



November 12, 2008

CIRCULAR LETTER TO ALL MEMBER COMPANIES

Re: Revised Uninsured Motorists (UM) and Underinsured Motorist (UIM) Coverage Manual Rule and Introduction of New Form for Commercial Automobile

The Commissioner of Insurance has approved revisions to Rule 26 - Uninsured and Underinsured Motorists Insurance of the Commercial Auto Manual and a revised Endorsement CA 21 16 03 06 North Carolina Uninsured Motorist Coverage which was filed on behalf of member companies of the North Carolina Reinsurance Facility.

This rule revision is a result of the passing of House Bill 738 which amends N.C. Gen. Stat. § 20-279.21 to make UM/UIM mandatory coverages on certain policies.

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

These changes become effective with respect to all new and renewal policies effective on or after January 1, 2009.

Please see to it that these changes are brought to the attention to all interested personnel in your Company.

Very truly yours,

F. Timothy Lucas

Automobile Manager

FTL:dms

RF-08-19

Attachments

Rule 26 UNINSURED AND UNDERINSURED MOTORISTS INSURANCE

For purposes of this rule, the following definitions apply:

A commercial motor vehicle is defined as: (1) any single motor vehicle with a GVWR of at least 26,001 pounds; (2) a combination of motor vehicles that has a combined GVWR of at least 26,001 pounds and includes as part of the combination a towed unit that has a GVWR of at least 10,001 pounds; (3) a combination of motor vehicles that includes a towing unit that has a GVWR of at least 26,001 pounds and a towed unit that has a GVWR of less than 10,001 pounds; (4) a motor vehicle that is designed to transport 16 or more passengers, including the driver; or (5) a motor vehicle transporting hazardous materials and required to be placarded in accordance with 49 C.F.R. Part 172, Subpart F.

A noncommercial motor vehicle is defined as any motor vehicle that is not a commercial motor vehicle as defined above, but that is otherwise subject to the requirements of North Carolina's Motor Vehicle Safety and Financial Responsibility Act of 1953.

A. Uninsured Motorists Coverage Only

1. Owners—(Class Code—Refer to Statistical Plan)

Bodily injury and property damage uninsured motorists coverage shall be afforded under every automobile liability policy insuring the owner of a motor vehicle registered or principally garaged in North Carolina.

~~EXCEPTIONS—This coverage shall not apply when the insured has either~~

- ~~This coverage shall not apply when the insured has elected to purchase combined uninsured and underinsured motorists coverage bodily injury liability limits greater than \$30,000/\$60,000, or~~
- ~~specifically rejected in writing both uninsured motorists and combined uninsured and underinsured motorists coverages. For policies insuring only commercial motor vehicles or a fleet of only noncommercial motor vehicles, uninsured motorist coverage is not mandatory and will apply only if purchased by the insured.~~

NOTE: For any fleet or non-fleet policy insuring both commercial and noncommercial motor vehicles with bodily injury liability limits not greater than \$30,000/\$60,000, Uninsured Motorists Coverage Only is mandatory and shall be afforded.

a. Basic Limits

The limits of uninsured motorist bodily injury coverage shall be \$30,000/\$60,000 unless the insured purchases a higher limit of uninsured motorist bodily injury coverage. The limit of uninsured motorist property damage coverage shall equal the highest limit of liability for property damage liability coverage for any one noncommercial motor vehicle insured under the policy.

Basic limits of uninsured motorists coverage are \$30,000/60,000 bodily injury and \$25,000 property damage. ~~Property damage—~~Uninsured motorists property damage coverage is subject to an exclusion of the first \$100 of damage.

If provided, this coverage must apply to all autos insured under the policy at the limits determined in this rule.

Rate—Charge the following for each auto insured under the policy per registered auto.

(1) Individual or Married Couple (Other than Garage Risks)—Per Auto

Private Passenger Types	\$15
Other than Private Passenger Types	8

(2) Garage Risks

\$6 for each set of dealer or transporter plates in addition to the premium charged for any separately registered autos.

(3) All Others—Per Auto

Private Passenger Types	\$13
Other than Private Passenger Types	6

This rate is not subject to modification under the provisions of any rating plan or other Manual rule.

b. Increased Limits

Increased limits of uninsured motorists bodily injury coverage may be afforded. Uninsured motorists pProperty damage limits may not exceed the property damage liability limit afforded by the policy.

(1) Bodily Injury Liability

- (a) To compute the premium for limits higher than the basic limits for Uninsured Motorists Coverage Only, add the appropriate rate shown below for each auto or set of dealer or transporter plates to the basic limits premium:

BI Limits	Additional Charge	
	PP Types	Other than PP Types
\$ 50/100	\$ 2	\$1
85/85	3	2
100/200	4	2
100/300	5	2
250/500	7	3
300/300	8	3
500/500	9	4
500/1,000	10	4
1,000/1,000	11	5

- (b) Compute the charges for limits not shown by interpolation.

(2) Property Damage Liability

- (a) To compute the premium for limits higher than the basic limits for Uninsured Motorists Coverage Only, add the rates shown for each auto or set of dealer or transporter plates to the basic limits premium:

PD Limits	Additional Charge	
	PP Types	Other than PP Types
<u>\$50</u>	\$1.00	\$1.00
<u>85</u>	1.01	1.01
<u>100</u>	1.02	1.02
<u>300</u>	1.03	1.03
<u>400</u>	1.04	1.04
<u>500</u>	1.05	1.05
<u>750</u>	1.06	1.06
<u>1,000</u>	1.07	1.07
<u>1,500</u>	1.08	1.08
<u>2,000</u>	1.09	1.09
<u>2,500</u>	1.10	1.10
<u>5,000</u>	1.11	1.11

- (b) Compute the charges for limits not shown by interpolation.

c. Additional Persons

Bodily injury uninsured motorists coverage only may be extended to an executive officer, partner, or employee of the named insured at a charge of \$3.08, provided such additional person does not own an automobile.

The charge for each additional person shall not be subject to modification under the provisions of any rating plan or other Manual rule.

2. Uninsured Motorists Insurance for Nonowners (Bodily Injury Only) (Class Code 9900)

Uninsured motorists insurance for a limit of \$30,000/60,000 bodily injury may be afforded to any person who does not own an automobile and who is not afforded such coverage as a named individual under section 1 of this Rule. Such coverage shall be written for a period of one year or three years at the following rates:

RATES

The following rates apply to each individual, including the spouse and relatives of either, resident in the same household as the named insured:

1 Year Policy	\$39
3 Year Policy	\$61

B. Combined Uninsured/and Underinsured Motorists Coverage

Owners—(Class Code—Refer to Statistical Plan)

~~Combined b~~Bodily injury and property damage ~~Combined U~~uninsured/~~U~~and ~~u~~underinsured ~~M~~motorists ~~e~~Coverage shall be afforded under every auto liability policy insuring the owner of a motor vehicle registered or principally garaged in North Carolina.

EXCEPTIONS—~~This coverage shall not apply when the insured has either~~

- ~~This coverage shall not apply when the insured has purchased bodily injury liability limits not greater than \$30,000/\$60,000, specifically rejected this coverage in writing and elected to purchase uninsured motorists coverage only; or~~
- ~~For policies insuring only commercial motor vehicles or a fleet of only noncommercial motor vehicles, combined uninsured/underinsured motorist coverage is not mandatory and will apply only if purchased by the insured.~~

NOTE: For any fleet or non-fleet policy insuring both commercial and noncommercial motor vehicles with bodily injury liability limits not greater than \$30,000/\$60,000, Combined Uninsured/Underinsured Motorists Coverage is mandatory and shall be afforded.

- ~~specifically rejected in writing both uninsured motorists and combined uninsured and underinsured motorists coverages.~~

(a) Limits

~~The limits of combined uninsured/underinsured motorist bodily injury coverage shall equal the highest limits of liability for bodily injury liability coverage for any one noncommercial motor vehicle insured under the policy unless the insured purchases a higher limit of combined uninsured/underinsured motorist bodily injury coverage. The limit of combined uninsured/underinsured motorist property damage coverage, which is available only on an uninsured motorists basis, shall equal the highest limit of liability for property damage liability coverage for any one noncommercial motor vehicle insured under the policy.~~

~~Combined uninsured and underinsured motorists coverage limits are available only at bodily injury limits higher than \$30,000/60,000 and with property damage limits at \$25,000 or with a limit not to exceed the property damage liability limit afforded by the policy. The property damage coverage applies only on an uninsured motorists basis and is subject to an exclusion of the first \$100 of damage.~~

If provided, this coverage must apply to all autos insured under the policy at the limits determined in this rule.

~~Refer to uninsured motorists coverage only for \$30/60/25 limits.~~

b. Rates

~~Combined bodily injury and property damage uninsured and underinsured motorists coverage is available at the following limits with rates per registered auto shown. Add the rates shown below to the basic limits rates for Uninsured Motorists Coverage Only for each auto insured under the policy.:~~

(1) Bodily Injury Liability

- (a) To compute the premium for limits higher than the basic limits, add the rate shown below for each auto or set of dealer or transporter plates to the basic limits premium:

Additional Charge			
		Other than	
BI Limits	PP Types	PP Types	
\$ 50/100	\$ 8		\$ 6

85/85	17	13
100/200	24	18
100/300	26	19
250/500	55	41
300/300	59	44
500/500	73	55
500/1,000	77	58
1,000/1,000	89	67

(b) Compute the charges for limits not shown by interpolation.

(2) Property Damage Liability

(a) To compute the premium for limits higher than the basic limits, add the rates shown for each auto or set of dealer or transporter plates to the basic limits premium:

PD Limits	Additional Charge	
	PP Types	Other than PP Types
\$50	\$1.00	\$1.00
85	1.01	1.01
100	1.02	1.02
300	1.03	1.03
400	1.04	1.04
500	1.05	1.05
750	1.06	1.06
1,000	1.07	1.07
1,500	1.08	1.08
2,000	1.09	1.09
2,500	1.10	1.10
5,000	1.11	1.11

(b) Compute the charges for limits not shown by interpolation.

These total rates are not subject to modification under the provisions of any rating plan or other Manual rule.

Attach the applicable endorsement.

C. Notice Requirements

The insurer shall notify the named insured of his right to purchase Uninsured Motorist Bodily Injury Coverage and, if applicable, Combined Uninsured/Underinsured Motorist Bodily Injury Coverage with limits up to \$1,000,000 per person and \$1,000,000 per accident when a policy is issued and when it is renewed. The insurer shall be deemed to have given reasonable notice if it includes Form NC 03 40 01 09-Notice Of Right To Purchase Higher Limits of UM/UIM or substantially similar language as a notice accompanying the original and renewal declarations page or if it includes the same language as the language in said form, or substantially similar language, on the policy's original and renewal declarations page in at least 10 point type.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

NORTH CAROLINA UNINSURED MOTORISTS COVERAGE

For a covered "auto" licensed or garaged in, or "garage operations" conducted in, North Carolina, this endorsement modifies insurance provided under the following:

- BUSINESS AUTO COVERAGE FORM
- GARAGE COVERAGE FORM
- MOTOR CARRIER COVERAGE FORM
- TRUCKERS COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the ~~C~~coverage ~~F~~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:
Countersignature Of Authorized Representative
Name:
Title:
Signature:
Date:

SCHEDULE

Limit Of Insurance: \$	Each "Accident"
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

The definition of "uninsured motor vehicle" in this endorsement applies in its entirety unless an "X" is entered below:
<input type="checkbox"/> If an "X" is entered in this box, Paragraph b. of the definition of "uninsured motor vehicle" does not apply.

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A. Coverage

1. We will pay all sums the "insured" is legally entitled to recover as compensatory damages from the owner or driver of:
 - a. An "uninsured motor vehicle" because of "bodily injury" sustained by the "insured" and caused by an "accident"; and
 - b. An "uninsured motor vehicle" as defined in Paragraphs a. and c. of the definition of "uninsured motor vehicle", because of "property damage" caused by an "accident".

The owner's or driver's liability for these damages must result from the ownership, maintenance or use of the "uninsured motor vehicle".

2. With respect to damages resulting from an "accident" with a vehicle described in Paragraph b. of the definition of "uninsured motor vehicle", we will pay under this coverage only if Paragraph a. or b. below applies:
 - a. The limits of any applicable liability bonds or policies have been exhausted by payment of judgments or settlements; or
 - b. A tentative settlement has been made between an "insured" and the insurer of a vehicle described in Paragraph b. of the definition of "uninsured motor vehicle" and we:
 - (1) Have been given prompt written notice of such tentative settlement; and
 - (2) Advance payment to the "insured" in an amount equal to the tentative settlement within 30 days after receipt of notification.
3. Any judgment for damages arising out of a "suit" brought without sending us a copy of the summons, complaint or other process against an uninsured motorist 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. The Named Insured for "property damage" only.

C. Exclusions

This coverage does not apply to:

1. Any claim settled by the "insured" or any legal representative of the "insured" without our consent. However, this exclusion does not apply to a settlement made with the insurer of a vehicle described in Paragraph b. of the definition of "uninsured motor vehicle" in accordance with the procedure described in Paragraph A.2.b.
2. The direct or indirect benefit of any insurer or self-insurer under any workers' compensation, disability benefits or similar law.
3. The direct or indirect benefit of any insurer of property.
4. An "auto" or property contained in the "auto" other than a covered "auto".
5. The first \$100 of the amount of "property damage" to the property of each "insured" as the result of any one "accident".
6. Anyone using a vehicle without a reasonable belief that the person is entitled to do so.
7. Punitive or exemplary damages.
8. "Bodily injury" or "property damage" 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.

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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 Uninsured Motorists Coverage shown in the 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 or Medical Payments Coverage Endorsement attached to this Coverage Part.

We will not make a duplicate payment under this Coverage Form 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 exclusive of non-occupational disability benefits.

E. Changes In Conditions

The Conditions are changed for Uninsured Motorists Coverage as follows:

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

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

- a. The maximum recovery under all coverage forms or policies combined may equal but not exceed the highest applicable limit for any one vehicle under any coverage form or policy providing coverage on either a primary or excess basis.
- b. Any insurance we provide with respect to a vehicle:
 - (1) The Named Insured does not own; or
 - (2) Owned by the Named Insured or, if the Named Insured is an individual, any "family member", that is not a covered "auto" for Uninsured Motorists Coverage under this Coverage Form;

shall be excess over any other collectible uninsured motorists insurance providing coverage on a primary basis.

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

- (1) On a primary basis, we will pay only our share of the loss that must be paid under insurance providing coverage on a primary basis. Our share is the proportion that our limit of liability bears to the total of all applicable limits of liability for coverage on a primary basis.
- (2) On an excess basis, we will pay only our share of the loss that must be paid under insurance providing coverage on an excess basis. Our share is the proportion that our limit of liability bears to the total of all applicable limits of liability for coverage on an excess basis.

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

- a. Promptly notify the police if a hit-and-run driver is involved; and
- b. Promptly send us copies of the legal papers if a "suit" is brought. A "suit" may not be brought against anyone legally responsible for the use of any "auto" involved in the "accident" until 60 days after an "insured" notifies us or our agent of his or her belief that the prospective defendant is an uninsured motorist; and
- c. Any person who intends to pursue recovery against the owner or operator of an "uninsured motor vehicle", as described in Paragraph **b.** of the definition of "uninsured motor vehicle", for damages beyond those paid or payable under this policy shall give us:
 - (1) Notice of such intent; and
 - (2) The opportunity to participate, at our expense, in the prosecution of such claim.
- d. A person seeking coverage from an insurer, owner or operator of a vehicle described in Paragraph **b.** of the definition of "uninsured motor vehicle" must also promptly notify us in writing of a tentative settlement between the "insured" and the insurer and allow us to advance payment to that "insured" in an amount equal to the tentative settlement within 30 days after receipt of notification to preserve our rights against the insurer, owner or operator of such vehicle.

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3. Transfer Of Rights Of Recovery Against Others To Us is changed as follows:

- a. If we make any payment on the Named Insured's behalf, we are entitled to recover what we paid from other parties. The Named Insured must transfer rights of recovery against others to us. The Named Insured must do everything necessary to secure these rights and do nothing to jeopardize them.

However, our rights under this paragraph do not apply with respect to vehicles described in Paragraphs **F.4.a.**, **c.** and **d.** of the definition of "uninsured motor vehicle". For these vehicles, if we make any payment and the Named Insured recovers from another party, that Named Insured must hold the proceeds in trust for us and pay us back the amounts we have paid.

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

- (1) Have been given prompt written notice of a tentative settlement between an "insured" and the insurer of a vehicle described in Paragraph **b.** of the definition of "uninsured motor vehicle"; and
- (2) 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:

- (1) That payment will be separate from any amount the "insured" is entitled to recover under the provisions of Underinsured Motor Vehicle Coverage; and
- (2) We also have a right to recover the advanced payment.

4. The following Condition is added:

ARBITRATIONArbitration

- a. If we and an "insured" disagree whether the "insured" is legally entitled to recover damages from the owner or driver of an "uninsured motor vehicle" or do not agree as to the amount of damages that are recoverable by that "insured", then the matter may be arbitrated. However, disputes concerning coverage under this endorsement may not be arbitrated. The "insured" may make a written demand for arbitration. In this event, each party will select an arbitrator. The two arbitrators will select a third. If they cannot agree within 30 days, either may request that selection be made by a judge of a court having jurisdiction. Each party will pay the expenses it incurs and bear the expenses of the third arbitrator equally.
- b. Unless both parties agree otherwise, arbitration will take place in the county in which the "insured" lives. Local rules of law as to arbitration procedure and evidence will apply. A decision agreed to by two of the arbitrators will be binding.
- c. If the "insured" elects not to arbitrate, our liability will be determined only in an action against us. In any action against us, except an action to determine whether a vehicle is an "uninsured motor vehicle", we may require the "insured" to join the owner or driver of the vehicle as a party defendant.

F. Additional Definitions

As used in this endorsement:

- 1. "Family member" means a person related to an individual Named Insured by blood, marriage, or adoption who is a resident of such Named Insured's household, including a ward or foster child.
- 2. "Occupying" means in, upon, getting in, on, out or off.
- 3. "Property damage" means injury to or destruction of the property of an "insured".

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

- a. For which neither a bond or policy nor cash or securities on file with the North Carolina Commissioner of Motor Vehicles provides at least the amounts required by the North Carolina Motor Vehicle Safety and Responsibility Act;
- b. That is an underinsured motor vehicle. An underinsured motor vehicle is a land motor vehicle or "trailer" for which the sum of all bodily injury liability bonds or policies at the time of an "accident" provides at least the amounts required by the North Carolina Motor Vehicle Safety and Responsibility Act but their limits are either:
 - (1) Less than the limits of underinsured motorists coverage applicable to a covered "auto" that the Named Insured owns involved in the "accident";
 - (2) Less than the limits of this coverage, if a covered "auto" that the Named Insured owns is not involved in the "accident"; or
 - (3) Reduced by payments to others injured in the "accident" to an amount which is less than the ~~limit of insurance~~ for this coverage.

However, an underinsured motor vehicle does not include a "covered auto" ~~if~~ unless the limit of Uninsured Motorists Coverage shown in the Declarations or Schedule is ~~less than or equal to~~ greater than the Limit of Insurance for Liability Coverage shown in the Declarations of this policy.

- c. For which the insuring or bonding company denies coverage or is or becomes insolvent; ~~or~~
- d. That is a hit-and-run vehicle causing "bodily injury" to an "insured" and neither the driver nor owner can be identified. The vehicle must hit an "insured", a covered "auto" or a vehicle an "insured" is "occupying".

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

- a. Owned or operated by a self-insurer under any applicable motor vehicle law, except a self-insurer who is or becomes insolvent and cannot provide the amounts required by that motor vehicle law;
- b. Owned by:
 - (1) The United States of America;
 - (2) Canada;
 - (3) A state; or
 - (4) An agency, except vehicles owned by political subdivisions of (1), (2) or (3) above.
- c. Designed for use mainly off public roads while not on public roads.

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