

PLEASE READ THIS ENDORSEMENT CAREFULLY AS IT CHANGES YOUR POLICY

UNINSURED MOTORISTS COVERAGE - OREGON

PART C – UNINSURED MOTORISTS COVERAGE is replaced by the following **PART C - UNINSURED MOTORISTS COVERAGE**:

INSURING AGREEMENTS

A. Uninsured 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 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 Uninsured Motorists Bodily Injury 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. Uninsured Motorists Property Damage Coverage.

If the premium for this coverage has been paid, we will pay for compensatory damages that you or a “family member” are legally entitled to recover from the owner or operator of an “uninsured motor vehicle” for “property damage” sustained by that “insured” and caused by a motor vehicle accident.

The owner’s or operator’s liability for “property damage” 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”.

Any payment by us for this Uninsured Motorists Property Damage 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.

C. “Date of settlement” means the date on which a written settlement agreement or release is signed by an “insured” or, in the absence of such documents, the date on which the “insured” or the legal representative of the “insured” receives payment of any sum required by the settlement agreement. An advance payment as defined in Oregon Revised Statutes §31.550, as amended, shall not be deemed a payment of a settlement for purposes of this definition.

D. “Final judgment” means a judgment that has become final by lapse of time for appeal, or by entry in an appellate court of an appellate judgment.

E. “Hit-and-run vehicle” means a vehicle that causes either or both:

1. “Bodily injury” to an “insured” that arises out of physical contact of that vehicle with either the “insured” or a vehicle the “insured” is “occupying” at the time of the accident;
2. “Property damage” to “your covered auto” for which Uninsured Motorists Property Damage Coverage has been purchased on this Policy, and that arises out of physical contact between those vehicles;

provided the following requirements are also satisfied:

1. The identity of either the owner or driver of that hit-and-run vehicle cannot be ascertained;

2. The “insured”, or someone on behalf of the “insured”, both:
 - a. Reports the accident within 72 hours to an appropriate law enforcement officer or agency; and
 - b. Files with us within 30 days thereafter a statement under oath that the “insured”, or the legal representative of the “insured”, has a cause or causes of action arising out of the accident for damages against a person or persons whose identities are unascertainable, and setting forth the facts in support thereof; and
3. At our request, the “insured”, or the legal representative of the “insured”, makes available for inspection the vehicle that, at the time of the accident, that “insured” was “occupying” or “your covered auto” that was damaged as a result of that accident.

F. “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. 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”.

G. “Phantom vehicle” means a vehicle that causes either or both:

1. “Bodily injury” to an “insured” that arises out of a motor vehicle accident that is caused by a vehicle that has no physical contact with the “insured” or the vehicle the “insured” is “occupying” at the time of the accident;
2. Property damage to “your covered auto” for which Uninsured Motorists Property Damage Coverage has been purchased on this Policy, although there is no physical contact between those vehicles;

provided the following requirements are also satisfied:

1. The identity of either the owner or driver of that phantom vehicle cannot be ascertained;
2. The facts of the accident can be corroborated by competent evidence other than the testimony of the “insured”, any person with a claim under this **Uninsured Motorists Coverage** resulting from that accident, or any passenger in “your covered auto” at the time of the accident; and
3. The “insured”, or someone on behalf of the “insured”, both:
 - a. Reports the accident within 72 hours to an appropriate law enforcement officer or agency; and
 - b. Files with us within 30 days thereafter a statement under oath that the “insured”, or the legal representative of the “insured”, has a cause of action arising out of the accident for damages against a person whose identity is unascertainable, and setting forth the facts in support thereof.

- H. "Property damage", as used in this endorsement, means physical injury to or destruction of "your covered auto" for which Uninsured Motorists Property Damage Coverage has been purchased on this Policy.

"Property damage" does not include:

1. Loss of use;
 2. Damage to, or destruction or loss of, any other personal property (whether or not contained in "your covered auto"); or
 3. Diminution of value.
- I. "Stolen vehicle" means, for "bodily injury" only, a vehicle that is "your covered auto" and, at the time of the accident, causes "bodily injury" to an "insured" arising out of a motor vehicle accident provided the following requirements are also satisfied:
1. That vehicle is operated without the consent of the "insured";
 2. The operator of that vehicle does not have collectible motor vehicle bodily injury liability insurance; and
 3. The "insured", or someone on behalf of the "insured", both:
 - a. Reports the accident within 72 hours to an appropriate law enforcement officer or agency; and
 - b. Cooperates with the appropriate law enforcement agency in the prosecution of the theft of that vehicle.
- J. "Underinsured motor vehicle" means a land motor vehicle for which one or more "bodily injury" liability policies or self-insurance apply at the time of the accident, but the amount paid under those policies and self-insurance for "bodily injury" liability coverage to or for an "insured" provides recovery in an amount that is less than the sums that the "insured", or the heirs or legal representative of that "insured", is legally entitled to recover as damages for "bodily injury". This definition only applies for purposes of "bodily injury", and does not apply to any "property damage".

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

1. Located for use as a residence or premises;
 2. That is a farm-type tractor or equipment 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 a vehicle owned by an Oregon government unit or agency subject to O.R.S. §§ 30.260 to 30.300, as amended, limiting the liability of those Oregon entities;
 5. Shown in the Declarations or Schedule, or insured under the liability coverage, of this Policy, unless it is a "stolen vehicle";
 6. 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, unless it is "your covered auto" that is a "stolen vehicle"; or
 7. That is an "uninsured motor vehicle".
- K. "Uninsured motor vehicle" means a land motor vehicle that is:
1. Not insured for liability at the time of the accident;
 2. Insured for liability at the time of the accident, but the:
 - a. Insuring company denies coverage or is, or becomes, insolvent or bankrupt, or is subject to the appointment of a receiver;

- b. Limit of liability for “bodily injury” under that policy is less than the “minimum limits”;
- 3. A “hit-and-run vehicle” or “phantom vehicle”;
- 4. Subject to a certificate of self-insurance that applies at the time of the accident, but it is not in compliance with ORS 806.130 (1)(c), as amended; or
- 5. With respect to “bodily injury” only, a “stolen vehicle”.

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

- 1. Located for use as a residence or premises;
- 2. That is a farm-type tractor or equipment 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 a vehicle owned by an Oregon government unit or agency subject to O.R.S. §§ 30.260 to 30.300, as amended, limiting the liability of those Oregon entities;
- 5. Shown in the Declarations or Schedule, or insured under the liability coverage, of this Policy unless it is a “stolen vehicle”;
- 6. 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, unless it is “your covered auto” that is a “stolen vehicle”;
- 7. Owned or operated by a self-insurer under any motor vehicle law that applies, other than a self-insurer that:
 - a. Is or becomes insolvent or bankrupt, or is subject to the appointment of a receiver; or
 - b. Is subject to a certificate of self-insurance that applies at the time of the accident, but it is not in compliance with ORS 806.130 (1)(c), as amended; 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 “uninsured motor vehicle” or “underinsured motor vehicle” has liability insurance or self-insurance, we will not make a payment under **Uninsured 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 “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). When seeking our consent as to a settlement offer, the “insured” must:
 - (1) Allow us a reasonable time to collect and evaluate information related to the proposed settlement offer; and
 - (2) Provide us any information we reasonably request that is within the custody and control of that person.

Unless we and the person seeking coverage agree otherwise, consent will be presumed to be given by us if we do not respond within thirty (30) days from our receipt of a written request for consent; or

3. The limits of liability under those other applicable liability policies 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”.
- No judgment against any person or organization alleged to be legally responsible, except for proceedings instituted against us as provided in this Policy, shall be conclusive, as between the “insured” and us, on the issues of liability of the person or organization or of the amount of damages to which the “insured” is legally entitled.
- C. No cause of action shall accrue to the “insured” under this Coverage unless within two (2) years from the date of the accident:
1. Agreement as to the amount due has been concluded;
 2. We or an “insured” have formally instituted arbitration proceedings;
 3. The “insured” has filed an action against us in a court of competent jurisdiction; or
 4. A lawsuit has been filed against the owner or driver of the “uninsured motor vehicle” or “underinsured motor vehicle” in a court of competent jurisdiction and, within two (2) years from the date of settlement or final judgment of that lawsuit:
 - a. Arbitration proceedings have been formally instituted against us by the “insured”; or
 - b. The “insured” filed a legal action against us in a court of competent jurisdiction.
- D. In the event of an accident involving a “hit-and-run vehicle” or “phantom vehicle”, you (or someone on your behalf) must contact:
1. The police (or other law enforcement with proper jurisdiction) within 72 hours of that accident and file a written report; and
 2. Us within 30 days of that accident.
- E. If a settlement for benefits covered under this Policy is not made within six (6) months from the date proof of loss is filed with us, and:
1. An action is brought in any court in the State of Oregon upon this Policy; and
 2. The plaintiff’s recovery exceeds the amount of any tender made by us in that action;
- then a reasonable amount to be fixed by the court as attorney fees may be taxed as part of the costs of the action and any appeal thereon, EXCEPT THAT THIS DOES NOT APPLY as to actions to recover **Uninsured Motorists Coverage** benefits if, in writing, not later than six (6) months from the date proof of loss is filed with us, we have:
1. Accepted coverage and the only issues are the liability of the uninsured or underinsured motorist and the damages due the “insured” under this **Uninsured Motorists Coverage**; and
 2. Consented to submit the case to binding arbitration.

EXCLUSIONS

- A. **Uninsured Motorists Coverage** does NOT cover “bodily injury” or “property damage” sustained by an “insured” or any person:

1. If the claim is settled or prosecuted to judgment 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".
- B. There is no Uninsured Motorists Bodily Injury Coverage for an accident caused by the owner or driver of an "underinsured motor vehicle" unless either of the following occur:
1. The limits of liability under any "bodily injury" liability insurance applicable at the time of the accident regarding the injured "insured" have been:
 - a. Exhausted by payment of judgments or settlements; or
 - b. Offered in settlement and the "insured" protects our subrogation right to the claim against the tortfeasor, if we have not consented to the settlement offer; or
 2. The "insured" gives credit to us for the unrealized portion of the described "bodily injury" liability limits as if the full limits had been received if less than the described limits have been offered in settlement, and we have:
 - a. Consented to such settlement; or
 - b. Not consented to such settlement, but the "insured" protects our subrogation right to the claim against the tortfeasor.
- C. There is no Uninsured Motorists Property Damage Coverage for the first:
1. \$300 of the amount of otherwise covered "property damage" as the result of any one accident with a "hit-and-run vehicle" or "phantom vehicle"; or
 2. \$200 of the amount of otherwise covered "property damage" as the result of any one accident in all other cases.
- D. **Uninsured Motorists Coverage** shall NOT apply, directly or indirectly, to benefit:
1. Any workers' compensation or disability benefits insurer;
 2. Any self-insurer under any workers' compensation, or disability benefits or similar law;
 3. Any government body or agency;
 4. Any insurer or self-insurer; or
 5. The Oregon State Accident Insurance Fund Corporation.
- E. 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 **Uninsured 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. The most we will pay for all “bodily injury” covered damages is:
 1. The “bodily injury” limit for each person shown in the Declarations or Schedule, 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. If the limit shown in the Declarations or Schedule shows a per person and per accident limit for “bodily injury”, that per accident limit:
 - 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 the Declarations or Schedule shows you have purchased Uninsured Motorists Property Damage Coverage, the limit shown is the most we will pay for all covered “property damage” sustained in any one accident, and is 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 or Schedule for Uninsured Motorists Property Damage Coverage
 - b. Guaranteed Value[®] of the damaged property, as shown in the Declarations or Schedule, at the time of the accident, if the damaged property is “your covered auto”; or
 - c. Cost of repair or replacement.
 2. Our payment for “property damage” will not include, and you are responsible for (when applicable), the amount of:
 - a. Any deductible that applies as set forth under the Exclusions and/or as shown in the Declarations or Schedule.
 - 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.
 - c. The salvage value if you or the owner retains salvage.
 3. We have no duty to cover or pay for any diminution in value.
- C. If only a single per accident limit is shown as the limit of liability in the Declarations or Schedule for **Uninsured 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.
- D. There will be no adding, stacking or combining of limits within this Policy 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 or Schedule.
- E. The amount of damages payable to or for an “insured” under this **Uninsured Motorists Coverage** shall be reduced by all sums:
1. That represent the difference between:
 - a. The liability limit of; and
 - b. The amount paid to an “insured” by or on behalf of;

any persons or parties that may be legally responsible to that “insured” when the “insured” has entered into a settlement with such persons or parties legally responsible for any amount less than the limit applicable to all liability policies, except when that lesser amount settled for was solely because the full liability limits were reduced by multiple claims being paid to other persons injured in the same accident.

This reduction does not apply to the extent that we have consented to such settlement between the “insured” and the legally responsible persons or organizations for less than the available liability coverage; and
 2. Paid under **PART A – LIABILITY COVERAGE, PERSONAL INJURY PROTECTION COVERAGE** and **PART B - MEDICAL PAYMENTS COVERAGE** of this Policy, and under any other personal injury protection, no-fault coverage or medical payments coverage of any other motor vehicle policy; and
 3. Paid, and the present value of all amounts payable but not yet paid, because of “bodily injury” under any workers’ compensation law, disability benefits law, other similar laws, or similar self-insured or governmental plan, 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, 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 **Uninsured Motorists Coverage** bears to the total of all applicable limits with the same priority as this coverage.

If coverage applies for “property damage” and there is other similar coverage or any source of recovery for “property damage”, then we are liable only for our share. Our share is that proportion of the amount of “property damage” that the limit of liability of this coverage bears to the total of all such coverage that applies to the “property damage”.

In no event may any recovery by an “insured” under all coverages and policies that apply exceed the actual damages or loss.

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 “uninsured motor vehicle” or “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, at the election of the “insured”:
 - 1. In the county and state in which the “insured” resides at time of accident;
 - 2. In the county and state where the cause of action against the owner or driver of the “uninsured motor vehicle” or “underinsured motor vehicle” arose; or
 - 3. At any other place mutually agreed upon by the “insured” and us.
- C. Local rules of law as to procedure and evidence will apply.
- D. Disputes as to procedure and evidence shall be subject to the authority of the arbitrator.
- E. Costs will be paid by each party as follows:
 - 1. Except as stated in E.3. below, each party will pay the expenses it incurs, the costs of its attorneys and the costs of its own arbitrator selected; and
 - 2. Each party will share the expenses of the third arbitrator equally.
 - 3. We will pay all arbitration costs that exceed \$100, but not including attorney fees or any expenses incurred by the “insured” in the production of witnesses or the making of transcripts of the arbitration proceedings.
- F. 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.

- G. 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. No judgment against any person or organization alleged to be legally responsible, except for proceedings instituted against us as provided in this Policy, shall be conclusive, as between the “insured” and us, on the issues of liability of the person or organization or of the amount of damages to which the “insured” is legally entitled.

PART F – GENERAL PROVISIONS

The **Two Or More Auto Policies** provision of this Policy does not apply to **Uninsured Motorists Coverage**.

All other policy provisions apply.