

INSURANCE
BUREAU
OF CANADA



BUREAU
D'ASSURANCE
DU CANADA

**CLAIMS AGREEMENT
AMENDMENT**

Effective January 1, 2002

January, 2002

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AGREEMENT

RESPECTING STANDARDIZATION OF CLAIM FORMS AND PRACTICES, AND GUIDELINES FOR THE SETTLEMENT OF CLAIMS

IT IS AGREED, that it is in the interest of the insuring public and of the insurers to avoid delays and disputes in the settlement of claims;

IT IS ALSO AGREED, that delays and disputes can be avoided to a material degree by acceptance of certain uniform practices related to claim forms, policy interpretation and rules as to distribution of liability;

ACCORDINGLY, the insurers signifying their acceptance of this uniform approach mutually agree to be guided by and to adhere to the rules, practices and interpretations contained herein as amended from time to time. For the purpose of this Agreement, words importing the singular number include the plural and words imputing the male gender include the female.

The Agreement applies in all provinces except where the Agreement states otherwise.

SECTION I: Claim Reporting: Standard Forms and Practices

Rule 1: The Standard Claim Forms recommended by the Insurance Bureau of Canada, attached as Appendix A to this Agreement, shall be used and accepted by Insurers from Independent Adjusters unless insurers prefer that the Independent Adjusters use their company forms.

Rule 2: Insurers shall require only an original report from Independent Adjusters, unless additional copies are specifically requested in special circumstances.

Exception Claims involving a Provincial General Agency

Rule 3: In the absence of meaningful developments in a claim, Insurers shall receive from Independent Adjusters interim or status reports every 60 days only unless the insurer directs otherwise. This rule to be subject to special requirements of Insurers.

SECTION II: Limited Waiver of Requirements by Insurers

Rule 4: Insurers agree to waive proof of loss on first party automobile claims where repairs have been carried out.

Exception For claims involving subrogation, this rule applies to repaired vehicles only supported by documentation.

Rule 5: Insurers agree to waive proof of loss on claims in the Property Classes of Insurance not exceeding \$5000.

Exception This rule shall not apply to claims involving theft or mysterious disappearance and/or subrogation, or at the discretion of the insurers involved.

Rule 6: Insurers agree to waive third party property damage releases on claims between signatory companies unless specifically requested. (Note - the insurer settling with Third Party directly should obtain release for benefit of paying insurer).

NOTES TO SECTION II --

Rules 4 & 5

Insurers are reminded of a legal requirement in certain provinces to:

- (a) provide a proof of loss form upon request to an insured or person to whom the insurance money is payable;
- (b) provide a proof of loss form within 60 days after notice of loss unless the claim is settled before expiry of the 60 days or as required by the Insurance Act of the applicable jurisdiction.

SECTION III: Interpretations

NOTE: These rules apply unless superceded By the Insurance Act and/or Regulations. For example, in Ontario the provisions of the Insurance Act and the Regulations thereunder in respect of Statutory Accident Benefits and Direct Compensation – Property Damage take precedence over these rules.

Rule 7: **Innocent Third Parties**

Where damage is caused by an automobile accident to the property of an innocent third party or third parties and the liability rests with two or more other parties and the allocation of responsibility between the latter parties cannot be immediately determined or is in dispute, the claims of the innocent third party or third parties shall be paid by the insurers of the other parties on an equal basis. Final adjustment shall be made by negotiation between the insurers, by arbitration or through litigation, or in the province of Quebec by the Arbitration Board of the Groupement des assureurs automobile when it applies.

This rule shall not apply when the property damage liability limits of any one of the concerned insurers may, on the face of it, be insufficient to satisfy the claims of all parties involved in the accident.

An innocent third party, for the purpose of this rule, shall be one who, on the face of it, has in no way caused or contributed to the occurrence leading to the damage.

Physical contact of all vehicles is not required in order for this rule to apply.

Rule 8: **Commercial Parking Lots and Shopping Plazas**

In respect of claims arising from accidents occurring on a public or commercial parking lot or on a shopping plaza, the respective liabilities of the parties involved shall be determined by the following: --

- (a) the Rules of the Road as set out in the applicable provincial statutes;
- (b) the existence of Stop Signs and other directional devices for the control of traffic, despite the lack of any legal validity for such signs and devices, shall be taken into consideration;
- (c) no defence to a claim available at Common Law shall be raised unless it is also available under the terms of the applicable provincial statutes.

Notes
to Rule 8

- (a) Any vehicle travelling on a portion of a public parking lot designated by the property owners or by its configuration as a “thoroughfare” shall have a right of way over vehicles entering it from another portion of the parking lot that is not so designated.

- (b) If no thoroughfare is designated by the owners as such, or if none is so marked, then Rules Of the Road, as defined in applicable provincial statutes, shall prevail.
- (c) The Rules of the Road, as defined in applicable provincial statutes, shall govern the movement of vehicles in intersecting “thoroughfares”.
- (d) Any vehicle exiting from or starting from a parked position is 100% at fault.
- (e) “Thoroughfare” means any place or structure intended for vehicular or pedestrian traffic on private property providing public access, for example a commercial parking lot. Private property includes government owned public parking lots, for example parking spaces provided at transit sites.

Exception – This rule shall not apply to claims over \$50,000. unless all parties to a subrogation issue have agreed to waive a limit on the amount of the claim.

Rule 9: Insurers agree to refrain from the use of a form of release stamped or printed upon the reverse side of a loss cheque, draft or other payment forms. Nothing in this rule shall prevent reasonable identification of the payment on the face of the loss cheque, draft or order.

Rule 10: Intercompany Settlement Chart

This rule applies countrywide, except as and when Section 263. (Direct Compensation-Property Damage) of the Ontario Insurance Act or the Quebec Direct Compensation Agreement applies. It is applicable only where indemnity is provided for all involved vehicles by a motor vehicle liability policy, and only where the damage to any vehicle in respect of which subrogation is being exercised does not exceed \$50,000, inclusive of applicable taxes, or as agreed by the signatories.

Where damage to a vehicle results from a vehicle-to-vehicle collision on a public thoroughfare or private property, insurers agree

- (a) to pay collision deductibles to their own insureds on the basis of the apportionment of liability shown on the Intercompany Settlement Chart* appended hereto for the circumstances therein described; and
- (b) to subrogate against each other on the same basis for the collision damage and loss of use claim indemnifiable by each and for the deductible payable by each by virtue of this Rule.

Where a dispute as to the facts prevents the ready application of the Intercompany Settlement Chart, each insurer involved shall designate a senior claims official to try to resolve the dispute promptly.

NOTES TO RULE 10

GENERAL

1. This Rule is not binding on an insured. Therefore, an insured may elect to seek a different basis of settlement of his/her deductible or any other uninsured loss.
2. In applying this Rule the configuration of the vehicles at the moment of impact will be used to determine the appropriate fact situation in the Intercompany Claims Chart and no external condition leading up to the moment of impact shall be considered.
3. The dotted lines used in the situations on the Chart are intended to indicate centre line or lane boundaries and do not imply passing zones.
4. Where there is a dispute as to the facts or the application of the Agreement, it shall first be referred to senior claims officials of the insurers involved. If the matter cannot be resolved by senior claims officials of the insurers involved, the provisions of the Arbitration Agreement will apply for those companies which are signatories to that Agreement.
5. Farm Equipment or Unlicensed Vehicle: The Chart would apply if indemnity is provided by a Motor Vehicle Liability Policy whether the vehicle is licenced or not. If coverage is provided for these vehicles by a CGL or other type of liability policy, the Chart would not apply unless agreed to by the signatory companies.
6. Stolen Vehicles and Driver Blackouts: The Agreement does not apply to stolen vehicles but does apply to driver blackout. The intent of the rule is to provide a guideline where indemnity is provided. There is indemnity under the Driver Blackout situation.
7. Uninsured Vehicles: In the event that more than two vehicles are involved in a loss, the Agreement applies only to those vehicles insured by signatory companies WHO ARE PRESENTING SUBROGATED CLAIMS. Other losses should be governed by tort.
8. Vehicles with PD Deductibles/Emergency Vehicles: In such a situation, indemnity is provided under a Motor Vehicle Policy, and therefore these vehicles will be covered under the Agreement. A problem arises in situations where there is a PD deductible and insureds feel that claims are being settled to their detriment. It has been suggested that if the rationale of the Agreement is explained, it might alleviate the problem and that at the inception or renewal dates of the policy it would be of assistance to obtain written consent from the insured indicating his assent to the Agreement.

* (See Intercompany Settlement Chart on Page 10)

9. Multiple Vehicle Accidents - Non-Signatory Companies: Where two or more vehicles are in an accident, the Agreement applies to the signatory companies who are presenting subrogated claims. Claims presented by non-signatories should be governed by tort.
10. Damage to Buildings: Rule 10 "the Intercompany Settlement Chart" only applies to vehicle damage, and therefore damage to buildings would not be covered under this rule. In most situations, it is felt that damage to buildings would be covered under Rule 7 "innocent third parties".
11. Intersection: The term "intersection" means an area as defined in the applicable Act. Definitions from the various provincial Acts follow:

Alberta:

Highway Traffic Act, RSA 1980 c H-7 Definition 1(h)

"intersection" means the area embraced within the prolongation or connection of

- (i) the lateral curb lines or, if none,
- (ii) the exterior edges of the roadways,

of 2 or more highways which join one another at an angle whether or not one highway crosses the other;

British Columbia:

Motor Vehicle Act RSBC 1979 c.288 Part 3 - Interpretation 115

"intersection" means the area embraced within the prolongation or connection of the lateral curb lines, or if none, then the lateral boundary lines of the roadways of the 2 highways which join one another at or approximately at right angles, or the area within which vehicles travelling on different highways joining at any other angle may come in conflict; and, for the purpose of this definition, "highway" does not include a lane or way less than 5 m in width separating the rear property lines of parcels of land fronting on highways running more or less parallel to and on each side of the lane or way;

Manitoba:

Highways Protection Act RSM 1987 c. H50 Definition 1

"intersection" means a place where two or more highways join one another at an angle, whether or not one such highway crosses the other; ("intersection")

New Brunswick:

Motor Vehicle Act RSNB 1973 c. M17 Definitions

"intersection" means the area enclosed within the lateral boundary lines of two or more roadways that join one another at an angle, and lines drawn at right angles across each such roadway from the points where such lateral boundary lines intersect or meet;

Newfoundland: *Highway Traffic Act RSN C. H-3 Definitions 2(ff)*

"intersection" means the area enclosed within the prolongation or connection of the lateral curb lines or, where there are no curb lines, the lateral boundary lines of 2 or more highways that join one another at an angle, whether or not 1 highway crosses the other;

Nova Scotia: *Motor Vehicle Act RSNS c. 293 Interpretation 2(v)*

"intersection" means the area embraced within the prolongation of connection of the lateral curb lines or, if none, then of the lateral boundary lines of two or more highways which join one another at an angle, whether or not one highway crosses the other;

Ontario: *Highway Traffic Act RSO 1990 c. H.8 Definitions*

"intersection" means the area embraced within the prolongation of connection of the lateral curb lines or, if none, then of the lateral boundary lines of two or more highways which join one another at an angle, whether or not one highway crosses the other;

P.E.I. *Highway Traffic Act RSPEI 1988 c. H-5 Definitions (i.1)*

"intersection" means the area enclosed within the prolongation or connection of the lateral curb lines or, if there are no curb lines, the lateral boundary lines of two or more highways that join one another at an angle, whether or not one highway crosses the other;



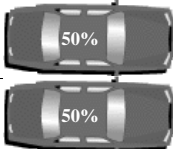
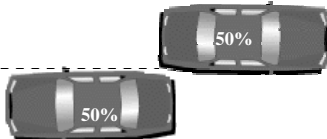
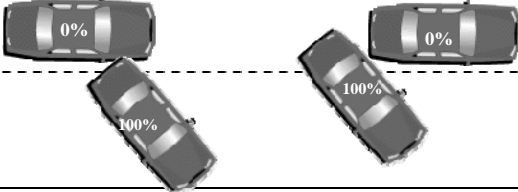
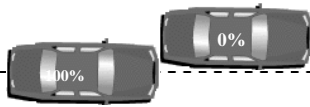

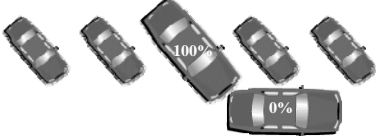
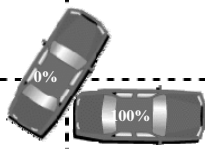
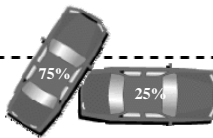
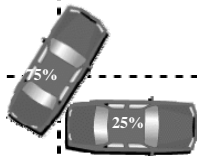
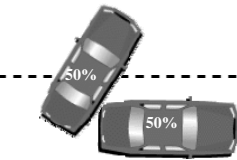
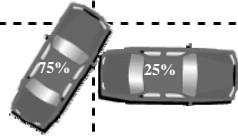
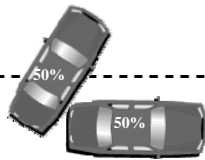
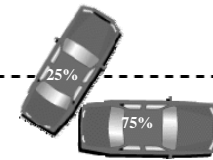
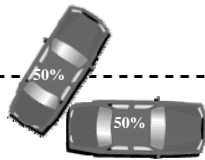
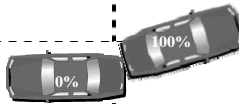
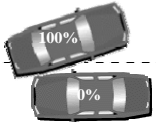
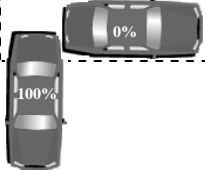
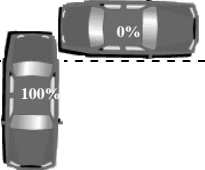
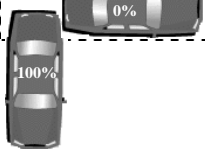
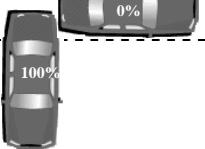
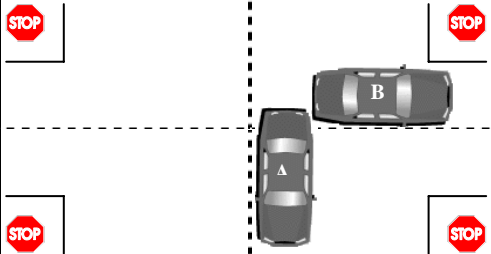
Quebec *Direct Compensation Agreement for the Settlement of Automobile Claims Automobile Insurance Act RSQCA - 25,5 116 and 173*

"intersection" means a place where several public roads, streets, avenues or boulevards intersect, including lanes in parking lots but excluding lanes between buildings.

Saskatchewan: *The Vehicle Act RSS 1978 c.V-3 Definitions: 2(p)*

"intersection" means the area embraced within the straight production:
 (i) of the lateral curb lines; or
 (ii) in the absence of curb lines, of the lateral boundary lines;
 of two or more public highways that join one another at an angle, whether or not one such public highway crosses the other;

INTERCOMPANY SETTLEMENT CHART (Appendix to Rule 10)

	A	B									
1 Vehicles in the same lane and direction, one vehicle struck from behind. See Special Note #1											
2 Vehicles in adjacent lanes, same or opposite direction, both vehicles on or over center line or where point of impact cannot be determined. See Special Note #2											
3 Vehicles in adjacent lanes same direction with one vehicle changing lanes or opposite direction with one vehicle over center line. See Special Note #2											
4 Vehicles pulling out from a parked position as another passes.											
5 (i) EXCEPT ONTARIO One vehicle turning left while being overtaken. (A) at intersection, 0/100 in favour of left turning vehicle (B) at any driveway, 75/25 in favour of overtaking vehicles (ii) IN ONTARIO ONLY One vehicle turning left at intersection or at any driveway as other vehicle over taking to pass shall be 75/25 at intersection and 50/50 at a driveway in favour of overtaking vehicle.											
											
											
											
6 Intersection - vehicles in opposite directions, one vehicle turning left. Applicable in all situations except those described in Notes (a) or (g).											
7 A - EXCEPT ONTARIO Intersection - no traffic lights, vehicles proceeding at right angles, vehicle on right has right of way - 0/100 in favour of vehicle on right. B - IN ONTARIO ONLY Intersection - no traffic lights, vehicles proceeding at right angles, vehicle on right has right of way - 75/25 in favour of vehicle on right.											
											
8 Where an accident occurs at an intersection equipped with STOP signs on each corner, the right of way applies unless it is proven: (A) that B failed to stop (B to be held full liable or (B) that both A & B failed to stop (both to be held equally liable)	<table border="1" data-bbox="513 1839 919 1944"> <thead> <tr> <th></th> <th style="text-align: center;">A</th> <th style="text-align: center;">B</th> </tr> </thead> <tbody> <tr> <td>a)</td> <td style="text-align: center;">0%</td> <td style="text-align: center;">100%</td> </tr> <tr> <td>b)</td> <td style="text-align: center;">50%</td> <td style="text-align: center;">50%</td> </tr> </tbody> </table>		A	B	a)	0%	100%	b)	50%	50%	
	A	B									
a)	0%	100%									
b)	50%	50%									

INTER-COMPANY SETTLEMENT CHART (Appendix to Rule 10)

SPECIAL NOTES TO SITUATIONS ON CHART (See Page 10)

Situation #1:

Notwithstanding anything previously stated relative to insurers paying for and subrogating on collision deductibles on first party claims, for the purpose of the "chain reaction rule" only, the following shall apply:

- (a) A collision insurer will pay in full all of the rear-end damage to its insured's vehicle; that portion of the front-end damage that exceeds the deductible, and except in the case of the last vehicle, 50% of the deductible and 50% of the loss of use paid by each.
- (b) The collision insurer shall then receive by way of recovery from the liability insurer of the following vehicle 100% of the rear-end damage and 50% of the front-end damage including the deductible and 50% of the loss of use it has paid as outlined in (a) above.
- (c) Regardless of the recovery apportionment stated in (b) above
 - the liability insurer of the following vehicle shall, where appropriate, negotiate directly with the owner of the preceding vehicle with respect to the remaining 50% of the latter's deductible and 50% of the loss of use paid.
 - if for any reason the collision insurer of the preceding vehicle has waived its insured's deductible in whole as related to the front-end damage this too shall be a separate item for negotiation as between insurers.
- (d) When the vehicle sustaining the collision claim is rendered a constructive total loss the subrogated collision claim to be paid by the Insurer of the following motorist shall be on the basis of 100% rear and 50% front but apportioned in the ratio that the rear-end damages and front-end damages sustained bear to the net amount of the collision claim paid.

▶ C ▶ B ▶ A

B's liability insurer then pays A's collision insurer 100% of A's rear damage.

A's collision cover pays all of A's rear damage

C's collision insurer pays C's front-end damage in excess of C's deductible.

B's collision insurer pays all of B's rear damage, B's front-end damage in excess of B's deductible, and 50% of B's deductible

C's liability insurer then pays B's collision insurer 100% of B's rear damage and 50% of B's front-end damage including 50% of B's deductible and indemnifiable loss of use.

A chain-reaction occurrence means a series of impacts between more than two occupied vehicles facing the same direction, whether moving or stationary, and in the same line.

Situation #2 or #3:

"Centre line" means a painted or marked full or broken line in the middle of the roadway. Where such lines do not exist, the centre line is the middle of the roadway that is approved or ordinarily used for vehicular traffic not including the shoulder.

Situation #5:

The occurrence depicted in Situation #5 is on a two-way street and the overtaking driver is actually on the wrong side of the road.

NOTES TO ALL CIRCUMSTANCES IN THE CLAIMS AGREEMENT

- (a) Within an intersection or while exiting from a laneway, or driveway,
 - A driver who fails to obey a red traffic light is 100% liable,
 - A driver who fails to obey or is leaving a stop or yield sign is 100% liable. Where no signs exist, a yield the right of way sign is deemed to exist at the exit of a laneway or driveway.
- (b) A driver is 100% liable if the open door of his vehicle causes damage to another vehicle.
- (c) At a "T" intersection controlled by three-way stop signs or at a four-way intersection controlled by four-way stop signs the vehicle reaching the intersection first, having stopped, then has the right-of-way 100%.
- (d) The driver of a vehicle failing to obey a police officer's signal, proceeding the wrong way, backing up, making a U-turn or striking a parked vehicle is, in each case 100% liable.
- (e) Liability is apportioned as shown regardless of whether point of contact is front, centre or rear of either vehicle.

- (f) Where two separate Rules are both clearly operative and applicable for a given accident with each rule producing an opposite finding of responsibility and a dispute therefore arises as to which rule should have priority the subrogated claims of each insurer shall be resolved on a 50/50 basis. This includes swerving vehicles where there is no contact.
- (g) In unresolved disputes as to the facts due to lack of independent proof, the case will be settled 50/50.

SECTION III: Interpretation

Rule 10A: Priority of Payment of Accident Benefits for Pedestrians Except in Ontario
 In Ontario, ONT reg.403/96 – Statutory Accident Benefits Schedule applies

Insurers agree, where a claim for Accident Benefits in respect of a pedestrian injured or killed in a motor vehicle accident may be payable under more than one motor vehicle liability policy providing Accident Benefits, as follows: --

PEDESTRIAN STRUCK BY SINGLE VEHICLE

1. Where a pedestrian is struck by a motor vehicle the owner of which
 - (a) is insured under a motor vehicle liability policy providing Accident Benefits, the automobile insurer of the owner of the vehicle shall pay the Accident Benefits ;
 - (b) is not insured under a policy referred to in Clause (a) but the pedestrian is so insured, the automobile insurer of the pedestrian shall pay the Accident Benefits.

PEDESTRIAN STRUCK IN MULTIPLE VEHICLE ACCIDENT

2. Where a pedestrian is struck by a motor vehicle and neither the owner of the vehicle which struck him or her nor the pedestrian is insured under a policy referred to in Clause 1 (a), the automobile insurer of the owners of any other vehicles involved, by actual physical contact, in the accident shall contribute to the payment of Accident Benefits in equal proportions.

PEDESTRIAN STRUCK BY MORE THAN ONE VEHICLE

3. Where a pedestrian is struck by more than one motor vehicle the priority of payment is as follows:-

- (a) the automobile insurer of the owner of the vehicle which first struck the pedestrian shall pay the Accident Benefits;
- (b) where the owner of the vehicle which first struck the pedestrian is not insured under a policy referred to in Clause 1 (a), the automobile insurer of the owner of the first vehicle so insured which struck the pedestrian, shall pay the Accident Benefits.
- (c) where none of the owners of the vehicles which struck the pedestrian is insured under a policy referred to in Clause 1 (a) but the pedestrian is so insured, the automobile insurer of the pedestrian shall pay the Accident Benefits.

PEDESTRIAN STRUCK BY OBJECT

- 4. Where a pedestrian is struck by an object as a direct result of a collision between a motor vehicle and that object the pedestrian shall be deemed to have been struck by the vehicle.

DEFINITIONS

- 5. In this rule, any reference to a pedestrian struck by a motor vehicle means a person not the occupant of a motor vehicle or of railway rolling stock that runs on rails, with whom the motor vehicle has come in physical contact.

Section IV: Confidentiality of Health Records

Insurers agree, as a matter of corporate policy, that they shall not gather medical information from doctors, or other health care practitioners or their employees, or hospitals or their employees, without the written consent of the patient, subject only to any right to such information under law or rules of court practice.

Section V: General Provisions

1. Companies Bound

This Agreement shall be binding only upon and between the insurers who signify their adherence to the agreement by lodging with the President of the Insurance Bureau of Canada a form as prescribed below:

To: The President
Insurance Bureau of Canada
777 Bay Street, Suite 2400, P.O. Box 121
Toronto, Ontario M5G 2C8

2. Withdrawal

No signatory to this Agreement shall withdraw until after 60 days after written notice of intended withdrawal shall have been given by registered mail to the President of the Insurance Bureau of Canada but such notice or withdrawal shall not prejudice or affect any proceedings pending for adjustment, apportionment or arbitration of any loss.

Receipt is hereby acknowledged of a copy of Agreement Respecting Standardization of Claim Forms and Practices, and Guidelines for the Settlement of Claims, as approved by the Board of Directors of the Insurance Bureau of Canada.

The undersigned insurer(s) agree(s) to become an adherent to and to be bound by the said Agreement in accordance with its terms.

NAME OF INSURER(S) (List Companies here)

Signed
(Authorized Representative)

PLEASE PRINT NAME TITLE

Signed
(Authorized Representative)

PLEASE PRINT NAME TITLE

Dated

3. Amendments

Amendments shall originate with the Claims Committee of the Insurance Bureau of Canada. Where 80 percent or more of the Subscribers adopt an amendment it shall be binding on all Subscribers effective on a date indicated by the President of the Insurance Bureau of Canada. He shall set this date only after he is satisfied that more than 80 percent of the Subscribers have accepted in accordance with the following procedure.

On receiving notice of a proposed amendment, Subscribers shall indicate their acceptance or rejection of it on a form as prescribed below which shall then be sent to the President of the Insurance Bureau of Canada.

To: The President
Insurance Bureau of Canada
777 Bay Street, Suite 2400, P.O. Box 121
Toronto, Ontario M5G 2C8

Receipt is hereby acknowledged of a copy of Amendment(s) dated.....
to the Agreement Respecting Standardization of Claim Forms and Practices, and
Guidelines for the Settlement of Claims, as approved by the Board of Directors of the
Insurance Bureau of Canada.

- The undersigned Subscriber(s) -
- (a) agree(s) to adopt the Amendment(s)
- (b) does not agree to adopt the Amendment(s)

NAME OF INSURER(S) (List Companies here)

Signed
(Authorized Representative)

PLEASE PRINT NAME TITLE

Signed
(Authorized Representative)

PLEASE PRINT NAME TITLE

Dated