

O.E.F. 87
ADDED COVERAGE TO OFFSET TORT DEDUCTIBLES
(for Ontario Garage Automobile Policy O.A.P. 4)

Issued To	Effective Date Of Change	Policy Number
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DEFINITIONS

1. Subject to section 2, in this endorsement,

1.1. "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 a school, college or university;
- (b) a relative of the named insured or of his or her spouse, who is principally 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 an owned automobile, as defined in the Policy.

1.2. "eligible claimant" means

- (a) the insured person who sustains bodily injury and who is entitled to maintain an action in Ontario for damages for non-pecuniary loss; and
- (b) any other person who is entitled to maintain an action in Ontario for damages for non-pecuniary loss under the *Family Law Act* because of bodily injury to an insured person.

1.3 "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 the Certificate of Insurance, 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 1.3 (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 1.3 (a) (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 added coverage to offset tort deductibles is available.

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

1.5 "Spouse" means either of two persons who:

- (a) are married to each other;
- (b) have together entered into a marriage that is voidable or void, in good faith on the part of the person making a claim under this policy; or
- (c) have lived together in a conjugal relationship outside marriage,
 - (i) continuously for a period of not less than three years, or
 - (ii) in a relationship of some permanence, if they are the natural or adoptive parents of a child.

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

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 would have been legally entitled to recover from a protected defendant as referred to in section 267.5 of the *Insurance Act* but for any reduction or reductions in damages awarded to the eligible claimant for non-pecuniary loss as provided for in paragraph 3 of section 267.5 (7).

LIMIT OF COVERAGE UNDER THIS ENDORSEMENT

4. (a) The insurer's maximum liability under section 3 of this endorsement in respect of any one eligible claimant for damages for non-pecuniary loss other than under the *Family Law Act* is \$10,000 in respect of one accident.
- (b) The insurer's maximum liability under section 3 of this endorsement in respect of any one eligible claimant for damages for non-pecuniary loss under the *Family Law Act* is \$5,000 in respect of any one accident.

DETERMINATION OF THE AMOUNT RECOVERABLE

5. For the purposes of this endorsement:
 - (a) the findings of a court with respect to issues of quantum or liability in proceedings brought in respect of a claim referred to in section 3 are binding on the insurer whether or not the insurer was provided with a reasonable opportunity to participate in those proceedings as a party; and
 - (b) a settlement of a claim referred to in section 3 is binding on the insurer only if the settlement was made with the concurrence of the insurer.

PROCEDURES

6. 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 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 automobile insurance to which the eligible claimant may have recourse;
 - (c) the eligible claimant and the insured person shall, upon request, provide a written declaration setting out the particulars of the claim under this change form, 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.
7. Where an eligible claimant commences a legal action for damages arising out of bodily injury 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.
8. No action or proceeding shall be commenced against the insurer for recovery under this change form until the eligible claimant provides the insurer with satisfactory proof of the final disposition, either by formal settlement or by final judgment issued by a court of competent jurisdiction, of the claim referred to in section 3. Every action or proceeding against the insurer for recovery under this endorsement shall be commenced within two years of the date of final disposition of the claim as aforesaid.

MULTIPLE COVERAGES

9. The following rules apply where an eligible claimant is entitled to added coverage to offset tort deductibles under more than one policy:
 - (a) 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;
 - (b) 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.

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.