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January 29, 2002

CIRCULAR LETTER TO ALL MEMBER COMPANIES

Re: North Carolina Personal Auto Policy -
Amendatory Endorsement NC 00 12 (Ed. 01 02)

By Circular Letter to All Member Companies A-02-2 dated January 25, 2002, this Bureau notified member companies of approved revisions to Endorsements NC 00 12 (Ed. 10 99) and NC 00 13 (Ed. 06 98) - Amendatory Endorsement - North Carolina. It has been brought to our attention that an incorrect version of the "marked" copy of Endorsement NC 00 12 (Ed. 01 02) was included in the circular however, the "clean" copy of this Endorsement is correct. For your convenience, please find attached the current version of the "marked" copy of Endorsement NC 00 12 (Ed. 01 02).

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:dp

Enclosures

A-02-3

Material in [brackets] is deleted; material underlined in new.

AMENDATORY
ENDORSEMENT-
NORTH
CAROLINA
PERSONAL
AUTO
POLICY

This Endorsement amends the Policy as follows:

I. DEFINITIONS

The Definitions Section is amended as follows:

A. The third paragraph is replaced by the following:

For the purposes of this policy, a private passenger type auto, pickup or van shall be deemed to be owned by a person if leased:

1. Under a written agreement to that person; and
2. For a continuous period of at least 6 months.

B. The definition of **Your covered auto** is replaced by the following:

"Your covered auto" means:

1. Any vehicle shown in the Declarations.
2. A **newly acquired auto**.
3. Any **trailer** you own.
4. Any auto or **trailer** not owned by you while used as a temporary substitute for any other vehicle described in this definition which is out of normal use because of its:
 - a. breakdown;
 - b. repair;
 - c. servicing;
 - d. loss; or
 - e. destruction.

This provision (4.) does not apply to Part D - Coverage For Damage To Your Auto.

C. The following definition of **Newly acquired auto** is added:

"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 10,000 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**.

II. PART A - LIABILITY COVERAGE

Part A is amended as follows:

- A. Paragraphs 2. and 5. of the Supplementary Payments provision are replaced by the following:

2. Premiums on appeal bonds and bonds to release attachments in any suit we defend. We have no duty to purchase bonds in an amount exceeding our Limit of Liability, and we have no duty to apply for or furnish these bonds.
5. Expenses incurred by an insured for emergency first aid to others performed at the scene of an accident that involves any auto covered by this policy.

- B. The following is added to Exclusion A.8.:

This Exclusion A.8. does not apply to a **family member** using **your covered auto** which is owned by you.

III. PART B - MEDICAL PAYMENTS COVERAGE

Part B. is amended as follows:

- A. The following is added to Exclusion 6.

This Exclusion 6. does not apply to a **family member** using **your covered auto** which is owned by you.

- B. Exclusion 11. is replaced by the following:

11. Sustained while **occupying** any motorized vehicle having fewer than four wheels.

IV. PART C1 - UNINSURED MOTORISTS COVERAGE

Part C1 is amended as follows:

A. The following is added to Exclusion A.3.:

This Exclusion A.3. does not apply to a **family member** using **your covered auto** which is owned by you.

B. The following Exclusion C. is added:

C. This coverage shall not apply directly or indirectly to benefit any insurer or self-insurer under any of the following or any similar law:

- a. workers' compensation law; or
- b. disability benefits law.

C. The third paragraph of the Limit of Liability provision is replaced by the following:

The limit of liability otherwise applicable under this coverage shall be reduced by all sums:

1. Paid because of the **bodily injury** or **property damage** by or on behalf of persons or organizations who may be legally responsible. This includes all sums paid under Part A;
2. 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; and
3. Paid or payable because of the bodily injury under any disability benefits law or any similar law.

D. The following OUR RIGHT TO RECOVER PAYMENT provision is added:

OUR RIGHT TO RECOVER PAYMENT

A. If we make a payment under this coverage and the person to or for whom payment was made has a right to recover damages from another, we shall be subrogated to that right. Further, the

execution of a covenant not to enforce judgment by the injured party shall not preclude us from pursuing our right to sue for or otherwise recover any payment made under this coverage from anyone else who may be liable. The person to or for whom payment was made shall do:

1. Whatever is necessary to enable us to exercise our rights; and

2. Nothing after loss to prejudice them.

B. If we make a payment under this coverage and the person to or for whom payment is made recovers damages from another, that person shall:

1. Hold in trust for us the proceeds of the recovery; and

2. Reimburse us to the extent of our payment.

V. PART C2 - COMBINED UNINSURED/UNDERINSURED MOTORISTS COVERAGE

Part C2 is amended as follows:

A. The following is added to Exclusion A.3.:

This Exclusion A.3. does not apply to a **family member** using **your covered auto** which is owned by you.

B. The following is added to Exclusion C.3,;

This Exclusion C.3. does not apply to a **family member** using **your covered auto** which is owned by you.

[B.]C. The following Exclusion D. is added:

D. This coverage shall not apply directly or indirectly to benefit any insurer or self-insurer under any of the following or any similar law:

- a. workers' compensation law; or
- b. disability benefits law.

[C.]D. The Limit of Liability provision is replaced by the following:

LIMIT OF LIABILITY

The limit of bodily injury liability shown in the Declarations for each person for Combined Uninsured/Underinsured Motorists Coverage is our maximum limit of liability for all damages for **bodily injury**, including damages for care, loss of services or death, sustained by any one person in any one auto accident.

Subject to this limit for each person, the limit of bodily injury liability shown in the Declarations for each accident for Combined Uninsured/Underinsured Motorists Coverage is our maximum limit of liability for all damages for **bodily injury** resulting from any one accident. The limit of property damage liability shown in the Declarations for each accident for Combined Uninsured/Underinsured Motorists Coverage is our maximum limit of liability for all damages for **property damage** caused by an **uninsured motor vehicle** and resulting from any one accident.

This is the most we will pay for **bodily injury** and **property damage** regardless of the number of:

1. **Insureds;**
2. Claims made;
3. Vehicles or premiums shown in the Declarations;
or
4. Vehicles involved in the accident.

The limits of bodily injury liability shown in the 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;
2. 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; and
3. 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:

- a. the limit of bodily injury liability shown in the Declarations for each person for this coverage reduced by all sums described in items 1., 2. and 3. of the preceding paragraph; or
- b. the damages sustained by the **insured** for **bodily injury** reduced by all sums described in items 1., 2. and 3. in the preceding paragraph.

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.

No payment will be made for loss paid or payable to the **insured** under Part D or any policy of property insurance.

Any payment to any person under this coverage will reduce any amount that person is entitled to recover for the same damages under Part A.

This coverage is excess over and shall not duplicate any amount paid or payable under Part B.

[D.]E. The following OUR RIGHT TO RECOVER PAYMENT provision is added:

OUR RIGHT TO RECOVER PAYMENT

A. If we make a payment under this coverage and the person to or for whom payment was made has a right to recover damages from another, we shall be subrogated to that right. Further, the execution of a covenant not to enforce judgment by the injured party shall not preclude us from pursuing our right to sue for or otherwise recover any payment made under this coverage from anyone else who may be liable. The person to or for whom payment was made shall do:

1. Whatever is necessary to enable us to exercise our rights; and
2. Nothing after loss to prejudice them.

However, our rights under this paragraph do not apply against the owner or operator of an **underinsured motor vehicle** if we have been given written notice in advance of a settlement and fail to advance payment in an amount equal to the tentative settlement within 30 days following receipt of such notice.

B. If we make a payment under this coverage and the person to or for whom payment is made recovers damages from another, that person shall:

1. Hold in trust for us the proceeds of the recovery; and
2. Reimburse us to the extent of our payment.

VI. PART D - COVERAGE FOR DAMAGE TO YOUR AUTO

Part D is amended as follows:

The fourth paragraph under the Insuring Agreement is replaced by the following:

Our payment will be reduced by any deductible shown in the Declarations. The deductible will not apply to a loss caused by:

- a. fire or lightning;
- b. smoke due to a sudden, unusual and faulty operation of any fixed heating equipment serving the premises in which the auto is stored;
- c. the stranding, sinking, burning, **collision**, or derailment of any conveyance in or on which the auto is being transported.

VII. PART F - GENERAL PROVISIONS

Part F is amended as follows:

- A. The second paragraph of the Fraud In Connection With Accident Or Loss provision is replaced by the following:

This provision applies to Part A - Liability Coverage to the extent that the limits of liability exceed the minimum limits required by the Financial Responsibility Law of North Carolina.

- B. The Our Right To Recover Payment provision is replaced by the following:

OUR RIGHT TO RECOVER PAYMENT

- A. If we make a payment under this policy and the person to or for whom payment was made has a right to recover damages from another, we shall be subrogated to that right. That person shall do:

1. Whatever is necessary to enable us to exercise our rights; and
2. Nothing after loss to prejudice them.

However, our rights under this paragraph do not apply to:

1. Part B;
 2. Parts C1 and C2, as those parts contain separate provisions which state our right to recover payment under those Parts;
 3. Part D, against any person using **your covered auto** with a reasonable belief that that person is entitled to do so.
- B. If we make a payment under this policy and the person to or for whom payment is made recovers damages from another, that person shall:
1. Hold in trust for us the proceeds of the recovery; and
 2. Reimburse us to the extent of our payment.

However, our rights under this paragraph do not apply to Part B.

C. The OTHER TERMINATION provisions section is replaced by the following:

OTHER TERMINATION PROVISIONS

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; or
- c. modifies any of the stated termination reasons;

we will comply with those requirements.

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.

D. The following AUTO REPAIRS provision is added:

AUTO REPAIRS

WE shall not recommend the use of a particular motor vehicle repair service without clearly informing the claimant that:

- (i) the claimant is under no obligation to use the recommended repair service;
- (ii) the claimant may use the repair service of the claimant's choice; and
- (iii) the amount determined by us to be payable under the policy will be paid regardless of whether or not the claimant uses the recommended repair service.

This Endorsement must be attached to all Personal Auto Policies NC 00 01 (Ed. 6-96) written on and after [January 1, 1999] April 1, 2002. If a company wishes to do so, this Endorsement may be incorporated into company policies that are written on and after [January 1, 1999] April 1, 2002. Companies exercising this option shall properly identify their reprinted policy.