

RULES – AMENDED AND APPROVED

MAY 17, 2019

COMMERCIAL LINES

LI-CL-2019-019

VIRGINIA REVISIONS TO VARIOUS CLAIMS-MADE RULES FURTHER AMENDED AND TO BE IMPLEMENTED

KEY MESSAGE

Commercial Lines rules filing CL-2018-ORU1 further amended and to be implemented in response to Virginia Adopted amendments to chapter 335 of title 14 of the Virginia Administrative Code addressing Rules Governing Claims-made Liability Insurance Policies.

Applicable Lines: CA, CU, CY, EP, GL, MP, PF, PR

BACKGROUND

In circular [LI-CL-2018-010](#), we announced that we were reviewing Virginia Adopted amendments to chapter 335 of title 14 of the Virginia Administrative Code addressing Rules Governing Claims-made Liability Insurance Policies with respect to requirements that may have impact on various ISO commercial lines of insurance.

In circular [LI-CL-2018-036](#), we announced the filing of CL-2018-ORU1 in response to Virginia Adopted amendments to chapter 335 of title 14 of the Virginia Administrative Code addressing Rules Governing Claims-made Liability Insurance Policies.

In circular [LI-CL-2018-017](#), we announced the amendment of CL-2018-ORU1 in response to comments from the Virginia Bureau of Insurance regarding ISO's revisions in response to Virginia Adopted amendments to chapter 335 of title 14 of the Virginia Administrative Code addressing Rules Governing Claims-made Liability Insurance Policies.

ISO ACTION

This second amendment addresses further comments from the Virginia Bureau of Insurance regarding ISO's revisions in response to Virginia Adopted amendments to chapter 335 of title 14 of the Virginia Administrative Code addressing Rules Governing Claims-made Liability Insurance Policies which became effective October 1, 2018, amending Rules 14VAC5-335-10 through 14VAC5-335-60 and adding new Rules 14VAC5-335-23, 14VAC5-335-27 and 14VAC5-335-45 ("Virginia Adopted amendments").

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

EFFECTIVE DATE

Commercial Auto, Commercial General Liability, Cyber, Medical Professional Liability, Professional Liability (Other Than Medical):

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.

Commercial Liability Umbrella, Employment-related Practices Liability, Management Protection:

We do not establish an effective date for employment-related practices liability, commercial liability umbrella, and management protection revisions in Virginia. Each insurer that elects to utilize this revision is responsible for determining its own effective date.

COMPANY ACTION

Commercial Automobile, Cyber, Commercial General Liability, Professional Liability (Other Than Medical), Medical Professional Liability:

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 Bureau of Insurance.
- 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 Bureau of Insurance.

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

In all correspondence with the Bureau of Insurance on this revision, you should refer to ISO Filing Designation Number CL-2018-ORU1, 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.

Commercial Liability Umbrella, Employment-related Practices Liability, Management Protection Liability:

ISO has not filed this revision on behalf of insurers.

You must independently determine what revision to make and when to make any revision effective. If you decide to use all or any part of our revision, you are NOT required to file anything with the Virginia Bureau of Insurance.

You must document your files in case the Bureau of Insurance wishes to review the information at a later date. In all internal correspondence on this revision, you should refer to ISO Revision Designation Number CL-2018-ORU1, 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

No new attributes are being introduced with this revision.

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 Manualholders with an edition date of 9-19 (or the earliest possible subsequent date), along with any new and/or revised manual pages.

RELATED FORMS REVISION

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

REFERENCE(S)

- [LI-CL-2019-018](#) (05/17/2019) Virginia Revisions To Various Claims-made Endorsements Approved
- [LI-CL-2019-017](#) (05/02/2019) Virginia Revisions To Various Claims-made Rules Amended
- [LI-CL-2019-013](#) (04/17/2019) Virginia Revisions To Various Claims-made Endorsements Amended
- [LI-CL-2018-036](#) (10/03/2018) Virginia Revisions To Various Claims-made Rules Filed
- [LI-CL-2018-035](#) (10/03/2018) Virginia Revisions To Various Claims-made Endorsements Filed
- [LI-CL-2018-010](#) (04/06/2018) Virginia Adoption Of Amendments To Administrative Rules Governing Claims-made Liability Insurance Policies Under Review
- [LI-CL-2018-044](#) (11/27/2018) Revised Lead Time Requirements Listing

ATTACHMENT(S)

Second Amendment to Filing [CL-2018-ORU1](#)

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Virginia Revisions To Various Claims-made Rules Further Amended

Applicable Lines of Business

This amendment applies to the following lines of business:

- ◆ Professional Liability (Other Than Medical) – Insurance Agents and Brokers Professional Liability Section
- ◆ Professional Liability (Other Than Medical) – Lawyers Professional Liability Section
- ◆ Professional Liability (Other Than Medical) – Miscellaneous Professional Liability Section
- ◆ Professional Liability (Other Than Medical) – Real Estate Agents and Brokers Professional Liability Section

About This Amendment

This amendment addresses comments from the Virginia Bureau of Insurance (BOI) regarding ISO's revisions in response to Virginia Adopted amendments to chapter 335 of title 14 of the Virginia Administrative Code.

Related Filing(s)

- ◆ CL-2018-OEND1 Virginia Forms Filing

Background

The Virginia BOI generally requested that certain rules be revised to more closely track with text of the related endorsements.

Explanation of Changes

In response to comments from the Virginia BOI, we have revised certain rules to track more closely with the text of the related endorsements.

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List Of Rules

Below is a list of all rules exceptions that are part of this amendment. These rules were submitted as part of the prior amendment filing and are now being further amended.

We have used a format of ~~striking-through~~ deletions, underlining additions and inserting a revision bar in the left margin to indicate changes.

Professional Liability – Other Than Medical – Division Sixteen

Insurance Agents And Brokers

- ◆ Rule 23. Extended Reporting Period

Lawyers

- ◆ Rule 23. Extended Reporting Period

Miscellaneous

- ◆ Rule 23. Extended Reporting Periods And Run-off Coverage Period

Real Estate Agents And Brokers

- ◆ Rule 23. Extended Reporting Period

DIVISION SIXTEEN – PROFESSIONAL LIABILITY (OTHER THAN MEDICAL) – INSURANCE AGENTS AND BROKERS PROFESSIONAL LIABILITY SECTION

23. EXTENDED REPORTING PERIOD

Rule 23. is replaced by the following:

- A. If a "triggering event", as defined in Virginia Changes Endorsement **IA 01 47**, takes effect, an Extended Reporting Period may be provided. Under the Extended Reporting Period, a claim first received and reported to us during the Extended Reporting Period will be deemed to have been made on the date a "triggering event" takes effect. The claim must be for damages because of a wrongful act arising out of the rendering of or failure to render professional services which commenced before the date a "triggering event" takes effect, but not before the applicable Retroactive Date.

If a "triggering event" takes effect, the company must offer, in writing, to the Named Insured, the Additional Extended Reporting Period, including the duration and premium of this coverage and any other available duration and premium options. The offer shall be sent no earlier than the date of notification of a "triggering event" and not later than 15 days after a "triggering event" takes effect.

An Additional Extended Reporting Period of at least one year shall be offered.

- B. A Basic Extended Reporting Period is automatically provided at no extra charge. This period begins with the date a "triggering event" takes effect and lasts for 60 days, with respect to claims because of a wrongful act arising out of the rendering of or failure to render professional services. The Basic Extended Reporting Period does not apply to claims that are covered under subsequent insurance purchased, or to claims that would be covered but for the exhaustion of the amount of insurance applicable to such claims.

The Basic Extended Reporting Period does not reinstate or increase the limits under the policy.

- C. The following Extended Reporting Period options are available for an additional premium charge:

1. Virginia Changes – Additional Extended Reporting Period Endorsement **IA 28 28**; or
2. Virginia Changes – Additional Extended Reporting Period – Defense Within Limits Endorsement **IA 28 29** whenever Amendment – Defense Within Limits Endorsement **IA 04 11** is also attached to the same policy.

The Named Insured must request this endorsement in writing within 60 days after the date a "triggering event" takes effect. This Additional Extended Reporting Period starts with the end of the Basic Extended Reporting Period and lasts for one, two, three, four, five or an unlimited number of years, with respect to claims because of a wrongful act arising out of the rendering of or failure to render professional services.

- D. Refer to company for rating the Additional Extended Reporting Period endorsement, which will be fully earned when the Endorsement takes effect. However, Insurance Agents And Brokers Professional Liability Policy Form **IA 00 01** indicates that the premium to be charged for the Additional Extended Reporting Period endorsement will not exceed 2.00 times the annual premium for the Insurance Agents And Brokers Professional Liability Coverage.

- E. The Additional Extended Reporting Period endorsement will not reinstate or increase the Limits of Insurance.

Once in effect, ~~the Additional Extended Reporting Period~~ ~~Extended Reporting Periods~~ may not be cancelled by the insurer, except for nonpayment of premium or fraud. The premium for the Additional Extended Reporting Period Endorsement will be deemed to be fully earned when the endorsement takes effect.

DIVISION SIXTEEN – PROFESSIONAL LIABILITY (OTHER THAN MEDICAL) – LAWYERS PROFESSIONAL LIABILITY SECTION

23. EXTENDED REPORTING PERIOD

Rule 23. is replaced by the following:

- A. If a "triggering event", as defined in Virginia Changes Endorsement **LW 01 44**, takes effect, an Extended Reporting Period may be provided. Under the Extended Reporting Period, a claim first received and reported to us during the Extended Reporting Period will be deemed to have been made on the date a "triggering event" takes effect. The claim must be for damages because of a wrongful act arising out of the rendering of or failure to render professional services which commenced before the date a "triggering event" takes effect, but not before the applicable Retroactive Date.

If a "triggering event" takes effect, the company must offer, in writing, to the Named Insured, the Additional Extended Reporting Period, including the duration and premium of this coverage and any other available duration and premium options. The offer shall be sent no earlier than the date of notification of the "triggering event" and not later than 15 days after a "triggering event" takes effect.

- B. A Basic Extended Reporting Period is automatically provided at no extra charge. This period begins with the date a "triggering event" takes effect and lasts for 60 days, with respect to claims because of a wrongful act arising out of the rendering of or failure to render professional services. The Basic Extended Reporting Period does not apply to claims that are covered under subsequent insurance purchased, or to claims that would be covered but for the exhaustion of the amount of insurance applicable to such claims.

The Basic Extended Reporting Period does not reinstate or increase the limits under the policy.

- C. An Additional Extended Reporting Period is available by attaching Virginia Changes – Additional Extended Reporting Period Endorsement **LW 28 10** for an additional premium charge. The Named Insured must request this endorsement in writing within 60 days after the date a "triggering event" takes effect. This Additional Extended Reporting Period starts ~~with the end of the policy period when the Basic Extended Period ends~~ and lasts for three years, with respect to claims because of a wrongful act arising out of the rendering of or failure to render professional services.
- D. Refer to company for rating the Additional Extended Reporting Period endorsement, which will be fully earned when the Endorsement takes effect. However, Lawyers Professional Liability Policy Form **LW 00 01** indicates that the premium to be charged for the Additional Extended Reporting Period endorsement will not exceed 2.00 times the annual premium for the Lawyers Professional Liability Coverage.
- E. The Additional Extended Reporting Period Endorsement will not reinstate or increase the Limits of Insurance.

Once in effect, ~~the Additional Extended Reporting Period~~ ~~Extended Reporting Periods~~ may not be cancelled by the insurer, except for ~~nonpayment of premium or fraud~~. The premium for the Additional Extended Reporting Period Endorsement will be deemed to be fully earned when the endorsement takes effect.

DIVISION SIXTEEN – PROFESSIONAL LIABILITY (OTHER THAN MEDICAL) – MISCELLANEOUS PROFESSIONAL LIABILITY SECTION

23. EXTENDED REPORTING PERIODS AND RUN-OFF COVERAGE PERIOD

Rule 23. is replaced by the following:

- A. If a "triggering event", as defined in Virginia Changes Endorsement **MI 01 47**, takes effect an Extended Reporting Period will be provided. Under the Extended Reporting Period, a claim first made and reported to the insurer during the Extended Reporting Period will be deemed to have been made on the date a "triggering event" takes effect. The claim must allege a wrongful act arising out of the rendering of or failure to render professional services which commenced before the date a "triggering event" takes effect, but not before the applicable Retroactive Date.

In the event of a merger, consolidation or acquisition of the Named Insured or the cessation of a subsidiary, the Named Insured has the option to purchase a Run-off Coverage Period for claims made and reported during the Run-off Coverage Period that arise from wrongful acts occurring on or after the Retroactive Date and prior to the merger, consolidation, acquisition of the named insured or cessation of a subsidiary. Under the Run-off Coverage Period, a claim first made and reported to the insurer during the Run-off Coverage Period will be deemed to have been made on the last day of the policy period. The claim must allege a wrongful act arising out of the rendering of or failure to render professional services which commenced before the end of the policy period, but not before the applicable Retroactive Date.

Extended Reporting Periods and the Run-off Coverage Period do not reinstate or increase the limits under the policy.

- B. In the event of a "triggering event" as specified in Endorsement **MI 01 47**:
1. A Basic Extended Reporting Period is automatically provided at no extra charge. This period begins with the date a "triggering event" takes effect and lasts for 60 days; and
 2. The company must offer, in writing, to the Named Insured the Additional Extended Reporting Period, including the duration and premium of this coverage and any other available duration and premium options. The offer shall be sent no earlier than the date of notification of a "triggering event" and not later than 15 days after a "triggering event" takes effect.
- C. The following Additional Extended Reporting Period and Run-off Coverage Period options are available for an additional premium charge:
1. If an Additional Extended Reporting Period is purchased, Attach Virginia Changes – Additional Extended Reporting Period – Elected Endorsement **MI 08 19**. The Named Insured must request this endorsement in writing within 30 days after the date a "triggering event" takes effect. This Additional Extended Reporting Period starts at the end of the Basic Extended Reporting Period. An Additional Extended Reporting Period of at least one year shall be offered.

2. If run-off coverage is purchased in the event of the run-off of the claims-made coverage, attach Virginia Changes – Run-off Coverage Period – Elected Endorsement **MI 08 20**. The Named Insured must request this endorsement in writing within 30 days after the end of the policy period. This Run-off Coverage Period starts at the end of the policy period and lasts from one to six years. A Run-off Coverage Period of at least one year shall be offered.
- D. Refer to company for rating Endorsement **MI 08 19** or **MI 08 20**.
- E. Once in effect, ~~the Additional Extended Reporting Period~~ ~~Extended Reporting Periods~~ and the Run-off Coverage Period may not be cancelled by the insurer, except for ~~nonpayment of premium or fraud~~. The premium for Endorsement **MI 08 19** or **MI 08 20** will be fully earned at the inception of the Additional Extended Reporting Period or the Run-Off Coverage Period.

DIVISION SIXTEEN – PROFESSIONAL LIABILITY (OTHER THAN MEDICAL) – REAL ESTATE AGENTS AND BROKERS PROFESSIONAL LIABILITY SECTION

23. EXTENDED REPORTING PERIOD

Rule 23. is replaced by the following:

- A. If a "triggering event", as defined in Virginia Changes Endorsement **RE 01 47**, takes effect, an Extended Reporting Period may be provided. Under the Extended Reporting Period, a claim first received and reported to us during the Extended Reporting Period will be deemed to have been made on the date a "triggering event" takes effect. The claim must be for damages because of a wrongful act arising out of the rendering of or failure to render professional services which commenced before the date a "triggering event" takes effect, but not before the applicable Retroactive Date.

If a "triggering event" takes effect, the company must offer, in writing, to the Named Insured, the Additional Extended Reporting Period, including the duration and premium of this coverage and any other available duration and premium options. The offer shall be sent no earlier than the date of notification of a "triggering event" and not later than 15 days after a "triggering event" takes effect.

An Additional Extended Reporting Period of at least one year shall be offered.

- B. A Basic Extended Reporting Period is automatically provided at no extra charge. This period begins with the date a "triggering event" takes effect and lasts for 60 days, with respect to claims because of a wrongful act arising out of the rendering of or failure to render professional services. The Basic Extended Reporting Period does not apply to claims that are covered under subsequent insurance purchased, or to claims that would be covered but for the exhaustion of the amount of insurance applicable to such claims.

The Basic Extended Reporting Period does not reinstate or increase the limits under the policy.

- C. The following extended reporting period options are available for an additional premium charge:
 1. Virginia Changes – Additional Extended Reporting Period Endorsement **RE 28 28**; or
 2. Virginia Changes – Additional Extended Reporting Period – Defense Within Limits Endorsement **RE 28 29** whenever Amendment – Defense Within Limits Endorsement **RE 04 08** is also attached to the same policy.

The Named Insured must request this endorsement in writing within 60 days after the date a "triggering event" takes effect. This Additional Extended Reporting Period starts with the end of the Basic Extending Reporting Period and lasts for one, two, three, four, five or an unlimited number of years, with respect to claims because of a wrongful act arising out of the rendering of or failure to render professional services.

- D. Refer to company for rating the Additional Extended Reporting Period endorsement, which will be fully earned when the endorsement takes effect. However, Real Estate Agents And Brokers Professional Liability Policy Form **RE 00 01** indicates that the premium to be charged for the Additional Extended Reporting Period endorsement will not exceed 2.00 times the annual premium for the Real Estate Agents And Brokers Professional Liability Coverage.

- E. The Additional Extended Reporting Period endorsement will not reinstate or increase the Limits of Insurance.

Once in effect, ~~the Additional Extended Reporting Period~~ ~~Extended Reporting Periods~~ may not be cancelled by the insurer, except for ~~nonpayment of premium or fraud~~. The premium for the Additional Extended Reporting Period Endorsement will be deemed to be fully earned when the endorsement takes effect.