

May 14, 2018

CIRCULAR LETTER TO ALL MEMBER COMPANIES

Re: Personal Automobile Policy Program
Amendatory Endorsements - North Carolina
Assignment of Benefits

The Commissioner of Insurance has recently approved the attached revisions to the North Carolina Personal Auto Policy Program which were filed on behalf of all member companies of the North Carolina Rate Bureau. This revision changes Amendatory Endorsements NC 00 13 and NC 00 12 (Physical Damage only Policy) which are mandatory endorsements required to be attached to the Personal Auto Policy.

The revised endorsements amend *Part E – Duties After An Accident Or Loss – Filing A Claim* and *Part F – General Provisions*. The purpose of this revision is to better protect insureds and insurers regarding assignment of benefits practices in North Carolina.

For your convenience, please find attached a copy of revised Amendatory Endorsements NC 00 13 10 18 and NC 00 12 10 18.

These changes become effective in accordance with the following Rule of Application:

These changes are applicable to all new and renewal policies becoming effective on or after October 1, 2018.

Please see to it that this circular is brought to the attention of all interested personnel in your company.

Sincerely,

Andy Montano

Director, Personal Lines

AM:ko
Attachment
A-18-1

AMENDATORY ENDORSEMENT

This endorsement is a part of your policy. Except for the changes it makes, all other terms of the policy remain the same and apply to this endorsement.

1. DEFINITIONS

- A. The definition of "**newly acquired auto**" is amended as follows:

"**Newly acquired auto**" means any of the following types of vehicles you become the owner of during the policy period:

1. a private passenger auto or station wagon type; or
2. a pickup truck or van that:
 - a. has a Gross Vehicle Weight as specified by the manufacturer of less than 14,000 pounds; and
 - b. is not used for the delivery or transportation of goods and materials unless such use is:
 - (1) incidental to your **business** of installing, maintaining or repairing furnishings or equipment; or
 - (2) for farming or ranching.

Any coverage for a **newly acquired auto** is subject to the following:

1. If a **newly acquired auto** replaces a vehicle shown in the Declarations, it will have the same coverage as the vehicle it replaced except that coverage, if any, under Part D – Coverage For Damage To Your Auto applies only if you ask us to insure it within 30 days after you become the owner.
2. If a **newly acquired auto** is in addition to any shown in the Declarations, it will have the broadest coverage we now provide for any vehicle shown in the Declarations if you ask us to insure it within 30 days after you become the owner.
3. Coverage under this policy terminates for any **newly acquired auto** on the effective date and time of a policy (other than this policy) issued by us or any other company that describes such vehicle on its declarations page.
- 4.

If you ask us to insure a **newly acquired auto** within the applicable specified time period described in 1. or 2. above, any coverage we provide for the **newly acquired auto** begins on the date you become the owner. If you ask us to insure a **newly acquired auto** after the applicable specified time period described above has elapsed, any coverage we provide for the **newly acquired auto** will begin at the time you request the coverage. You must pay us any added amount due for any coverage we provide for a **newly acquired auto**.

- B. The definition of "**transportation network platform**" is added:

"**Transportation network platform**" means an online-enabled application or digital network used to connect passengers with drivers using vehicles for the purpose of providing prearranged transportation services for compensation.

2. Part A – LIABILITY COVERAGE

- A. Part A is amended as follows:

1. Exclusion A.2. is deleted and replaced by the following:

We do not provide Liability Coverage for any **insured**:

2. For **property damage** to property:
 - a. owned in whole or in part by that **insured**; or
 - b. being transported by that **insured**;

2. Exclusion A.5. is deleted and replaced by the following:

We do not provide Liability Coverage for any **insured**:

5. For that **insured's** liability arising out of the ownership or operation of a vehicle while it is being used as a public livery or conveyance. This includes but is not limited to any period of time that **insured** is logged into a **transportation network platform** as a driver, whether or not a passenger is **occupying** the vehicle.

This exclusion does not apply to a share-the-expense car pool.

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3. The following Exclusion B.3. is added:

We do not provide Liability Coverage for the ownership, maintenance or use of:

- 3. Any vehicle while participating in any prearranged, organized, or spontaneous:
 - a. racing contest, speed contest, demolition, stunt activity, or competitive driving event, or in practice or preparation for any such contest or use of this type; or
 - b. use of a vehicle at a facility designed for racing or high performance driving unless such use is for an activity other than high performance driving, high speed driving, and other than those activities listed in 3.a. above.

This exclusion applies only to the extent that the limit of liability of this policy exceeds the minimum limit required by the financial responsibility law of North Carolina.

B. The following provision is added following the **Other Insurance** provision:

Appraisal – Diminution in Value

If there is no dispute between the claimant and us regarding the **insured's** liability for the property damage to the claimant's vehicle, but:

- a. the claimant and we fail to agree as to the difference in fair market value of the vehicle immediately before the accident and immediately after the accident; and
- b. the difference in the claimant's and our estimate of the diminution in fair market value is greater than two thousand dollars (\$2,000) or twenty-five percent (25%) of the fair market retail value of the vehicle prior to the accident as determined by the latest edition of the National Automobile Dealers Association Pricing Guide Book or other publications approved by the Commissioner of Insurance, whichever is less; then

on the written demand of either the claimant or us, the dispute regarding the amount of the diminution in value shall be determined by appraisal in accordance with G.S. 20-279.21(d1).

3. Part B – MEDICAL PAYMENTS COVERAGE

Exclusion 1. is deleted and replaced by the following:

We do not provide Medical Payments Coverage for any **insured** for **bodily injury**:

- 1. Sustained while **occupying your covered auto** when it is being used as a public or livery conveyance. This includes but is not limited to any period of time that **insured** is logged into a **transportation network platform** as a driver, whether or not a passenger is **occupying** the vehicle.

This exclusion does not apply to a share-the-expense car pool.

The following Exclusion 12. is added:

We do not provide Medical Payments Coverage for any **insured** for **bodily injury**:

- 12. Sustained while **occupying** any vehicle participating in any prearranged, organized, or spontaneous:
 - a. racing contest, speed contest, demolition, stunt activity, or competitive driving event, or in practice or preparation for any such contest or use of this type; or
 - b. use of a vehicle at a facility designed for racing or high performance driving unless such use is for an activity other than high performance driving, high speed driving, and other than those activities listed in 12.a. above.

4. Part C1 – UNINSURED MOTORISTS COVERAGE

A. Part C1 is amended as follows:

A. Exclusion A.2. is deleted and replaced by the following:

We do not provide Uninsured Motorists Coverage for **property damage** or **bodily injury** sustained by any **insured**:

- 2. While **occupying your covered auto** when it is being used as a public or livery conveyance. This includes but is not limited to any period of time that **insured** is logged into a **transportation network platform** as a driver, whether or not a passenger is **occupying** the vehicle.

This exclusion does not apply to a share-the-expense car pool.

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- B. The third paragraph of **Limit of Liability** is deleted and replaced by the following:

The limits of bodily injury liability shown in the [Schedule or] Declarations for each person and each accident for this coverage shall be reduced by all sums:

1. 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 Part A; and
2. Paid or payable because of the **bodily injury** under any disability benefits law or any similar law.

The most we will pay for **bodily injury** damages to an **insured** under this coverage is the lesser of:

1. the limit of bodily injury liability shown in the [Schedule or] Declarations for each person for this coverage reduced by all sums described in items 1. and 2. of the preceding paragraph; or
2. the damages sustained by the **insured** for **bodily injury** reduced by:
 - a. all sums described in items 1. and 2. in the preceding paragraph; and
 - b. all sums paid or payable because of the **bodily injury** under any workers' compensation law. However, this reduction does not apply to the extent that an employer's lien is required to be paid under North Carolina's workers' compensation law.

The limit of property damage liability under this coverage shall be reduced by all sums paid because of the **property damage** by or on behalf of persons or organizations who may be legally responsible. This includes all sums payable under Part A.

- C. The first paragraph of **Arbitration** is deleted and replaced by the following:

If we and an **insured** do not agree:

1. Whether that **insured** is legally entitled to recover compensatory damages from the owner or operator of an **uninsured motor vehicle**; or
2. As to the amount of such compensatory damages;

then the **insured** may demand to settle these disputed issues by arbitration. If an **insured** files a lawsuit against us or an owner or operator of an **uninsured motor vehicle** seeking damages that are the subject of the claim for Uninsured Motorists Coverage under this policy, the **insured** shall have the right to demand arbitration only if such lawsuit is filed within the time limit required by the law of the state where the accident occurred for filing a lawsuit against the owner or operator of the **uninsured motor vehicle** for the damages arising out of the accident and only if the **insured** gives us a written demand for arbitration within (30) days after the filing of such lawsuit.

- D. Item 5. of **Arbitration** is deleted and the remaining paragraphs are renumbered appropriately.

5. Part C2 – COMBINED UNINSURED/UNDER-INSURED MOTORISTS COVERAGE

Part C2 is amended as follows: _

- A. Exclusion A.2. Is deleted and replaced by the following:

We do not provide coverage for **property damage** or **bodily injury** caused by an uninsured motor vehicle and sustained by any **insured**:

2. While **occupying your covered auto** when it is being used as a public or livery conveyance. This includes but is not limited to any period of time that **insured** is logged into a **transportation network platform** as a driver, whether or not a passenger is **occupying** the vehicle.

This exclusion does not apply to a share-the-expense car pool.

- B. Exclusion C.2. is deleted and replaced by the following:

We do not provide coverage for **bodily injury** caused by an **underinsured motor vehicle** and sustained by any **insured**:

2. While **occupying your covered auto** when it is being used as a public or livery conveyance. This includes but is not limited to any period of time that **insured** is logged into a **transportation network platform** as a driver, whether or not a passenger is **occupying** the vehicle. This exclusion does not apply to a share-the-expense car pool.

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C. The fourth and fifth paragraphs of **Limit of Liability** are deleted and replaced by the following:

The limits of bodily injury liability shown in the [Schedule or] Declarations for each person and each accident for this coverage shall be reduced by all sums:

1. 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 Part A; and
2. Paid or payable because of the **bodily injury** under any disability benefits law or any similar law.

The most we will pay for **bodily injury** damages to an **insured** under this coverage is the lesser of:

1. the limit of bodily injury liability shown in the [Schedule or] Declarations for each person for this coverage reduced by all sums described in items 1. and 2. of the preceding paragraph; or
2. the damages sustained by the **insured** for **bodily injury** reduced by:
 - a. all sums described in items 1. and 2. in the preceding paragraph; and
 - b. all sums paid or payable because of the **bodily injury** under any workers' compensation law. However, this reduction does not apply to the extent that an employer's lien is required to be paid under North Carolina's workers' compensation law.

D. The first paragraph of **Arbitration** is deleted and replaced by the following:

If we and an **insured** do not agree:

1. Whether that **insured** is legally entitled to recover compensatory damages from the owner or operator of an **uninsured motor vehicle** or **underinsured motor vehicle**; or
2. As to the amount of such compensatory damages;

then the **insured** may demand to settle these disputed issues by arbitration.

For purposes of an:

1. Uninsured Motorists Coverage claim, if an **insured** files a lawsuit against us or an owner or operator of an **uninsured motor vehicle** seeking damages that are the subject of the claim for Uninsured Motorists Coverage under this policy, the **insured** shall have the right to demand arbitration only if such lawsuit is filed within the time limit required by the laws of the state where the accident occurred for filing a lawsuit against the owner or operator of the **uninsured motor vehicle** for the damages arising out of the accident and only if the **insured** gives us a written demand for arbitration within thirty (30) days after the filing of such lawsuit. **R**
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2. Underinsured Motorists Coverage claim, if an **insured** files a lawsuit against an owner or operator of an **underinsured motor vehicle** seeking damages that are the subject of the claim for Underinsured Motorists Coverage under this policy, the **insured** shall have the right to demand arbitration only if the **insured** gives us a written demand for arbitration within thirty (30) days after the later of: **I**
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 - a. The date we advance payment to the **insured** in an amount equal to a tentative settlement between the **insured** and the owner or operator of the **underinsured motor vehicle**; **E**
 - b. The date any applicable liability bonds or policies have been exhausted by payments of judgments or settlements; or **D**
 - c. The date the **insured** files a lawsuit against an owner or operator of an **underinsured motor vehicle** seeking damages that are the subject of the claim for Underinsured Motorists Coverage under this policy, provided that such lawsuit is filed within the time limit required by the laws of the state where the accident occurred for filing a lawsuit against the owner or operator of the **underinsured motor vehicle** for the damages arising out of the accident.

E. Item 5. of **Arbitration** is deleted and the remaining paragraphs are renumbered appropriately.

6. PART D – COVERAGE FOR DAMAGE TO YOUR AUTO

Part D is amended as follows:

A. Exclusion 1. Is replaced by the following:

We will not pay for:

1. Loss to **your covered auto** or any **non-owned auto** which occurs while it is being used as a public or livery conveyance. This includes but is not limited to any period of time while it is being used by any person who is logged into a **transportation network platform** as a driver, whether or not a passenger is **occupying** the vehicle.

This exclusion does not apply to a share-the-expense car pool.

B. Exclusion 9. is changed by deleting the following:

This exclusion does not apply to the interests of Loss Payees in **your covered auto**.

C. The following Exclusion 14 is added:

We will not pay for:

14. Loss to your **covered auto** or any **non-owned auto** while participating in any prearranged, organized, or spontaneous:
 - a. racing contest, speed contest, demolition, stunt activity, or competitive driving event, or in practice or preparation for any such contest or use of this type; or
 - b. use of a vehicle at a facility designed for racing or high performance driving unless such use is for an activity other than high performance driving, high speed driving, and other than those activities listed in 14.a. above.

7. PART E – DUTIES AFTER AN ACCIDENT OR LOSS – FILING A CLAIM

Paragraph 3. of the **Additional Duties For Coverage For Damage To Your Auto** provision is replaced by the following:

3. Permit us to inspect and appraise the damaged property, including but not limited to any damaged glass or windshield, before its repair, replacement or disposal.

8.7—Part F – GENERAL PROVISIONS

Part F is amended as follows:

A. The following is added to paragraph 4 of the **Cancellation** provision:

- g. The named **insured** is no longer an eligible risk under G.S. 58-37-1.
- h. Any other reason permitted by the North Carolina General Statutes.

B. **Other Termination Provisions** is deleted and replaced by the following:

1. If the law in effect in North Carolina at the time this policy is issued, renewed or continued:
 - a. requires a longer notice period;
 - b. requires a special form of or procedure for giving notice;
 - c. modifies any of the stated termination reasons; or;
 - d. adds any additional termination reasons; we will comply with those requirements and this policy shall be deemed amended to include any such change in the law.

2. Proof of mailing of any notice shall be sufficient proof of notice.

3. If the named **insured** or a premium finance company cancels this policy, the premium owed or premium refund due will be calculated according to the short rate provisions contained in our manuals. If we cancel this policy, any premium owed or premium refund will be calculated on a pro-rata basis. However, making or offering to make the refund is not a condition of cancellation.

4. The effective date of cancellation stated in the notice shall become the end of the policy period.

C. The following is added to the **Transfer Of Your Interest In This Policy provision:**

The benefits of this Policy that may be available to you following a covered loss may not be assigned unless:

1. All duties listed under the **Additional Duties For Coverage For Damage To Your Auto** provision in Part E – **Duties After An Accident Or Loss – Filing A Claim** are performed by a person seeking coverage;

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2. An inspection of the damage has been conducted by an adjuster authorized by us, or we give our consent; and

3. Any Assignee receiving a benefit under this Policy assigned under this provision for damage to **your covered auto** is subject to all duties and conditions under the policy. This includes the Appraisal Clause under Part D - **Coverage For Damage To Your Auto** to resolve disagreements on the amount of loss.

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AMENDATORY ENDORSEMENT

This endorsement is a part of your policy. Except for the changes it makes, all other terms of the policy remain the same and apply to this endorsement.

1. DEFINITIONS

A. The definition of "**newly acquired auto**" is amended as follows:

"**Newly acquired auto**" means any of the following types of vehicles you become the owner of during the policy period:

1. a private passenger auto or station wagon type; or
2. a pickup truck or van that:
 - a. has a Gross Vehicle Weight as specified by the manufacturer of less than 14,000 pounds; and
 - b. is not used for the delivery or transportation of goods and materials unless such use is:
 - (1) incidental to your **business** of installing, maintaining or repairing furnishings or equipment; or
 - (2) for farming or ranching.

Any coverage for a **newly acquired auto** is subject to the following:

1. If a **newly acquired auto** replaces a vehicle shown in the Declarations, it will have the same coverage as the vehicle it replaced except that coverage, if any, under Part D – Coverage For Damage To Your Auto applies only if you ask us to insure it within 30 days after you become the owner.
2. If a **newly acquired auto** is in addition to any shown in the Declarations, it will have the broadest coverage we now provide for any vehicle shown in the Declarations if you ask us to insure it within 30 days after you become the owner.
3. Coverage under this policy terminates for any **newly acquired auto** on the effective date and time of a policy (other than this policy) issued by us or any other company that describes such vehicle on its declarations page.

4. If you ask us to insure a **newly acquired auto** within the applicable specified time period described in 1. or 2. above, any coverage we provide for the **newly acquired auto** begins on the date you become the owner. If you ask us to insure a **newly acquired auto** after the applicable specified time period described above has elapsed, any coverage we provide for the **newly acquired auto** will begin at the time you request the coverage. You must pay us any added amount due for any coverage we provide for a **newly acquired auto**.

B. The definition of "**transportation network platform**" is added:

"**Transportation network platform**" means an online-enabled application or digital network used to connect passengers with drivers using vehicles for the purpose of providing prearranged transportation services for compensation.

2. PART D – COVERAGE FOR DAMAGE TO YOUR AUTO

Part D is amended as follows:

A. Exclusion 1. Is deleted and replaced by the following:

We will not pay for:

1. Loss to **your covered auto** or any **non-owned auto** which occurs while it is being used as a public or livery conveyance. This includes but is not limited to any period of time while it is being used by any person who is logged into a **transportation network platform** as a driver, whether or not a passenger is **occupying** the vehicle.

This exclusion 1. Does not apply to a share-the-expense car pool.

B. Exclusion 9 is changed by deleting the following:

This exclusion does not apply to the interests of Loss Payees in **your covered auto**.

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C. The following Exclusion 14 is added:

We will not pay for:

- 14. Loss to your **covered auto** or any **non-owned auto** while participating in any prearranged, organized, or spontaneous:
 - a. racing contest, speed contest, demolition, stunt activity, or competitive driving event, or in practice or preparation for any such contest or use of this type; or
 - b. use of a vehicle at a facility designed for racing or high performance driving unless such use is for an activity other than high performance driving, high speed driving, and other than those activities listed in 14.a. above.

- 3. If the named insured or a premium finance company cancels this policy, the premium owed or premium refund due will be calculated according to the short rate provisions contained in our manuals. If we cancel this policy, any premium owed or premium refund will be calculated on a pro-rata basis. However, making or offering to make the refund is not a condition of cancellation.
- 4. The effective date of cancellation stated in the notice shall become the end of the policy period.

The following is added to the Transfer Of Your Interest In This Policy provision:

The benefits of this Policy that may be available to you following a covered loss may not be assigned unless:

- 1. All duties listed under the **Additional Duties For Coverage For Damage To Your Auto** provision in **Part E – Duties After An Accident Or Loss – Filing A Claim** are performed by a person seeking coverage;
- 2. An inspection of the damage has been conducted by an adjuster authorized by us, or we give our consent; and
- 3. Any Assignee receiving a benefit under this Policy assigned under this provision for damage to your covered auto is subject to all duties and conditions under the policy. This includes the Appraisal Clause under Part D - Coverage For Damage To Your Auto to resolve disagreements on the amount of loss.

3. PART E – DUTIES AFTER AN ACCIDENT OR LOSS – FILING A CLAIM

Paragraph 3. of the **Additional Duties For Coverage For Damage To Your Auto** provision is replaced by the following:

- 3. Permit us to inspect and appraise the damaged property, including but not limited to any damaged glass or windshield, before its repair, replacement or disposal.

34. PART F – GENERAL PROVISIONS

Other Termination Provisions is deleted and replaced by the following:

- 1. If the law in effect in North Carolina at the time this policy is issued, renewed or continued:
 - a. requires a longer notice period;
 - b. requires a special form of or procedure for giving notice;
 - c. modifies any of the stated termination reasons; or;
 - d. adds any additional termination reasons;
 we will comply with those requirements and this policy shall be deemed amended to include any such change in the law.
- 2. Proof of mailing of any notice shall be sufficient proof of notice.

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