



March 31, 2004

CIRCULAR LETTER TO ALL MEMBER COMPANIES

Re: Revision to the Commercial Automobile Forms
Revised Uninsured Motorist Coverage Endorsement
CA 21 16 03 03

The Commissioner of Insurance has recently approved revisions to the Endorsement CA 21 16 03 03 North Carolina Uninsured Motorist Coverage. These revisions are designed to track the changes made by Insurance Services Office (ISO) for the Commercial Automobile Policy Program utilized on a voluntary basis. Enclosed is a copy of the Endorsement and an explanatory memorandum explaining the revisions.

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

These changes become effective with respect to policies written on or after July 1, 2004.

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

Very truly yours,

Wayne B. Hinton

Automobile Manager

WBH:dp

RF-04-2

North Carolina Revised Uninsured Motorist Coverage Endorsement

About This Filing

This filing is being made in response to 2003 N.C. Sess. Laws__ (Former H.B. 1023).

Revised Forms

We are revising endorsement CA 21 16 03 03, 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 03 03 edition to the 07 04 edition. Concurrent with implementation, the 07 04 edition will supersede the 03 03 edition.

Background

2003 N.C. Sess. Laws__ (Former H.B. 1023), enacted July 10, 2003, amends section 20-279.21(b) of the North Carolina General Statutes, in part, to:

- provide that "[f]or purposes of an underinsured motorist claim asserted by a person injured in an accident where more than one person is injured, a highway vehicle will also be an "underinsured highway vehicle" if the total amount actually paid to that person under all bodily injury liability bonds and insurance policies applicable at the time of the accident is less than the applicable limits of underinsured motorist coverage for the vehicle involved in the accident and insured under the owner's policy"; and
- amend the definition of an underinsured motor (UIM) vehicle to provide that "a highway vehicle shall not be an underinsured motor vehicle for the purposes of an 'underinsured motorist' claim under an owner's policy insuring that vehicle if the owner's policy insuring that vehicle provides underinsured motorist coverage with limits that are less than or equal to that policy's bodily injury liability limits."

Currently, endorsement CA 21 16 03 03, North Carolina Uninsured Motorists Coverage, provides UIM insurance on a 'limits to limits' trigger. Thus, in general, the UIM portion of the coverage is activated if the limit of the policy, applicable to the UIM vehicle, provides at least the amounts required by the financial responsibility law of North Carolina, but is less than either the applicable limits of underinsured motorists coverage for a covered auto that the named insured owns that is involved in the accident or the limits of this coverage if a covered auto that the named insured owns is not involved in the accident.

Explanation of Changes

In response to 2003 N.C. Sess. Laws__ (Former H.B. 1023), we have revised the definition of an underinsured motor vehicle in paragraph F.4.b. by adding a modified limits trigger to the definition of an "underinsured motor vehicle" in paragraph F.4.b. as follows:

- A "modified limits" trigger has been added as a new subparagraph (3) to provide that an underinsured motor vehicle includes a land motor vehicle or trailer for which the sum of all bodily injury liability bonds or policies at the time of the accident provides at least the amounts required by North Carolina law, but the limits are reduced by payments to others injured in the "accident" to an amount which is less than the Limits Of Insurance for this coverage.
- An exception has been added to provide, in general, that a UIM vehicle does not include a covered "auto", if the Uninsured Motorist Coverage limit is less than or equal to the policy's liability limits.

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determination of coverage for a specific claim. ISO does not intercede in coverage disputes arising from insurance policies. If there is any conflict between a form and any other part of the attached material, the provisions of the form apply.

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.

| | |
|------------------------|--|
| Endorsement Effective: | Countersigned By: (Authorized Representative) |
| Named Insured: | |

SCHEDULE

| | |
|--------------------|-----------------|
| LIMIT OF INSURANCE | |
| \$ | Each "Accident" |

The definition of "uninsured motor vehicle" in this endorsement applies in its entirety unless an "X" is entered below:

If an "X" is entered in this box, Paragraph **b.** of the definition of "uninsured motor vehicle" does not apply.

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

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 **a.** or **b.** below applies:
 - a. The limit 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. 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.

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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.

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.

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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.

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
- (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 the limit of Uninsured Motorist Coverage shown in the Declarations or Schedule is less than or equal to 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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