

Be Careful What You Ask For...
The NEW 2013 ISO CGL
Changes



Presented by

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Bill Wilson

William C. Wilson, Jr., CPCU, ARM is director of the Virtual University of the Independent Insurance Agents & Brokers of America (IIABA). He was the Director of Education & Technical Affairs for the Insurors of Tennessee from 1988-1999. Prior to 1988, he was employed by Insurance Services Office, Inc. as the manager of their field operations in Tennessee and Kentucky. Before that time, he was a bag boy at H.G. Hill food store #25.

Bill is a graduate of the Illinois Institute of Technology with a B.S. degree in Fire Protection & Safety Engineering. He was a licensed insurance and surplus lines agent, and his professional affiliations have included past president of the Middle Tennessee Chapter of CPCU, board member of the national CPCU Society, PMLG of the Honorable Order of Blue Goose, International, member of the Independent Insurance Agents of America (IIABA) National Education Committee, member of the Certified Insurance Service Representative (CISR) National Advisory Committee, member of the Society of Insurance Trainers and Educators (SITE) and its SITE Journal editorial committee, member of the National Writers Association, chairman of the Tennessee Insurance Commissioner's Education Advisory Committee, member of the Middle Tennessee State University Insurance Liaison Committee, member of the Nashville State Technical Institute's Financial Services Advisory Committee, member of the National Underwriter's FC&S Editorial Advisory Board, and an instructor for insurance and risk management programs for Tennessee State University and Nashville State Technical Institute. He is listed in the International Who's Who of Professionals™.

He has served as a trainer and speaker for various organizations, including the Independent Insurance Agents of America (IIABA national conventions and state convention programs and seminars), the CPCU Society national convention, National Leadership Conference and chapter programs, the National Association of Insurance Women (NAIW), the Southern Agents Conference, and the Risk & Insurance Managers Society (RIMS).

Bill has conducted hundreds of technical seminars, workshops and convention presentations—from Hawaii to Rhode Island—as well as programs on time management, presentation and public speaking skills, seminar development, and many others. He was the recipient of the 1996 L.P. McCord National Education Award for having the #1 ranked IIABA insurance education program in America. Bill was the 2010 recipient of the George M. Gottheimer Memorial Award which is presented annually to a CPCU Society member who has made an outstanding contribution to the field of insurance education, risk management or insurance consulting.

He has researched, developed, written, and published dozens of technical articles and manuals, and has authored articles in business and industry trade periodicals such as Presentations magazine, American Agent & Broker magazine, Independent Agent magazine, Tennessee Insuror magazine, Tennessee Business magazine, the CPCU Journal, and the SITE Journal.

He has been cited as an expert resource/interviewee for local television and radio media, and has served as an expert witness in litigation. According to Nashville NBC television affiliate WSMV, *"Bill Wilson is an expert when it comes to insurance."* Dr. William T. Hold, president of the Society of Certified Insurance Counselors in Austin, Texas has said that, *"Bill Wilson is recognized by his peers as one of the premier insurance educators in America."*

Finally, not that it has anything whatsoever to do with this program, Bill is also an avid (notice we didn't say 'good') electric blues guitar player. He can be emailed at bill.wilson@iaba.net. You can visit IIABA's Virtual University by going to <http://www.bigivu.com>.

The Big “I” Virtual University

The Big “I” Virtual University (VU) is an online education, reference, and research facility that is available for free to members of the Independent Insurance Agents & Brokers of America and on a subscription basis to others.

This 4,000+ page resource includes a research library with articles, white papers, charts, checklists, policy form analysis, and other documents on insurance coverages, agency management, sales, customer service, and technology.

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Why ISO makes policy changes

- Events and emerging issues
- Case law
- Insurer panels
- ISO staff
- Liaison committee
- Big "I" National Technical Affairs Committee
- Mid-America Insurance Conference (www.matcinsurance.com)



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2013 Filing Changes

- **Forms:** GL-2012-OFR12
 - **Rules:** GL-2012-ORU12
 - **Loss Costs:** GL-2012-RCTLC
-
- About a dozen coverage form changes
 - 80+ new and revised endorsements
 - Effective April 1, 2013 in most states



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Liquor Liability

- Expands the exclusion to include claims alleging:
 - the supervision, hiring, employment, training or monitoring of others
 - Providing or failing to provide transportation with respect to any person that may be under the influence
- BYOB establishments
 - Whether a fee is charged or a license required, is not “by itself” considered the business of selling, serving or furnishing alcoholic beverages
 - So, *BYOB establishments don't need to buy liquor liability coverage?*
- These changes also made to CG 21 50, CG 21 51, CG 29 52, and CG 29 53, and a **new** CG 24 06



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Aircraft/Auto/Watercraft

- The prior exclusion contains an exception for BI or PD arising out of the operation of machinery or equipment attached to a land vehicle that would qualify as mobile equipment if not subject to a MV law *in the state* where it is licensed or garaged
- The phrase “in the state” is removed to recognize jurisdictions such as DC, Puerto Rico, Guam, and the U.S. Virgin Islands



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Electronic Data

- This exclusion applies to the loss of, loss of use of, damage to, corruption of, inability to access, or inability to manipulate electronic data
- The following exception is introduced:
“However, this exclusion does not apply to liability for damages because of ‘bodily injury’.”
- This change is also made to the CG 04 37 endorsement



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Unlawful Material

- The mandatory CG 00 68 – Recording And Distribution Of Material Or Information In Violation Of Law Exclusion endorsement was introduced in 2008 to exclude BI, PD, PI, and AI arising out violations of consumer protection laws such as the TCPA, CAN-SPAM, and FCRA
- The endorsement is withdrawn and the language incorporated into the CGL policy



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False Material

- Coverage B exclusions for “Material Published With Knowledge Of Falsity” and “Material Published Prior To Policy Period” are revised to apply to PI and AI arising out of the oral or written publication of material “in any manner”
- This is done in recognition that PI and AI may arise from internet and electronic publication via email, web site, etc.



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Other Insurance

- The CGL policy is excess over “Any other primary insurance available to you covering liability for damages arising out of the premises or operations, or the products and completed operations, **for which you have been added as an additional insured by attachment of an endorsement.**”
- Last 5 words removed in new CGL form...why?
- IRMI citation: *Graphic Arts Mut. Ins. Co. v. Essex Ins. Co.*, 465 F. Supp. 2d 1290 (N.D. Ga. 2006)



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Other Insurance (cont'd)

ACORD 25:

IMPORTANT: If the certificate holder is an **ADDITIONAL INSURED**, the **policy(ies) must be endorsed**...A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).



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Auto/ME Definitions

- The CGL “auto” and “mobile equipment” definitions are governed in part by whether a land vehicle is subject to MV laws *in the state* where it is licensed or garaged
- The phrase “in the state” is removed to recognize jurisdictions such as DC, Puerto Rico, Guam, and the U.S. Virgin Islands



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Other Coverage Forms

- Liquor Liability – CG 00 33 and CG 00 34
Adds named trusts and their trustees as insureds.
- Railroad Protective Liability – CG 00 35
Covers loss from fuels/lubricants for on-site equipment.
- Pollution Liability – CG 00 39 and CG 00 40
See next slide...
- Electronic Data Liability – CG 00 65
Removes a phrase from Exclusion g. that was apparently mistakenly added in 2006.



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Pollution Liability

- Pollution Liability Coverage Forms CG 00 39 and CG 00 40 Aircraft, Auto, Rolling Stock or Watercraft exclusion
 - Expands the exclusion to apply to claims alleging negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by the insured
 - CG 00 39 now excludes the over-the-road exposures of a land vehicle subject to MV laws (this is already the case with the CG 00 40)



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Primary/Noncontributory

4. Other Insurance
 - b. Excess Insurance
This insurance is excess over:
 - (2) Any other primary insurance available to you covering liability for damages arising out of the premises or operations **for which you have been added as an additional insured** by attachment of an endorsement.



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Primary/Noncontributory (cont'd)

ISO CG 20 01 04 13 Primary And Noncontributory – Other Insurance Condition

The following is added to the **Other Insurance** Condition and supersedes any provision to the contrary:

Primary And Noncontributory Insurance

This insurance is primary to and will not seek contribution from any other insurance available to an additional insured under your policy provided that:

- (1) The additional insured is a **Named Insured** under such other insurance; and
- (2) You have agreed **in writing** in a contract or agreement that this insurance would be primary and would not seek contribution from any other insurance available to the additional insured.



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Primary/Noncontributory (cont'd)

- Beware of AI endorsements that provide only excess coverage
- Some say they provide excess coverage unless primary coverage is required by written contract
- *Jeffrey M. Brown Assoc., Inc. v. Zurich Am. Ins. Co.*, 2010 N.J. Super. LEXIS 108 (N.J. Super. Ct. App. Div. June 23, 2010)...court upheld excess coverage language under AI endorsement



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New Blanket AI Form

- **Current CG 20 33 blanket AI endorsement:**
“Section II – Who Is An Insured is amended to include as an additional insured any person or organization for whom you are performing operations when you and such person or organization have agreed in writing in a contract or agreement that such person or organization be added as an additional insured on your policy.”



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New Blanket AI Form (cont'd)

- “XYZ Catering, Inc. (d/b/a XYZ Creations), ABC Sports & Entertainment LLC, ABC Holdings LP, the DEF Center, their respective principals, members, officials, officers, directors, shareholders, employees, and agents, their respective parent and affiliate companies and their respective Successors or Assigns as now or hereafter may be constituted and the Centennial Authority, the City of Raleigh, North Carolina, the State of North Carolina and their departments, divisions, commissions, and boards and their respective principals, members, officials, officers, directors, shareholders, employees, and agents have been named as additionally insured's under said policy with respect to any legal liability arising out of the Licensee's performance hereunder.”



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New Blanket AI Form (cont'd)

- **New York trial court cases:**
 - *Brooklyn Hosp. Ctr. V. One Beacon Ins.*
 - *Illinois National Ins. Co. v. American Alternative Ins. Corp.*
 - *Cusumano v. Extell Rock, LLC*
 - *Skanska USA Building, Inc. v. Burlington Insurance Company*
- **Illinois appeals court case:**
Westfield Insurance Company v. FCL Builders, Inc.
<http://www.state.il.us/court/Opinions/AppellateCourt/2011/1stDistrict/March/1100521.pdf>
- Another reason to decline to add “explanatory” language to a certificate of insurance



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New Blanket AI Form (cont'd)

CG 20 38 04 13 adds the following language:

- "Any other person or organization you are required to add as an additional insured under the contract or agreement...."
- "Such person(s) or organization(s) is an additional insured only with respect to liability for 'bodily injury', 'property damage' or 'personal and advertising injury' caused, in whole or in part, by...Your acts or omissions; or...The acts or omissions of those acting on your behalf...**in the performance of your ongoing operations for the additional insured.**"



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Other AI Form Revisions

- "The insurance afforded to such additional insured only applies to the extent permitted by law...."
- "If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured."



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Other AI Form Revisions (cont'd)

"If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement; or
2. Available under the applicable Limits of Insurance shown in the Declarations; whichever is less."



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Other AI Form Revisions

- CG 20 10 (and others)
"Section II – Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the schedule, but only with respect to liability for 'bodily injury', 'property damage' or 'personal and advertising injury' caused, in whole or in part, by...Your acts or omissions; or...The acts or omissions of those acting on your behalf...**in the performance of your ongoing operations for the additional insured(s)**....
- CG 20 26...next slide



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Other AI Form Revisions

- CG 20 26
"Section II – Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the schedule, but only with respect to liability for 'bodily injury', 'property damage' or 'personal and advertising injury' caused, in whole or in part, by...Your acts or omissions or the acts or omissions of those acting on your behalf...**in the performance of your ongoing operations**; or...In connection with your premises owned by or rented to you. **for the additional insured(s)**....
- ?????



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"Insured Contracts"

- CG 24 26 – Amendment Of Insured Contract Definition Endorsement
- CG 24 27 – Limited Contractual Liability - Railroads Endorsement
- Remove coverage for the indemnitee's sole negligence from the "insured contract" definition
- New language limits any coverage to whatever is permitted by a jurisdiction's anti-indemnity law



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Bugs and Lawns

- **Endorsement title changes**
 - CG 22 64 – Pesticide Or Herbicide Applicator - **Limited Pollution Coverage**
 - CG 22 93 – Lawn Care Services - **Limited Pollution Coverage**
 - CG 28 12 – Pesticide Or Herbicide Applicator – **Limited Pollution Coverage**
- CGL Exclusions j.(5), j.(6), and l. still apply



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Other Changes

- **CG 20 08** – Additional Insured – Users of Golfmobiles Endorsement adds a definition of "golfmobile"
- **CG 24 13** – Amendment of Personal And Advertising Injury Definition adds some invasion of privacy coverage (new)
- Other "minor" changes in about 45 endorsements
- Editorial changes to 67 policy forms and endorsements



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