

NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES

**FIFTH AMENDMENT TO 11 NYCRR 60-2
(INSURANCE REGULATION 35-D)**

SUPPLEMENTARY UNINSURED/UNDERINSURED MOTORISTS INSURANCE

I, Benjamin M. Lawskey, Superintendent of Financial Services, pursuant to the authority granted by Sections 202 and 302 of the Financial Services Law, Sections 301 and 3420 of the Insurance Law, Chapter 496 of the Laws of 2012, and Chapter 11 of the Laws of 2013, do hereby promulgate the following Fifth Amendment to Part 60-2 of Title 11 of the Official Compilation of Codes, Rules, and Regulations of the State of New York (Insurance Regulation 35-D), to take effect upon publication in the State Register, to read as follows:

(NEW MATTER UNDERSCORED; MATTER IN BRACKETS DELETED)

Section 60-2.3(f), INSURING AGREEMENTS I. Definitions: definition (a) is hereby amended to read as follows:

(f) Prescribed SUM endorsement:

**SUPPLEMENTARY UNINSURED/UNDERINSURED MOTORISTS
ENDORSEMENT--NEW YORK**

We, the company, agree with you, as the named insured, in return for payment of the premium for this coverage, to provide Supplementary Uninsured/Underinsured Motorists (SUM) coverage, subject to the following terms and conditions:

INSURING AGREEMENTS

I. Definitions:

For purposes of this SUM endorsement, the following terms 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 person while acting in the scope of that person's duties for you, except with respect to the use and operation by such person of a motor vehicle not covered under this policy, where such person is:¹

¹ Language in paragraph (2) may be deleted for covered policies as defined in Section 3425(a)(1) of the New York Insurance Law.

(i) your employee and you are a fire department;

(ii) your member and you are a fire company, as defined in General Municipal Law section 100;

(iii) your employee and you are an ambulance service, as defined in Public Health Law section 3001; or

(iv) your member and you are a voluntary ambulance service, as defined in Public Health Law section 3001;

(3) any other person while occupying:

(i) a motor vehicle insured for SUM under this policy; or

(ii) any other motor vehicle while being operated by you or your spouse; and

[(3)] (4) 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 paragraph (1)[or], (2) or (3) above.

Subdivision 60-2.3(f), CONDITIONS, conditions (1) and (6) are hereby amended to read as follows:

CONDITIONS

1. Policy Provisions. None of the Insuring Agreements, Exclusions or Conditions of the policy shall apply to the SUM coverage except: "Duties After an Accident or Loss"; "Fraud"; and "Termination" if applicable.[*]²

6. Maximum SUM Payments: Regardless of the number of insureds, our maximum payment under this SUM endorsement shall be the difference between:

(a) the SUM limits; and

(b) the motor vehicle bodily injury liability insurance or bond payments received by the insured or the insured's legal representative, from or on behalf of all persons that may be legally liable for the bodily injury sustained by the insured.

[*]² Appropriate terms may be substituted to conform with terms used in the policy.

The SUM limit shown on the Declarations is the amount of coverage for all damages due to bodily injury in any one accident.^[1]³ (The SUM limit shown on the Declarations for “Each Person” is the amount of coverage for all damages due to bodily injury to one person. The SUM limit shown under “Each Accident” is, subject to the limit for each person, the total amount of coverage for all damages due to bodily injury to two or more persons in the same accident.)^[2]⁴

[1] ³ Language in this sentence should be used for SUM endorsements issued with a combined single limit, in which case Condition 5 should speak throughout in terms of a singular limit, rather than plural limits.

[2] ⁴ Language in parentheses should be used for SUM endorsements issued with split limits.



NEW YORK STATE
DEPARTMENT *of*
FINANCIAL SERVICES

Andrew M. Cuomo
Governor

Benjamin M. Lawsky
Superintendent

I, Benjamin M. Lawsky, Superintendent of Financial Services, do hereby certify that the foregoing is the Fifth Amendment to Part 60-2 of Title 11 of the Official Compilation of Codes, Rules and Regulations of the State of New York (Insurance Regulation 35-D), entitled "Supplementary Uninsured/Underinsured Motorists Insurance", signed by me on September 10, 2013, pursuant to the authority granted by Sections 202 and 302 of the Financial Services Law, Sections 301 and 3420 of the Insurance Law, Chapter 496 of the Laws of 2012, and Chapter 11 of the Laws of 2013, to take effect upon filing with the Secretary of State.

Pursuant to the provisions of the State Administrative Procedure Act, prior notice of the proposed amendment was published in the State Register on July 17, 2013. No other publication or prior notice is required by statute.



Benjamin M. Lawsky
Superintendent of Financial Services

Date: September 10, 2013