



September 8, 2009

CIRCULAR LETTER TO ALL MEMBER COMPANIES

Re: Personal Automobile Policy Revisions

The Commissioner of Insurance has approved on behalf of all member companies of the North Carolina Rate Bureau, revisions to the Personal Auto Policy Program. This revision is amending the mandatory Endorsement NC 00 13 10 09 - Amendatory Endorsement which was announced earlier this year by Circular Letter To All Member Companies dated June 26, 2009. This revision replaces the previously announced NC 00 13 10 09 - Amendatory Endorsement.

Please find attached a copy of Endorsement NC 00 13 01 10 - Amendatory Endorsement which is being amended as a result of Senate Bill 660. With this revision language is being introduced regarding diminished value for liability claims.

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

This change is applicable to all new and renewal policies written on or after January 1, 2010.

The North Carolina Personal Auto Policy Program contains copyrighted material of Insurance Services Office used with their permission under limited copyright license granted by Insurance Services Office to the North Carolina Rate Bureau. Under the terms of the limited copyrighted license, the Rate Bureau has copyrighted the materials included in the Personal Auto Policy Program, including the manual and all forms, and member companies are advised that when they reprint, copy, or otherwise use any materials included in this program the following notice must appear on the materials: "Copyright, North Carolina Rate Bureau, 2010."

This program may be used only by members of the North Carolina Rate Bureau and may be used only in North Carolina.

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:dms

Attachment

A-09-10

Amendatory Endorsement

This endorsement is a part of your policy. Except for the changes it makes, all other terms of the policy remain the same and apply to this endorsement.

1. Part A - LIABILITY COVERAGE

A. Part A is amended as follows:

Exclusion 2. is deleted and replaced by the following:

We do not provide Liability Coverage for any **insured**:

2. For **property damage** to property:
 - a. owned in whole or in part by that **insured**; or
 - b. being transported by that **insured**;

B. The following provision is added following the **Other Insurance** provision:

Appraisal – Diminution in Value

If there is no dispute between the claimant and us regarding the insured's liability for the property damage to the claimant's vehicle, but:

- a. the claimant and we fail to agree as to the difference in fair market value of the vehicle immediately before the accident and immediately after the accident; and
- b. the difference in the claimant's and our estimate of the diminution in fair market value 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; then

on the written demand of either the claimant or us, the dispute regarding the amount of the diminution in value shall be determined by appraisal in accordance with G.S. 20-279.21(d1).

2. Part C1 - UNINSURED MOTORISTS COVERAGE

Part C1 is amended as follows:

A. The third paragraph of **Limit of Liability** is deleted and replaced by the following:

The limits of bodily injury liability shown in the [Schedule or] 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; and
2. 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:

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

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.

B. The first paragraph of **Arbitration** is deleted and replaced by the following:

If we and an **insured** do not agree:

- 1. Whether that **insured** is legally entitled to recover compensatory damages from the owner or operator of an **uninsured motor vehicle**; or
- 2. As to the amount of such compensatory damages;

then the **insured** may demand to settle these disputed issues by arbitration. If an **insured** files a lawsuit against us or an owner or operator of an **uninsured motor vehicle** seeking damages that are the subject of the claim for Uninsured Motorists Coverage under this policy, the **insured** shall have the right to demand arbitration only if such lawsuit is filed within the time limit required by the law of the state where the accident occurred for filing a lawsuit against the owner or operator of the **uninsured motor vehicle** for the damages arising out of the accident and only if the **insured** gives us a written demand for arbitration within (30) days after the filing of such lawsuit.

C. Item 5. of **Arbitration** is deleted and the remaining paragraphs are renumbered appropriately.

3. **Part C2 - COMBINED UNINSURED/UNDER-INSURED MOTORISTS COVERAGE**

Part C2 is amended as follows:

A. The fourth and fifth paragraphs of **Limit of Liability** are deleted and replaced by the following:

The limits of bodily injury liability shown in the [Schedule or] 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; and
- 2. 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:

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

B. The first paragraph of **Arbitration** is deleted and replaced by the following:

If we and an **insured** do not agree:

- 1. Whether that **insured** is legally entitled to recover com-

pensatory damages from the owner or operator of an **uninsured motor vehicle** or **underinsured motor vehicle**; or

2. As to the amount of such compensatory damages;

then the **insured** may demand to settle these disputed issues by arbitration.

For purposes of an:

1. Uninsured Motorists Coverage claim, if an **insured** files a lawsuit against us or an owner or operator of an **uninsured motor vehicle** seeking damages that are the subject of the claim for Uninsured Motorists Coverage under this policy, the **insured** shall have the right to demand arbitration only if such lawsuit is filed within the time limit required by the laws of the state where the accident occurred for filing a lawsuit against the owner or operator of the **uninsured motor vehicle** for the damages arising out of the accident and only if the **insured** gives us a written demand for arbitration within thirty (30) days after the filing of such lawsuit.
2. Underinsured Motorists Coverage claim, if an **insured** files a lawsuit against an owner or operator of an **underinsured motor vehicle** seeking damages that are the subject of the claim for Underinsured Motorists Coverage under this policy, the **insured** shall have the right to demand arbitration only if the **insured** gives us a written demand for arbitration within thirty (30) days after the later of:
 - a. The date we advance payment to the **insured** in an amount equal to a ten-

tative settlement between the **insured** and the owner or operator of the **underinsured motor vehicle**;

- b. The date any applicable liability bonds or policies have been exhausted by payments of judgments or settlements; or
- c. The date the **insured** files a lawsuit against an owner or operator of an **underinsured motor vehicle** seeking damages that are the subject of the claim for Underinsured Motorists Coverage under this policy, provided that such lawsuit is filed within the time limit required by the laws of the state where the accident occurred for filing a lawsuit against the owner or operator of the **underinsured motor vehicle** for the damages arising out of the accident.

C. Item 5. of **Arbitration** is deleted and the remaining paragraphs are renumbered appropriately.

4. PART D - COVERAGE FOR DAMAGE TO YOUR AUTO

Part D is amended as follows:

Exclusion 9 is changed by deleting the following:

This exclusion does not apply to the interests of Loss Payees in **your covered auto**.

5. Part F – GENERAL PROVISIONS

Part F is amended as follows:

Termination – Cancellation, Non-renewal, Automatic Termination, Other Termination Provisions is

amended by adding the following to paragraph 4 of the **Cancellation Provision**:

- g. The named **insured** is no longer an eligible risk under G.S. 58-37-1.
- h. Any other reason permitted by the North Carolina General Statutes.

Other Termination Provisions is deleted and replaced by the following:

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

we will comply with those requirements and this policy shall be deemed amended to include any such change in the law.
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.