

## S.E.F. 44 Family Protection Endorsement

### 1. DEFINITIONS: where used in this endorsement,

- (a) The term "automobile" shall mean a vehicle with respect to which motor vehicle liability insurance would be required if it were subject to the law of the province governing the policy.
- (b) The term "dependant relative" means:
  - (i) a person,
    - (1) under the age of 18 years who resides with the named insured and is principally dependent upon the named insured or the spouses/adult interdependent partners of the named insured for financial support.
    - (2) 18 years of age or over who, because of mental or physical infirmity, is principally dependant upon the named insured or the spouses/adult interdependent partners of the named insured for financial support, or
    - (3) 18 years of age or over who, because of full-time attendance at a school, college or university, is principally dependant upon the named insured or the spouse of the named insured for financial support; or
  - (ii) a parent or relative,
    - (1) of the named insured, or
    - (2) of the spouses/adult interdependent partners of the named insured,

residing in the same dwelling premises and principally dependant upon the named insured or the spouses/adult interdependent partners of the named insured for financial support.
- (c) The term "eligible claimant" means:
  - (i) the insured person sustaining bodily injury;
  - (ii) any other person who, in the jurisdiction in which the accident occurred, is entitled to maintain an action against the inadequately insured motorist for damages because of the death of an insured person or because of bodily injury to an insured person.
- (d) The words "Family Protection Coverage" mean the insurance as provided by this form of endorsement and any other coverage provided by virtue of a contract of insurance providing indemnity similar in nature to the indemnity provided by this endorsement, whether described as underinsured motorist coverage or not.
- (e) The term "inadequately insured motorist" means:
  - (i) the identified owner or identified driver of an automobile with respect to which the total motor vehicle liability insurance or provided bonds, cash deposits or other financial guarantees as required by law in lieu of insurance, of the owner and driver is less than the Limit of Family Protection Coverage.
  - (ii) the driver or owner of an uninsured automobile or unidentified automobile as defined in the "Uninsured Automobile Coverage" 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 purpose of 1 (e) (i) above and determining the insurer's limit of liability under paragraph 3 of this endorsement, the limits of motor vehicle liability insurance shall be deemed to be the aggregate of all limits of liability insurance and all bonds, cash deposits, or other financial guarantees as required by law in lieu of such insurance, with respect to all of the said automobiles;
  - (B) where an eligible claimant is entitled to recover damages from the identified owner or identified driver of an uninsured automobile as defined in this policy, for the purpose of 1 (e) (i) and (ii) above and for the purpose of determining the limit of coverage under paragraph 3 of this endorsement, uninsured motorist coverage available to the eligible claimant shall be taken into account as if it were motor vehicle liability insurance with the limits stated to be those of the uninsured motorist coverage;
  - (C) where an eligible claimant alleges that both the owner and driver of an automobile referred to in 1 (e) (ii) cannot be determined, the eligible claimant's own evidence of the involvement of such automobile must be corroborated by other material evidence; and
  - (D) "other material evidence" for the purposes of this section means:
    - (i) independent witness evidence, other than evidence of a spouses/adult interdependent partners as defined in this endorsement or a dependent relative as defined in this endorsement; or
    - (ii) physical evidence indicating the involvement of an unidentified automobile
- (f) The words "insured person" means:
  - (i) the named insured and his or her spouses/adult interdependent partners if residing in the same dwelling premises and any dependant relative of either, while
    - (1) an occupant of the described automobile, a newly acquired automobile or a temporary substitute automobile as defined in the general provisions, definitions and exclusions of the policy,
    - (2) an occupant of any other automobile but excluding the person who leases such other automobile for a period in excess of 30 days or who owns such other automobile unless underinsured motorist insurance is in force in respect of such other automobile, or
    - (3) not an occupant of an automobile who is struck by an automobile;

- (ii) if the named insured is a corporation, an unincorporated association or partnership, any officer, employee or partner of the named insured for whose regular use the described automobile is provided (which individual shall be considered the 'named insured' for the purposes of Definition 1 (b), and his or her spouses/adult interdependent partners if residing in the same dwelling premises, and any dependant relative of either, while
  - (1) an occupant of the described automobile, a newly acquired automobile or a temporary substitute automobile as defined in the general provisions, definitions and exclusions of the policy;
  - (2) an occupant of an automobile other than the automobile referred to in (ii) (1) above leased by the named insured for a period in excess of 30 days or owned by the named insured provided underinsured motorist insurance is in force in respect of such other automobile, or
  - (3) not an occupant of an automobile who is struck by an automobile;
 provided that where the policy has been endorsed to grant permission to rent or lease the described automobile for a period in excess of 30 days, any reference to the named insured shall be construed as a reference to the lessee specified in that endorsement.
- (g) The term "Limit of Family Protection Coverage" means the amount set out in the policy documents, with respect to this endorsement. If no amount is set out in the policy documents then the Section A limit with respect to the automobile to which this endorsement applies is the Limit of Family Protection Coverage.
- (h) The words "limits of motor vehicle liability insurance" mean the amount stated in the said policy of insurance referred to as the limit of liability of the Insurer with respect to liability claims, regardless of whether the stated limits are reduced by the payment of claims or otherwise, provided however, in the event that an Insurer's liability under a policy of insurance is reduced by operation of law to the statutory minimum limits in a jurisdiction because of a breach of the said policy of insurance, then the statutory minimum limits are the "limits of motor vehicle liability insurance" in the said policy.
- (i) The term "spouses/adult interdependent partners" means either of a man or woman who
  - (i) are married to each other;
  - (ii) are married to each other by a marriage that is voidable and has not been voided by a judgment of nullity; or
  - (iii) have gone through a form of marriage with each other, in good faith, that is void and are cohabitating or have cohabited within the preceding year, and includes.
  - (iv) either of a man and woman not being married to each other who have cohabited
    - (1) continuously for a period of not less than five years, or
    - (2) in a relationship of some permanence where there is a child born of whom they are the natural parents, and have so cohabited within the preceding year.
- (j) The term "the policy" means the policy to which this endorsement is attached.

## 2. INSURING AGREEMENT

In consideration of the premium charged and subject to the provisions hereof, it is understood and agreed that the Insurer shall indemnify each eligible claimant for the amount that such eligible claimant is legally entitled to recover from an inadequately insured motorist as compensatory damages in respect of bodily injury or death sustained by an insured person by accident arising out of the use or operation of an automobile.

## 3. LIMIT OF COVERAGE UNDER THIS ENDORSEMENT

- (a) The Insurer's maximum liability under this endorsement, regardless of the number of eligible claimants, or number of insured persons injured or killed, or number of automobiles insured under the policy shall be 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 therewith.
- (b) Where this endorsement applies as excess, the Insurer's maximum liability under this endorsement is the amount determined in accordance with paragraph 3(a) less the amounts available to eligible claimants under any first loss insurance as referred to in paragraph 7 of this endorsement.

## 4. AMOUNT PAYABLE PER ELIGIBLE CLAIMANT

- (a) the amount payable under this endorsement to any eligible claimant shall be ascertained 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 paragraph 4(b), but in no event shall the Insurer be obliged to pay any amount in excess of the limit of coverage as determined under paragraph 3 of this endorsement.
- (b) The amount payable under this endorsement to any eligible claimant is excess to any amount actually recovered by the eligible claimant from any source (other than money payable on death under a policy of insurance) and is excess to any amounts the eligible claimant is entitled to recover (whether such entitlement is pursued or not) from:
  - (i) the insurers of the inadequately insured motorist, and from bonds, cash deposits or other financial guarantees given on behalf of the inadequately insured motorist;
  - (ii) the insurers of any person jointly liable with the inadequately insured motorist for the damages sustained by an insured person;
  - (iii) the Société de l'assurance automobile du Québec;
  - (iv) 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;
  - (v) the uninsured motorist coverage of a motor vehicle liability policy;
  - (vi) any automobile accident benefits plan applicable in the jurisdiction in which the accident occurred;
  - (vii) any policy of insurance providing disability benefits or loss of income benefits or medical expense or rehabilitation benefits;
  - (viii) any Worker's Compensation Act or similar law of the jurisdiction applicable to the injury or death sustained;
  - (ix) any Family Protection Coverage of a motor vehicle liability policy;
- (c) In the event that the insurer is presented with claims by more than one eligible claimant and the total of the amounts payable to the eligible claimants exceeds the limit of the Insurer's liability under the endorsement as set out in paragraph 3, the insurer may pay to each eligible claimant a pro rata portion of the amount otherwise payable to each eligible claimant. In the event that payments are made to eligible claimants under this endorsement prior to the receipt of actual notice of any additional claim, then the limits of this endorsement as referred to in paragraph 3 of this endorsement shall be the amount determined in paragraph 3 less the amounts paid to the prior eligible claimants.

## **5. DETERMINATION OF THE AMOUNT AN ELIGIBLE CLAIMANT IS LEGALLY ENTITLED TO RECOVER**

- (a) The amount that an eligible claimant is legally entitled to recover shall be determined in accordance with the procedures set forth for determination of the issues of quantum and liability by the uninsured motorist coverage provisions of the policy.
- (b) In determining the amount an eligible claimant is legally entitled to recover from the inadequately insured motorist, issues of quantum shall be decided in accordance with the law of the province governing the policy and issues of liability shall be decided in accordance with the law of the place where the accident occurred.
- (c) In determining any amounts an eligible claimant is legally entitled to recover, no amount shall be included with respect to pre-judgment interest accumulating prior to notice as required by this endorsement.
- (d) In determining any amounts an eligible claimant is legally entitled to recover, no amount shall be included with respect to punitive, exemplary, aggravated or other damages the award of which is based in whole or in part on the conduct of the inadequately insured motorist or person jointly liable therewith, to the extent that the said damages are not for the purpose of compensating the eligible claimant for actually incurred losses.
- (e) In determining any amounts an eligible claimant is legally entitled to recover from an inadequately insured motorist as defined in paragraph 1 (e)(i), no amount shall be included with respect to costs.
- (f) No findings of a Court with respect to issues of quantum or liability are binding on the Insurer unless the Insurer was provided with a reasonable opportunity to participate in those proceedings as a party.

## **6. PROCEDURES**

- (a) The following requirements are conditions precedent to the liability of the Insurer to the eligible claimant under this endorsement:
  - (i) the eligible claimant shall promptly give written notice, with all available particulars, of any accident involving injury or death to an insured person and of any claim made on account of the accident;
  - (ii) the eligible claimant shall, if so required, provide details of any policies of insurance, other than life insurance, to which the eligible claimant may have recourse.
  - (iii) 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 documents in their possession or control that relate to the matters in question, and they shall permit extracts and copies thereof to be made.
- (b) 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 Writ of Summons or other initiating process shall be delivered or sent by registered mail immediately to the chief agency or head office of the Insurer in the province together with particulars of the insurance and loss.
- (c) Every action or proceeding against the Insurer for recovery under this endorsement shall be commenced within 12 months from the date upon which the eligible claimant or his legal representatives knew or ought to have known that the quantum of the claims with respect to an insured person exceeded the minimum limits for motor vehicle liability insurance in the jurisdiction in which the accident occurred. No action which is commenced within 2 years of the date of the accident shall be barred by this provision.

## **7. MULTIPLE COVERAGES**

Subject to the provisions hereof, where an eligible claimant is entitled to payment under Family Protection Coverage under more than one policy and the insured person

- (a) is an occupant of an automobile, such insurance on the automobile in which the insured person is an occupant is first loss insurance and any other such insurance is excess;
- (b) is not an occupant of an automobile, such insurance in any policy in the name of the insured person is first loss insurance and any other such insurance is excess.

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. The applicable first loss insurance shall be exhausted before recourse is made to excess insurances. 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 paragraph 3(b) thereof, provided by any one of such excess insurances.

## **8. ACCIDENTS IN THE PROVINCE OF QUEBEC**

This endorsement does not apply to an accident occurring in the Province of Quebec for which compensation is payable under the automobile Insurance Act of Quebec or by virtue of an agreement referred to in that Act.

## **9. SUBROGATION**

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 paragraph 4(b).

## **10. ASSIGNMENT OF RIGHTS OF ACTION**

Where a payment is made under this endorsement, the Insurer is entitled to receive from the eligible claimant, in consideration thereof, 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.

## **11. MISCELLANEOUS PROVISIONS**

If more than one automobile is insured under the policy, this endorsement shall apply only to the automobile(s) against which S.E.F. No. 44 is designated in the schedule of automobiles forming part of the policy. If S.E.F. No. 44 is designated with respect to more than one automobile in the schedule of automobiles forming part of this policy, then the coverages provided shall be construed as if provided by separate policies of insurance with respect to each automobile to which endorsement S.E.F. No. 44 is applicable, subject always to the provisions of paragraph 7 hereof.

This endorsement is attached to and forms part of the policy and shall be effective from the local time and effective date of the policy or renewal thereof, or if added to the policy during the policy period, from the local time and effective date of the endorsement specifying the addition of this coverage.

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

**AGREEMENTS**

1.
  - (a) Supplementary Agreement 1(b) below applies only where the person injured or killed is not an insured person as defined in the Family Protection Coverage of any policy of insurance or does not own an automobile which is licensed in any jurisdiction of Canada where Family Protection Coverage is available,
  - (b) Subject to 1(a) above, the insurer undertakes to include in the definition of 'dependant relative' the following:
    - (i) any relative of the named insured, or of the spouses/adult interdependent partners of the named insured, who resided in the same premises as the named insured; and,
    - (ii) any other relative of the named insured, or of the spouses/adult interdependent partners of the named insured, but only while an occupant of the described automobile, a newly acquired automobile, or a temporary substitute automobile, as defined in the policy.
2. The amount determined under paragraph 3 of the Family Protection Endorsement is the insurer's limit of liability for the aggregate of all claims arising out of any one occurrence. Nothing in this Supplement is to be construed so as to increase the insurer's limit of liability under the Family Protection Coverage which these agreements supplement.
3. These supplementary agreements modify only the Family Protection Coverage of the policy. Except as provided herein, all limits, terms, conditions, provisions, definitions and exclusions of the policy shall have full force and effect.