

PLEASE READ THIS ENDORSEMENT CAREFULLY AS IT CHANGES YOUR POLICY

PART C – COLORADO

UNINSURED AND UNDERINSURED MOTORISTS COVERAGE

INSURING AGREEMENT

A. Uninsured and 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 “uninsured motor vehicle” or “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 “uninsured motor vehicle” or “underinsured motor vehicle”.

Any payment by us for this **Uninsured and 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. Uninsured 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 “uninsured motor vehicle”, but not an “underinsured motor vehicle”, for “property damage” 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 “uninsured motor vehicle”.

Any payment by us for this **Uninsured Motorists Property Damage Coverage** is subject to the **Limit of Liability** provision of this endorsement.

C. “Diminution of value” means the difference in “market value” of the covered property just prior to loss and just after loss, whether or not the covered property is repaired. “Market value” means the price which the property might be expected to realize if offered for sale by a willing seller to a willing buyer in a fair market on the date of loss or damage.

D. “Insured” as used in this endorsement means:

1. You or a “family member” while “occupying” or using “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”.

E. “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.

- F. "Property damage" means, when caused by actual direct physical contact with the "uninsured motor vehicle", physical injury to or destruction of "your covered auto" for which **Uninsured Motorists Property Damage Coverage** has been purchased. This includes a child passenger restraint system that was in use by a child during an accident, or if the child passenger restraint system was in the vehicle and it sustained a loss covered by the policy.

"Property damage" does not include any:

1. Injury to or destruction of any other property;
2. Loss of use; or
3. "Diminution of value".

- G. "Underinsured motor vehicle" means a land motor vehicle for which one or more "bodily injury" liability bonds or policies applies at the time of the accident, but all limits available under those bonds and policies for "bodily injury" liability coverage:

1. Are not enough to pay the full amount the "insured" is legally entitled to recover for compensatory damages for "bodily injury"; or
2. Have been reduced by payments to other persons injured in the accident to an amount which is not enough to pay the full amount the "insured" is legally entitled to recover for compensatory damages for "bodily injury".

This definition only applies for purposes of "bodily injury", and does not apply to, and no coverage is provided for, any "property damage" caused by an "underinsured motor 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. Shown in the Declarations, or insured under the liability coverage, of this policy; or
5. Owned by, furnished, or available for the regular use of, you, or a "family member".

- H. "Uninsured 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 bonding or insuring company denies coverage or is, or becomes, insolvent;
3. For "bodily injury" only:
 - a. Insured or bonded for liability at the time of the accident, but the vehicle is an "underinsured motor vehicle";
 - b. A motor vehicle that causes an accident resulting in "bodily injury" to an "insured", for which the owner or driver cannot be identified; or
 - c. Owned or operated at the time of the accident by a person who cannot be located after a reasonable attempt for service of process and either:
 - 1) Service of process on the insurer, as authorized by §42-7-414(3), C.R.S., as amended, is found by a court to be insufficient or ineffective after reasonable effort has failed; or
 - 2) The report of a law enforcement agency investigating the accident fails to disclose the insurer covering the motor vehicle, and the insurance coverage of such owner or operator when the accident occurred is not actually known by the person trying to serve process.

This clause H.3. only applies with respect to "bodily injury" and does not apply to "property damage"; or

4. For “property damage” only, a hit-and-run motor vehicle that hits, with actual physical contact, “your covered auto” to which this coverage applies, for which **Uninsured Motorists Property Damage Coverage** has been purchased on this policy.

An “uninsured 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. Shown in the Declarations, or insured under the liability coverage, of this policy;
5. Owned by, furnished, or available for the regular use of, you or a “family member”; or
6. Owned or operated by a self-insurer under any motor vehicle law that applies, other than a self-insurer that is or becomes insolvent.

However, notwithstanding the list of vehicles described above as excluded from the definition of “uninsured motor vehicle”, “your covered auto”, if insured for purposes of uninsured or underinsured motorists coverage under this policy, may be deemed an “uninsured motor vehicle” if it was stolen and being used by a person who is a thief of such auto and without any applicable liability coverage at the time 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 **PART C** 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 “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 offer of settlement so as to protect our rights to recover against the liable owner and/or operator, or its insurer.
- 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 “uninsured motor vehicle” or “underinsured motor vehicle”.
- C. In the event of an accident involving a hit-and-run or unidentified vehicle, you, or someone on your behalf, must contact:
 1. The police, or other law enforcement with proper jurisdiction, within 24 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. **PART C** does NOT cover “bodily injury” to an “insured” or any other person, or any “property damage”:
 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. If the "insured" is using or occupying a motorized vehicle when that "insured" is a converter of that vehicle, as defined in §10-4-601(3), C.R.S., without a good faith belief that he or she is legally entitled to operate or use such vehicle.
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. **PART C** 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.
- D. There is no coverage for “property damage” for any type of damages or loss:
- 1. Arising out of an accident where there is no actual physical contact between the property of the “insured” with the “uninsured motor vehicle”;
 - 2. For loss of use;
 - 3. Which is paid or payable under any other property insurance including, but not limited to, any coverage under this policy;
 - 4. Caused by an “underinsured motor vehicle”; or
 - 5. For any diminution of value.

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 **Uninsured and Underinsured Motorists Bodily Injury Coverage** or **Uninsured Motorists Property Damage Coverage** for each person and each accident, this is the most we will pay for all covered damages.
- 1. This limit shall apply to all claims due to “bodily injury” to:
 - a. Any one person in any one accident; and
 - b. Two or more persons in any one accident, subject to the “bodily injury” limit for each person as described in a. 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”.
 - 2. 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 **Uninsured Motorists Property Damage Coverage**.
- B. If a single limit of liability is shown in the Declarations for **Uninsured Motorists Coverage**, this is the most we will pay for the total of all covered damages for “bodily injury” (and if applicable “property damage”) 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; or
 - 4. Vehicles or premiums shown in the Declarations.
- D. When necessary to avoid duplication of benefits, and subject to all other limits of liability set forth in this policy, the total damages for “bodily injury” an “insured” is legally entitled to recover because of the accident with an “uninsured motor vehicle” or “underinsured motor vehicle” shall be reduced by any amount paid or to be paid because of “bodily injury”:
- 1. 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. Under any workers’ compensation law, disability benefits law, or similar laws, exclusive of any state non-occupational disability benefits law.

However, this reduction clause shall not reduce the available amount to less than “minimum limits”.

- E. 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.
- F. As to any coverage afforded as related to an accident caused by an “underinsured motor vehicle”, this coverage shall:
 - 1. Be in addition to and excess over any legal liability coverage for “bodily injury” that applies to the responsible tortfeasor; and
 - 2. Cover only the difference, if any, between the amount of the limits of any such legal liability coverage for the responsible tortfeasor and the amount of the damages sustained for “bodily injury”, up to the limit of liability for **Uninsured and Underinsured Motorists Bodily Injury Coverage** shown in the Declarations.
- G. The limit of liability for **Uninsured Motorists Property Damage Coverage**, as described in this endorsement, is the most we will pay for all “property damage” sustained in any one accident, and we shall not pay more for the covered property damaged at the time of the accident than the lowest of the:
 - 1. Guaranteed Value[®], as shown in the Declarations; or
 - 2. Cost of repair or replacement of the damaged covered property.

Our payment will not include, and you are responsible for, the amount of:

- 1. Any deductible that applies as shown in the Declarations. When applying the deductible, if the “property damage”:
 - a. Is to more than one auto covered by this **Uninsured Motorists Property Damage Coverage** resulting from the same accident, only the highest applicable deductible will apply.
 - b. Is the result of more than one accident, a separate deductible shall apply to each accident.
- 2. Betterment to any property, including but not limited to 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 “property damage”.
- 3. The salvage value if you or the owner retains salvage.

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 **PART C** bears to the total of all applicable limits with the same priority as this coverage.
- B. If there is other similar “property damage” coverage available, or any other source of recovery for “property damage” under any insurance including, but not limited to, any coverage under this policy, that is paid or payable for “property damage”, then no **Uninsured Motorists Property Damage Coverage** will apply for that “property damage” under this policy.
- C. 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 “uninsured motor vehicle” or “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 experts and lawyer; and
 - 2. We will pay the expenses of the arbitration and the arbitrators.
- 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”.
- 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; 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.