

PLEASE READ THIS ENDORSEMENT CAREFULLY AS IT CHANGES YOUR POLICY

UNINSURED/UNDERINSURED MOTORISTS COVERAGE – NEW MEXICO

PLEASE NOTE: Your election of either “stacked” or “non-stacked” **Uninsured/Underinsured Motorists Coverage** appears on your Declarations or Schedule for this policy, is subject to all terms of this policy, and is further described in the **Limit of Liability** provision of this endorsement.

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

INSURING AGREEMENT

- A. If the premium for this coverage has been paid, we will pay for damages that an “insured” is legally entitled to recover from the owner or operator of an “uninsured motor vehicle” or “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 “uninsured motor vehicle” or “underinsured motor vehicle”.

Any payment by us for this **Uninsured/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.

- B. “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.

A “family member”, as used in this endorsement, will also include, for purposes of “bodily injury” only, a person who is:

1. The named insured’s spouse if that spouse did reside in the same household as that named insured on this policy at the start of the current policy period, and no other similar coverage applies; or
2. Your unemancipated and dependent minor child for whom you are required by law to provide financial support;

whether or not that person or child is residing in the same household as the named insured on this policy at the time of the accident causing the “bodily injury”.

- 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. "Property damage", as used in this endorsement, means physical harm to, destruction of, or loss of use of tangible property owned by:
1. You or a "family member"; or
 2. Any other "insured" who is not you or a "family member", but only if that property that was damaged was in "your covered auto" at the time of the accident.

- F. "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 the:

1. Sum of all limits available under those bonds and policies for "bodily injury" and/or "property damage", as applicable, is less than the sum of the **Uninsured/Underinsured Motorists Coverage** limit for this policy and other such similar coverage available as stacked under this or another policy; or
2. Amount actually made available under all those bonds and policies for "bodily injury" and/or "property damage", as applicable, to the "insured" after payment to other persons injured in the same accident is less than the sum of the **Uninsured/Underinsured Motorists Coverage** limit for this policy and any other such similar coverage available as stacked under this or another 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; or
4. That is an "uninsured motor vehicle".

- G. "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:
 - a. Bonding or insuring company denies coverage or is, or becomes, insolvent; or
 - b. Limit of liability under that policy or bond is less than the "minimum limits";
3. A motor vehicle for which the owner or operator cannot be identified, and that motor vehicle causes "bodily injury" to an "insured" or "property damage". If there is no physical contact with that unidentified motor vehicle causing the accident, then the facts of the accident must be proven by the "insured" by a preponderance of the evidence.

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. 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
5. 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 **Uninsured/Underinsured Motorists 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 "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. 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. **Uninsured/Underinsured Motorists Coverage** 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 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/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. There is no coverage under **PART C** for or related to:

1. The first \$250 of the total amount of all “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.

D. This policy excludes underinsured motorists coverage in the event of a loss from a motor vehicle accident in which the total reimbursement you receive from other parties’ insurance policies is equal to or in excess of the **Uninsured/Underinsured Motorists Coverage** provided by this policy. This exclusion is in accordance with New Mexico law, as set forth in *Crutcher v. Liberty Mut. Ins. Co.*, decided on October 4, 2021.

LIMIT OF LIABILITY

Our **Uninsured/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 limit shown in the Declarations or Schedule shows a separate limit for Uninsured/Underinsured 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.

If only a single per accident limit is shown as the limit of liability in the Declarations or Schedule for **Uninsured/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; or
 4. Vehicles or premiums shown in the Declarations or Schedule.
- C. However, notwithstanding any policy provision to the contrary, if both:
 1. You have selected, purchased and paid the extra premium for the "Stacked" coverage option as shown in the Declarations for **Uninsured/Underinsured Motorists Coverage** on this policy; AND
 2. The **Uninsured/Underinsured Motorists Coverage** under this **PART C** applies to an "insured" who is you and/or a "family member" (also referred to as a Class I "insured");

then for that applicable **Uninsured/Underinsured Motorists Coverage**, the following terms apply for any stacking or adding of such **Uninsured/Underinsured Motorists Coverage** under this **PART C** that is required by New Mexico law (as amended) for you or a "family member" as a Class I "insured":

1. **Uninsured/Underinsured Motorists Coverage** stacking will be provided only if, when and as required by New Mexico law (as amended) for you and "family members" as Class I "insureds".
 2. The most we will pay for all covered damages for you and/or a "family member" is the applicable limit of **Uninsured/Underinsured Motorists Coverage** (as set forth in paragraph "A" above under this **Limit of Liability** provision) multiplied by the number of "your covered autos" on this policy for which the "Stacked" coverage option for **Uninsured/Underinsured Motorists Coverage** has been selected and purchased with a separate premium shown per vehicle as shown in the Declarations or Schedule.
 3. When **Uninsured/Underinsured Motorists Coverage** stacking applies, the per accident limit that is shown as the limit of liability in the Declarations for **Uninsured/Underinsured Motorists Coverage** will increase only to the extent that the stacking described above, increases the amount payable to a Class I "insured" (you and "family members") who is entitled under New Mexico law to stack coverage to an amount that exceeds the (non-stacked) per person limit of liability shown in the Declarations that is otherwise the limit applicable to that Class I "insured" (you and "family members").
- D. We are not be obligated to pay under this **PART C** that part of the damages which an "insured" may be entitled to recover from the owner or operator of an "uninsured motor vehicle" or "underinsured motor vehicle" which represents expenses for medical services paid or payable under **PART B – MEDICAL PAYMENTS COVERAGE** of this policy.
 - E. Our limit of liability for **Uninsured/Underinsured Motorists Coverage** shall be reduced by any amount:

1. Paid or to be paid because of "bodily injury" and/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 for "property damage" under **PART D – COVERAGE FOR DAMAGE TO YOUR COVERED AUTO** of this policy or under any other policy of property insurance.
- F. The applicable limit shown in the Declarations or Schedule for Uninsured/Underinsured Motorists Property Damage is the most we will pay for all covered damages for or related to "property damage" sustained in any one accident, and is also 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/Underinsured Motorists Property Damage;
 - b. Cost of repair or replacement; or
 - 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".
 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/Underinsured Motorists Property Damage, or the statutory deductible (as amended) being the first \$250 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.
- 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 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 for "bodily injury":

- 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; and
- B. If there is other insurance with the same priority as this coverage for "bodily injury", 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/Underinsured Motorists Coverage** bears to the total of all applicable limits with the same priority as this coverage.

With respect to "property damage", any coverage under this **PART C** shall:

- A. Be excess insurance over any and all other valid and collectible insurance that applies to or for that "property damage"; and
- B. Apply only after that other valid and collectible insurance that applies to or for that "property damage" has been exhausted.

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;

unless the arbitration costs are awarded by the arbitrators to the prevailing party, or the costs and fees of the arbitration are otherwise determined by the arbitrators. However, the cost of any expert witness shall be paid by the party who hired that witness, and the cost of other expenses shall be paid by the party who incurred that expense.
- 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, but only if that amount is not greater than “minimum limits”.
- 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, interest, or attorney fees.

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

Under **PART F – GENERAL PROVISIONS**, the following is added to the **Two Or More Auto Policies** provision:

This policy provision and limitation does not apply to **PART C – Uninsured/Underinsured Motorists Coverage**, but only if, when and as required by New Mexico law, as amended.

All other policy provisions apply.