

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**UNINSURED MOTORISTS COVERAGE – NEW MEXICO (STACKED)**

**SCHEDULE**

Uninsured Motorists Coverage	Limit Of Liability	Premium		
		Auto 1	Auto 2	Auto 3
Bodily Injury	\$ Each Person			
	\$ Each Accident			
Property Damage	\$ Each Accident	\$	\$	\$

**I. 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:

1. "Uninsured motor vehicle" or "underinsured motor vehicle" because of "bodily injury":
  - a. Sustained by an "insured"; and
  - b. Caused by an accident;
2. "Uninsured motor vehicle" or "underinsured motor vehicle" because of "property damage" 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". With respect to damages an "insured" is legally entitled to recover from the owner or operator of an "underinsured motor vehicle", we will pay under this coverage only if Paragraph 1. or 2. below applies:

1. The limits of liability under any liability bonds or policies applicable to the "underinsured motor vehicle" have been exhausted by payment of judgments or settlements; or
2. A tentative settlement has been made between an "insured" and the insurer of the "underinsured motor vehicle" and we:
  - a. Have been given prompt written notice of such tentative settlement; and
  - b. Advance payment to the "insured" in an amount equal to the tentative settlement within 30 days after receipt of notification.

Any judgment for damages arising out of a suit brought without our written consent 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 Paragraph 1. or 2. above.

**C.** "Property damage" as used in this endorsement means injury to or destruction of the property of an "insured".

**D.** "Underinsured motor vehicle" means a land motor vehicle or trailer of any type for which the sum of the limits of liability under all liability bonds or policies applicable at the time of the accident is less than the sum of the limits of liability applicable to the "insured" for Uninsured Motorists Coverage under this policy and any other policy.

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

1. Owned by or furnished or available for the regular use of you or any "family member". However, this Exception 1. does not apply for damages sustained by you or any "family member" if the sum of the limits of liability under all liability bonds or policies applicable at the time of the accident is less than the sum of the limits of liability for Uninsured Motorists Coverage under this policy and any other policy.
2. To which a 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.
  - 3. Owned or operated by a self-insurer under any applicable motor vehicle law.
- E. "Uninsured motor vehicle" means a land motor vehicle or trailer of any type:
- 1. To which no 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" or "property damage" without hitting:
    - a. You or any "family member";
    - b. A vehicle which you or any "family member" are "occupying"; or
    - c. "Your covered auto".
  - 3. To which a 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.

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

- 1. Owned or operated by a self-insurer under any applicable motor vehicle law, except a self-insurer which is or becomes insolvent; or
- 2. Owned by or furnished or available for the regular use of you or any "family member". However, this Exception 2. does not apply for damages sustained by you or any "family member" if liability coverage is excluded for such damages under this policy or any other policy.

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

- 1. Operated on rails or crawler treads.
- 2. Designed mainly for use off public roads while not on public roads.
- 3. While located for use as a residence or premises.

**Exclusions**

- A. We do not provide Uninsured Motorists Coverage for "property damage" or "bodily injury" sustained by any "insured":
  - 1. If that "insured" or the legal representative settles the "bodily injury" or "property damage" claim and such settlement prejudices our right to recover payment.

- 2. When "your covered auto" is being used to carry persons or property for a fee. This Exclusion A.2. does not apply to a share-the-expense car pool.
  - 3. Using a vehicle without a reasonable belief that that "insured" is entitled to do so. This Exclusion A.3. does not apply to a "family member" using "your covered auto" which is owned by you.
  - 4. For the first \$250 of the amount of "property damage" to the property of each "insured" as the result of any one accident.
- B. This coverage shall not apply directly or indirectly to benefit:
- 1. Any insurer or self-insurer under any of the following or similar law:
    - a. Workers' compensation law; or
    - b. Disability benefits law.
  - 2. Any insurer of property.

**Limit Of Liability**

- A. If "bodily injury" or "property damage" is sustained in an accident by you or any "family member":
  - 1. 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 such accident is the sum of the Limits Of Liability shown in the Schedule or in the Declarations for each person for Bodily Injury Uninsured Motorists Coverage;
  - 2. Subject to the maximum limit for each person described in 1. above, our maximum limit of liability for all damages arising out of "bodily injury" resulting from any one accident is the sum of the Limits Of Liability shown in the Schedule or in the Declarations for each accident for Bodily Injury Uninsured Motorists Coverage.
  - 3. Our maximum limit of liability for all "property damage" resulting from any such accident is the sum of the Limits Of Liability shown in the Schedule or in the Declarations for each accident for Property Damage Uninsured Motorists Coverage.

4. Subject to the maximum limits of liability set forth in 1., 2. or 3. above:

a. The most we will pay for "bodily injury" or "property damage" sustained in such accident by an "insured" other than you or any "family member" is that "insured's" pro rata share of the each person or each accident Limit Of Liability shown in the Schedule or the Declarations applicable to the vehicle that "insured" was "occupying" at the time of the accident; and

b. You or any "family member" who sustains "bodily injury" or "property damage" in such accident will also be entitled to a pro rata share of the each person or each accident limit described in Paragraph 4.a. above.

A person's pro rata share shall be the proportion that that person's damages bears to the total damages sustained by all "insureds".

The maximum limit of liability is the most we will pay regardless of the number of:

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

B. If "bodily injury" or "property damage" is sustained by an "insured" other than you or any "family member" in an accident in which neither you nor any "family member" sustained "bodily injury" or "property damage":

1. 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 such accident will be the each person Limit Of Liability shown in the Schedule or in the Declarations for Bodily Injury Uninsured Motorists Coverage applicable to the "your covered auto" that "insured" was "occupying" at the time of that accident.

2. Subject to this limit for each person, our maximum limit of liability for all damages arising out of "bodily injury" sustained in such accident is the each accident Limit Of Liability shown in the Schedule or in the Declarations for Bodily Injury Uninsured Motorists Coverage applicable to the "your covered auto" that "insured" was "occupying" at the time of the accident.

3. Our maximum limit of liability for all "property damage" resulting from such accident is the each accident Limit Of Liability shown in the Schedule or in the Declarations for Property Damage Uninsured Motorists Coverage applicable to the "your covered auto" that "insured" was "occupying" at the time of the accident.

The maximum limit of liability is the most we will pay regardless of the number of:

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

C. With respect to damages caused by an accident with an "underinsured motor vehicle", the limit of liability shall be reduced by all sums paid on behalf of persons or organizations who may be legally responsible. This includes all sums paid under Part A of the policy.

D. 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.

E. 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 legally responsible.

F. No payment will be made for loss paid or payable to the "insured" under Part D of the policy.

#### Other Insurance

If there is other applicable insurance similar to the insurance provided by this endorsement, we will pay only our share of the loss. Our share is the proportion that our limit of liability bears to the total of all applicable limits. However, any insurance we provide with respect to a vehicle:

1. You do not own, including any vehicle while used as temporary substitute for "your covered auto"; or
2. Owned by you or any "family member" which is not insured for this coverage under this policy;

shall be excess over any other collectible insurance similar to the insurance provided by this endorsement.

With respect to "property damage", this insurance shall apply only after the limits of any other collectible insurance applicable to the damaged property have been exhausted.

#### **Arbitration**

- A.** If we and an "insured" do not agree:
1. Whether that "insured" is legally entitled to recover damages; or
  2. As to the amount of damages which are recoverable by that "insured";
- from the owner or operator of an "uninsured motor vehicle" or "underinsured motor vehicle", then the matter may be arbitrated. However, disputes concerning coverage under this endorsement may not be arbitrated.
- Both parties must agree to arbitration. If so agreed, 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.
- B.** Each party will:
1. Pay the expenses it incurs; and
  2. Bear the expenses of the third arbitrator equally;
- unless the arbitration costs are awarded to the prevailing party by the arbitrators.
- C.** 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. A decision agreed to by at least two of the arbitrators will be binding as to:
1. Whether the "insured" is legally entitled to recover damages; and
  2. The amount of damages.

#### **Additional Duty**

A person seeking Uninsured Motorists Coverage under the definition of "underinsured motor vehicle" must also promptly notify us in writing of a tentative settlement between the "insured" and the insurer of the "underinsured motor vehicle" and allow us 30 days to advance payment to that "insured" in an amount equal to the tentative settlement to preserve our rights against the insurer, owner or operator of such "underinsured motor vehicle".

## **II. Part F – General Provisions**

Part F is amended as follows:

### **A. The following is added to the **Our Right To Recover Payment** Provision:**

Our rights do not apply under Paragraph **A.** with respect to coverage under the definition of "underinsured motor vehicle" for Uninsured Motorists Coverage if we:

1. Have been given prompt written notice of a tentative settlement between an "insured" and the insurer of an "underinsured motor vehicle"; and
2. Fail to advance payment to the "insured" in an amount equal to the tentative settlement within 30 days after receipt of notification.

If we advance payment to the "insured" in an amount equal to the tentative settlement within 30 days after receipt of notification:

1. That payment will be separate from any amount the "insured" is entitled to recover under the provisions of Uninsured Motorists Coverage; and
2. We also have a right to recover the advance payment.

### **B. The following is added to the **Two Or More Auto Policies** Provision:**

1. This provision does not apply to Uninsured Motorists Coverage.
2. No one will be entitled to receive duplicate payments for the same elements of loss under Uninsured Motorists Coverage.