all stakeholders, monitor the availability of a \$2 million C.G.L. insurance policy for D.D. Brokers, and report back to the Corporate Services Committee at its September 12, 2016 meeting.

## 6.0 Financial Implications

There are no financial implications directly related to the recommendations in this report.

## 7.0 Relationship to the Oshawa Strategic Plan

The recommendations in this report respond to the Oshawa Strategic Plan Goal of 4.2: Accountable Leadership: Deliberate Community Engagement, and Develop and Leverage Relationships.



Jerry Conlin, Director,  
Municipal Law Enforcement and Licensing Services



Beverly Hendry, Commissioner,  
Corporate Services Department

Attachments

**Excerpt of Definitions from Designated Driving Services By-law 111-2015**

**Designated Drivers:** means

- any person who operates a motor vehicle owned by another Registered Motor Vehicle Owner for the purposes of providing Designated Driving Services; or
- any person who operates a Designated Driver Support Vehicle,

but does not include a "Driver" while operating a "Taxicab" as those two terms are defined by the City's Taxicab Licensing By-law.

**Designated Driving Brokers:** means any person who accepts or communicates orders or information in any way related to the provision of Designated Driving Services by a Designated Driver to another person.

**Designated Driving Services:** means the transportation of an impaired Registered Motor Vehicle Owner and their passengers, where applicable, in the Registered Motor Vehicle Owner's vehicle from a licensed establishment or social engagement within the City to one or more residences for payment of a salary, a fee or for any other consideration.

**Designated Driver Support Vehicle:** means a motor vehicle operated by a Designated Driver for the purposes of assisting another Designated Driver in the provision of Designated Driving Services.

## Frequently Asked Questions: Designated Driving Services and Insurance

**Note:** this document provides general information on D.D. Services and Insurance and is not intended as a substitute for legal and/or insurance advice.

### 1. Will using a Designated Driving Service impact my vehicle insurance?

**Answer:** In general, automobile insurance coverage is arranged for the insured vehicle and provides coverage for the driver and passengers using the insured vehicle with the owner's permission. When using a Designated Driving Service, any claims resulting from an accident caused by the Designated Driver may affect the customer's insurance record.

**It is important for prospective Designated Driving Service Customers to contact their insurance provider to ensure that they have appropriate coverage prior to using a Designated Driving Service.**

### 2. What is Commercial General Liability (C.G.L.) Insurance?

**Answer:** A C.G.L. insurance policy is designed to respond to 'claims' that arise out of the Insured's business operations that are generally **not** related to the operation of an automobile.

### 3. What sort of coverages does C.G.L. Insurance provide?

**Answer:** Coverage is provided for the Insured for a specified amount in instances when the Insured becomes obligated to pay for compensatory damages due to:

- **Bodily Injury** – For example, the client sues the D.D. Broker and/or Designated Driver because the client trips and falls while the Designated Driver is assisting the client up the steps to the client's house.
- **Property Damage** – For example, the client sues the D.D. Broker and/or Designated Driver because the Designated Driver damaged the client's assistive walking device while unloading it from the trunk of the client's vehicle.
- **Personal Injury** – For example, the client sues the D.D. Broker and/or Designated Driver because the client claims the Designated Driver wrongfully entered the vehicle and drove it without the client's permission.

4. **How much will C.G.L. Insurance cost for D.D. Brokers and how is the premium determined?**

**Answer:** The City is presently aware of an insurance company **or** companies that will offer a \$2 million C.G.L. insurance policy to D.D. Brokers and their employees and Designated Drivers operating as independent contractors for D.D. Brokers. According to one insurer, the minimum premium for a \$2 million C.G.L. insurance policy for Designated Driving Brokers and their employees is approximately \$1000. The premium is based on annual gross sales figures and therefore, the higher the annual gross sales figure, the higher the premium.

5. **Is a C.G.L. insurance policy valid in other jurisdictions if other municipalities regulate Designated Driving Services and establish a C.G.L. insurance requirement in their by-law?**

**Answer:** Yes.