

PLEASE READ THIS ENDORSEMENT CAREFULLY AS IT CHANGES YOUR POLICY

## UNDERINSURED MOTORISTS COVERAGE – OHIO

### INSURING AGREEMENT

- A. If the premium for this coverage has been paid, we will pay for compensatory damages that an “insured” is legally entitled to recover from the owner or operator of an “underinsured motor vehicle” for “bodily injury” sustained by an “insured” and caused by an auto accident.

The owner’s or operator’s liability for these damages must:

1. Be due to an auto accident; and
2. Arise out of and be causally connected to the ownership, maintenance, or use of the “underinsured motor vehicle”.

Any payment by us for this **Underinsured Motorists Coverage** is subject to the limits elected and shown in the Declarations, and as further described in the **Limit of Liability** provision of this endorsement.

- B. “Insured” as used in this endorsement means:

1. You or a “family member” while “occupying” “your covered auto”.
2. You or a “family member” while not “occupying” a motor vehicle.
3. Any other person while “occupying” “your covered auto” with permission from you.
4. Any person, for damages that person is legally entitled to recover because of “bodily injury” to a person described in this definition in 1., 2., or 3. above. This does not increase our limit of liability in any accident to an amount greater than the limit that applies to the person who has sustained a “bodily injury” and is described in this definition in 1., 2., or 3. above.

However, “insured” shall NOT mean and does NOT include:

1. You;
2. A “family member”; or
3. Any other person;

while “occupying”, operating, or otherwise using any vehicle owned by, furnished, or available for the regular use of you or a “family member”, if that vehicle is not “your covered auto”.

- C. “Minimum limits”, as used in this endorsement, means the minimum amounts of liability insurance required under a financial responsibility or compulsory insurance law of the state where “your covered auto” is registered, as shown in our records, that apply to the owner or operator of a private passenger automobile. The minimum limits amount will be the each person/each accident limit required by these laws.
- D. “Underinsured motor vehicle” means a land motor vehicle for which one or more “bodily injury” liability bonds or policies apply at the time of the accident, but all limits available under those bonds and policies for “bodily injury” liability coverage are less than the **Underinsured Motorists Coverage** limit for this policy.

An “underinsured motor vehicle” does NOT include any vehicle or its equipment:

1. Located for use as a residence or premises;
2. Designed for use mainly off public roads, while not on public roads;
3. Operated on rails or crawler treads;
4. Owned by any government or any of its subdivisions or agencies;
5. Shown in the Declarations, or insured under the liability coverage of this policy;
6. Owned by, furnished, or available for the regular use of you or a “family member”; or
7. That is an uninsured motor vehicle, meaning a land motor vehicle that is:
  - a. Not insured or bonded for “bodily injury” liability at the time of the accident;
  - b. Insured or bonded for “bodily injury” liability at the time of the accident, but either the:

- 1) Bonding or insuring company denies coverage or is, or becomes, insolvent; or
- 2) Limit of liability for “bodily injury” under that policy or bond is less than the “minimum limits”; or
- c. A motor vehicle for which the owner or operator cannot be identified, and that causes an accident resulting in “bodily injury” to an “insured” if the facts of the accident are independently corroborated by competent evidence, other than by an “insured” making a claim, to prove that the “bodily injury” to the “insured” was proximately caused by the negligence or intentional actions of the unidentified operator of that motor vehicle. The testimony of any “insured” seeking recovery shall not constitute independent corroborative evidence unless that testimony is supported by additional evidence.

### ADDITIONAL TERMS AND DUTIES

The coverage provided by this endorsement is also subject to these additional terms and duties:

- A. If the owner or operator of an “underinsured motor vehicle” has liability insurance, self-insurance, or bond, we will not make a payment under **Underinsured Motorists Coverage** to or for an “insured” until after one of the following occurs:
  1. You and we agree, in writing, to a written settlement;
  2. We have been given both:
    - a. Prompt written notice of an offer of settlement by the owner, operator, or insurer of an “underinsured motor vehicle”; and
    - b. Within 30 days of that offer notice, an opportunity to advance payment to the “insured” in an amount equal to that offer of settlement so as to protect our rights to recover against the liable owner and/or operator, or its insurer; or
  3. The limits of liability under those other applicable liability policies or bonds have been exhausted by payment of judgments or settlements.

If we have given our consent, which must be in writing, to a settlement between the “insured” and the at-fault operator and/or owner, or that person’s liability insurer, we have no right of recovery against that at-fault person as otherwise allowed under the **Our Right to Recover Payment** provision in **PART F** of this policy.
- B. Without our prior written consent, we are not bound by:
  1. Any settlement for damages; or
  2. Any judgment arising out of a lawsuit;

against the owner or operator of an “underinsured motor vehicle”.
- C. Provided the “insured” has not prejudiced our subrogation rights, any claim, lawsuit, or arbitration against us by an “insured” must be made or brought within the later of:
  1. 3 years after the date of the accident; or
  2. 1 year after the liability insurer for the owner or operator of the motor vehicle liable to the “insured” has become the subject of insolvency proceedings in any state.
- D. As to any legal action, we must be timely given all legal papers sent, served, or received.

### EXCLUSIONS

- A. **Underinsured Motorists Coverage** does NOT cover “bodily injury” to an “insured” or any person:
  1. If the claim is settled without our written consent and our rights are prejudiced.
  2. That occurs while “occupying” or using a vehicle without permission from the owner of the vehicle. This does not apply to you or a “family member” when “occupying” or using “your covered auto”.
  3. That occurs while “your covered auto” is being used to carry persons or property for a fee. This exclusion does not apply to shared expense carpools.
  4. That occurs while “occupying”, operating, or otherwise using any vehicle, including any vehicle owned by, furnished, or available for the regular use of you or a “family member”, if that vehicle is not “your covered auto”.
  5. While that person is operating a motor vehicle:

- a. Without a driver's license; or
  - b. With a driver's license that is suspended or revoked.
6. Who is an employee, officer, director, partner, trustee, member, executor, administrator, or beneficiary of the Named Insured, or any relative of any such person, and who is operating or "occupying" any motor vehicle that is not "your covered auto" under this **Underinsured Motorists Coverage**.
7. Who is involved in any prearranged, organized, or spontaneous race or who is involved in:
- a. Preparation for a race of this type, but only while in any pit area, on the track or racecourse, or its entrance or exit lanes; or
  - b. Practicing or qualifying for a race of this type.
- A race includes any contest for speed or endurance, whether against another competitor or against a time measuring device.
8. Using "your covered auto" at a:
- a. Racing facility; or
  - b. Facility or roadway temporarily designated for speed, time, racing, or performance driving events. This includes, but is not limited to, the use of "your covered auto" at a performance or racing driving school, a rally in excess of the legal speed limit, or a closed road rally.

However, Exclusions 7.a. and 8. do not apply while "your covered auto" is:

- a. In a race facility's "paddock" area or a specified show display area;
  - b. Being trailered from one location to another;
  - c. Used by you to attend a racing event as a spectator;
  - d. Being operated for purposes of display in any pre- or post-race parade laps; or
  - e. Involved in an organized event on public roads while operated within legal speed.
9. Using "your covered auto" to prepare, practice, qualify for, or participate in, any of the following activities, regardless of where they take place:
- a. Forced hydraulic bouncing competitions or exhibitions;
  - b. Pulling against another vehicle, or pulling of a weighted object during competitions or exhibitions, but not including trailer pulling;
  - c. Stereo thumping competitions or exhibitions; or
  - d. Any other similar competitive or exhibition activity that a reasonable person could foresee may cause injury or damage.

However, this exclusion does not apply while "your covered auto" is:

- a. In a facility or a specified show display area and is not involved in any competitive or exhibition activity described in this exclusion;
- b. Being trailered from one location to another; or
- c. Used by you to attend an event as a spectator.

B. **Underinsured Motorists Coverage** shall NOT apply, directly or indirectly, to benefit any:

- 1. Workers' compensation or disability benefits insurer;
- 2. Self-insurer under any workers' compensation, or disability benefits or similar law; or
- 3. Government body or agency.

This does adversely affect any statutory subrogation right established by Ohio law.

C. We do NOT provide any coverage of any kind for any punitive or exemplary damages, however named, and we do not cover any and all:

- 1. Damages that are separate from sums intended to provide compensation, and are instead intended or

awarded to:

- a. Punish or deter wrongful, malicious, or unlawful conduct by any person or party; or
  - b. Fine, penalize, or impose a statutory penalty; and
2. Attorney fees, interest, costs, or other fees awarded in connection with the award of any such punitive or exemplary damages.

#### LIMIT OF LIABILITY

Our limit of liability, which is the most we will pay, is the limit shown in the Declarations. That limit is subject to the following terms:

- A. If a split limit of liability is shown in the Declarations for **Underinsured Motorists Coverage** for each person and each accident, this is the most we will pay for all covered damages.

This limit shall apply to all claims due to "bodily injury" to:

1. Any one person in any one accident; and
2. Two or more persons in any one accident, subject to the "bodily injury" limit for each person as described in 1. above.

This each person limit includes all claims allowed by law and incurred by persons other than the person who sustains the actual "bodily injury" that results from an accident. These claims include, but are not limited to, derivative or independent claims, however labeled and where allowed by law, for: wrongful death; loss of consortium, companionship, society, support, and services; and emotional distress or mental anguish as a result of seeing the accident or "bodily injury".

- B. If a single limit of liability is shown in the Declarations for **Underinsured Motorists Coverage**, this is the most we will pay for the total of all covered damages for "bodily injury" resulting from any one accident. We will comply with any law requiring us to provide any separate limits, but this does not increase the total limit of liability that applies to each accident.

- C. There will be no adding, stacking, or combining of limits for any one covered accident no matter the number of:

1. Injured persons, claims, or lawsuits asserted;
2. Vehicles or trailers involved in the accident;
3. Insureds on this policy or involved in the accident;
4. Vehicles or premiums shown in the Declarations; or
5. Policies issued by us.

- D. **Underinsured Motorists Coverage:**

1. Is not and shall not be excess coverage to other applicable liability coverage(s); and
2. Shall only provide the "insured" an amount of protection not greater than that which would be available under the "insured's" **Uninsured Motorists Coverage** if the person(s) liable to the "insured" were uninsured at the time of the accident, though will be less than that amount when the reductions set forth in paragraph E. below are applied as allowed or required by law.

- E. Our limit of liability for **Underinsured Motorists Coverage** shall be reduced by any amount:

1. Paid or payable because of "bodily injury" by or on behalf of any persons or parties that may be legally responsible for the injury, including, but not limited to, all amounts paid under **PART A** of this policy; and
2. Paid under **PART B** of this policy; and
3. Paid or payable because of "bodily injury" under any disability benefits law or similar law, other than workers' compensation, exclusive of any state non-occupational disability benefits law.

- F. Duplicate payments will not be allowed or made for the same element of damages, expense, or loss that has been or will be paid by any other coverage under this policy, any other policy, or by any other source.

## OTHER INSURANCE

If there is other uninsured and/or underinsured motorists coverage, or similar type of insurance or source of recovery, that applies or is available under one or more policies:

- A. Except when the “insured” is “occupying” “your covered auto”, the coverage under this policy, if applicable, shall be excess to all other insurance, whether that insurance is considered primary, secondary, or excess. If there is other insurance with the same priority as this coverage, we will not pay more than our share of the covered damages or loss. Our share of the covered damages or loss is the proportion that our limit of coverage under **Underinsured Motorists Coverage** bears to the total of all applicable limits with the same priority as this coverage.
- B. Notwithstanding paragraph A. above in this **Other Insurance** provision, the total recovery under all such policies or coverages cannot be greater than the single highest limit that applies for any one vehicle under one policy of insurance providing coverage on either a primary, secondary, or excess basis.
- C. Any insurance we may be required by law to provide, but which is not otherwise provided under the terms of this **Underinsured Motorists Coverage**, with respect to the use or occupancy of a vehicle that is not “your covered auto” shall be excess over any and all other available uninsured and/or underinsured motorists coverage.

In issuing this policy of insurance we have relied upon your representation that you will purchase and maintain other insurance providing this coverage on a primary basis with respect to you and any “family members”. However, this insurance shall be primary to such other insurance for any “insured” while “occupying” or using “your covered auto”.

## ARBITRATION

Arbitration is not available to resolve any disputes as to coverage or policy interpretation issues.

Arbitration may be used, if mutually agreed to by both parties, if we and an “insured” do not agree as to:

- A. Whether or not that “insured” is legally entitled to recover damages; or
- B. The amount of damages that “insured” is legally entitled to recover;

from the owner or operator of an “underinsured motor vehicle”. Any such arbitration is limited to resolving only either one or both of those issues.

The following terms govern the arbitration process unless we and the “insured” otherwise agree in writing:

- A. Each party will select an impartial and qualified arbitrator. Those two arbitrators will select a third impartial and qualified arbitrator. If the first two arbitrators cannot agree within 30 days, either may request that selection of the third arbitrator be made by a court with proper jurisdiction.
- B. Arbitration will take place in the county in which the “insured” resides at the time of the accident.
- C. Local rules of law as to procedure and evidence will apply. Disputes as to procedure and evidence shall be subject to the authority of the arbitrator.
- D. Costs will be paid by each party as follows:
  - 1. Each party will pay the expenses it incurs and the costs of its own arbitrator selected; and
  - 2. Each party will share the expenses of the third arbitrator equally.
- E. A decision agreed to by two of the arbitrators will be binding as to:
  - 1. Whether or not that “insured” is legally entitled to recover damages; and
  - 2. The amount of damages that “insured” is legally entitled to recover, but only if that amount is not greater than “minimum limits”.

If the arbitrators’ award is greater than “minimum limits”, either party may demand the right to a trial. This demand must be made within 60 days of the arbitrators’ decision. If this demand is not made, the amount of damages agreed to by the arbitrators will then be binding.

- F. The arbitrators shall have no authority to:

- 1. Resolve any disputes as to coverage; who is an “insured”; the validity of any coverage election, rejection, or selection; residency status of a claimant; qualification of a person as an “insured”; rights or duties under

the policy; statutes of limitations; or other policy interpretation issues;

2. Award any amount greater than the limit of liability;
  3. Award any amount as punitive or exemplary damages, costs, interest, attorney fees, or other fees; or
  4. Consolidate claims or disputes in arbitration without the mutual consent of the parties.
- G. No party shall be entitled to arbitrate any claims or disputes in a representative capacity or as a member of a class.

If there is no mutual agreement to arbitrate, all issues shall be resolved in a court of proper and competent jurisdiction.

All other policy provisions apply.