

“Horrible Policy Forms and Endorsements To Avoid or Be Wary Of”

The collage features several documents and a website screenshot:

- Commercial General Liability (CGL) Endorsement:** A form titled "THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY. ADDITIONAL INSURED - OWNERS, LESSEES OR CONTRACTORS - SCHEDULED PERSON OR ORGANIZATION". It includes a table for listing insured parties and their descriptions.
- Expanded Property Damage Coverage:** A form titled "THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY. EXPANDED PROPERTY DAMAGE COVERAGE". It details coverage for property damage, including items like "Expansion, Collapse, & Collapse of Property" and "Explosion".
- Additional Insured Wrap:** A form titled "THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY. ADDITIONAL INSURED WRAP". It provides instructions for adding additional insureds to a policy.
- Handwritten Notes:** Red and black ink annotations are scattered across the forms, including phrases like "Company files", "No completed special", and "This is a...".
- Website Screenshot:** A screenshot of the "Virtual University" website. The article is titled "Is It ISO or Is It Memorex Insurance Company?" by Bill Wilson. The article discusses the quality of insurance policy forms, comparing ISO forms to Memorex audio cassette tapes, and provides advice on how to identify and avoid poor-quality forms.

1st Edition
March 2016

Presenters



John Eubank

John O. Eubank, CPCU, ARM is CEO and President of Professional Insurance Education, Inc. in Nashville, Tennessee. He was previously employed by the Insurance Services Office, Inc. and ISO Commercial Risk Services, Inc. as the Regional Operations Manager for the Southern Region. He left ISO in 1987 to form PIE, Inc. and since has logged 14.72 gazillion miles in his insurance-manual-laden Lincoln.

John's professional affiliations include past Regional Vice President of the Society of Chartered Property & Casualty Underwriters (CPCU), PMLG of the Honorable Order of Blue Goose, International (HOBGI), member of the National Fire Protection Association (NFPA), and member of the Society of Fire Protection Engineers (SFPE).

John is recognized as one of the nation's premier insurance education instructors, having served as a National Faculty member of the Society of Certified Insurance Counselors since 1976, and is a recipient of the Professional Leadership Scroll from the American Institute for Property & Liability Underwriters and the Insurance Institute of America.

Since forming Professional Insurance Education, Inc. in 1987, he has served as a speaker and instructor for a wide variety of educational seminars for insurance associations in Alabama, California, Georgia, Illinois, Indiana, Kansas, Kentucky, Louisiana, Ohio, North & South Carolina, and Tennessee; Hoosier Ins. Co.; Society of CIC and the CPCU Society; National Association of Insurance Women (NAIW); and the North American Retail Dealers Association.

John is available for association-sponsored and in-house training programs, though he is usually booked over a year in advance. He can be contacted at 408 Page Road, Nashville, TN 37205, 615-383-5443, insspeak1@bellsouth.net.



Bill Wilson

William C. Wilson, Jr., CPCU, ARM, AIM, AAM is the Vice President of Education and Research and founder and director of the Virtual University of the Independent Insurance Agents & Brokers of America, the country's largest trade association of independent insurance agents. He is the former Director of Education & Technical Affairs for the Insurors of Tennessee and, prior to that time, he was employed by Insurance Services Office, Inc. Mr. Wilson is a graduate of the Illinois Institute of Technology with a B.S. degree in Fire Protection & Safety Engineering.

Bill was a licensed insurance and surplus lines agent, and his professional affiliations have included past president of the Middle Tennessee Chapter of CPCU, member of the board of directors of the national CPCU society, PMLG of the Honorable Order of Blue Goose, International, member of the Independent Insurance Agents & Brokers of America (IIABA) National Education Committee, member of the Certified Insurance Service Representative (CISR) National Advisory Committee, member of the National Underwriter FC&S editorial board, 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, and member of the Nashville State Technical Institute's Business Management Advisory Committee.

Bill has served as a trainer and speaker for various organizations, including the Independent Insurance Agents & Brokers of America and 41 of its state affiliates, the CPCU Society national convention and chapter programs, the National Association of Insurance Women (NAIW), the Southern Agents Conference (SAC), the Risk & Insurance Managers Society (RIMS), the International Risk Management Institute (IRMI), and the Society of Risk Management Consultants (SRMC).

He has conducted hundreds of technical seminars, workshops and convention presentations—from Hawaii to Rhode Island and Alaska to Florida—as well as programs on time management, presentation and public speaking skills, seminar development, and many others. He has been the top-rated presenter at several CPCU National Conventions and his programs are always highly rated by attendees. He has presented seminars or webinars to as many as 5,000 attendees in a single session.

He was the recipient of the IIABA L.P. McCord National Education Award for having the #1 ranked state insurance education program in America and has won five other national education awards, including 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.

Bill has researched, developed, written, and published dozens of technical articles, manuals and CDs/audio tapes, 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*, CPCU Interest Group newsletters, and the *SITE Journal*.

He has been quoted as an expert in a number of mainstream publications, including *Readers Digest*, *Kiplinger's*, and *Money* magazines and the *Wall Street Journal*, and he has been cited as an expert resource/interviewee for television and radio media, most recently CNBC. He has also served as an expert witness in litigation.

Until December 2016, he can be contacted at bill.wilson@iiaba.net. At that time, he is retiring from IIABA and can be found at InsuranceCommentary@outlook.com and at his soon to be launched blog at www.InsuranceCommentary.com.

Remaining 2016 National Webinars and Webcasts

April 10

“Pollution...You’re Not Properly Insuring It!”

May 11

“The Dumb Things We Do”

June 22

“Drones”

July 20

“Identifying and Fixing Personal Lines Coverage Gaps”

August 24

“Identifying and Fixing Commercial Lines Coverage Gaps”

September

No webinars this month.

October

TBD...YOU pick a subject or subjects, but do it by August 26

November 16

“Builders Risk and Installation Floaters”

December 7

“What I’ve Learned (So Far) in 47 Years in the Insurance Industry” (FREE webinar)

For more information or to register, go to www.independentagent.com, click on Education, then Webinars.

FREE 30-Minute Monthly “First Monday LIVE!” Webcast on “What’s Goin’ On?”

What are the insurance implications of stories in the news headlines?

- April 4
- May 2
- June 6...tentatively broadcasting live from ISO headquarters
- July 11 (SECOND Monday due to the holiday)
- August 1
- September 5...tentatively broadcasting live from Chicago
- October 6...possibly another on-location live broadcast
- November 7...tentatively broadcasting live from the Mid-America Insurance Conference
- December 5

To register, go to the VU home page and click on the “FML” link on the left.

“Horrible Commercial Lines Policy Forms and Endorsements to Avoid or Be Wary Of”

Course Description

This program examines dozens of commercial lines policy forms and endorsements that business entities should avoid in their insurance programs if at all possible.

Learning Objectives

At the conclusion of this seminar, you should be able to:

- Understand the importance of carefully reviewing customer insurance packages
 - Determine if policy forms are standard ISO or non-ISO and how to determine their coverage impact
 - Advocate for coverage strategies that best serve the interests of consumers and businesses
 - Minimize legal liability for failing to identify and inform insureds about important coverage limitations
-

Introduction

- Why be concerned and who's to blame?
- Insurance requirements of “ISO or equivalent” forms
- Is It ISO or Is It Memorex?
- The “RTFP” and “Where's Waldo?” Doctrines
- Exclusionary endorsements used indiscriminately
- Two of the worst policies in the history of insurance?

Non-ISO Policy Forms and Endorsements

- Illusory coverage (and defective product liability?)
- Ambiguous policy provisions
- Manuscript endorsements
- Forms attaching coverage to classification codes
- “Special Condition” or “Contractor Warranty” endorsements
- Additional insured and related endorsements
- Residential and habitational construction exclusion endorsements
- Breach of contract exclusions
- Prior work exclusions
- Sunset clauses
- Third-party-over and employers liability exclusions and limitations
- Driver exclusions
- Others?

ISO Policy Forms and Endorsements

- CG 21 39 – Contractual Liability Limitation
- CG 24 26 – Amendment Of Insured Contract Definition
- CG 22 94 – Exclusion - Damage To Work Performed By Subcontractors On Your Behalf
- CG 22 95 – Exclusion - Damage To Work Performed By Subcontractors On Your Behalf - Designated Sites Or Operations
- CG 21 00 – Exclusion - All Hazards In Connection With Designated Premises
- CG 21 44 – Limitation Of Coverage To Designated Premises Or Projects
- CG 21 45 – Exclusion - Damage To Premises Rented To You
- CG 21 04 – Exclusion - Products-Completed Operations Hazard

- CG 21 53 – Exclusion - Designated Ongoing Operations
- CG 21 34 – Exclusion – Designated Work
- CG 21 33 – Exclusion - Designated Products
- CG 21 41 – Exclusion - Intercompany Products Suits
- CG 21 49 – Total Pollution Exclusion Endorsement
- CG 21 55 – Total Pollution Exclusion With A Hostile Fire Exception
- CG 21 65 – Total Pollution Exclusion With A Building Heating, Cooling And Dehumidifying Equipment Exception And A Hostile Fire Exception
- CG 21 50 – Amendment Of Liquor Liability Exclusion
- CG 21 51 – Amendment Of Liquor Liability Exclusion - Exception For Scheduled Premises Or Activities
- CG 24 06 – Liquor Liability - Bring Your Own Alcohol Establishments
- CG 24 08 – Liquor Liability
- CG 22 93 – Lawn Care Services - Limited Pollution Coverage
- CG 22 64 – Pesticide Or Herbicide Applicator - Limited Pollution Coverage
- CG 22 66 – Misdelivery Of Liquid Products Coverage
- CA 23 05 – Wrong Delivery Of Liquid Products
- CG 22 92 – Snow Plow Operations Coverage
- CG 22 29 – Exclusion - Property Entrusted
- CG 21 86 – Exclusion - Exterior Insulation And Finish Systems
- CG 21 96 – Silica Or Silica-Related Dust Exclusion
- CG 21 37 – Exclusion - Employees And Volunteer Workers As Insureds
- CG 21 66 – Exclusion - Volunteer Workers
- CG 21 36 – Exclusion - New Entities
- CG 21 35 – Exclusion - Coverage C - Medical Payments
- CG 21 01 – Exclusion - Athletic Or Sports Participant
- CG 21 32 – Communicable Disease Exclusion
- CG 21 17 – Exclusion - Movement Of Buildings Or Structures
- CG 21 38 – Exclusion - Personal And Advertising Injury
- CG 21 46 – Abuse Or Molestation Exclusion
- CG 21 97 – Abuse or Molestation Exclusion – Specified Professional Services
- CG 21 47 – Employment-Related Practices Exclusion
- CG 21 16 – Exclusion - Designated Professional Services
- CA 02 40 – Suspension Of Insurance
- CA 20 48 – Designated Insured For Covered Autos Liability Coverage
- CA 20 54 – Employee Hired Autos
- CA 25 07 – Locations And Operations Not Covered
- CG 22 48 – Exclusion - Insurance And Related Operations
- CP 10 36 – Limitations On Coverage For Roof Surfacing
- CP 12 32 – Limitation On Loss Settlement - Blanket Insurance (Margin Clause)
- CP 04 11 – Protective Safeguards
- CP 12 11 – Burglary And Robbery Protective Safeguards
- CP 99 10 – Alcoholic Beverages Tax Exclusion
- Others?

Conclusion

- What to do?
- Q&A

“Horrible Commercial Lines Policy Forms and Endorsements to Avoid or Be Wary Of”

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Insurance in the Headlines

Next Broadcast: **April 4**...tentative topics include Insurify.com, a VERY important court ruling, and more.

Questions or want to dig deeper?

- Email: bill.wilson@iiaba.net
- **Virtual Risk Consultant**
<http://www.independentagent.com/Products/non-insurance/VRC>
- **IRMI**
www.irmi.com



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Introduction

- Why be concerned and who's to blame?
- Insurance requirements of "ISO or equivalent" forms
- Is It ISO or Is it Memorex?
- The "RTFP" and "Where's Waldo?" doctrines
- Exclusionary endorsements used indiscriminately
- The worst policy in the history of insurance?



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Why be concerned?

Remember:

The purpose of insurance is to insure.

St. Paul Mercury Ins. Co. v. American Bank Holdings, Inc.
U.S. Court of Appeals, Fourth Circuit, 2015

Liability insurance policies are designed
to protect the general public.



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Why be concerned? (cont'd)

- Agents and brokers
- Insurer
- Insured
- Employees
- The general public
- Regulators



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“ISO or equivalent” forms

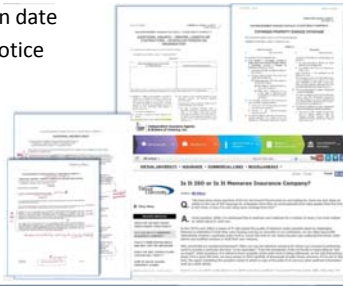
- Contractual insurance requirements
- “CG xx xx xx xx or its equivalent” or “no more restrictive than...”
- “Our carriers are only offering the 2004 edition date of the CG 20 10 and CG 20 27 AI endorsements. Our insureds are being required to provide 2001 edition date AI endorsements. Would the 2004 forms be equivalent to the 2001 forms?” – Louisiana agent



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Is It ISO or Is It Memorex?

- Test 1: Form number structure
- Test 2: Form edition date
- Test 3: Copyright notice
- Good example
- Bad example #1
- Bad example #2



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“RTFP” and “Where’s Waldo?”

- RTFP: “Does ‘a’ CGL policy cover....?”
- Where’s Waldo?
- Q: When you see this on a certificate of insurance, what does it tell you?

COVERAGES		CERTIFICATE I	
THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE INDICATED, NOTWITHSTANDING ANY REQUIREMENTS, CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, TO EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. U			
FORM	TYPE OF INSURANCE	ADDITIONAL	INSURANCE
X	COMMERCIAL GENERAL LIABILITY	X	X
	CLAIMS-MADE	X	

- The failure of continuing education laws



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“RTFP” and “Where’s Waldo? ®”

- **Exclusions**

This insurance does not apply to:

- **b. Contractual Liability**

...This exclusion does **not** apply to liability for damages:

- (1) That the insured would have in the absence of the contract or agreement; or
- (2) Assumed **BY YOU** in a contract or agreement that is an “insured contract”, provided the “bodily injury” or “property damage” occurs subsequent to the execution of the contract or agreement...

- *NPS Energy Services, Inc., et al. v. National Union Fire Insurance Company of Pittsburgh, PA, et al., 264 F.3d 365 (3rd Cir. 2001) – cited by Malecki on Insurance, May 2012*



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“RTFP” and “Where’s Waldo? ®”

Employers Liability exclusion (cross liability issue):

- **ISO language:**

“This insurance does not apply to...’bodily injury’ to...An ‘employee’ of **the** insured....”

- **Proprietary insurer language:**

“This insurance does not apply to...’bodily injury’ to...An ‘employee’ of **any** insured....”



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Exclusionary endorsements

- Start with the primary policy form(s), especially if they are not ISO
- Non-ISO endorsements
- ISO endorsements
- E&S forms



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Worst policy in history?

- Exposure scenario
- 2004 ISO CGL policy
- \$700 premium
- 42 exclusionary endorsements, including
 - **Classification exclusion**...coverage limited to “tree trimming and pruning”
 - **Operations exclusion**...no coverage for “ongoing operations” and “your work”
- Impact on insured and third parties
- E&S broker and carrier



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Non-ISO Policy Forms

- Illusory coverage (and defective product liability?)
- Ambiguous policy provisions
- Manuscript endorsements
- Forms attaching coverage to classification codes
- “Special Condition” or “Contractor Warranty” forms
- Additional insured and related endorsements
- Residential and habitational construction exclusions
- Breach of contract exclusions
- Prior work exclusions
- Sunset clauses
- Third-party-over and employers liability exclusions and limitations
- Driver exclusions
- Others?



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Illusory coverage

- 720-730 Fort Washington Avenue Owners Corp. v. Utica First Insurance Company, NY (2009)
 - “Employee” exclusion
 - “Roofing work” exclusion
 - Contractual liability exclusion
- Coverage was not illusory to the extent that it violated public policy
- “Caveat emptor”
- Sending AI endorsements to AIs (search VU)



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Illusory coverage (cont'd)

- **\$45,000 D&O policy**
 - City-owned hospital managed by nonprofit board
 - Policy excluded coverage for any public entity and claims arising from healthcare facilities
 - Policy had been in force for 10 years
- **\$42,000 CGL policy**
 - Various exclusions applied to possibly 80-90% of the insured's risks
 - Probably not "illusory"
- **Tree service contractor**
 - 2004 ISO CGL policy
 - 42 endorsements



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Ambiguous policy provisions

- E&O policy exclusion:
"to any Claim for or arising out of or resulting from any express warranty or representation except for an agreement to perform **within a reasonable standard of care or skill consistent with applicable industry standards**, or breach of any contractual obligation which goes beyond an express or **implied duty** to exercise a degree of care or skill as **consistent with applicable industry standards.**"



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Manuscript endorsements

- **E&S marketplace**
 - "The Importance of E&S Markets"
 - "13 Caveats in Using E&S Markets"
- **Scheduled Event Exclusion**
"It is agreed that the insurance afforded by this policy shall not apply to injury or damage caused by any occurrence arising out of the intentional operation of any scheduled aircraft within one mile of a scheduled event at which more than twenty people are expected to be present. Such events include concerts, exhibitions, fairs, charitable or political events, sports or cultural events, receptions, parties, and any similar events."



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Additional insured forms

- Coverage is triggered by agency issuance of COI
- Only vicarious liability is covered
- Claims based on negligent supervision excluded
- Provides only excess coverage (not P/NC)
- Only ongoing operations are covered
- Professional liability exclusion
- Limit is lesser of policy limit or contract "requirement"



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Additional insured forms *(cont'd)*

- **One insurer's AI endorsement:**
"This insurance shall apply as primary and not contributing with any insurance **carried by** such Additional Insured."
- **Another insurer's AI endorsement:**
"Insurance provided under this policy shall apply on a primary basis and shall not seek contribution from any other insurance **available to** an additional insured added to this policy."



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Additional insured forms *(cont'd)*

A "**Blanket** Additional Insured Protection Endorsement" says:

"This insurance does not apply to any person or organization **not specifically approved by us** as an additional insured."



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Additional insured forms (cont'd)

- **One insurer's AI endorsement:**
"The limits of insurance **applicable to the additional insured** are those specified in the written contract or agreement or in the Declarations of this policy, whichever are less."
- **Another insurer's AI endorsement:**
"**The insurance provided** will not exceed the lesser of the coverage and/or limits of this policy or the coverage and/or limits required by said contract or agreement."



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Additional insured forms (cont'd)

"The insurance afforded by this Additional Insured endorsement shall be **limited to the liability required** by the written contract **to which this endorsement is subject.**"

- No reference to "agreement," only "contract"
- What is the "liability required"? It doesn't say "insurance required" so could it be interpreted to refer to an unlimited indemnity requirement?
- Should insurance be "subject to" a third-party contract?



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Additional insured forms (cont'd)

"This amendment applies only when you have agreed by **written 'insured contract'** to designate the person or organization listed above as an additional insured subject to all provisions and limitations of this policy."

- Commonly used ISO AI forms (other than the CG 20 33 and CG 20 38) have no WRITTEN contract requirement
- ISO forms refer to contracts (not just "insured contracts") AND agreements



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Additional insured forms (cont'd)

- 3-page "Broad Form Additional Insured" endorsement
- Used with contractors, owners/managers/lessors, equipment lessors, vendors, and others
- **Question:** Does this form provide ongoing AND completed operations?
- **Poll of 10 experts:**
 - 1 No
 - 3 Yes
 - 2 Yes AND No
 - 2 Maybe
 - 1 I have no idea
 - 1 This endorsement proves why most insurers should leave policy form drafting to ISO



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Additional insured forms (cont'd)

- Covers AI vicarious liability only
- Expressly excludes any direct liability of AI
- "Our obligation to provide coverage to an 'additional insured' is further limited by the interest of the 'additional insured' as defined below.

"Interest of the Additional Insured(s) Defined:

"Contractor"



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Additional insured forms (cont'd)

Vicarious liability revisited

- Coverage is provided "...only to the extent that 'additional insured' is being **held responsible** for the acts, omissions and/or negligence of the 'named insured'."
- "The person or organization does not qualify as an additional insured with respect to the **independent acts or omissions of such person or organization.**"
- "The coverage afforded hereunder is limited to imputed liability resulting solely from the conduct of the named insured for which the additional insured is **held responsible** and liable."
- "The coverage afforded to the additional insured is limited solely to the additional insured's '**vicarious liability**' that is a specific and direct result of your conduct."



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Additional insured forms *(cont'd)*

St. Paul & Marine Ins. Co. v. Cypress Fairway Condo. Ass'n (M.D. Fla. July 20, 2015)

- Construction contract required indemnification of “owners, officers, directors, shareholders, partners....”
- The policy covered “[a]ll **owners, contractors...**who require that you add them as an Additional Protected Person in a specific contract entered into **by you.**”

RTFP!



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Special construction exclusions

- **Residential or habitational exclusions**
 - “Residential And Residential Conversion Limitation Endorsement”...claims that “in any way arise out of, relate to, or result from the new development or construction in whole or in part of any non-commercial dwelling.”
 - “Residential Exclusion”...claims arising from any operations in connection with any condominium, townhome, time share, apartment converted to condominium or “new tract housing” project.
 - “Habitational Limits on Construction Activity” by Don Malecki, CPCU, *Rough Notes* magazine, September 2013



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Special construction exclusions *(cont'd)*

- “Construction Excluded Hazards Exclusion Endorsement”
 - “Construction Operations” excluded but not “Non-Structural Improvements”
 - Exterior Insulation and Finish Systems
 - Wrap-Ups
- “Specified Project Exclusion [Work In Five (5) Boroughs Of New York]”



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Breach of contract exclusions

- This insurance does not apply to:
Breach of Contract
Claims *arising out of* breach of contract, whether written or oral, express or implied, implied-in-law, or implied-in-fact contract.
- “When a Breach of Contract Constitutes an Accident,” July 2000 IRMI article



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Prior work exclusions

- Similar to the retro date aspect of claims-made policies, a “prior work” exclusion the insuring agreement trigger for occurrences during the policy period for work performed/completed prior to policy expiration, a specified date, or a specific project
- Bad, very bad



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Sunset clauses

- Similar to the claims filing aspect of claims-made policies, a “sunset clause” limits the amount of time following policy expiration to file a claim
- Avoid if at all possible or negotiate to the statute of repose for that state



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Employers Liability exclusions

Employers Liability exclusion (from the earlier “Where’s Waldo?” example):

- **ISO language:**
“This insurance does not apply to...’bodily injury’ to...An ‘employee’ of **the** insured....”
- **Proprietary insurer language:**
“This insurance does not apply to...’bodily injury’ to...An ‘employee’ of **any** insured....”



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Employers Liability exclusions (cont’d)

- **AI endorsement language cited by IRMI:**
“No coverage is provided to an additional insured for damages because of **bodily injury to an employee of the named insured**, whether suit is brought or claim is made by the employee or the parent, spouse, child or sibling of such employee or any entity seeking damages because of injury to such employee.”
- *Bayport Construction Corp. v. BHS Insurance Agency* (NY Ct. App. 2014)
CGL employer’s liability exclusion applied to “Bodily injury’ to: (1) An employee of **any** insured arising out of and in the course of: (a) Employment by **any** insured.”



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Driver exclusions

- Some exclusions apply only to a named driver
- More exclusions apply to ALL insureds
- There are many variations dealing with classes of drivers, personal use only, etc.
- VU articles:
 - “Driver Exclusions”
 - “Auto Policies and Permissive Users”



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Driver exclusions (cont'd)

Class of Driver Exclusion

We do not provide liability coverage **for any person:**

For bodily injury or property damage caused by your covered auto when it is driven, operated or used with your permission by a person whom you know:

- a. is under the minimum age to obtain a driver's license;
- b. does not have a valid driver's license;
- c. has a suspended driver's license;
- d. has a revoked driver's license; or
- e. has a restricted driver's license and is operating a vehicle beyond the scope of such restriction.



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Driver exclusions (cont'd)

Named Driver Exclusion

In consideration of the premium charged, it is hereby understood and agreed the coverages as afforded by the policy do not apply when the insured vehicle is being driven by [name of individual]. All other terms and conditions of this policy remain unchanged.

Driver Exclusions

We agree with 'you' that such insurance as is afforded by the policy shall not apply with respect to any automobile or its use while such automobile is in the care, custody or control of, or is being operated by, any individual designated below.



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Driver exclusions (cont'd)

Exclusion of Coverage for Personal use by Unscheduled Drivers

This insurance does not apply to "bodily injury", "property damage" or medical payments arising out of the ownership, maintenance, operation or use of a covered "auto" while used for "personal use" by anyone unless that person is listed in the Schedule of Drivers.

However, coverage is temporarily extended to an unscheduled driver if the covered "auto" being driven is used for an "emergency" purpose and the driver has the permission of a scheduled driver for such use.

"Personal use" means: Any use of an "auto" for purposes other than "garage operations".

"Emergency" means: Immediate threat to life or property.



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Driver exclusions (cont'd)

- Usage endorsements

Farm Use Only Endorsement

The insured agrees and understands that the insured vehicle may be used for pleasure and **farm use** only. Any other use of the vehicle suspends coverage under the policy.

Farm Use means the ownership, maintenance, or use of the insured vehicle for the hauling, towing, loading or unloading of farm products, farm machinery, or farm supplies:

1. Owned or used by the insured and used in the insured's farming operation;
2. Belonging to others when the transportation is being done at "no charge". A payment for gas only shall be considered "no charge".



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Others?

- "The CGL 'No Occurrence' Claim Denial"
- "Failure to Perform Exclusion"
- "Defense Within Limits" auto policy endorsement
- Auto "step-down" provisions

Locations and Operations Exclusion Form

Named Insured:
Policy #:

Locations and Operations Not Covered:
[list]

The above listed locations and or operations or any liability claims or property damage claims resulting from the above listed location/operation are specifically excluded under the terms of this policy and [Insurer] would not be liable for these locations/operations.

Signature of Named Insured:



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ISO Policy Forms

- Commercial general liability
- Commercial auto
- Commercial property
- Others?



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CG 21 39

Contractual Liability Limitation

- There are 6 categories of “insured contracts”
 - a. Premises leases
 - b. Sidetrack agreements
 - c. Most easements
 - d. Ordinances requiring indemnification of municipalities
 - e. Elevator maintenance agreements
 - f. Hold harmless agreements that assume the tort liability of others for BI and PD to third parties
- The CG 21 39 removes Item f., GUTTING contractual liability coverage



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CG 24 26

Amendment Of Insured Contract Definition

Introduced with revised AI endorsements by ISO in 2004 and added this language to the definition of “insured contract” (blue text revised in 2013):

That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another party to pay for “bodily injury” or “property damage” to a third person or organization, **provided the “bodily injury” or “property damage” is caused, in whole or in part, by you or by those acting on your behalf.** However, such part of a contract or agreement shall only be considered an “insured contract” to the extent your assumption of the tort liability is permitted by law. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement...



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CG 22 94

Exclusion – Damage To Work Performed By Subcontractors...

- **CGL exclusion 2.L.:**
 - I. **Damage To Your Work**
“Property damage” to “your work” arising out of it or any part of it and included in the “products-completed operations hazard”.
 - ~~This exclusion does not apply if the damaged work or the work out of which the damage arises was performed on your behalf by a subcontractor.~~
- **Non-ISO forms**
 - “Exclusion – Designated Work”
 - “Faulty, Defective Or Poor Workmanship Exclusion”



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CG 22 95

Exclusion – Damage To Work Performed By Subcontractors...Designated...

Same as the CG 22 94 but only applies to designated sites or operations



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CG 21 00

Exclusion – All Hazards In Connection With Designated Premises

- CGL coverage is not limited to any particular premises but rather the "coverage territory"
- For scheduled premises, this endorsement excludes premises, operations (necessary or incidental to scheduled premises), and products/completed operations



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CG 21 44

Limitation Of Coverage To Designated Premises Or Projects

- Kind of the opposite of the CG 21 00 in that only scheduled premises or projects are covered
- Potential problems include the coverage limitation for "operations necessary or incidental" to the scheduled premises
- Be wary of non-ISO "designated premises" forms
- Notable case law includes *United States Liab. Ins. Co. v. Harbor Club, Inc.*, Mass. App. Ct. (2010)
- VU article:
"CGL 'Designated Premises' Coverage"



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CG 21 45

Exclusion – Damage To Premises Rented To You

- Removes FDLL coverage, which is not necessarily a bad thing IF.....
- Removes short-term open perils rental coverage



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CG 21 04

Exclusion – Products-Completed Operations Hazard

- Primarily used to exclude products liability when they are covered by a separate policy form such as the CG 00 37 or a non-ISO form
- Not necessarily a problem IF the other coverage is in place and provides equivalent or better coverage and/or better pricing relative to risk



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CG 21 33

Exclusion – Designated Products

- Can be used with the CG 00 10 or CG 00 37 to exclude a schedule of certain designated products
- Could be an underwriting necessity if the insured has one or more product lines outside the carrier's underwriting appetite



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CG 21 34

Exclusion – Designated Work

- Excludes schedule completed operations
- Most prevalently used in the construction industry
- May specify certain types of work, dates, locations, etc. and such wording could be critical to coverage given the possibility of an ambiguous description
- Arguably ISO’s version of proprietary “prior work” exclusions and, when used that way, the schedule could specify that the exclusion applies to all work completed before a specific date
- Insureds may undertake jobs of an excluded type and not realize it



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CG 21 53

Exclusion – Designated Ongoing Operations

- Excludes described ongoing operations or operations at a specified location
- Can be used if an insured’s operations are acceptable to underwriting with the exception of an activity that is riskier or with which the insured is not experienced
- Actual claim example illustrates the dangers



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CG 21 41

Exclusion – Intercompany Products Suits

- “Cross liability” and “Separation of Insureds”
- This endorsement allows the removal of inter-insured sales from the premium base, in return for an exclusion that states that an insured cannot sue another insured for products liability
- It can be helpful in controlling premium if such suits are unlikely
- VU article: “CGL Cross Liability”



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CG 21 49

Total Pollution Exclusion Endorsement

- We could spend hours/days discussing the CGL “pollution” exclusion
- There is actually a lot of coverage in the “exclusion”
 - Products and completed operations
 - Ongoing operations where the insured didn’t bring the “pollutant” onto those premises
 - Heat, smoke or fumes from a hostile fire
 - Fumes from a faulty heater or furnace
- The CG 21 49 excludes ALL of them (BI, PD, cleanup)
- No “give-backs”
- NO RATE CREDIT??????????



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CG 21 55

Total Pollution Exclusion With A Hostile Fire Exception

- If the underwriter tries to use the CG 21 49, ask them to substitute the CG 21 55 to grant the hostile fire exception (does not apply to waste disposal fires)
- Or better yet....



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CG 21 65

Total Pollution Exclusion With A Building Heating, Cooling And...

- The CG 21 65 does what the CG 21 55 does, PLUS it adds back coverage for building heating, cooling and dehumidifying equipment
- CLM Rule 36 says for CG 21 49, CG 21 55, and CG 21 65, “With regard to these optional endorsement, refer to company for rating.”
- There is a little known and rarely mentioned reason for CG 21 55 and CG 21 65
 - Coverage C – Medical Payments excludes anything excluded under Coverage A
 - Example....



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CG 21 50

Amendment Of Liquor Liability Exclusion

- Since 1986, the liquor liability exclusion has applied to insureds “in the business of...”
- In 2013, ISO added BYOB establishments wording
 - Whether a fee is charged or a license required is not BY ITSELF considered “in the business of” selling, serving or furnishing alcoholic beverages
 - **So, BYOB establishments don’t need to buy liquor liability coverage?**



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CG 21 51 and CG 21 50 (cont’d)

Amendment Of Liquor Liability Exclusion – Exception for Scheduled...

- The only difference between CG 21 50 and CG 21 51 is the latter contains a **schedule** so that the specifically described activity can be covered while continuing to exclude all the nonscheduled activities.
- The purpose of the CG 21 51 is to make the CGL liquor liability exclusion **unequivocally** applicable to organizations, such as social clubs, that sell alcoholic beverages as a sideline activity or even the serving or furnishing of alcoholic beverages **without a charge if a license is required for such activity.**



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CG 21 51 and CG 21 50 (cont’d)

Amendment Of Liquor Liability Exclusion(s)

- 2013 revision:
“This exclusion applies on if you...
...(4) Permit any person to bring any alcoholic beverages on your premises, for consumption on your premises.”



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CG 24 06

Liquor Liability – Bring Your Own Alcohol Establishments

- When attached to a Liquor Liability Policy (LLP), CG 24 06 includes “BYO” establishments within the category of businesses engaged in “selling, serving or furnishing alcoholic beverages.”
- Since CG 21 50 or CG 21 51 can modify the CGL to exclude “BYO” liquor liability coverage:
 - The business would need to buy a LLP
 - The LLP would need to be endorsed with CG 24 06 to make it clear that the operations come within the LLP coverage



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CG 24 08

Liquor Liability

- This endorsement simply removes the liquor liability exclusion (Exclusion c.) from the CGL policy
- GOOD LUCK!



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CG 22 93

Lawn Care Services – Limited Pollution Coverage

- Former title was “Lawn Car Services Coverage”
- “Paragraph (1)(d) of Exclusion f. under Section I – Coverage A...does not apply to the application of herbicides or pesticides by an insured **on lawns under your regular care.**”
- Exclusions j.(5), j.(6), and L.
- Big I National Technical Affairs Committee
- VU article:
“The CGL and Damage Caused by Pesticides and Herbicides”
- Ohio



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CG 22 64

Pesticide Or Herbicide Applicator – [Limited Pollution Coverage](#)

- Former title was “Pesticide Or Herbicide Applicator Coverage”
- “With respect to the operations shown in the Schedule, Paragraph (1)(d) of Exclusion f. of Section I – Coverage A...does not apply if the operations meet all standards of any statute, ordinance, regulation or license requirement of any federal, state or local government which apply to those operations.”
- Same issues as CG 22 93...see previous slide
- Ohio revisited



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CG 22 66

Misdelivery of Liquid Products Coverage

- Two example claim scenarios:
 - Delivery to heating oil to the wrong house or a property where the tank has been removed
 - Filling a gasoline UST with diesel fuel
- Unendorsed commercial auto forms do not cover
 - “Loading or unloading” issue – ongoing operations
 - **Completed operations exclusion**
- Endorsement is mandatory for certain class codes
- See [CA 23 05](#)...next slide



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CA 23 05

Wrong Delivery Of Liquid Products

- Title should read “Wrong Delivery Of Liquid Products **EXCLUSION**”
- Excludes:
“Bodily injury” or “property damage” resulting from the delivery of any liquid into the wrong receptacle or to the wrong address, or from the delivery of one liquid for another, if the “bodily injury” or “property damage” occurs after delivery has been completed.”
- Coverage IS provided by the CG 22 66 (good reason why businesses need BOTH CGL and BAP coverage)



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CG 22 92

Snow Plow Operations Coverage

- The BAP covers ongoing operation of autos but not completed operations
- The issue involves BI or PD that arises from the use of the auto once operations are completed
- The premise is that the CGL's auto exclusion applies to completed operations of an auto once the auto is done plowing
- VU article:
"The CG 22 92...Another Endorsement That Doesn't Do Anything?"



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CG 22 29

Exclusion – Property Entrusted

- The schedule limits the exclusion to (1) security and patrol agencies, (2) individual cold storage warehouse lockers, and (3) miniwarehouses
- CGL exclusion j.(4) already excludes damage to *personal* property in the care, custody or control of the insured
- Presumably (1) above would apply to real and personal property
- Presumably (2) and (3) apply to personal property not technically in the CCC of the insured



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CG 21 86

Exclusion – Exterior Insulation And Finish Systems

COMMERCIAL GENERAL LIABILITY
CG 21 86 12 04

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EXCLUSION – EXTERIOR INSULATION AND FINISH SYSTEMS

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

- A. This insurance does not apply to "bodily injury", "property damage" or "personal and advertising injury" arising out of, caused by, or attributable to, whether in whole or in part, the following:
1. The design, manufacture, construction, fabrication, preparation, distribution and sale, installation, application, maintenance or repair, including remodeling, service, correction or replacement of any "exterior insulation and finish system" or any part thereof, or any substantially similar system or any part thereof, including the application or use of conditioners, primers, accessories, flashings, coatings, caulking or sealants in connection with such a system, or
 2. "Your product" or "your work" with respect to any exterior component, fixture or feature of any structure if an "exterior insulation and finish system" or any substantially similar system, is used on the part of that structure containing that component, fixture or feature
- B. The following definition is added to the Definitions Section:
- "Exterior insulation and finish system" means a non-load bearing exterior cladding or finish system, and all component parts therein, used on any part of any structure, and consisting of:
1. A rigid or semi-rigid insulation board made of expanded polystyrene and other materials;
 2. The adhesive and/or mechanical fasteners used to attach the insulation board to the substrate;
 3. A reinforced or unreinforced base coat;
 4. A finish coat providing surface texture to which color may be added; and
 5. Any flashing, caulking or sealant used with the system for any purpose.



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CG 21 96

Silica Or Silica-Related Dust Exclusion

- “Silica” defined to mean silicon dioxide particles, dust, etc.
- Can occur naturally in soils and also masonry
- Can cause silicosis and other diseases including cancer, similar to the impact of asbestosis
- Important to risk manage this exposure



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CG 21 37

Exclusion – Employees And Volunteer Workers As Insureds

- Employees and volunteer workers are automatically included as insureds under the CGL policy
- Non-insureds don’t have to comply with policy cooperation requirements
- Allows subrogation against these now non-employees/volunteers



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CG 21 66

Exclusion – Volunteer Workers

- Similar to the CG 21 37 but only applies to volunteer workers



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CG 21 36

Exclusion – New Entities

- The CGL automatically extends 90 days coverage for newly acquired or formed entities other than partnerships or joint ventures
- This endorsement removes such automatic coverage



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CG 21 35

Exclusion – Coverage C – Medical Payments

- Mandatory according to the CLM for certain risks (e.g., horseback riding, skating rinks, swimming pools)
- Schedule excludes by Description and Location of Premises OR by Classification
- First aid expenses are covered by addition to Supplementary Payments



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CG 21 01

Exclusion – Athletic Or Sports Participant

- Already excluded under Coverage C (med pay)
- Excludes BI "to any person while practicing for or participating in any sports or athletic contest or exhibition that you sponsor."
- Mandatory for certain classes (e.g., athletic teams and programs (underwriting exception for regular school athletic programs), rodeos, stadiums, etc.)
- May be attached to CGL policies of civic organizations or companies known to sponsor athletic leagues or contests



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CG 21 32

Communicable Disease Exclusion

- Excluded for Coverages A and B for BI and PD
- Can include any communicable disease from chicken pox to avian flu and SARS to norovirus



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CG 21 17

Exclusion – Movement Of Buildings Or Structures

- Mandated for the CLM "Building structure – raising or moving" classification
- Otherwise, if attached, there is no Coverage A or B WHILE any building or structure is being moved by an auto or mobile equipment
- ISO has no standard means of covering this exposure



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CG 21 38

Exclusion – Personal And Advertising Injury

- Mandatory for certain classes such as security/patrol agencies, detective agencies, attorneys, trade associations, political campaign organizations
- Underwriting may prescribe for an organizations that present a higher risk of false arrest, invasion of privacy, libel/slander, etc.



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CG 21 46

Abuse Or Molestation Exclusion

- Most commonly used with schools, day care centers, nursing homes, churches, hospitals, etc.
- Excludes losses under Coverages A and B for “the actual or threatened abuse or molestation **by anyone** of any person while in the care, custody or control of any insured”
- Also excludes claims based on negligent hiring, supervision, investigation, etc.



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CG 21 97

Abuse or Molestation Exclusion – Specified Professional Services

- Similar to the CG 21 46 but only applies to scheduled professional services



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CG 21 47

Employment-Related Practices Exclusion

- Excludes BI/PI/AI claims involving refusal to employ someone, wrongful termination, coercion, demotion, defamation, harassment, humiliation, discrimination, malicious prosecution, etc.
- Also applies to consequential injury claimed by family members, dual capacity claims, and third-party-over claims
- Requires separate coverage



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CG 21 16

Exclusion – Designated Professional Services

- The CGL policy has no “professional liability” exclusion
- ISO has several specific professional services exclusionary endorsements
- This is a catch-all endorsement where the underwriter can schedule specified professional services



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CA 02 40

Suspension Of Insurance

- Suspends the coverages identified on the schedule
- May be used in the summer by schools, in the winter by construction companies, in economic slow-downs, etc.
- CA 02 38 – Reinstatement of Insurance
- No ISO standard PAP endorsements
- VU articles:
 - “Auto Insurance Suspensions & Lay-Up Endorsements”
 - “Auto Insurance Suspensions Revisited”



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CA 20 48

Designated Insured For Covered Autos Liability Coverage

- One of the “funny” endorsement...ISO has a sense of humor
- Developed by ISO to respond to a request (by uneducated attorneys) to add an entity as an AI
- It was never needed since “Who Is An Insured” includes “Anyone liable for the conduct of an ‘insured’ described above but only to the extent of that liability.”
- All the endorsement does is say ‘If you’re an insured, you’re an insured’), but it makes lawyers happy
- VU article:
“The BAP and Additional Insureds”



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CA 20 54

Employee Hired Autos

- Provides broader protection for employees who rent cars in their own names but for the furtherance of their employer's business.
- The "Who Is An Insured" clause provides protection for any party while using autos **hired by the named insured**.
- However the commercial auto forms do not explicitly provide coverage if an employee rents a car in his or her name while conducting business for the named insured.
- The endorsement says, "An 'employee of yours is an 'insured' while operating an 'auto' hired or rented under a contract or agreement in an 'employee's' name, with your permission, while performing duties related to the conduct of your business."



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CA 25 07

Locations And Operations Not Covered

This endorsement is now only applicable in ISO's Auto Dealers form which likely is not yet used by many insurers.



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CG 22 48

Exclusion – Insurance And Related Operations

- Mandatory for class code 45334 – **Insurance Agents**.
- Intended to preclude coverage for liability arising from the insurance-related activities for which errors and omissions liability policies are available.
- It clarifies that no coverage will be provided for BI, PD, and PAI.
- The endorsement itself is ambiguous because of its exclusion for BI, PD, etc. "for which the insured may be held liable because of...the rendering or failure to render...professional services...."
- For example....



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CP 10 36

Limitations On Coverage For Roof Surfacing

- Introduced in ISO's 2012 countrywide filing
- Used to alter coverage on roofs in one or both of the following ways, as indicated in the endorsement schedule, with respect to the buildings or structures shown in the endorsement schedule:
 - Change the valuation basis of roof surfacing from replacement cost to actual cash value as of the time of loss or damage for any covered cause of loss
 - Exclude cosmetic damage to roof surfacing caused by wind or hail
- CLM Division 5, Rule 28



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CP 12 32

Limitation On Loss Settlement – Blanket Insurance (Margin Clause)

- "Optional" endorsement introduced by ISO in 2007
- Converts blanket limits to specific limits by placing a maximum on the amount payable for loss to each building and contents for each building shown in the endorsement schedule
- Maximum is the amount shown for each building and the contents of each building on the latest statement of values provided to the insurer, multiplied by the margin clause percentage shown in the endorsement schedule for that property



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CP 12 32 (cont'd)

Limitation On Loss Settlement – Blanket Insurance (Margin Clause)

- CLM Rule 34.B.6 establishes margin clause percentages of 105%, 110%, 120%, and 130%... individual insurers may have different options.
- The endorsement includes three examples showing the calculation of the loss payment amount.
- They need to be reviewed with insureds.



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CP 12 32 (cont'd)

Limitation On Loss Settlement – Blanket Insurance (Margin Clause)

- Buildings #1, #2, #3 with a Blanket Limit of Insurance of \$4,500,000
- Assume no Coinsurance penalty and disregard the deductible
- Value of Building #1 on Statement of Values is \$1,000,000
- Margin Clause Percentage is 110%
- Maximum Loss Payable is **\$1,100,000** (1.10 x \$1,000,000)
- Amount of Loss to Building #1 is **\$1,200,000**
- Payment is limited to **\$1,100,000**, the Maximum Loss Payable
- Without CP 12 32, loss payment is \$1,200,000



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CP 04 11

Protective Safeguards

- Formerly IL 04 15
- Makes the maintenance of particular protective safeguards a condition of coverage
- ISO Rule makes it **mandatory** if specified in the published rate
- There are six different protective safeguards, the main one being automatic sprinkler systems
- The endorsement eliminates coverage for loss by fire if the insured knew of an impairment in the protection device and failed to notify the insurer, or if the insured failed to maintain the scheduled protective safeguards, which were under the insured's control, in "complete" working order



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CP 04 11 (cont'd)

Protective Safeguards

- Exception if a sprinkler system is shut off as a result of breakage, leakage, freezing conditions, or opening of sprinkler heads...**the insured is not required to notify the insurer of the impairment "if you can restore full protection within 48 hours."**
- Important for the insured and the agent to **notify the insurer immediately** of even the slightest, shortest impairment in the protection and to document the notification in writing.
- **Big "I" Technical Affairs Committee**



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CP 12 11

Burglary And Robbery Protective Safeguards

- Comparable to the CP 04 11
- **Big "I" Technical Affairs Committee**



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CP 99 10

Alcoholic Beverages Tax Exclusion

- Title 26, Section 5064 of the U.S. Code...federal excise taxes and customs duties on alcoholic beverages held for sale that are damaged by perils other than theft are refundable
- In some areas, state and local taxes paid on damaged alcoholic beverages are also refundable
- The endorsement may be used to exclude these taxes from coverage
- This reduces insurable values and, therefore, premiums
- So, this can be a positive endorsement



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CP 99 10 (cont'd)

Alcoholic Beverages Tax Exclusion

- Federal excise taxes and customs duties on alcoholic beverages are *not* refundable when stocks of alcoholic beverages are **stolen**.
- Insureds whose policies provide theft coverage (CP 10 30) want to **exclude** the value of the taxes with respect to coverage for all other perils (so as to save premium dollars) but **include** the value of the taxes with respect to loss by theft so as to be able to collect that value in the event of loss by theft. It excludes the value of federal excise taxes, etc. unless the CP 10 30 applies. If so, it stipulates that the taxes are covered only in the event of loss by theft.



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CP 99 10 (cont'd)
Alcoholic Beverages Tax Exclusion

- Since the distilled spirits and wines market value CP 99 05 already excludes unpaid and refundable taxes and duties, there is no need to use this endorsement unless coverage is provided with a CP 10 30. When coverage is provided under the CP 10 30, it is advisable to attach CP 99 10 so that two personal property limits – one for coverage other than theft and one for coverage including theft as described above – **can be scheduled**.
- The 1988 edition endorsement is the current edition.
- CLM Division 5, Rule 38.B.



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Other ISO forms or endorsements?

Use the VU "Ask an Expert" service:



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Conclusions

- RTFP!
- "Invariable Practice" in agency procedures
- Education
- Advocate



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THANK YOU!

Questions?

Email bill.wilson@iiaba.net



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