

PLEASE READ THIS ENDORSEMENT CAREFULLY AS IT CHANGES YOUR POLICY

## UNDERINSURED MOTORIST COVERAGE (NON-STACKED) – PENNSYLVANIA

**PLEASE NOTE:** Your election of either STACKED or NON-STACKED coverage appears in 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 and is attached to your Classic Automobile Policy, as set forth below.

### 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 “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.

- 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 or a "family member"; or
6. That is an uninsured motor vehicle.

### ADDITIONAL TERMS AND 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:
  1. The police, or other law enforcement with proper jurisdiction, within 24 hours, or as soon as reasonably possible; and file a written report with the proper authorities as soon as practicable; and
  2. Us within 30 days, 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. If there is only one vehicle shown in the Declarations, we do not provide **Underinsured Motorist Coverage** for "bodily injury" that is sustained by and occurs while:
  1. You are "occupying", operating, or otherwise using or struck by any motor vehicle owned by you which is not insured for this coverage under this policy.
  2. A "family member" who owns an auto is "occupying", operating, or otherwise using or struck by any motor vehicle owned by you or a "family member" which is not insured for this coverage under this policy.
  3. A "family member" who does not own an auto is "occupying", operating, or otherwise using or struck by

any motor vehicle you own which is insured for this coverage on a primary basis under any other policy.

- B. If there is more than one vehicle shown in the Declarations or Schedule, we do not provide **Underinsured Motorist Coverage** for “bodily injury” that is sustained by and occurs while:
1. You are “occupying”, operating, or otherwise using or struck by any motor vehicle owned by you which is not “your covered auto” and is not insured for this coverage.
  2. A “family member” who owns an auto is “occupying”, operating, or otherwise using or struck by any motor vehicle owned by you or a “family member” which is not insured for this coverage.
- C. **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 “occupying” or using a vehicle without permission from the owner of the vehicle. This does not apply to you or a “family member” when “occupying” or using “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 does not apply to shared expense carpools.
- D. **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.
- E. 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 limit of liability, which is the most we will pay under this policy, is the limit shown in the Declarations or Schedule. That limit is subject to the following terms.

- A. For a split limit of liability that sets forth separate limits for “bodily injury” for each person and each accident, the most we will pay under this policy for all covered damages is:
1. The limit for each person shown in the Declarations or Schedule due to “bodily injury” to one person in any one accident.  
  
This each person limit includes 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:
    - a. Wrongful death;
    - b. Loss of consortium, companionship, society, support and services; and
    - c. Emotional distress or mental anguish as a result of seeing the accident or “bodily injury”.
  2. The limit for each accident shown in the Declarations or Schedule which:
    - 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. There will be no adding, stacking or combining of limits under this policy for any one covered accident no matter the number of:
    - a. Claims asserted;
    - b. Vehicles or trailers involved in the accident;
    - c. Insureds on this policy or involved in the accident; or

- d. Vehicles or premiums shown in the Declarations or Schedule.
- B. For a single limit of liability that sets forth one limit for “bodily injury” for each accident, the most we will pay under this policy is the total of all covered damages resulting from any one accident up to the limit for each accident shown in the Declarations or Schedule.
1. Without increasing this each accident limit, we will provide any separate each person limit required by law for “bodily injury”.
  2. There will be no adding, stacking or combining of limits under this policy for any one covered accident no matter the number of:
    - a. Claims asserted;
    - b. Vehicles or trailers involved in the accident;
    - c. Insureds on this policy or involved in the accident; or
    - d. Vehicles or premiums shown in the Declarations or Schedule.
- C. For an “insured”, other than you or a “family member”, our limit of liability for **Underinsured Motorist Coverage (Non-Stacked)** shown in the Declarations or Schedule shall be reduced by all sums paid under **PART A** of this policy to that person.
- D. 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:
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** of this policy. This does not apply to workers’ compensation benefits.  
  
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 of 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, other than workers’ compensation benefits, 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, other than workers’ compensation benefits.
- 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 than workers’ compensation benefits.

#### **OTHER INSURANCE**

- A. If there is other applicable underinsured motorist coverage or similar type of insurance or source of recovery, other than workers’ compensation benefits, that applies or is available under one or more policies to cover the accident, payment shall be made in the following order of priority as set forth under Pennsylvania law, as amended:
- 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”.
1. 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. Afterwards, 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.

2. 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, and if there is only one vehicle shown in the Declarations or Schedule, 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 2nd priority policies.
- B. 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 and any "family members". 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 .

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:
    - a. Coverage;
    - b. Who is an "insured";
    - c. The validity of any coverage election, rejection, or selection;
    - d. Residency status of a claimant;
    - e. Qualification of a person as an "insured";
    - f. Rights or duties under the policy;
    - g. Statutes of limitations;
    - h. Other policy interpretation issues; or
  2. Award any amount greater than the limit of liability shown in the Declarations or Schedule; 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.