

December 12, 2008

CIRCULAR LETTER TO ALL MEMBER COMPANIES

Re: Cedable Limits

As a result of the amendment this year to North Carolina's financial responsibility law (by House Bill 738), the Board of Governors recently adopted changes to the Uninsured/Underinsured Motorist Coverage (UM/UIM) rule in the Facility Commercial Auto Manual. Following this revision, additional questions have arisen related to the interpretation of this and similar rules and whether the Facility will take cession of certain limits in various situations.

The Board of Governors reviewed various circumstances and recognized that, in certain situations, companies may interpret portions of the amended statute differently. The Facility cannot advise companies with respect to the interpretation of the applicable statutes, particularly where there are potential ambiguities; companies should rely on the advice of their own legal counsel. With respect to the application of various Facility manual rules, the Board of Governors approved the following:

1) Primary limits on multi-vehicle policies

It is a common occurrence for a multi-vehicle policy to include a vehicle that is required by statute or regulation to carry higher limits than the other vehicles on the policy are required to carry. For various reasons, the policy is often issued providing coverages at the higher limits for all vehicles on the policy. If this policy is ceded and premiums are paid for all vehicles at the higher limits, the Facility will honor the limits ceded on all vehicles, even if some of the limits would not have been cedable without the inclusion on the policy of the vehicle requiring higher limits.

Mid-term change - Similarly, if the vehicle on the policy that required higher limits is deleted from the policy during the policy term and no change is made to the policy to reduce the limits on the vehicles remaining on the policy, the Facility will continue to honor the limits ceded on the vehicles remaining on the policy, even where the policy limits would not have been cedable on the remaining vehicles had they been the only vehicles on the policy at the time of cession. Honoring such higher limits will **not** apply to subsequent renewals if there is no vehicle on the policy requiring higher limits at the time of renewal.

2) UM/UIM Limits on multi-vehicle policies

A company may write a commercial auto policy on a risk that is required by law to have limits greater than \$1,000,000 Combined Single Limits (for example, \$5,000,000 CSL because the vehicle hauls hazardous waste). There may be multiple interpretations of what UM/UIM limits are mandated and therefore eligible for cession. Companies should refer to their own legal counsel for guidance on the statutory requirements, but the Facility will honor ceded limits under good faith interpretations up to UM/UIM limits equal to the primary limits (in the preceding example, up to \$5,000,000 UI/UIM).

3) Mid-Term changes that may affect the characterization of a policy to Fleet or Non-Fleet status

In the normal course of business, insureds frequently add or delete vehicles on a policy mid-term. By adding or deleting vehicles, it is arguable that the policy status may change from fleet to non-fleet (or vice versa) or from a policy for which UM/UIM is mandated to one for which those coverages are not mandated (or vice versa).

Consistent with the above, the Facility will accept cession of UM/UIM limits based on the status of a policy at the inception of the policy and, assuming that no affirmative change is made to that policy mid-term changing those limits, the Facility will honor those limits throughout the policy period.

Additionally, the same general principle will apply in other, similar situations. For example, where an insured is hauling a certain type of commodity that requires higher limits of liability at the inception of the policy and during the policy period the insured stops hauling that commodity and does not notify the company and request a change to the policy, the Facility will accept cession of the limits of liability based on the status of the policy at the inception of the policy and, assuming no affirmative change to the policy, the Facility will continue to honor those limits throughout the policy period.

Please see to it that these matters are brought to the attention to all interested personnel in your Company.

Very truly yours,

F. Timothy Lucas

Automobile Manager

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