

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

UNINSURED MOTORISTS COVERAGE – KANSAS

PART C – UNINSURED MOTORISTS COVERAGE

Part C is replaced by the following:

INSURING AGREEMENT

A. We will pay damages which an "insured" is legally entitled to recover from the owner or operator of an "uninsured motor vehicle" or "underinsured motor vehicle" because of "bodily injury":

1. Sustained by an "insured"; and
2. Caused by an accident.

The owner's or operator's liability for these damages must arise out of the ownership, maintenance or use of the "uninsured motor vehicle" or "underinsured motor vehicle".

Any judgment for damages arising out of a suit filed without our having been given notice of the suit is not binding on us.

B. "Insured" as used in this endorsement means:

1. You or any "family member".
2. Any other person "occupying" "your covered auto".
3. Any person for damages that person is entitled to recover because of "bodily injury" to which this coverage applies sustained by a person described in 1. or 2. above.

C. "Underinsured motor vehicle" means a land motor vehicle or trailer of any type to which a bodily injury liability bond or policy applies at the time of the accident but its limit for bodily injury liability is less than the limit of liability for this coverage.

However, "underinsured motor vehicle" does not include any vehicle or equipment:

1. To which a bodily injury liability bond or policy applies at the time of the accident but the bonding or insuring company:
 - a. Denies coverage; or
 - b. Is or becomes insolvent.
2. Owned or operated by a self-insurer under any applicable motor vehicle law.

D. "Uninsured motor vehicle" means a land motor vehicle or trailer of any type:

1. To which no bodily injury liability bond or policy applies at the time of the accident.
2. Which is a hit-and-run vehicle whose operator or owner cannot be identified and which hits or which causes an accident resulting in "bodily injury" without hitting:
 - a. You or any "family member";

- b. A vehicle which you or any "family member" are "occupying"; or
- c. "Your covered auto".

If there is no physical contact with the hit-and-run vehicle the facts of the accident must be proved. We will only accept competent evidence other than the testimony of a person making claim under this or any similar coverage.

3. To which a bodily injury liability bond or policy applies at the time of the accident but the bonding or insuring company:

- a. Denies coverage; or
- b. Is or becomes insolvent within two years of the date of the accident.

However, "uninsured motor vehicle" does not include any vehicle or equipment owned or operated by a self-insurer under any applicable motor vehicle law, except a self-insurer which is or becomes insolvent.

In addition, neither "uninsured motor vehicle" nor "underinsured motor vehicle" includes any vehicle or equipment:

1. Owned by or furnished or available for the regular use of you or any "family member".
2. Owned by any governmental unit or agency.
3. Operated on rails or crawler treads.
4. Designed mainly for use off public roads while not on public roads.
5. While located for use as a residence or premises.

EXCLUSIONS

A. We do not provide Uninsured Motorists Coverage for "bodily injury" sustained by an "insured" while "occupying", or when struck by, any motor vehicle owned by or provided for the regular use of that "insured" for which the security required by the Statutes of the State of Kansas is not in effect. This includes a trailer of any type used with that vehicle.

B. We do not provide Uninsured Motorists Coverage for "bodily injury" sustained by any "insured":

1. If that "insured" or the legal representative accepts a settlement or secures a judgment for a "bodily injury" claim that prejudices our right to recover payment. This Exclusion (B.1.) does not apply if we have given that "insured" our written consent to settle or sue.

2. Using a vehicle without a reasonable belief that that "insured" is entitled to do so. This Exclusion (**B.2.**) does not apply to a "family member" using "your covered auto" which is owned by you.

C. This coverage shall not apply directly or indirectly to benefit any insurer or self-insurer under any of the following or similar law:

1. Workers' compensation law; or
2. Disability benefits law.

LIMIT OF LIABILITY

A. The limit of liability shown in the Declarations for each person for Uninsured Motorists Coverage is our maximum limit of liability for all damages, including damages for care, loss of services or death, arising out of "bodily injury" sustained by any one person in any one accident. Subject to this limit for each person, the limit of liability shown in the Declarations for each accident for Uninsured Motorists Coverage is our maximum limit of liability for all damages for "bodily injury" resulting from any one accident.

This is the most we will pay regardless of the number of:

1. "Insureds";
2. Claims made;
3. Vehicles or premiums shown in the Declarations;
4. Premiums paid; or
5. Vehicles involved in the accident.

The coverage limit provided for Uninsured Motorists Coverage applies separately to damages caused by an accident with an "uninsured motor vehicle" or "underinsured motor vehicle".

B. No one will be entitled to receive duplicate payments for the same elements of loss under this coverage and Part **A** or Part **B** of this policy.

C. We will not make a duplicate payment under this coverage for any element of loss for which payment has been made by or on behalf of persons or organizations who may be held legally responsible.

D. We will not pay for any element of loss if a person is entitled to receive payment for the same element of loss under any of the following or similar law:

1. Workers' compensation law; or
2. Personal Injury Protection Coverage.

E. We will reduce the "insured's" total damages by any amount available to that "insured", under any bodily injury liability bonds or policies applicable to the "underinsured motor vehicle", that such "insured" did not recover as a result of a settlement between that "insured" and the insurer of an "underinsured motor vehicle". However, any reduc-

tion of the "insured's" total damages will not reduce the limit of liability for this coverage.

This Paragraph (**E.**) shall not apply if we advance payment to the "insured" in an amount equal to the tentative settlement with the insurer of the "underinsured motor vehicle".

OTHER INSURANCE

If there is other applicable insurance available under one or more policies or provisions of coverage that is similar to the insurance provided under this Part of the policy:

1. Any recovery for damages under all such policies or provisions of coverage may equal but not exceed the highest applicable limit for any one vehicle under any insurance providing such coverage on either a primary or excess basis.

2. Any insurance we provide with respect to a vehicle you do not own, including any vehicle while used as a temporary substitute for "your covered auto", shall be excess over any collectible insurance providing coverage on a primary basis.

3. If the coverage under this policy is provided:

a. On a primary basis, we will pay only our share of the loss that must be paid under insurance providing coverage on a primary basis. Our share is the proportion that our limit of liability bears to the total of all applicable limits of liability for coverage provided on a primary basis.

b. On an excess basis, we will pay only our share of the loss that must be paid under insurance providing coverage on an excess basis. Our share is the proportion that our limit of liability bears to the total of all applicable limits of liability for coverage provided on an excess basis.

ARBITRATION

A. After a claim has been made seeking coverage for damages, if we and an "insured" do not agree:

1. Whether that "insured" is legally entitled to recover damages under this endorsement; or
2. As to the amount of damages;

From the owner or operator of an "uninsured motor vehicle" or "underinsured motor vehicle" then the matter may be arbitrated.

B. Both parties must agree, voluntarily, to arbitration and neither party shall be forced to arbitrate.

If both parties voluntarily agree, each party will select an arbitrator. The two arbitrators will select a third. If they cannot agree within 30 days, either may request that selection be made by a judge of a court having jurisdiction.

C. Each party will:

1. Pay the expenses it incurs; and

2. Bear the expenses of the third arbitrator equally.
- D. Unless both parties agree otherwise, arbitration will take place in the county in which the "insured" lives. Local rules of law as to procedure and evidence will apply.
- E. **Any decision agreed to by the arbitrators will not be binding.**

ADDITIONAL DUTY

A person seeking coverage for damages caused by an accident with an "underinsured motor vehicle" must also:

1. Provide us with written notice, by certified mail, of a tentative settlement between the "insured" and the insuring company of the

owner or operator of the "underinsured motor vehicle"; and

2. Allow us 60 days after receipt of the written notice to advance payment to that "insured", in an amount equal to the tentative settlement, to preserve our rights against the insuring company, owner or operator of such "underinsured motor vehicle".

Written notice of a tentative settlement must include written documentation of all damages incurred, copies of all medical bills, and written authorization or a court order to obtain reports from all employers and medical providers.

This endorsement must be attached to the Change Endorsement when issued after the policy is written.