

PLEASE READ THIS ENDORSEMENT CAREFULLY AS IT CHANGES YOUR POLICY

## **UNINSURED MOTORISTS COVERAGE AND UNDERINSURED MOTORISTS COVERAGE - ILLINOIS**

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

### **INSURING AGREEMENT**

#### **A. Uninsured Motorists Bodily Injury Coverage**

If the premium for Uninsured Motorists Bodily Injury 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” 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”.

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. Underinsured Motorists Bodily Injury Coverage**

If the premium for Underinsured Motorists Bodily Injury 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 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 “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 or Schedule, and as further described in the **Limit of Liability** provision of this endorsement.

#### **C. Uninsured Motorists Property Damage Coverage**

If the premium for Uninsured Motorists Property Damage Coverage has been paid, we will pay for compensatory damages that you are legally entitled to recover from the owner or operator of an “uninsured motor vehicle” for “property damage” to “your covered auto” 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 involving direct actual physical contact of the “uninsured motor vehicle” with “your covered auto”; and
2. Arise out of and be causally connected to the ownership, maintenance or use of the “uninsured motor vehicle”.

Also, the owner or operator of the “uninsured motor vehicle” must be identified by giving us:

1. The name and address of the owner of the at-fault “uninsured motor vehicle”;

2. A registration number and description of the “uninsured motor vehicle”; or
3. Any other available information so we can determine there is no motor vehicle property damage liability insurance that applies.

No coverage applies under **PART C** to or for “property damage” caused by the owner or operator of an unidentified motor vehicle or an “underinsured 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.

D. “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. 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”.

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”, as used in this endorsement, means physical harm to or destruction of:

1. “Your covered auto” for which Uninsured Motorists Property Damage Coverage has been purchased; and
2. A child restraint system being used by a child in “your covered auto” (for which this Uninsured Motorists Property Damage Coverage applies) at the time of the accident.

“Property damage” does not include: any damage to any other property, any amount for loss of use, or any diminution of value.

G. “Underinsured motor vehicle” means a land motor vehicle for which one or more “bodily injury” liability bonds or policies (or other security required to be maintained under Illinois law applicable to the driver or to the person or organization legally responsible for such motor vehicle) apply at the time of the accident, but all limits available under those bonds and policies (or other security) for “bodily injury” liability coverage are less than the Underinsured Motorists Bodily Injury Coverage limit shown in the Declarations or Schedule 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 Schedule, or insured under the liability coverage, of this policy;
  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; or
  7. That is an "uninsured motor vehicle".
- 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:
    - a. Bonding or insuring company denies coverage or is, or becomes, insolvent; or
    - b. Limit of liability under that policy or bond is less than the "minimum limits";
  3. For purposes of "bodily injury" only, a hit-and-run motor vehicle for which the owner or operator cannot be identified, and that motor vehicle causes "bodily injury" to an "insured" by direct actual physical contact with, by striking or hitting, that "insured" or "your covered auto"; or
  4. For purposes of "property damage" only, a hit-and-run motor vehicle:
    - a. For which the owner or operator must be identified by the information required and listed under the Uninsured Motorists Property Damage Coverage **Insuring Agreement** of this **PART C**; and
    - b. That causes a motor vehicle accident involving direct actual physical contact with, by striking or hitting, "your covered auto".

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. Owned by any government or any of its subdivisions or agencies;
5. Shown in the Declarations or Schedule, or insured under the liability coverage, of this policy, unless that vehicle is "your covered auto" for which **PART A – LIABILITY COVERAGE** is purchased under this Policy but that coverage is denied for the damages sustained in the accident;
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 that vehicle is "your covered auto" for which **PART A – LIABILITY COVERAGE** is purchased under this Policy but that coverage is denied for the damages sustained in the accident;
7. Owned or operated by a self-insurer under any motor vehicle law that applies, other than a self-insurer that is or becomes insolvent; 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, self-insurance, bond or other security, we will not make a payment under this **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); or
  3. The limits of liability under those other applicable liability policies or bonds have been fully or partially 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.

## EXCLUSIONS

- A. **PART C** does NOT cover “bodily injury” to an “insured” or any person and does not cover “property damage”:
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”.
- 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 any deductible amount for or related to any “property damage”, or other unpaid portions of loss or damage related to “property damage”, for which you or any “insured” are responsible for under this or any other policy or source of recovery.
- E. **PART C** Uninsured Motorists Property Damage Coverage does NOT cover any type of loss or damages:
1. Where the owner or operator cannot be identified by the information required and listed under the Uninsured Motorists Property Damage Coverage **Insuring Agreement** of this **PART C**.
  2. Caused by an accident where there is no actual direct physical contact between the “uninsured motor vehicle” and “your covered auto” for which this Uninsured Motorists Property Damage Coverage has been purchased and applies at the time of the accident.
  3. For or related to any amount for loss of use or diminution of value.
  4. Caused by an “underinsured motor vehicle”.

### LIMIT OF LIABILITY

Our Uninsured Motorists Bodily Injury Coverage, Underinsured Motorists Bodily Injury Coverage or Uninsured Motorists Property Damage Coverage limit of liability that applies, 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 covered damages is:
1. The 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.
  3. If the limit shown in the Declarations or Schedule shows a separate limit of “property damage” for each accident for **Uninsured Motorists Coverage** (i.e. Uninsured Motorists Property Damage Coverage), that limit is the most we will pay for all covered damages related to, or arising out of, “property damage” resulting from any one accident.
  4. If only a single per accident limit is shown as the limit of liability in the Declarations or Schedule for **Uninsured Motorists Coverage** or **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.
- 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 Schedule; or
  5. Policies issued by us.

If more than one provision or policy of uninsured or underinsured motorists coverage applies to an accident, any recovery for covered damages under all such provisions or policies of coverage may equal but not exceed the highest applicable limit of liability for any one vehicle under any one provision or policy.

- C. Our limit of liability for Uninsured Motorists Bodily Injury Coverage, Underinsured Motorists Bodily Injury Coverage and Uninsured Motorists Property Damage Coverage, as applicable, shall be reduced by any amount:
1. Paid or to be paid because of "bodily injury" and/or "property damage" 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 (though any such set-off from Underinsured Motorists Bodily Injury Coverage will only be for the amounts actually recovered from all applicable bodily injury insurance policies, bonds or other security maintained on the "underinsured motor vehicle" or its owner or operator); and
  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 (other than federal Social Security disability benefits), or similar laws, exclusive of any state non-occupational disability benefits law.

However, this shall not reduce the available amount to less than "minimum limits".

- D. For Underinsured Motorists Bodily Injury Coverage, and subject to all other limits of liability that apply, the most we will pay for "bodily injury" damages to or for an "insured" caused by the owner or operator of an "underinsured motor vehicle" shall not be more than the amount by which the limits of the Underinsured Motorists Bodily Injury Coverage under this policy exceed the full limits of the bodily injury liability insurance, bonds or other security available to the owner or driver of the "underinsured motor vehicle", even if that "insured" (or that person's representative) enters into a settlement agreement for an amount less than those full limits of liability under all applicable bodily injury liability insurance, bonds or other security.
- E. 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. Cost of repair or replacement;
    - c. Guaranteed Value<sup>®</sup> 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
    - d. If there is damage to a child restraint system being used by a child in "your covered auto" (for which this Uninsured Motorists Property Damage Coverage applies) at the time of the accident, actual cash value of that property.
  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 Schedule for Uninsured Motorists Property Damage Coverage.
    - b. The salvage value if you or the owner retains salvage. The right of salvage belongs to us. You may, at your option, purchase the salvage from us. You must advise us of your intent prior to our making payments under the terms of this policy.
- 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:

1. The "insured" sustains "bodily injury" while "occupying" "your covered auto"; or
2. "Your covered auto" sustains "property damage" covered under this **PART C**;

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 Bodily Injury Coverage, Underinsured Motorists Bodily Injury Coverage or Uninsured Motorists Property Damage Coverage, as applicable, bears to the total of all applicable limits with the same priority as this coverage.

B. Notwithstanding paragraph A. above in this **Other Insurance** section, 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, "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.

In accord with Illinois insurance law, 215 ILCS 5/143a (as amended), arbitration may be used, if demanded by any one of the 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 such arbitrators are not selected within 45 days from such request, either party may request that the arbitration be submitted to the American Arbitration Association. Alternatively, arbitration may be commenced initially by submitting it to the American Arbitration Association.
- B. Arbitration will take place in the county in which the "insured" resides at time of accident.
- C. Illinois Rules of Civil Procedure and Illinois Rules of Evidence will apply.
- 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.

If the arbitrators award reasonable arbitration costs, fees or expenses, we will pay only that portion of such an award that is necessary to prevent the amount available under **Part C** of this policy for payment of compensatory damages awarded by the arbitrators from being reduced to an amount less than "minimum limits".

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.

However, as to "bodily injury", the arbitrators' decision shall be binding only if the amount of damages awarded does not exceed the lesser of either:

1. The limits for "bodily injury" shown in the Declarations or Schedule for Uninsured Motorists Bodily Injury Coverage or Underinsured Motorists Bodily Injury Coverage, as applicable; or
2. \$75,000 for "bodily injury" to any one person, or \$150,000 for "bodily injury" to 2 or more persons in any one accident.

If the amount of the award exceeds the limits set forth directly above, either party may demand the right to 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.

If there is no arbitration, all issues shall be resolved in a court of proper and competent jurisdiction.

All other policy provisions apply.