

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

B. Who Is An Insured

If the Named Insured is designated in the Declarations as:

1. An individual, then the following are "insureds":
 - a. The Named Insured and any "family members".
 - b. Anyone else "occupying" an "insured motor vehicle" or a temporary substitute for an "insured motor vehicle". The "insured motor vehicle" must be out of service because of its breakdown, repair, servicing, "loss" or destruction.
 - c. Anyone for damages he or she is entitled to recover because of "bodily injury" sustained by another "insured".
2. A partnership, limited liability company, corporation or any other form of organization, then the following are "insureds":
 - a. Anyone "occupying" an "insured motor vehicle" or a temporary substitute for an "insured motor vehicle". The "insured motor vehicle" must be out of service because of its breakdown, repair, servicing, "loss" or destruction.
 - b. Anyone for damages he or she is entitled to recover because of "bodily injury" sustained by another "insured".
 - c. The Named Insured for "property damage" only.

C. Exclusions

This insurance does not apply to any of the following:

1. Any claim settled without our consent. However, this exclusion does not apply to a settlement made with the insurer of a vehicle described in Paragraph **b.** of the definition of "uninsured motor vehicle", in accordance with the procedure described in Paragraph **A.2.b.**
2. The direct or indirect benefit of any insurer or self-insurer under any workers' compensation, disability benefits or similar law.
3. The direct or indirect benefit of any insurer of property.
4. "Bodily injury" sustained by:
 - a. The Named Insured while "occupying" or when struck by any vehicle owned by the Named Insured that is not an "insured motor vehicle" for Uninsured Motorists Coverage under this Coverage Form;

- b. Any "family member" while "occupying" or when struck by any vehicle owned by that "family member" that is not an "insured motor vehicle" for Uninsured Motorists Coverage under this Coverage Form; or
- c. Any "family member" while "occupying" or when struck by any vehicle owned by the Named Insured that is insured for Uninsured Motorists Coverage on a primary basis under any other Coverage Form or policy.
- d. The following "insureds":
 - (1) The Named Insured or any "family member":
 - (a) While that "insured" is operating any "auto"; and
 - (b) While that "insured's" driver's license is suspended or revoked.
 - (2) Any other "insured":
 - (a) While operating an "insured motor vehicle"; and
 - (b) While that "insured's" driver's license is suspended or revoked.

However, this exclusion does not apply if the suspension or revocation can be directly attributed to our failure to file the necessary certification material with the director of the division of motor vehicles.

5. Anyone using a vehicle without a reasonable belief that the person is entitled to do so. This exclusion does not apply to a "family member" using the "insured motor vehicle" which is owned by the Named Insured.
6. Punitive or exemplary damages.

D. Limit Of Insurance

1. Regardless of the number of "insured motor vehicles", "insureds", premiums paid, claims made or vehicles involved in the "accident", the most we will pay for all damages resulting from bodily injury sustained in any one "accident" is the Limit of Insurance for Uninsured Motorists Coverage shown in the Schedule or Declarations.

Regardless of the number of "insured motor vehicles", "insureds", premiums paid, claims made or vehicles involved in the "accident", the most we will pay for all "property damage" resulting from any one "accident" is the limit of liability required by the New Hampshire Financial Responsibility Law.

The coverage limit for Uninsured and Underinsured Motorists Coverage applies separately to damages caused by an "accident" with an "uninsured motor vehicle" and an "underinsured motor vehicle".

2. No one will be entitled to receive duplicate payments for the same elements of "loss" under this Coverage and any Liability Coverage form, Medical Payments Coverage endorsement, Underinsured Motorists Coverage endorsement or Uninsured Motorists Coverage endorsement. This provision does not apply if duplicate payments for Uninsured Motorists Coverage is also provided for the same elements of "loss" under Medical Payments Coverage.

We will not make a duplicate payment under this Coverage for any element of "loss" for which payment has been made by or for anyone who is legally responsible.

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 workers' compensation, disability benefits or similar law.

Uninsured Motorists Coverage for "property damage" is excess to any other collectible coverage.

3. Any amount payable for "property damage" under this insurance will not reduce the limit of insurance applicable to an "insured" for "bodily injury" under this insurance.

E. Changes In Conditions

The Conditions are changed for **Uninsured Motorists Coverage** as follows:

1. **Other Insurance** in the Business Auto and Garage Coverage Forms and **Other Insurance – Primary And Excess Insurance Provisions** in the Truckers and Motor Carrier Coverage Forms are replaced by the following:

If there is other applicable insurance available under one or more policies or provisions of coverage:

- a. The maximum recovery under all coverage forms or policies combined may equal but not exceed the highest applicable limit for any one vehicle under any coverage form or policy providing coverage on either a primary or excess basis.
- b. Any insurance we provide with respect to a vehicle the Named Insured does not own shall be excess over any other collectible uninsured motorists insurance providing coverage on a primary basis.

- c. If the coverage under this coverage form is provided:

- (1) 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 on a primary basis.
- (2) 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 on an excess basis.

2. **Duties In The Event Of Accident, Claim, Suit Or Loss** is changed by adding the following:

- a. Promptly notify the police if a hit-and-run driver is involved, and
- b. Promptly send us copies of the legal papers if a "suit" is brought.
- c. A person seeking coverage from an insurer, owner or operator of a vehicle described in Paragraph **b.** of the definition of "uninsured motor vehicle" must also promptly notify us in writing of a tentative settlement between the "insured" and the insurer and allow us to advance payment to that "insured" in an amount equal to the tentative settlement within 30 days after receipt of notification to preserve our rights against the insurer, owner or operator of such vehicle.

3. **Transfer Of Rights Of Recovery Against Others To Us** is replaced by the following:

If we make any payment and the "insured" recovers from another party, the "insured" shall hold the proceeds in trust for us and pay us back the amount we have paid.

Our rights do not apply under this provision with respect to damages caused by an "accident" with a vehicle described in Paragraph **b.** of the definition of "uninsured motor vehicle" if we:

- a. Have been given prompt written notice of a tentative settlement between an "insured" and the insurer of a vehicle described in Paragraph **b.** of the definition of "uninsured motor vehicle"; and
- b. 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:

- a. That payment will be separate from any amount the "insured" is entitled to recover under the provisions of this coverage; and
- b. We also have a right to recover the advance payment.

4. The following Condition is added:

ARBITRATION

- a. If we and an "insured" disagree whether the "insured" is legally entitled to recover damages from the owner or driver of an "uninsured motor vehicle" or do not agree as to the amount of damages, 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. Each party will pay the expenses it incurs and bear the expenses of the third arbitrator equally. However, the "insured" will not be required to advance the expenses of arbitration.
- b. Unless both parties agree otherwise, arbitration will take place in the county in which the "insured" lives. Local rules of law as to arbitration procedure and evidence will apply. A decision agreed to by two of the arbitrators will be binding.

F. Additional Definitions

As used in this endorsement:

- 1. "Family member" means a person related to the individual Named Insured by blood, marriage or adoption who is a resident of such Named Insured's household, including a ward or foster child.
- 2. "Insured motor vehicle" means a self-propelled vehicle, "trailer", or semi-trailer for which the Named Insured has purchased Uninsured Motorists Coverage. However, it does not include a farm tractor or crawler type tractor or a vehicle operated exclusively upon stationary tracks.
- 3. "Occupying" means in, upon, getting in, on, out or off.

4. "Property damage" means physical injury to or destruction of:

- (a) An "insured motor vehicle" which is registered or principally garaged in New Hampshire and which is owned by the Named Insured or if the Named Insured is an individual such Named Insured's spouse, if a resident of the Named Insured's household.
- (b) Any property owned by the Named Insured or if the Named Insured is an individual any "family member" which is contained in the "insured motor vehicle".
- (c) Any property owned by anyone else which is contained in the "insured motor vehicle" while the person is "occupying" the "insured motor vehicle".

5. "Uninsured motor vehicle" means a land motor "vehicle" or "trailer":

- a. For which no liability bond or policy at the time of an "accident" provides at least the amounts required by the applicable law where an "insured motor vehicle" is principally garaged.
- b. That is an underinsured motor vehicle. An underinsured motor vehicle is a land motor vehicle, "trailer" or semi-trailer for which the sum of all liability bonds or policies at the time of an "accident" provides at least the amounts required by the applicable law where an "insured motor vehicle" is principally garaged, but their limits are less than the limit of this coverage.
- c. For which an insuring or bonding company denies coverage or is or becomes insolvent; or
- d. That is a hit-and-run vehicle and neither the driver nor owner can be identified. The vehicle must:
 - (1) Hit an "insured", an "insured motor vehicle" or a vehicle an "insured" is "occupying"; or
 - (2) Cause an "accident" resulting in "bodily injury" to an "insured" without hitting an "insured", an "insured motor vehicle" or a vehicle an "insured" is "occupying".

If there is no physical contact with the hit-and-run vehicle, the facts of the "accident" must be corroborated by competent evidence other than the testimony of any person having a claim under this or any similar insurance as the result of such "accident".

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

- a.** Owned or operated by a self-insurer under any applicable motor vehicle law, except a self-insurer who is or becomes insolvent and cannot provide the amounts required by that motor vehicle law;
- b.** Owned by a governmental unit or agency;
or
- c.** Designed for use mainly off public roads while not on public roads.