



February 24, 2010

CIRCULAR LETTER TO ALL MEMBER COMPANIES

Re: Revised Commercial Auto Policy Forms

The Reinsurance Facility has recently filed and received approval of the CA 01 26 04 10 – North Carolina Changes and the CA 21 16 04 10 – North Carolina Uninsured Motorists Coverage to be used with the Commercial Auto Coverage Forms for use in connection with ceded commercial auto insurance business. Insurance Services Office has previously received approval of these same forms for voluntary commercial auto insurance business.

The CA 01 26 04 10 – North Carolina Changes and the CA 21 16 04 10 – North Carolina Uninsured Motorists Coverage are attached. The Reinsurance Facility has filed these forms for use on an optional basis by its member companies.

The primary purpose of filing these forms is to afford our member companies the opportunity to utilize the same forms in insuring risks ceded to the Reinsurance Facility which are utilized in connection with voluntary commercial auto insurance business.

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

These changes are applicable to all policies effective on or after May 1, 2010.

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

Very truly yours,

F. Timothy Lucas

Personal Lines Manager

FTL:dms

RF-10-5

Attachments

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## NORTH CAROLINA CHANGES

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM  
BUSINESS AUTO PHYSICAL DAMAGE COVERAGE FORM  
GARAGE COVERAGE FORM  
MOTOR CARRIER COVERAGE FORM  
TRUCKERS COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

For a covered "auto" licensed or principally garaged in, or "garage operations" conducted in, North Carolina, the policy is changed as follows:

### A. Changes In Liability Coverage

1. The Limit of Insurance applies except that we will apply the limit shown in the Declarations to first provide the separate limits required by North Carolina law as follows:
  - a. \$30,000 for "bodily injury" to any one person caused by any one "accident";
  - b. \$60,000 for "bodily injury" to two or more persons caused by any one "accident"; and
  - c. \$25,000 for "property damage" caused by any one "accident".

This provision will not change the Limit of Insurance.

2. If the policy provides Liability Coverage only for owned "autos", a temporary substitute for one of these will also be considered a covered "auto", subject to the following provisions:
  - a. The owned "auto" must be out of service because of its breakdown, repair, servicing, loss or destruction.
  - b. The temporary substitute must be owned by someone other than you or a member of your household.
  - c. The temporary substitute must be with the permission of the owner.
  - d. The Liability Coverage for the temporary substitute is excess over any other collectible insurance.

### B. Changes In Physical Damage Coverage

Paragraph A.3., Glass Breakage – Hitting A Bird Or Animal – Falling Objects Or Missiles, is replaced by the following:

#### Glass Breakage – Hitting A Bird Or Animal – Falling Objects Or Missiles.

If you carry Comprehensive Coverage for the damaged covered "auto", we will pay for the following under Comprehensive Coverage:

- a. Glass breakage;
- b. "Loss" caused by hitting a bird or animal; and
- c. "Loss" caused by falling objects or missiles.

However, you have the option of having glass breakage caused by covered "auto's" collision or overturn and "loss" caused by hitting a bird or animal considered a "loss" under Collision Coverage.

### C. Changes In Uninsured Motorists Coverage

The Limit of Insurance applies except that we will apply the limit shown in the Declarations to first provide the separate limits required by North Carolina Law as follows:

1. \$30,000 for "bodily injury" to any one person caused by any one "accident";
2. \$60,000 for "bodily injury" to two or more persons caused by any one "accident"; and
3. \$25,000 for "property damage" caused by any one "accident".

This provision will not change the total Limit of Insurance.

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#### D. Auto Medical Payments Coverage

Exclusion C.5. of Auto Medical Payments Coverage, relating to "bodily injury" to an "insured" while working in a business of selling, servicing, repairing or parking "autos", applies only if workers' compensation benefits are available.

#### E. Changes In Garagekeepers Coverage

If the policy provides Garagekeepers Coverage, any deductible will apply only to the amount of "loss" and will not reduce the limit of insurance.

#### F. Changes In Conditions

1. Paragraph 2. of the **Cancellation Common Policy** Condition is replaced by the following:

We may cancel any type or limit of coverage provided by this policy to the extent that it cannot be ceded to the North Carolina Reinsurance Facility as follows:

- a. If this policy has been in effect for less than 60 days, we may cancel this policy by mailing or delivering to the first Named Insured written notice of cancellation at least:
- (1) 15 days before the effective date of cancellation if we cancel for nonpayment of premium; or
  - (2) 30 days before the effective date of cancellation if we cancel for any other reason.
- b. If this policy has been in effect for 60 days or more, or is a renewal of a policy we issued, we may cancel this policy prior to the:
- (1) Expiration of the policy term; or
  - (2) Anniversary date;  
stated in the policy only for one or more of the following reasons:
- (a) Nonpayment of premium. Cancellation for nonpayment of premium is not effective if the amount due is paid before the effective date set forth in the notice of cancellation.
  - (b) An act or omission by the "insured" or his or her representative that constitutes material misrepresentation or nondisclosure of a material fact in obtaining this policy, continuing this policy, or presenting a claim under this policy.
  - (c) Increased hazard or material change in the risk assumed that could not have been reasonably contemplated by the parties at the time of assumption of the risk.

- (d) Substantial breach of contractual duties, conditions, or warranties that materially affects the insurability of the risk.
- (e) A fraudulent act against us by the "insured" or his or her representative that materially affects the insurability of the risk.
- (f) Willful failure by the "insured" or his or her representative to institute reasonable loss control measures that materially affect the insurability of the risk after written notice by us.
- (g) Loss of facultative reinsurance, or loss of or substantial changes in applicable reinsurance as provided in G.S. 58-41-30.
- (h) Conviction of the "insured" of a crime arising out of acts that materially affect the insurability of the risk.
- (i) A determination by the Commissioner of Insurance that the continuation of the policy would place us in violation of the laws of North Carolina.
- (j) You fail to meet the requirements contained in our corporate charter, articles of incorporation, or bylaws, when we are a company organized for the sole purpose of providing members of an organization with insurance coverage in North Carolina.

We may cancel any type or limit of coverage provided by the policy to the extent that it can be ceded to the North Carolina Reinsurance Facility only for one or more of the following reasons by mailing to the first Named Insured at least 15 days' notice at the last address known to us:

- (1) Nonpayment of premium.
- (2) You become a nonresident of North Carolina and are not otherwise entitled to insurance through the Reinsurance Facility.
- (3) Our contract with the agent through whom this policy is written is terminated for reasons other than the quality of the agent's "insureds".
- (4) This policy is cancelled pursuant to a power of attorney given a company licensed according to the provisions of G.S. 58-56.

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To the extent that any type or limit of coverage provided by this policy cannot be ceded to the North Carolina Reinsurance facility, the following provisions are added and supersede any other provisions to the contrary:

**G. Nonrenewal**

1. If we elect not to renew this policy, we will mail or deliver to the first Named Insured shown in the Declarations written notice of nonrenewal at least 45 days prior to the:
  - a. Expiration of the policy if it has been written for one year or less; or
  - b. Anniversary date if it is a continuous policy or has been written for more than one year or for an indefinite term.
2. We need not mail or deliver the notice of nonrenewal if you have:
  - a. Insured property covered under this policy under any other insurance policy;
  - b. Accepted replacement coverage; or
  - c. Requested or agreed to nonrenewal of this policy.
3. If notice is mailed, proof of mailing will be sufficient proof of notice.
4. The written notice of cancellation or nonrenewal will:
  - a. Be mailed or delivered to the first Named Insured and any designated loss payee at their addresses shown in the policy, or if not indicated in the policy, at their last known addresses; and
  - b. State the reason or reasons for cancellation or nonrenewal.
5. To the extent that any type or limit of coverage provided by this policy can be ceded to the North Carolina Reinsurance Facility, the following provision is added and supersedes any other provision to the contrary:

**H. Nonrenewal**

We may nonrenew this policy only for one or more of the following reasons:

1. Nonpayment of premium.
2. You become a nonresident of North Carolina and are not otherwise entitled to insurance through the Reinsurance Facility.

3. Our contract with the agent through whom this policy is written is terminated for reasons other than the quality of the agent's "insureds".
4. This policy is cancelled pursuant to a power of attorney given a company licensed according to the provisions of G.S. 58-56.
5. You fail to meet the requirements contained in our corporate charter, articles of incorporation, or bylaws, when we are a company organized for the sole purpose of providing members of an organization with insurance coverage in North Carolina.

**I. Common Policy Condition B. Changes,** is changed to read as follows:

This policy contains all the agreements between you and us. Its terms may not be changed or waived except by endorsement issued by us. If a change requires a premium adjustment, we will adjust the premium for that change as of the effective date of change. If we revise this policy form to provide more coverage without additional premium charge, your policy will automatically provide the additional coverage as of the day the revision is effective in your state.

**J. Loss Condition 1<sub>2</sub>, Appraisal For Physical Damage Loss,** is replaced by the following:

**APPRAISAL FOR PHYSICAL DAMAGE LOSS**  
**Appraisal For Physical Damage Loss**

If you and we disagree on the amount of "loss", either may demand an appraisal of the "loss". In this event, each party will select a competent appraiser. The two appraisers will select a competent and impartial umpire. The appraisers will state separately the actual cash value and amount of "loss". If they fail to agree, they will submit their differences to the umpire. A decision, in writing, agreed to by any two will be binding. Each party will:

- a. Pay its chosen appraiser; and
- b. Bear the other expenses of the appraisal and umpire equally.

If we submit to an appraisal, we will still retain our right to deny the claim.

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**K. Appraisal For Property Damage**

In the event of an "accident":

1. If the claimant and we fail to agree as to the difference in fair market value of the motor vehicle immediately before and immediately after the "accident" and the difference in the claimant's and our estimate of the diminution in fair market value of the vehicle 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; and

2. Coverage for the liability claim is not in dispute; then on the written demand of either the claimant or us, each shall select a competent and disinterested appraiser and notify the other of the appraiser selected within 20 days after the demand.

Should the appraisers fail to agree, they shall then select a competent and disinterested appraiser to serve as an umpire. If the appraisers cannot agree upon an umpire within 15 days, either the claimant or we may request that a magistrate resident in the county where the insured motor vehicle is registered or the county where the "accident" occurred select the umpire.

The umpire then shall prepare a report determining the amount of "property damage" and shall file the report with us and the claimant.

The claimant or we shall have 15 days from the filing of the report to reject the report and notify the other party of such rejection. If the report is not rejected within 15 days from the filing of the report, the report shall be binding upon both the claimant and us.

Each appraiser shall be paid by the party selecting the appraiser, and the expenses of appraisal and umpire shall be paid by the parties equally.

If the umpire determines the amount of "property damage" exceeds our original estimate of diminution in fair market value, we shall pay the appraisers, the expenses of appraisal, and the umpire.

If either party elects to have an appraisal to determine the amount of "property damage", then the amount of "property damage" cannot be decided through arbitration.

**KL.Changes In General Conditions**

Paragraph 2. of the **Concealment, Misrepresentation Or Fraud** General Conditions is amended by the addition of the following:

This condition does not apply for coverage up to the minimum limits of liability required by the North Carolina Financial Responsibility Act of 1957.

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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 coverage 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.

<b>Named Insured:</b>
<b>Endorsement Effective Date:</b>

## SCHEDULE

<b>Limit Of Insurance: \$</b>	<b>Each "Accident"</b>
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>b.</b> of the definition of "uninsured motor vehicle" does not apply.

### A. Coverage

1. We will pay all sums the "insured" is legally entitled to recover as compensatory damages from the owner or driver of 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

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(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.

#### 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 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.

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## 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.

- 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.

- 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.

### 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.

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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:

**Arbitration**

- 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.

If the "insured" elects arbitration to determine the amount of "property damage", then the Appraisal For Property Damage Condition does not apply.

**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".
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" unless the limit of Uninsured Motorists Coverage shown in the Declarations or Schedule is 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.

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- 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.