

UNINSURED MOTORISTS COVERAGE SECTION

Coverage D1 – Uninsured Motorists Bodily Injury

Insuring Agreement

A. 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 “bodily injury”:

1. Sustained by an “insured”; and
2. 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”.

With respect to coverage under Section 2. of the definition of “uninsured motor vehicle”, we will pay under this coverage only if Paragraph 1. or 2. below applies:

1. The limits of liability under any bodily injury liability bonds or policies applicable to the “uninsured motor vehicle” have been exhausted by payment of judgments or settlements; or
2. A tentative settlement has been made between an “insured” and the insurer of the “uninsured motor vehicle” and we:
 - a. Have been given prompt written notice of such tentative settlement; and
 - b. Advance payment to the “insured” in an amount equal to the tentative settlement within 30 days after receipt of notification.

Any judgment for damages arising out of a suit brought without our written consent is not binding on us.

B. “Insured” as used in this Coverage Section means:

1. You or any “resident relative”.
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. and 2. above.

C. “Uninsured motor vehicle” means a land motor vehicle or trailer of any type:

1. To which no bodily injury liability bond or policy applies at the time of the accident.
2. To which a bodily injury liability bond or policy applies at the time of the accident. In this case its limit for bodily injury liability must be less than the limit of liability for this coverage.
3. Which is a hit-and-run vehicle whose operator or owner cannot be identified and which hits or which causes an accident resulting in “bodily injury” without hitting:
 - a. You or any “resident relative”;

- b. A vehicle which you or any “resident relative” are “occupying”; or
- c. “Your covered auto”.

If there is no physical contact with the hit-and-run vehicle the facts of the accident must be proved. We will only accept competent evidence which may include the testimony, under oath, of a person making claim under this or any similar coverage.

4. To which a bodily injury 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 “resident relative”.
2. Owned or operated by a self-insurer under any applicable motor vehicle law, except a self-insurer which is or becomes insolvent.
3. Operated on rails or crawler treads.
4. Designed mainly for use off public roads while not on public roads.
5. While located for use as a residence or premises.

Exclusions

A. We do not provide Uninsured Motorists Coverage for “bodily injury” sustained:

1. By you while “occupying”, or when struck by, any motor vehicle you own which is not insured for this coverage under this policy. This includes a trailer of any type used with that vehicle.
2. By a “resident relative”:
 - a. Who owns an auto, while “occupying”, or when struck by, any motor vehicle owned by you or any “resident relative” which is not insured for this coverage under this policy. This includes a trailer of any type used with that vehicle.
 - b. Who does not own an auto, 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” sustained by any “insured”:

1. If that “insured” or the legal representative settles the “bodily injury” and such settlement prejudices our right to recover payment.

However, this Exclusion (B.1.) does not apply to a settlement made with the insurer of a vehicle described in Section 2. of the definition of "uninsured motor vehicle".

2. While "occupying" "your covered auto" when it is being used, or during the period of time it is available for hire, as a public or livery conveyance. This Exclusion (B.2.) applies whether or not there is:
 - a. A passenger "occupying" the vehicle; or
 - b. Property being transported for a fee in or upon the vehicle.

This Exclusion (B.2.) does not apply to a vehicle used for a:

- a. Share-the-expense car pool
 - b. Charitable purpose
 - c. Volunteer purpose
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 "resident relative" using "your covered auto" which is owned by you.
- C. This coverage shall not apply directly or indirectly to benefit any insurer or self-insurer under any of the following or similar law:
1. Workers' compensation law; or
 2. Disability benefits law.
- D. We do not provide Uninsured Motorists Coverage for punitive or exemplary damages.

Limit of Liability

A. Split Limits

If the Declarations shows separate limits of liability for each person and each accident for Coverage D1 – Uninsured Motorists Bodily Injury:

The limit of liability shown in the Declarations for each person for Coverage D1 – Uninsured Motorists Bodily Injury 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 liability shown in the Declarations for each accident for Coverage D1 – Uninsured Motorists Bodily Injury is our maximum limit of liability for all damages for "bodily injury" resulting from any one accident.

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

1. "Insureds";
2. Claims made;
3. Vehicles or premiums shown in the Declarations; or
4. Vehicles involved in the accident.

B. Single Limit

If the Declarations shows a single limit of liability for Coverage D1 – Uninsured Motorists Bodily Injury:

The limit of liability shown in the Declarations for Coverage D1 – Uninsured Motorists Bodily Injury is our maximum limit of liability for all damages resulting from any one accident. This is the most we will pay regardless of the number of:

1. "Insureds";
2. Claims made;
3. Vehicles or premiums shown in the Declarations; or
4. Vehicles involved in the accident.

C. With respect to coverage under Section 2. of the definition of "uninsured motor vehicle", the limit of liability shall be reduced by all sums paid because of the "bodily injury" by or on behalf of persons or organizations who may be legally responsible. This includes all sums paid under the Liability Coverage Section of this policy.

D. No one will be entitled to receive duplicate payments for the same elements of loss under this Coverage Section and:

1. Any other Coverage Section or part of this policy; or
2. Any other personal auto policy issued to you by us or any of our affiliates.

E. 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.

F. 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.

Other Insurance

If there is other applicable insurance similar to the insurance provided by this Coverage Section, we will pay only our share of the loss. Our share is the proportion that our limit of liability bears to the total of all applicable limits. However, any insurance we provide with respect to a vehicle you do not own, including any vehicle used as a temporary substitute for "your covered auto", shall be excess over any other collectible insurance similar to the insurance provided by this Coverage Section.

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 Coverage Section 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.

General Provisions Section

The following is added to the Our Right To Recover Payment provision in the General Provisions Section of this policy:

Our Right To Recover Payment

Our rights do not apply under Paragraph A. with respect to coverage under Section 2. of the definition of “uninsured motor vehicle” for Uninsured Motorists Coverage 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 advanced payment.