

FORMS/RULES – IMPLEMENTATION

APRIL 7, 2020

GENERAL LIABILITY

LI-GL-2020-077

## WISCONSIN NEW HIRED AND NON-OWNED AUTO LIABILITY ENDORSEMENT, AS WELL AS RELATED ADDITIONAL RULE, TO BE IMPLEMENTED

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### KEY MESSAGE

In response to a March 23, 2020 letter from the Wisconsin Office of the Commissioner of Insurance (OCI), we are introducing a new endorsement and an additional rule relating to hired and non-owned automobile coverage.

**Effective Date:** 4/6/2020

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### BACKGROUND

On March 23, the Wisconsin OCI released a letter ordering, in part, that:

"[...] OCI orders all insurers who provide commercial general liability coverage to a restaurant to notify their restaurant insureds that hired and non-owned auto coverage is available if requested. If the insured restaurant requests hired and non-owned auto coverage, the insurer shall, either through a rider or stand-alone policy, provide this coverage to any insured restaurant."

The letter further states that, "This order shall apply to all commercial general liability policies in effect on or after March 17, 2020. The coverage afforded shall be effective upon the date it is requested. Insurers who offer retroactive coverage may request that the insured certify that they have not incurred any potential claims in the period of retroactive coverage. This order shall remain in effect until the public health emergency order is lifted, in whole or in part, to permit restaurants to resume normal operations."

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### ISO ACTION

In response to the above referenced letter, we are introducing Endorsement [CG 04 00 04 20](#) Wisconsin – Hired Auto And Non-owned Auto Liability Insurance in forms filing GL-2020-OHNFR. We are also introducing an additional rule to reference and instruct on the use of this new endorsement in rules filing GL-2020-OHNRU.

Refer to the attached explanatory material for complete details about these filings.

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### INSURANCE DEPARTMENT ACTION

The Wisconsin OCI has acknowledged these filings as submitted.

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### EFFECTIVE DATE

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

These changes are applicable to all policies **written** on or after April 6, 2020.

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## COMPANY ACTION

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 ISO's revision, you must make an appropriate submission with the OCI.

However, in view of current circumstances and in terms of using ISO endorsement CG 04 00, the OCI has informed us that we "can advise companies to send in an email to notify [the OCI]...of their intention to adopt the endorsement. This way we can track which companies are using what forms." As such, companies may "send in an email to notify us of their intention to adopt the endorsement" to [ociratesforms@wisconsin.gov](mailto:ociratesforms@wisconsin.gov) notifying the OCI of the company's intent to adopt this specific endorsement. We also ask that each company specify their date of the adoption, and the expected date of termination – which is typically the date the public health emergency is lifted, or a couple weeks after that date. The March 23, 2020 OCI guidance stated, "this order shall apply to all personal auto policies in effect on or after March 17, 2020."

Accordingly, should you decide to submit such an email, your email should reference your intent to adopt ISO Filing Numbers [GL-2020-OHNFR](#) and [GL-2020-OHNRU](#). Please note that this applies **only** to ISO Filing Numbers [GL-2020-OHNFR](#) and [GL-2020-OHNRU](#) and not other filings.

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

You must document your files in case the OCI wishes to review the information at a later date. In all internal correspondence on this revision, you should refer to ISO Filing Numbers [GL-2020-OHNFR](#) and [GL-2020-OHNRU](#), 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.

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## RATING SOFTWARE IMPACT

New attributes being introduced with this revision:

- A new form is being introduced.

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## 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-2019-057](#) 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.

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We will issue a Notice to Manualholders with an edition date of 4-20 (or the earliest possible subsequent date), along with any new and/or revised manual pages.

We will issue a Notice to Portfolioholders with an edition date of 4-20 (or the earliest possible subsequent date), along with any new and/or revised forms.

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**REFERENCE(S)**

[LI-CL-2019-057](#) (12/10/2019) Revised Lead Time Requirements Listing

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**ATTACHMENT(S)**

- Filing [GL-2020-OHNFR](#)
- Filing [GL-2020-OHNRU](#)
- Final copy of [CG 04 00 04 20](#)

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# Wisconsin – Hired Auto And Non-owned Auto Liability Insurance Endorsement Introduced

## About This Filing

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This filing introduces Wisconsin – Hired Auto And Non-owned Auto Liability Insurance Endorsement in response to guidance provided by the Wisconsin Office of the Commissioner of Insurance (OCI).

## New Form

We are introducing the following form:

- ◆ CG 04 00 04 20 Wisconsin – Hired Auto And Non-owned Auto Liability Insurance

## Related Filing(s)

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- ◆ GL-2020-OHNRU

## Background

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In a letter dated March 23, 2020 with a subject of "Coverage for Delivery Drivers for Restaurants during the COVID-19 Public Health Emergency", the OCI provided certain guidance to insurers and bars and restaurants "regarding insurance coverage for delivery drivers during the COVID-19 public health emergency." In part, this guidance states:

. . . OCI orders all insurers who provide commercial general liability coverage to a restaurant to notify their restaurant insureds that hired and non-owned auto coverage is available if requested. If the insured restaurant requests hired and non-owned auto coverage, the insurer shall, either through a rider or stand-alone policy, provide this coverage to any insured restaurant.

This order shall apply to all commercial general liability policies in effect on or after March 17, 2020. The coverage afforded shall be effective upon the date it is requested. Insurers who offer retroactive coverage may request that the insured certify that they have not incurred any potential claims in the period of retroactive coverage. This order shall remain in effect until the public health

emergency order is lifted, in whole or in part, to permit restaurants to resume normal operations.

ISO's Commercial General Liability program does not currently offer an endorsement to provide coverage with respect to hired and non-owned auto liability, though such options are available for use with the Commercial General Liability Coverage Part under ISO's Market Segments programs.

## **Explanation of Changes**

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To assist insurers who do not subscribe to ISO's Market Segments programs to provide the coverage addressed by the OCI's letter dated March 23, 2020, we are introducing Wisconsin – Hired Auto And Non-owned Auto Liability Insurance endorsement CG 04 00. This endorsement may be used to provide certain coverage with respect to non-owned or hired autos under the Commercial General Liability Coverage Part.

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**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **WISCONSIN – HIRED AUTO AND NON-OWNED AUTO LIABILITY INSURANCE**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

### **SCHEDULE**

Insurance is provided only with respect to those coverages for which a specific Limit of Insurance and Premium are shown:

<b>Coverage</b>	<b>Limit Of Insurance Per "Occurrence"</b>	<b>Premium</b>
<b>Hired Auto Liability Insurance</b>	\$	\$
<b>Non-owned Auto Liability Insurance</b>	\$	\$
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.		

#### **A. Hired Auto Liability**

The insurance provided under the **Bodily Injury And Property Damage Liability** coverage applies to "bodily injury" or "property damage" arising out of the maintenance or use of a "hired auto" by you or your "employees" in the course of your business.

#### **B. Non-owned Auto Liability**

The insurance provided under the **Bodily Injury And Property Damage Liability** coverage applies to "bodily injury" or "property damage" arising out of the use of a "non-owned auto" by any person in the course of your business.

#### **C. Changes In Exclusions**

With respect to the insurance provided by this endorsement:

##### **1. The following Bodily Injury And Property Damage Liability exclusions do not apply:**

- a. Contractual Liability;
- b. Liquor Liability;
- c. Employer's Liability;

d. Aircraft, Auto Or Watercraft;

e. Mobile Equipment;

f. Damage To Property;

g. Damage To Your Product;

h. Damage To Your Work;

i. Damage To Impaired Property Or Property Not Physically Injured; and

j. Recall Of Products, Work Or Impaired Property.

##### **2. The following Bodily Injury And Property Damage Liability exclusions are added:**

This insurance does not apply to:

a. "Bodily injury" or "property damage" for which the insured is obligated to pay damages by reason of the assumption of liability in a contract or agreement. 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 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.

**b. "Bodily injury" to:**

- (1) An "employee" of the insured arising out of and in the course of:
  - (a) Employment by the insured; or
  - (b) Performing duties related to the conduct of the insured's business; or
- (2) The spouse, child, parent, brother or sister of that "employee" as a consequence of Paragraph (1) above.

This exclusion applies:

- (1) Whether the insured may be liable as an employer or in any other capacity; and
- (2) To any obligation to share damages with or repay someone else who must pay the damages because of the injury.

This exclusion does not apply to:

- (1) Liability assumed by the insured under an "insured contract"; or
- (2) "Bodily injury" to domestic "employees" not entitled to workers' compensation benefits.

**c. "Property damage" to:**

- (1) Property owned or being transported by, or rented or loaned to the insured; or
- (2) Property in the care, custody or control of the insured.

**D. Who Is An Insured**

For the purposes of this endorsement only, the **Who Is An Insured** Section is replaced by the following:

**Who Is An Insured**

- 1. Each of the following is an insured under this insurance to the extent set forth below:
  - a. You.
  - b. Any other person using a "hired auto" with your permission.
  - c. With respect to a "non-owned auto", any partner or "executive officer" of yours, but only while such "non-owned auto" is being used in your business.

- d. An officer, agent or employee of an "auto business" that you do not operate while using a "hired auto" or "non-owned auto". However, that person is an insured only if he or she has no other valid and collectible insurance with at least the applicable minimum limit specified by the Wisconsin Financial Responsibility law. In this event, coverage will be provided only up to the applicable minimum limit. The applicable minimum limit is:

- (1) \$60,000 for each accident for "bodily injury" and "property damage", if the limit of liability is a single limit that applies for each accident; or
- (2) \$25,000 for each person/\$50,000 for each accident for "bodily injury"/\$10,000 for "property damage", if the limit of liability is indicated as a split limit.

- e. Any other person or organization, but only with respect to their liability because of acts or omissions of an insured under Paragraph a., b., c. or d. above.

**2. None of the following is an insured:**

- a. Any person engaged in the business of his or her employer with respect to "bodily injury" to any coemployee of such person injured in the course of employment;
- b. Any partner or "executive officer" with respect to any "auto" owned by such partner or officer or a member of his or her household;
- c. Any person while employed in or otherwise engaged in performing duties related to the conduct of an "auto business", other than an "auto business" you operate or except as provided in Paragraph D.1.d. of this endorsement;
- d. The owner or lessee (of whom you are a sublessee) of a "hired auto" or the owner of a "non-owned auto" or any agent or "employee" of any such owner or lessee;
- e. Any person or organization with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a Named Insured in the Declarations.

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#### E. Limits Of Insurance

For the purposes of this endorsement only, the **Limits Of Insurance** is replaced by the following:

##### **Limits Of Insurance**

Regardless of the number of "hired autos", "non-owned autos", insureds, premiums paid, claims made or vehicles involved in the "occurrence", the most we will pay for all damages resulting from any one "occurrence" is the applicable Limit of Insurance shown in the Schedule of this endorsement or in the Declarations.

#### F. Changes In Conditions

For the purposes of this endorsement only, the **Other Insurance** provision of the **Commercial General Liability Conditions** Section is replaced by the following:

##### **Other Insurance**

This insurance is excess over any primary insurance covering the "hired auto" or "non-owned auto".

#### G. Additional Definitions

For the purposes of this endorsement only, the following definitions are added to the **Definitions** Section:

1. "Auto business" means the business or occupation of selling, repairing, servicing, storing or parking "autos".
2. "Hired auto" means any "auto" you lease for less than six months, hire, rent or borrow. This does not include any "auto" you lease, hire, rent or borrow from any of your "employees", your partners or your "executive officers", or members of their households.
3. "Non-owned auto" means any "auto" you do not own, lease, hire, rent or borrow which is used in connection with your business. This includes "autos" owned by your "employees", your partners or your "executive officers", or members of their households, but only while used in your business or your personal affairs.

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**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **WISCONSIN – HIRED AUTO AND NON-OWNED AUTO LIABILITY INSURANCE**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

### **SCHEDULE**

Insurance is provided only with respect to those coverages for which a specific Limit of Insurance and Premium are shown:

<b>Coverage</b>	<b>Limit Of Insurance Per "Occurrence"</b>	<b>Premium</b>
<b>Hired Auto Liability Insurance</b>	\$	\$
<b>Non-owned Auto Liability Insurance</b>	\$	\$
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.		

#### **A. Hired Auto Liability**

The insurance provided under the **Bodily Injury And Property Damage Liability** coverage applies to "bodily injury" or "property damage" arising out of the maintenance or use of a "hired auto" by you or your "employees" in the course of your business.

#### **B. Non-owned Auto Liability**

The insurance provided under the **Bodily Injury And Property Damage Liability** coverage applies to "bodily injury" or "property damage" arising out of the use of a "non-owned auto" by any person in the course of your business.

#### **C. Changes In Exclusions**

With respect to the insurance provided by this endorsement:

**1. The following **Bodily Injury And Property Damage Liability** exclusions do not apply:**

- a.** Contractual Liability;
- b.** Liquor Liability;
- c.** Employer's Liability;

- d.** Aircraft, Auto Or Watercraft;
- e.** Mobile Equipment;
- f.** Damage To Property;
- g.** Damage To Your Product;
- h.** Damage To Your Work;
- i.** Damage To Impaired Property Or Property Not Physically Injured; and
- j.** Recall Of Products, Work Or Impaired Property.

**2. The following **Bodily Injury And Property Damage Liability** exclusions are added:**

This insurance does not apply to:

- a.** "Bodily injury" or "property damage" for which the insured is obligated to pay damages by reason of the assumption of liability in a contract or agreement. 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 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.

**b. "Bodily injury" to:**

- (1) An "employee" of the insured arising out of and in the course of:
  - (a) Employment by the insured; or
  - (b) Performing duties related to the conduct of the insured's business; or
- (2) The spouse, child, parent, brother or sister of that "employee" as a consequence of Paragraph (1) above.

This exclusion applies:

- (1) Whether the insured may be liable as an employer or in any other capacity; and
- (2) To any obligation to share damages with or repay someone else who must pay the damages because of the injury.

This exclusion does not apply to:

- (1) Liability assumed by the insured under an "insured contract"; or
- (2) "Bodily injury" to domestic "employees" not entitled to workers' compensation benefits.

**c. "Property damage" to:**

- (1) Property owned or being transported by, or rented or loaned to the insured; or
- (2) Property in the care, custody or control of the insured.

**D. Who Is An Insured**

For the purposes of this endorsement only, the **Who Is An Insured** Section is replaced by the following:

**Who Is An Insured**

- 1. Each of the following is an insured under this insurance to the extent set forth below:
  - a. You.
  - b. Any other person using a "hired auto" with your permission.
  - c. With respect to a "non-owned auto", any partner or "executive officer" of yours, but only while such "non-owned auto" is being used in your business.

- d. An officer, agent or employee of an "auto business" that you do not operate while using a "hired auto" or "non-owned auto". However, that person is an insured only if he or she has no other valid and collectible insurance with at least the applicable minimum limit specified by the Wisconsin Financial Responsibility law. In this event, coverage will be provided only up to the applicable minimum limit. The applicable minimum limit is:

- (1) \$60,000 for each accident for "bodily injury" and "property damage", if the limit of liability is a single limit that applies for each accident; or
- (2) \$25,000 for each person/\$50,000 for each accident for "bodily injury"/\$10,000 for "property damage", if the limit of liability is indicated as a split limit.

- e. Any other person or organization, but only with respect to their liability because of acts or omissions of an insured under Paragraph a., b., c. or d. above.

**2. None of the following is an insured:**

- a. Any person engaged in the business of his or her employer with respect to "bodily injury" to any coemployee of such person injured in the course of employment;
- b. Any partner or "executive officer" with respect to any "auto" owned by such partner or officer or a member of his or her household;
- c. Any person while employed in or otherwise engaged in performing duties related to the conduct of an "auto business", other than an "auto business" you operate or except as provided in Paragraph D.1.d. of this endorsement;
- d. The owner or lessee (of whom you are a sublessee) of a "hired auto" or the owner of a "non-owned auto" or any agent or "employee" of any such owner or lessee;
- e. Any person or organization with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a Named Insured in the Declarations.

#### **E. Limits Of Insurance**

For the purposes of this endorsement only, the **Limits Of Insurance** is replaced by the following:

##### **Limits Of Insurance**

Regardless of the number of "hired autos", "non-owned autos", insureds, premiums paid, claims made or vehicles involved in the "occurrence", the most we will pay for all damages resulting from any one "occurrence" is the applicable Limit of Insurance shown in the Schedule of this endorsement or in the Declarations.

#### **F. Changes In Conditions**

For the purposes of this endorsement only, the **Other Insurance** provision of the **Commercial General Liability Conditions** Section is replaced by the following:

##### **Other Insurance**

This insurance is excess over any primary insurance covering the "hired auto" or "non-owned auto".

#### **G. Additional Definitions**

For the purposes of this endorsement only, the following definitions are added to the **Definitions** Section:

1. "Auto business" means the business or occupation of selling, repairing, servicing, storing or parking "autos".
2. "Hired auto" means any "auto" you lease for less than six months, hire, rent or borrow. This does not include any "auto" you lease, hire, rent or borrow from any of your "employees", your partners or your "executive officers", or members of their households.
3. "Non-owned auto" means any "auto" you do not own, lease, hire, rent or borrow which is used in connection with your business. This includes "autos" owned by your "employees", your partners or your "executive officers", or members of their households, but only while used in your business or your personal affairs.

# Wisconsin Additional Rule Introduced

## About This Filing

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This filing introduces an additional rule in response to guidance provided by the Wisconsin Office of the Commissioner of Insurance (OCI).

### New Rule

We are introducing the following rule:

- ♦ Rule A4. Hired Auto and Non-owned Auto Liability Coverage

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

## Related Filing(s)

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- ♦ GL-2020-OHNFR

## Background

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In the companion forms revision, we are introducing Wisconsin – Hired Auto And Non-owned Auto Liability Insurance Endorsement CG 04 00 in response to the OCI's letter dated March 23, 2020.

## Explanation of Changes

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We are adding an additional rule to reference and instruct on the use of new endorsement CG 04 00 Wisconsin – Hired Auto And Non-owned Auto Liability Insurance.

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**A4. HIRED AUTO AND NON-OWNED AUTO LIABILITY COVERAGE**

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Use Wisconsin – Hired Auto And Non-owned Auto Liability Insurance Endorsement **CG 04 00** to provide either or both non-owned or hired auto coverage. Non-owned Auto Liability provides coverage for any auto that is not owned, borrowed or hired by the insured. Hired Auto Liability provides coverage for autos leased, hired or borrowed by the insured. An auto leased with a term of six months or more is treated as an owned auto and is not eligible for this coverage. This endorsement is also not available to insureds who have a policy covering other commercial automobile exposures.

Refer to company for rating.