

PLEASE READ THIS ENDORSEMENT CAREFULLY AS IT CHANGES YOUR POLICY

## PART C – ARKANSAS

### UNINSURED MOTORISTS COVERAGE AND UNDERINSURED MOTORISTS COVERAGE

#### INSURING AGREEMENT

##### A. Uninsured Motorists Bodily Injury and Uninsured Motorists Property Damage

If the Declarations indicates **Uninsured Motorists Bodily Injury** and/or **Uninsured Motorists Property Damage** coverage applies, 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 an “insured”, and/or for “property damage” to “your covered auto”, 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 “uninsured motor vehicle”.

##### B. Underinsured Motorists Bodily Injury

If the Declarations indicates **Underinsured Motorists Bodily Injury** coverage applies, 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 an “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”.

There is no Underinsured Motorists Coverage for any type of “property damage”.

##### C. Any payment by us for coverage under this **PART C** is subject to the limits elected and shown in the Declarations, and as further described in the **Limit of Liability** provision of this endorsement.

##### D. “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”:
  - a. “Your covered auto” with permission from you; or
  - b. A “temporary substitute vehicle” with permission from you or a “family member”, but only if that “temporary substitute vehicle” is being operated by you or a “family member”.
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. A “family member”; 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 a “family member”, if that vehicle is not “your covered auto”.

##### 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 limit required by these laws.

- F. "Property damage", when used with respect to **Uninsured Motorists Property Damage Coverage**, means physical injury to or destruction of "your covered auto", including a reasonable allowance for loss of use of "your covered auto", for which **Uninsured Motorists Property Damage Coverage** has been purchased on this policy.
- G. "Punitive damages" means any type of punitive or exemplary damages, however named, which are damages that are separate from sums intended to provide compensation, and are instead intended or awarded to:
1. Punish and/or deter wrongful, malicious, or unlawful conduct by any person or party; or
  2. Fine, penalize, or impose a statutory penalty.
- "Punitive damages" includes any attorney fees, interest, costs, or other fees awarded in connection with the award of any such punitive or exemplary damages.
- H. "Temporary substitute vehicle" means a motor vehicle:
1. Loaned by a duly licensed automobile dealer to, and while operated by, you or a "family member" for use as a:
    - a. Temporary substitute, with or without consideration, for "your covered auto" while that covered auto is out of use because of its breakdown, repair, or servicing; or
    - b. Demonstrator vehicle; or
  2. Rented or leased from a rental company to, and while operated by, you or a "family member". A rental company, as used here, is a person or entity in the business of providing mainly private passenger vehicles to the public under a rental agreement for a period not to exceed 90 days
- I. "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 "bodily injury" damages incurred by the "insured" and for which that "insured" is legally entitled to recover 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 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".
- J. "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 hit-and-run motor vehicle for which the owner or operator cannot be identified, and that motor vehicle causes:
    - a. "Bodily injury" to an "insured" by striking or hitting that "insured", "your covered auto", or a vehicle an "insured" is "occupying"; or
    - b. "Property damage" by striking "your covered auto".

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 insured under the liability coverage of this policy;

5. Owned by, furnished, or available for the regular use of you or a "family member";
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 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 "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. The limits of liability under those other applicable liability policies or bonds have been exhausted by payment of judgments or settlements; or
3. We have been given at least 30 days prior written notice, by certified mail return receipt requested, of a settlement offer between the "insured" and owner or driver of an "uninsured motor vehicle" or "underinsured motor vehicle", and we advance payment to the "insured" in an amount equal to that settlement offer. However, if the owner or driver of the "underinsured motor vehicle" is insured by us for liability coverage under some other separate policy, this provision shall be waived and not apply such that an insured may proceed with their claim for damages under this coverage after settlement of that insured's claim for damages under the liability coverage applicable to the owner or driver of the underinsured motor vehicle.

If there is a tentative agreement to settle between the "insured" and the owner or driver of an "underinsured motor vehicle", or its insurer, then we must be given written notice of such proposed settlement as described directly above. That written notice of such offer to pay or tentative settlement must include written:

- a. Documentation of monetary losses incurred, including copies of all medical bills;
- b. Authorization, or a court order authorizing us, to obtain medical reports from all employers and medical providers; and
- c. Confirmation from the insurer of the "uninsured motor vehicle" or "underinsured motor vehicle" of the liability coverage limits of the owner or driver of that "uninsured motor vehicle" or "underinsured motor vehicle" and the terms of the tentative settlement, which shall in no event include any component sum representing "punitive damages". In no event shall evidence of the referenced liability limits, the fact that a tentative settlement was reached, or the terms of the tentative settlement be admissible in any civil action with the sole exceptions of actions by:
  - 1) Underinsured motorists insurers to enforce subrogation rights;
  - 2) First party liability insureds against their insurer to enforce their contract or a settlement hereunder, if any; and
  - 3) First party underinsured motorists insureds against their insurer to enforce their contract or a settlement hereunder.

However, if the owner or driver of the "underinsured motor vehicle" is insured by us for liability coverage under some other separate policy, the requirements directly above for notice of settlement shall be waived and not apply such that an "insured" may proceed with their claim for damages under this coverage after settlement of that "insured's" claim for damages under the liability coverage applicable 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 "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, 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 of, or as soon as practicable;  
after that accident.

## EXCLUSIONS

A. **PART C** does NOT cover “bodily injury” or “property damage” 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 to carry persons or property for a fee. This exclusion does not apply to shared expense carpools.
4. That occurs while “occupying”, operating, or otherwise using any vehicle owned by, furnished, or available for the regular use of you or a “family member”, if that vehicle is not “your covered auto”.
5. For or due to diminution in value or any perceived or real decrease in market or resale value of property due to an accident, loss, or repair.
6. 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.
7. Using “your covered auto” at a:
  - a. Racing facility; or
  - b. Facility or roadway temporarily designated 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 6.a. and 7. 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.
8. 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 8. 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. **PART C** 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 damages".

#### **LIMIT OF LIABILITY**

Our limit of liability is the limit shown in the Declarations. That limit is subject to the following terms:

A. This is the most we will pay for all covered damages.

1. If a split limit of liability is shown in the Declarations for **Uninsured Motorists Bodily Injury** and **Underinsured Motorists Bodily Injury** for each person / each accident, these limits shall apply to all claims due to "bodily injury" to:
  - a. Any one person in any one accident; and
  - b. Two or more persons in any one accident, subject to the "bodily injury" limit for each person as described in a. above.

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: 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. The separate limit of liability shown in the Declarations for **Uninsured Motorists Property Damage** shall apply to all claims for "property damage" related to, arising out of, or sustained in any one accident. There is no coverage for the first \$200 of the amount of "property damage" as the result of any one accident unless:
  - a. We insure "your covered auto" for both **Collision** and **Uninsured Motorists Property Damage**; and
  - b. The driver of the "uninsured motor vehicle" is positively identified and is solely at fault.
3. If a single limit of liability is shown in the Declarations for **Uninsured Motorists Bodily Injury & Property Damage** for each accident, that amount shown is the most we will pay for the total of all covered damages resulting from any one accident for "bodily injury" and/or "property damage". 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.
4. "Property damage" is subject to the following:
  - a. We shall not pay more than the lowest of the:
    - 1) The limit, if shown in the Declarations, for **Uninsured Motorists Property Damage**;
    - 2) Cost of repair or replacement;
    - 3) "Guaranteed Value<sup>®</sup>" of the damaged property, as shown in the Declarations, at the time of the accident, if the damaged property is "your covered auto"; or
    - 4) If the damaged property is a "temporary substitute vehicle", actual cash value at the time of the accident.
  - b. Our payment will not include, and you are responsible for the amount of:
    - 1) Any deductible that applies as shown in the Declarations for **Uninsured Motorists Property Damage**.
    - 2) 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.
    - 3) 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.

c. We have no duty to cover or pay for any diminution in value.

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
5. Policies issued by us.

C. For an "insured" who is other than you or a "family member", our limit of liability for "bodily injury" 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;
2. Paid under **PART B** 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.

However, this shall not reduce the available amount to less than "minimum limits".

D. For "bodily injury" to you or a "family member", the total damages that this "insured" is legally entitled to recover from the owner or driver of an "uninsured motor vehicle" or "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, including, but not limited to all sums paid under **PART A**;
2. Under **PART B**; and
3. Under any workers' compensation law, disability benefits law, or similar laws.

E. For "property damage" sustained by you or a "family member", the total "property damage" that you or a "family member" are legally entitled to recover from the owner or driver of an "uninsured motor vehicle" shall be reduced by any amount paid or to be paid because of "property damage":

1. By or on behalf of any persons or parties that may be legally responsible, including, but not limited to all sums paid under **PART A**; and
2. Under **PART D**.

F. 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", any applicable coverage under this policy 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 **PART C** bears to the total of all applicable limits with the same priority as this coverage.

However, we will provide primary coverage for the use or operation of a "temporary substitute" vehicle by you or a "family member", but only as compared to any insurance or self-insurance maintained by the duly licensed automobile dealer or rental company for that "temporary substitute" vehicle.

B. Notwithstanding paragraph A. above in this **Other Insurance** provision, 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.

C. If there is other similar coverage or source of recovery for property damage, then:

1. The total limits under all such coverages shall not exceed that of the coverage with the highest limit of liability; and
2. We are liable only for our share. Our share is that proportion of the damages that the limit of liability of this coverage bears to the total of all such coverage that applies to the accident; and
3. We will provide primary **Uninsured Motorists Property Damage** for the use or operation of a "temporary substitute" vehicle by you or a "family member", but only as compared to any insurance or self-insurance maintained by the duly licensed automobile dealer or rental company for that "temporary substitute" vehicle.

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.

Arbitration may be used, if voluntarily 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.

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 by the arbitrators is non-binding.
- 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; the residency status of a claimant, or the qualification of a person as an "insured"; any 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; or
  4. Render a binding decision.

If there is no mutual agreement between the "insured" and us, all issues shall be resolved in a court of proper and competent jurisdiction.

All other policy provisions apply.