

THIS ENDORSEMENT CHANGES YOUR POLICY. PLEASE READ IT CAREFULLY.

PEMCO AUTO POLICY AMENDATORY ENDORSEMENT

In **PART II, UNINSURED MOTORIST COVERAGES**, the **Definitions** section is deleted and replaced with the following:

The following definitions apply to **Part II Uninsured Motorist Coverages**. These definitions apply only for the purposes of **Part II Uninsured Motorist Coverages**, and apply regardless of any other definitions set forth elsewhere in this policy. Terms and phrases defined in the general **DEFINITIONS** section of this policy apply to **Part II Uninsured Motorist Coverages** only to the extent that they are not defined below.

Covered person means **you; family members**; and any other person while **occupying**, with **your** permission, an **auto we** insure under this policy.

Hit-and-run vehicle means a vehicle whose driver or owner can't be identified, which causes **bodily injury** to an **insured** arising out of physical contact of the vehicle with the **insured** or with a vehicle the **covered person** is **occupying** at the time of the **accident**.

Motor vehicle means a motor-propelled vehicle designed to draw or transport a person or property on public highways, but does *not* include any of the following:

- a. a human-propelled or animal-propelled vehicle;
- b. a vehicle that is used exclusively on stationary rails or tracks;
- c. a motor truck, as defined in ORS 801.355, that has a registration weight, as described in ORS 803.430, of more than 8,000 pounds if the insured has employees that operate the motor truck and that are covered by a workers' compensation law, disability benefits law, or similar law; or
- d. farm-type tractors or other motor-propelled vehicles or equipment designed for use principally off of public roads, except when actually used on public roads.

Phantom vehicle means an unidentified vehicle that causes **bodily injury** to a **covered person** arising out of an **accident** although there is no physical contact with the **insured** or with a vehicle the **covered person** is **occupying** at the time of the **accident**.

Property damage means physical damage to or destruction of tangible property, but does not include loss of use of that property.

Repair or replace means to repair the covered **auto** to its pre-accident operational safety, function and appearance, or replace it with an **auto** of like kind and quality, regardless of whether or not the covered **auto** is or can be restored to its pre-accident condition or value.

Stolen vehicle means a **motor vehicle** that causes **bodily injury** to a **covered person** while being operated without consent of the owner. Any **accident** involving a **stolen vehicle** must be reported to law enforcement and **us** within 72 hours, and **you** and all other **covered persons** involved in the **accident** must cooperate with law enforcement and **us** in the investigation and prosecution of the theft.

Uninsured Motorist means an owner or driver who is operating an **uninsured vehicle**.

Uninsured Vehicle is a **motor vehicle** which:

- has no collectible bodily injury liability insurance at the time of the **accident**;
- has collectible bodily injury liability insurance at the time of the **accident**, but the limit of the liability policy is inadequate to pay the full amount a **covered person** is legally entitled to recover as damages;
- has collectible bodily injury liability insurance that applies at the time of the **accident**, but the insurance company is or becomes insolvent or denies coverage to its insured for that **accident**;
- is a **stolen vehicle**;
- is a vehicle that is owned or operated by a self-insurer that is not in compliance with the minimum requirements of the motor vehicle financial responsibility law or that provides recovery to an **insured** in an amount that is less than the limits for **uninsured motorist** coverage of the **insured** under this policy;
- is a **hit-and-run vehicle**; or
- is a **phantom vehicle**;

NOTE: If a **phantom vehicle** or a **hit-and-run vehicle** causes the **accident**, the facts of the **accident** must be corroborated by competent evidence other than testimony of a person having an **uninsured motorist** claim resulting from the **accident**. The **accident** must be reported to the appropriate law enforcement agency within 72 hours after it occurs and within 30 days to **us**.

An **uninsured vehicle** is *not*:

- an insured vehicle, unless it is a **stolen vehicle**;
- a vehicle owned by or furnished or available for regular or frequent use by **you** or a **family member** while **you** or any **family member** is using it, except that this provision does not apply to **you** or any **family member** for claims under Coverage **C**;
- a **motor vehicle** or **trailer** to which the liability coverage of this policy applies, unless it is stolen, except that this provision does not apply to **you** or any **family member** for claims under Coverage **C**;
- a vehicle owned by, rented to or operated by a self-insurer under any motor vehicle financial responsibility law, motor carrier law or any similar law, except for those vehicles owned or operated by a self-insurer not in compliance with the minimum requirements of the financial responsibility laws;

- a **motor vehicle** or **trailer** if it's for use as a residence or premises except that this provision does not apply to **you** or any **family member** for claims under Coverage **C**;
- a vehicle that is owned by the United States of America, Canada, a state, a political subdivision of any such government or an agency of any such government. However, this limitation will not apply to the extent the government entity is unable to satisfy a claim because of financial inability, insolvency or any applicable tort claim limitations.

In **PART II, UNINSURED MOTORIST COVERAGES**, the **COVERAGE C – BODILY INJURY CAUSED BY AN UNINSURED MOTORIST** and **COVERAGE D – PROPERTY DAMAGE CAUSED BY AN UNINSURED MOTORIST** sections are deleted and replaced by the following:

COVERAGE C – BODILY INJURY CAUSED BY AN UNINSURED MOTORIST

If **you've** selected this coverage as shown by the charge on the "Declarations," **we** will pay for **bodily injury** sustained by a **covered person** when those damages are caused by an **uninsured motorist**. But the damages must result from an **accident** arising out of the ownership, maintenance, or use of an **uninsured vehicle**, and the damages caused by the **uninsured motorist** must be those that the **covered person** is legally entitled to recover from the **uninsured motorist**.

NOTE: Coverage **C** does not apply to punitive damages.

COVERAGE D – PROPERTY DAMAGE CAUSED BY AN UNINSURED MOTORIST

If **you've** selected this coverage as shown by the charge on the "Declarations," **we** will pay for **property damage** to **your** covered **auto** caused by an **uninsured vehicle**, less any applicable deductible. This coverage only applies to damages **you** are legally entitled to recover from the **uninsured motorist**, and which results from an **accident** arising out of the ownership, maintenance or use of an **uninsured vehicle**.

NOTE: Coverage **D** does not apply to punitive damages or damages for loss of use of the covered **auto**.

In **PART II, UNINSURED MOTORIST COVERAGES**, sections **I. Definition of Uninsured Motor Vehicle, II. Payment of Damages, IV. Other Insurance, V. Limitation Period, and VI. Agreement and Arbitration** are deleted and replaced by the following:

I. Additional Limitations on Coverage

Those Not Protected

- **We** don't protect anyone **occupying** a **motor vehicle we** insure while it's being used to transport persons or deliver property for compensation of any kind. This doesn't apply to a shared-expense car pool.
- **We** don't protect anyone **occupying** a **motor vehicle you** or a **family member** own which is not insured under the liability coverage of this policy.

- **We** don't protect anyone **occupying** a **motor vehicle** furnished or available for regular use by **you** or a **family member** and operated by **you** or that **family member** which is not insured under the liability coverage of this policy.
- **We** don't protect anyone whose claim is based on, derived from or the result of the **bodily injury** or death of a person who is not a **covered person** for **uninsured motorist** insurance benefits under this policy.
- **We** don't protect anyone to the benefit of any workers' compensation carrier, any person or organization qualifying as a self-insurer under any workers' compensation or disability benefits law or the State Accident Insurance Fund Corporation.

Limitations on Uninsured Benefits

We will pay only if:

- The limits of liability under any **bodily injury** liability insurance applicable at the time of the **accident** regarding the **covered person** have been exhausted by payment of judgments or settlements to the **covered person**;
- The described limits have been offered in settlement, **we** have refused consent to settle, and the **covered person** protects **our** right of subrogation to the claim against the person responsible;
- The **covered person** gives credit to **us** for the unrealized portion of the described liability limits as if the full limits had been received if less than the described limits have been offered in settlement, and **we** have consented; or
- The **covered person** gives credit to **us** for the unrealized portion of the described liability limits as if the full limits had been received if less than the described limits have been offered in settlement and, if **we** have refused consent, the **covered person** protects **our** right of subrogation to the claim against the person responsible.

NOTE: When seeking **our** consent to settle, the **covered person** shall allow **us** reasonable time in which to collect and evaluate information related to consent to the proposed offer of settlement. The **covered person** shall provide promptly to **us** any information that is reasonably requested by **us** and that is within the custody and control of the **covered person**. Consent will be presumed to be given if **we** do not respond within a reasonable time. A "reasonable time" is no more than 30 days from **our** receipt of a written request for consent, unless **we** and the **covered person** agree otherwise.

II. Payment of Damages

Under these coverages, **we** may pay the **covered person**, his or her legal representative or anyone else authorized by law to receive payment. No obligation to pay arises under either Coverage **C** – Bodily Injury Caused by an Uninsured Motorist or Coverage **D** – Property Damage Caused by an Uninsured Motorist until the total amount of damages the **covered person** is legally entitled to recover from the **uninsured motorist** for **bodily injury** or **property damage** has been determined as provided in this policy.

The coverage amounts payable will not be reduced by the amount of liability proceeds offered, but not paid to the injured person due to **our** refusal to consent. If liability proceeds have been offered and not paid, the amount payable will be included in the amount of liability limits offered but not accepted due to the insurer's refusal to consent. However, the **covered person** must cooperate with **us** to prosecute the claim against the **uninsured motorist**.

Any damages that are payable under these coverages because of **bodily injury** sustained in an **accident** by a **covered person** are reduced by:

- All sums paid on account of such **bodily injury** by or on behalf of the owner or operator of the uninsured vehicle and by or on behalf of any other person or organization jointly or severally liable, together with such owner or operator, for such **bodily injury**;
- Credit for any unrealized liability policy limits for a settlement for less than the available policy limits;
- All sums paid by **us** in Personal Injury Protection benefits to the **covered person** arising from the **accident**; and
- The amount paid and the present value of all amounts payable on account of such **bodily injury** under any workers' compensation law, disability benefits law or any similar law.

Non-Duplication

In no event will a **covered person** be entitled to duplicate payment for **bodily injury** or **property damage** that has already been paid to or for a **covered person**:

- By or on behalf of any person or organization who is or may be held legally liable for the accident;
- As benefits under any medical payments coverage under this or any other policy;
- As benefits under the Personal Injury Protection coverage of this policy;
- As benefits to or for the **covered person** under any workers' compensation law, disability benefits law, or similar law; and
- As benefits already paid under any policy of property insurance.

When **we** pay damages under these coverages, the **covered person** must repay **us** out of any amounts recovered from anyone liable for his or her **bodily injury** or **property damage**. This includes reimbursement to medical providers and attorney fees but does not include any proceeds of a liability policy received by other **covered persons**. The **covered person** must protect **our** right to recover **our** money. **We** won't exercise this right to the extent that it would reduce the **covered person's** full recovery of damages, but will exercise this right as to any payments for which a credit or offset from damages is not received.

At **our** request, the **covered person** must cooperate with **us**, and representatives of **our** choice, to recover the payments **we've** made under these coverages. **Our** expenses to recover payments also must be paid to **us** out of any money recovered.

The **covered person** must hold in trust for **us** any rights of recovery they may have against any person, firm or organization because of the damages that are the subject of claim made under this coverage, but only to the extent a claim is made or payment is made by **us**.

No judgment against any person or organization alleged to be legally responsible for **bodily injury**, except for proceedings instituted against the insurer as provided in the policy, is conclusive on the issues of liability of such person or organization or the amount of damages to which a **covered person** is legally entitled.

IV. Other Insurance

With respect to **bodily injury** to a **covered person** while **occupying** a vehicle owned by **you** under this coverage, the insurance under this coverage is primary.

While **occupying** a vehicle not owned by **you** under this coverage, this coverage shall apply only as excess insurance over any primary insurance available to the occupant that is similar to this coverage, and this excess insurance coverage shall then apply only to the sums that the **covered person**, their heirs or legal representative is legally entitled to recover as damages for **bodily injury** or death caused by an **accident** and that arises out of owning, maintaining or using an **uninsured vehicle**.

With respect to **bodily injury** to **you** or a **covered person** while **occupying** any **motor vehicle** used as a public or livery conveyance, the insurance under this coverage shall apply only as excess insurance over any other insurance available to **you** or a **covered person** that is similar to this coverage, and this excess insurance coverage shall then apply only to the amount by which that applicable limit of liability of this coverage exceeds the sum of the applicable limits of liability of all other insurance.

Responsibility for allocation of payment will be between **us** and any other responsible insurers.

Coverage **D** benefits will be excess over any other collectible insurance.

V. Limitation Period

No cause of action shall accrue to the **covered person** under this coverage unless, within two years from the date of the **accident**:

- An agreement as to the amount due under the policy has been concluded;
- The **covered person** or **us** has formally instituted arbitration proceedings;
- The **covered person** has filed an action against **us**; or
- Suit for **bodily injury** has been filed against the **uninsured motorist** and, within two years from the date of settlement or final judgment against the **uninsured motorist**, the **covered person** has formally instituted arbitration proceedings or filed an action against **us**.

NOTE: "Date of settlement" means the date on which a written settlement agreement or release is signed by a **covered person** or, in the absence of these documents, the date on which the **covered person** or their attorney receives payment of the settlement sum. "Final judgment" means a judgment that becomes final by lapse of time for appeal or by entry of an appellate judgment.

VI. Agreement and Arbitration

A **covered person's** legal right to recover damages against the **uninsured motorist** or the amount of damages may be made by agreement between **us** and the **covered person**, or in the event of disagreement, by arbitration as provided herein or legal action against **us**.

If **we** and the **covered person** don't agree that the **covered person** is entitled to legally recover damages arising from the **accident**, or do not agree as to the amount of damages payable under this coverage, then the disagreement may be settled by arbitration by mutual agreement at the time of the dispute.

Unless otherwise agreed to, the parties shall submit the dispute to a panel of three arbitrators. The panel shall consist of one arbitrator chosen by each party and one arbitrator chosen by the two arbitrators previously chosen to sit on the panel. Attorney fees or expenses incurred in the production of evidence or witnesses or the making of transcripts of the proceedings will be paid by the party incurring them. Costs to the **covered person** for all other arbitration proceedings will not exceed \$100, with the remainder to be paid by **us**.

At the election of the **covered person**, the arbitration shall be held in the county where the **covered person** resides, the **accident** occurred or any other place mutually agreed upon by the **covered person** and **us**. The arbitration proceeding shall be subject to the local court rules in the county where the arbitration is held.

The decision of the arbitrators will be binding on the **covered person** and **us**, and may be entered in any court having jurisdiction.

In **PART II, UNINSURED MOTORIST COVERAGES**, section **VII. Limits, Limits of Coverage D - Property Damage Caused by an Uninsured Motorist** is deleted and replaced with the following:

Limits of Coverage D - Property Damage Caused by an Uninsured Motorist

The amount shown in the "Declarations" for "each occurrence" under this coverage is the most **we'll** pay for **property damage** to **your** covered **auto** for any one **accident** for which **you** are legally entitled to recover damages, and does not include damages for loss of use.

This limit is the most **we'll** pay for damages arising out of any one **accident** regardless of the number of **covered persons**, claims made, vehicles involved in the **accident**, vehicles covered by the policy, or premiums paid.

Subject to this maximum, the limit of **our** liability is the lesser of the actual cash value of the damaged or destroyed covered **auto** or the amount necessary to **repair or replace** the damaged or destroyed covered **auto** with property of like kind and quality.

In **PART III, PERSONAL INJURY PROTECTION COVERAGE ("PIP"), COVERAGE E – INSURING AGREEMENT FOR PIP BENEFITS**, the sections **Medical and Hospital Expenses, Reimbursement and Subrogation**, and **Other Insurance** are deleted and replaced by the following:

Medical and Hospital Expenses

Reasonable and necessary medical and hospital expenses for medical, hospital, dental, surgical, ambulance and prosthetic services incurred within two years after the date of the person's injury. Payment for these expenses will not exceed the Medical Expense Limit specified in the "Declarations" in the aggregate for all such expenses of the injured person.

Reimbursement and Subrogation

We may choose to recover **our** PIP payments by inter-insurer reimbursement, lien, or subrogation as set forth by the Personal Injury Protection Benefits sections in the Oregon Revised Statutes.

We are entitled to the proceeds, to the extent of PIP benefits furnished by **us**, of any settlement or judgment recovered by an injured person against any person legally responsible for the **accident**, less **our** share of expenses, costs and attorney fees incurred by the injured person in connection with such recovery.

We are entitled to reimbursement of PIP benefits made on behalf of any person only to the extent that the total amount of benefits paid exceeds the damages suffered by that person. The "total amount of benefits" means that amount of money recovered by a person from applicable uninsured motorist coverage, liability insurance coverage, PIP payments, and any other payments by or on behalf of those whose fault caused the damages.

Upon **our** written request, through **our** designated representative, the injured person, in their name, shall take all necessary action to recover benefits paid as damages from the responsible person or organization. **We** will not designate a representative that has a conflict of interest with the injured person. In the event of a recovery, **we** shall be reimbursed only to the extent of benefits provided by **us**. **We** shall also be reimbursed the injured person's share of expenses, costs and attorney fees incurred by **us** in connection with the recovery.

In calculating respective shares of expenses, costs and attorney fees under this section, the basis of allocation shall be the respective proportions borne to the total recovery by **a.** such benefits furnished by **us**, and **b.** the total recovery less **a.**

Any provisions in a **motor vehicle** liability insurance policy or health insurance policy giving rights to **us** relating to subrogation or the subject matter of this section shall be construed and applied in accordance with the provisions of the Oregon Insurance Code and Oregon Revised Statutes.

The injured person shall do whatever is proper to secure and not prejudice **our** rights of reimbursement and shall execute and provide any necessary documents to effect recovery and reimbursement. The injured person shall hold in trust for **us** all recovered amounts which the injured person has and that **we** are entitled to.

Other Insurance

This PIP coverage is primary for **you, family members**, and passengers **occupying a motor vehicle** insured under this policy. This PIP coverage is excess for **you and family members** injured while **occupying a motor vehicle** not insured under this policy, and for **pedestrians** injured by the **insured motor vehicle**, other than **you and family members** to whom other collateral benefits are payable, including but not limited to insurance benefits, governmental benefits except Medicare and Medicaid, and gratuitous benefits.

The **POLICY PROVISIONS** are amended to include a new section at the end of the last page:

Conformity to Oregon Statutes

If any provisions of this policy are in conflict with the statutes of Oregon, they are amended to conform to those statutes.

ALL OTHER POLICY TERMS AND CONDITIONS REMAIN UNCHANGED