



NORTH CAROLINA REINSURANCE FACILITY  
5401 Six Forks Road • Raleigh NC • 27609  
(919) 783-9790 • www.ncrb.org

April 1, 2003

CIRCULAR LETTER TO ALL MEMBER COMPANIES  
VIA E-MAIL

Re: Revised Commercial Automobile Policy Language

The Commissioner of Insurance has recently approved revisions to Endorsement CA 21 16 - NC Uninsured Motorists Coverage of the Commercial Automobile Policy Program utilized by the North Carolina Reinsurance Facility. This change is designed to track the recently approved changes in the Insurance Services Office (ISO) Commercial Automobile Coverage Policy Program.

The attached revision to the Reinsurance Facility Commercial Automobile Policy Program is for use on an optional basis by the member companies of the North Carolina Reinsurance Facility in connection with eligible commercial automobile business ceded to the Reinsurance Facility.

In that regard, please find attached a copy of the approved Endorsement CA 21 16 - North Carolina Uninsured Motorist Coverage for use in connection with commercial automobile business ceded to the North Carolina Reinsurance Facility.

This change becomes effective in accordance with the following Rule of Application:

This change becomes effective with respect to policies written on or after April 1, 2003.

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

Very truly yours,

F. Timothy Lucas

Automobile Manager

FTL:dp

Enclosures

RF-03-6

# Revised North Carolina Uninsured Motorists Coverage Endorsement

## About This Filing

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This filing is being made in order to more closely track the North Carolina General Statutes with respect to the definition of an uninsured motor vehicle.

## Revised Form

We are revising endorsement CA 21 16 06 01, North Carolina Uninsured Motorists Coverage. We have used a format of ~~striking through~~ deletions, underlining additions and inserting a revision bar in the left margin to indicate changes from the 06 01 edition to the 03 03 edition. Concurrent with implementation, the 03 03 edition will supersede the 06 01 edition.

## Background

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N.C.G.S. § 20-279.21(b)(3) provides that the term "uninsured motor vehicle" shall not include "[a] motor vehicle that is owned by the United States of America, Canada, a state or any agency of the forgoing (excluding, however, political subdivisions thereof)."

Currently, the definition of "uninsured motor vehicle" found in endorsement CA 21 16 06 01, North Carolina Uninsured Motorists Coverage, indicates, in part, that a motor vehicle that is owned by a governmental unit or agency is not included. However, no exception is made for vehicles owned by political subdivisions of these agencies or units.

## **Explanation of Changes**

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In order to more closely track the definition of an uninsured motor vehicle provided by N.C.G.S. § 20-279.21(b)(3), we have filed revised endorsement CA 21 16 03 03 to exclude vehicles owned by the United States of America, Canada, a state or any agency of the foregoing from the definition of "uninsured motor vehicle." Excepted from this exclusion are vehicles owned by political subdivisions of any of the foregoing.

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## **Important Note**

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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. 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".
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.

#### D. Limit Of Insurance

1. Regardless of the number of covered "autos", "insureds", premium 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.

#### 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 the Named Insured does not own 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.

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- (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.

**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:**

**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.

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- 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".
- 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", or
- (2) Less than the limits of this coverage, if a covered "auto" that the Named Insured owns is not involved in the "accident"; or

- 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) and (3) above.

- ~~b. Owned by a governmental unit or agency, or~~

- c. Designed for use mainly off public roads while not on public roads.

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