

FORMS/RULES – APPROVED

JUNE 11, 2019

COMMERCIAL AUTOMOBILE

LI-CA-2019-119

WASHINGTON INTRODUCTION OF STOP GAP – EMPLOYERS LIABILITY COVERAGE ENDORSEMENT AND INTRODUCTION OF ADDITIONAL RULE TO REFERENCE STOP GAP – EMPLOYERS LIABILITY COVERAGE ENDORSEMENT APPROVED

KEY MESSAGE

Forms filing CA-2019-OSG1 and Rules filing CA-2019-RSG1 are approved in Washington.

BACKGROUND

In circular:

- [LI-CA-2019-113](#), we announced the filing of forms filing CA-2019-OSG1, which provided an endorsement for use with the Commercial Auto (CA) Program in order that employers liability coverage would be available in Washington.
- [LI-CA-2019-114](#), we announced the filing of rules filing CA-2019-RSG1, which revised Washington state exception pages to add an Additional Rule that makes reference to and provides rating information for the endorsement.

INSURANCE DEPARTMENT ACTION

The Insurance Department has approved forms filing CA-2019-OSG1 and rules filing CA-2019-RSG1 filing as filed.

EFFECTIVE DATE

CA-2019-OSG1

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**.

CA-2019-RSG1

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

CA-2019-OSG1

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-OSG1, 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.

CA-2019-RSG1

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-RSG1, 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

CA-2019-OSG1

New attributes being introduced with this revision:

- A new form is being introduced.

CA-2019-OSG1

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

CA-2019-OSG1

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.

CA-2019-RSG1

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.

REFERENCE(S)

- [LI-CA-2019-114](#) (06/06/2019) Washington Introduction Of Additional Rule To Reference Stop Gap – Employers Liability Coverage Endorsement Filed
- [LI-CA-2019-113](#) (06/06/2019) Washington Introduction Of Stop Gap – Employers Liability Coverage Endorsement Filed
- [LI-CL-2018-044](#) (11/27/2018) Revised Lead Time Requirements Listing

ATTACHMENT(S)

Final copy of [CA 04 76 09 19](#)

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**STOP GAP – EMPLOYERS LIABILITY COVERAGE
ENDORSEMENT – WASHINGTON**

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.

This endorsement changes the Policy effective on the inception date of the Policy unless another date is indicated below.

Named Insured:
Endorsement Effective Date:

SCHEDULE

Limits Of Insurance		
Bodily Injury By Accident	\$	Each Accident
Bodily Injury By Disease	\$	Aggregate Limit
Bodily Injury By Disease	\$	Each Employee
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.		

A. The following is added to Section II – General Liability Coverages:

Coverage – Stop Gap – Employer's Liability

1. Coverage

a. We will pay those sums that the "insured" becomes legally obligated by Washington Law to pay as damages because of "bodily injury by accident" or "bodily injury by disease" to your "employee" to which this insurance applies. We will have the right and duty to defend the "insured" against any "suit" seeking those damages. However, we will have no duty to defend the "insured" against any "suit" seeking damages to which this insurance does not apply. We may, at our discretion, investigate any accident and settle any claim or "suit" that may result. But:

(1) The amount we will pay for damages is limited as described in Paragraph F. Limits Of Insurance – General Liability Coverages; and

(2) Our right and duty to defend end when we have used up the applicable Limit of Insurance in the payment of judgments or settlements under this coverage.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments.

b. This insurance applies to "bodily injury by accident" or "bodily injury by disease" only if:

(1) The:

(a) "Bodily injury by accident" or "bodily injury by disease" takes place in the coverage territory;

- (b) "Bodily injury by accident" or "bodily injury by disease" arises out of and in the course of the injured "employee's" employment by you; and
 - (c) "Employee", at the time of the injury, was covered under a workers' compensation policy and subject to a "workers' compensation law" of Washington; and
- (2) The:
- (a) "Bodily injury by accident" is caused by an accident that occurs during the policy period; or
 - (b) "Bodily injury by disease" is caused by or aggravated by conditions of employment by you, and the injured "employee's" last day of last exposure to the conditions causing or aggravating such "bodily injury by disease" occurs during the policy period.
- c. The damages we will pay, where recovery is permitted by law, include damages:
- (1) For:
- (a) Which you are liable to a third party by reason of a claim or "suit" against you by that third party to recover the damages claimed against such third party as a result of injury to your "employee";
 - (b) Care and loss of services; and
 - (c) Consequential "bodily injury by accident" or "bodily injury by disease" to a spouse, child, parent, brother or sister of the injured "employee";
- provided that these damages are the direct consequence of "bodily injury by accident" or "bodily injury by disease" that arises out of and in the course of the injured "employee's" employment by you; and
- (2) Because of "bodily injury by accident" or "bodily injury by disease" to your "employee" that arises out of and in the course of employment, claimed against you in a capacity other than as employer.

2. Exclusions

This insurance does not apply to:

a. Intentional Injury

"Bodily injury by accident" or "bodily injury by disease" intentionally caused or aggravated by you, or "bodily injury by accident" or "bodily injury by disease" resulting from an act which is determined to have been committed by you if it was reasonable to believe that an injury is substantially certain to occur.

b. Fines Or Penalties

Any assessment, penalty or fine levied by any regulatory inspection agency or authority.

c. Statutory Obligations

Any obligation of the "insured" under a workers' compensation, disability benefits or unemployment compensation law or any similar law.

d. Contractual Liability

Liability assumed by you under any contract or agreement.

e. Violation Of Law

"Bodily injury by accident" or "bodily injury by disease" suffered or caused by any "employee" while employed in violation of law with your actual knowledge or the actual knowledge of any of your "executive officers".

f. Termination, Coercion Or Discrimination

Damages arising out of coercion, criticism, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation, discrimination against or termination of any "employee", or arising out of other employment or personnel decisions concerning the "insured".

g. Failure To Comply With "Workers' Compensation Law"

"Bodily injury by accident" or "bodily injury by disease" to an "employee" when you are:

- (1) Deprived of common law defenses; or
- (2) Otherwise subject to penalty; because of your failure to secure your obligations or other failure to comply with any "workers' compensation law".

h. Violation Of Age Laws Or Employment Of Minors

"Bodily injury by accident" or "bodily injury by disease" suffered or caused by any person:

- (1) Knowingly employed by you in violation of any law as to age; or
- (2) Under the age of 14 years, regardless of any such law.

i. Federal Laws

Any premium, assessment, penalty, fine, benefit, liability or other obligation imposed by or granted pursuant to:

- (1) The Federal Employer's Liability Act (45 USC Sections 51-60);
- (2) The Non-appropriated Fund Instrumentalities Act (5 USC Sections 8171-8173);
- (3) The Longshore and Harbor Workers' Compensation Act (33 USC Sections 910-950);
- (4) The Outer Continental Shelf Lands Act (43 USC Sections 1331-1356);
- (5) The Defense Base Act (42 USC Sections 1651-1654);
- (6) The Federal Coal Mine Health and Safety Act of 1969 (30 USC Sections 901-942);
- (7) The Migrant and Seasonal Agricultural Worker Protection Act (29 USC Sections 1801-1872);
- (8) Any other workers' compensation, unemployment compensation or disability laws or any similar law; or
- (9) Any subsequent amendments to the laws listed above.

j. Punitive Damages

Multiple, exemplary or punitive damages.

k. Crew Members

"Bodily injury by accident" or "bodily injury by disease" to a master or member of the crew of any vessel or any member of the flying crew of an aircraft.

B. Paragraph E. Supplementary Payments in Section II – General Liability Coverages applies to Stop Gap Employers Liability Coverage.

C. For the purposes of this endorsement:

1. Section II – General Liability Coverages – Who Is An Insured is replaced by the following:

If you are designated in the Declarations as:

- a. You.
- b. Your partners and their spouses, if you are a partnership, but only with respect to the conduct of your "auto dealer operations".
- c. Your members, if you are a limited liability company, but only with respect to the conduct of your "auto dealer operations". Your managers are also "insureds", but only with respect to their duties as your managers.
- d. Your "executive officers" and directors, if you are an organization other than a partnership or limited liability company, but only with respect to their duties as your officers or directors. Your stockholders are also "insureds", but only with respect to their liability as stockholders.

No person or organization is an "insured" with respect to the conduct of any current or past partnership or limited liability company that is not shown as a Named Insured in the Declarations.

2. Section II – General Liability Coverages, Paragraph F. Limits Of Insurance – General Liability Coverages is replaced by the following:

- a. The Limits Of Insurance shown in the Schedule of this endorsement is the most we will pay regardless of the number of:
 - (1) "Insureds";
 - (2) Claims made or "suits" brought; or
 - (3) Persons or organizations making claims or bringing "suits".
- b. The "Bodily Injury By Accident" – Each Accident Limit shown in the Schedule of this endorsement is the most we will pay for all damages covered by this insurance because of "bodily injury by accident" to one or more "employees" in any one "accident".
- c. The "Bodily Injury By Disease" – Aggregate Limit shown in the Schedule of this endorsement is the most we will pay for all damages covered by this insurance and arising out of "bodily injury by disease", regardless of the number of "employees" who sustain "bodily injury by disease".

- d. Subject to Paragraph **C.3.** of this endorsement, the "Bodily Injury By Disease" – Each "Employee" Limit shown in the Schedule of this endorsement is the most we will pay for all damages because of "bodily injury by disease" to any one "employee".

The limits of the coverage apply separately to each consecutive annual period and to any remaining period of less than 12 months, starting with the beginning of the policy period shown in the Declarations, unless the policy period is extended after issuance for an additional period of less than 12 months. In that case, the additional period will be deemed part of the last preceding period for purposes of determining the Limits of Insurance.

- 3. Condition **2. Duties In The Event Of Accident, Claim, Offense, Suit, Loss Or Acts, Errors Or Omissions** under **Section IV – Conditions** is replaced by the following:

- 2. **Duties In The Event Of Injury, Claim Or Suit**

We have no duty to provide coverage under this Policy unless there has been full compliance with the following duties:

- a. You must see to it that we or our agent is notified as soon as practicable of a "bodily injury by accident" or "bodily injury by disease" which may result in a claim. To the extent possible, notice should include:

- (1) How, when and where the "bodily injury by accident" or "bodily injury by disease" took place;
- (2) The names and addresses of any injured persons and witnesses; and
- (3) The nature and location of any injury.

- b. If a claim is made or "suit" is brought against any "insured", you must:

- (1) Immediately record the specifics of the claim or "suit" and the date received; and
- (2) Notify us as soon as practicable.

You must see to it that we receive written notice of the claim or "suit" as soon as practicable.

- c. You and any other involved "insured" must:

- (1) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the injury, claim, proceeding or "suit";

- (2) Authorize us to obtain records and other information;

- (3) Cooperate with us and assist us, as we may request, in the investigation or settlement of the claim or defense against the "suit";

- (4) Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to the "insured" because of injury to which this insurance may also apply; and

- (5) Do nothing after an injury occurs that would interfere with our right to recover from others.

- d. No "insured" will, except at that "insured's" own cost, voluntarily make a payment, assume any obligation, or incur any expense, without our consent.

- 4. Condition **7. Policy Period, Coverage Territory** of **Section IV – Conditions** is replaced by the following:

- 7. **Policy Period, Coverage Territory**

Under this Coverage Form, we cover "bodily injury by disease" and "bodily injury by accident" occurring during the policy period shown in the Declarations and within the coverage territory.

The coverage territory is:

- a. The United States of America;
- b. The territories and possessions of the United States of America;
- c. Puerto Rico;
- d. Canada; and
- e. Anywhere else in the world if "bodily injury by accident" or "bodily injury by disease" to your "employee" is caused by an "insured" who permanently lives within the United States of America, its territories or possessions, Puerto Rico or Canada while the "insured" is temporarily outside of one of those places;

provided that the "insured's" responsibility to pay damages is determined in the United States of America, the territories and possessions of the United States of America, Puerto Rico or Canada, in a "suit" on the merits according to the substantive law in this territory, or in a settlement we agree to.

5. **Section V – Definitions** is amended as follows:

1. Definition **V.** in **Section V** is replaced by the following:

V. "Suit" means a civil proceeding in which damages because of "bodily injury by accident" or "bodily injury by disease" to which this insurance applies are claimed.

"Suit" includes:

1. An arbitration proceeding in which such damages are claimed and to which the insured must submit or does submit with our consent; or
2. Any other alternative dispute resolution proceeding in which such damages are claimed and to which the insured submits with our consent.

2. The following is added to the **Definitions** section:

a. "Workers' Compensation Law" means the Workers' Compensation Law and any Occupational Disease Law of Washington. This does not include provisions of any law providing nonoccupational disability benefits.

b. "Bodily injury by accident" means bodily injury, sickness or disease sustained by a person, including death, resulting from an accident. A disease is not "bodily injury by accident" unless it results directly from "bodily injury by accident".

c. "Bodily injury by disease" means a disease sustained by a person, including death. "Bodily injury by disease" does not include a disease that results directly from an accident.

3. The definition of "bodily injury" does not apply.