

PLEASE READ THIS ENDORSEMENT CAREFULLY AS IT CHANGES YOUR POLICY

UNINSURED MOTORISTS COVERAGE AND UNDERINSURED MOTORISTS COVERAGE – WEST VIRGINIA

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

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/or “property damage”, when 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

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/or “property damage”, when 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”.
2. Any other person (other than a bailee for hire) while “occupying” or using “your covered auto” with express or implied consent or permission from you.
3. Any person, for damages that person is legally entitled to recover because of “bodily injury” to a person described in this definition in 1. or 2. 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. or 2. above.

However, “insured” shall NOT mean and does NOT include (unless otherwise required by law):

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”. To the extent such a person is or will be required by law to be an “insured”, that person will only be deemed an “insured” under **PART C** for “minimum limits” for Uninsured Motorists Coverage, any and all coverage under this **PART C** for such an “insured” applies excess to all other available uninsured and/or underinsured motorist coverage, and only after all other insurance and other sources of recovery have been exhausted by payment.

- D. "Family member", as used in this endorsement, means a person related to you by blood, marriage or adoption and who is a resident of your household, including your ward or foster child.
- 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 and property damage limit required by these laws.
- F. "Property damage", as used in this endorsement, means, physical harm to, or destruction of:
1. "Your covered auto";
 2. Tangible property owned by you or a "family member"; and
 3. Tangible property owned by any other "insured" when it is damaged while in "your covered auto" (for which this coverage has been purchased) at the time of the accident. However, coverage for such tangible personal property shall not exceed "minimum limits".
- G. "Underinsured motor vehicle" means a land motor vehicle for which one or more liability bonds or policies apply (with limits of liability greater than "minimum limits") at the time of the accident, but:
1. All limits available under those bonds or policies for "bodily injury" and/or "property damage", coverage, as applicable, are not enough to pay the full amount the "insured" is legally entitled to recover for compensatory damages from the owner or operator of that motor vehicle; or
 2. Amount actually made available and paid under all liability bonds and policies for "bodily injury" and/or "property damage", as applicable, to the "insured", after payment to or for other persons injured or property damaged in the same accident, is not enough to pay the full amount the "insured" is legally entitled to recover for compensatory damages from the owner or operator of that motor vehicle.
- 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:
1. Has none of the following:
 - a. Insured or bonded for liability;
 - b. A certificate of self-insurance; or
 - c. Whose owner has filed a deposit of cash or securities (or similar compliance) for liability; at the time of the accident;
 2. Is 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 has been placed in receivership; or
 - b. Limit of liability under that policy or bond is less than the "minimum limits";
 3. Is an unknown 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" and/or "property damage". If there is no physical contact with such a motor vehicle causing the accident, then the facts of the accident must be corroborated by competent evidence of an independent third-party eyewitness (not an "insured" making

a claim) that there was a close and substantial physical nexus that, but for the immediate evasive action of the “insured”, direct physical contact would have incurred between the unknown motor vehicle and the injured “insured” and/or damaged property.

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, or filed a deposit of cash or securities in lieu of such insurance, self-insurance or bond, or similar compliance, for liability, 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, sent by certified mail return receipt requested, of an offer of settlement by the owner, operator or insurer of an “uninsured motor vehicle” or “underinsured motor vehicle”. That notice to us must include and clearly set forth all information required by the West Virginia insurance laws, as amended, and as related to that settlement offer, and
 - b. Within 60 days of that properly made notice to us of an offer of settlement, 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 (or filed deposit of cash or securities in lieu thereof, or similar compliance, for liability) have been 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 an unknown motor vehicle for which the owner or operator cannot be identified, 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 60 days of, or as soon as practicable after, that accident.
- D. Any legal action against us for coverage under this **PART C**, or any legal action filed against us following an accident, must be commenced within, and no later than, two (2) years after the date the cause of action accrues.

EXCLUSIONS

- A. **Uninsured Motorists Coverage** and **Underinsured Motorists Coverage** do NOT cover “bodily injury” to an “insured” or any person, and do 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”. However, as to **Uninsured Motorists Coverage** only, and only if and when required by law, this exclusion does not apply to the portion of the covered damages for “bodily injury” or “property damage” that is less than or equal to “minimum limits” and only if that amount is not otherwise covered by another policy of uninsured motorists coverage.
- 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;
 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 under **PART C** for or related to:
1. The first \$300 of the amount of “property damage” as the result of any one accident.
 2. Any other 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** or **Underinsured 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 **Uninsured Motorists Coverage** or **Underinsured Motorists Coverage** limit shown in the Declarations or Schedule shows a separate limit for 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** 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.

The limits described above will apply unless the terms of this endorsement indicate only the “minimum limits” are applicable, and then those “minimum limits” will be applied (as described in this endorsement) and in the same manner as described herein.

- 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 two or more policies issued by us apply to provide this coverage to the same accident, our limit of liability under all those policies shall not exceed the single highest limit of liability that applies for such coverage under any one of those policies).
- C. The total damages an “insured” is legally entitled to recover because of the accident with the owner or operator of an “uninsured motor vehicle” or “underinsured motor vehicle” shall be reduced by any amount paid or to be paid because of “bodily injury” and/or “property damage”:
 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** and/or **PART D – COVERAGE FOR DAMAGE TO YOUR COVERED AUTO** of this policy; and
 3. 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
 4. From any other source of recovery, including any other insurance policy.
- D. If the Declarations or Schedule shows you have purchased Property Damage coverage under either or both **Uninsured Motorists Coverage** and/or **Underinsured Motorists Coverage**, that limit that applies is the most we will pay for all covered damages related to, or arising out of, “property damage” resulting from any one accident, and is also 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 Coverage** or **Underinsured Motorists Coverage** (as applicable);
 - 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. Actual cash value of that property, if there is damage to tangible personal property.
 2. Our payment will not include, and you are responsible for (when applicable), the amount of:

- a. Betterment to any property, including any costs for labor, parts, and materials to repair prior damage, deterioration, and/or defects to the property that had not been repaired prior to the accident.
- b. The salvage value if you or the owner retains salvage.

3. We have no duty to cover or pay, and will not pay any amount, for any diminution in value.

E. 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.
- B. 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.

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”.

PART F – GENERAL PROVISIONS the following changes are made.

The following is added to the **Two or More Auto Policies** provision:

This provision, and limitation, does not apply to **PART C - UNINSURED MOTORISTS COVERAGE AND UNDERINSURED MOTORISTS COVERAGE**.

All other policy provisions apply.