Bulletin

No. A-06/90

Property & Casualty

- Auto

Endorsements attached to O.P.F. 4 (Garage Policy)

Enclosed is a complete set of endorsements attached to O.P.F. 4 (Garage Policy), approved by the Commissioner of Insurance.

Bernard Webber

Deputy Commissioner

July 13, 1990

Attachments :

- Endorsements
- O.E.F. 70 Named Chauffeur Endorsement (for Garage Policy O.P.F. 4)
- O.E.F. 71 Excluding Owned Automobiles Endorsement (for Garage Policy O.P.F. 4)
- O.E.F. 72 Multiple Alteration Endorsement (for Garage Policy O.P.F. 4)
- O.E.F. 73 Excluding Financed Automobiles Endorsement (for Garage Policy O.P.F. 4)

- O.E.F. 74 Open Lot Theft Endorsement - Owned Automobiles (for Garage Policy O.P.F. 4)
- O.E.F. 75 Open Lot Theft Endorsement - Customers' Automobiles (for Garage Policy O.P.F. 4)
- O.E.F. 76 Additional Insured Endorsement Broad Form (for Garage Policy O.P.F. 4)
- O.E.F. 77 Liability for Comprehensive Damage to a Customers Automobile Endorsement (Including Open Lot Theft (for Garage Policy O.P.F. 4)
- O.E.F. 78 Reduction of Coverage for Named Persons Endorsement (for Garage Policy O.P.F. 4)
- O.E.F. 78A Excluded Driver Endorsement (for Garage Policy O.P.F. 4)
- O.E.F. 79 Fire and Theft Deductible Endorsement (for Garage Policy O.P.F. 4)
- O.E.F. 80 Specified Owned Automobile Physical Damage Coverage (for Garage Policy O.P.F. 4)
- O.E.F. 81 Garage Family Protection Endorsement (for Garage Policy O.P.F. 4)
- Amount Payable per Eligible Claimant

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Financial Services Commission of Ontario
5160 Yonge Street
Toronto, ON M2N 6L9
1-800-668-0128
(416) 250-7250

July 13, 1990

ENDORSEMENTS

Attached to OPF 4

No.	70	Named Chauffeur Endorsement
	71	Excluding Owned Automobiles Endorsement
	72	Multiple Alteration Endorsement
	73	Excluding Financed Automobiles Endorsement
	74	Open Lot Theft Endorsement - Owned Automobiles
	75	Open Lot Theft Endorsement - Customers' Automobiles
	76	Additional Insured Endorsement Broad Form
	77	Liability for Comprehensive Damage to Customers' Automobile Endorsement (including Open Lot Theft)
	78	Reduction of Coverage for Named Persons Endorsement
	78A	Excluded Driver Endorsement
	79	Fire and Theft Deductible Endorsement
	80	Specified Owned Automobile Physical Damage Coverage
	81	Garage Family Protection Endorsement

O.E.F. 70

NAMED CHAUFFEUR ENDORSEMENT

(for Garage Policy O.P.F. 4)

In consideration of the reduced premium, it is agreed that the insurance under Part C, subsection 3.1.1(Collision or Upset) of this Policy shall apply only while following person(s) is personally in control as driver or occupant of the automobile.

NAME(S)

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

Attached to and forming part of Policy No.

Issued to

This endorsement shall be effective from Y. M. D. from am. p.m. local time or as stated in the Policy to which this endorsement is attached.

....
Signature of insured

67410 (7/90)

O.E.F. 71

EXCLUDING OWNED AUTOMOBILES ENDORSEMENT

(for Garage Policy O.P.F. 4)

In consideration of the reduced premium, it is agreed that Parts A, B, C and D shall not apply to loss or damage arising from the ownership, use or operation of any automobile owned, hired or leased by or licensed in the name of the insured.

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

Attached to and forming part of Policy No.

Issued to

7lis endorsement shall be effective from Y M D from am. p.m. local time or as stated in the Policy to which this endorsement is attached.

....
Signature of insured

67412 (7/90)

O.E.F. 72

MULTIPLE ALTERATION ENDORSEMENT

(for Garage Policy O.P.F. 4)

It is agreed that the following change(s) is made to the Item(s) of the Application listed below.

ITEM NO.	PARTICULARS OF CHANGE

CHANGE IN PREMIUM (IF ANY)				
INSURING AGREEMENTS			RETURN PREMIUM	ADDITIONAL PREMIUM
PART A - Third Party Liability				
	Bodily Injury			
	Property Damage			
	Third Party Inclusive Limit			
PART B -Accident Benefits				
PART C - Loss of or Damage to Owned Automobiles				
Subsections	3.1.1	All Perils		
	3.1.2	Collision or Upset		
	3.1.3	Comprehensive		
	3.1.4	Specified Perils		
PART D - Uninsured Automobile Coverage				
PART E - Liability for Damage to a Customer's Automobile while in the care, custody or control of the Insured				
Subsections	5.1.1	Collision or Upset		
	5.4	Specified Perils		
ONTARIO ENDORSEMENT FORMS (O.E.Fs) No. and Name				
		TOTAL		
NET ADDITIONAL / RETURN PREMIUM				

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

Attached to and forming part of Policy No.

Issued to

This endorsement shall be effective from Y M D from am. p.m. local time or as stated in the Policy to which this endorsement is attached.

....

Signature of insured

67414 (7/90)

O.E.F. 73

EXCLUDING FINANCED AUTOMOBILES ENDORSEMENT
(for Garage Policy O.P.F. 4)

It is agreed that the insurer shall not be liable under subsections 3.1.2,3.1.3 or3.1.4 of Part C of this Policy for loss of or damage to any automobile held for sale by the insured which is financed by or held on consignment from..
....
.... as lienholder or mortgagee.

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

Attached to and forming part of Policy No.

Issued to

This endorsement shall be effective from Y M D from am. p.m. local time or as stated in the Policy to which this endorsement is attached.

....

Signature of insured

67416 (7/90)

O.E.F. 74

OPEN LOT THEFT ENDORSEMENT - OWNED AUTOMOBILES

(for Garage Policy O.P.F. 4)

In consideration of a premium of $.............................. it is agreed that exclusion 3.16 of Part C of the Policy to which this endorsement is attached is deleted.

It is further agreed that each separate occurrence by theft, except the theft of an entire automobile, from any open lot or unroofed space owned, rented or controlled by the insured shall give rise to a separate claim in respectof which the insurer's liability shall be limited to the amount of loss or damage in excess of the sum of $......................... payable by the insured.

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

Attached to and forming part of Policy No.

Issued to

This endorsement shall be effective from Y M D from am. p.m. local time or as stated in the Policy to which this endorsement is attached.

....

Signature of insured

67418 (7/90)

O.E.F. 75

OPEN LOT THEFT ENDORSEMENT - CUSTOMERS' AUTOMOBILES

(for Garage Policy O.P.F. 4)

In consideration of a premium of $.............................. it is agreed that exclusion (c) of section 5.6 of Part E the Policy to which this endorsement is attached is deleted.

It is further agreed that each separate occurrence by theft, except the theft of an entire automobile, from any open lot or unroofed space owned, rented or controlled by the insured shall give rise to a separate claim in respect of which the insurer's liability shall be limited to the amount of loss or damage in excess of the sum of $......................... payable by the insured.

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

Attached to and forming part of Policy No.

Issued to

This endorsement shall be effective from Y M D from am. p.m. local time or as stated in the Policy to which this endorsement is attached.

....
Signature of insured

67420 (7/90)

O.E.F. 76

ADDITIONAL INSURED ENDORSEMENT

BROAD FORM

(for Garage Policy O.P.F. 4)

In consideration of a premium of $.............................. it is agreed that paragraph (c) of section 6.15 of the General Provisions, Definitions and Exclusions of the Policy to which this endorsement is attached, is deleted and replaced by the following:

provided by the insured to any person, for regular or frequent use, except an active partner or a full time employee of the business stated in Item 3 of the Application; or the person(s) named below.

Name(s)	Position or relationship to insured

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

Attached to and forming part of Policy No.

Issued to

This endorsement shall be effective from Y M D from a.m. p.m. local time or as stated in the Policy to which this endorsement is attached.

67422 (7/90)

O.E.F. 77

LIABILITY FOR COMPREHENSIVE DAMAGE TO A CUSTOMERS AUTOMOBILE ENDORSEMENT (INCLUDING OPEN LOT THEFT (for Garage Policy O.P.F. 4)

In consideration of a premium of $ ____________ it is agreed that section 5.4 of Part E of Item 5 of the Application is amended to read as follows:

INSURING AGREEMENT

PART E	PERIL	LOCATION AS PER ITEM 1	MAXIMUM NUMBER OF CUSTOMERS' AUTOMOBILES	LIMIT OF LIABILITY; ANY ONE OCCURRENCE	DEDUCTIBLE APPLICABLE TO EACH SEPARATE OCCURRENCE (EXCEPT FOR LOSS OR DAMAGE BY FIRE, LIGHTNING OR THEFT OF THE ENTIRE AUTOMOBILE)	ADVANCE OR FULL PREMIUM
LIABILITY FOR DAMAGE TO A CUSTOMER'S AUTOMOBILE IN THE CARE, CUSTODY OR CONTROL OF THE INSURED	COMPREHENSIVE EXCLUDING COLLISION OR UPSET	1			$	$
		2			$	$
		3			$	$
		4			$	$
					TOTAL PREMIUM	$

It is agreed that sections 5.4, 5.5 and 5.6 of Part E of the Policy are deleted and replaced as follows:

5.4 The insurer agrees to indemnify the insured against the liability imposed by law upon the insured for loss of or damage to a customer's automobile, including its equipment while attached to the automobile, and including reimbursement of expenses incurred for taxicabs, public transportation or rental of a substitute automobile, for

COMPREHENSIVE - caused by any peril other than by collision with another object or by upset provided that,

(a) "another object" includes an automobile to which the automobile is attached and the surface of the ground and any object in or on the surface; and

(b) "peril" includes, but is not limited to, loss or damage caused by missiles, falling or flying objects, fire, theft, explosion, earthquake, windstorm, hail, rising water, vandalism, riot or civil commotion.

LIMIT'S OF LIABILITY APPLICABLE TO SECTION 5.4

5.5 The insurer SHALL NOT BE LIABLE,
5.5.1 in respect of any one occurrence for,

(a) any amount in excess of the limits of liability stated in section 5.4 of Part E of Item 5 of the Application at each specified location, and expenditures provided for in the Additional Agreements of this Part;

(b) any amount at a newly acquired location in excess of the lowest limit of liability stated for any specified location; and

(c) loss or damage to more than four owned automobiles at any location not used by the insured in the business specified in Item 3 of the Application.

EXCLUSIONS

5.5.2 for loss or damage,

(a) from the explosion of tires, or consisting of or caused by mechanical fracture or breakdown of any part of the automobile, or by rusting, corrosion, wear and tear, freezing, or explosion within the combustion chamber, BUT the insurer will be liable if the loss or damage is coincident with other loss or damage which is covered by section 5.4, or is caused by fire, theft or vandalism;

(b) caused directly or indirectly by contamination by radioactive material;

(c) to contents of automobiles or trailers; or

(d) to tapes and equipment for use with a tape player or recorder, when the tapes or equipment are detached from the player or recorder.

DEDUCTIBLE

5.6 Each occurrence causing loss or damage covered under section 5.4 shall give rise to a separate claim, and the insurer's liability for each claim shall be limited to the amount of loss or damage in excess of the sum payable by the insured as stated in section 5.4 of Part E of Item 5 of the Application; BUT there shall be no sum payable by the insured where the loss or damage is caused by fire or lightning or theft of the entire automobile.

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

Attached to and forming part of Policy No.

Issued to

This endorsement shall be effective from Y M D from a.m. p.m. local time or as stated in the Policy to which this endorsement is attached.

67424 (7/90)

O.E.F. 78

REDUCTION OF COVERAGE FOR NAMED PERSONS ENDORSEMENT

(for Garage Policy O.P.F. 4)

It is agreed that the limits, amounts, perils and deductible amounts specified in parts A, C, and E of the Application are amended to read as stated below while..is personally driving the automobile.

<table>
<tr><th colspan="3">INSURING AGREEMENTS</th><th>LIMITS AND DEDUCTIBLE</th><th>INSURED/
NOT INSURED</th></tr>
<tr><td rowspan="3">PART A
THIRD PARTY
LIABILITY</td><td colspan="2">Bodily injury</td><td></td><td></td></tr>
<tr><td colspan="2">Property Damage</td><td></td><td></td></tr>
<tr><td colspan="2">Third Party Inc. Limit</td><td></td><td></td></tr>
<tr><td>PART C
LOSS OF OR DAMAGE TO OWNED AUTOMOBILE</td><td>SUB. SEC.
3.1.1</td><td>COLLISION OR UPSET</td><td>ACTUAL CASH VALUE AT TIME OF LOSS OR DAMAGE NOT EXCEEDING THE ACTUAL COST TO THE INSURED.

DEDUCTIBLE BY INSURED IN RESPECT OF EACH SEPARATE AUTOMOBILE $__________</td><td></td></tr>
<tr><td>PART E
LIABILITY FOR DAMAGE TO A CUSTOMER'S AUTOMOBILE WHILE IN THE CARE, CUSTODY OR CONTROL OF THE APPLICANT</td><td>SEC.
5.1</td><td>COLLISION OR UPSET</td><td>ANYONE CUSTOMER'S AUTOMOBILE
$__________
DEDUCTIBLE BY INSURED IN RESPECT OF EACH SEPARATE OCCURRENCE
$__________</td><td></td></tr>
</table>

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

Attached to and forming part of Policy No.

Issued to

This endorsement shall be effective from Y M D from a.m. p.m. local time or as stated in the Policy to which this endorsement is attached.

....

Signature of insured

67426 (7/90)

O.E.F. 78A

EXCLUDED DRIVER ENDORSEMENT

(for Garage Policy O.P.F. 4)

BY SIGNING THIS FORM YOU WILL BE WITHOUT SOME INSURANCE FOR SOME ACCIDENTS

1. Except as provided under Part B (Accident Benefits), it is agreed that all insurance provided by this Policy is eliminated while ______________________ (excluded driver) ______________________ drives any of the automobiles defined in the Policy.

2. **Acknowledgment of Excluded Driver**
   I acknowledge that if I drive any of the automobiles deflned in the Policy, there is no coverage for (i) my liability for property damage and bodily injury caused to others, (ii) my liability for damage to any of the automobile(s), and (iii) same Accident Benefits.

____
(excluded driver)

3. Acknowledgement of Named Insured

   I acknowledge that if ______________ (excluded driver) ______________ in the Policy, drives any of the automobiles defined in the policy, there is no coverage for (i) my liability for property damage and bodily injury caused to others, (ii) my liability for damage to any of the automobiles), and (iii) same Accident Benefits.

____
(named insured)

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

Attached to and forming part of Policy No.

Issued to

This endorsement shall be effective from Y M D from am. p.m. local time or as stated in the Certificate of Insurance to which this endorsement is attached.

67427 (7/90)

O.E.F. 79

FIRE AND THEFT DEDUCTIBLE ENDORSEMENT

(for Garage Policy O.P.F. 4)

In consideration of the premium, it is agreed that the amount deductible under subsections 3.1.2, 3.1.3 or 3.1.4 of Part C of the Policy shall also apply on each occurrence for loss or damage caused by fire, or theft of the entire automobile.

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

Attached to and forming part of Policy No.

Issued to

This endorsement shall be effective from Y M D from am. p.m. local time or as stated in the Policy to which this endorsement is attached.

....
Signature of insured

67428 (7/90)

O.E.F. 80
SPECIFIED OWNED AUTOMOBILE PHYSICAL DAMAGE COVERAGE
(for Garage Policy O.P.F. 4)

In consideration of the premium, it is agreed that the Insuring Agreement of Part C - (Loss of or Damage to Owned Automobiles), is amended to indemnify the insured against direct and accidental loss of or damage to only those owned automobiles specified on this endorsement, including equipment while attached to and forming part of the automobiles.

AUTO NO.	**MDL YR.**	**TRADE NAME**	**MODEL OR C.C.**	**BODY TYPE**	**VIN. (SERIAL NO.)**	**LIST PRICE NEW INCL EQUIPM'T**

AUTO NO.	**LIENHOLDER: NAME AND POSTAL ADDRESS**

AUTO NO.	**COLLISION**		**COMPREHENSIVE**		**SPECIFIED PERILS**		**SPECIFIED PERILS EXCLUDING THEFT**		**PREMIUM**
	DED.	PREMIUM	DED.	PREMIUM	DED.	PREMIUM	DED.	PREMIUM	
								TOTAL PREMIUM	**$**

It is agreed that with respect to only those owned automobiles specified on this endorsement and insured for Comprehensive (subsection 3.1.2) or Specified Perils (subsection 3.1.3) that exclusion 3.16 of Part C of the Policy to which this endorsement is attached is deleted.

It is agreed that each separate occurrence by theft, except the theft of an entire automobile, from any open lot or unroofed space, owned, rented or controlled by the insured shall give rise to a separate claim in respect of which the insurer's liability shall be limited to the amount of loss or damage in excess of the deductible sum (payable by the insured) shown in subsection 3.1.2 or 3.1.3 for the applicable automobiles.

It is agreed that loss, if any, under Part C of the Insuring Agreements of the Policy to which this endorsement is attached shall, in the event that the automobile is not repaired or the lost or damaged parts are not replaced, be payable, jointly as their interests may appear, to the insured and to the lienbolder or mortgagee or assignee (referred to as 'lienholder") stated above.

If the insurance provided by any subsection of Part C of the Insuring Agreements of the Policy is cancelled, the Insurer hereby agrees to give fifteen days written notice of the cancellation to the lienholder. Notwithstanding anything contained in any renewal certificate issued subsequent to the date stated below, the obligation to notify the lienholder shall not be effective after the expiry date specified in Item 2 of the Application.

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

Attached to and forming part of Policy No.

Issued to

This endorsement shall be effective from Y M D from am. p.m. local time or as stated in the Policy to which this endorsement is attached.

67430 (7/90)

O.E.F. 81

GARAGE FAMILY PROTECTION ENDORSEMENT

(for Garage Policy O.P.F. 4)

DEFINITIONS

1. Subject to section 2, in this endorsement,

1.1 "automobile" means a vehicle for which motor vehicle liability insurance would be required if were subject to the law of Ontario.

1.2 "dependent relative" means

(a) a person who is principally dependent for financial support upon the named insured or his or her spouse, and who is

(i) under the age of 18 years;

(ii) 18 years or over and is mentally or physically incapacitated

(iii) 18 years or over and in full-time attendance at school, college, or university.

(b) a relative of the named insured or of his or her spouse, who is principally by dependent on the named insured or his or her spouse for financial support;

(c) a relative of the named insured or of his or her spouse, who resides in the same dwelling premises as the named insured; and

(d) a relative of the named insured or of his or her spouse while an occupant of the described automobile, a newly acquired automobile, or a temporary substitute, as defined in the Policy.

BUT subsections 1.2(c) and 1.2(d) apply only when the person injured or killed is not an insured person as defined in the family protection coverage of any other policy of insurance or does not own or lease for more than 30 days an automobile which is licensed in any jurisdiction of Canada where family protection coverage is available.

1.3 "eligible claimant" means

(a) the person who sustains bodily injury; and

(b) any other person who, in the jurisdiction in which an accident occurs, is entitled to maintain an action against the inadequately insured motorist for damages because of bodily injury to or death of an insured person.

1.4 "family protection coverage" means the insurance provided by this endorsement and any similar indemnity provided under any other contract of insurance.

1.5 "inadequately insured motorist" means

(a) the identified owner or identified driver of an automobile for which the total motor vehicle liability insurance or bonds, ash deposits or other financial guarantees as required by law in lieu of insurance, obtained by the owner or driver is less than the limit of family protection coverage; or

(b) the identified owner or identified driver of an uninsured automobile as defined in Part D of the Policy;

PROVIDED THAT

(A) where an eligible claimant is entitled to recover damages from an inadequately insured motorist and the owner or operator of any other automobile, for the purposes of

(i) (a) above, and

(ii) determining the limit of coverage under section 4 of this endorsement,

the limit of motor vehicle liability insurance shall be deemed to be the aggregate of all limits of motor vehicle liability insurance and all bonds, cash deposits, or other financial guarantees required by law in lieu of such insurance, for all of the automobiles; and

(B) where an eligible claimant is entitled to recover damages from the identified owner or

identified driver of an uninsured automobile as defined in the Policy for the purpose of
(i) (a) and (b) above; and
(ii) determining the limit of coverage under section 4 of this endorsement;
Other uninsured automobile coverage available to the eligible shall be taken into account as if it were motor vehicle liability insurance with the same limits as the uninsured automobile coverage.

1.6 "insured person" means
(a) while an occupant of an owned automobile as defined in the Policy,
(i) the named insured if an individual
(ii) all active partners and full time employees of the business described in item 3 of the Policy, if they are provided with an owned automobile as defined in the Policy for their regular personal use on a full time basis,
(iii) any person specified in an additional Insured Endorsement if they are provided with an owned automobile as defined in the Policy for their regular personal use on a full time basis, and
(iv) if residing in the same dwelling premises, the spouse of persons described in 1.6 (a) (i), (ii) and (iii), and any dependent relative of either;
(b) while an occupant of any other automobile (except an automobile excluded by type or use in the Policy) or while not the occupant of an automobile when struck by an automobile,
(i) the named insured if an individual, providing such individual does not lease an automobile for a period in excess of 30 days,
(ii) the persons described in 1.6 (i), (ii), (iii) and (iv) providing such persons do not own an automobile or lease an automobile for a period in excess of 30 days which is licensed in any jurisdiction of Canada where family protection coverage is available.

1.7 "limit of family protection coverage" means the amount set out in the Policy documents with respect to this endorsement, but if no amount is set out in the Policy, the limit set out in Part A (Third Party Liability) of the Policy is the limit of the family protection coverage.

1.8 "limit of motor vehicle liability insurance" means the amount stated in the Application as the limit of liability of the insurer the with respect to liability claims, regardless of whether that limit is reduced by the payment of claims or otherwise;
PROVIDED THAT in the event that an insurer's liability under a policy is reduced by operation of law to the statutory minimum limits in a jurisdiction because of a breech of the Policy, the statutory minimum limits are the limits of motor vehicle liability insurance in the Policy.

1.9 "Policy" means the Policy to which this endorsement is attached.

1.10 "Spouse" means either a man or a woman who
(a) are married to each other;
(b) have together in good faith entered marriage; or
(c) are not married to each other and have cohabited continuously for a period of not less than 3 years, or have cohabited in a relationship of some permanence if they are the natural or adoptive parents of a child.

1.11 "uninsured automobile" means an automobile with respect to which neither the owner nor driver thereof has applicable and collectible bodily injury liability and property damage liability insurance for its ownership, use or operation but it does not include an automobile owned by or registered in the name of the insured or his or her spouse.

2. The definitions in section 1 apply as of the time of the happening for which indemnity is provided under this endorsement.

INSURING AGREEMENT

3. In consideration of a premium of $... or as stated in the Policy to which this endorsement is attached, the insurance 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 or death of an insured person arising directly or indirectly 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, 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 deducing from that amount the aggregate of the amounts referred to in section 7, but in no event shall the insurer be obliged to pay an amount in excess of the limit of coverage as determined under section 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
   - (b) the insurer's of the inadequately insured motorist for the damages sustained by an injured person;
   - (c) the Régie de l'assurance automobile du Québec;
   - (d) an unsatisfied judgement fund or similar plan, or which would have been payable by such fund or plan had this endorsement not been 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 Act or similar 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 section 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 the eligible to prior to the receipt of actual notice of any additional claim, the limits in section 4 and 5 shall be the amount calculated under those sections 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 Part D (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 prejudgement interest which accumulated prior to notice as required by section 15.
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 damage 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 proceeding 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 to 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 within12 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 action which is commenced withing 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 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, 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.

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 judgement 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.

Except as otherwise stated in this endorsement, all limits, terms, conditions, provisions, definitions and exclusions of this Policy shall have full force and effect.

Attached to and forming part of Policy No.

Issued to
This endorsement shall be effective from Y M D from am. p.m. local time or as stated in the Policy to which this endorsement is attached.

67431 (7/90)