



FORMS – APPROVED

MARCH 8, 2019

COMMERCIAL AUTOMOBILE

LI-CA-2019-056

WASHINGTON EFFICIENT PROXIMATE CAUSE RELATED AGGREGATE LIMIT ENDORSEMENT FILED AND APPROVED

KEY MESSAGE

ISO filing CA-2019-OGLC1 introduces [CA 27 11 09 19](#), Washington – Limited Coverage For Bodily Injury, Property Damage Or Personal And Advertising Injury General Liability Coverages Involving Efficient Proximate Cause (Defense Within Limits) for use with the ISO Commercial Auto Dealers Coverage Form.

BACKGROUND

Circular [LI-CL-2018-027](#) generally advised of the approval of ISO filing CL-2018-OEND1, which introduced optional efficient proximate cause related aggregate limit endorsements in Washington for use with the Commercial Excess Liability, Commercial General Liability and Commercial Liability Umbrella Lines of Business in response to the Supreme Court of Washington's holding in *Xia v. ProBuilders Specialty Insurance Co.*, 188 Wash.2d 171 (Wash. 2017).

ISO ACTION

To generally address the State of Washington's application of the efficient proximate cause rule, as currently set forth in *Xia v. ProBuilders* and for consistency with the Commercial Excess Liability and Commercial Liability Umbrella Lines of Business, we have:

- Introduced endorsement [CA 27 11 09 19](#), Washington – Limited Coverage For Bodily Injury, Property Damage Or Personal And Advertising Injury General Liability Coverages Involving Efficient Proximate Cause (Defense Within Limits); and
- Filed these revisions with the Washington State Office of the Insurance Commissioner under ISO Filing Designation Number CA-2019-OGLC1.

Refer to the attached explanatory material for complete details about the filing.

INSURANCE DEPARTMENT ACTION

The Washington State Office of the Insurance Commissioner has approved this filing.

EFFECTIVE DATE

The ISO revision is subject to the following rule of application:

These changes are applicable to all policies written on or after September 1, 2019.

COMPANY ACTION

If you have authorized us to file on your behalf and decide:

- To use our revision and effective date, you are not required to file anything with the Insurance Department.
- To use our revision with a different effective date, to use our revision with modification, or to not use our revision, you must make an appropriate submission with the Insurance Department.

For guidance on submission requirements, consult the ISO State Filing Handbook.

In all correspondence with the Insurance Department on this revision, you should refer to ISO Filing Designation Number CA-2019-OGLC1, NOT this circular number. Communications with the regulator concerning a filing affecting multiple lines of business (i.e., CL, PL, AL filing designation) should specify the line(s) of business that you are addressing.

RATING SOFTWARE IMPACT

New attributes being introduced with this revision:

- A new form is being introduced.

RELATED RULES REVISION

We are announcing in a separate circular the implementation of a corresponding rules revision. Please refer to the Reference(s) block for identification of that circular.

POLICYHOLDER NOTIFICATION

If you decide to implement this revision, you should check all applicable laws for the state(s) to which this revision applies, to determine whether or not a specific policyholder notice requirement may apply. Please note that circular LI-CL-2018-044 contains the ISO Guide To Renewals With Changed Conditions For Commercial Lines, which is available only as a guide to assist participating companies in complying with various conditional renewal statutes or regulations, for the major commercial lines of insurance serviced by ISO. The information in the Guide does not necessarily reflect all requirements or exceptions that may apply, and it is not intended as a substitute for your review of all applicable statutes and regulations concerning policyholder notification.

REVISION DISTRIBUTION

We will issue a Notice to Portfolioholders with an edition date of 9-19 (or the earliest possible subsequent date), along with any new and/or revised forms.

REFERENCE(S)

- [LI-CA-2019-057](#) (03/08/2019) Washington Efficient Proximate Cause Related Rule Filed And Approved
- [LI-CL-2018-044](#) (11/27/2018) Revised Lead Time Requirements Listing
- [LI-CL-2018-027](#) (07/27/2018) Washington Efficient Proximate Cause Related Aggregate Limit Endorsements Approved

ATTACHMENT(S)

- Filing CA-2019-OGLC1
 - Final copy of CA 27 11 09 19
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Introduction of Washington Efficient Proximate Cause Related Aggregate Limit Endorsement

About This Filing

This filing introduces optional efficient proximate cause related aggregate limit endorsement in Washington for use with the ISO Commercial Auto Dealers Coverage Form.

New Form

We are introducing CA 27 11 09 19 – Washington – Limited Coverage for Bodily Injury, Property Damage Or Personal And Advertising Injury General Liability Coverages Involving Efficient Proximate Cause (Defense Within Limits).

Related Filing(s)

- ♦ CA-2019-OGLC2 (Rules)

Background

In *Xia v. ProBuilders Specialty Insurance Co.*, 188 Wash.2d 171 (Wash. 2017), the Supreme Court of Washington, in remanding the case for further proceedings, reversed the Washington Court of Appeals' decision granting summary judgment to the insurer. In the case, it was generally alleged that an exhaust vent attached to a hot water heater was improperly installed and released carbon monoxide into a home, sickening the resident. The insurer for the company that constructed the home declined to defend or indemnify its insured, based, in part, on a pollution exclusion within the policy.

The pollution exclusion in the policy at issue in the case, which is not identical to the pollution exclusion in current edition of ISO's Auto Dealers Coverage Form, General Liability Coverages section generally provided, in part, that the exclusion applied regardless of the cause of the pollution, and whether any other cause of injury or damage "acted jointly, concurrently, or in any sequence" with pollutants, and whether any other cause of injury or damage would otherwise be covered under the insurance. With respect to the facts of the case, the Supreme Court of Washington stated that the insurer "correctly identified the existence of an excluded polluting occurrence under the unambiguous language of its policy.

However, it ignored the existence of a covered occurrence – negligent installation – that was the efficient proximate cause of the claimed loss. Accordingly, coverage for this loss existed under the policy, and...[the insurer's] refusal to defend its insured was in bad faith". The court described the "efficient proximate cause rule" as providing coverage "where a covered peril sets in motion a causal chain[,] the last link of which is an uncovered peril" (internal quotations omitted). The court commented that the exclusionary language at issue was similar to language, in certain other previous court actions, that attempted to circumvent the efficient proximate cause rule and the court noted that "[t]he exclusion cannot eviscerate a covered occurrence merely because the uncovered peril appeared later in the causal chain." The court held that "the efficient proximate cause of [the plaintiff's] loss was a covered peril: the negligent installation of a hot water heater." The court found that the insurer correctly applied the pollution exclusion to the release of the carbon monoxide, but had "breached its duty to defend in the face of an alleged covered occurrence that was the efficient proximate cause of the loss."

ISO Filing CL-2018-OEND1 introduced optional efficient proximate cause related aggregate limit endorsements in Washington for use with the Commercial Excess Liability, Commercial General Liability and Commercial Liability Umbrella Lines of Business.

Explanation of Changes

To generally address the State of Washington's application of the efficient proximate cause rule, as currently set forth in *Xia v. ProBuilders* and for consistency with the Commercial Excess Liability, Commercial General Liability and Commercial Liability Umbrella Lines of Business, we are introducing an optional efficient proximate cause related aggregate limit endorsement that generally amends Section II - General Liability Coverages of the Commercial Auto Dealers Coverage Form.

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

WASHINGTON – LIMITED COVERAGE FOR BODILY INJURY, PROPERTY DAMAGE OR PERSONAL AND ADVERTISING INJURY GENERAL LIABILITY COVERAGES INVOLVING EFFICIENT PROXIMATE CAUSE (DEFENSE WITHIN LIMITS)

This endorsement modifies insurance provided under the following:

AUTO DEALERS COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

Named Insured:

Endorsement Effective Date:

SCHEDULE

Efficient Proximate Cause Aggregate Limit:

\$

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

"Defense expense" is payable within, not in addition to, the Efficient Proximate Cause Aggregate Limit shown in the Schedule of this endorsement.

Section II – General Liability Coverages is changed as follows:

A. The following exclusion is added to Paragraph 2. Exclusions of Paragraph A. Bodily Injury And Property Damage Liability, Paragraph 2. Exclusions of Paragraph B. Personal And Advertising Injury Liability and Paragraph 2. Exclusions of Paragraph C. Locations And Operations Medical Payments:

1. If an exclusion under the terms of this Policy applies with respect to "bodily injury", "property damage" or "personal and advertising injury"; and

2. The efficient proximate cause, in accordance with the law of the State of Washington, of such "bodily injury", "property damage" or "personal and advertising injury" is not also excluded under the terms of this Policy;

then:

- a. The exclusion referenced in Paragraph **A.1.** above does not apply to such "bodily injury", "property damage" or "personal and advertising injury"; and
- b. Coverage provided by this insurance for such "bodily injury", "property damage" or "personal and advertising injury" is subject to the Efficient Proximate Cause Aggregate Limit described in Paragraph **B.** of this endorsement.

B. For purposes of the coverage provided under this endorsement, the following provision is added to Paragraph **F. Limits Of Insurance – General Liability Coverages**:

1. Subject to Paragraphs **A.1.** and **A.2.** as applicable, the Efficient Proximate Cause Aggregate Limit shown in the Schedule of this endorsement is the most we will pay for the sum of all:

- a. Damages under Paragraph **A. Bodily Injury And Property Damage Liability**;
- b. Damages under Paragraph **B. Personal And Advertising Injury Liability**;
- c. Damages under Paragraph **C. Locations And Operations Medical Payments**; and
- d. "Defense expense";

because of all "bodily injury", "property damage" and "personal and advertising injury" described in Paragraph **A.** of this endorsement.

2. Paragraph **2.**, the Personal And Advertising Injury Liability Limit, Paragraph **3.**, the Locations And Operations Medical Payments Limit, and Paragraph **4.**, the General Liability Bodily Injury And Property Damage Liability Each "Accident" Limit, continue to apply to "personal and advertising injury", "bodily injury" or "property damage" described in Paragraph **A.** of this endorsement but only if, and to the extent that, limits are available under the Efficient Proximate Cause Aggregate Limit.

C. For purposes of the coverage provided under this endorsement, Subparagraphs **1.**, **3.** and **4.** of Paragraph **E. Supplementary Payments** do not apply.

D. For purposes of the coverage provided under this endorsement, the following definition is added:

"Defense expense":

1. Means:

Payments allocated to a specific claim or "suit" we investigate, settle or defend, for its investigation, settlement or defense.

2. Includes payments for:

- a. Fees and salaries of attorneys and paralegals we retain, including attorneys and paralegals who are our "employees".
- b. Fees of attorneys the "insured" retains when by mutual agreement or court order the "insured" is given the right to retain defense counsel to defend a "suit".
- c. All other litigation expenses.
- d. Reasonable expenses incurred by the "insured" at our request to assist us in the investigation or defense of the claim or "suit", including actual loss of earnings up to \$250 a day because of time off from work.
- e. Costs taxed against the "insured" in the "suit".

3. Does not include:

- a. Any payments described in Paragraph **D.1.** above allocated to that portion of a specific claim or "suit" involving "bodily injury", "property damage" or "personal and advertising injury" not described in Paragraph **A.** of this endorsement; and
- b. Salaries and expenses of our "employees" or the "insured's" "employees" (other than those described in Paragraphs **D.2.a.** and **D.2.d.** above) and does not include fees and expenses of independent adjusters we hire.
- c. Any payments described in Paragraph **D.1.** above allocated to that portion of a specific claim or "suit" involving medical expenses for "bodily injury" under Section **I – Coverage C – Medical Payments**.

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

WASHINGTON – LIMITED COVERAGE FOR BODILY INJURY, PROPERTY DAMAGE OR PERSONAL AND ADVERTISING INJURY GENERAL LIABILITY COVERAGES INVOLVING EFFICIENT PROXIMATE CAUSE (DEFENSE WITHIN LIMITS)

This endorsement modifies insurance provided under the following:

AUTO DEALERS COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

Named Insured:

Endorsement Effective Date:

SCHEDULE

Efficient Proximate Cause Aggregate Limit:

\$

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

"Defense expense" is payable within, not in addition to, the Efficient Proximate Cause Aggregate Limit shown in the Schedule of this endorsement.

Section II – General Liability Coverages is changed as follows:

A. The following exclusion is added to Paragraph 2. Exclusions of Paragraph A. Bodily Injury And Property Damage Liability, Paragraph 2. Exclusions of Paragraph B. Personal And Advertising Injury Liability and Paragraph 2. Exclusions of Paragraph C. Locations And Operations Medical Payments:

1. If an exclusion under the terms of this Policy applies with respect to "bodily injury", "property damage" or "personal and advertising injury"; and

2. The efficient proximate cause, in accordance with the law of the State of Washington, of such "bodily injury", "property damage" or "personal and advertising injury" is not also excluded under the terms of this Policy;

then:

- a. The exclusion referenced in Paragraph **A.1.** above does not apply to such "bodily injury", "property damage" or "personal and advertising injury"; and
- b. Coverage provided by this insurance for such "bodily injury", "property damage" or "personal and advertising injury" is subject to the Efficient Proximate Cause Aggregate Limit described in Paragraph **B.** of this endorsement.

B. For purposes of the coverage provided under this endorsement, the following provision is added to Paragraph **F. Limits Of Insurance – General Liability Coverages**:

1. Subject to Paragraphs **A.1.** and **A.2.** as applicable, the Efficient Proximate Cause Aggregate Limit shown in the Schedule of this endorsement is the most we will pay for the sum of all:

- a. Damages under Paragraph **A. Bodily Injury And Property Damage Liability**;
- b. Damages under Paragraph **B. Personal And Advertising Injury Liability**;
- c. Damages under Paragraph **C. Locations And Operations Medical Payments**; and
- d. "Defense expense";

because of all "bodily injury", "property damage" and "personal and advertising injury" described in Paragraph **A.** of this endorsement.

2. Paragraph **2.**, the Personal And Advertising Injury Liability Limit, Paragraph **3.**, the Locations And Operations Medical Payments Limit, and Paragraph **4.**, the General Liability Bodily Injury And Property Damage Liability Each "Accident" Limit, continue to apply to "personal and advertising injury", "bodily injury" or "property damage" described in Paragraph **A.** of this endorsement but only if, and to the extent that, limits are available under the Efficient Proximate Cause Aggregate Limit.

C. For purposes of the coverage provided under this endorsement, Subparagraphs **1.**, **3.** and **4.** of Paragraph **E. Supplementary Payments** do not apply.

D. For purposes of the coverage provided under this endorsement, the following definition is added:

"Defense expense":

1. Means:

Payments allocated to a specific claim or "suit" we investigate, settle or defend, for its investigation, settlement or defense.

2. Includes payments for:

- a. Fees and salaries of attorneys and paralegals we retain, including attorneys and paralegals who are our "employees".
- b. Fees of attorneys the "insured" retains when by mutual agreement or court order the "insured" is given the right to retain defense counsel to defend a "suit".
- c. All other litigation expenses.
- d. Reasonable expenses incurred by the "insured" at our request to assist us in the investigation or defense of the claim or "suit", including actual loss of earnings up to \$250 a day because of time off from work.
- e. Costs taxed against the "insured" in the "suit".

3. Does not include:

- a. Any payments described in Paragraph **D.1.** above allocated to that portion of a specific claim or "suit" involving "bodily injury", "property damage" or "personal and advertising injury" not described in Paragraph **A.** of this endorsement; and
- b. Salaries and expenses of our "employees" or the "insured's" "employees" (other than those described in Paragraphs **D.2.a.** and **D.2.d.** above) and does not include fees and expenses of independent adjusters we hire.
- c. Any payments described in Paragraph **D.1.** above allocated to that portion of a specific claim or "suit" involving medical expenses for "bodily injury" under Section **I – Coverage C – Medical Payments**.