

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**UNINSURED MOTORISTS COVERAGE – TEXAS**

**SCHEDULE**

<b>Bodily Injury Liability</b>	<b>\$</b>	<b>each person</b>
	<b>\$</b>	<b>each accident</b>
<b>Property Damage Liability</b>	<b>\$</b>	<b>each accident</b>

**I. Part C – Uninsured Motorists Coverage**

Part C is replaced by the following:

**INSURING AGREEMENT**

We will pay compensatory damages which an "insured" is legally entitled to recover from the owner or operator of an "uninsured motor vehicle" because of:

1. "Bodily injury" sustained by an "insured" and caused by an accident; and
2. "Property damage" caused by an accident.

The owner's or operator's liability for these damages must arise out of the ownership, maintenance or use of the "uninsured motor vehicle".

Any judgment for damages arising out of a suit brought without our consent is not binding on us. If we and you do not agree as to whether or not a vehicle is actually uninsured, the burden of proof as to that issue shall be on us.

"Insured" as used in this endorsement means:

1. You or any "family member".
2. Any other person "occupying" "your covered auto".
3. Any person for damages that person is entitled to recover because of "bodily injury" to which this coverage applies sustained by a person described in 1. or 2. above.

"Property damage" as used in this endorsement means injury to, or destruction of, or loss of use of:

1. "Your covered auto", not including a temporary substitute auto.
2. Any property owned by a person listed in 1. or 2. of the definition of an "insured" while contained in "your covered auto".
3. Any property owned by you or any "family member" while contained in any auto not owned, but being operated, by you or any "family member".

"Uninsured motor vehicle" means a land motor vehicle or trailer of any type:

1. To which no liability bond or policy applies at the time of the accident.
2. To which a liability bond or policy applies at the time of the accident but its limit of liability either:
  - a. Is not enough to pay the full amount the "insured" is legally entitled to recover as damages; or
  - b. Has been reduced by payments to others to an amount which is not enough to pay the full amount the "insured" is legally entitled to recover as damages.
3. Which is a hit-and-run vehicle whose operator or owner cannot be identified and which hits:
  - a. You or any "family member";
  - b. A vehicle which you or any "family member" are "occupying"; or
  - c. "Your covered auto".
4. To which a liability bond or policy applies at the time of the accident, but the bonding or insuring company:
  - a. Denies coverage; or
  - b. Is or becomes insolvent.

However, "uninsured motor vehicle" does not include any vehicle or equipment:

1. Owned by or furnished or available for the regular use of you or any "family member".
2. Owned or operated by a self-insurer under any applicable motor vehicle law, except a self-insurer which is or becomes insolvent.
3. Owned by any governmental unit or agency.
4. Operated on rails or crawler treads.

5. Designed mainly for use off public roads while not upon public roads.
6. While located for use as a residence or premises.

#### EXCLUSIONS

- A.** We do not provide Uninsured Motorists Coverage for "bodily injury" sustained:
1. By an "insured" while "occupying", or when struck by, any motor vehicle owned by that "insured" which is not insured for this coverage under this policy. This includes a trailer of any type used with that vehicle.
  2. By any "family member" while "occupying", or when struck by, any motor vehicle you own which is insured for this coverage on a primary basis under any other policy.
- B.** We do not provide Uninsured Motorists Coverage for "bodily injury" or "property damage" sustained by any "insured":
1. Resulting from the intentional acts of that "insured".
  2. If that "insured" or the legal representative settles the "bodily injury" or "property damage" claim and such settlement prejudices our right to recover payment. However, this Exclusion **(B.2.)** does not apply to a settlement made with the insurer of a vehicle described in Paragraph **2.** of the definition of "uninsured motor vehicle".
  3. Using a vehicle without a reasonable belief that that "insured" is entitled to do so. This Exclusion **(B.3.)** does not apply to a "family member" using "your covered auto" which is owned by you.
  4. While "occupying" "your covered auto" when it is being used as a public or livery conveyance. This Exclusion **(B.4.)** does not apply to a share-the-expense car pool.
  5. For the first \$250 of the amount of "property damage" to the property of that "insured" as the result of any one accident.
- C.** This coverage shall not apply directly or indirectly to benefit:
1. Any insurer or self-insurer under any of the following or similar law:
    - a. Workers' compensation law; or
    - b. Disability benefits law.
  2. Any insurer of property.

- D.** We do not provide Uninsured Motorists Coverage for punitive or exemplary damages.

#### LIMIT OF LIABILITY

- A.** The limit of Bodily Injury Liability shown in the Schedule or in the Declarations for each person for Uninsured Motorists Coverage is our maximum limit of liability for all damages, including damages for care, loss of services or death, arising out of "bodily injury" sustained by any one person in any one accident. Subject to this limit for each person, the limit of Bodily Injury liability shown in the Schedule or in the Declarations for each accident for Uninsured Motorists Coverage is our maximum limit of liability for all damages for "bodily injury" resulting from any one accident. The limit of Property Damage Liability shown in the Schedule or in the Declarations for each accident for Uninsured Motorists Coverage is our maximum limit of liability for all "property damage" resulting from any one accident.

This is the most we will pay regardless of the number of:

1. "Insureds";
  2. Claims made;
  3. Bonds or policies applicable;
  4. Vehicles or premiums shown in the Declarations; or
  5. Vehicles involved in the accident.
- B.** Subject to Paragraph **A.**, our limit of liability will be the lesser of:
1. The difference between the amount of an "insured's" damages for "bodily injury" or "property damage" and the amount paid or payable to that "insured" for such damages by or on behalf of persons or organizations who may be legally responsible; and
  2. The applicable limit of liability for this coverage.
- C.** No one will be entitled to receive duplicate payments for the same elements of loss under this coverage and:
1. Part **A**, Part **B** or Part **D** of this policy; or
  2. Personal Injury Protection Coverage.
- D.** We will not make a duplicate payment under this coverage for any element of loss for which payment has been made by or on behalf of persons or organizations who may be legally responsible.

E. We will not pay for any element of loss if a person is entitled to receive payment for the same element of loss under any of the following or similar law:

1. Workers' compensation law; or
2. Disability benefits law.

F. With respect to coverage under Paragraph 2. of the definition of "uninsured motor vehicle", we will reduce the "insured's" total damages by any amount available to that "insured", under any bodily injury liability bonds or policies applicable to the "uninsured motor vehicle", that such "insured" did not recover as a result of a settlement between that "insured" and the insurer of an "uninsured motor vehicle". However, any reduction of the "insured's" total damages will not reduce the limit of liability for this coverage.

This Paragraph (F.) shall not apply if we advance payment to the "insured" in an amount equal to the tentative settlement with the insurer of the "uninsured motor vehicle".

#### OTHER INSURANCE

If there is other applicable insurance available under one or more policies or provisions of coverage that is similar to the insurance provided by this endorsement:

1. Any insurance we provide with respect to a vehicle you do not own, including any vehicle while used as a temporary substitute for "your covered auto", shall be excess over any collectible insurance providing such coverage on a primary basis.
2. If the coverage under this policy is provided:
  - a. On a primary basis, we will pay only our share of the loss that must be paid under insurance providing coverage on a primary basis. Our share is the proportion that our limit of liability bears to the total of all applicable limits of liability for coverage provided on a primary basis.
  - b. On an excess basis, we will pay only our share of the loss that must be paid under insurance providing coverage on an excess basis. Our share is the proportion that our limit of liability bears to the total of all applicable limits of liability for coverage provided on an excess basis.

#### ARBITRATION

A. If we and an "insured" do not agree:

1. Whether that "insured" is legally entitled to recover damages; or
2. As to the amount of damages which are recoverable by that "insured";

from the owner or operator of an "uninsured motor vehicle", then the matter may be arbitrated. However, disputes concerning coverage under this endorsement may not be arbitrated.

Both parties must agree to arbitration. If so agreed, each party will select an arbitrator. The two arbitrators will select a third. If they cannot agree within 30 days, either may request that selection be made by a judge of a court having jurisdiction.

B. Each party will:

1. Pay the expenses it incurs; and
2. Bear the expenses of the third arbitrator equally.

C. Unless both parties agree otherwise, arbitration will take place in the county in which the "insured" lives. Local rules of law as to procedure and evidence will apply. A decision agreed to by at least two of the arbitrators will be binding as to:

1. Whether the "insured" is legally entitled to recover damages; and
2. The amount of damages. This applies only if the amount does not exceed the minimum limit for bodily injury liability specified by the financial responsibility law of the state in which "your covered auto" is principally garaged. If the amount exceeds that limit, 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 be binding.

However, at any time before the arbitrators' decision, either party may revoke the agreement to arbitrate the matter.

## **ADDITIONAL DUTIES**

A person seeking Uninsured Motorist Coverage under Paragraph 2. of the definition of "uninsured motor vehicle" must also promptly:

1. Send us copies of the legal papers if a suit is brought; and
2. Notify us in writing of a tentative settlement between the "insured" and the insurer of the "uninsured motor vehicle" and allow us 30 days to advance payment to that "insured" in an amount equal to the tentative settlement to preserve our rights against the insurer, owner or operator of such "uninsured motor vehicle".

## **II. Part F – General Provisions**

The following is added to the **Our Right To Recover Payment** Provision in Part F:

### **OUR RIGHT TO RECOVER PAYMENT**

Our rights do not apply under Paragraph A. with respect to coverage under Paragraph 2. of the definition of "uninsured motor vehicle" if we:

1. Have been given prompt written notice of a tentative settlement between an "insured" and the insurer of an "uninsured motor vehicle"; and
2. Fail to advance payment to the "insured" in an amount equal to the tentative settlement within 30 days after receipt of notification.

If we advance payment to the "insured" in an amount equal to the tentative settlement within 30 days after receipt of notification:

1. That payment will be separate from any amount the "insured" is entitled to recover under the provisions of Uninsured Motorists Coverage; and
2. We also have a right to recover the advance payment.

This endorsement must be attached to the Change Endorsement when issued after the policy is written.