



GEORGE E. PATAKI  
Governor

STATE OF NEW YORK  
INSURANCE DEPARTMENT  
160 WEST BROADWAY  
NEW YORK, NEW YORK 10013

EDWARD J. MUHL  
Superintendent of Insurance

Supplement No. 1  
Circular Letter No. 15 (1995)  
April 4, 1996

TO: ALL INSURERS LICENSED TO WRITE MOTOR VEHICLE LIABILITY INSURANCE IN NEW YORK STATE AND ALL RATE SERVICE ORGANIZATIONS WHICH FILE POLICY FORMS AND ENDORSEMENTS ON BEHALF OF MOTOR VEHICLE LIABILITY INSURERS

RE: IMPLEMENTATION OF CHAPTER 305 OF THE LAWS OF 1995 INCREASING THE REQUIRED MINIMUM LIMITS OF LIABILITY FOR MOTOR VEHICLE INSURANCE

**- REVISED ENDORSEMENT FOR UNINSURED MOTORISTS COVERAGE**

The Superintendent of Insurance has approved the revised uninsured motorists coverage endorsement form. This endorsement was prescribed in accordance with subsection (b) of Section 5206 of the Insurance Law by the Motor Vehicle Accident Indemnification Corporation (MVAIC). The form embodies the coverage required by subsection (f)(1) of Section 3420 of the Insurance Law (uninsured motorists coverage). The revised form containing the prescribed language is attached hereto.

Insurers were advised in Department Circular Letter No. 15 (1995) to notify all insureds who have uninsured motorists coverage, that pursuant to Chapter 305 of the Laws of 1995, for accidents occurring on or after January 1, 1996, the statutory uninsured motorists coverage limits increased to \$25,000 for injury to one person in a motor vehicle accident and to \$50,000 for injury to two or more persons in any one accident. Minimum statutory uninsured motorist limits continue to be \$50,000 for any injury resulting in death sustained by any one person in any one accident, and \$100,000 for any injuries resulting in death sustained by two or more persons in any one accident.

The original circular letter also advised all insurers to file the revised "Automobile Accident Indemnification Coverage - New York" Endorsement (revised as the "Uninsured Motorists Endorsement - New York"), as soon as MVAIC prescribes and obtains approval for it. This supplement modifies such form filing requirement by extending the implementation date.

**Implementation**

All insurers licensed to write motor vehicle insurance must file a form, for approval no later than July 15, 1996, containing the prescribed language. Rate service organizations may file the prescribed language on behalf of their members and subscribers.

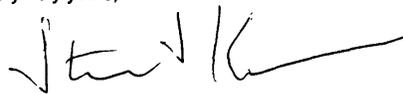
The revised form shall be used on all new and renewal motor vehicle insurance policies effective September 1, 1996 and subsequent which do not provide Supplementary Uninsured Motorists Coverage.

Since all insureds affected by the statutory change in limits were advised of the change pursuant to Circular Letter No. 15 (1995) and since no other statutory change is being made to this endorsement, retroactive endorsements are not required to be issued. The July 15th date for filing and the September 1st date for implementation were selected to give the industry sufficient time to make any necessary changes to their systems.

Insurers may, at their option, file for an earlier implementation date.

Please direct any questions concerning this Circular Letter to Ms. Benita Hirsch, Principal Examiner, Property/Casualty Bureau, 160 West Broadway, New York, New York 10013 (212-602-0356).

Very truly yours,

A handwritten signature in black ink, appearing to read 'Stewart Keir', with a long horizontal flourish extending to the right.

STEWART KEIR, CPCU, CFE, CIE  
ASSISTANT DEPUTY SUPERINTENDENT AND CHIEF  
PROPERTY/CASUALTY BUREAU

**UNINSURED MOTORISTS ENDORSEMENT - NEW YORK**

We, the Company, agree with you, as the named insured, in return for the payment of the premium for this coverage to provide you with Uninsured Motorist (UM) Coverage, subject to the following terms and conditions:

**INSURING AGREEMENTS**

**1. Damages for Bodily Injury Caused by Uninsured Motor Vehicles.**

We will pay all sums which the insured, as defined herein, or the insured's legal representative shall be legally entitled to recover as damages from the owner or operator of an uninsured motor vehicle because of bodily injury sustained by the insured, and caused by accident arising out of such uninsured motor vehicle's ownership, maintenance or use, subject to the Exclusions, Conditions, Limits and other provisions of this UM endorsement; provided, for the purposes of this coverage, determination as to whether the insured or the insured's representative is legally entitled to recover such damages, and if so the amount thereof, shall be made by agreement between the insured or the insured's representative and us or, if they fail to agree, by arbitration.

**2. Definitions.** For purposes of this UM endorsement, the following terms shall have the following meanings:

(a) **Insured.** The unqualified term "insured" means:

- (1) You, as the named insured and, while residents of the same household, your spouse and the relatives of either you or your spouse;

- (2) Any other person while occupying:
    - (i) A motor vehicle owned by the named insured or, if the named insured is an individual, such spouse and used by or with the permission of either, or
    - (ii) Any other motor vehicle while being operated by the named insured or such spouse, except a person occupying a motor vehicle not registered in the State of New York, while used as a public or livery conveyance; and
  - (3) Any person, with respect to damages such person is entitled to recover because of bodily injury to which this coverage applies sustained by an insured under sub-paragraphs (1) or (2) above.
- (b) **Uninsured Motor Vehicle.** The term "uninsured motor vehicle" means a motor vehicle that through its ownership, maintenance or use, results in bodily injury to an insured, and for which:
- (1) No bodily injury liability insurance policy or bond applies to such vehicle (including a vehicle that was stolen, operated without the owner's permission, or unregistered) at the time of the accident; or
  - (2) Neither the owner nor driver can be identified, including a hit-and-run vehicle, and which causes bodily injury to an insured by physical contact

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with the insured or with a motor vehicle occupied by the insured at the time of the accident, provided that :

- (i) The insured or someone on the insured's behalf shall have reported the accident within 24 hours or as soon as reasonably possible to a police, peace or judicial officer or to the Commissioner of Motor Vehicles and shall have filed with us a statement under oath that the insured or the insured's legal representative has a cause or causes of action arising out of such accident for damages against a person or persons whose identity is unascertainable, and setting forth the facts in support thereof; and
  - (ii) At our request, the insured or the insured's legal representative makes available for inspection the motor vehicle the insured was occupying at the time of the accident, or
- (3) There is a bodily injury liability insurance coverage or bond applicable to such motor vehicle at the time of the accident, but:
- (i) The amount of such insurance coverage or bond is less than the UM limits of this policy; or
  - (ii) The amount of such insurance coverage or bond has been reduced, by payments to other persons

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- injured in the accident to an amount less than the UM limits of this policy; or
- (iii) The insurer writing such insurance coverage or bond denies coverage.
- (4) The term "uninsured motor vehicle" does not include a motor vehicle that is:
- (i) Insured under the liability coverage of this policy; or
- (ii) Owned by you, as the named insured and, while residents of the same household, your spouse and relatives of either you or your spouse; or
- (iii) Self-insured within the meaning of the financial responsibility law of the state in which the motor vehicle is registered, or any similar state or federal law, to the extent that the required amount of such coverage is equal to, or greater than, the UM limits of this policy; or
- (iv) Owned by the United States of America, Canada, a state, a political subdivision of any such government, or an agency of any of the foregoing; or
- (v) A land motor vehicle or trailer, while located for use as a residence or premises and not as a vehicle, or while operated on rails or crawler-treads; or

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(vi) A farm type vehicle or equipment designed for use principally off public roads, except while actually upon public roads.

(c) **Hit-and-Run Motor Vehicle.** The term "hit-and-run motor vehicle" means a motor vehicle which causes bodily injury to an insured arising out of physical contact of such motor vehicle with the insured or with a motor vehicle which the insured is occupying at the time of the accident, provided:

- (1) there cannot be ascertained the identity of either the operator or the owner of such "hit-and-run motor vehicle";
- (2) the insured or someone on his behalf shall have reported the accident within 24 hours or as soon as reasonably possible to a police, peace or judicial officer or to the Commissioner of Motor Vehicles, and shall have filed with the company within 90 days thereafter a statement under oath that the insured or his legal representative has a cause or causes of action arising out of such accident for damages against a person or persons whose identity is unascertainable, and setting forth the facts in support thereof; and
- (3) at our request, the insured or his legal representative makes available for inspection the motor

vehicle which the insured was occupying at the time of the accident.

- (d) **Bodily Injury.** The term "bodily injury" means bodily harm, including sickness, disease or death resulting therefrom.
- (e) **Occupying.** The term "occupying" means in, upon, entering into, or exiting from a motor vehicle.
- (f) **State.** The term "state" includes the District of Columbia, a territory or possession of the United States, and a province of Canada.

3. **Territory.** The coverage provided by this UM endorsement applies only to accidents which occur within the State of New York.

**EXCLUSIONS**

This UM coverage does not apply:

1. To bodily injury to an insured while operating a motor vehicle in violation of an order of suspension or revocation; or to care or loss of services recoverable by an insured because of such bodily injury so sustained.
2. To bodily injury to an insured, or care or loss of services recoverable by an insured, with respect to which such insured, the insured's legal representatives or any person entitled to payment under this UM coverage shall, without our written consent, make any settlement with or prosecute to judgment any action against any person or organization who may be legally liable therefor, but this provision shall be subject to Condition 8 of this UM endorsement.

3. To bodily injury to an insured incurred while occupying a motor vehicle owned by that insured, if such motor vehicle is not insured for at least the minimum bodily injury liability limits and UM limits required by law by the policy under which a claim is made, or is not a newly acquired or replacement motor vehicle covered under the terms of this policy.

4. So as to inure directly or indirectly to the benefit of any workers' compensation or disability benefits carrier or any person or organization qualifying as a self-insurer under any workers' compensation or disability benefits law or any similar law.

5. For non-economic loss, resulting from bodily injury to an insured and arising from an accident in New York State, unless the insured has sustained serious injury as defined in Section 5102(d) of the New York Insurance Law.

**CONDITIONS**

1. **Policy Provisions.** None of the Insuring Agreements, Exclusions or Conditions of the policy shall apply to this UM coverage except "Duties After an Accident or Loss"; "Fraud", and "Termination" if applicable.

2. **Premium.** If during the policy period the number of motor vehicles owned by the named insured or spouse and registered in New York or the number of New York dealer's license plates or transporter plates issued to the named insured changes, the named insured shall notify us during the policy period of any change and the premium shall be adjusted as of the date of such change in accordance with the manuals in use by us. If the earned premium

thus computed exceeds the advance premium paid, the named insured shall pay the excess to us; if less, we shall return to the named insured the unearned portion paid by such insured.

3. **Notice and Proof of Claim.** Within 90 days or as soon as practicable, the insured or other person making claim shall give us written notice of claim under this UM endorsement.

As soon as practicable after our written request, the insured or other person making any claim shall give us written proof of claim, under oath if required, including full particulars of the nature and extent of the injuries, treatment, and other details we need to determine the UM amount payable hereunder.

The insured and every other person making claim hereunder shall, as may reasonably be required, submit to examinations under oath by any person named by us and subscribe the same. Proof of claim shall be made upon forms we furnish unless we fail to furnish such forms within 15 days after receiving notice of claim.

4. **Medical Reports.** The injured person shall submit to physical examinations by physicians we select when and as often as we may reasonably require. The insured, or in the event of the insured's incapacity, such insured's legal representative, or in the event of the insured's death, the insured's legal representative or the person or persons entitled to sue therefor, shall upon our request authorize us, when and as often as we may reasonably require, to obtain relevant medical reports and copies of records.

5. **Notice of Legal Action.** If the insured or such insured's legal representative brings any lawsuit against any persons or

organizations legally responsible for the use of a motor vehicle involved in the accident, a copy of the summons and complaint or other process served in connection with the lawsuit shall be forwarded immediately to us by the insured or the insured's legal representative.

6. **UM Limit of Liability.** The UM limit payable under this UM endorsement shall be:

- (a) The limit of our liability for all damages, including damages for care or loss of services, because of bodily injury sustained by one person as the result of any one accident is \$25,000 per person and, subject to this per person limit, the total limit of our liability for all damages, including damages for care or loss of services, because of bodily injury sustained by two or more persons, as the result of any one accident is \$50,000.
- (b) If the bodily injury results in death, the limit of our liability shall be \$50,000 for such bodily injury resulting in death sustained by one person as the result of any one accident and, subject to this limit for each person, \$100,000 for such bodily injury resulting in death sustained by two or more persons as the result of any one accident.
- (c) Any amount payable under the terms of this UM endorsement, including amounts payable for care or loss of services, because of bodily injury sustained by one person, shall be reduced by (1) all sums paid to one or

more insureds on account of such bodily injury by or on behalf of (a) the owner or operator of the uninsured motor vehicle and (b) any other person or persons jointly or severally liable together with such owner or operator for such bodily injury, and (2) all sums paid to one or more insureds on account of bodily injury sustained in the same accident under any insurance or statutory benefit similar to that provided by this UM endorsement.

7. **Other Insurance.** With respect to bodily injury to an insured while occupying a motor vehicle not owned by the named insured, the coverage under this UM endorsement shall apply only as excess insurance over any other similar insurance available to such insured and applicable to such motor vehicle as primary insurance, and this UM endorsement shall then apply only in the amount by which the limit of liability for this coverage exceeds the applicable limit of liability of such other insurance.

Except as provided in the foregoing paragraph, if there is other similar insurance available to the insured and applicable to the accident, the damages shall be deemed not to exceed the higher of the applicable limits of liability of this coverage and such other insurance, and we shall not be liable for a greater proportion of any loss to which this coverage applies than the limit of liability hereunder bears to the sum of the applicable limits of liability of this UM endorsement and such other insurance.

8. **Release or Advance.** In accidents involving the insured and one or more negligent parties, if such insured settles with any

such party for the available limit of the motor vehicle bodily injury liability coverage of such party, release may be executed with such party after thirty calendar days actual written notice to us, unless within this time period we agree to advance such settlement amounts to the insured in return for the cooperation of the insured in our lawsuit on behalf of the insured.

We shall have a right to the proceeds of any such lawsuit equal to the amount advanced to the insured and any additional amounts paid under this UM coverage. Any excess above those amounts shall be paid to the insured.

An insured shall not otherwise settle with any negligent party, without our written consent, such that our rights would be impaired.

9. **Non-Duplication.** This UM coverage shall not duplicate any of the following:

- (a) Benefits payable under workers' compensation or other similar laws;
- (b) Non-occupational disability benefits under article nine of the Workers' Compensation Law or other similar law;
- (c) Any amounts recovered or recoverable pursuant to article fifty-one of the New York Insurance Law or any similar motor vehicle insurance payable without regard to fault;
- (d) Any valid or collectible motor vehicle medical payments insurance; or

(e) Any amounts recovered as bodily injury damages from sources other than motor vehicle bodily injury insurance policies or bonds.

10. **Arbitration.** If we do not agree with the insured or the insured's representative making claim hereunder that the insured is legally entitled to recover damages from the owner or operator of an uninsured motor vehicle because of bodily injury to the insured, or do not agree as to the amount of payment which may be owing under this UM endorsement then, upon written demand of either the claimant or us, the matter or matters upon which we do not agree with such person shall be settled by arbitration in accordance with the rules and procedures of the American Arbitration Association prescribed or approved by the Superintendent of Insurance for this purpose. Judgment upon the award rendered by the arbitrators may be entered in any court having jurisdiction thereof. Such person and we each agree to consider itself bound and to be bound by any award made by the arbitrators pursuant to this UM endorsement.

11. **Subrogation.** If we make a payment under this UM coverage, we have the right to recover the amount of this payment from any person legally responsible for the bodily injury or loss of the person to whom, or for whose benefit such payment was made to the extent of the payment. The insured or any person acting on behalf of the insured must do whatever is necessary to transfer this right of recovery to us. Except as permitted by Condition 8, such person shall do nothing to prejudice this right.

12. **Payment of Loss by Company.** We shall pay any amount due under this UM endorsement to the insured or, at our option, to a person authorized by law to receive such payment or to a person legally entitled to recover the damages which the payment represents.

13. **Action Against Company.** No lawsuit shall lie against us unless, as a condition precedent thereto, the insured or the insured's legal representative has first fully complied with all the terms of this UM endorsement.

14. **Assignment.** Assignment of interest under this UM endorsement shall not bind us until our consent is endorsed hereon.

15. **Survivor Rights.** If you or your spouse, if a resident of the same household, dies, this UM coverage shall cover:

- (a) The survivor as named insured;
- (b) The decedent's legal representative as named insured, but only while acting within the scope of such representative's duties as such; and
- (c) Any relative who was an insured at the time of such death.

16. **Policy Period-Termination.** This UM coverage applies only to accidents which occur on and after the effective date hereof and during the policy period and shall terminate upon (1) termination of the policy of which it forms a part or (2) termination of New York registration on all motor vehicles owned by the named insured or spouse.

This UM endorsement must be attached to the Change Endorsement when issued after the policy is written.