

INSURING AGREEMENT

3. In consideration of a premium of \$.....or as stated in the Certificate of Insurance, the Insurer shall indemnify an eligible claimant for the amount that he or she is legally entitled to recover from an inadequately insured motorist as compensatory damages in respect of bodily injury to or death of an insured person arising directly from the use or operation of an automobile.

LIMIT OF COVERAGE UNDER THIS ENDORSEMENT

4. The Insurer's maximum liability under this endorsement, regardless of the number of eligible claimants or insured persons injured or killed or the number of automobiles insured under the Policy, is the amount by which the limit of family protection coverage exceeds the total of all limits of motor vehicle liability insurance, or bonds or cash deposits, or other financial guarantees as required by law in lieu of such insurance, of the inadequately insured motorist and of any person jointly liable with that motorist.
5. Where this endorsement applies as excess, the Insurer's maximum liability under this endorsement is the amount calculated under section 4 of this endorsement, less the amounts available to eligible claimants under any first loss insurance referred to in section 18 of this endorsement.

AMOUNT PAYABLE PER ELIGIBLE CLAIMANT

6. The amount payable to an eligible claimant under this endorsement shall be calculated by determining the amount of damages the eligible claimant is legally entitled to recover from the inadequately insured motorist, and deducting from that amount the aggregate of the amounts referred to in section 7 of this endorsement, but in no event shall the Insurer be obliged to pay an amount in excess of the limit of coverage as determined under sections 4 and 5 of this endorsement.
7. The amount payable under this endorsement to an eligible claimant is excess to an amount received by the eligible claimant from any source, other than money payable on death under a policy of insurance, and is excess to amounts that were available to the eligible claimant from,
- (a) the insurers of the inadequately insured motorist, and from bonds, cash deposits or other financial guarantees given on behalf of the inadequately insured motorist;
 - (b) the insurers of a person jointly liable with the inadequately insured motorist for the damages sustained by an insured person;
 - (c) the Société de l'assurance automobile du Québec;
 - (d) an unsatisfied judgment fund or similar plan, or which would have been payable by such fund or plan had this endorsement not been in effect;
 - (e) the uninsured automobile coverage of a motor vehicle liability policy;
 - (f) an automobile accident benefits plan applicable in the jurisdiction in which the accident occurred;
 - (g) a law or policy of insurance providing disability benefits or loss of income benefits or medical expense or rehabilitation benefits;
 - (h) any applicable workers' compensation plan or law of the jurisdiction in which the accident occurred;
 - (i) the family protection coverage of another motor vehicle liability policy.
8. If the Insurer is presented with claims by more than one eligible claimant and the total amount payable to the eligible claimants exceeds the limit of the Insurer's liability under sections 4 and 5 of this endorsement, the Insurer shall pay to each eligible claimant a pro rata portion of the amount otherwise payable to each eligible claimant; and if payments are made to eligible claimants prior to the receipt of actual notice of any additional claim, the limits in sections 4 and 5 shall be the amount calculated under those sections less the amounts paid to the prior eligible claimants.

DETERMINATION OF THE AMOUNT RECOVERABLE

9. The amount that an eligible claimant is entitled to recover shall be determined in accordance with the procedures set forth for determination of the issues of quantum and liability under Section 3 (Uninsured Automobile Coverage) of the Policy.
10. In determining the amount that an eligible claimant is entitled to recover from the inadequately insured motorist, issues of quantum shall be decided in accordance with the law of Ontario, and issues of liability shall be decided in accordance with the law of the place where the accident occurred.
11. In determining any amounts that an eligible claimant is entitled to recover, no amount shall be included with respect to prejudgment interest which accumulated prior to notice as required by section 15 of this endorsement.
12. In determining any amounts that an eligible claimant is entitled to recover, no amount shall be included with respect to punitive, exemplary, aggravated or other damages awarded in whole or in part because of the conduct of the inadequately insured motorist or the person jointly liable with him or her, unless these damages are for the purpose of compensating the eligible claimant for losses actually incurred.
13. In determining any amounts an eligible claimant is entitled to recover from an inadequately insured motorist, no amount shall be included with respect to costs.
14. For the purposes of this endorsement, the findings of a court with respect to issues of quantum or liability are not binding on the insurer unless the insurer was provided with a reasonable opportunity to participate in those proceedings as a party.

PROCEDURES

15. The following requirements are conditions precedent to the liability of the Insurer to an eligible claimant under this endorsement:
- (a) the eligible claimant shall promptly give written notice, with all available particulars, of any accident involving injury to or death of an insured person and of any claim made on account of the accident;
 - (b) the eligible claimant shall, upon request, provide details of any policies of insurance other than life insurance to which the eligible claimant may have recourse;
 - (c) the eligible claimant and the insured person shall submit to examination under oath, and shall produce for examination at such reasonable place and time as is designated by the Insurer or its representative, all relevant documents in their possession or control, and shall permit extracts and copies of them to be made.
16. Where an eligible claimant commences a legal action for damages for bodily injury or death against any other person owning or operating an automobile involved in the accident, a copy of the initiating process shall be delivered or sent by registered mail immediately to the chief agent or head office of the Insurer in Ontario together with particulars of the insurance and loss.
17. Every action or proceeding against the Insurer for recovery under this endorsement shall be commenced within 12 months of the date that the eligible claimant or his or her representative knew or ought to have known that the quantum of claims with respect to an insured person exceeded the minimum limits for motor vehicle liability insurance in the jurisdiction in which the accident occurred, but this requirement is not a bar to an action which is commenced within 2 years of the date of the accident.

MULTIPLE COVERAGES

18. The following rules apply where an eligible claimant is entitled to payment under family protection coverage under more than one policy:
- (a) (i) if he or she is an occupant of an automobile, such insurance on the automobile in which the eligible claimant is an occupant is first loss insurance and any other such insurance is excess;
 - (ii) if he or she is not an occupant of an automobile, such insurance in any policy in the name of the eligible claimant is first loss insurance and any other such insurance is excess.
 - (b) all applicable first loss family protection coverage shall be apportioned on a pro rata basis, but in no event shall the aggregate payment under all such insurances exceed the highest limit of coverage provided by any one of such first loss insurances;
 - (c) the applicable first loss insurance shall be exhausted before recourse is made to excess insurances;
 - (d) all applicable excess family protection coverage shall be similarly apportioned on a pro rata basis, but in no event shall the aggregate payment under all such insurances exceed the highest limit of coverage, as defined in section 5 of this endorsement, which is provided by any one of such excess insurances.

ACCIDENTS IN THE PROVINCE OF QUEBEC

19. This endorsement does not apply to an accident occurring in the Province of Quebec for which compensation is payable under the *Automobile Insurance Act* (Quebec) or under an agreement referred to in that Act.

SUBROGATION

20. Where a claim is made under this endorsement, the Insurer is subrogated to the rights of the eligible claimant by whom a claim is made, and may maintain an action in the name of that person against the inadequately insured motorist and the persons referred to in section 7 of this endorsement.

ASSIGNMENT OF RIGHTS OF ACTION

21. Where a payment is made under this endorsement, the Insurer is entitled to receive from the eligible claimant an assignment of all rights of action, whether judgment is obtained or not, and the eligible claimant undertakes to cooperate with the Insurer, except in a pecuniary way, in the pursuit of any subrogated action or any right of action so assigned.

MISCELLANEOUS

22. If this endorsement applies to more than one automobile, coverages shall be construed as if provided by separate policies of insurance with respect to each automobile to which this endorsement applies, subject to the provisions of section 18 of this endorsement.

Except as otherwise provided in this endorsement, all limits, terms, conditions, provisions, definitions and exclusions of the Policy to which this endorsement is attached shall have full force and effect.