

# Technical Advisory



TA 317

April 15, 2015

**Subject:** New ISO CGL Filing on Drones

**Background:** In December 2014, the Insurance Services Office (ISO) introduced a countrywide filing related to drones for Commercial General Liability (CGL) and Commercial Liability Umbrella programs. The proposed adoption date is June 2015. The Louisiana Department of Insurance approved the filing for new and renewal business on or after June 1, 2015.

## Main Points:

### **OVERVIEW**

**Important issues.** There are several important issues to consider about drones and commercial liability insurance:

- (1) Drones are probably in more widespread use than is commonly known, despite the fact that the FAA (Federal Aviation Administration) is not expected to issue its final rules on drone usage until sometime in 2016.
- (2) Drones are currently used by many diverse types of businesses, both large and small. Some businesses own drones, while others rent or borrow them, or hire third parties to perform specific tasks.
- (3) At present, there is no ISO filing for drones in the Businessowners Program.
- (4) Insurers and insurance producers should be alert to possible drone use by their commercial insureds.

**Drones and the FAA.** Drones, also known as “unmanned aircraft,” have shown enormous potential commercial value in myriad industries and businesses. The FAA is currently working on rules and regulations for drones – which at present are generally illegal to operate. Some businesses have been granted special FAA exemptions – mostly for testing and research – while others operate without authority. At present, the FAA has granted 69 exemptions. A review of the list will show the types of businesses currently operating drones with permission. News reports, however, clearly reveal that many drones are currently operating without FAA exemptions. Link: [FAA Drone Exemptions](#)

A recent *Wall Street Journal* article on drone usage had a very revealing title: “Drone Ban? Corporations Skirt Rules.” The article interviewed employees in businesses that currently use drones, including construction, agriculture, industrial maintenance, real estate, car dealerships shooting promotional videos, data analytics firms, and so forth.

When asked about the FAA ban, one supervisor commented, “Officially, the FAA’s stance is, ‘You can’t do that.’ But they say you can’t drive 70 miles per hour on a 50-mile-per-hour freeway.”

Another factor in the use of drones by many businesses without FAA authority was illustrated in another recent *Wall Street Journal* article, in which it was reported that Amazon had just received FAA approval for a drone that was already outdated, given the rapid pace of drone technology. The present FAA approval procedure is said to follow the same regimen that is used to approve new designs or changes to commercial aircraft.

**The CGL and drones.** The unendorsed ISO CGL excludes certain liability exposures related to "aircraft." While the CGL does not define the term "aircraft," by any reasonable interpretation, it would include drones. Excerpt:

**CG 00 01 04 13**

**Commercial General Liability Coverage Form**

**Section I – Coverages**

**Coverage A – Bodily Injury and Property Damage Liability**

**2. Exclusions**

*This insurance does not apply to:*

**g. Aircraft, Auto Or Watercraft**

*"Bodily injury" or "property damage" arising out of the ownership, maintenance, use or entrustment to others of any aircraft, "auto" or watercraft owned or operated by or rented or loaned to any insured. Use includes operation and "loading or unloading".*

*This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage" involved the ownership, maintenance, use or entrustment to others of any aircraft, "auto" or watercraft that is owned or operated by or rented or loaned to any insured.*

*This exclusion does not apply to:*

*(1) A watercraft while ashore on premises you own or rent;*

*(2) A watercraft you do not own that is:*

*(a) Less than 26 feet long; and*

*(b) Not being used to carry persons or property for a charge;*

*(3) Parking an "auto" on, or on the ways next to, premises you own or rent, provided the "auto" is not owned by or rented or loaned to you or the insured;*

**(4)** *Liability assumed under any "insured contract" for the ownership, maintenance or use of aircraft or watercraft; or*

*(5) "Bodily injury" or "property damage" arising out of:*

*(a) The operation of machinery or equipment that is attached to, or part of, a land vehicle that would qualify under the definition of "mobile equipment" if it were not subject to a compulsory or financial responsibility law or other motor vehicle insurance law where it is licensed or principally garaged; or*

*(b) The operation of any of the machinery or equipment listed in Paragraph f.(2) or f.(3) of the definition of "mobile equipment".*

Comments:

(1) The unendorsed CGL excludes under Coverage A, any BI or PD arising out of the ownership, maintenance, use or entrustment to others of any aircraft...owned or operated by or rented or loaned to any insured. While absent a definition in the CGL, common definitions of "aircraft" include "any contrivance used or designed for flight," and "a vehicle for traveling through the air."

(2) The exclusion only applies to aircraft which are owned, operated, rented or loaned to any insured. Therefore, the insured still has coverage for vicarious liability, such as arising from aircraft owned or used by sub-contractors or independent contractors, etc.

(3) There is also an exception to the aircraft exclusion for certain contractual liability arising from aircraft [**2.g.(4)**].

(3) The aircraft exclusion only applies to Coverage A – Bodily Injury and Property Damage.

### **THE ISO DRONE FILING**

The ISO filing will introduce 7 new endorsements to the CGL, 7 new endorsements to Commercial Umbrella/Excess forms, with revisions to 2 current CGL endorsements, and revisions to 2 current Commercial Umbrella/Excess endorsements. All will have an edition date of "06 15."

In the Explanation of Change portion of the filing, ISO describes the purpose and scope of the filing as follows: *"We are introducing several optional endorsements to enhance the underwriting flexibility in addressing drone-related liability exposures under ISO's Commercial General Liability Coverage Part, Owners and Contractors Protective Liability Coverage Part, Commercial Liability Umbrella Coverage Part, and Commercial Excess Liability Coverage Part."*

### **Summary of New Endorsements**

**Note: A definition of "unmanned aircraft" is included in the filing.**

#### **CG 21 09 Exclusion – Unmanned Aircraft**

(1) Excludes unmanned aircraft for Coverage A – Bodily Injury and Property Damage.

(2) Excludes unmanned aircraft for Coverage B – Personal and Advertising Injury.

#### **CG 21 10 Exclusion – Unmanned Aircraft (Coverage A Only)**

(1) Excludes unmanned aircraft for Coverage A – Bodily Injury and Property Damage.

#### **CG 21 11 Exclusion – Unmanned Aircraft (Coverage B Only)**

(1) Excludes unmanned aircraft for Coverage B – Personal and Advertising Injury.

#### **CG 24 50 Limited Coverage For Designated Unmanned Aircraft**

(1) Provides coverage for specific unmanned aircraft, and specific operations or projects, described in the Schedule.

(2) Applies to Coverage A – Bodily Injury and Property Damage and Coverage B – Personal and Advertising Injury.

#### **CG 24 51 Limited Coverage For Designated Unmanned Aircraft (Coverage A Only)**

(1) Provides coverage for specific unmanned aircraft, and specific operations or projects, described in the Schedule.

(2) Applies to Coverage A – Bodily Injury and Property Damage only.

**CG 24 52 Limited Coverage For Designated Unmanned Aircraft (Coverage B Only)**

(1) Provides coverage for specific unmanned aircraft, and specific operations or projects, described in the Schedule.

(2) Applies to Coverage B – Personal and Advertising Injury only.

**CG 29 60 Exclusion – Unmanned Aircraft**

(1) Used only with the Owners and Contractors Protective (OCP) Coverage Form

(2) Excludes coverage for unmanned aircraft.

**CU 21 71 Exclusion – Unmanned Aircraft**

(1) Used with Commercial Umbrella.

(2) Tracks CG 21 09.

**CU 21 72 Exclusion – Unmanned Aircraft (Coverage A Only)**

(1) Used with Commercial Umbrella.

(2) Tracks CG 21 10.

**CU 21 73 Exclusion – Unmanned Aircraft (Coverage B Only)**

(1) Used with Commercial Umbrella.

(2) Tracks CG 21 11.

**CU 24 50 Limited Coverage For Designated Unmanned Aircraft**

(1) Used with Commercial Umbrella.

(2) Tracks CG 24 50.

**CU 24 51 Limited Coverage for Designated Unmanned Aircraft (Coverage A Only)**

(1) Used with Commercial Umbrella.

(2) Tracks CG 24 51.

**CU 24 52 Limited Coverage for Designated Unmanned Aircraft (Coverage B Only)**

(1) Used with Commercial Umbrella.

(2) Tracks CG 24 52.

**CX 21 71 Exclusion – Unmanned Aircraft**

(1) Used with Commercial Excess Liability.

(2) Excludes coverage for unmanned aircraft.

**NEW ENDORSEMENT – CG 21 09 06 15**

**(Note: This endorsement has 3 sections (A., B., and C.). Each section is discussed separately below.)**

**(Here is section A. of the CG 21 09 06 15):**

**CG 21 09 06 15 Exclusion – Unmanned Aircraft**

**This endorsement modifies insurance provided under the following:  
COMMERCIAL GENERAL LIABILITY COVERAGE PART**

**A. Exclusion 2.g.** Aircraft, Auto Or Watercraft under Section I - **Coverage A - Bodily Injury And Property Damage Liability** is replaced by the following:

**2. Exclusions**

This insurance does not apply to:

**g. Aircraft, Auto Or Watercraft**

**(1) Unmanned Aircraft**

"Bodily injury" or "property damage" arising out of the ownership, maintenance, use or entrustment to others of any aircraft that is an "unmanned aircraft". Use includes operation and "loading or unloading".

This Paragraph **g.(1)** applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage" involved the ownership, maintenance, use or entrustment to others of any aircraft that is an "unmanned aircraft".

**(2) Aircraft (Other Than Unmanned Aircraft), Auto Or Watercraft**

"Bodily injury" or "property damage" arising out of the ownership, maintenance, use or entrustment to others of any aircraft (other than "unmanned aircraft"), "auto" or watercraft owned or operated by or rented or loaned to any insured. Use includes operation and "loading or unloading".

This Paragraph **g.(2)** applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage" involved the ownership, maintenance, use or entrustment to others of any aircraft (other than "unmanned aircraft"), "auto" or watercraft that is owned or operated by or rented or loaned to any insured.

This Paragraph **g.(2)** does not apply to:

(a) A watercraft while ashore on premises you own or rent;

(b) A watercraft you do not own that is:

(i) Less than 26 feet long; and

(ii) Not being used to carry persons or property for a charge;

(c) Parking an "auto" on, or on the ways next to, premises you own or rent, provided the "auto" is not owned by or rented or loaned to you or the insured;

(d) Liability assumed under any "insured contract" for the ownership, maintenance or use of aircraft or watercraft; or

(e) "Bodily injury" or "property damage" arising out of:

(i) The operation of machinery or equipment that is attached to, or part of, a land vehicle that would qualify under the definition of "mobile equipment" if it were not subject to a compulsory or financial responsibility law or other motor vehicle insurance law where it is licensed or principally garaged; or

(ii) The operation of any of the machinery or equipment listed in Paragraph f.(2) or f.(3) of the definition of "mobile equipment".

#### Comments:

(1) Exclusion **2.g.(1) Unmanned Aircraft**, is new. The current exclusion for aircraft is redesignated as **2.g.(2)** – see excerpt above and comments below.

(2) This is the so-called "drone exclusion," since "unmanned aircraft" is the ISO term for drones. Drones are defined in section **C.** below.

(3) The unmanned aircraft exclusion strengthens (expands) the aircraft exclusion in the unendorsed CGL (see **2.g.** in excerpt of **CG 00 01 04 13** above) in two ways. First, it applies to "any aircraft that is an 'unmanned aircraft'." In contrast, the aircraft exclusion in the unendorsed CGL only applies to aircraft that are "owned, operated, rented or loaned to any insured." Thus, the new exclusion applies even for drones of subcontractors, independent contractors, etc., for which the insured is vicariously liable.

(4) The second strengthening (expansion) of the aircraft exclusion is the deletion of the exception for contractual liability. See **2.g.(4)** in the unendorsed CGL CG 00 01 04 13 excerpt above.

(5) Exclusion **2.g.(2) Aircraft (Other Than Unmanned Aircraft), Auto Or Watercraft** is essentially Exclusion **2.g.** in the unendorsed CGL. (See **CG 00 01 04 13** excerpt above.) The only change is the addition of a reference to "unmanned aircraft."

#### **(Here is the section B. of the CG 21 09 06 15):**

**B.** The following exclusion is added to Paragraph 2. Exclusions of **Coverage B - Personal And Advertising Injury Liability**:

#### **2. Exclusions**

*This insurance does not apply to:*

*Unmanned Aircraft*

*"Personal and advertising injury" arising out of the ownership, maintenance, use or entrustment to others of any aircraft that is an "unmanned aircraft". Use includes operation and "loading or unloading".*

*This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the offense which caused the "personal and advertising injury" involved the ownership, maintenance, use or entrustment to others of any aircraft that is an "unmanned aircraft".*

*This exclusion does not apply to:*

*a. The use of another's advertising idea in your "advertisement" or*

*b. Infringing upon another's copyright, trade dress or slogan in your "advertisement".*

Comments:

(1) The exclusion for unmanned aircraft now applies to Coverage B – Personal and Advertising Injury Liability. In the unendorsed CGL (**CG 00 01 04 13**), the aircraft exclusion (**2.g.**) only applied to Coverage A – Bodily Injury and Property Damage Liability.

(2) Some industry experts suggest that this might be the sleeper in the entire filing. Given the frequent news reports of video footage taken by drone cameras of unsuspecting members of the public, personal injury claims from drones are likely to only increase. All sorts of egregious violations of privacy by drone cameras are easy to foresee.

**(Here is the section C. of the CG 21 09 06 15):**

***C. The following definition is added to the Definitions section:***

***"Unmanned aircraft" means an aircraft that is not:***

*1. Designed;*

*2. Manufactured; or*

*3. Modified after manufacture;*

*to be controlled directly by a person from within or on the aircraft.*

Comments:

(1) This definition is used throughout the ISO filing.

**OTHER NEW ENDORSEMENTS**

**CG 21 10 Exclusion – Unmanned Aircraft (Coverage A Only)**

Comments:

(1) This endorsement can be used in lieu of **CG 21 09** – discussed above.

(2) The exclusionary provisions of CG 21 10 only apply to Coverage A – Bodily Injury and Property Damage Liability in the CGL.

(3) As discussed above, the exclusionary provisions of the CG 21 09 apply to both Coverage A – Bodily Injury and Property Damage Liability and Coverage B – Personal and Advertising Liability in the CGL.

**CG 21 11 Exclusion – Unmanned Aircraft (Coverage B Only)**

Comments:

(1) This endorsement can be used in lieu of **CG 21 09** – discussed above.

(2) The exclusionary provisions of CG 21 11 only apply to Coverage B – Personal and Advertising Liability in the CGL.

(3) As discussed above, the provisions of the CG 21 09 apply to both Coverage A – Bodily Injury and Property Damage Liability and Coverage B – Personal and Advertising Liability in the CGL.

### **CG 24 50 Limited Coverage for Designated Unmanned Aircraft**

#### Comments:

- (1) This endorsement can be used in lieu of **CG 21 09** – discussed above.
- (2) This endorsement incorporates the provisions of the CG 21 09, but provides an exception for specific unmanned aircraft, and specific operations or projects, described in the Schedule.
- (3) Coverage afforded by this endorsement applies to both Coverage A – Bodily Injury and Property Damage Liability and Coverage B – Personal and Advertising Liability in the CGL.
- (4) The Schedule also is used to display an Aggregate Limit for unmanned aircraft.

### **CG 24 51 Limited Coverage for Designated Unmanned Aircraft (Coverage A Only)**

#### Comments:

- (1) This endorsement can be used in lieu of **CG 21 09** (discussed above).
- (2) It incorporates most of the provisions of CG 24 50 (above), except that it provides the limited coverage only under Coverage A – Bodily Injury and Property Damage Liability, for specific unmanned aircraft, and specific operations or projects, described in the Schedule.
- (3) The Schedule also is used to display an Aggregate Limit for unmanned aircraft.
- (4) Neither the CG 21 09 or CG 21 10 is attached where the CG 24 51 is used.

### **CG 24 52 Limited Coverage for Designated Unmanned Aircraft (Coverage B Only)**

#### Comments:

- (1) This endorsement can be used in lieu of **CG 21 09** (discussed above).
- (2) It incorporates most of the provisions of CG 24 50 (above), except that it provides the limited coverage only under Coverage B – Personal and Advertising Liability, for specific unmanned aircraft, and specific operations or projects, described in the Schedule.
- (3) The Schedule also is used to display an Aggregate Limit for unmanned aircraft.

### **CG 29 60 Exclusion – Unmanned Aircraft**

#### Comments:

- (1) This endorsement can be used with the Owners and Contractors Protective (OCP) coverage form (CG 00 09 04 13).
- (2) The unendorsed OCP does not have an exclusion for aircraft. Attachment of this endorsement would exclude coverage for unmanned aircraft.

### **CU 21 71 Exclusion – Unmanned Aircraft**

#### Comments:

- (1) This endorsement can be attached to the CU 00 01 04 13 Commercial Liability Umbrella Coverage Part.
- (2) The endorsement excludes coverage for unmanned aircraft under Coverage A – Bodily Injury and Property Damage Liability and Coverage B – Personal and Advertising Liability in the Commercial Umbrella.
- (3) Coverage tracks the CG 21 09 (discussed above).



### **CU 21 72 Exclusion – Unmanned Aircraft (Coverage A Only)**

#### Comments:

- (1) This endorsement can be attached to the CU 00 01 04 13 Commercial Liability Umbrella Coverage Part.
- (2) The endorsement excludes coverage for unmanned aircraft under Coverage A – Bodily Injury and Property Damage Liability in the Commercial Umbrella.
- (3) Coverage tracks the CG 21 10 (discussed above).

### **CU 21 73 Exclusion – Unmanned Aircraft (Coverage B Only)**

#### Comments:

- (1) This endorsement can be attached to the CU 00 01 04 13 Commercial Liability Umbrella Coverage Part.
- (2) The endorsement excludes coverage for unmanned aircraft under Coverage B – Personal and Advertising Liability in the Commercial Liability Umbrella.
- (3) Coverage tracks the CG 21 11 (discussed above).

### **CU 24 50 Limited Coverage for Designated Unmanned Aircraft**

#### Comments:

- (1) Coverage afforded by this endorsement applies to both Coverage A – Bodily Injury and Property Damage Liability and Coverage B – Personal and Advertising Liability in the Commercial Liability Umbrella.
- (2) The limited coverage applies to specific unmanned aircraft, and specific operations or projects, described in the Schedule.
- (3) Coverage tracks the CG 24 50.

### **CU24 51 Limited Coverage for Designated Unmanned Aircraft (Coverage A Only)**

#### Comments:

- (1) It incorporates most of the provisions of CU 24 50 (above), except that it provides the limited coverage only under Coverage A – Bodily Injury and Property Damage Liability, for specific unmanned aircraft, and specific operations or projects, described in the Schedule.
- (2) Coverage tracks the CG 24 51.

### **CU 24 52 Limited Coverage for Designated Unmanned Aircraft (Coverage B Only)**

#### Comments:

- (1) It incorporates most of the provisions of CU 24 50 (above), except that it provides the limited coverage only under Coverage B – Personal and Advertising Liability, for specific unmanned aircraft, and specific operations or projects, described in the Schedule.
- (2) Coverage tracks the CG 24 52

### **CX 21 71 Exclusion – Unmanned Aircraft**

Comments:

- (1) This endorsement can be attached to the CU 00 01 04 13 Commercial Excess Liability Coverage Part.
- (2) Coverage is excluded for unmanned aircraft.

## **REVISED ENDORSEMENTS**

### **CG 21 37 Exclusion – Employees and Volunteer Workers As Insureds**

Comments:

- (1) Endorsement is revised to reflect changes necessitated if certain specified unmanned aircraft endorsements are attached.

### **CG 21 66 Exclusion – Volunteer Workers**

Comments:

- (1) Endorsement is revised to reflect changes necessitated if certain specified unmanned aircraft endorsements are attached.

### **CU 21 05 Exclusion – Employees and Volunteer Workers As Insureds**

Comments:

- (1) Endorsement is revised to reflect changes necessitated if certain specified unmanned aircraft endorsements are attached.
- (2) Tracks the CG 21 37.
- (3) This endorsement was formerly titled Exclusion – Employee As Insureds

### **CU 21 24 Exclusion – Non-Owned Aircraft**

Comments:

- (1) Endorsement is revised to reflect changes necessitated if certain specified unmanned aircraft endorsements are attached.

**Necessary Action:** Circulate this Technical Advisory to all appropriate agency staff.

**Please note that this Technical Advisory is intended to be educational and is not legal advice upon which you should rely. Please seek any legal opinion you may need from a qualified attorney.**