

**PROGRAM DIVISION  
BULLETIN**

2004-52

December 13, 2004

**VIRGINIA SPECIFIC UM ENDORSEMENT**

Please be advised that a new Virginia specific UM endorsement has been developed. Its purpose is to clarify the CSL for Virginia when you have a multistate policy.

A copy of the endorsement is attached for you to enter into Non-CoverAll systems.



"Virginia UM  
Endorsement - 84

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**LEXINGTON INSURANCE COMPANY**

**PROGRAM DIVISION**

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## UNINSURED MOTORISTS ENDORSEMENT (VIRGINIA)

	<b>LIMIT OF INSURANCE</b>
"Bodily Injury" and "Property Damage"	\$ Combined Single Limit

**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 amount of 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 uninsured motorist coverage afforded 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 **1.** or **2.** above.

#### **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:
  - a. Shall be reduced by all sums paid because of "bodily injury" or "property damage" by or on behalf of persons or organizations who may be legally responsible.
  - b. 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 "bodily injury" to an "insured" while "occupying" a motor vehicle that is not a "covered auto", this coverage shall apply only as excess insurance over any other similar insurance available to that "insured" and applicable to that motor vehicle as primary insurance. However, this paragraph does not apply to an "underinsured motor vehicle".
- b. Except as provided in Paragraph **a.** above, if the "insured" has other similar "bodily injury" insurance available to him or her and applicable to the "accident", "we" shall not be liable for a greater proportion of any "loss" to which this coverage applies than the limit of liability for this coverage bears to the sum of the applicable limits of liability of this insurance and such other insurance. However, this provision does not apply to an "underinsured motor vehicle".

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

d. If the injured person is entitled to underinsured motorists coverage under more than one policy, the following order of priority applies and any amount "available for payment" shall be credited against such policies in the following order of priority:

(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 Paragraph d. above, 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.