

**SECTION D – UNINSURED MOTORIST COVER S.P.F. No. 4**

**NUNAVUT ONLY**

The Insurer agrees to pay all sums which an insured person shall be legally entitled to recover from the owner or driver of an uninsured or unidentified automobile as damages for bodily injury and all sums which any other person shall be legally entitled to recover as damages because of the death of any insured person, resulting from an accident involving an automobile.

1. The insurer shall not be liable under this Section:
2. to any person who has a right of recovery under an unsatisfied judgment or similar fund or plan in effect in any jurisdiction of Canada or the United States of America;
3. to any person who, without the written consent of the Insurer, makes directly or through his representative any settlement with or prosecutes to judgment any action against any person or organization which may be legally liable therefor;
4. for any amount in excess of the minimum limit(s) for automobile bodily injury liability insurance applicable in the jurisdiction in which the accident occurs regardless of the number of persons so injured or killed, but in no event shall such limit(s) exceed the minimum limit(s) applicable in the jurisdiction stated in item 1 of the application.
5. **Definitions:**

In this Section

(a) the words "insured automobile" mean an owned automobile or a customer's automobile;

(b) the words "insured person" mean

1. any person while an occupant of the insured automobile;
2. the insured and, if residing in the same dwelling premises as the insured, his or her spouse and any dependent relative of either while an occupant of an uninsured automobile;
3. if the insured is a corporation, unincorporated association or partnership, any director, office, employee or partner of the insured for whose regular use of the insured automobile is provided, and, if residing in the same dwelling premises as such person, his or her spouse and any dependent relative of the person or the spouse while an occupant of an uninsured automobile, provided that such director, officer, employee or partner or his or her spouse is not the owner of an automobile insured under a contract;

(c) The words “uninsured automobile” mean an automobile with respect to which neither the owner or the driver thereof has applicable and collectible bodily injury liability insurance for its ownership, use or operation, but shall not include an automobile owned by or registered in the name of:

1. the name insured or by any person residing in the same dwelling premises therewith; or
2. the government of Canada or the United States of America or any political sub-division thereof or any agency or corporation owned or controlled by any of them, or
3. any person who is an authorized self-insurer within the meaning of a financial or safety responsibility law; or
4. any person who has filed a bond or otherwise given proof of financial responsibility with respect to his liability for the ownership, use or operation of automobiles;

(d) The words “unidentified automobile” mean an automobile which causes bodily injury or death to an insured person arising out of physical contact of such automobile with the automobile of which the insured person is an occupant at the time of the accident, provided

1. the identity of either the owner or driver of such automobile cannot be ascertained; and
2. the insured person or someone on his behalf has reported the accident within 24 hours to a police, peace or judicial officer or to an administrator of motor vehicle laws and shall have filed with the Insurer within 30 days thereafter a statement under oath that the insured person or his legal representative has a cause or causes of action arising out of such accident for damages against a person or persons whose identity cannot be ascertained, and setting forth the facts in support thereof; and
3. at the request of the Insurer, the insured person or his legal representative makes available for inspection the automobile of which the insured person was an occupant at the time of the accident.
4. **Qualification of Dependent Relative**

Where a dependent relative referred to in paragraph (b) of clause 2,

1. Is the owner of an automobile insured under a contract; or
2. Sustains bodily injuries or dies as a result of accident while the occupant of his own uninsured automobile,
Such relative shall be deemed not to be a dependent relative for the purpose of this Section.
3. **Limitation for Liability**
4. If claim is made under this Section and claims is also made against any person who is an insured under Section A – Third Party Liability of this policy, any payment under this Section shall be applied in reduction of any amount which the insured person may be entitled to recover from any person who is insured under Section A.
5. Any payment made under Section A or under subsection 1 or 2 of Section B of this policy to an insured person hereunder shall be applied in reduction of any amount which such person may be entitled to recover under this Section.
6. **Determination of Legal Liability and Amount of Damages**

The determination as to whether the insured person shall be legally entitled to recover damages and if so entitled, the amount thereof, shall be made by agreement between the insured person and the Insurer.

If any difference arises between the insured person and the Insured as to whether the insured person is legally entitled to recover damages and, if so entitled, as to the amount thereof these questions shall be submitted to arbitration of some person to be chosen by both parties, or if they cannot agree on one person, then by two persons, one to be chosen by the insured person and the other by the Insurer, and a third person to be appointed by the persons so chosen. The submission shall be subject to the provisions of The Arbitration Act or Ordinance, as the case may be, and the award shall be binding upon the parties.

1. **Notice of Legal Action**

If, before the Insurer makes payment of loss hereunder, the insured person or his representative shall institute any legal action for bodily injury or death against any other person owning or operating an automobile involved in the accident, a copy of the Writ of Summons or other process served in connection with such legal action shall be forwarded immediately to the Insurer.

1. **Notice and proof of Claim**

The insured person or his agent, or the person otherwise entitled to make claim or his agent, shall:

1. have written notice of claim to the Insurer by delivery thereof or by sending it by registered mail to the chief agency or head office of the Insurer in the Province, Territory or Territories, no later than 30 days for the date of the accident, or as soon as practicable thereafter;
2. within 30 days for the date of the accident for which the claim is made, or as soon as practicable thereafter, provide to the Insurer such proof of claim as is reasonably possible in the circumstances of the happening of the accident and the loss occasioned thereby;
3. if so required by the Insurer, provide a certificate as the cause and the nature of the accident for which the claim is made and as to the duration of disability caused thereby form a duly qualified medical practitioner.
4. **Medical Reports**

The Insurer has the right and the claimant shall afford to a duly qualified medical practitioner named by the Insurer an opportunity to examines the person of the insured’s person when and as often as it is reasonably required while the claim is pending, and also, in the case of death of the insured person, to make an autopsy subject to the law relating to autopsies.

1. **When Moneys Payable**
2. No person shall bring an action to recover the amount of a claim under this Section unless the requirements of clauses 7 and 8 thereof are complied with, nor until the amount of the loss has been ascertained as provided in the Section.
3. Every action or proceeding against the Insurer for the recovery of a claim under this Section shall be commenced within one year from the date on which the cause of action arose and not afterwards.

 10. **Limitation of Benefit Payable**

When a person is entitled to benefits under more than one contract providing uninsured motorist coverage similar to the type provided herein, he or his representative may recover only an amount equal to one benefit.

 11. **Application of General Provisions**

Insofar as applicable the General Provisions, Definitions, Exclusions and Statutory Conditions of the policy also apply.