

PLEASE READ THIS ENDORSEMENT CAREFULLY AS IT CHANGES YOUR POLICY

UNINSURED MOTORISTS COVERAGE - TENNESSEE

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

INSURING AGREEMENTS

A. Uninsured Motorists Bodily Injury Coverage.

If the premium for Uninsured Motorists Bodily Injury 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 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 Bodily Injury 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. Uninsured Motorists Property Damage Coverage.

If the premium for Uninsured Motorists Property Damage Coverage has been paid, we will pay for “property damage” that an “insured” is legally entitled to recover from the owner or operator of an “uninsured motor vehicle” if the “property damage” is caused by a motor vehicle accident that arises out of the ownership, maintenance, or use of that “uninsured motor vehicle”. Provided, however, this coverage does not apply to the first \$200 of “property damage” as the result of any one accident unless:

1. We also insure “your covered auto” for which this coverage applies for collision under **PART D – COVERAGE FOR DAMAGE TO YOUR COVERED AUTO**; and
2. The driver of the “uninsured motor vehicle” is positively identified and is solely at fault.

Any payment by us for this Uninsured Motorists Property Damage 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. “Diminution of value” means the difference in “market value” of the covered property just prior to loss and just after loss, whether or not the covered property is repaired. “Market value” means the price which the property might be expected to realize if offered for sale by a willing seller to a willing buyer in a fair market on the date of loss or damage.

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” “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”.

- 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”, as used in this endorsement, means physical injury to, or destruction of:
 1. “Your covered auto” for which Uninsured Motorists Property Damage Coverage has been purchased on this policy; and
 2. Personal property owned by an “insured”, but only if that property is contained within “your covered auto” at the time of the accident.

“Property damage” does not include:

1. Loss of use of “your covered auto”, property contained within “your covered auto”, or any other property;
2. Damage to, or destruction or loss of, any other personal property if not contained within “your covered auto” at the time of the accident; or
3. “Diminution of value”.

- 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 insolvent or becomes insolvent within one year of the accident; or
 - b. Limit of liability for “bodily injury” available to the “insured” under all valid and collectible bonds, securities and insurance policies for liability coverage applicable to the “bodily injury” or “property damage” is less than the applicable limit of liability under this Policy; or
 3. A hit-and-run motor vehicle for which the owner or operator is unknown, and that motor vehicle causes “bodily injury” or “property damage” to an “insured”:
 - a. By striking or hitting that “insured”, “your covered auto”, or a vehicle an “insured” is “occupying”; or
 - b. Without striking or hitting that “insured”, “your covered auto”, or a vehicle an “insured” is “occupying”, provided that all the following are satisfied:
 - (1) If there is no actual physical contact with the hit-and-run motor vehicle, then the existence of the unknown motorist must be established by clear and convincing evidence, other than any evidence provided by:
 - (a) Occupants in “your covered auto” or any vehicle an “insured” is “occupying”; or

- (b) An “insured” making a claim; and
- (2) The “insured”, or someone on the behalf of the “insured”, has reported the accident to the appropriate law enforcement agency within a reasonable time after its occurrence; and
- (3) The “insured” was not negligent in failing to determine the identity of the other vehicle or the owner or driver of the other vehicle at the time of the accident.

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, or an off-highway vehicle, 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; or
- 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.

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” has liability insurance, self-insurance or bond, we will not make a payment under **Uninsured 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”, 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”.
- 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 Motorists Coverage** does NOT cover “property damage” or “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, 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 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.

LIMIT OF LIABILITY

Our **Uninsured 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 “bodily injury” 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 “bodily injury” limit, 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 only a single per accident "bodily injury" limit is shown in the Declarations or Schedule as the limit of liability, that amount shown is the most we will pay for the total of all covered "bodily injury" damages resulting from any one accident.
 4. If only a single per accident "property damage" limit is shown in the Declarations or Schedule as the limit of liability, that amount shown is the most we will pay for the total of all covered "property damage" resulting from any one accident.
 5. If only a combined "bodily injury" and "property damage" single per accident limit is shown as the limit of liability in the Declarations or Schedule for **Uninsured 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;
 4. Vehicles or premiums shown in the Declarations or Schedule; or
 5. Policies issued by us.
- C. Our limit of liability for **Uninsured Motorists Coverage** 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, whether paid or payable by settlement or judgment, whether characterized as compensatory or punitive damages, and 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** of this policy; and
 3. Paid or payable because of "bodily injury" under any workers' compensation law, disability benefits law, or similar type of benefits, whether required or available by law or contract, exclusive of any state non-occupational disability benefits law.
- D. If the Declarations or Schedule shows you have purchased Uninsured Motorists Property Damage Coverage, the limit shown as outlined in Paragraphs A.4. and A.5 above is the most we will pay for all covered "property damage" sustained in any one accident, and is 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 Property Damage Coverage;
 - 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. If there is damage to personal property which is contained within "your covered auto" at the time of the accident, actual cash value of that property.
 2. Our limit of liability for Uninsured Motorists Property Damage Coverage shall be reduced by any amount paid or to be paid:
 - a. Because of "property damage" by or on behalf of any persons or parties that may be legally responsible for the "property damage", including, but not limited to, all amounts paid for

- “property damage” under **PART A – LIABILITY COVERAGE** of this policy, whether paid or payable by settlement or judgment, whether characterized as compensatory or punitive damages; and
- b. All amounts paid under **PART D – COVERAGE FOR DAMAGE TO YOUR COVERED AUTO** in this policy.
3. Our payment for Uninsured Motorists Property Damage Coverage will not include, and you are responsible for (when applicable), the amount of:
- a. Any deductible that applies. When applying the deductible, if the “property damage”:
 - (1) Is to more than one of “your covered autos” with Uninsured Motorists Property Damage Coverage in the same accident, only the highest applicable deductible will apply.
 - (2) Is the result of more than one accident, a separate deductible shall apply to each accident.
 - b. 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.
 - c. The salvage value if you or the owner retains salvage.
 - d. 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 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. 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 with the other insurance with the same priority as this coverage, but excess to any lower priority as provided under Tennessee law. Our share of the covered damages or loss is the proportion that our limit of coverage under **Uninsured Motorists Coverage** bears to the total of all applicable limits with the same priority as this coverage.
- 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.

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 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” upon either:

- A. Mutual consent between us and the “insured”; or
- B. Written demand for arbitration by the “insured” to us, but only if:
 - 1. There is a full liability limits settlement offer from a liable party; and
 - 2. The “insured” has met all requirements and conditions to invoke this right to arbitrate under the Tennessee insurance laws, as amended, including but not limited to:
 - a. All owners and drivers alleged to be liable for the damages to the “insured” have offered their available limits of all liability insurance, self-insurance, bond or other security in settlement of the claims made by the “insured”;
 - b. The “insured” has given us prompt notice in writing of such offer by certified mail, return receipt requested (or by some other method with written verification of delivery to us), and we have agreed to that offer and settlement rather than pursuing our right to subrogate; and
 - c. The “insured” accepts the offer and executes a full release of the party on whose behalf the offer is made. If the settlement does not release all parties alleged to be liable to the “insured”, arbitration of the claim under this coverage shall not be conducted until the claims against all such other parties have been fully and finally disposed of by settlement, final judgment or otherwise.

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 in the county in which the arbitration is pending. If a court of record with proper jurisdiction is asked to select the third arbitrator, the court shall designate three (3) potential arbitrators. The parties shall then agree upon one (1) of those three (3) arbitrators.
- 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. If the arbitration award to the “insured” is less than or equal to the total amount collected by the “insured” by way of settlements or judgments plus the amount of any settlement offer made by us at least fifteen (15) days prior to the arbitration, the “insured” will pay the cost of the third arbitrator's fee. In the event the arbitrator's award to the “insured” exceeds the total amount collected by the “insured” by way of settlements or judgments plus the amount of any settlement offer made by us at least fifteen (15) days prior to the arbitration, we will pay the third arbitrator's fee.
- E. The arbitrators shall decide issues of tort liability and damages only. The arbitrators shall first decide issues of liability and the apportionment of fault and, if fault is found, the amount of damages sustained by the “insured”. 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”.

If the arbitrators' award is greater than “minimum limits”, either party may demand the right to a trial. This demand must be made within 60 days of the arbitrators' decision. If this demand is not made, the amount of damages agreed to by the arbitrators will then be 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, 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.

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.