

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**UNINSURED MOTORISTS COVERAGE – TENNESSEE****SCHEDULE**

Uninsured Motorists Coverage	Limit Of Liability	Premium		
		Auto 1	Auto 2	Auto 3
1. Bodily Injury and Property Damage	\$ each person \$ each accident \$ each accident	\$	\$	\$
2. Bodily Injury Only	\$ each person \$ each accident	\$	\$	\$

**I. Part C – Uninsured Motorists Coverage**

Part C is replaced by the following:

**INSURING AGREEMENT**

A. We will pay compensatory damages which an "insured" is legally entitled to recover from the owner or operator of an "uninsured motor vehicle" because of:

1. "Bodily injury" sustained by an "insured" and caused by an accident; and
2. "Property damage" caused by an accident if the Schedule or Declarations indicates that both bodily injury and property damage Uninsured Motorists Coverage applies.

The owner's or operator's liability for these damages must arise out of the ownership, maintenance or use of the "uninsured motor vehicle". With respect to coverage under Section 2. of the definition of "uninsured motor vehicle", we will pay under this coverage only if 1. or 2. below applies:

1. The limits of liability under any bodily injury liability bonds or policies applicable to the "uninsured motor vehicle" have been exhausted by payment of judgments or settlements; or
2. A tentative settlement has been made between an "insured" and the insurer, owner or operator of the "uninsured motor vehicle" and we:
  - a. Have been given written notice of such tentative settlement sent certified mail return receipt requested or by some other method with written verification; and
  - b. Advance payment to the "insured" in an amount equal to the tentative settlement within 30 days after receipt of the written notification required by this endorsement.

Any judgment for damages arising out of a suit brought without our written consent is not binding on us.

B. "Insured" as used in this endorsement means:

1. You or any "family member".
2. Any other person "occupying" "your covered auto".
3. Any person for damages that person is entitled to recover because of "bodily injury" to which this coverage applies sustained by a person described in 1. or 2. above.

C. "Property damage" as used in this endorsement means injury to or destruction of:

1. "Your covered auto".
2. Any property owned by a person listed in 1. or 2. of an "insured" while contained in "your covered auto".

D. "Uninsured motor vehicle" means a land motor vehicle or trailer of any type:

1. To which no liability bond or policy applies at the time of the accident.
2. For which the sum of the limits of liability available for payment to an "insured" under all policies, bonds and securities applicable at the time of the accident:
  - a. Is less than the limit of liability for this coverage; or
  - b. Has been reduced by payment to persons other than the "insured" to an amount which is less than the limit of liability for this coverage.
3. Which is a hit-and-run vehicle whose operator or owner cannot be identified and which hits, or which causes an accident resulting in "bodily injury" or "property damage" without hitting:
  - a. You or any "family member";

- b. A vehicle which you or any "family member" are "occupying"; or
- c. "Your covered auto".

If there is no physical contact with the hit-and-run vehicle the facts of the accident must be proven by clear and convincing evidence. We will only accept competent evidence other than evidence provided by an occupant of:

- a. "Your covered auto", if "your covered auto" is involved in the accident.
  - b. The vehicle you or any "family member" are "occupying", if you or any "family member" are "occupying" a vehicle other than "your covered auto" at the time of the accident.
4. To which a liability bond or policy applies at the time of the accident but the bonding or insuring company:
    - a. Legally denies coverage; or
    - b. Is or becomes insolvent within one year of the date of the accident.

However, "uninsured motor vehicle" does not include any vehicle or equipment:

1. Owned by or furnished or available for the regular use of you or any "family member".
2. Owned or operated by a self-insurer under any applicable motor vehicle law, except a self-insurer which is or becomes insolvent.
3. Designed mainly for use off public roads while not on public roads.
4. While located for use as a residence or premises.

## EXCLUSIONS

- A. We do not provide Uninsured Motorists Coverage for "property damage" or "bodily injury" sustained:
  1. By an "insured" while "occupying", or when struck by, any motor vehicle owned by that "insured" which is not insured for this coverage under this policy. This includes a trailer of any type used with that vehicle.
  2. By any "family member" while "occupying", or when struck by, any motor vehicle you own which is insured for this coverage on a primary basis under any other policy.
- B. We do not provide Uninsured Motorists Coverage for "property damage" or "bodily injury" sustained by any "insured":
  1. If that "insured" or the legal representative settles the "bodily injury" or "property damage" claim and such

settlement prejudices our right to recover payment. This Exclusion (**B.1.**) does not apply to a settlement made with the insurer of a vehicle described in Section 2. of the definition of "uninsured motor vehicle".

2. When "your covered auto" is being used as a public or livery conveyance. This Exclusion (**B.2.**) does not apply to a share-the-expense car pool.
  3. Using a vehicle without a reasonable belief that that "insured" is entitled to do so. This Exclusion (**B.3.**) does not apply to a "family member" using "your covered auto" which is owned by you.
  4. For the first \$200 of the amount of "property damage" to the property of each "insured" as the result of any one accident. This Exclusion (**B.4.**) does not apply if:
    - a. We insure "your covered auto" for both collision and uninsured motorists property damage coverage; and
    - b. The operator of the "uninsured motor vehicle" is positively identified and is solely at fault.
  5. If the property is contained in or struck by a motor vehicle (other than "your covered auto") owned by you or any "family member".
- C. This coverage shall not apply directly or indirectly to benefit:
    1. Any insurer or self-insurer under any of the following or similar law:
      - a. Workers' compensation law; or
      - b. Disability benefits law.
    2. Any insurer of property.
  - D. We do not provide Uninsured Motorists Coverage for punitive or exemplary damages.

## LIMIT OF LIABILITY

- A. The limit of Bodily Injury Liability shown in the Schedule or in the Declarations for each person for Uninsured Motorists Coverage is our maximum limit of liability for all damages, including damages for care, loss of services or death, arising out of "bodily injury" sustained by any one person in any one accident. Subject to this limit for each person, the limit of Bodily Injury Liability shown in the Schedule or in the Declarations for each accident for Uninsured Motorists Coverage is our maximum limit of liability for all damages for "bodily injury" resulting from any one accident. The limit of Property Damage Liability shown in the Schedule or in the Declarations for each accident for Uninsured Motorists Coverage is our maximum limit of liability for all "property damage" resulting from any one accident.

This is the most we will pay regardless of the number of:

1. "Insureds";
  2. Claims made;
  3. Vehicles or premiums shown in the Schedule or in the Declarations; or
  4. Vehicles involved in the accident.
- B.** The limit of liability shall be reduced by all sums:
1. Paid because of the "bodily injury" or "property damage" by or on behalf of persons or organizations who may be legally responsible. This includes all sums paid under Part **A** of the policy; and
  2. Paid or payable because of the "bodily injury" under any of the following or similar law:
    - a. Workers' compensation law; or
    - b. Disability benefits law.
- C.** No payment will be made for loss paid or payable to the "insured" under Part **D** of the policy.
- D.** No one will be entitled to receive duplicate payments for the same elements of loss under this coverage and Part **A** or Part **B** of this policy.
- E.** We will not make a duplicate payment under this coverage for any element of loss for which payment has been made by or on behalf of persons or organizations who may be legally responsible.
- F.** We will not pay for any element of loss if a person is entitled to receive payment for the same element of loss under any of the following or similar law:
1. Workers' compensation law; or
  2. Disability benefits law.

#### **OTHER INSURANCE**

- A.** If there is other applicable insurance available under one or more policies or provisions of coverage that is similar to the insurance provided under this Part of the policy, any recovery for damages under all such policies or provisions of coverage may equal but not exceed the highest applicable limit for any one vehicle under any one policy or provision of coverage.
- B.** Subject to Paragraph **A.**, with respect to "bodily injury" to an "insured":
1. While not "occupying" a vehicle, only the policy or provision, under which the injured person is an "insured", that provides the highest limit of liability of Uninsured Motorists Coverage, will apply. No other policies or provisions of coverage with lesser limits of liability will apply. If two or

more policies or provisions of coverage provide the highest limit of liability, they will share the loss equally.

2. While "occupying" a vehicle owned by that "insured", only the Uninsured Motorists Coverage applicable to that vehicle will apply, and no other policies or provisions of coverage will apply.
3. While "occupying" a vehicle not owned by that "insured", including any vehicle while used as a temporary substitute for "your covered auto", the following will be the priorities of recovery:

<b>First Priority</b>	The Uninsured Motorists Coverage applicable to the vehicle the "insured" was occupying at the time of the accident.
<b>Second Priority</b>	If the first priority is exhausted, only the policy or provision, applicable to a vehicle under which the "insured" is a named insured, that provides the highest limit of liability of Uninsured Motorists Coverage.
<b>Third Priority</b>	If the first and second priorities are exhausted, only the policy or provision, applicable to a vehicle under which the "insured" is other than a named insured, that provides the highest limit of liability of Uninsured Motorists Coverage.

If two or more policies or provisions of coverage in the second or third priority provide the highest limit of liability, they will equally share the loss applicable to that priority. No policies or provisions of coverage with lesser limits of liability will apply to the second or third priority.

#### **ARBITRATION IN THE EVENT OF OUR CONSENT TO A FULL LIMITS SETTLEMENT OFFER FROM A LIABLE PARTY**

The following provision applies with respect to arbitration proceedings that are subject to the requirements of the Tennessee Uninsured Motorists Coverage statute regarding a full limits settlement offer from a liable party:

- A.** If a tentative settlement is made between an "insured" and the insurer, owner or operator of the "uninsured motor vehicle" for the full limits of all liability policies or bonds available to the party on whose behalf the tentative settlement is made, and:
1. We receive written notice from the "insured", sent certified mail return receipt requested or by some other method with written verification, of the "insured's":
    - a. Intent to accept the offer thereby releasing the party on whose behalf the offer is made; and

- b. Agreement to submit the uninsured motorists claim to binding arbitration;
- 2. We receive written notice from the insurer of the "uninsured motor vehicle", sent certified mail return receipt requested or by some other method with written verification, of the offer, and such insurer:
  - a. Provides verification of coverage upon request; and
  - b. Confirms to us that the owner or operator of the "uninsured motor vehicle" agrees to cooperate in connection with the arbitration of the uninsured motorists claim; and
- 3. We consent to the tentative settlement in writing, sent certified mail return receipt requested or by some other method with written verification, within 30 days from receipt of both notices described in Paragraphs 1. and 2. above, thereby waiving our right to recover payment from the owner or operator of an "uninsured motor vehicle" in exchange for their written agreement to cooperate in connection with the arbitration;

then all issues of tort liability and damages arising out of the ownership, maintenance or use of the "uninsured motor vehicle" shall be arbitrated. However, if the settlement does not release all parties alleged to be liable to the "insured", arbitration of the uninsured motorist claim shall not be conducted until all such parties have been fully and finally disposed by settlement, final judgment or otherwise.

Disputes concerning coverage under this Part may not be arbitrated and shall be decided by a court of competent jurisdiction.

- B. An arbitrator shall be selected by agreement of the parties. If they cannot agree on an arbitrator, either party may request a judge of a court of record in the county in which the arbitration is pending to designate three potential arbitrators. The parties shall then agree upon one of the three arbitrators so designated.
- C. Unless both parties agree otherwise, arbitration will take place in the county in which the "insured" lives. Rules of law as to procedure and evidence applicable to the state courts where the arbitration is being conducted will apply.
- D. Expenses will be paid as follows:
  - 1. Except for the arbitrator's fee, each party will pay for the expenses it incurs.
  - 2. If the arbitrator's award is:
    - a. Less than or equal to the total amount collected by the "insured" by way of settlements or judgments plus

the amount of any settlement offer made by us at least 15 days prior to the arbitration, the "insured" will pay the arbitrator's fee.

- b. Greater than the total amount collected by the "insured" by way of settlements or judgments plus the amount of any settlement offer made by us at least 15 days prior to the arbitration, we will pay the arbitrator's fee.

- E. Any decision made by the arbitrator will be binding.

#### **ARBITRATION OF OTHER DISPUTES BETWEEN AN "INSURED" AND US**

The following provisions apply with respect to arbitration proceedings that are NOT subject to the requirements of the Tennessee Uninsured Motorists Coverage statute regarding a full limits settlement offer from a liable party:

- A. If we and an "insured" do not agree:
  - 1. Whether that "insured" is legally entitled to recover damages; or
  - 2. As to the amount of damages which are recoverable by that "insured";

from the owner or operator of an "uninsured motor vehicle", then the matter may be arbitrated. However, disputes concerning coverage under this Part may not be arbitrated.

Both parties must agree to arbitration. If so agreed, each party will select an arbitrator. The two arbitrators will select a third. If they cannot agree within 30 days, either may request that selection be made by a judge of a court having jurisdiction.
- B. Each party will:
  - 1. Pay the expenses it incurs; and
  - 2. Bear the expenses of the third arbitrator equally.
- C. Unless both parties agree otherwise, arbitration will take place in the county in which the "insured" lives. Local rules of law as to procedure and evidence will apply. A decision agreed to by at least two of the arbitrators will be binding as to:
  - 1. Whether the "insured" is legally entitled to recover damages; and
  - 2. The amount of damages. This applies only if the amount does not exceed the minimum limit for liability specified by the financial responsibility law of Tennessee. If the amount exceeds that limit, 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 be binding.

#### **ADDITIONAL DUTY**

A person seeking Uninsured Motorists Coverage under Section 2. of the definition of "uninsured motor vehicle" must also promptly notify us in writing of a tentative settlement between the "insured" and the insurer, owner or operator of the "uninsured motor vehicle".

We have 30 days after we have received such notification and any other written notification required by the insurer of the "uninsured motor vehicle" to either:

1. Consent in writing to the settlement thereby waiving our rights against the insurer, owner or operator of the "uninsured motor vehicle" and requiring arbitration of all issues of tort liability and damages arising out of the ownership, maintenance or use of the "uninsured motor vehicle"; or
2. Advance payment to that "insured" in an amount equal to the tentative settlement to preserve our rights against the insurer, owner or operator of such "uninsured motor vehicle".

#### **II. Part F – General Provisions**

The following is added to the **Our Right To Recover Payment** Provision in Part F:

##### **OUR RIGHT TO RECOVER PAYMENT**

Our rights under Paragraph A. with respect to coverage under Section 2. of the definition of

"uninsured motor vehicle" do not apply with respect to the insurer, owner or operator of an "uninsured motor vehicle" if we have been given prompt written notice of a tentative settlement between an "insured" and the insurer, owner or operator of an "uninsured motor vehicle", and we:

1. Consent to a settlement for the full limits of all liability insurance policies or bonds available to the owner or operator of an "uninsured motor vehicle" and we agree to arbitrate; or
2. Fail to advance payment to the "insured" in an amount equal to the tentative settlement,

within 30 days after receipt of the written notification required by this endorsement.

However, if we advance payment to the "insured" in an amount equal to the tentative settlement within 30 days after receipt of notification:

1. That payment will be separate from any amount the "insured" is entitled to recover under the provisions of Uninsured Motorists Coverage; and
2. We also have a right to recover the advanced payment, unless judgment is rendered in favor of the owner or operator of an "uninsured motor vehicle".

This endorsement must be attached to the Change Endorsement when issued after the policy is written.