

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

# HAWAII UNDERINSURED MOTORISTS COVERAGE (NONSTACKED)

For a covered "auto" licensed or principally garaged in, or "auto dealer operations" conducted in, Hawaii, 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.

<b>Named Insured:</b>
<b>Endorsement Effective Date:</b>

## SCHEDULE

<b>Limit Of Insurance: \$</b>	<b>Each "Accident"</b>
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 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. 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". The covered "auto" 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" a covered "auto" or a temporary substitute for a covered "auto". The covered "auto" 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. Exclusions

This insurance does not apply to:

1. The direct or indirect benefit of any insurer or self-insurer under any workers' compensation, disability benefits or similar law.
2. Any "insured" using a vehicle without a reasonable belief that the person is entitled to do so.
3. Punitive or exemplary damages.
4. "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 and any Liability Coverage form, Personal Injury Protection Coverage endorsement, Auto Medical Payments Coverage endorsement, Uninsured Motorists Coverage endorsement or Underinsured Motorists Coverage endorsement.

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.

3. We will reduce the "insured's" total damages by any amount available to that "insured" under any liability bonds or policies applicable to the "underinsured motor vehicle" that such "insured" did not recover as a result of a settlement between that "insured" and the insurer of an "underinsured motor vehicle". However, any reduction of the "insured's" total damages will not reduce the limit of liability for this coverage.

This paragraph shall not apply if we advance payment to the "insured" in an amount equal to the tentative settlement with the insurer of the "underinsured motor vehicle".

### E. Changes In Conditions

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

1. The following provisions are added to the **Other Insurance** Condition in the Auto Dealers and Business Auto Coverage Forms and the **Other Insurance – Primary And Excess Insurance Provisions** in the Motor Carrier Coverage Form:
  - a. The reference to other collectible insurance applies only to other collectible Underinsured Motorists Insurance.
  - b. If there is other applicable insurance available under one or more policies or provisions of coverage, 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.
2. **Duties In The Event Of Accident, Claim, Suit Or Loss** in the Business Auto and Motor Carrier Coverage Forms and **Duties In The Event Of Accident, Claim, Offense, Suit, Loss Or Acts, Errors Or Omissions** in the Auto Dealers Coverage Form are changed by adding the following:
  - a. Promptly send us copies of the legal papers if a "suit" is brought; and
  - b. Promptly notify us, in writing, of a tentative settlement between an "insured" and the insurer of the "underinsured 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 "underinsured motor vehicle".

**3. Transfer Of Rights Of Recovery Against Others To Us** is changed by adding 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 if we:

- a. Have been given prompt written notice of a tentative settlement between an "insured" and the insurer of an "underinsured 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 Underinsured Motorists Coverage; and
- b. We also have a right to recover the advance payment.

**4.** The following condition is added:

**Arbitration**

If we and an "insured" disagree as to 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, either party may make a written demand for arbitration as provided in Section 431:10C-213 of the Hawaii Motor Vehicle Insurance Law.

**F. Additional Definitions**

As used in this endorsement:

- 1. "Occupying" means in, upon, getting in, on, out or off.
- 2. "Underinsured motor vehicle" means a land motor vehicle or "trailer" for which the sum of all liability bonds or policies of the tortfeasor at the time of an "accident" does not provide at least the amount an "insured" is legally entitled to recover as damages.

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

- a. Owned or operated by a self-insurer under any applicable motor vehicle law.
- b. Owned by a governmental unit or agency.
- c. Designed for use mainly off public roads while not on public roads.
- d. Which does not require registration under Chapter 286, Hawaii Revised Statutes.
- e. For which no liability bond or policy at the time of an "accident" applies.
- f. For which an insuring or bonding company denies coverage or is or becomes insolvent.
- g. For which neither the driver nor owner can be identified and which hits or causes an "accident" resulting in "bodily injury" without hitting:
  - (1) An "insured";
  - (2) A covered "auto"; or
  - (3) A vehicle an "insured" is "occupying".