

PLEASE READ THIS ENDORSEMENT CAREFULLY AS IT CHANGES YOUR POLICY

## UNDERINSURED MOTORISTS COVERAGE - INDIANA

This **UNDERINSURED MOTORISTS COVERAGE** is provided subject to the provisions of this endorsement and in return for the premium and compliance with all applicable provisions of the policy to which it is attached:

### INSURING AGREEMENTS

- 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 “uninsured motor vehicle” or “underinsured motor vehicle” for “bodily injury” sustained by that “insured” and caused by a motor vehicle accident.

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

1. Be due to a motor vehicle 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 **Underinsured Motorists Coverage** is subject to the limits elected and shown in the Declarations or Schedule, 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 using or “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. Any “family member” or any other person related to you who resides with you; or
3. Any other person;

while “occupying”, operating or otherwise using any vehicle owned by, or furnished or available for the regular use of, you, or any person related to you who resides with you, 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:

1. Are less than the **Underinsured Motorists Coverage** limit for “bodily injury”, if purchased and shown in the Declarations or Schedule of coverage for this policy; or
2. Have been reduced by “bodily injury” payments to other persons injured in the accident to an amount less than the “bodily injury” limit for **Underinsured Motorists Coverage** shown in the Declarations or Schedule but greater than “minimum limits”.

This definition only applies for “bodily injury”, and no coverage applies to any “property damage” caused by the owner or driver of 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 Schedule, or insured under the liability coverage, of this policy;
5. Owned by, or furnished or available for the regular use of, you, any “family member” or any other person related to you who resides with you; or
6. That is an “uninsured motor vehicle”.

E. “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:
  - a. Bonding or insuring company denies coverage or is insolvent, or becomes insolvent within two years after the date of the accident; or
  - b. Limit of liability for under that policy or bond is less than the “minimum limits”;
3. For “bodily injury” only, means a motor vehicle:
  - a. For which the owner or driver cannot be identified; and
  - b. That causes an accident resulting in “bodily injury” to an “insured”.

If there is no physical contact with the unidentified motor vehicle, then the facts of the accident must be corroborated by competent evidence of an eyewitness other than an “insured” making a claim; or

4. For “property damage” only, a hit-and-run motor vehicle that strikes, with direct 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 Schedule, or insured under the liability coverage, of this policy;
5. Owned by, or furnished or available for the regular use of, you, any “family member” or any other person related to you who resides with you;
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;

7. That is an unidentified vehicle or miss-and-run vehicle, for which neither the owner nor operator of the vehicle has been identified; or
8. That is an "underinsured motor vehicle".

### **ADDITIONAL TERMS & 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" which includes a certification of the liability coverage limits of the owner or driver of the "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 all other applicable liability policies or bonds have been exhausted by payment of judgments or settlements.
- 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 of, or as soon as practicable after, that accident, and file a written report; and
  2. Us within 30 days of, or as soon as practicable after, that accident.
- D. There is no coverage for any noneconomic damages, as defined and limited under the Indiana insurance laws at Indiana Code sections 27-7-5.1-1 through 27-7-5.1-6, as amended, including physical and/or emotional pain and suffering, physical impairment, emotional distress, mental anguish, loss of enjoyment, loss of companionship, services and consortium, and any other noneconomic damages, if that "insured" is an uninsured motorist with a previous violation as defined in Indiana Code Section 27-7-5.1. This exclusion does not apply to an "insured" under 18 years of age.

### **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 using or "occupying" a vehicle without permission from the owner of the vehicle. This does not apply to you or a "family member" when using or "occupying" "your covered auto".

3. 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 (A.3.) does not apply to shared expense car pools.
  4. That occurs while “occupying”, operating or otherwise using any vehicle owned by, or furnished or available for the regular use of, you, a “family member” or any other person related to you who resides with you, if that vehicle is not “your covered auto”.
  5. For noneconomic loss, including physical and/or emotional pain and suffering, physical impairment, emotional distress, mental anguish, loss of enjoyment, loss of companionship, services and consortium, and any other noneconomic damages, if that “insured” is an uninsured motorist with a previous violation as defined in Indiana Code Section 27-7-5.1. This exclusion does not apply to an “insured” under 18 years of age.
- 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.
- 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 **Underinsured Motorists Coverage** limit of liability, which is the most we will pay, is the limit shown in the Declarations or Schedule. That limit is subject to the following terms:

- A. If the limit shown in the Declarations or Schedule shows a per person and per accident limit:
1. The limit for each person shown in the Declarations or Schedule 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 limit shown in the Declarations or Schedule per 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.
- B. If only a single per accident limit is shown as the limit of liability in the Declarations or Schedule for **Underinsured Motorists 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.

- 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 Schedule; or
  5. Policies issued by us.

There will be no adding, stacking or combining of coverage in any way even if:

1. Both an “uninsured motor vehicle” and “underinsured motor vehicle”, or multiple such vehicles, are involved in an accident; or
  2. More than one source or policy of uninsured or underinsured motorist coverage applies to an accident, in which case the priorities and all terms set forth in the Other Insurance clause apply so that the most to be recovered under all those policies shall not exceed the single highest limit of liability that applies for such coverage under any one of those policies.
- D. Our limit of liability for **Underinsured Motorists Coverage** shall be reduced by any amount paid or to be paid because of “bodily injury”:
1. By or on behalf of any and all persons or parties that may be legally responsible for the injury, including, but not limited to, all amounts paid:
    - a. Under **PART A – LIABILITY COVERAGE** of this policy; and
    - b. By any legally responsible persons or parties involved in causing the accident whether or not that person or party is the owner or driver of an “underinsured motor vehicle”;
  2. Paid under **PART B – MEDICAL PAYMENTS COVERAGE** of this policy; and
  3. Paid or payable because of “bodily injury” under any workers’ compensation law, disability benefits law, or similar laws, exclusive of any state non-occupational disability benefits law.

However, this shall not reduce the available amount to less than the statutory minimum for “bodily injury”.

- 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.

#### **OTHER INSURANCE**

If there is other 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. However, when there is coverage under this endorsement, we will provide primary coverage for you or a “family member”, but only if and when required by law and only:
1. As compared to any insurance or self-insurance maintained by the owner of a motor vehicle if that motor vehicle is leased by you or a “family members” under a written lease agreement and you or

a “family members” have agreed in writing to provide primary coverage for the use or operation of that motor vehicle by you or a “family members”; or

2. As compared to coverage under a “garage liability policy” maintained by the owner of a motor vehicle. As used here, a “garage liability policy” means any motor vehicle liability insurance policy that affords coverage to a named insured engaged in a “motor vehicle business”, but does not refer to a motor vehicle liability insurance policy that affords coverage to a vehicle used in the business of transporting property for hire. “Motor vehicle business” means any business related to or involving motor vehicle or trailer transactions, including, but not limited to, the following: the selling, leasing, renting, repairing, servicing, delivering, loading or unloading, testing, road testing, test-driving, storing, parking (including valet parking), towing, washing, cleaning or detailing of any motor vehicle or trailer.
- B. Any and all primary coverage, if and when such order of priority is set forth in the Indiana insurance laws and is required to apply, must be exhausted before any other similar coverage that is not primary will apply.
- C. Notwithstanding paragraph A. above in this **Other Insurance** section:
1. 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; and
  2. When coverage applies under this Endorsement related to the use or occupancy of “your covered auto” by a person engaged in a “motor vehicle business”, if the accident occurs while “your covered auto” is under that person’s control or the control of that person’s employee or agent, then our Policy and our coverage is excess.

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, “family members” and any other person related to you who resides with you. 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 (i.e. liability and damages).

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 time of 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, 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.