

PLEASE READ THIS ENDORSEMENT CAREFULLY AS IT CHANGES YOUR POLICY

## **UNDERINSURED MOTORISTS COVERAGE - WASHINGTON**

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

### **INSURING AGREEMENTS**

#### **A. Underinsured Motorists Bodily Injury Coverage.**

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 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”.

Any payment by us for this **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. Underinsured Motorists Property Damage Coverage.**

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” because of “property damage” 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”.

Any payment by us for this **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.

#### **C. “Diminution of value” means the perceived or real:**

1. Decrease in market or resale value of property;
  2. Decrease in value related to alleged irreparable physical damage; and/or
  3. Stigma type damages;
- due to an accident, loss or repair.

#### **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 using or “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” 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 “your covered auto” to which this coverage applies, for which Underinsured Motorists Property Damage Coverage has been purchased on this Policy.

“Property damage” does not include any:

1. Injury to or destruction of any other property;
2. Loss of use; or
3. “Diminution of value”.

- G. “Underinsured 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. Insuring or bonding company denies coverage or is or becomes insolvent (if that insolvency occurs within three years after the date of the accident); or
  - b. Limits available under those sources of recovery that are applicable to an “insured” after an accident are less than the damages that “insured” is legally entitled to recover from the owner or driver of that motor vehicle for “bodily injury” and “property damage”;
3. A hit-and-run motor vehicle; or
4. An “unidentified 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, unless it is not able to pay damages because of financial inability or insolvency;
5. Shown in the Declarations or Schedule, or insured under the liability coverage, of this policy; or
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.

- H. “Unidentified motor vehicle” means a motor vehicle:

1. For which the owner or driver cannot be identified; and

2. That causes an accident without actual physical contact, but resulting in “bodily injury” to an “insured” or “property damage”;

if the facts of the accident are corroborated by competent evidence other than the testimony of an “insured” making a claim, and the accident has been reported to the appropriate law enforcement agency within 72 hours of the accident.

### **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 **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; or
  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). If we do not receive this required notice and our rights are prejudiced, we will deny benefits under this coverage to the extent our rights are prejudiced.
- 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 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. There is no coverage of any kind under **Underinsured Motorists Coverage** for “bodily injury” to an “insured” or any other person, or for “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”.
  5. Sustained by an “insured” as the result of an act of that “insured” that was intended or reasonably likely to cause “bodily injury” or “property damage”.

- B. **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. 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.
- D. We do NOT provide any coverage for "diminution of value".

#### **LIMIT OF LIABILITY**

Our **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. For "bodily injury", the limit for each person shown for "bodily injury" 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 for "bodily injury" 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. The limit for each accident for property damage shown in the Declarations or Schedule, if you have purchased coverage for "property damage".
- However, if combined "bodily injury" and "property damage" single per accident limit is shown as the limit of liability in the Declarations or Schedule for **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;
  4. Vehicles or premiums shown in the Declarations or Schedule; or
  5. Policies issued by us.
- C. When necessary to avoid duplication of benefits, and subject to all other limits of liability set forth in this policy, the total damages an "insured" is legally entitled to recover under this coverage because of the accident shall be reduced by any amount paid or to be paid:
1. By or on behalf of any persons or parties that may be legally responsible, including, but not limited to, all amounts paid under **PART A – LIABILITY COVERAGE** of this policy; and
  2. Paid because of "bodily injury" under **PERSONAL INJURY PROTECTION COVERAGE** or **PART B – MEDICAL PAYMENTS COVERAGE** provided under this policy;
  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; and
  4. Paid because of "property damage" under **PART D – COVERAGE FOR DAMAGE TO YOUR COVERED AUTO**.
- D. Subject to all other terms and limits of liability set forth in the policy and this **Underinsured Motorists Coverage**, the most we will pay for damages due to "bodily injury" and/or "property damage" to an "insured" caused by the owner or driver of an "underinsured motor vehicle" will be no more than the amount by which those damages exceed the sum of the amounts of coverage of all liability bonds or policies (or self-insurance) available to the owner and driver of the "underinsured motor vehicle", even if that "insured" enters into a settlement agreement for an amount less than the sum of the limits of liability under all applicable liability bonds and policies (or self-insurance).
- E. If "property damage" coverage is purchased, the Underinsured Motorists Property Damage Coverage limit of liability shown on the Declarations or Schedule 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 "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; 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 on the Declarations or Schedule, or if no deductible is shown, the statutory Underinsured Motorists Property Damage Coverage deductible of:
      - (1) \$300 for any accident with a hit-and-run motor vehicle or unidentified or phantom motor vehicle; or
      - (2) \$100 for all other accidents.
 When applying the deductible, if the "property damage":
      - (1) Is to more than one auto covered by Underinsured Motorists Property Damage Coverage and resulting from 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. Deductions for betterment and depreciation are limited to the lesser of:
    - (1) An increase in the actual cash value caused by the replacement of the part or repair; or
    - (2) An amount equal to the value of the expired life of the part to be repaired or replaced when compared to the normal useful life of that part.
  - c. The salvage value if you or the owner retains salvage.
- 3. We have no duty under this Policy to cover or pay for any diminution in value and/or stigma damages in connect in connection with any coverage for "property damage".
- 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 underinsured or 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. Our share of the covered damages or loss is the proportion that our limit of **Underinsured 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** 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.

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".

Nothing in this **Other Insurance** section shall be deemed to provide, grant or extend coverage that is not otherwise provided under the terms of the policy.

## 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 "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 attorney fees and expenses it incurs and the costs of its own arbitrator selected; and
  - 2. The other expenses of the arbitration and the third arbitrator shall be paid by us.
- 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".

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.