

PLEASE READ THIS ENDORSEMENT CAREFULLY AS IT CHANGES YOUR POLICY

## UNINSURED MOTORISTS COVERAGE – NEW JERSEY

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

### INSURING AGREEMENT

- 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:
1. “Bodily injury” sustained by that “insured” when caused by a motor vehicle accident; and
  2. “Property damage” when caused by a motor vehicle accident, except when caused by a hit-and-run motor vehicle or a motor vehicle for which the owner or operator cannot be identified, or any “uninsured motor vehicle” as described in clause F.3. below, defining “uninsured motor vehicle”.

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 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 “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. Any person driving or operating “your covered auto” without a valid in-force driver’s license or permit shall be conclusively presumed to be using “your covered auto” without permission, and any such permission allegedly granted shall have no effect, thus preventing coverage under **PART C** for that person.
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.

These “minimum limits” are the minimum liability insurance limits required for an auto under a “standard” auto liability insurance policy per the compulsory insurance or financial responsibility laws, as amended, of New Jersey if “your covered auto” is shown in our records as garaged in New Jersey, and will apply when this definition is used in this endorsement (even if the Declarations or Schedule shows a combined single limit or “CSL”).

D. "Property damage" means physical harm to or destruction of:

1. "Your covered auto" for which **Uninsured Motorists Coverage** has been purchased; and
2. Items of personal property owned by an "insured" and contained in that auto described directly above in 1. of this definition.

E. "Underinsured motor vehicle" means:

1. For an "insured" who:

- a. Is not the named insured under this policy; and
- b. Is a named insured under one or more other policies providing similar coverage;

"underinsured motor vehicle" means a land motor vehicle for which one or more liability bonds or policies apply at the time of the accident, but all limits available under those bonds or policies for liability coverage are less than the highest applicable limit of liability under any insurance providing coverage to that "insured" as a named insured.

2. For an "insured" who:

- a. Is not the named insured under this policy or any other policy; and
- b. Is insured as a spouse, family member or relative under one or more other policies providing similar coverage;

"underinsured motor vehicle" means a land motor vehicle for which one or more liability bonds or policies apply at the time of the accident, but all limits available under those bonds or policies for liability coverage are less than the highest applicable limit of liability under any insurance providing coverage to that "insured" as a spouse, family member or relative.

3. With respect to any other "insured" not described in Paragraphs 1. or 2. directly above in this definition, "underinsured motor vehicle" means a land motor vehicle for which one or more liability bonds or policies apply at the time of the accident, but all limits available under those bonds and policies for liability coverage are less than the **Uninsured Motorists Coverage** limit 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".

F. "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 bonding or insuring company:
  - a. Denies coverage;
  - b. Is unable to make payment because it is, or becomes, insolvent or bankrupt; or
  - c. Is unable to make payment because the New Jersey Commissioner of Banking and Insurance has taken control of the insurer for the purpose of liquidation;
3. For purposes of "bodily injury" coverage only under this **PART C**, a hit-and-run motor vehicle or a motor vehicle for which the owner or operator cannot be identified, and that motor vehicle causes "bodily injury" to an "insured". For an accident involving such a hit-and-run or unidentified motor vehicle, an "insured" must make all reasonable efforts to find out the identity of the:

- a. Motor vehicle causing the accident; and
  - b. Owner or operator of the motor vehicle who may be liable for the damages caused by the accident;
4. A vehicle for which a special automobile insurance policy per New Jersey Statutes Section 39:6A-3.3, as amended, applies at the time of the accident.

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

- 1. Located for use as a residence or stationary structure and not as a vehicle;
- 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. This definitional exclusion does not apply to a motor vehicle owned by United States if the United States has rightfully denied it is vicariously liable for damages which have resulted from driver's negligence;
- 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;
- 7. Owned or operated by a self-insurer within the meaning of any financial responsibility or similar law of the state in which the motor vehicle is registered or principally garaged, other than a self-insurer that is or becomes insolvent;
- 8. Covered by a basic automobile insurance policy issued in accord with New Jersey law or regulation, as amended; or
- 9. 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 or bond, we will not make a payment under **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 exhausted by payment of judgments or settlements. If a court of proper jurisdiction decides payment under this **PART C** cannot be conditioned upon exhaustion, any payment by us is limited as set forth under the **Limit of Liability** provision of this **PART C**.
- 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, or our rights are otherwise 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”. Any person driving or operating a vehicle without a valid in-force driver’s license or permit shall be conclusively presumed to be using that vehicle without permission, and any such permission allegedly granted shall have no effect, thus preventing all coverage under **PART C** for that person.
  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 insurer (except if and when required by New Jersey Law) 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. We do NOT provide any coverage for damages for pain, suffering, inconvenience or any other non-economic damages resulting from “bodily injury” caused by an accident involving an “uninsured motor vehicle” or “underinsured motor vehicle” unless the injured “insured” has a legal right to recover such damages under New Jersey law, as amended. The injured “insured’s” legal right to recover damages will be determined by the liability tort limitation, if any, that applies to that “insured” at the time of the accident.
- E. There is no **PART C** coverage of any kind for an “insured” if, at the time of the accident, that “insured”:
1. Was required and failed to maintain medical expense benefits coverage mandated by New Jersey law, N.J.S.A. 39:6A-4, N.J.S.A. 39:6A-3.1 or N.J.S.A. 39:6A-3.3 as amended, while operating that uninsured automobile;
  2. Was operating a motor vehicle in violation of N.J.S.A. 39:4-50 (driving while intoxicated), N.J.S.A. 39:4-50.4a (refusal to submit to chemical testing), as amended, or a similar statute from any other jurisdiction, and is convicted of or pleads guilty to that violation; or
  3. Acted with the specific intent of causing self-injury or injury to others in the use of an automobile.
- F. There is no **PART C** 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.

**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 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 Uninsured Motorists Property Damage for each accident, 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**, 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.

However, subject to our maximum limit of liability for this coverage, the following also apply:

1. If:
    - a. An "insured" is not the named insured under this policy;
    - b. That "insured" is a named insured under one or more other policies providing similar coverage; and
    - c. All such other policies have a limit of liability for similar coverage which is less than the limit of liability for this coverage on this policy;

then our maximum limit of liability for that "insured", for all covered damages resulting from any one accident, shall not exceed the highest applicable limit of liability under any insurance providing coverage to that "insured" as a named insured.
  2. If:
    - a. An "insured" is not the named insured under this policy or any other policy;
    - b. That "insured" is insured as a spouse, family member or relative under one or more other policies providing similar coverage; and
    - c. All such other policies have a limit of liability for similar coverage which is less than the limit of liability for this coverage on this policy;

then our maximum limit of liability for that "insured", for all covered damages resulting from any one accident, shall not exceed the highest applicable limit of liability under any insurance providing coverage to that "insured" as a spouse, family member or relative.
- 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.
- C. The total damages an “insured” is legally entitled to recover because of a covered accident shall be reduced by any amount:
1. Paid or to be paid because of “bodily injury” 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; and
  2. Paid under any medical payments, personal injury protection, no-fault and/or first party benefits coverage of this policy; and
  3. Paid as “property damage” under **PART D – COVERAGE FOR DAMAGE TO YOUR COVERED AUTO** of this policy; and
  4. 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; and
  5. Paid or to be paid from any other source of recovery, including any other insurance policy.
- D. If there is an accident covered under this **PART C** caused by an “underinsured motor vehicle”, our **Uninsured Motorists Coverage** limit of liability for “bodily injury” shall be reduced by any amount:
1. Paid or to be paid because of “bodily injury” 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; and
  2. Of any liability insurance coverage, bond or other form of security that was not exhausted in a settlement with or judgment against the owner or operator of the “underinsured motor vehicle”, or any other person or party liable. If there are multiple injured parties claiming against the owner or operator of the “underinsured motor vehicle”, the reduction will be of a pro-rata portion of the amount not exhausted as computed in accord with New Jersey law.
- 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 the “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® 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 personal property which is contained within “your covered auto” 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, or the statutory deductible (as amended) being the first \$500 of the amount of “property damage” in any one accident.
    - 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 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.
- B. Notwithstanding paragraph A. above in this **Other Insurance** section, and subject to all terms of this **PART C** (including all terms and maximum limits set forth under the **Limit of Liability** provision of this endorsement), the total recovery under all such policies or coverages cannot be greater, though could be less, 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.

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 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.

However, if the arbitrators' award as to the amount or portion of damages the insured is entitled to recover from us 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.

**OUR RIGHT TO RECOVER PAYMENT**

- A. Our rights to recover payment do not apply under this endorsement with respect to damages caused by an accident with an "underinsured motor vehicle" 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 30 days after receipt of notification.
- B. 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.

All other policy provisions apply.