

NORTH CAROLINA RATE BUREAU

POST OFFICE BOX 176010
RALEIGH, NORTH CAROLINA 27619-6010

RAYMOND F. EVANS, JR. CPCU
General Manager

5401 SIX FORKS ROAD
RALEIGH, NORTH CAROLINA 27609-4435

TELEPHONE (919) 783-9790
FACSIMILE (919) 783-0355

JERRY G. HAMRICK
Workers Compensation Manager

F. TIMOTHY LUCAS
Personal Lines Manager

DAVID E. SINK, JR.
Accounting Manager

May 23, 2001

CIRCULAR LETTER TO ALL MEMBER COMPANIES

Re: Revised North Carolina Uninsured Motorists
Coverage Endorsement CA 21 16

The North Carolina Commissioner of Insurance has approved for use on an optional basis by the member companies of the North Carolina Rate Bureau and the North Carolina Reinsurance Facility the Insurance Services Office (ISO) Commercial Auto Coverage Forms (Business Auto, Truckers, Motor Carrier and Garage Policies and endorsements for use in connection therewith).

ISO recently filed and received approval of the North Carolina Uninsured Motorists Coverage Endorsement CA 21 16. The attached revised form has now been approved for use on an optional basis by the member companies of the North Carolina Rate Bureau and the North Carolina Reinsurance Facility.

The revised forms becomes effective in accordance with the following Rule of Application:

These changes are applicable to all policies on or after June 1, 2001.

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

Personal Lines Manager

FTL:dp

Enclosure

A-01-2

Revision of North Carolina Uninsured Motorists Coverage Endorsement

About This Filing

This filing revises endorsement CA 21 16 10 97, North Carolina Uninsured Motorists Coverage, to clarify the coverage intent of the Who Is An Insured provision, when the Named Insured is other than an individual.

Revised Form

We are revising CA 21 16 10 97, 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 10 97 edition to the 06 01 edition. Concurrent with the implementation of the 06 01 edition, we will supersede the 10 97 edition.

Background

Currently, paragraph B. Who Is An Insured contained in endorsement CA 21 16 10 97, North Carolina Uninsured Motorists Coverage, lists the various insureds covered under the coverage endorsement. The Who Is An Insured provision includes, in part, the following insureds:

1. You.
2. If you are an individual, any "family member".

A review of several court decisions in various jurisdictions indicates that there have been mixed interpretations of the term "you" in the context of a Named Insured that is not a natural person. Reasoning that a corporation or other non-individual cannot sustain bodily injury, several courts have expanded this term, to include persons, who were never intended to be insureds under UM/UIM coverage, such as employees using a nonowned auto outside the scope of employment.

Explanation of Changes

In response to a growing trend of rulings which attach an unintended meaning to the term "you" in a policy issued to a corporate insured, we are filing revised endorsement CA 21 16 06 01, North Carolina Uninsured Motorists Coverage, to clarify coverage intent as follows:

- ◆ Paragraph B. Who Is An Insured has been revised to further distinguish an individual named insured from a non-individual named insured as follows:
 - A lead-in sentence has been added immediately after the paragraph heading to state: "If the Named Insured is designated in the Declarations as:".
 - In current paragraph 1., the word "you" has been replaced with various non-individual entities, such as a partnership, a limited liability company, a corporation or any other form of organization.
 - In current paragraph 2., the sentence "If you are an individual, any 'family member'" has been replaced by new paragraph 1.a. The new paragraph describes an individual as the Named Insured and any "family members".

Reference to the terms "You" and "Your" have been replaced with the terms "Named Insured" and/or "Individual Named Insured" throughout the endorsement.

Finally, we made the following editorial revisions:

- ◆ Paragraph 2.a. in the Insuring Agreement was revised to state: "The limit of any applicable liability bonds or policies have been exhausted by payment of judgments or settlements; or".
- ◆ In paragraph F.4. of the defined term "uninsured motor vehicle", reference to "vehicle" has been revised to track the lead-in reference "land motor vehicle or trailer" for consistency purposes.
- ◆ Quotation marks have been placed around the word "trailer" to identify that it is a defined term.

Copyright Explanation

The material distributed by Insurance Services Office, Inc. is copyrighted. All rights reserved. Possession of these pages does not confer the right to print, reprint, publish, copy, sell, file or use same in any manner without the written permission of the copyright owner.

Important Note

Insurance Services Office, Inc. (ISO) makes available advisory services to property/casualty insurers. ISO has no adherence requirements. ISO policy forms and explanatory materials are intended solely for the information and use of ISO's participating insurers, their representatives and state regulators. Neither ISO's general explanations of policy intent nor opinions expressed by ISO's staff necessarily reflect every insurer's view or control any insurer's 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:
Named Insured:	(Authorized Representative)

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 payments/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

R
E
V
I
S
E
D
□

- (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

- ~~1. You.~~
- ~~2. If you are an individual, any "family member".~~
- ~~3. 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.~~
- ~~4. Anyone for damages he or she is entitled to recover because of "bodily injury" sustained by another "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.

R
E
V
I
S
E
D

b. Any insurance we provide with respect to a vehicle ~~you~~ 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.

(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 ~~your~~ the Named Insured's behalf, we are entitled to recover what we paid from other parties. ~~You~~ The Named Insured must transfer rights of recovery against others to us. ~~You~~ 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 ~~you~~ the Named Insured recovers from another party, ~~you~~ 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:

R

E

V

I

S

E

D

(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.

F. Additional Definitions

As used in this endorsement:

1. "Family member" means a person related to ~~you~~ an individual Named Insured by blood, marriage, or adoption who is a resident of ~~your~~ 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 ~~you~~ the Named Insured owns involved in the "accident", or

(2) Less than the limits of this coverage, if a covered "auto" that ~~you~~ 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 a governmental unit or agency; or

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

R
E
V
I
S
E
D