

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## UNDERINSURED MOTORISTS COVERAGE – UTAH

### SCHEDULE

Vehicle	Limit Of Liability		Premium
1.	\$	Each Person	\$
	\$	Each Accident	\$
2.	\$	Each Person	\$
	\$	Each Accident	\$
3.	\$	Each Person	\$
	\$	Each Accident	\$

With respect to the coverage provided by this endorsement, the provisions of the Policy apply unless modified by the endorsement.

#### I. Definitions

The **Definitions** section is amended as follows:

**A.** The definition of "family member" as used in this endorsement means:

1. A person related to you by blood, marriage, adoption or guardianship, who is a resident of your household, whether or not temporarily residing elsewhere; and
2. Your dependent minor children.

**B.** The definition of "occupying" as used in this endorsement means:

1. In;
2. Upon;
3. Getting in, on, out or off; or
4. Using.

#### II. Underinsured Motorists Coverage

##### INSURING AGREEMENT

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

1. Sustained by an "insured"; and
2. Caused by an accident.

The owner's or operator's liability for these damages must arise out of the ownership, maintenance or use of the "underinsured motor vehicle".

We will pay damages under this coverage caused by an "underinsured motor vehicle" only if Paragraph 1. or 2. below applies:

1. The limits of liability under any bodily injury liability bonds or policies applicable to the "underinsured 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 of the "underinsured motor vehicle" and we:
  - a. Have been given prompt written notice of such tentative settlement; and
  - b. Advance payment to the "insured" in an amount equal to the tentative settlement within five business days after receipt of notification.

**B.** "Insured" as used in this Part 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 Paragraph 1. or 2. above.

- C. "Underinsured motor vehicle" means a land motor vehicle or trailer of any type to which a bodily injury liability bond or policy applies at the time of the accident but the amount paid for "bodily injury" under that bond or policy to an "insured" is not enough to pay the full amount the "insured" is legally entitled to recover as damages.

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

1. To which a bodily injury liability bond or policy applies at the time of the accident but its limit for bodily injury liability is less than the applicable minimum limits for bodily injury liability required by the financial responsibility law of Utah.
2. To which Part A of this Policy applies.
3. Owned by:
  - a. You; or
  - b. Any "family member" who is your dependent.
4. Owned by any governmental unit or agency.
5. Operated on rails or crawler treads.
6. Designed mainly for use off public roads while not upon public roads.
7. While located for use as a residence or premises.
8. Owned or operated by a person qualifying as a self-insurer under any applicable motor vehicle law.
9. To which a bodily injury liability bond or policy applies at the time of the accident but the bonding or insuring company:
  - a. Denies coverage; or
  - b. Is or becomes insolvent.

#### **EXCLUSIONS**

- A. We do not provide Underinsured Motorists Coverage for "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 Underinsured Motorists Coverage for "bodily injury" sustained by any "insured":
1. While "occupying" "your covered auto" when it is being used as a public or livery conveyance. This exclusion (B.1.) does not apply to a share-the-expense car pool.
  2. Using a vehicle without a reasonable belief that that "insured" is entitled to do so. This exclusion (B.2.) does not apply to:
    - a. A "family member" using "your covered auto" which is owned by you;
    - b. Medical and funeral expenses incurred by an "insured" under 18 years of age; or
    - c. A law enforcement officer injured in the course and scope of the officer's duties.
  3. Who:
    - a. Is a passenger in a vehicle; and
    - b. Has knowledge that the vehicle is being operated by an operator who is not entitled to do so.This exclusion (B.3.) does not apply to:
    - a. Medical and funeral expenses incurred by an "insured" under 18 years of age; or
    - b. A law enforcement officer injured in the course and scope of the officer's duties.
  4. While committing a felony. This exclusion (B.4.) does not apply to:
    - a. Medical and funeral expenses incurred by an "insured" under 18 years of age; or
    - b. A law enforcement officer injured in the course and scope of the officer's duties.
- C. This coverage shall not apply directly or indirectly to benefit any insurer or self-insurer under any of the following or similar law:
1. Workers' compensation law; or
  2. Disability benefits law.
- D. We do not provide Underinsured Motorists Coverage for punitive or exemplary damages.

## LIMIT OF LIABILITY

- A.** The Limit Of Liability shown in the Schedule or in the Declarations for each person for Underinsured 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 Liability shown in the Schedule or in the Declarations for each accident for Underinsured Motorists Coverage is our maximum limit of liability for all damages for "bodily injury" 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.** No one will be entitled to receive duplicate payments for the same elements of loss under this coverage and Part **A**, Part **B** or Part **C** of this Policy.
- C.** 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.
- D.** 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

If there is other applicable similar insurance available under one or more policies or provisions of coverage that is similar to the insurance provided under this endorsement:

1. Any recovery for damages sustained by you or any "family member" under all such policies or provisions of coverage:
  - a. While "occupying" a vehicle owned by you or any "family member" may equal, but not exceed, the highest applicable limit of liability for Underinsured Motorists Coverage for any one vehicle under any insurance providing coverage on either a primary or excess basis.

- b. While "occupying" a vehicle not owned by you or any "family member" may equal, but not exceed, the sum of:

- (1) The limit of liability for Underinsured Motorists Coverage applicable to the vehicle you or any "family member" was "occupying" at the time of the accident; and
- (2) The highest applicable limit of liability for Underinsured Motorists Coverage for any one vehicle under any insurance providing coverage to you or any "family member".

- c. While not "occupying" any vehicle may equal, but not exceed, the highest applicable limit of liability for Underinsured Motorists Coverage for any one vehicle under any insurance providing coverage to you or any "family member".

2. Except as provided in Paragraph 3. below, any insurance we provide with respect to a vehicle you do not own, including any vehicle while used as a temporary substitute for "your covered auto", shall be excess over any collectible insurance providing such coverage on a primary basis.
3. If the vehicle you do not own is a rental private passenger motor vehicle, the following priorities of recovery apply:

<b>First Priority</b>	Any source of recovery purchased by you or any "family member" from the owner of the rental private passenger motor vehicle.
<b>Second Priority</b>	Any policy affording Underinsured Motorists Coverage to the "insured" as a named insured or "family member".

4. If the coverage under this Policy is provided:
  - a. On a primary basis, we will pay only our share of the loss that must be paid under insurance providing coverage on a primary basis. Our share is the proportion that our limit of liability bears to the total of all applicable limits of liability for coverage provided on a primary basis.

- b. On an excess basis, we will pay only our share of the loss that must be paid under insurance providing coverage on an excess basis. Our share is the proportion that our limit of liability bears to the total of all applicable limits of liability for coverage provided on an excess basis.

## **ARBITRATION**

- 1. This provision does not apply if a small-claims court having jurisdiction resolves the matter or matters upon which the parties do not agree.

- 2. If we and an "insured" do not agree:

- a. Whether that "insured" is legally entitled to recover damages; or
- b. As to the amount of damages which are recoverable by that "insured";

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

Either party may make a written demand for arbitration. Unless both parties agree otherwise in writing, the parties will select a single arbitrator. If the parties are unable to agree on a single arbitrator, 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.

- 3. Unless both parties agree otherwise in writing, each party will:

- a. Bear the expenses for a single arbitrator equally; or
- b. Pay the expenses for the arbitrator selected by that party and bear the expenses of the third arbitrator equally.

- 4. If an "insured" submits a claim for Underinsured Motorists Coverage to arbitration that "insured" shall provide to us within 30 days:

- a. A written demand for payment setting forth the specific monetary amount of the demand, including a computation of that "insured's" claimed past medical expenses, claimed past lost wages, and the other claimed past economic damages required by the Utah Insurance Code; and

- b. Any written statements under oath, documents and signed authorizations required by the Utah Insurance Code.

However, the written demand requirement in item **a.** above does not affect the "insured's" requirement to provide a computation of any other economic damages claimed and we may, within a reasonable time after receipt of such computation, conduct fact and expert discovery as to any additional damages claimed.

Subject to our receipt of items **a.** and **b.** described above, we shall, within 60 days:

- a. Provide a written response to the written demand for payment; and

- b. Tender the amount, if any, that we determine as owed to that "insured" less any state or federal statutory liens as provided in the Utah Insurance Code.

- (1) If the amount tendered by us is our limit of liability for Underinsured Motorists Coverage, this amount shall be accepted by that "insured".

- (2) If the amount tendered by us is less than our limit of liability for Underinsured Motorists Coverage, the "insured" may accept the amount tendered as full payment of such "insured's" claim or accept the amount tendered as partial payment and continue to arbitrate the remaining claim.

- 5. If the final award obtained through arbitration is greater than the average of the "insured's" initial written demand for payment and our initial written response, then we shall pay:

- a. The final award obtained through arbitration less any amount accepted as partial payment. If the award exceeds our limit of liability for Underinsured Motorists Coverage by more than \$15,000, we shall pay \$15,000, in addition to our limit of liability;

- b. Any costs as set forth in the Utah Rules of Civil Procedure;

- c. Arbitration fees; and

- d. Reasonable costs for witnesses and depositions.

If the "insured" does not disclose all material information, other than rebuttal evidence, required by the Utah Insurance Code within 30 days after submitting a claim for Underinsured Motorists Coverage to arbitration, the "insured" may not recover costs or amounts in excess of our limit of liability.

The "insured" shall provide an affidavit of costs within five days of an arbitration award. If we object to such costs, the costs shall be arbitrated and such award may not exceed \$5,000.

6. 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 written decision by the single arbitrator, or agreed to by at least two of the arbitrators, will be binding as to:
  - a. Whether the "insured" is legally entitled to recover damages; and
  - b. The amount of damages.

However, either party may demand the right to a trial. This demand must be made within 20 days of service of the arbitration award. If this demand is not made, the arbitration award will be binding.

#### **ADDITIONAL DUTIES**

A person seeking coverage under this endorsement must also promptly:

1. Send us copies of the legal papers if a suit is brought; and
2. Notify us in writing of a tentative settlement between the "insured" and the insurer of the "underinsured motor vehicle" and allow us five business days to 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 "underinsured motor vehicle".

### **III. General Provisions**

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

#### **Our Right To Recover Payment**

Our rights do not apply under Paragraph A. with respect to Underinsured Motorists Coverage if we:

1. Have been given prompt written notice of a tentative settlement between an "insured" and the insurer of an "underinsured motor vehicle"; and
2. Fail to advance payment to the "insured" in an amount equal to the tentative settlement within five business days after receipt of notification.

If we advance payment to the "insured" in an amount equal to the tentative settlement within five business days after receipt of notification:

1. That payment will be separate from any amount the "insured" is entitled to recover under the provisions of Underinsured Motorists Coverage; and
2. We also have a right to recover the advanced payment.