

FORMS – APPROVED

MARCH 9, 2023

COMMERCIAL AUTOMOBILE

LI-CA-2023-077

## VIRGINIA REVISED AND NEW UNINSURED MOTORISTS COVERAGE ENDORSEMENTS APPROVED

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### KEY MESSAGE

The Virginia State Corporation Commission Bureau of Insurance (BOI) has approved forms filing [CA-2023-OUM1](#).

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### BACKGROUND

In circular [LI-CA-2023-072](#), we announced, in part, that, in response to former S.B. 754, we had:

- Revised CA 21 21, Uninsured Motorists Coverage Endorsement (Virginia); and
- Introduced CA 31 44, Uninsured Motorists Coverage Endorsement (Alternative Coverage) (Virginia).

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### INSURANCE DEPARTMENT ACTION

The Virginia BOI has approved filing [CA-2023-OUM1](#).

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### FUTURE ISO ACTION

Please be advised that companion rules filing CA-2023-RUM1 is still pending. Companion loss cost filing CA-2023-RUMLC will be filed in the near future.

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### EFFECTIVE DATE

As established by Virginia State Corporation Commission Bureau of Insurance Administrative Order Number 12167, dated March 3, 2023, these changes are approved and available for use by all insurers for policies written on and after July 1, 2023.

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### COMPANY ACTION

Refer to Virginia State Corporation Commission Bureau of Insurance Administrative Order Number 12167, dated March 3, 2023, for further details regarding company acting requirements.

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### RATING SOFTWARE IMPACT

New attributes being introduced with this revision:

- A new edition date of an existing form number is being introduced.
- A new form is being introduced.

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## POLICYHOLDER NOTIFICATION

If you decide to implement this revision, you should check all applicable laws for the state(s) to which this revision applies, to determine whether or not a specific policyholder notice requirement may apply. Please note that circular [LI-CL-2023-005](#) contains the ISO Guide To Renewals With Changed Conditions For Commercial Lines, which is available only as a guide to assist participating companies in complying with various conditional renewal statutes or regulations, for the major commercial lines of insurance serviced by ISO. The information in the Guide does not necessarily reflect all requirements or exceptions that may apply, and it is not intended as a substitute for your review of all applicable statutes and regulations concerning policyholder notification.

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## REVISION DISTRIBUTION

We will issue a Notice to Portfolioholders with an edition date of 7-23 (or the earliest possible subsequent date), along with any new and/or revised forms.

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## RELATED RULES REVISION

In a future circular, we will announce the implementation of corresponding rules revision CA-2023-RUM1.

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## RELATED LOSS COSTS REVISION

In a future circular, we will announce the filing and implementation of corresponding loss costs revision CA-2023-RUMLC.

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## REFERENCE(S)

- [LI-CA-2023-072](#) (03/07/2023) Virginia Revised And New Uninsured Motorists Coverage Endorsements Filed
- [LI-CL-2023-005](#) (02/21/2023) Commercial Lines Revised Lead Time Requirements Listing

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## ATTACHMENT(S)

Final copies of [CA 21 21 07 23](#) and [CA 31 44 07 23](#)

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We provide participating insurers with information concerning the jurisdictions for which our products and services are distributed. Even in those jurisdictions, each insurer must determine what filing requirements, if any, apply and whether those requirements have been satisfied.

Now, as in the past, all of our products and services are advisory, and are made available for optional use by participating insurers as a matter of individual choice. Your company must decide for itself which, if any, ISO products or services are needed or useful to its operation and how those selected for use should be applied. We urge that you be guided by the advice of your attorneys on the legal requirements.

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## CONTACT INFORMATION

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**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **UNINSURED MOTORISTS ENDORSEMENT (VIRGINIA)**

**Any coverage that may be available subject to the provisions of this endorsement for damages caused by an "accident" with an "underinsured motor vehicle" shall be paid in addition to any bodily injury liability or property damage liability coverage "available for payment".**

### **A. Words And Phrases With Special Meaning**

The following words and phrases have special meaning throughout this endorsement and appear in quotation marks when used:

1. "You" and "your" mean the person or organization shown as the named insured in ITEM ONE of the Declarations.
2. "We", "us" and "our" mean the company providing insurance.
3. "Accident" includes continuous or repeated exposure to the same conditions resulting in "bodily injury" or "property damage" the "insured" neither expected nor intended.
4. "Available for payment" means the liability insurance coverage applicable to the claim of the injured person for "bodily injury" or "property damage" reduced by the payment of any other claims arising out of the same "accident".
5. "Bodily injury" means bodily injury, sickness or disease including death resulting from any of these.
6. "Covered auto" means a motor vehicle, or a "temporary substitute", with respect to which the "bodily injury" or "property damage" liability coverage of the Policy applies.
7. "Family member" means a person related to "you" by blood, marriage or adoption who is a resident of "your" household, including a ward or foster child.
8. "Insured" means any person or organization qualifying as an insured in the Who Is An Insured section of this endorsement, including the personal representative of any insured. Except with respect to "our" limit of liability, the insurance afforded applies separately to each insured who is seeking coverage under this endorsement.
9. "Loss" means direct and accidental damage or loss.
10. "Property damage" means damage to or loss of use of tangible property.
11. "Occupying" means in, upon, using, getting in, on, out of or off.
12. "Temporary substitute" means a motor vehicle that is being used in place of a "covered auto". The "covered auto" must be out of service because of its breakdown, repair, servicing, loss or destruction.
13. "Underinsured motor vehicle" means a motor vehicle, when, and to the extent that, the total amount of "bodily injury" and "property damage" coverage applicable to the operation or use of the motor vehicle and "available for payment" for such "bodily injury" or "property damage", including all bonds or deposits of money or securities made pursuant to Article 15 (Section 46.2-435 et seq.) of Chapter 3 of Title 46.2 of the Code of Virginia, is less than the total amount of damages sustained by any person injured as a result of the operation or use of the motor vehicle.
14. "Uninsured motor vehicle" means a motor vehicle:
  - a. For which:
    1. There is no "bodily injury" liability insurance and "property damage" liability insurance in the amounts specified by Section 46.2-472 of the Code of Virginia.
    2. There is such insurance but the insurer writing the insurance denies coverage for any reason whatsoever, including failure or refusal of the insured to cooperate with the insurer.
    3. There is no bond or deposit of money or securities in lieu of such insurance.
    4. The owner of the vehicle has not qualified as a self-insurer under the provisions of Section 46.2-368, or

5. The owner or operator of the motor vehicle is immune from liability for negligence under the laws of the Commonwealth or the United States. A motor vehicle shall be deemed uninsured if its owner or operator is unknown.

If the owner or operator of any motor vehicle that causes "bodily injury" or "property damage" to the "insured" is unknown, and if the damage or injury results from an "accident" where there has been no contact between that motor vehicle and the motor vehicle occupied by the "insured", or where there has been no contact with the person of the "insured" if the "insured" was not "occupying" a motor vehicle, then for the "insured" to recover under this endorsement pursuant to Paragraph a. of this definition, the "accident" shall be reported promptly to either:

1. The insurer; or
2. A law-enforcement officer having jurisdiction in the county or city in which the "accident" occurred. If it is not reasonably practicable to make the report promptly, the report shall be made as soon as reasonably practicable under the circumstances.

b. Which is an "underinsured motor vehicle".

#### **B. We Will Pay**

"We" will pay in accordance with the Virginia Uninsured Motorists Law, all sums the "insured" is legally entitled to recover as damages from the owner or operator of an "uninsured motor vehicle".

#### **C. We Will Not Cover – Exclusions**

This insurance does not apply to:

1. A "bodily injury" or "property damage" claim settled by the "insured" without "our" consent with anyone who may be legally liable.
2. The direct or indirect benefit of any insurer of property.
3. The first \$200 of the total amount of "property damage" as the result of any one "accident" involving an unidentifiable driver or owner of an "uninsured motor vehicle". This exclusion does not apply if the owner or operator of the "uninsured motor vehicle" causing the damage can be identified.
4. Anyone using the "covered auto" without a reasonable belief that the person is entitled to do so.

#### **D. Who Is Insured**

1. "You" or any "family member".
2. Anyone else "occupying" a "covered auto".
3. Anyone for damages he or she is entitled to recover because of "bodily injury" to which this coverage applies, sustained by another "insured" under Paragraph 1. or 2.

#### **E. Our Limit Of Liability**

1. Regardless of the number of "covered autos", "insureds", claims made or motor vehicles involved in the "accident", the most "we" will pay for all damages resulting from any one "accident" is the limit of Uninsured Motorists Insurance shown in the Schedule or Declarations. However, if more than one "covered auto" is involved in the same "accident", the limit of Uninsured Motorists Insurance shown in the Schedule or Declarations will apply separately to each of these "covered autos". Such limit of insurance shall first provide the separate limits required by the Virginia Motor Vehicle Safety Responsibility Act.
2. Except with respect to an "underinsured motor vehicle", damages otherwise payable under this coverage with respect to an employee of a self-insured employer, shall be reduced by all sums paid or payable because of "bodily injury" under a workers' compensation law.

#### **F. Conditions**

The conditions applicable to this coverage are as follows:

##### **1. Other Insurance**

- a. For "property damage", Uninsured Motorists Insurance is excess over all other collectible insurance of any kind applicable to the "property damage".
- b. If the injured person is entitled to uninsured motorists coverage or underinsured motorists coverage under more than one policy, the following order of priority of payment applies:
  - (1) The Policy covering a motor vehicle "occupied" by the injured person at the time of the "accident".
  - (2) The Policy covering a motor vehicle not involved in the "accident" under which the injured person is a named insured.

- (3) The Policy covering a motor vehicle not involved in the "accident" under which the injured person is other than a named insured.

If there is more than one insurer providing coverage under one of the payment priorities set forth in this paragraph (b.), we will pay only "our" share of the "loss". "Our" share is the proportion that "our" limit of liability bears to the total of all limits applicable on the same level of priority.

## **2. Our Right To Recover From Others**

If "we" make any payment, "we" are entitled to recover what "we" paid from other parties. Any person to or for whom "we" make payment must transfer to "us" his or her rights of recovery against any other party. The person must do everything necessary to secure these rights and must do nothing that would jeopardize them.

## **3. Legal Action Against Us**

No legal action may be brought against "us" until there has been full compliance with all the terms of the Policy.

## **4. Changes**

If a change requires a premium adjustment, "we" will adjust the premium as of the effective date of the change.

## **5. Transfer Of Rights And Duties**

"Your" rights and duties under this endorsement may not be assigned without "our" written consent.

## **6. Bankruptcy**

Bankruptcy or insolvency of the "insured" or the "insured's" estate shall not relieve "us" of any obligations under this endorsement.

## **7. Policy Period, Coverage Territory**

Under this endorsement, "we" cover "accidents" and "losses" occurring:

- a. During the policy period shown in the Declarations; and
- b. Within the coverage territory.

The coverage territory is:

- a. The United States of America;
- b. The territories and possessions of the United States of America;
- c. Puerto Rico; and
- d. Canada.

"We" also cover "loss" to, or "accidents" involving, a "covered auto" while being transported between any of these places.

## **8. Concealment, Misrepresentation Or Fraud**

Coverage for "your" claim under this endorsement is void in any case of fraud by "you" at any time as it relates to this coverage. It is also void if "you", at any time, intentionally conceal or misrepresent a material fact concerning:

- a. This endorsement;
- b. The "covered auto";
- c. "Your" interest in the "covered auto"; or
- d. A claim under this coverage.

## **9. Premium Audit**

- a. The estimated premium for this endorsement is based on the exposures "you" told "us" "you" would have when this Policy began. "We" will compute the final premium due when "we" determine "your" actual exposures. The estimated total premium will be credited against the final premium due and the First Named Insured will be billed for the balance, if any. If the estimated total premium exceeds the final premium due, the First Named Insured will get a refund.
- b. If this Policy is issued for more than one year, the premium for this endorsement will be computed annually, based on "our" rates or premiums in effect at the beginning of each year of the Policy.

## **10. Arbitration**

- a. If "we" and an "insured" disagree 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.

"You" are not required to arbitrate; however, if both parties agree to arbitrate, 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. "We" will pay all arbitration expenses if "we" request arbitration. If an "insured" requests the arbitration, 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 can be reached by two of the arbitrators but will not be binding.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **UNINSURED MOTORISTS COVERAGE ENDORSEMENT (ALTERNATIVE COVERAGE) (VIRGINIA)**

**Any coverage that may be available subject to the provisions of this endorsement for damages caused by an "accident" with an "underinsured motor vehicle" may be reduced by any bodily injury liability or property damage liability coverage "available for payment".**

### **A. Words And Phrases With Special Meaning**

The following words and phrases have special meaning throughout this endorsement and appear in quotation marks when used:

1. "You" and "your" mean the person or organization shown as the named insured in ITEM ONE of the Declarations.
2. "We", "us" and "our" mean the company providing insurance.
3. "Accident" includes continuous or repeated exposure to the same conditions resulting in "bodily injury" or "property damage" the "insured" neither expected nor intended.
4. "Available for payment" means the liability insurance coverage applicable to the claim of the injured person for "bodily injury" or "property damage" reduced by the payment of any other claims arising out of the same "accident".
5. "Bodily injury" means bodily injury, sickness or disease including death resulting from any of these.
6. "Covered auto" means a motor vehicle, or a "temporary substitute", with respect to which the "bodily injury" or "property damage" liability coverage of the Policy applies.
7. "Family member" means a person related to "you" by blood, marriage or adoption who is a resident of "your" household, including a ward or foster child.
8. "Insured" means any person or organization qualifying as an insured in the Who Is An Insured section of this endorsement, including the personal representative of any insured. Except with respect to "our" limit of liability, the insurance afforded applies separately to each insured who is seeking coverage under this endorsement.
9. "Loss" means direct and accidental damage or loss.
10. "Property damage" means damage to or loss of use of tangible property.
11. "Occupying" means in, upon, using, getting in, on, out of or off.
12. "Temporary substitute" means a motor vehicle that is being used in place of a "covered auto". The "covered auto" must be out of service because of its breakdown, repair, servicing, loss or destruction.
13. "Underinsured motor vehicle" means a motor vehicle, when, and to the extent that, the total amount of "bodily injury" and "property damage" coverage applicable to the operation or use of the motor vehicle and "available for payment" for such "bodily injury" or "property damage", including all bonds or deposits of money or securities made pursuant to Article 15 (Section 46.2-435 et seq.) of Chapter 3 of Title 46.2 of the Code of Virginia, is less than the total amount of damages sustained by any person injured as a result of the operation or use of the motor vehicle.
14. "Uninsured motor vehicle" means a motor vehicle:
  - a. For which:
    1. There is no "bodily injury" liability insurance and "property damage" liability insurance in the amounts specified by Section 46.2-472 of the Code of Virginia.
    2. There is such insurance but the insurer writing the insurance denies coverage for any reason whatsoever, including failure or refusal of the insured to cooperate with the insurer.
    3. There is no bond or deposit of money or securities in lieu of such insurance.
    4. The owner of the vehicle has not qualified as a self-insurer under the provisions of Section 46.2-368, or

5. The owner or operator of the motor vehicle is immune from liability for negligence under the laws of the Commonwealth or the United States. A motor vehicle shall be deemed uninsured if its owner or operator is unknown.

If the owner or operator of any motor vehicle that causes "bodily injury" or "property damage" to the "insured" is unknown, and if the damage or injury results from an "accident" where there has been no contact between that motor vehicle and the motor vehicle occupied by the "insured", or where there has been no contact with the person of the "insured" if the "insured" was not "occupying" a motor vehicle, then for the "insured" to recover under this endorsement pursuant to Paragraph a. of this definition, the "accident" shall be reported promptly to either:

1. The insurer; or
2. A law-enforcement officer having jurisdiction in the county or city in which the "accident" occurred. If it is not reasonably practicable to make the report promptly, the report shall be made as soon as reasonably practicable under the circumstances.

b. Which is an "underinsured motor vehicle".

#### **B. We Will Pay**

"We" will pay in accordance with the Virginia Uninsured Motorists Law, all sums the "insured" is legally entitled to recover as damages from the owner or operator of an "uninsured motor vehicle".

#### **C. We Will Not Cover – Exclusions**

This insurance does not apply to:

1. A "bodily injury" or "property damage" claim settled by the "insured" without "our" consent with anyone who may be legally liable.
2. The direct or indirect benefit of any insurer of property.
3. The first \$200 of the total amount of "property damage" as the result of any one "accident" involving an unidentifiable driver or owner of an "uninsured motor vehicle". This exclusion does not apply if the owner or operator of the "uninsured motor vehicle" causing the damage can be identified.
4. Anyone using the "covered auto" without a reasonable belief that the person is entitled to do so.

#### **D. Who Is Insured**

1. "You" or any "family member".
2. Anyone else "occupying" a "covered auto".
3. Anyone for damages he or she is entitled to recover because of "bodily injury" to which this coverage applies, sustained by another "insured" under Paragraph 1. or 2.

#### **E. Our Limit Of Liability**

1. Regardless of the number of "covered autos", "insureds", claims made or motor vehicles involved in the "accident", the most "we" will pay for all damages resulting from any one "accident" is the limit of Uninsured Motorists Insurance shown in the Schedule or Declarations. However, if more than one "covered auto" is involved in the same "accident", the limit of Uninsured Motorists Insurance shown in the Schedule or Declarations will apply separately to each of these "covered autos". Such limit of insurance shall first provide the separate limits required by the Virginia Motor Vehicle Safety Responsibility Act.
2. Except with respect to an "underinsured motor vehicle", damages otherwise payable under this coverage with respect to an employee of a self-insured employer, shall be reduced by all sums paid or payable because of "bodily injury" under a workers' compensation law.
3. When an "insured" is "occupying" a "covered auto" at the time of the "accident" with an "underinsured motor vehicle", the limit of insurance shall be reduced by all sums "available for payment" because of "bodily injury" or "property damage" by or on behalf of persons or organizations who may be legally responsible, including all sums paid under this Coverage Form's Covered Autos Liability Coverage.

#### **F. Conditions**

The conditions applicable to this coverage are as follows:

##### **1. Other Insurance**

- a. For "property damage", Uninsured Motorists Insurance is excess over all other collectible insurance of any kind applicable to the "property damage".



b. If the injured person is entitled to uninsured motorists coverage or underinsured motorists coverage under more than one policy, the following order of priority of payment applies:

- (1) The Policy covering a motor vehicle "occupied" by the injured person at the time of the "accident".
- (2) The Policy covering a motor vehicle not involved in the "accident" under which the injured person is a named insured.
- (3) The Policy covering a motor vehicle not involved in the "accident" under which the injured person is other than a named insured.

If there is more than one insurer providing coverage under one of the payment priorities set forth in this paragraph (b.), we will pay only "our" share of the "loss". "Our" share is the proportion that "our" limit of liability bears to the total of all limits applicable on the same level of priority.

If an injured person is entitled to similar insurance under one or more policies for damages caused by an "accident" with an "underinsured motor vehicle", wherein a named insured has elected to reduce the limits of liability for Uninsured Motorist Insurance shown in the Declarations by the amount of bodily injury liability insurance or property damage liability insurance coverage "available for payment", any amount "available for payment" shall be credited against such policies in payment priority pursuant to Paragraph 1.b.(1) only, and where there is more than one such policy entitled to such credit, the credit shall be apportioned pro-rata pursuant to the policies' respective available coverages for damages caused by an "accident" with an "underinsured motor vehicle".

## **2. Our Right To Recover From Others**

If "we" make any payment, "we" are entitled to recover what "we" paid from other parties. Any person to or for whom "we" make payment must transfer to "us" his or her rights of recovery against any other party. The person must do everything necessary to secure these rights and must do nothing that would jeopardize them.

## **3. Legal Action Against Us**

No legal action may be brought against "us" until there has been full compliance with all the terms of the Policy.

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## **7. Policy Period, Coverage Territory**

Under this endorsement, "we" cover "accidents" and "losses" occurring:

- a. During the policy period shown in the Declarations; and
- b. Within the coverage territory.

The coverage territory is:

- a. The United States of America;
- b. The territories and possessions of the United States of America;
- c. Puerto Rico; and
- d. Canada.

"We" also cover "loss" to, or "accidents" involving, a "covered auto" while being transported between any of these places.

## **8. Concealment, Misrepresentation Or Fraud**

Coverage for "your" claim under this endorsement is void in any case of fraud by "you" at any time as it relates to this coverage. It is also void if "you", at any time, intentionally conceal or misrepresent a material fact concerning:

- a. This endorsement;
- b. The "covered auto";
- c. "Your" interest in the "covered auto"; or
- d. A claim under this coverage.

## **9. Premium Audit**

- a. The estimated premium for this endorsement is based on the exposures "you" told "us" "you" would have when this Policy began. "We" will compute the final premium due when "we" determine "your" actual exposures. The estimated total premium will be credited against the final premium due and the First Named Insured will be billed for the balance, if any. If the estimated total premium exceeds the final premium due, the First Named Insured will get a refund.
- b. If this Policy is issued for more than one year, the premium for this endorsement will be computed annually, based on "our" rates or premiums in effect at the beginning of each year of the Policy.

## **10. Arbitration**

- a. If "we" and an "insured" disagree 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.

"You" are not required to arbitrate; however, if both parties agree to arbitrate, 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. "We" will pay all arbitration expenses if "we" request arbitration. If an "insured" requests the arbitration, 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 can be reached by two of the arbitrators but will not be binding.