

NEW YORK CODES, RULES AND REGULATIONS

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TITLE 11. INSURANCE DEPARTMENT  
CHAPTER III. POLICY AND CERTIFICATE PROVISIONS  
SUBCHAPTER B. PROPERTY AND CASUALTY INSURANCE  
PART 65. \* (REGULATION 68) REGULATIONS IMPLEMENTING THE COMPREHENSIVE  
MOTOR VEHICLE INSURANCE REPARATIONS ACT

11 NYCRR § 65.12 (2003)

**§ \* 65.12 Requirements for minimum benefit insurance policies for personal injuries sustained on and after December 1, 1977 and Optional Basic Economic Loss coverage on and after November 12, 1991**

(a) Every owner's policy of liability insurance issued in satisfaction of the minimum requirements of article VI or VIII of the Vehicle and Traffic Law and article 51 of the Insurance Law shall contain provisions providing minimum first-party benefits equal to those set out below in the mandatory personal injury protection endorsement (New York) and mandatory personal injury protection endorsement -- motorcycles (New York), respectively.

(b) Policies in effect on or after July 22, 1982 insuring a motor vehicle shall be deemed to include coverage for pedestrians struck by motorcycles, as provided by section 5103(a)(2) of the New York Insurance Law, which endorsement has been amended in accordance with section 2307(b) of the Insurance Law.

(c) Policies in effect on and after November 12, 1991 insuring a motor vehicle shall be deemed to include the increased maximum work loss benefit of up to \$ 2,000 per month, which shall apply to claims arising out of accidents occurring on and after November 12, 1991, as required by section 5102(a)(2) of the Insurance Law.

(d) For policies issued on and after November 12, 1991 insuring a motor vehicle, the declarations page of each policy must specify the dollar amount of basic economic loss coverage under the policy and, if the insured has purchase OBEL coverage, OBEL coverage shall be separately identified on the declarations page of the policy.

(e) The Mandatory Personal Injury Protection Endorsement (New York) and the Mandatory Personal Injury Protection Endorsement -- Motorcycles (New York) set out below are approved and promulgated for use by an insurer and, except as provided in subdivision (g) of this section, must be:

(1) furnished to all new insureds with policies effective on and after November 12, 1991; and

(2) enclosed with the first renewal policies renewed on and after November 12, 1991.

## **MANDATORY PERSONAL INJURY PROTECTION ENDORSEMENT (New York)**

The Company agrees with the named insured, as follows:

### **Section I Mandatory Personal Injury Protection**

The company will pay first-party benefits to reimburse for basic economic loss sustained by an eligible injured person on account of personal injuries caused by an accident arising out of the use or operation of a motor vehicle or a motorcycle during the policy period and within the United States of America, its territories or possessions, or Canada.

#### **First-Party Benefits**

First-party benefits, other than death benefits, are payments equal to basic economic loss, reduced by the following:

- (a) 20 percent of the eligible injured person's loss of earnings from work to the extent that an eligible injured person's basic economic loss consists of such loss of earnings;
- (b) amounts recovered or recoverable on account of personal injury to an eligible injured person under State or Federal laws providing social security disability or workers' compensation benefits, or disability benefits under article 9 of the New York Workers' Compensation Law;
- (c) the amount of any applicable deductible, provided that such deductible shall apply to each accident, but only to the total of first-party benefits otherwise payable to the named insured and any relative as a result of that accident.

#### **Basic Economic Loss**

Basic economic loss shall consist of medical expense, work loss, other expense and, when death occurs, a death benefit as herein provided. Except for such death benefit, basic economic loss shall not include any loss sustained on account of death. Basic economic loss of each eligible injured person on account of any single accident shall not exceed \$ 50,000, except that any death benefit hereunder shall be in addition thereto.

#### **Medical Expense**

Medical expense shall consist of necessary expenses for:

- (a) medical, hospital (including services rendered in compliance with Article 41 of the Public Health Law, whether or not such services are rendered directly by a hospital), surgical, nursing, dental, ambulance, X-ray, prescription drug and prosthetic services;
- (b) psychiatric, physical and occupational therapy and rehabilitation;

(c) any nonmedical remedial care and treatment rendered in accordance with a religious method of healing recognized by the laws of New York; and

(d) any other professional health services.

These medical expenses will not be subject to a time limitation, provided that, within one year after the date of the accident, it is ascertainable that further medical expenses may be sustained as a result of the injury. Payments hereunder for necessary medical expenses shall be subject to the limitations and requirements of section 5108 of the New York Insurance Law.

#### **Work Loss**

Work loss shall consist of the sum of the following losses and expenses, up to a maximum payment of \$ 2,000 per month for a maximum period of three years from the date of the accident:

(a) loss of earnings from work which the eligible injured person would have performed had such person not been injured, except that an employee who is entitled to receive monetary payments, pursuant to statute or contract with the employer, or who receives voluntary monetary benefits paid for by the employer, by reason of such employee's inability to work because of personal injury arising out of the use or operation of a motor vehicle or a motorcycle, shall not be entitled to receive first-party benefits for loss of earnings from work to the extent that such monetary payments or benefits from the employer do not result in the employee suffering a reduction in income or a reduction in such employee's level of future benefits arising from a subsequent illness or injury; and

(b) reasonable and necessary expenses sustained by the eligible injured person in obtaining services in lieu of those which such person would have performed for income.

#### **Other Expenses**

Other expenses shall consist of all reasonable and necessary expenses, other than medical expense and work loss, up to \$ 25 per day for a period of one year from the date of the accident causing injury.

#### **Death Benefit**

Upon the death of any eligible injured person, caused by an accident to which this coverage applies, the company will pay to the estate of such person a death benefit of \$ 2,000.

#### **Eligible Injured Person**

Subject to the exclusions and conditions set forth below, an eligible injured person is:

(a) the named insured and any relative who sustains personal injury arising out of the use or operation of any motor vehicle;

(b) the named insured and any relative who sustains personal injury arising out of the use or operation of any motorcycle, while not occupying a motorcycle;

(c) any other person who sustains personal injury arising out of the use or operation of the insured motor vehicle in the State of New York while not occupying another motor vehicle; or

(d) any New York State resident who sustains personal injury arising out of the use or operation of the insured motor vehicle outside of New York while not occupying another motor vehicle.

#### **Exclusions**

This coverage does not apply to personal injury sustained by:

(a) the named insured while occupying, or while a pedestrian through being struck by, any motor vehicle owned by the named insured with respect to which the coverage required by the New York Comprehensive Motor Vehicle Insurance Reparations Act is not in effect;

(b) any relative while occupying, or while a pedestrian through being struck by, any motor vehicle owned by the relative with respect to which the coverage required by the New York Comprehensive Motor Vehicle Insurance Reparations Act is not in effect;

(c) the named insured or relative while occupying, or while a pedestrian through being struck by, a motor vehicle in New York State, other than the insured motor vehicle, with respect to which the coverage required by the New York Comprehensive Motor Vehicle Insurance Reparations Act is in effect; however, this exclusion does not apply to personal injury sustained in New York State by the named insured or relative while occupying a bus or school bus, as defined in sections 104 and 142 of the New York Vehicle and Traffic Law, unless that person is the operator, an owner, or an employee of the owner or operator, of such bus or school bus;

[(d) any person in New York State while occupying the insured motor vehicle which is a bus or school bus, as defined in sections 104 and 142 of the New York Vehicle and Traffic Law, but only if such person is a named insured or relative under any other policy providing the coverage required by the New York Comprehensive Motor Vehicle Insurance Reparations Act; however, this exclusion does not apply to the operator, an owner, or an employee of the owner or operator, of such bus or school bus;] \*\* Language in brackets may be deleted if the insured motor vehicle is not a bus or school bus.

(e) any person while occupying a motorcycle;

(f) any person who intentionally causes his or her own personal injury;\*\*

(g) any person as a result of operating a motor vehicle while in an intoxicated condition or while his ability to operate such vehicle is impaired by the use of a drug (within the meaning of section 1192 of the New York Vehicle and Traffic Law); or

(h) any person while:

(i) committing an act which would constitute a felony, or seeking to avoid lawful apprehension or arrest by a law enforcement officer;\*\*

(ii) operating a motor vehicle in a race or speed test;\*\*

(iii) operating or occupying a motor vehicle known to that person to be stolen;\*\*

(iv) repairing, servicing or otherwise maintaining a motor vehicle if such conduct is within the course of a business of repairing, servicing or otherwise maintaining a motor vehicle and the injury occurs on the business premises.\*\*\*\*

These exclusions may be deleted, in the event the company wishes to provide coverage under the indicated circumstances.

(i) the named insured or relative while not occupying a motor vehicle or a motorcycle when struck by a motorcycle in New York State with respect to which the coverage required by the New York Comprehensive Motor Vehicle Insurance Reparations Act is in effect;

(j) any New York State resident other than the named insured or relative injured through the use or operation of the insured motor vehicle outside of New York State if such resident is the owner or a relative of the owner of a motor vehicle insured under another policy providing the coverage required by the New York Comprehensive Motor Vehicle Insurance Reparations Act;

(k) any New York State resident other than the named insured or relative injured through the use or operation of the insured motor vehicle outside of New York State if such resident is the owner of a motor vehicle for which the coverage required by the New York Comprehensive Motor Vehicle Insurance Reparations Act is not in effect.

#### **Other Definitions**

When used in reference to this coverage:

(a) the insured motor vehicle means a motor vehicle owned by the named insured and to which the bodily injury liability insurance of this policy applies and for which a specific premium is charged;

(b) motorcycle means a vehicle as defined in section 123 of the New York Vehicle and Traffic Law and which is required to carry financial

security pursuant to article 6, 8 or 48-A of the Vehicle and Traffic Law;

(c) motor vehicle means a motor vehicle, as defined in section 311 of the New York Vehicle and Traffic Law, and also includes fire and police vehicles, but shall not include any motor vehicle not required to carry financial security pursuant to article 6, 8 or 48-A of the Vehicle and Traffic Law, or a motorcycle as defined above;

(d) named insured means the person or organization named [in the declarations];\*\*\*\*\* Companies may substitute the appropriate term, reference or language for the matter set out in brackets.

(e) occupying means in or upon or entering into or alighting from;

(f) personal injury means bodily injury, sickness or disease;

(g) relative means a spouse, child, or other person related to the named insured by blood, marriage, or adoption (including a ward or foster child), who regularly resides in the insured's household, including any such person who regularly resides in the household, but is temporarily living elsewhere; and

(h) use or operation of a motor vehicle or a motorcycle includes the loading or unloading of such vehicle.

#### **Conditions**

**Action Against Company.** No action shall lie against the Company unless, as a condition precedent thereto, there shall have been full compliance with the terms of this coverage.

**Notice.** In the event of an accident, written notice setting forth details sufficient to identify the eligible injured person, along with reasonably obtainable information regarding the time, place and circumstances of the accident, shall be given by, or on behalf of, each eligible injured person, to the Company, or any of the Company's authorized agents, as soon as reasonably practicable, but in no event more than 90 days after the date of the accident, unless the eligible injured person submits written proof that it was impossible to comply with such time limitation due to specific circumstances beyond such person's control. If an eligible injured person or that person's legal representative institutes a proceeding to recover damages for personal injury under section 5104(b) of the New York Insurance Law, a copy of the summons and complaint or other process served in connection with such action shall be forwarded as soon as practicable to the Company or any of the Company's authorized agents by such eligible injured person or that person's legal representative.

**Proof of Claim; Medical, Work Loss, and Other Necessary Expenses.** In the case of a claim for health service expenses, the eligible injured person or that person's representative shall submit written proof of claim to the Company, including full particulars of the nature and extent of the injuries and treatment received and contemplated, as soon as reasonably

practicable, but in no event later than 180 days after the date services are rendered or 180 days after the date written notice was given to the Company, whichever is later. The eligible injured person or that person's representative shall submit written proof of claim for work loss benefits to the Company as soon as reasonably practicable. Written proof of claim for other necessary expenses shall be submitted by the eligible injured person or that person's representative to the Company as soon as reasonably practicable, but in no event later than 90 days after the services are rendered. The foregoing time limitations for the submission of proof of claim shall apply unless the eligible injured person or that person's representative submits written proof that it was impossible to comply with such time limitation due to specific circumstances beyond such person's control. Upon request by the Company, the eligible injured person or that person's representative shall:

- (a) execute a written proof of claim under oath;
- (b) provide authorization that will enable the Company to obtain medical records; and
- (c) provide any other pertinent information that may assist the Company in determining the amount due and payable.

The eligible injured person shall submit to medical examination by physicians selected by, or acceptable to, the Company, when, and as often as, the Company may reasonably require.

**Arbitration.** In the event any person making a claim for first-party benefits and the Company do not agree regarding any matter relating to the claim, such person shall have the option of submitting such disagreement to arbitration pursuant to procedures promulgated or approved by the Superintendent of Insurance.

**Reimbursement and Trust Agreement.** To the extent that the Company pays first-party benefits, the Company is entitled to the proceeds of any settlement or judgment resulting from the exercise of any right of recovery for damages for personal injury under section 5104(b) of the New York Insurance Law. The Company shall have a lien upon any such settlement or judgment to the extent that the Company has paid first-party benefits. An eligible injured person shall:

- (a) hold in trust, for the benefit of the Company, all rights of recovery which that person shall have for personal injury under section 5104(b) of the New York Insurance Law;
- (b) do whatever is proper to secure, and shall do nothing to prejudice, such rights; and
- (c) execute, and deliver to the Company, instruments and papers as may be appropriate to secure the rights and obligations of such person and the Company established by this provision.

An eligible injured person shall not compromise an action to recover damages brought under section 5104(b) of the New York Insurance Law, except:

- (a) with the written consent of the Company;

(b) with approval of the court; or

(c) where the amount of the settlement exceeds \$ 50,000.

**Other Coverage.** Where more than one source of first-party benefits required by article 51 of the New York Insurance Law and article VI or VIII of the New York Vehicle and Traffic Law is available and applicable to an eligible injured person in any one accident, this Company is liable to an eligible injured person only for an amount equal to the maximum amount that the eligible injured person is entitled to recover under this coverage, divided by the number of available and applicable sources of required first-party benefits. An eligible injured person shall not recover duplicate benefits for the same elements of loss under this coverage or any other mandatory first-party motor vehicle or no-fault motor vehicle insurance coverage issued in compliance with the laws of another state.

If the eligible injured person is entitled to benefits under any such mandatory first-party motor vehicle or no-fault motor vehicle insurance for the same elements of loss under this coverage, this Company shall be liable only for an amount equal to the proportion that the total amount available under this coverage bears to the sum of the amount available under this coverage and the amount available under such other mandatory insurance for the common elements of loss. However, where another state's mandatory first-party or no-fault motor vehicle insurance law provides unlimited coverage available to an eligible injured person for an element of loss under this coverage, the obligation of this Company is to share equally for that element of loss with such other mandatory insurance until the \$ 50,000, or \$ 75,000 if Optional Basic Economic Loss (OBEL) coverage is purchased, limit of this coverage is exhausted by the payment of that element of loss and any other elements of loss.

## **Section II Excess Coverage**

If motor vehicle medical payments coverage or any disability coverages or uninsured motorists coverage are afforded under this policy, such coverages shall be excess insurance over any Mandatory PIP, OBEL or Additional PIP benefits paid or payable, or which would be paid or payable but for the application of a deductible, under this or any other motor vehicle No-Fault insurance policy.

## **Section III Constitutionality**

If it is conclusively determined by a court of competent jurisdiction that the New York Comprehensive Motor Vehicle Insurance Reparations Act, or any amendment thereto, is invalid or unenforceable in whole or in part, then, subject to the approval of the Superintendent of Insurance, the Company may amend this policy and may also recompute the premium for the existing or amended policy.

These amendments and recomputations will be effective retroactively to the date that such act or any amendment is deemed to be invalid or unenforceable in whole or in part.

**MANDATORY PERSONAL INJURY PROTECTION ENDORSEMENT MOTORCYCLES\***  
**(New York)**

\*This endorsement shall be issued only for insured motorcycles.

The company agrees with the named insured as follows:

**Section I**  
**Mandatory Personal Injury Protection**

The Company will pay first-party benefits to reimburse for basic economic loss sustained by an eligible injured person on account of personal injuries caused by an accident arising out of the use or operation of the insured motorcycle. This coverage applies only to motorcycle accidents which occur during the policy period and on or after December 1, 1977 and within the State of New York.

**Eligible Injured Person**

An eligible injured person is any person who sustains a personal injury arising out of the use or operation of the insured motorcycle while not occupying the insured motorcycle, any other motorcycle or a motor vehicle.

**First-Party Benefits**

First-party benefits, other than death benefits, are payments equal to basic economic loss, reduced by the following:

(a) 20 percent of the eligible injured person's loss of earnings from work to the extent that an eligible injured person's basic economic loss consists of such loss of earnings;

(b) amounts recovered or recoverable on account of personal injury to an eligible injured person under State or Federal laws providing social security disability or workers' compensation benefits, or disability benefits under article 9 of the New York Workers' Compensation Law.

**Basic Economic Loss**

Basic economic loss shall consist of medical expense, work loss, other expense and, when death occurs, a death benefit as herein provided. Except for such death benefit, basic economic loss shall not include any loss sustained on account of death. Basic economic loss of each eligible injured person on account of any single accident shall not exceed \$ 50,000, except that any death benefit hereunder shall be in addition thereto.

**Medical Expense**

Medical expense shall consist of necessary expenses for:

(a) medical, hospital (including services rendered in compliance with Article 41 of the Public Health Law, whether or not such services are rendered directly by a hospital), surgical, nursing, dental, ambulance, X-ray, prescription drug and prosthetic services;

- (b) psychiatric, physical and occupational therapy and rehabilitation;
- (c) any nonmedical remedial care and treatment rendered in accordance with a religious method of healing recognized by the laws of New York; and
- (d) any other professional health services.

These medical expenses will not be subject to a time limitation, provided that within one year after the date of the accident it is ascertainable that further medical expenses may be sustained as a result of the injury. Payments hereunder for necessary medical expenses shall be subject to the limitations and requirements of section 5108 of the New York Insurance Law.

#### **Work Loss**

Work loss shall consist of the sum of the following losses and expenses, up to a maximum payment of \$ 2,000 per month for a maximum period of three years from the date of the accident:

(a) loss of earnings from work which the eligible injured person would have performed had such person not been injured, except that an employee who is entitled to receive monetary payments, pursuant to statute or contract with the employer, or who receives voluntary monetary benefits paid for by the employer, by reason of such employee's inability to work because of personal injury arising out of the use or operation of a motorcycle, shall not be entitled to receive first-party benefits for loss of earnings from work to the extent that such monetary payments or benefits from the employer do not result in the employee suffering a reduction in income or a reduction in such employee's level of future benefits arising from a subsequent illness or injury; and

(b) reasonable and necessary expenses sustained by the eligible injured person in obtaining services in lieu of those which such person would have performed for income.

#### **Other Expenses**

Other expenses shall consist of all reasonable and necessary expenses, other than medical expense and work loss, up to \$ 25 per day for a period of one year from the date of the accident causing injury.

#### **Death Benefit**

Upon the death of any eligible injured person, caused by an accident to which this coverage applies, the Company will pay to the estate of such person a death benefit of \$ 2,000.

#### **Exclusions**

\*\*\*\* The exclusions may be deleted in the event a Company wishes to provide coverage under the indicated circumstances.  
This coverage does not apply:

(a) to a personal injury sustained by any person who intentionally causes his own personal injury;

(b) to a personal injury sustained by any person while committing an act which would constitute a felony, or seeking to avoid lawful apprehension or arrest by a law enforcement officer; or

(c) to a personal injury sustained by a person while repairing, servicing, or otherwise maintaining a motor vehicle or motorcycle if such conduct is within the course of a business of repairing, servicing, or otherwise maintaining a motor vehicle or motorcycle and the injury occurs on the business premises.

#### **Other Definitions**

When used in reference to this coverage:

(a) the insured motorcycle means a motorcycle owned by the named insured and to which the bodily injury liability insurance of this policy applies and for which a specific premium is charged;

(b) motorcycle means a vehicle as defined in section 123 of the New York Vehicle and Traffic Law, and which is required to carry financial security pursuant to article 6, 8 or 48-A of the Vehicle and Traffic Law;

(c) motor vehicle means a motor vehicle, as defined in section 311 of the New York Vehicle and Traffic Law, and also includes fire and police vehicles, but shall not include any motor vehicle not required to carry financial security pursuant to article 6, 8 or 48-A of the Vehicle and Traffic Law, or a motorcycle as defined above;

(d) named insured means the person or organization named [in the declaration];\*\*\*\*\* Companies may substitute the appropriate term, reference or language for the matter set out in brackets.

(e) occupying means in or upon or entering into or alighting from;

(f) personal injury means bodily injury, sickness or disease;

(g) use or operation of a motor vehicle or motorcycle includes the loading or unloading of such vehicle.

#### **Conditions**

**Action Against Company.** No action shall lie against the Company unless, as a condition precedent thereto, there shall have been full compliance with the terms of this coverage.

**Notice.** In the event of an accident, written notice setting forth details sufficient to identify the eligible injured person, along with reasonably obtainable information regarding the time, place and circumstances of the accident, shall be given by, or on behalf of, each eligible injured person, to the Company, or any of the Company's authorized agents, as soon as reasonably practicable, but in no event

more than 90 days after the date of the accident, unless the eligible injured person submits written proof that it was impossible to comply with such time limitation due to specific circumstances beyond such person's control. If an eligible injured person or that person's legal representative institutes a proceeding to recover damages for personal injury under section 5104(b) of the New York Insurance Law, a copy of the summons and complaint or other process served in connection with such action shall be forwarded as soon as practicable to the Company or any of the Company's authorized agents by such eligible injured person or that person's legal representative.

**Proof of Claim; Medical, Work Loss, and Other Necessary Expenses.** In the case of a claim for health service expenses, the eligible injured person or that person's representative shall submit written proof of claim to the Company, including full particulars of the nature and extent of the injuries and treatment received and contemplated, as soon as reasonably practicable but in no event later than 180 days after the date services are rendered or 180 days after the date written notice was given to the Company, whichever is later. The eligible injured person or that person's representative shall submit written proof of claim for work loss benefits to the Company as soon as reasonably practicable. Written proof of claim for other necessary expenses shall be submitted by the eligible injured person or that person's representative to the Company as soon as reasonably practicable but in no event later than 90 days after the services are rendered. The foregoing time limitations for the submission of proof of claim shall apply unless the eligible injured person or that person's representative submits written proof that it was impossible to comply with such time limitation due to specific circumstances beyond such person's control. Upon request by the Company, the eligible injured person or that person's representative shall:

(a) execute a written proof of claim under oath;

(b) provide authorization that will enable the Company to obtain medical records; and

(c) provide any other pertinent information that may assist the Company in determining the amount due and payable.

The eligible injured person shall submit to medical examination by physicians selected by, or acceptable to, the Company, when, and as often as, the Company may reasonably require.

**Arbitration.** In the event any person making a claim for first-party benefits and the Company do not agree regarding any matter relating to the claim, such person shall have the option of submitting such disagreement to arbitration pursuant to procedures promulgated or approved by the Superintendent of Insurance.

**Reimbursement and Trust Agreement.** To the extent that the Company pays first-party benefits, the Company is entitled to the proceeds of any settlement or judgment resulting from the exercise of any right of recovery for damages for personal injury under section 5104(b) of the New York Insurance Law. The Company shall have a lien upon any such

settlement or judgment to the extent that the Company has paid first-party benefits. An eligible injured person shall:

(a) hold in trust, for the benefit of the Company, all rights of recovery which that person shall have for personal injury under section 5104(b) of the New York Insurance Law;

(b) do whatever is proper to secure, and shall do nothing to prejudice, such rights; and

(c) execute, and deliver to the Company, instruments and papers as may be appropriate to secure the rights and obligations of such person and the Company established by this provision.

An eligible injured person shall not compromise an action to recover damages brought under section 5104(b) of the New York Insurance Law, except:

(a) with the written consent of the Company;

(b) with approval of the court; or

(c) where the amount of the settlement exceeds \$ 50,000.

**Other Coverage.** Where more than one source of first-party benefits required by article 51 of the New York Insurance Law and article VI or VIII of the New York Vehicle and Traffic law is available and applicable to an eligible injured person in any one accident, this Company is liable to an eligible injured person only for an amount equal to the maximum amount that the eligible injured person is entitled to recover under this coverage, divided by the number of available and applicable sources of required first-party benefits. An eligible injured person shall not recover duplicate benefits for the same elements of loss under this coverage or any other mandatory first-party motor vehicle or no-fault motor vehicle insurance coverage issued in compliance with the laws of another state.

If the eligible injured person is entitled to benefits under any such mandatory first-party motor vehicle or no-fault motor vehicle insurance for the same elements of loss under this coverage, this Company shall be liable only for an amount equal to the proportion that the total amount available under this coverage bears to the sum of the amount available under this coverage and the amount available under such other mandatory insurance for the common elements of loss. However, where another state's mandatory first-party or no-fault motor vehicle insurance law provides unlimited coverage available to an eligible injured person for an element of loss under this coverage, the obligation of this Company is to share equally for that element of loss with such other mandatory insurance until the \$ 50,000, or \$ 75,000 if Optional Basic Economic Loss (OBEL) coverage is purchased, limit of this coverage is exhausted by the payment of that element of loss and any other elements of loss.

## Section II

### **Excess Coverage**

If medical payments coverage or any disability coverages or uninsured motorists coverage are afforded under this policy, such coverages shall be excess insurance over any Mandatory PIP, OBEL or Additional PIP benefits paid or payable, or which would be paid or payable but for the application of a deductible under this or any other motor vehicle No-Fault insurance policy.

### **Section III Constitutionality**

If it is conclusively determined by a court of competent jurisdiction that the New York Comprehensive Motor Vehicle Insurance Reparations Act, or any amendment thereto, is invalid or unenforceable in whole or in part, then, subject to the approval of the Superintendent of Insurance, the Company may amend this policy and may also recompute the premium for the existing or amended policy.

These amendments and recomputations will be effective retroactively to the date that such Act or any amendment is deemed to be invalid or unenforceable in whole or in part.

(f) The Mandatory Personal Injury Protection Endorsement -- Managed Care Coverage (New York) set out below is approved and promulgated for use by an insurer and, except as provided in subdivision (h) of this section, must be furnished, in place of the Mandatory Personal Injury Protection Endorsement (New York), to all insureds who purchase Managed Care Coverage from insurers that elect to offer such coverage.

**MANDATORY PERSONAL INJURY PROTECTION ENDORSEMENT MANAGED  
CARE COVERAGE (New York)**

The Company agrees with the named insured, as follows:

**Section I  
Mandatory Personal Injury Protection**

The company will pay first-party benefits to reimburse for basic economic loss sustained by an eligible injured person on account of personal injuries caused by an accident arising out of the use or operation of a motor vehicle or a motorcycle during the policy period and within the United States of America, its territories or possessions, or Canada.

**First-Party Benefits**

First-party benefits, other than death benefits, are payments equal to basic economic loss, reduced by the following:

(a) 20 percent of the eligible injured person's loss of earnings from work to the extent that an eligible injured person's basic economic loss consists of such loss of earnings;

(b) amounts recovered or recoverable on account of personal injury to an eligible injured person under State or Federal laws providing social security disability or workers' compensation benefits, or disability benefits under article nine of the New York Workers' Compensation Law; and

(c) if medical expense is not incurred in accordance with the terms of the Managed Care coverage provided by this endorsement, the amount of any applicable (deductible)\* (and)\* (or)\* (coinsurance)\*, provided that any such (deductible)\* (and)\* (or)\* (coinsurance)\* shall be applied to the first-party benefits payable for medical expense incurred by the named insured or any relative as a result of the accident.

\_\_\_\_\_ \* Companies may select from and then delete, as appropriate, the matter set out in parenthesis.

**Basic Economic Loss**

Basic economic loss shall consist of medical expense, work loss, other expense and, when death occurs, a death benefit as herein provided. Except for such death benefit, basic economic loss shall not include any loss sustained on account of death. Basic economic loss of each eligible injured person on account of any single accident shall not exceed \$

50,000, except that any death benefit hereunder shall be in addition thereto.

#### **Medical Expense**

Medical expense shall consist of necessary expenses for:

(a) medical, hospital (including services rendered in compliance with the Public Health Law, whether or not such services are rendered directly by a hospital), surgical, nursing, dental, ambulance, X-ray, prescription drug and prosthetic services;

(b) psychiatric, physical and occupational therapy and rehabilitation;

(c) any non-medical remedial care and treatment rendered in accordance with a religious method of healing recognized by the laws of New York; and

(d) any other professional health services.

These medical expenses will not be subject to a time limitation, provided that, within one year after the date of the accident, it is ascertainable that further medical expenses may be sustained as a result of the injury. Payments hereunder, including payments by the Company to a managed care organization or to a provider affiliated with a managed care organization, for necessary medical expenses shall be subject to the limitations and requirements of section 5108 of the New York Insurance Law.

#### **Work Loss**

Work loss shall consist of the sum of the following losses and expenses, up to a maximum payment of \$ 2,000 per month for a maximum period of three years from the date of the accident:

(a) loss of earnings from work which the eligible injured person would have performed had such person not been injured, except that an employee who is entitled to receive monetary payments, pursuant to statute or contract with the employer, or who receives voluntary monetary benefits paid for by the employer, by reason of such employee's inability to work because of personal injury arising out of the use or operation of a motor vehicle or a motorcycle, shall not be entitled to receive first-party benefits for loss of earnings from work to the extent that such monetary payments or benefits from the employer do not result in the employee suffering a reduction in income or a reduction in such employee's level of future benefits arising from a subsequent illness or injury; and

(b) reasonable and necessary expenses sustained by the eligible injured person in obtaining services in lieu of those which such person would have performed for income.

#### **Other Expenses**

Other expenses shall consist of all reasonable and necessary expenses, other than medical expense and work loss, up to \$ 25 per day for a period of one year from the date of the accident causing injury.

### **Death Benefit**

Upon the death of any eligible injured person, caused by an accident to which this coverage applies, the company will pay to the estate of such person a death benefit of \$ 2,000.

### **Eligible Injured Person**

Subject to the exclusions and conditions set forth below, an eligible injured person is:

(a) the named insured and any relative who sustains personal injury arising out of the use or operation of any motor vehicle;

(b) the named insured and any relative who sustains personal injury arising out of the use or operation of any motorcycle, while not occupying a motorcycle;

(c) any other person who sustains personal injury arising out of the use or operation of the insured motor vehicle in the State of New York while not occupying another motor vehicle; or

(d) any New York State resident who sustains personal injury arising out of the use or operation of the insured motor vehicle outside of New York while not occupying another motor vehicle.

### **Exclusions**

This coverage does not apply to personal injury sustained by:

(a) the named insured while occupying, or while a pedestrian through being struck by, any motor vehicle owned by the named insured with respect to which the coverage required by the New York Comprehensive Motor Vehicle Insurance Reparations Act is not in effect;

(b) any relative while occupying, or while a pedestrian through being struck by, any motor vehicle owned by the relative with respect to which the coverage required by the New York Comprehensive Motor Vehicle Insurance Reparations Act is not in effect;

(c) the named insured or relative while occupying, or while a pedestrian through being struck by, a motor vehicle in New York State, other than the insured motor vehicle, with respect to which the coverage required by the New York Comprehensive Motor Vehicle Insurance Reparations Act is in effect; however, this exclusion does not apply to personal injury sustained in New York State by the named insured or relative while occupying a bus or school bus, as defined in sections 104 and 142 of the New York Vehicle and Traffic Law, unless that person is the operator, an owner, or an employee of the owner or operator, of such bus or school bus;

[(d) any person in New York State while occupying the insured motor vehicle which is a bus or school bus, as defined in sections 104 and 142 of the New York Vehicle and Traffic Law, but only if such person is a named insured or relative under any other policy providing the coverage

required by the New York Comprehensive Motor Vehicle Insurance Reparatons Act; however, this exclusion does not apply to the operator, an owner, or an employee of the owner or operator, of such bus or school bus;] \*\*\*\*Language in brackets may be deleted if the insured motor vehicle is not a bus or school bus.

(e) any person while occupying a motorcycle;

(f) any person who intentionally causes his or her own personal injury; \*\*\*\*\*These exclusions may be deleted, in the event the company wishes to provide coverage under the indicated circumstances.

(g) any person as a result of operating a motor vehicle while in an intoxicated condition or while his ability to operate such vehicle is impaired by the use of a drug (within the meaning of section 1192 of the New York Vehicle and Traffic Law);\*\*\*

(h) any person while:

(i) committing an act which would constitute a felony, or seeking to avoid lawful apprehension or arrest by a law enforcement officer;\*\*\*

(ii) operating a motor vehicle in a race or speed test;\*\*\*

(iii) operating or occupying a motor vehicle known to that person to be stolen;\*\*\* or

(iv) repairing, servicing or otherwise maintaining a motor vehicle if such conduct is within the course of a business of repairing, servicing or otherwise maintaining a motor vehicle and the injury occurs on the business premises; \*\*\*\*\*These exclusions may be deleted, in the event the company wishes to provide coverage under the indicated circumstances.

(i) the named insured or relative while not occupying a motor vehicle or a motorcycle when struck by a motorcycle in New York State with respect to which the coverage required by the New York Comprehensive Motor Vehicle Insurance Reparatons Act is in effect;

(j) any New York State resident other than the named insured or relative injured through the use or operation of the insured motor vehicle outside of New York State if such resident is the owner or a relative of the owner of a motor vehicle insured under another policy providing the coverage required by the New York Comprehensive Motor Vehicle Insurance Reparatons Act; or

(k) any New York State resident other than the named insured or relative injured through the use or operation of the insured motor vehicle outside of New York State if such resident is the owner of a motor vehicle for which the coverage required by the New York Comprehensive Motor Vehicle Insurance Reparatons Act is not in effect.

#### Other Definitions

When used in reference to this coverage:

**(a)** the "insured motor vehicle" means a motor vehicle owned by the named insured and to which the bodily injury liability insurance of this policy applies and for which a specific premium is charged;

**(b)** "motorcycle" means a vehicle as defined in section 123 of the New York Vehicle and Traffic Law, and which is required to carry financial security pursuant to article 6, 8 or 48-A of the Vehicle and Traffic Law;

**(c)** "motor vehicle" means a motor vehicle, as defined in section 311 of the New York Vehicle and Traffic Law, and also includes fire and police vehicles, but shall not include any motor vehicle not required to carry financial security pursuant to article 6, 8 or 48-A of the Vehicle and Traffic Law, or a motorcycle as defined above;

**(d)** "named insured" means the person or organization named [in the declarations]; \*\*\*\*\*Companies may substitute the appropriate term, reference or language for the matter set out in brackets.

**(e)** "occupying" means in or upon or entering into or alighting from;

**(f)** "personal injury" means bodily injury, sickness or disease;

**(g)** "relative" means a spouse, child, or other person related to the named insured by blood, marriage, or adoption (including a ward or foster child), who regularly resides in the insured's household, including any such person who regularly resides in the household, but is temporarily living elsewhere;

**(h)** "use or operation" of a motor vehicle or a motorcycle includes the loading or unloading of such vehicle;

**(i)** "managed care organization" means an individual or group certified by the Superintendent of Insurance to provide health care services pursuant to an approved managed care program;

**(j)** "managed care program" means a comprehensive plan to deliver some or all medical and other health care services under systems designed to enhance the efficiency and quality of health care services that emphasize or require utilizing specific health care providers and which may require pre-authorization for the use of health care providers.

**(k)** "emergency care" means necessary medical care, treatment, services, products or accommodations provided or related expenses incurred for a sudden, unexpected onset of a medical condition of such nature that failure to render care could reasonably result in deterioration to the point of placing the eligible injured person's life in jeopardy or cause serious impairment to that person's bodily functions;

**(l)** "participating provider" means a physician, hospital, facility or other health care provider who has contracted with the managed care organization to provide services to the named insured and to relatives of the named insured;

(m) "non-participating provider" means a physician, hospital, facility or other provider who has not contracted with the managed care organization to provide services to the named insured and to relatives of the named insured; and

(n) "pre-authorization" means a method of managing care where the eligible injured person or participating provider must notify and receive authorization from the (managed care organization)\* (Company)\* prior to obtaining or furnishing non-emergency care.

#### **Conditions**

**Action against company.** No action shall lie against the Company unless, as a condition precedent thereto, there shall have been full compliance with the terms of this coverage.

**Notice.** In the event of an accident, subject to the notice requirements and limitations imposed by managed care coverage as set forth below, written notice setting forth details sufficient to identify the eligible injured person, along with reasonably obtainable information regarding the time, place and circumstances of the accident, shall be given by, or on behalf of, each eligible injured person, to the Company, or any of the Company's authorized agents, as soon as reasonably practicable, but in no event more than 90 days after the date of the accident, unless the eligible injured person submits written proof that it was impossible to comply with such time limitation due to specific circumstances beyond such person's control. If an eligible injured person or that person's legal representative institutes a proceeding to recover damages for personal injury under section 5104(b) of the New York Insurance Law, a copy of the summons and complaint or other process served in connection with such action shall be forwarded as soon as practicable to the Company or any of the Company's authorized agents by such eligible injured person or that person's legal representative.

**Managed care coverage.** An eligible injured person who is a named insured or a relative of the named insured agrees to receive treatment, for all items covered as medical expense under this endorsement and any other endorsement providing personal injury protection under the policy, through a managed care organization pursuant to a managed care program designated by the Company, unless:

(a) emergency care is required. If emergency care is required, the eligible injured person or someone on such person's behalf must notify the (Company)\* (managed care organization)\* in writing or by telephone and such notice must be received within 48 hours after emergency care is first provided. If it was not reasonably practicable to provide notice within 48 hours, then notice must be supplied as soon as reasonably practicable so that care can be coordinated under the managed care program. All necessary treatment received outside the managed care organization within 24 hours after the accident shall be considered emergency care; or

(b) the company or the managed care organization determines that the eligible injured person requires treatment that is not within the scope of the managed care program established by the insurer; or

(c) the company or the managed care organization determines that the eligible injured person requires treatment that is within the scope of the managed care program, but the particular services needed are not accessible to that person within the managed care program.

(Management of care. An eligible injured person who is a named insured or a relative of a named insured agrees to obtain pre-authorization from the Company or the managed care organization prior to obtaining treatment from participating providers or from non-participating providers for injuries sustained in an accident, if such treatment is not for emergency care.)\*

(Management of care. An eligible injured person who is a named insured or a relative of the named insured agrees to provide notice received by the Company or the managed care organization in writing or by telephone within 48 hours after first receiving treatment for injuries sustained in an accident in an emergency or a non-emergency situation, so that care can be coordinated under the managed care program. However, for non-emergency care to be covered, the eligible injured person must receive treatment from a participating provider as required by the managed care program. If it is not reasonably practicable to provide notice within 48 hours, then notice must be provided as soon as reasonably practicable.)\*

Unless (a), (b) or (c) apply (and unless the authorization and notification requirements of the managed care coverage have been followed),\* any first-party benefits payable shall be reduced by a (deductible in the amount of \$ (xxxx) \*\*\*\*\* per person per accident)\* (and, after such deductible has been paid, by)\* ((xx)\*\*\*\*\* percent coinsurance)\* if it is determined that care, treatment, services, products or accommodations were not provided by or through the managed care program (or in compliance with notification and pre-authorization requirements established by the Company or the managed care organization.)\*Companies may select from and then delete, as appropriate, the matter set out in brackets. A combination of these approaches may be possible.\*\*\*\*\* Companies may insert an amount up to \$ 2,500. In addition, or as an alternative, to a deductible, insurers may also require a coinsurance payment, not to exceed 25 percent.

**Proof of Claim; Medical, Work Loss, and Other Necessary Expenses.** In the case of a claim for health service expenses, subject to the notice requirements and limitations pursuant to the managed care program, the eligible injured person or that person's representative shall submit written proof of claim to the Company, including full particulars of the nature and extent of the injuries and treatment received and contemplated, as soon as reasonably practicable, but in no event later than 180 days after the date services are rendered or 180 days after the date written notice was given to the Company, whichever is later. The eligible injured person or that person's representative shall submit written proof of claim for work loss benefits to the Company as soon as

reasonably practicable. Written proof of claim for other necessary expenses shall be submitted by the eligible injured person or that person's representative to the Company as soon as reasonably practicable, but in no event later than 90 days after the services are rendered. The foregoing time limitations for the submission of proof of claim shall apply unless the eligible injured person or that person's representative submits written proof that it was impossible to comply with such time limitation due to specific circumstances beyond such person's control. Upon request by the Company, the eligible injured person or that person's representative shall:

(a) execute a written proof of claim under oath;

(b) provide authorization that will enable the Company to obtain medical records; and

(c) provide any other pertinent information that may assist the Company in determining the amount due and payable.

The eligible injured person shall submit to medical examination by physicians selected by, or acceptable to, the Company, when, and as often as, the Company may reasonably require.

**Arbitration.** In the event any person making a claim for first-party benefits and the Company do not agree regarding any matter relating to the claim, such person shall have the option of submitting such disagreement to arbitration pursuant to procedures promulgated or approved by the Superintendent of Insurance. However, as a precondition to such arbitration, if the dispute involves any matter concerning treatment with respect to a managed care program designated by the insurer, the person making claim must first exhaust the dispute resolution procedures established by the managed care program.

**Reimbursement and trust agreement.** To the extent that the Company pays first-party benefits, the Company is entitled to the proceeds of any settlement or judgment resulting from the exercise of any right of recovery for damages for personal injury under section 5104(b) of the New York Insurance Law. The Company shall have a lien upon any such settlement or judgment to the extent that the Company has paid first-party benefits. An eligible injured person shall:

(a) hold in trust, for the benefit of the Company, all rights of recovery which that person shall have for personal injury under section 5104(b) of the New York Insurance Law;

(b) do whatever is proper to secure, and shall do nothing to prejudice, such rights; and

(c) execute, and deliver to the Company, instruments and papers as may be appropriate to secure the rights and obligations of such person and the Company established by this provision.

An eligible injured person shall not compromise an action to recover damages brought under section 5104(b) of the New York Insurance Law, except:

(a) with the written consent of the Company;

(b) with approval of the court; or

(c) where the amount of the settlement exceeds \$ 50,000.

**Other Coverage.** Where more than one source of first-party benefits required by article 51 of the New York Insurance Law and article VI or VIII of the New York Vehicle and Traffic Law is available and applicable to an eligible injured person in any one accident, this Company is liable to an eligible injured person only for an amount equal to the maximum amount that the eligible injured person is entitled to recover under this coverage, divided by the number of available and applicable sources of required first-party benefits.

An eligible injured person shall not recover duplicate benefits for the same elements of loss under this coverage or any other mandatory first-party motor vehicle or No-Fault motor vehicle insurance coverage issued in compliance with the laws of another state.

If the eligible injured person is entitled to benefits under any such mandatory first-party motor vehicle or No-Fault motor vehicle insurance for the same elements of loss under this coverage, this Company shall be liable only for an amount equal to the proportion that the total amount available under this coverage bears to the sum of the amount available under this coverage and the amount available under such other mandatory insurance for the common elements of loss. However, where another state's mandatory first-party or No-Fault motor vehicle insurance law provides unlimited coverage available to an eligible injured person for an element of loss under this coverage, the obligation of this Company is to share equally for that element of loss with such other mandatory insurance until the \$ 50,000, or \$ 75,000 if Optional Basic Economic Loss (OBEL) coverage is purchased, limit of this coverage is exhausted by the payment of that element of loss and any other elements of loss.

## **Section II Excess Coverage**

If motor vehicle medical payments coverage or any disability coverages or uninsured motorists coverage are afforded under this policy, such coverages shall be excess insurance over any Mandatory PIP, OBEL, or Additional PIP benefits paid or payable, or which would be paid or payable but for the application of a deductible or co-insurance, under this or any other motor vehicle No-Fault insurance policy.

## **Section III Constitutionality**

If it is conclusively determined by a court of competent jurisdiction that the New York Comprehensive Motor Vehicle Insurance Reparations Act, or any amendment thereto, is invalid or unenforceable in whole or in part, then, subject to the approval of the Superintendent of Insurance, the Company may amend this policy and may also recompute the premium for the existing or amended policy.

These amendments and recomputations will be effective retroactively to the date that such act or any amendment is deemed to be invalid or unenforceable in whole or in part.

(g) The Optional Basic Economic Loss Coverage Endorsement (New York), set out below is approved and promulgated for use by an insurer and, except as provided in subdivision (h) of this section, must be furnished to all insureds who purchase Optional Basic Economic Loss (OBEL) coverage for policies issued or renewed on or after November 12, 1991.

**OPTIONAL BASIC ECONOMIC LOSS COVERAGE ENDORSEMENT  
(New York)**

The Company agrees with the named insured, subject to all of the provisions, exclusions and conditions of the MANDATORY PERSONAL INJURY PROTECTION ENDORSEMENT (New York) not expressly modified in this Endorsement, as follows:

The definition of Basic Economic Loss contained in the MANDATORY PERSONAL INJURY PROTECTION ENDORSEMENT (New York) or the MANDATORY PERSONAL INJURY PROTECTION ENDORSEMENT -- MOTORCYCLES (New York) is replaced by the following:

**Basic Economic Loss**

Basic economic loss shall consist of medical expense, work loss, other expense and, when death occurs, a death benefit as herein provided. Except for such death benefit, basic economic loss shall not include any loss sustained on account of death. Basic economic loss of each eligible injured person on account of any single accident shall not exceed \$ 75,000, the last \$ 25,000 of which represents optional basic economic loss coverage, payable after the first \$50,000 of basic economic loss has been exhausted, that the eligible injured person or that person's legal representative may specify will be applied to one of the following four options:

- (1) basic economic loss;
- (2) loss of earnings from work;
- (3) psychiatric, physical or occupational therapy and rehabilitation; or
- (4) a combination of options (2) and (3).

Any death benefit hereunder shall be in addition thereto.

Exclusion (c) set forth in the MANDATORY PERSONAL INJURY PROTECTION ENDORSEMENT (New York) is replaced by the following:

(c) the named insured or relative while occupying, or while a pedestrian through being struck by, a motor vehicle in New York State, other than the insured motor vehicle, with respect to which the coverage required by the New York Comprehensive Motor Vehicle Insurance Reparations Act is in effect; however, this exclusion does not apply to:

- (1) the Optional Basic Economic Loss coverage provided under this endorsement, unless OBEL coverage is provided by the policy covering the other motor vehicle; or

(2) to personal injury sustained in New York State by the named insured or relative while occupying a bus or school bus, as defined in sections 104 and 142 of the New York Vehicle and Traffic Law, unless that person is the operator, an owner, or an employee of the owner or operator, of such bus or school bus.

#### **Election**

Election of the OBEL option shall be made by the eligible injured person or that person's legal representative after such person has incurred expense aggregating \$ 30,000 in basic economic loss and after receiving the required notices from the Company that an OBEL election may be made. Failure of the eligible injured person or that person's legal representative to respond to the second notice within 15 calendar days after its mailing shall be considered an election by the eligible injured person to apply OBEL coverage to all elements of basic economic loss. Once made by the eligible injured person or that person's legal representative, an OBEL election cannot be changed. However, if claims payable under OBEL coverage have not yet been received by the Company, an eligible injured person who has failed to respond to the second notice in a timely manner may make an election.

#### **Notice**

If OBEL coverage is payable under this policy, but Mandatory PIP is being paid under a policy covering another motor vehicle, then the named insured or relative shall notify the Company no later than 90 days after Mandatory PIP benefits under that other policy have been exhausted. The Company shall then send its OBEL election notice.

(h) Deviations from these endorsements prescribed by this section may be submitted for prior approval, but approval will not be granted for:

(1) any reduction in first-party benefits payable to eligible injured persons; or

(2) any changes in form alone, or non-substantive or editorial deviations or minor deviations in first-party benefits or other provisions.

(i) Notwithstanding any of the provisions of these endorsements, the Company shall provide at least for the payment of first-party benefits pursuant to section 5103 of the Insurance Law, and these endorsements shall be construed as if such coverage were embodied therein.

\* NB Reinstated effective February 1, 2000 per Medical Society of New York v. Neil D. Levin as Superintendent of Insurance, 712 NY2d 745 (Supreme Court, New York County).

Section statutory authority: Vehicle & Traffic Law, §T3A6, §T3A8; Insurance Law, §A51, §5103, §2307, §5102; Workers' Compensation Law, §A9; Public Health Law, §A41; Insurance Law, §5108; Vehicle & Traffic Law, § 104; Insurance Law, §5104; Vehicle & Traffic Law, §142, §1192, §123, §T11A48-A, §311

Added 65.12 on 11/28/77; amended 65.12 on 12/29/81; amended 65.12 on 12/20/82; amended 65.12 on 8/30/85; repealed 65.12 on 11/03/99.