

FORMS – FILED AND APPROVED

OCTOBER 11, 2022

COMMERCIAL AUTOMOBILE

LI-CA-2022-237

## DELAWARE – AUTO DEALERS COVERAGE FORM ENDORSEMENT FILED AND APPROVED

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### KEY MESSAGE

Delaware Changes – Auto Dealers Coverage Form has been filed and approved for use in Delaware under ISO Filing Designation Number CA-2022-OAD1.

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### BACKGROUND

In *State Farm v. Clarendon*, the Supreme Court of Delaware held, in part, that an escape clause in a garage liability policy which excluded coverage to customers operating covered automobiles unless the customer had no other insurance or did not have sufficient insurance to meet the minimum required by law contravened Delaware's Motor Vehicle Financial Responsibility Law, 21 Del.C. § 2118(e), and was void.

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### ISO ACTION

In response to *State Farm v. Clarendon*, we have:

- Introduced CA 05 30, Delaware Changes – Auto Dealers Coverage Form, which revises the Auto Dealers Coverage Form to state that Paragraph 2.b.(4) of the Who Is An Insured provision found in Covered Autos Liability Coverage, does not apply.
- Withdrawn optional multistate endorsement CA 25 15 from use in Delaware.

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

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### INSURANCE DEPARTMENT ACTION

The Delaware Department of Insurance has approved filing CA-2022-OAD1.

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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 March 1, 2023.

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## 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-2022-OAD1, and SERFF Tracking Number ISOF-133407370, 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 form is being withdrawn.
- 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-2022-006](#) 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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## REVISION DISTRIBUTION

We will issue a Notice to Portfolioholders with an edition date of 3-23 (or the earliest possible subsequent date), along with any new and/or revised forms.

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## RELATED RULES REVISION

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

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## REFERENCE(S)

- [LI-CA-2022-238](#) (10/11/2022) Delaware Revised Commercial Auto Manual Rules Filed And Approved
- [LI-CL-2022-006](#) (02/22/2022) Revised Lead Time Requirements Listing

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## ATTACHMENT(S)

Filing CA-2022-OAD1

Final copy of [CA 05 30 02 23](#)

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## CONTACT INFORMATION

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- Other issues for this circular, please contact Customer Support:

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# Introduction Of Delaware Changes – Auto Dealers Coverage Form Endorsement

## About This Filing

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This filing is being made in response to the Supreme Court of Delaware's decision in *State Farm Mut. Auto Ins. Co. v. Clarendon Nat. Ins. Co.*, 604 A.2d 384 (Del. 1992).

### New Form

We are introducing CA 05 30 02 23, Delaware Changes - Auto Dealers Coverage Form.

### Withdrawn Form

We are withdrawing CA 25 15 10 13, Full Covered Autos Liability Limit For Customers.

## Related Filing(s)

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- ♦ CA-2022- RRU1 (Rules)

## Background

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In *State Farm v. Clarendon*, the Supreme Court of Delaware held, in part, that an escape clause in a garage liability policy which excluded coverage to customers operating covered automobiles unless the customer had no other insurance or did not have sufficient insurance to meet the minimum required by law contravened Delaware's Motor Vehicle Financial Responsibility Law, 21 Del.C. § 2118(e), and was void

The "escape clause" in the relevant policy provided:

"D. WHO IS AN INSURED.

1. For Covered Autos.

a. You are an insured for any covered auto.

b. Anyone else is an insured while using with your permission a covered auto *except*:

.....

(3) Your customers, if business is shown in the General Declarations as an auto dealership. *However*, if a customer of yours:

(a) Has no other available insurance (whether primary, excess or contingent), he or she is insured but only up to the compulsory or financial responsibility law limits where the covered auto is principally garaged.

(b) Has other available insurance (whether primary, excess or contingent) less than the compulsory or financial responsibility law limits where the covered auto is principally garaged he or she is an insured only for the amount by which the compulsory or financial responsibility law limits exceed the limits of his or her other insurance.” (*emphasis added*). *State Farm Mut. Auto Ins. Co. v. Clarendon Nat.. Ins. Co.*, 604 A.2d at 386.

CA 00 25, Auto Dealers Coverage Form, contains a similar provision as stated above.

## Explanation of Changes

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In response to *State Farm v. Clarendon*, we are:

- ◆ Introducing CA 05 30, Delaware Changes – Auto Dealers Coverage Form, which revises the Auto Dealers Coverage Form to state that Paragraph 2.b.(4) of the Who Is An Insured provision found in Covered Autos Liability Coverage, does not apply.
- ◆ Withdrawing optional multistate endorsement CA 25 15 from use in Delaware, since it generally modifies coverage in the same way as new endorsement CA 05 30.

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

## **DELAWARE CHANGES – AUTO DEALERS COVERAGE FORM**

For a covered "auto" licensed or principally garaged in, or "auto dealer operations" conducted in, Delaware, 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.

#### **D. Covered Autos Liability Coverage**

Paragraph **b.(4)** of **2. Who Is An Insured** provision does not apply.

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

## **DELAWARE CHANGES – AUTO DEALERS COVERAGE FORM**

For a covered "auto" licensed or principally garaged in, or "auto dealer operations" conducted in, Delaware, 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.

#### **D. Covered Autos Liability Coverage**

Paragraph **b.(4)** of **2. Who Is An Insured** provision does not apply.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## FULL COVERED AUTOS LIABILITY LIMIT FOR CUSTOMERS

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.

Paragraph **2.b.(4)** of the **Who Is An Insured** provision in **Section I – Covered Autos Liability Coverage** does not apply.

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