

September 23, 2011

CIRCULAR LETTER TO ALL MEMBER COMPANIES

Re: Personal Auto Policy Revisions

The Commissioner of Insurance has approved a number of changes to the North Carolina Personal Auto Policy Program which were filed on behalf of member companies of the North Carolina Rate Bureau.

Enclosed are copies of the revised policy forms as well as an explanatory memorandum which sets forth and explains the changes. It is anticipated that copies of these forms in Microsoft Word format will be available for download from the Rate Bureau's website by October 6, 2011.

The following new policy form has been approved by the Commissioner.

NC 01 25 08 11 Other Products Endorsement – North Carolina

The following endorsements have been revised for use in North Carolina.

NC 00 12 08 11 Amendatory Endorsement

NC 00 13 08 11 Amendatory Endorsement

The following endorsement has been withdrawn from use in North Carolina.

NC 00 15 08 99 Amendatory Endorsement – North Carolina

Endorsement NC 00 12 and NC 00 13 are mandatory endorsements and are required to be attached to the Personal Auto Policy. Endorsement NC 00 13 08 11 – Amendatory Endorsement is an endorsement that is attached to the NC 00 01 – Personal Auto Policy and Endorsement NC 00 12 08 11 – Amendatory Endorsement is an endorsement that is attached to the NC 00 02 – Personal Auto Policy. The NC 00 02 – Personal Auto Policy is a physical damage only policy.

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

These changes are applicable to all new and renewal policies written to become effective on or after April 1, 2012.

The North Carolina Personal Auto Policy Program contains copyrighted material of Insurance Services Office used with their permission under a limited copyright license granted by Insurance Services Office to the North Carolina Rate Bureau. Under the terms of the limited copyright license, the Rate Bureau has copyrighted the materials included in the Personal Auto Policy Program, including the manual and all forms, and member companies are advised that when they reprint, copy, or otherwise use any materials included in this program the following notice must appear on the materials: "Copyright, North Carolina Rate Bureau, 2011." This program may be used only by members of the North Carolina Rate Bureau and may be used only in North Carolina.

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

Very truly yours,

F. Timothy Lucas

Personal Lines Manager

FTL:dms

Attachments

A-11-5

PERSONAL AUTOMOBILE POLICY REVISIONS

AMENDATORY ENDORSEMENT – NC 00 13

1. PART A - LIABILITY COVERAGE

Liability Exclusion B.3 is being added to exclude liability coverage in excess of the minimum limits required by the financial responsibility law of North Carolina for damages arising out of any prearranged, organized or spontaneous racing contest, speed contest, demolition, stunt activity or competitive driving event (including any practice or preparation for such an event). The exclusion also excludes liability coverage in excess of the minimum limits required by the financial responsibility law of North Carolina for damages arising out of use of a vehicle at any facility designed for racing or high performance driving, unless it is being used for purposes other than high speed or high performance driving.

2. PART B – MEDICAL PAYMENTS COVERAGE

Medical Payments Coverage Exclusion 12 is being added to exclude medical payments coverage for damages while occupying any vehicle that is participating in any prearranged, organized or spontaneous racing contest, speed contest, demolition, stunt activity or competitive driving event (including any practice or preparation for such an event). The exclusion also excludes medical payment coverage arising out of use of a vehicle at any facility designed for racing or high performance driving, unless it is being used for purposes other than high speed or high performance driving.

3. PART C1 – UNINSURED MOTORIST COVERAGE

The Arbitration Provision of the Uninsured Motorists Coverage is being amended to provide mutual consent between the insured and the company. Currently, the insured can demand arbitration without the consent of the company. In addition, changes have been incorporated to include the procedures for arbitration.

4. PART C2 - COMBINED UNINSURED/UNDERINSURED MOTORIST COVERAGE

The Arbitration Provision of the Uninsured Motorist Coverage is being amended to provide mutual consent between the insured and the company. Currently, the insured can demand arbitration without the consent of the company. In addition, changes have been incorporated to include the procedures for arbitration.

AMENDATORY ENDORSEMENTS – NC 00 12 AND NC 00 13

5. PART D - COVERAGE FOR DAMAGE TO YOUR AUTO

Coverage for Damage to Your Auto Exclusion 14 is being added to exclude damages while operating any **owned** or **non-owned auto** arising out of any prearranged, organized or spontaneous racing contest, speed contest, demolition, stunt activity or competitive driving event (including any practice or preparation for such an event). The exclusion also excludes damages arising out of use of any vehicle at any facility designed for racing or high performance driving, unless it is being used for purposes other than high speed or high performance driving.

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. PART D - COVERAGE FOR DAMAGE TO YOUR AUTO

Part D is amended as follows:

A. Exclusion 9 is changed by deleting the following:

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

B. 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.

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.

2. 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;

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. 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. 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).

2. Part B – MEDICAL PAYMENTS COVERAGE

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.

- 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.

3. Part C1 - UNINSURED MOTORISTS COVERAGE

A. Part C1 is amended as follows:

A. 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. The **Arbitration** provision 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**; and/or
- 2. As to the amount of compensatory damages an **insured** is legally entitled to recover from the owner or operator of an **uninsured motor vehicle**;

then such issue or issues may be settled by arbitration. Neither party is required to arbitrate. However, if both parties agree to arbitration the following procedures will be used:

- 1. Unless the **insured** and we agree otherwise, arbitration will take place in the county and state in which the **insured** lives.
- 2. Each party will select a competent arbitrator. The two so selected will select a third competent and disinterested arbitrator. If the third arbitrator is not selected within 30 days from the date the last party selects its arbitrator, the **insured** or we, upon three days notice to the other, may re-

quest a judge of a court of record to name one. The court must be in the county and state in which arbitration is to take place.

3. Each party will pay its chosen arbitrator. Each will pay half of all other expenses of arbitration. Fees and expenses of lawyers and expert witnesses are not considered arbitration expenses and are to be paid by the party hiring these persons.
4. Arbitration will be subject to the rules of procedure and evidence in the county and state in which arbitration is to take place. The arbitrators can only resolve the issues of whether the **insured** is legally entitled to recover compensatory damages from the owner or operator of an **uninsured motor vehicle** and/or the amount of compensatory damages an **insured** is legally entitled to recover from the owner or operator of an **uninsured motor vehicle**. A written decision on which two arbitrators agree will be binding on the **insured** and us.
5. As an alternative, the **insured** and we may agree to arbitrate by rules other than stated above.

4. Part C2 - COMBINED UNINSURED/UNDER-INSURED MOTORISTS COVERAGE

Part C2 is amended as follows:

- A. 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 in-

cludes 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.

- B. The **Arbitration** provision 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**; and/or
2. As to the amount of compensatory damages an **insured** is legally entitled to recover from the owner or operator of an **uninsured** or **underinsured motor vehicle**;

then such issue or issues may be settled by arbitration. Neither party is required to arbitrate.

However, if both parties agree to arbitration, the following procedures will be used:

by rules other than stated above,

1. Unless the **insured** and we agree otherwise, arbitration will take place in the county and state in which the **insured** lives.
2. Each party will select a competent arbitrator. The two so selected will select a third competent and disinterested arbitrator. If the third arbitrator is not selected within 30 days from the date the last party selects its arbitrator, the **insured** or we, upon three days notice to the other, may request a judge of a court of record to name one. The court must be in the county and state in which arbitration is to take place.
3. Each party will pay its chosen arbitrator. Each will pay half of all other expenses of arbitration. Fees and expenses of lawyers and expert witnesses are not considered arbitration expenses and are to be paid by the party hiring these persons.
4. Arbitration will be subject to the rules of procedure and evidence in the county and state in which arbitration is to take place. The arbitrators can only resolve the issues of whether the **insured** is legally entitled to recover compensatory damages from the owner or operator of an **uninsured or underinsured motor vehicle** and/or the amount of compensatory damages an **insured** is legally entitled to recover from the owner or operator of an **uninsured or underinsured motor vehicle**. A written decision on which two arbitrators agree will be binding on the **insured** and us.
5. As an alternative, the **insured** and we may agree to arbitrate

5. PART D - COVERAGE FOR DAMAGE TO YOUR AUTO

Part D is amended as follows:

- A. Exclusion 9 is changed by deleting the following:

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

- B. 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.

6. 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.

OTHER PRODUCTS ENDORSEMENT – NORTH CAROLINA PERSONAL AUTO POLICY

This Endorsement amends the Policy as follows:

PART F – GENERAL PROVISIONS

Part F is amended as follows:

- A. The following is added to end of the **Changes** provision:

Your purchase of this policy may allow:

1. You to purchase or obtain certain coverages, coverage options, coverage deductibles, coverage limits, or coverage terms on other products from us or one of our affiliated companies, subject to their applicable eligibility rules;
2. The premium or price for other products or services purchased by you, including non-insurance products or services, to vary. Such other products or services must be provided by us or one of our affiliated companies or by an organization that has entered into an agreement or contract with us or one of our affiliated companies. We and our affiliated companies do not warrant the merchantability, fitness, or quality of any product or service offered or provided by that organization.

3. The premium for this policy may vary based upon:
 - a. the purchase of other products or services from us or one of our affiliated companies;
 - b. the purchase of products or services from an organization that has entered into an agreement or contract with us or one of our affiliated companies. We and our affiliated companies do not warrant the merchantability, fitness, or quality of any product or service offered or provided by that organization; or
 - c. an agreement, concerning the insurance provided by this policy, that we or one of our affiliated companies has with an organization of which you are a member, employee, subscriber, licensee, or franchisee.