

PLEASE READ THIS ENDORSEMENT CAREFULLY AS IT CHANGES YOUR POLICY

## **UNINSURED AND UNDERINSURED MOTORISTS COVERAGE - ARKANSAS**

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

### **INSURING AGREEMENT**

#### **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 compensatory damages that you or a “family member” are legally entitled to recover from the owner or operator of an “uninsured motor vehicle” for “property damage” to “your covered auto” caused by a motor vehicle accident but only if there is actual and direct physical contact between the vehicles resulting in “property damage”.

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 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. Underinsured Motorists Bodily Injury Coverage**

If the premium for Underinsured 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 “underinsured 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 “underinsured motor vehicle”.

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

Any payment by us for this Underinsured 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.

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. 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. "Property damage", when used with respect to Uninsured Motorists Property Damage Coverage, means physical injury to or destruction of "your covered auto" for which Uninsured Motorists Property Damage Coverage has been purchased on this Policy.
- F. "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.
- 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. Owned by any government or any of its subdivisions or agencies;
5. Shown in the Declarations or Schedule, or insured under the liability coverage, of this policy;
6. 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
7. 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. Owned by any government or any of its subdivisions or agencies;
5. Shown in the Declarations or Schedule, or insured under the liability coverage, of this policy;
6. 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;
7. 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
8. 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 and 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. 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 clause #3 shall be waived and not apply such that an insured may proceed with his or her 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 in the clause #3 directly above of this **Additional Terms & Duties** provision. 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 or exemplary 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 his or her 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 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 and Underinsured Motorists Coverage** 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 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”.
  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.
- B. **Uninsured and 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; 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 for the coverage you bought from us is the limit shown in the Declarations or Schedule, which is the most we will pay under this endorsement. 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 only a single per accident limit is shown as the limit of liability in the Declarations or Schedule, 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. The Uninsured Motorists Property Damage Coverage limit of liability shown in the Declarations or Schedule is the most we will pay for all “property damage” sustained in any one accident. There is no Uninsured Motorists Property Damage Coverage for the first \$200 of the amount of “property damage” as the result of any one accident unless:

1. We insure "your covered auto" for both Collision and Uninsured Motorists Property Damage Coverage; and
  2. The driver of the "uninsured motor vehicle" is positively identified and is solely at fault.
- C. 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.
- D. 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 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; 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 laws, exclusive of any state non-occupational disability benefits law.
- However, this shall not reduce the available amount to less than "minimum limits".
- E. 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 – LIABILITY COVERAGE**;
  2. Under **PART B – MEDICAL PAYMENTS COVERAGE**; and
  3. Under any workers' compensation law, disability benefits law, or similar laws.
- F. 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 – LIABILITY COVERAGE**; and
  2. Under **PART D – COVERAGE FOR DAMAGE TO YOUR COVERED AUTO**.
- G. If the Declarations or Schedule shows you have purchased Uninsured Motorists Property Damage Coverage, the limit shown is the most we will pay for all covered "property damage" sustained in any one accident, subject to the deductible and any reductions in clause F above, 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 the damaged property is a "temporary substitute vehicle", actual cash value at the time of the accident.

2. Our payment will not include, and you are responsible for (when applicable), the amount of:
    - a. 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.
    - b. The salvage value if you or the owner retains salvage.
  3. We have no duty to cover or pay for any diminution in value.
- H. 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", 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. Our share of the covered damages or loss is the proportion that our limit of coverage 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** section, 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 Uninsured Motorists Property Damage Coverage that applies to the accident; and
  3. We will provide primary Uninsured Motorists Property Damage 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.

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 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 (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.
- 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, 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;
  - 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.