

PLEASE READ THIS ENDORSEMENT CAREFULLY AS IT CHANGES YOUR POLICY

UNDERINSURED MOTORIST COVERAGE – PENNSYLVANIA

PLEASE NOTE: Your election of either “STACKED” or “NON-STACKED” coverage appears on your Declarations for this policy, is subject to all terms of this policy, and is further described in the Limit of Liability provision of this endorsement.

This endorsement forms part of your Enthusiast Automobile Policy™ (as if attached to and made part of the policy), and replaces or changes the policy terms, as set forth below.

INSURING AGREEMENT

A. **Underinsured Motorist Coverage** (also called or titled Underinsured Motorist Protection or UIM)

If the premium for **Underinsured Motorist 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 an auto accident.

The owner’s or operator’s liability for these damages must:

1. Be due to an auto 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 Motorist 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.

In any one accident that is covered by us, an “insured” cannot recover damages for both **Uninsured Motorist Coverage** and **Underinsured Motorist Coverage** due to that same accident.

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.
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, 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. “Family member”, as used in this endorsement, means and includes:

1. A person related to you by blood, marriage, or adoption who is a resident of your household, including a ward or foster child.
2. If residing in the household of the named insured on this policy, a minor child in the custody of that named insured or in the custody of a person residing in your household who is a relative of the named insured on this policy.

D. “Noneconomic loss” means pain, suffering, and other nonmonetary detriment.

E. “Serious injury” means a personal injury resulting in death, serious impairment of body function, or permanent serious disfigurement.

F. “Underinsured motor vehicle” means a land motor vehicle for which one or more “bodily injury” liability bonds or policies apply, or for which there is self-insurance, at the time of the accident, but all limits available under

those bonds and policies for “bodily injury” liability coverage are, or the amount of the self-insurance is, less than the damages an “insured” is legally entitled to recover for “bodily injury” from the owner or driver 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. Shown in the Declarations or Schedule, or insured under the liability coverage, of this policy;
5. Owned by, 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.

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 “underinsured motor vehicle” has liability insurance, self-insurance, or bond, we will not make a payment under **Underinsured Motorist Coverage** 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 “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). If we advance payment to preserve our rights of subrogation and protect our interests, you agree to assign to us all rights that you have against the owner or driver of the “underinsured motor vehicle”; or
 3. The limits of liability under those other applicable liability policies or bonds have been exhausted by payment of judgments or settlements, or partially exhausted by payments, in which case, the damages recoverable by the “insured” shall be reduced by the full limits of liability under all liability policies and bonds that apply to the owner or driver of the “underinsured motor vehicle”.
- 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 “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 us within 30 days of, or as soon as practicable after, that accident.
- D. The right of recovery for damages arising out of “bodily injury” is subject to both the:
 1. Lawsuit tort option elected by the “insured” (or the tort option that otherwise applies under 75 Pa. C.S. § 1705, as amended); and
 2. Limitations on recovery, if any, due to that tort option that applies.

If the limited tort option applies to an “insured”, there is no coverage under this endorsement for any “noneconomic loss” due to the “bodily injury” sustained by that “insured” unless that “insured” sustains a “serious injury” or is otherwise legally entitled to recover for “noneconomic loss” as set forth in Pennsylvania law, as amended.

EXCLUSIONS

- A. **Underinsured Motorist Coverage** does 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, 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".
5. Who is involved in any prearranged, organized, or spontaneous race or who is involved in:
 - a. Preparation for a race of this type, but only while in any pit area, on the track or racecourse, or its entrance or exit lanes; or
 - b. Practicing or qualifying for a race of this type.

A race includes any contest for speed or endurance, whether against another competitor or against a time measuring device.

6. Using "your covered auto" at a:
 - a. Racing facility; or
 - b. Facility or roadway temporarily designed for speed, time, racing, or performance driving events. This includes, but is not limited to, the use of "your covered auto" at a performance or racing driving school, a rally in excess of the legal speed limit, or a closed road rally.

However, Exclusions 5.a. and 6. do not apply while "your covered auto" is:

- a. In a race facility's "paddock" area or a specified show display area;
 - b. Being trailered from one location to another;
 - c. Used by you to attend a racing event as a spectator;
 - d. Being operated for purposes of display in any pre- or post-race parade laps; or
 - e. Involved in an organized event on public roads while operated within legal speed.
7. Using "your covered auto" to prepare, practice, qualify for, or participate in, any of the following activities, regardless of where they take place:
 - a. Forced hydraulic bouncing competitions or exhibitions;
 - b. Pulling against another vehicle, or pulling of a weighted object during competitions or exhibitions, but not including trailer pulling;
 - c. Stereo thumping competitions or exhibitions; or
 - d. Any other similar competitive or exhibition activity that a reasonable person could foresee may cause injury or damage.

However, this Exclusion 7. does not apply while "your covered auto" is:

- a. In a facility or a specified show display area and is not involved in any competitive or exhibition activity described in this exclusion;
- b. Being trailered from one location to another; or
- c. Used by you to attend an event as a spectator.

B. Underinsured Motorist Coverage shall NOT apply, directly or indirectly, to benefit any self-insurer under any disability benefits or similar law other than workers' compensation law.

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

If **Underinsured Motorist Coverage** is purchased on this policy and there is a covered accident, the following limitations apply:

A. Non-Stacked Split Limit Underinsured Motorist Coverage

If you bought coverage with a split limit that sets forth separate limits for “bodily injury”, and a named insured rejected or waived stacked coverage, and the non-stacked coverage is shown in the Declarations or Schedule, then for this Underinsured Motorist Non-Stacked Coverage you bought:

1. The limit for each person shown in the Declarations or Schedule 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:
 - a. The **Underinsured Motorist Coverage** limit of liability shown on the Declarations or Schedule that applies per person is the most we will pay for all damages due to “bodily injury” to any one person in any one accident.
 - b. Subject to the limit of liability that applies per person to the **Underinsured Motorist Coverage**, the **Underinsured Motorist Coverage** limit of liability shown on the Declarations or Schedule per accident is the most we will pay for all damages due to “bodily injury” to two or more persons in any one accident. Without increasing this per accident limit, we will provide any separate per person limit required by law for “bodily injury” liability.
3. There will be no adding, stacking, or combining of limits for any one covered accident no matter the number of:
 - a. Injured persons, claims, or lawsuits asserted;
 - b. Vehicles or trailers involved in the accident;
 - c. Insureds on this policy or involved in the accident;
 - d. Vehicles or premiums shown in the Declarations or Schedule; or
 - e. Policies issued by us.

B. Non-Stacked Combined Single Limit Underinsured Motorist Coverage

If you bought coverage with only a single per accident limit, and a named insured rejected or waived stacked coverage, and the non-stacked coverage is shown in the Declarations or Schedule, then for this Underinsured Motorist Non-Stacked Coverage you bought:

1. The combined single limit of liability shown on the Declarations or Schedule is the most we will pay for the total of all covered damages resulting from any one accident; and
2. Without increasing this per accident limit, we will provide any separate per person limit required by law for “bodily injury” liability.
3. There will be no adding, stacking, or combining of limits for any one covered accident no matter the number of:
 - a. Injured persons, claims, or lawsuits asserted;

- b. Vehicles or trailers involved in the accident;
- c. Insureds on this policy or involved in the accident;
- d. Vehicles or premiums shown in the Declarations or Schedule; or
- e. Policies issued by us.

C. **Stacked Split Limit Underinsured Motorist Coverage**

If you bought Stacked coverage with a split limit that sets forth separate limits for “bodily injury”, and the Stacked coverage is shown in the Declarations or Schedule, then for this Underinsured Motorist Stacked Coverage you bought:

1. Any increased benefit from this Stacked option will only apply as to an “insured” who is you or a “family member”, and will not apply to any other “insured”.
2. Our maximum limit of liability for “bodily injury” to an “insured” who is you or a “family member” is the sum of the per person limit of liability shown in the Declarations or Schedule for “bodily injury” added together for each of “your covered autos” shown in the Declarations or Schedule with the Stacked coverage. This Stacked coverage option applies only to you and “family members”, and does not increase the limit of liability under this coverage for any other “insured”. This is the most we will pay for you or any “family member” as an “insured”, and there will be no other adding, stacking, or combining of limits for any one covered accident no matter the number of:
 - a. Injured persons, claims, or lawsuits asserted;
 - b. Vehicles or trailers involved in the accident; or
 - c. Insureds on this policy or involved in the accident.
3. Our maximum limit of liability for “bodily injury” to an “insured” who is other than you or a “family member” is the per person limit of liability shown in the Declarations or Schedule for “bodily injury” that applies to “your covered auto” involved in the accident. The Stacked coverage option that applies only to you and “family members” does not increase the limit of liability under this coverage for any other “insured”. This non-stacked limit is the most we will pay for any “insured” other than you or a “family member”, and there will be no adding, stacking, or combining of limits for any one covered accident for such an “insured” no matter the number of:
 - a. Injured persons, claims, or lawsuits asserted;
 - b. Vehicles or trailers involved in the accident;
 - c. Insureds on this policy or involved in the accident;
 - d. Vehicles or premiums shown in the Declarations or Schedule; or
 - e. Policies issued by us.
4. Subject to the limit of liability that applies per person to the **Underinsured Motorist Coverage**, the per accident limit is the most we will pay for all damages due to “bodily injury” sustained by two or more persons in any one accident with respect to “your covered auto” involved in the accident. However, with respect to “bodily injury” to you and “family members”, this does not include the added stacked coverage on a per person limit basis for you and “family members” due to stacking coverage from “your covered autos” that are not involved in the accident. Without increasing this per accident limit, we will provide any separate per person limit required by law for “bodily injury” liability.
5. The limit for each person shown in the Declarations or Schedule shall 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”.

D. **Stacked Combined Single Limit Underinsured Motorist Coverage**

If you bought coverage with only a single per accident limit, and the Stacked coverage is shown in the Declarations or Schedule, then for this Underinsured Motorist Stacked Coverage you bought:

1. Any increased benefit from this Stacked option will only apply as to an “insured” who is you or a “family member”.

member", and will not apply to any other "insured".

2. Our maximum limit of liability with respect to all "bodily injury" to an "insured" who is you or a "family member" is the sum of the combined limit of liability shown in the Declarations or Schedule for each of "your covered autos" with that Stacked coverage, added together, for all covered damages resulting from an accident. This Stacked coverage option applies only to you and "family members", and does not increase the limit of liability under this coverage for any other "insured". This is the most we will pay for you or any "family member" as an "insured", and there will be no other adding, stacking, or combining of limits for any one covered accident no matter the number of:
 - a. Injured persons, claims, or lawsuits asserted;
 - b. Vehicles or trailers involved in the accident; or
 - c. Insureds on this policy or involved in the accident.
3. Our maximum limit of liability for "bodily injury" to an "insured" who is other than you or a "family member" is the limit of liability shown in the Declarations or Schedule that applies to "your covered auto" involved in the accident, and this is our limit for the total of all covered damages for all such "insureds" in any one accident with respect to that covered auto. This does not include the added stacked coverage for you and "family members" attributed to coverage on any other of "your covered autos". There will be no adding, stacking, or combining of coverage for any "insured" who is not you or a "family member". This non-stacked limit is the most we will pay for any such "insured" other than you or a "family member", and there will be no adding, stacking, or combining of limits for any one covered accident for such an "insured" no matter the number of:
 - a. Injured persons, claims, or lawsuits asserted;
 - b. Vehicles or trailers involved in the accident;
 - c. Insureds on this policy or involved in the accident;
 - d. Vehicles or premiums shown in the Declarations or Schedule; or
 - e. Policies issued by us.
4. Without increasing this combined single limit, we will apply that limit to provide any separate per person limit required by law for "bodily injury".
5. Notwithstanding the above:
 - a. There is still only one Combined Single Limit of liability that applies as shown in the Declarations or Schedule and that one Combined Single Limit is our maximum limit of liability for all "insureds" for all covered damages due to "bodily injury" in any one covered accident; and
 - b. The stacking described will apply only when that maximum one Combined Single Limit of liability for all "insureds" is not enough to cover all such covered damages in an accident involving both:
 - 1) You and/or a "family member"; and
 - 2) Any other "insured";
 in which case, only you and "family members" may proceed to stack coverage as described above within those stacked limits only as necessary to compensate any remaining covered damages of you and/or "family members".

E. For an "insured", other than you or a "family member", our limit of liability for **Underinsured Motorist Coverage** shown on the Declarations or Schedule shall be reduced by all sums paid under **PART A – LIABILITY COVERAGE** of this policy to that person.

F. The damages an "insured" is entitled to recover for "bodily injury" from the owner or driver of the "underinsured motor vehicle" 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. However, if an "insured" settles with the owner or driver of an "underinsured motor vehicle", or its insurer, for less than the limit of the liability coverage under the policies insuring that "underinsured motor vehicle" (or for less than the full amount of self-insurance), the damages recoverable shall be reduced by the sum of the full limits of liability under all other liability policies and bonds (or the full amount of self-insurance) that apply

to the owner or driver of the “underinsured motor vehicle”; and

2. Paid under any medical payments, personal injury protection, and/or first party benefits coverage of this policy; and
3. Paid or payable because of “bodily injury” under any disability benefits law or similar laws, other than workers’ compensation law and exclusive of any state non-occupational disability benefits law; and
4. From any other source of recovery, including any other insurance policy.

G. 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 underinsured motorist coverage, or similar type of insurance or source of recovery, that applies or is available under one or more policies to cover the accident:

A. Payment shall be made in the following order of priority as set forth under Pennsylvania law, as amended (“1st” being the highest level of priority and “2nd” being the lowest level of priority):

1st: The underinsured motorist coverage that applies to and covers the motor vehicle the “insured” was “occupying” at the time of the accident.

2nd: Any other policy affording underinsured motorist coverage to the “insured”.

B. If policies covering the accident are of equal priority, the insurer against whom the claim is first made, subject to the priorities above, shall process and pay the claim as if wholly responsible. After, that insurer has a right to recover contribution on a pro rata basis from any other insurer for both the benefits paid and costs of processing the claim.

C. If coverage that applies is shown in the Declarations or Schedule as any of the following: “Non-Stacked”, waiver of stacked, stacking rejected or waived, or some other like styled text to indicate there is NO stacking of any coverage, then the maximum recovery under all policies of the 2nd priority will be no more than the highest limit of liability for one motor vehicle applicable under any one of those Second priority policies.

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.

As provided under the Pennsylvania Arbitration Act of 1927, questions of law or coverage under this policy are to be submitted to a court with jurisdiction where the insured resides.

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 “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 the time of the 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.
- 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.
- G. A decision of the arbitrators that is within the arbitrators’ authority as set forth above is binding. Either party may appeal questions of law or coverage, interpretation of this policy, or any other matter outside of the arbitrators’ authority, pursuant to the Arbitration Act of 1927, which shall govern the terms of arbitration, to a court with jurisdiction where the insured resides.

If there is no mutual agreement to arbitrate, all issues shall be resolved in a court of proper and competent jurisdiction.

All other policy provisions apply.