

PLEASE READ THIS ENDORSEMENT CAREFULLY AS IT CHANGES YOUR POLICY

UNINSURED MOTORISTS COVERAGE AND UNDERINSURED MOTORISTS COVERAGE – SOUTH DAKOTA

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

INSURING AGREEMENT

A. Uninsured Motorists Coverage (UM)

If the premium for **Uninsured Motorists 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 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 Coverage (UIM)

If the premium for **Underinsured Motorists 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 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. “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”.

- D. “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.
- E. “Underinsured motor vehicle” means a land motor vehicle for which one or more “bodily injury” liability bonds or policies apply at the time of the accident, but all limits available under those bonds and policies for “bodily injury” liability coverage are less than the **Underinsured 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. Shown in the Declarations or Schedule, or insured under the liability coverage, of this policy;
5. 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
6. That is an “uninsured motor vehicle”.

- F. “Uninsured motor vehicle” means a land motor vehicle that is:

1. Not insured or bonded for “bodily injury” liability at the time of the accident;
2. Insured or bonded for “bodily injury” 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 for “bodily injury” under that policy or bond is less than the “minimum limits”;
3. A hit-and-run motor vehicle or a motor vehicle for which the owner or operator cannot be identified, and that motor vehicle causes an accident resulting in “bodily injury” to an “insured”. If there is no physical contact with the motor vehicle causing the accident, then the facts of the accident must be must be corroborated by competent evidence of an eyewitness other than an “insured” making a claim.

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. Shown in the Declarations or Schedule, or insured under the liability coverage, of this policy;
5. 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;
6. 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
7. 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.
- B. No judgment for damages arising out of a suit brought against, or settlement entered into with, the owner or operator of an “uninsured motor vehicle” or “underinsured motor vehicle” is binding on us unless we:
 - 1. Received reasonable notice of the pendency of the suit resulting in judgment or the negotiations resulting in settlement; and
 - 2. Had a reasonable opportunity to protect our interests in the suit or settlement.
- 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. **Uninsured Motorists Coverage** and **Underinsured Motorists Coverage** do NOT cover “bodily injury” to an “insured” or any person:
 - 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. **Uninsured Motorists Coverage** and **Underinsured Motorists Coverage** 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; or
 - 3. Government body or agency.

- 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.

LIMIT OF LIABILITY

Our **Uninsured Motorists Coverage** or **Underinsured Motorists Coverage** limit of liability (as applicable), 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, 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 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.
- C. Our limit of liability for **Uninsured Motorists Coverage** or **Underinsured Motorists Coverage** shall be reduced by any amount paid or to be paid because of "bodily injury":
1. 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 **PART B – MEDICAL PAYMENTS COVERAGE** or paid under any personal injury protection, no-fault and/or first party benefits coverage of this policy.

- D. 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** or **Underinsured 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, 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".

All other policy provisions apply.