

PLEASE READ THIS ENDORSEMENT CAREFULLY AS IT CHANGES YOUR POLICY

PART C – WASHINGTON

UNDERINSURED MOTORISTS BODILY INJURY COVERAGE and UNDERINSURED MOTORISTS PROPERTY DAMAGE COVERAGE

INSURING AGREEMENT

A. Underinsured Motorists Bodily Injury Coverage

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 Bodily Injury 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. Underinsured Motorists Property Damage Coverage

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” because of “property damage” 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 Property Damage 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.

C. “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” or using “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”.

D. “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.

E. "Property damage" as used in this endorsement means physical injury to or destruction of "your covered auto" to which this coverage applies, for which **Underinsured Motorists Property Damage Coverage** has been purchased on this policy.

"Property damage" does not include any:

1. Injury to or destruction of any other property; or
2. Loss of use.

F. "Underinsured motor vehicle" means a land motor vehicle that is:

1. Not insured or bonded for liability at the time of the accident;
2. Insured or bonded for liability at the time of the accident, but the:
 - a. Insuring or bonding company denies coverage or is or becomes insolvent, if that insolvency occurs within three years after the date of the accident; or
 - b. Limits available under those sources of recovery that are applicable to an "insured" after an accident are less than the damages that "insured" is legally entitled to recover from the owner or driver of that motor vehicle for "bodily injury" and "property damage";
3. A hit-and-run motor vehicle; or
4. A "phantom vehicle".

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, unless it is not able to pay damages because of financial inability or insolvency;
5. Shown in the Declarations or Schedule, or insured under the liability coverage, of this policy. However, this exception does not apply to you or a "family member" who sustains damages while "occupying" or when struck by such a vehicle; or
6. Owned by, furnished, or available for the regular use of you or a "family member" or any other person related to you who resides with you.

G. "Phantom vehicle" means a motor vehicle which causes "bodily injury", death, or "property damage" to an "insured" and has no physical contact with the "insured" or the vehicle which the "insured" is "occupying" at the time of the accident if:

1. The facts of the accident can be corroborated by competent evidence other than the testimony of the "insured" or any person having an underinsured motorists claim resulting from the accident; and
2. The accident has been reported to the appropriate law enforcement agency within 72 hours of the accident.

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 uninsured motor vehicle or "underinsured motor vehicle" has liability insurance, self-insurance, or bond, we will not make a payment under **Underinsured Motorists Bodily Injury Coverage** or **Underinsured Motorists Property Damage Coverage** to or for an "insured" until after one of the following occurs:

1. You and we agree, in writing, to a written settlement; or
2. We have been given both:
 - a. Prompt written notice of an offer of tentative settlement by the owner, operator, or insurer of an uninsured motor vehicle or "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 tentative offer of settlement so as to protect our rights to recover against the liable owner and/or operator, or its insurer. If we do not receive this required notice and our rights are prejudiced, we will deny benefits under this coverage to the extent our rights are prejudiced.
- B. In the event of an accident involving a hit-and-run or “phantom vehicle”, you, or someone on your behalf, must contact:
1. The police, or other law enforcement with proper jurisdiction, within 72 hours, or as soon as reasonably possible; and file a written report with the proper authorities as soon as practicable; and
 2. Us within 30 days of, or as soon as practicable;
- after that accident.

EXCLUSIONS

- A. **Underinsured Motorists Bodily Injury Coverage** or **Underinsured Motorists Property Damage Coverage** does NOT cover “bodily injury” to an “insured” or any other person, or “property damage”:
1. 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”.
 2. That occurs while “your covered auto” is being used as a public or livery conveyance, or for any delivery of persons or property for compensation or a fee. This exclusion does not apply to shared expense carpools.
 3. That occurs 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”.
 4. Sustained by an “insured” as the result of an act of that “insured” that was intended or reasonably likely to cause “bodily injury” or “property damage”.
 5. 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.
 6. 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 5.a. and 6. 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.
7. 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 7. 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 Bodily Injury Coverage or Underinsured Motorists Property Damage 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;
- 3. Government body or agency; or
- 4. Insurer or self-insurer of property.

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. The most we will pay for all covered damages is:

- 1. For “bodily injury”, the limit for each person shown for “bodily injury” in the Declarations, which shall:
 - a. Apply for all claims due to “bodily injury” to one person in any one accident; and
 - b. Include 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”.
- 2. The “bodily injury” limit shown in the Declarations for each person and each accident:
 - a. Shall apply for “bodily injury” to two or more persons in any one accident; and
 - b. Is subject to the “bodily injury” limit for each person as described above.
- 3. The limit for “property damage” related to, or arising out of, any one accident, if there is a separate limit shown in the Declarations for **Underinsured Motorists Property Damage Coverage**.

However, if a combined single limit for each accident is shown as the limit of liability in the Declarations for **Underinsured Motorists Bodily Injury Coverage** and **Underinsured Motorists Property Damage Coverage**, that amount shown is the most we will pay for the total of all covered damages 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.

B. 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.
- C. When necessary to avoid duplication of benefits, and subject to all other limits of liability set forth in this policy, the total damages an “insured” is legally entitled to recover under this coverage because of the accident 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 – LIABILITY COVERAGE** of this policy; and
 2. Paid or payable because of “bodily injury” under **PERSONAL INJURY PROTECTION COVERAGE** or **PART B – MEDICAL PAYMENTS COVERAGE** provided under this policy; and
 3. Paid or payable because of “property damage” under **PART D – COVERAGE FOR DAMAGE TO YOUR COVERED AUTO**.
- D. Subject to all other terms and limits of liability set forth in the policy and this **Underinsured Motorists Bodily Injury Coverage** or **Underinsured Motorists Property Damage Coverage**, the most we will pay for damages due to “bodily injury” and/or “property damage” to an “insured” caused by the owner or driver of an “underinsured motor vehicle” will be no more than the amount by which those damages exceed the sum of the amounts of coverage of all liability bonds, policies, or self-insurance available to the owner and driver of the “underinsured motor vehicle”, even if that “insured” enters into a settlement agreement for an amount less than the sum of the limits of liability under all applicable liability bonds, policies, or self-insurance.
- E. If “property damage” coverage is purchased, the **Underinsured Motorists Property Damage Coverage** limit of liability shown in the Declarations is the most we will pay for all covered damages for or related to “property damage” sustained in any one accident, and is also subject to the following:
1. For “property damage”, we shall not pay more than the lowest of the:
 - a. “Property damage” limits shown in the Declarations for **Underinsured Motorists Property Damage Coverage**;
 - b. Cost of repair or replacement; or
 - c. Guaranteed Value[®] of the damaged property, as shown in the Declarations, at the time of the accident, if the damaged property is “your covered auto”.
 2. Our payment will not include, and you are responsible for, when applicable, the amount of:
 - a. Any deductible that applies as shown in the Declarations, or if no deductible is shown, the statutory **Underinsured Motorists Property Damage Coverage** deductible of:
 - 1) \$300 for any accident with a hit-and-run motor vehicle or “phantom vehicle”; or
 - 2) \$100 for all other accidents.
 When applying the deductible, if the “property damage”:
 - 1) Is to more than one auto covered by **Underinsured Motorists Property Damage Coverage** and resulting from the same accident, only the highest applicable deductible will apply.
 - 2) Is the result of more than one accident, a separate deductible shall apply to each accident.
 - b. Betterment to any property, including any costs for labor, parts, and materials to repair prior damage, deterioration, and/or defects to the property that had not been repaired prior to the accident. Deductions for betterment and depreciation are limited to the lesser of:
 - 1) An increase in the actual cash value caused by the replacement of the part or repair; or
 - 2) An amount equal to the value of the expired life of the part to be repaired or replaced when compared to the normal useful life of that part.
 - c. The salvage value if you or the owner retains salvage.

- 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 underinsured or uninsured 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 Bodily Injury Coverage** or **Underinsured Motorists Property Damage 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.

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”.

Nothing in this **Other Insurance** section shall be deemed to provide, grant, or extend coverage that is not otherwise provided under the terms of the policy.

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. We will pay all arbitration expenses. However, arbitration expenses will not include an “insured’s” attorneys’ fees or other expenses incurred for costs such as fees for expert witnesses.
- 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, or who is an “insured”, the validity of any coverage election or rejection or selection, residency status of a claimant, qualification of a person as an “insured”, rights or duties under the policy, or statutes of limitations, or other policy interpretation issues; or
2. Award any amount greater than the limit of liability; or
3. Award any amount as punitive or exemplary damages, costs, interest, attorney fees, or other fees.

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.