

FORMS – IMPLEMENTATION

FEBRUARY 6, 2019

COMMERCIAL AUTOMOBILE

LI-CA-2019-032

UTAH REVISED UNDERINSURED MOTORISTS COVERAGE ENDORSEMENTS TO BECOME EFFECTIVE

KEY MESSAGE

We are implementing revisions to CA 31 06, Utah Underinsured Motorists Coverage in response to Utah Supreme Court's holding in Dircks v. The Travelers Indemnity Company of America, 416 P.3d 376 (2017).

ISO ACTION

In response to the Utah Supreme Court's holding in Dircks v. The Travelers Indemnity Company of America, we are revising the Who Is An Insured provision contained in CA 31 06.

EFFECTIVE DATE

The ISO revision is subject to the following rule of application:

These changes are applicable to all policies written on or after July 1, 2019.

COMPANY ACTION

If you have authorized us to file on your behalf and decide:

- To use our revision and effective date, you are not required to file anything with the Insurance Department.
- To use our revision with a different effective date, to use our revision with modification, or to not use our revision, you must make an appropriate submission with the Insurance Department.

For guidance on submission requirements, consult the ISO State Filing Handbook.

In all correspondence with the Insurance Department on this revision, you should refer to ISO Filing Designation Number CA-2018-OUM2, not this circular number. Communications with the regulator concerning a filing affecting multiple lines of business (i.e., CL, PL, AL filing designation) should specify the line(s) of business that you are addressing.

RATING SOFTWARE IMPACT

A new edition date of an existing form number is being introduced.

POLICYHOLDER NOTIFICATION

If you decide to implement this revision, you should check all applicable laws for the state(s) to which this revision applies, to determine whether or not a specific policyholder notice requirement may apply. Please note that circular [LI-CL-2018-044](#) contains the ISO Guide To Renewals With Changed Conditions For Commercial Lines, which is available only as a guide to assist participating companies in complying with various conditional renewal statutes or regulations, for the major commercial lines of insurance serviced by ISO. The information in the Guide does not necessarily reflect all requirements or exceptions that may apply, and it is not intended as a substitute for your review of all applicable statutes and regulations concerning policyholder notification.

REVISION DISTRIBUTION

We will issue a Notice to Portfolioholders with an edition date of 7-19 (or the earliest possible subsequent date), along with any new and/or revised forms.

RELATED RULES REVISION

We are announcing in a separate circular the implementation of a corresponding rules revision. Please refer to the Reference(s) block for identification of that circular.

RELATED LOSS COSTS REVISION

We are announcing in a separate circular the implementation of a corresponding loss costs revision. Please refer to the Reference(s) block for identification of that circular.

REFERENCE(S)

- [LI-CA-2019-034](#) (02/06/2019) Utah Revised Commercial Auto Advisory Prospective Loss Costs To Become Effective
- [LI-CA-2019-033](#) (02/06/2019) Utah Revised Commercial Auto Rule To Become Effective
- [LI-CL-2018-044](#) (11/27/2018) Revised Lead Time Requirements Listing

ATTACHMENT(S)

- Filing [CA-2018-OUM2](#)
- Final copy of [CA 31 06 07 19](#)

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CONTACT INFORMATION

If you have any questions concerning:

- The content of this circular, please contact:
Larisa Wirth-Granlund
Auto, Compliance and Product Services
(201) 469-2711
Larisa.Wirth-Granlund@verisk.com
auto@verisk.com
- Other issues for this circular, please contact Customer Support:
E-mail: info@verisk.com
Phone: 800-888-4476

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Revision To Utah Underinsured Motorists Coverage Endorsement

About This Filing

This filing is being made in response to Utah Supreme Court's holding in Dircks v. The Travelers Indemnity Company of America, 416 P.3d 376 (2017).

Revised Forms

We are revising the following forms:

- ♦ CA 31 06 11 18, Utah Underinsured Motorists Coverage

We have used a format of ~~striking-through~~ deletions, underlining additions and inserting a revision bar in the left margin to indicate changes from the above-referenced edition to the 07 19 edition. Concurrent with implementation, the 07 19 edition will supersede the prior edition.

Related Filing(s)

The following companion filings are being filed with a concurrent effective date:

- ♦ Rules filing CA-2018-RUM1 contains the related rules filing.
- ♦ Loss Costs filing CA-2018-RUMLC contains the related advisory prospective loss costs filing.

Background

In Dircks v. The Travelers Indemnity Company of America, the Utah Supreme Court generally held, in part, that any vehicle covered under the liability provisions of an auto insurance policy must also be covered under the underinsured motorist provisions of that policy, and with equal limits, unless a named insured waives the coverage by signing an acknowledgment form meeting certain statutory requirements.

Currently, the Who Is An Insured provision contained in CA 31 06 does not address non-owned autos.

Explanation of Changes

In response to the Utah Supreme Court's holding in Dircks v. The Travelers Indemnity Company of America, we are revising the Who Is An Insured provision contained in CA 31 06 to add the following paragraph:

Anyone else "occupying" an "auto" the Named Insured does not own who is an "insured" for Covered Autos Liability under this Coverage Form, but only at times when that person is an "insured" for Covered Autos Liability under this Coverage Form.

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

UTAH UNDERINSURED MOTORISTS COVERAGE

For a covered "auto" licensed or principally garaged in, or "auto dealer operations" conducted in, Utah, this endorsement modifies insurance provided under the following:

AUTO DEALERS COVERAGE FORM
BUSINESS AUTO COVERAGE FORM
MOTOR CARRIER COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

This endorsement changes the Policy effective on the inception date of the Policy unless another date is indicated below.

Named Insured:

Endorsement Effective Date:

SCHEDULE

Limit Of Insurance: \$

Each "Accident"

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

A. Coverage

1. We will pay all sums the "insured" is legally entitled to recover as compensatory damages from the owner or driver of an "underinsured motor vehicle". The damages must result from "bodily injury" sustained by the "insured" caused by an "accident". The owner's or driver's liability for these damages must result from the ownership, maintenance or use of the "underinsured motor vehicle".
2. We will pay under this coverage only after all liability bonds or policies have been exhausted by judgments or payments.
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" a covered "auto" or a temporary substitute for a covered "auto", except the Named Insured's customers, if that Named Insured's business is shown in the Declarations as a rental company. However, if the customer of a rental company has no policy of motor vehicle insurance, they are "insured", but only up to:

- (1) \$20,000 for each "accident", which is the minimum combined single limit of liability; or
- (2) \$10,000/\$20,000 for each "accident", which is the minimum split limits of liability,

specified by UTAH CODE ANN. Section 31A-22-305. This supersedes any provision to the contrary. If the "auto" is a temporary substitute, the covered "auto" must be out of service because of its breakdown, repair, servicing, "loss" or destruction.

Rental company means any person or organization in the business of providing private passenger motor vehicles to the public under the terms of a rental agreement.

- c. Anyone for damages he or she is entitled to recover because of "bodily injury" sustained by another "insured".

d. Anyone else "occupying" an "auto" the Named Insured does not own who is an "insured" for Covered Autos Liability under this Coverage Form, but only at times when that person is an "insured" for Covered Autos Liability under this Coverage Form.

- 2. A partnership, limited liability company, corporation or any other form of organization, then the following are "insureds":

- a. Anyone "occupying" a covered "auto" or a temporary substitute for a covered "auto", except the Named Insured's customers, if that Named Insured's business is shown in the Declarations as a rental company. However, if the customer of a rental company has no policy of motor vehicle insurance, they are "insured", but only up to:

(1) \$20,000 for each "accident", which is the minimum combined single limit of liability; or

(2) \$10,000/\$20,000 for each "accident", which is the minimum split limits of liability,

specified by UTAH CODE ANN. Section 31A-22-305. This supersedes any provision to the contrary. If the "auto" is a temporary substitute, the covered "auto" must be out of service because of its breakdown, repair, servicing, "loss" or destruction.

Rental company means any person or organization in the business of providing private passenger motor vehicles to the public under the terms of a rental agreement.

- b. Anyone for damages he or she is entitled to recover because of "bodily injury" sustained by another "insured".

c. Anyone else "occupying" an "auto" the Named Insured does not own who is an "insured" for Covered Autos Liability under this Coverage Form, but only at times when that person is an "insured" for Covered Autos Liability under this Coverage Form.

C. Exclusions

This insurance does not apply to any of the following:

- 1. The direct or indirect benefit of any insurer or self-insurer under any workers' compensation, disability benefits or similar law.

- 2. "Bodily injury" sustained by:

- a. An individual Named Insured while "occupying" or when struck by any vehicle owned by that Named Insured that is not a covered "auto" for Underinsured 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 a covered "auto" for Underinsured 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 Underinsured Motorists Coverage on a primary basis under any other Coverage Form or policy.

- 3. Anyone:

- a. Using a vehicle without a reasonable belief that the person is entitled to do so;

- b. Who, as a passenger in a vehicle, has knowledge that the vehicle is being operated in violation of Utah Code Section 41-1a-1314; or

- c. While committing a felony.

However, Exclusion C.3. does not apply to the following:

- a. An "insured" under 18 years of age, but coverage is limited to medical and funeral expenses.

- b. An "insured" who is a law enforcement officer as defined in Utah Code Section 53-13-103, who is injured within the course and scope of the law enforcement officer's duties.

- 4. Punitive or exemplary damages.

- 5. "Bodily injury" arising directly or indirectly out of:

- a. War, including undeclared or civil war;

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- b. Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
- c. Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

D. Limit Of Insurance

1. Regardless of the number of covered "autos", "insureds", premiums paid, claims made or vehicles involved in the "accident", the most we will pay for all damages resulting from any one "accident" is the Limit Of Insurance for Underinsured Motorists Coverage shown in the Schedule or Declarations.
2. No one will be entitled to receive duplicate payments for the same elements of "loss" under this Coverage Form and any Liability Coverage form, Medical Payments Coverage endorsement or Uninsured Motorists Coverage endorsement attached to this Coverage Part.

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, except for any portion of such payment that a person is not entitled to receive pursuant to UTAH CODE ANN. Section 34A-2-106(5).

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.

E. Changes In Conditions

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

1. **Other Insurance** in the Auto Dealers and Business Auto Coverage Forms and **Other Insurance – Primary And Excess Insurance Provisions** in the Motor Carrier Coverage Form are replaced by:
 - a. With respect to coverage we provide when a covered "auto" the Named Insured owns is involved in an "accident", the Limit of Insurance for Underinsured Motorists Coverage applicable to that "auto" will apply for damages for which the owner or operator of the "underinsured motor vehicle" is legally responsible.

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

- (1) 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. However, the maximum recovery for damages sustained by an individual Named Insured or any "family member" while "occupying" an "auto" such Named Insured does not own, is not leased, or that is not furnished, under all Coverage Forms or policies combined may equal but not exceed the sum of:

- (a) The limit of liability for Underinsured Motorists Coverage applicable to the "auto" an individual Named Insured or any "family member" was "occupying" at the time of the "accident"; and

- (b) The highest applicable limit of liability for Underinsured Motorists Coverage under any Coverage Form or policy that provides coverage for an individual Named Insured or any "family member".

- (2) Any insurance we provide with respect to a vehicle the individual Named Insured does not own shall be excess over any other collectible underinsured motorists insurance providing coverage on a primary basis.

- (3) If the coverage under this Coverage Form 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 on a primary basis.

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- (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 on an excess basis.

2. The Transfer Of Rights Of Recovery Against Others To Us eCondition does not apply.

3. Arbitration

- a. If we and an "insured" disagree whether the "insured" is legally entitled to recover damages from the owner or driver of an "underinsured motor vehicle" or do not agree as to the amount of damages that are recoverable by that "insured", then the matter may be arbitrated. However, disputes concerning coverage under this endorsement may not be arbitrated. Either party may make a written demand for arbitration. In this event, unless otherwise agreed to in writing, we and the "insured" shall agree on the selection of a single arbitrator. If we and the "insured" are unable to agree on the selection of a single arbitrator, 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 bear the expenses for a single arbitrator equally or pay the expenses for the arbitrator each party selects and bear the expenses of the third arbitrator equally.
- b. If an "insured" submits a claim for Underinsured Motorists Coverage to arbitration, that "insured" shall provide to us within 30 days:
- (1) A written demand for payment setting forth the specific monetary amount of the demand, including a computation of that "insured's" claimed past medical expenses, claimed past lost wages, and other claimed past economic damages required by UTAH CODE ANN. Section 31A-22-305.3; and
 - (2) Any written statements under oath, documents and signed authorizations required by UTAH CODE ANN. Section 31A-22-305.3.

- c. Subject to our receipt of items b.(1) and b.(2) described above, we shall, within 60 days:

- (1) Provide a written response to the "insured's" written demand for payment; and
- (2) Tender the amount, if any, that we determine as owed to that "insured", less any state or federal statutory liens as provided by UTAH CODE ANN. Section 31A-22-305.3.

If the amount tendered by us is the Limit of Insurance for Underinsured Motorists Coverage, such amount shall be accepted by that "insured".

If the amount tendered by us is less than the Limit of Insurance for Underinsured Motorists Coverage, the "insured" may accept the amount tendered as full payment of such "insured's" claim or accept the amount tendered as partial payment and continue to arbitrate the remaining claim.

- d. If the final award obtained through arbitration is greater than the average of the "insured's" initial written demand for payment and our initial written response, then we shall pay:
- (1) The final award obtained through arbitration, less any amount accepted as partial payment. If the award exceeds the Limit of Insurance for Underinsured Motorists Coverage by more than \$15,000, we shall pay \$15,000, in addition to the Limit of Insurance for Underinsured Motorists Coverage;
 - (2) Any costs as set forth in the Utah Rules of Civil Procedure;
 - (3) Arbitration fees; and
 - (4) Reasonable costs for witnesses and depositions.

If the "insured" does not disclose all material information required by UTAH CODE ANN. Section 31A-22-305.3 within 30 days after submitting a claim for Underinsured Motorists Coverage to arbitration, the "insured" may not recover costs or amounts in excess of the Limit of Insurance.

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The "insured" shall provide an affidavit of costs within five days of an arbitration award. If we object to such costs, the costs shall be arbitrated, and such award may not exceed \$5,000.

- e. The written demand requirement in item **b.(1)** described above does not affect the "insured's" requirement to provide a computation of any other economic damages claimed, and we may, within a reasonable time after receipt of such computation, conduct fact and expert discovery as to any additional damages claimed.
- f. 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 written decision agreed to by the single arbitrator or agreed to by two of the arbitrators will be binding, unless either party demands a trial. This demand must be made within 20 days of service of the arbitration award. If this demand is not made, the amount of damages agreed to by the arbitrators will be binding.

However, this condition does not apply if a small-claims court having jurisdiction resolves the matter or matters upon which we and an "insured" do not agree.

F. Additional Definitions

As used in this endorsement:

- 1. "Family member" means:
 - a. A person related to the individual Named Insured by blood, marriage, adoption or guardianship, who is a resident of such Named Insured's household, whether or not temporarily residing elsewhere; and
 - b. An individual Named Insured's dependent minor children.
- 2. "Occupying" means in, upon, using, getting in, on, out or off.

- 3. "Underinsured motor vehicle" means a land motor vehicle or "trailer" for which a bodily injury liability bond or policy applies at the time of the "accident", but the amount paid for "bodily injury" under that bond or policy to an "insured" is not enough to pay the full amount the "insured" is legally entitled to recover as damages caused by the "accident".

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

- a. Owned by a governmental unit or agency;
- b. Designed for use mainly off public roads while not on public roads;
- c. For which no liability bond or policy at the time of the "accident" provides at least \$80,000 for each "accident", which is the minimum combined single limit for "bodily injury" liability, or \$25,000/\$65,000 for each "accident", which is the minimum split limits of liability, specified by UTAH CODE ANN. Section 31A-22-304;
- d. For which an insuring or bonding company denies coverage or is or becomes insolvent;
- e. That is a hit-and-run vehicle whose operator or owner cannot be identified and that hits or causes an "accident" resulting in "bodily injury" without hitting:
 - (1) The individual Named Insured or any "family member";
 - (2) A vehicle that such Named Insured or any "family member" is "occupying"; or
 - (3) The individual Named Insured's covered "auto";
- f. That is owned or leased by the Named Insured, the Named Insured's spouse or any "family member" who is a dependent of the Named Insured; or
- g. That is insured for Covered Autos Liability Coverage under this Policy.

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

UTAH UNDERINSURED MOTORISTS COVERAGE

For a covered "auto" licensed or principally garaged in, or "auto dealer operations" conducted in, Utah, this endorsement modifies insurance provided under the following:

AUTO DEALERS COVERAGE FORM
BUSINESS AUTO COVERAGE FORM
MOTOR CARRIER COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

This endorsement changes the Policy effective on the inception date of the Policy unless another date is indicated below.

Named Insured:

Endorsement Effective Date:

SCHEDULE

Limit Of Insurance: \$

Each "Accident"

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

A. Coverage

1. We will pay all sums the "insured" is legally entitled to recover as compensatory damages from the owner or driver of an "underinsured motor vehicle". The damages must result from "bodily injury" sustained by the "insured" caused by an "accident". The owner's or driver's liability for these damages must result from the ownership, maintenance or use of the "underinsured motor vehicle".
2. We will pay under this coverage only after all liability bonds or policies have been exhausted by judgments or payments.
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" a covered "auto" or a temporary substitute for a covered "auto", except the Named Insured's customers, if that Named Insured's business is shown in the Declarations as a rental company. However, if the customer of a rental company has no policy of motor vehicle insurance, they are "insured", but only up to:

- (1) \$20,000 for each "accident", which is the minimum combined single limit of liability; or
- (2) \$10,000/\$20,000 for each "accident", which is the minimum split limits of liability,

specified by UTAH CODE ANN. Section 31A-22-305. This supersedes any provision to the contrary. If the "auto" is a temporary substitute, the covered "auto" must be out of service because of its breakdown, repair, servicing, "loss" or destruction.

Rental company means any person or organization in the business of providing private passenger motor vehicles to the public under the terms of a rental agreement.

- c. Anyone for damages he or she is entitled to recover because of "bodily injury" sustained by another "insured".
 - d. Anyone else "occupying" an "auto" the Named Insured does not own who is an "insured" for Covered Autos Liability under this Coverage Form, but only at times when that person is an "insured" for Covered Autos Liability under this Coverage Form.
2. A partnership, limited liability company, corporation or any other form of organization, then the following are "insureds":
- a. Anyone "occupying" a covered "auto" or a temporary substitute for a covered "auto", except the Named Insured's customers, if that Named Insured's business is shown in the Declarations as a rental company. However, if the customer of a rental company has no policy of motor vehicle insurance, they are "insured", but only up to:
 - (1) \$20,000 for each "accident", which is the minimum combined single limit of liability; or
 - (2) \$10,000/\$20,000 for each "accident", which is the minimum split limits of liability,

specified by UTAH CODE ANN. Section 31A-22-305. This supersedes any provision to the contrary. If the "auto" is a temporary substitute, the covered "auto" must be out of service because of its breakdown, repair, servicing, "loss" or destruction.

Rental company means any person or organization in the business of providing private passenger motor vehicles to the public under the terms of a rental agreement.

- b. Anyone for damages he or she is entitled to recover because of "bodily injury" sustained by another "insured".
- c. Anyone else "occupying" an "auto" the Named Insured does not own who is an "insured" for Covered Autos Liability under this Coverage Form, but only at times when that person is an "insured" for Covered Autos Liability under this Coverage Form.

C. Exclusions

This insurance does not apply to any of the following:

1. The direct or indirect benefit of any insurer or self-insurer under any workers' compensation, disability benefits or similar law.
2. "Bodily injury" sustained by:
 - a. An individual Named Insured while "occupying" or when struck by any vehicle owned by that Named Insured that is not a covered "auto" for Underinsured 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 a covered "auto" for Underinsured 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 Underinsured Motorists Coverage on a primary basis under any other Coverage Form or policy.

3. Anyone:

- a. Using a vehicle without a reasonable belief that the person is entitled to do so;
- b. Who, as a passenger in a vehicle, has knowledge that the vehicle is being operated in violation of Utah Code Section 41-1a-1314; or
- c. While committing a felony.

However, Exclusion C.3. does not apply to the following:

- a. An "insured" under 18 years of age, but coverage is limited to medical and funeral expenses.
- b. An "insured" who is a law enforcement officer as defined in Utah Code Section 53-13-103, who is injured within the course and scope of the law enforcement officer's duties.

4. Punitive or exemplary damages.
5. "Bodily injury" arising directly or indirectly out of:
 - a. War, including undeclared or civil war;

- b. Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
- c. Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

D. Limit Of Insurance

1. Regardless of the number of covered "autos", "insureds", premiums paid, claims made or vehicles involved in the "accident", the most we will pay for all damages resulting from any one "accident" is the Limit Of Insurance for Underinsured Motorists Coverage shown in the Schedule or Declarations.
2. No one will be entitled to receive duplicate payments for the same elements of "loss" under this Coverage Form and any Liability Coverage form, Medical Payments Coverage endorsement or Uninsured Motorists Coverage endorsement attached to this Coverage Part.

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, except for any portion of such payment that a person is not entitled to receive pursuant to UTAH CODE ANN. Section 34A-2-106(5).

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.

E. Changes In Conditions

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

1. **Other Insurance** in the Auto Dealers and Business Auto Coverage Forms and **Other Insurance – Primary And Excess Insurance Provisions** in the Motor Carrier Coverage Form are replaced by:
 - a. With respect to coverage we provide when a covered "auto" the Named Insured owns is involved in an "accident", the Limit of Insurance for Underinsured Motorists Coverage applicable to that "auto" will apply for damages for which the owner or operator of the "underinsured motor vehicle" is legally responsible.

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

(1) 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. However, the maximum recovery for damages sustained by an individual Named Insured or any "family member" while "occupying" an "auto" such Named Insured does not own, is not leased, or that is not furnished, under all Coverage Forms or policies combined may equal but not exceed the sum of:

(a) The limit of liability for Underinsured Motorists Coverage applicable to the "auto" an individual Named Insured or any "family member" was "occupying" at the time of the "accident"; and

(b) The highest applicable limit of liability for Underinsured Motorists Coverage under any Coverage Form or policy that provides coverage for an individual Named Insured or any "family member".

(2) Any insurance we provide with respect to a vehicle the individual Named Insured does not own shall be excess over any other collectible underinsured motorists insurance providing coverage on a primary basis.

(3) If the coverage under this Coverage Form 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 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 on an excess basis.

2. The Transfer Of Rights Of Recovery Against Others To Us Condition does not apply.

3. Arbitration

- a. If we and an "insured" disagree whether the "insured" is legally entitled to recover damages from the owner or driver of an "underinsured motor vehicle" or do not agree as to the amount of damages that are recoverable by that "insured", then the matter may be arbitrated. However, disputes concerning coverage under this endorsement may not be arbitrated. Either party may make a written demand for arbitration. In this event, unless otherwise agreed to in writing, we and the "insured" shall agree on the selection of a single arbitrator. If we and the "insured" are unable to agree on the selection of a single arbitrator, 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 bear the expenses for a single arbitrator equally or pay the expenses for the arbitrator each party selects and bear the expenses of the third arbitrator equally.
- b. If an "insured" submits a claim for Underinsured Motorists Coverage to arbitration, that "insured" shall provide to us within 30 days:
 - (1) A written demand for payment setting forth the specific monetary amount of the demand, including a computation of that "insured's" claimed past medical expenses, claimed past lost wages, and other claimed past economic damages required by UTAH CODE ANN. Section 31A-22-305.3; and
 - (2) Any written statements under oath, documents and signed authorizations required by UTAH CODE ANN. Section 31A-22-305.3.

- c. Subject to our receipt of items **b.(1)** and **b.(2)** described above, we shall, within 60 days:

- (1) Provide a written response to the "insured's" written demand for payment; and
- (2) Tender the amount, if any, that we determine as owed to that "insured", less any state or federal statutory liens as provided by UTAH CODE ANN. Section 31A-22-305.3.

If the amount tendered by us is the Limit of Insurance for Underinsured Motorists Coverage, such amount shall be accepted by that "insured".

If the amount tendered by us is less than the Limit of Insurance for Underinsured Motorists Coverage, the "insured" may accept the amount tendered as full payment of such "insured's" claim or accept the amount tendered as partial payment and continue to arbitrate the remaining claim.

- d. If the final award obtained through arbitration is greater than the average of the "insured's" initial written demand for payment and our initial written response, then we shall pay:
 - (1) The final award obtained through arbitration, less any amount accepted as partial payment. If the award exceeds the Limit of Insurance for Underinsured Motorists Coverage by more than \$15,000, we shall pay \$15,000, in addition to the Limit of Insurance for Underinsured Motorists Coverage;
 - (2) Any costs as set forth in the Utah Rules of Civil Procedure;
 - (3) Arbitration fees; and
 - (4) Reasonable costs for witnesses and depositions.

If the "insured" does not disclose all material information required by UTAH CODE ANN. Section 31A-22-305.3 within 30 days after submitting a claim for Underinsured Motorists Coverage to arbitration, the "insured" may not recover costs or amounts in excess of the Limit of Insurance.

The "insured" shall provide an affidavit of costs within five days of an arbitration award. If we object to such costs, the costs shall be arbitrated, and such award may not exceed \$5,000.

- e. The written demand requirement in item **b.(1)** described above does not affect the "insured's" requirement to provide a computation of any other economic damages claimed, and we may, within a reasonable time after receipt of such computation, conduct fact and expert discovery as to any additional damages claimed.
- f. 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 written decision agreed to by the single arbitrator or agreed to by two of the arbitrators will be binding, unless either party demands a trial. This demand must be made within 20 days of service of the arbitration award. If this demand is not made, the amount of damages agreed to by the arbitrators will be binding.

However, this condition does not apply if a small-claims court having jurisdiction resolves the matter or matters upon which we and an "insured" do not agree.

F. Additional Definitions

As used in this endorsement:

- 1. "Family member" means:
 - a. A person related to the individual Named Insured by blood, marriage, adoption or guardianship, who is a resident of such Named Insured's household, whether or not temporarily residing elsewhere; and
 - b. An individual Named Insured's dependent minor children.
- 2. "Occupying" means in, upon, using, getting in, on, out or off.

- 3. "Underinsured motor vehicle" means a land motor vehicle or "trailer" for which a bodily injury liability bond or policy applies at the time of the "accident", but the amount paid for "bodily injury" under that bond or policy to an "insured" is not enough to pay the full amount the "insured" is legally entitled to recover as damages caused by the "accident".

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

- a. Owned by a governmental unit or agency;
- b. Designed for use mainly off public roads while not on public roads;
- c. For which no liability bond or policy at the time of the "accident" provides at least \$80,000 for each "accident", which is the minimum combined single limit for "bodily injury" liability, or \$25,000/\$65,000 for each "accident", which is the minimum split limits of liability, specified by UTAH CODE ANN. Section 31A-22-304;
- d. For which an insuring or bonding company denies coverage or is or becomes insolvent;
- e. That is a hit-and-run vehicle whose operator or owner cannot be identified and that hits or causes an "accident" resulting in "bodily injury" without hitting:
 - (1) The individual Named Insured or any "family member";
 - (2) A vehicle that such Named Insured or any "family member" is "occupying"; or
 - (3) The individual Named Insured's covered "auto";
- f. That is owned or leased by the Named Insured, the Named Insured's spouse or any "family member" who is a dependent of the Named Insured; or
- g. That is insured for Covered Autos Liability Coverage under this Policy.