Technical Advisory

TA 328 **March 29, 2017**

Subject: New ISO Filing on CG 21 44 Designated Premises Limitation

Background: The CG 21 44 endorsement significantly restricts the coverage provided by the unendorsed CGL (Commercial General Liability) policy. When this endorsement is attached to a CGL, Coverage A (BI/PD Liability), Coverage B (Personal and Advertising Injury), and Coverage C (Medical Payments) apply only as follows:

> ***CG 21 44 07 98***
> ***Limitation of Coverage to Designated Premises or Project***
> *This insurance applies only to "bodily injury", "property damage", "personal and advertising injury" and medical expenses arising out of:*
>
> *1. The ownership, maintenance or use of the premises shown in the Schedule and operations necessary or incidental to those premises; or*
>
> *2. The project shown in the Schedule.*

Just how restrictive this endorsement actually is has been the subject of much discussion since it was first introduced as a part of the ISO Simplification program in 1985. That is due to the varying interpretations as to the extent of coverage, if any, that would apply to "*operations necessary or incidental to those premises*" that are <u>not</u> shown in the Schedule.

Main Points: In response to adverse litigation (discussed below) over the intent of the phrase "*operations necessary or incidental to those premises,"* ISO (Insurance Services Office) is making countrywide filings for a revised edition of the CG 21 44. **The Louisiana Department of Insurance has approved the filing, with an effective date of 4/1/17.**

The new endorsement will have an edition date of **04 17**, and a slightly different title than the **07 98** edition. Here is the key change:

> ***CG 21 44 04 17***
> ***Limitation of Coverage to Designated Premises, Project or Operation***
> *1. Paragraph 1.b. under Section I - Coverage A - Bodily Injury And Property Damage Liability is replaced by the following:*
> *b. This insurance applies to "bodily injury" and "property damage" caused by an "occurrence" that takes place in the "coverage territory" only if:*
>
> > *(1) The "bodily injury" or "property damage":*
> >
> > *(a) Occurs on the premises shown in the Schedule or the grounds and structures appurtenant to those premises; or*

(b) Arises out of the project or operation shown in the Schedule;

Comments:
(1) In the **07 98** edition, the entire endorsement was only a half-page in length, and paragraphs 1. and 2. applied equally to "bodily injury and property damage" (Coverage A), "personal and advertising injury" (Coverage B), and "medical payments" (Coverage C). [See excerpt above.]

(2) The **04 17** edition runs 3 pages. One reason is that there are separate sections for Coverage A, Coverage B, and Coverage C. For Coverage A and Coverage C, the language at the heart of the endorsement (see excerpt immediately above) is the same. However, the language is slightly different for Coverage B.

(3) Another reason the new edition is longer is that there are separate sections applicable to the **CG 00 01** (Occurrence CGL), and the **CG 00 02** (Claims Made CGL).

(4) Some coverage experts have observed that since the revised endorsement only applies to scheduled premises and projects, coverage would (or could be read to) eliminate Hired & Non-Owned coverage for any off-premises occurrence, if the H/NO endorsement is attached.

(5) Below is an excellent article written by Bill Wilson, who recently retired as the Director of IIABA's Virtual University.

"**Designated Premises, Operations, and Projects Endorsements"**
By Bill Wilson, CPCU, ARM, AIM, AAM
Posted February 14, 2017 on Bill's blog: InsuranceCommentary.com

ISO has filed a change for its BOP, CGL, and umbrella and excess programs that, according to IRMI, *"…marks a significant and historically unprecedented narrowing of coverage that has traditionally been available to general liability insureds with respect to designated premises."* This change is effective in most jurisdictions in April 2017 and applies to ISO forms BP 04 12, CG 21 44, CU 21 11, and CX 21 10. Your carriers may use these form numbers or their own. The ISO forms' titles are "Limitation Of Coverage To Designated Premises, Project Or Operation."

These "designated premises/projects" endorsements have been problematic for years because of the language that says that coverages apply only if arising out of "The ownership, maintenance or use of the premises shown in the Schedule **and operations necessary or incidental to those premises**…." The question has always been, to what extent are operations away from a designated premises covered? How far away can you be and what constitutes "necessary or incidental to"?

In their filing, ISO cites two recent court cases where coverage was found for BI and PD that occurred, in one case, at an unscheduled premises (largely because the "negligent decision" from which the BI/PD arose took place on the scheduled location) and, in another case, 500 miles from the designated premises. As a result, ISO has revised the language on all of the aforementioned forms so that coverage applies only if loss:

(a) Occurs on the premises shown in the Schedule or the grounds and structures appurtenant to those premises; or

(b) Arises out of the project or operation shown in the Schedule;

For designated premises, there is no longer any automatic coverage for "operations necessary or incidental to those premises." This is true premises-only liability in that there is no coverage that takes place off premises (or appurtenant grounds/structures) UNLESS such off-premises operations are specifically scheduled. The question is, how do you know what operations might be necessary or incidental to the designated premises so that you can list ALL of them.

Aside from that, what are the implications if Hired and Nonowned Auto coverage has been added. Many carriers have H/NO endorsements for their CGL policies. ISO does not. They removed this endorsement from the GL line over 30 years ago and coverage in the ISO program must be added via Symbol 1 or Symbols 8 & 9 under their BAP program. But ISO still provides the BP 04 -04 – Hired Auto And Non-Owned Auto Liability endorsement in their BOP program.

So, for H/NO coverage, what is the potential implication for this designated premises change? A literal interpretation would be that, if only a premises is scheduled without any mention of a project or operation, then the H/NO coverage under the BP 04 04 only applies to accidents that occur on that premises. Needless to say, this makes the coverage under the BP 04 04 virtually illusory and certainly can't be the intention of the BP 04 04. However, that's exactly what a literal reading of these forms would indicate.

As a result, when an ISO BOP policy includes H/NO coverage under the BP 04 04 AND the designated premises limitation BP 04 12 endorsement, in addition to the schedule premises, a notation should probably be made in the "Project Or Operation" schedule that coverage applies to the operation of autos covered by the BP 04 04 (along with a list of any other operations necessary or incidental to the scheduled premises). If your carriers also provide H/NO coverage via proprietary endorsements on their CGL policies, the same action might be taken on the CG, CU, and CX Limitation endorsements.

The better solution is to have the BP 04 12 REMOVED from the policy if at all possible in order to avoid these issues.

Consider sending a link to this blog post to your underwriters and ask them what they suggest you do. Then feel free to return and Comment on this post below…you do not need to include the name of the insurer, just how they plan to address this issue.

Bill's Q&A with a blog subscriber:

Subscriber: I do not have the forms in question available. In years past this endorsement granted separate limits of coverage to each designated premises. Has this changed?
It is my understanding this endorsement was supposed to be used as it is titled designated premises. So if a policy had two or more locations this endorsement only applied to the locations scheduled. It was never intended to designate every location. Any location not designated traveled under the standard policy limit and included the premises, ops and off premises coverage.

The designated premises received separate limits for stuff that happens on that premises only. If the event was not covered by that endorsement then the general policy limit was used and picked up the difference. So to me the solution is reject this on any policy that only has one location but it is fine if one location is not so designated, for use on all the other locations and additional coverage limits are then available . Apparently I did not understand how this worked. Or am I correct?

Bill: The limits apply to the scheduled premises. I've most often seen it used when there are multiple locations with, for whatever reason, multiple insurers, maybe multiple ownership. This may happen when a carrier will write some locations but not others and they're placed with other carriers. The other carriers don't want to pick up exposures of other locations and coordinate with other carriers, so they attempt to limit their exposure using this endorsement.

The problem historically is that not everything exclusively related to activities on the schedule premises occur solely on the premises. That's why there was some off-premises coverage but, based on two recent court decisions, ISO said the courts interpreted coverage beyond that intended, so they've restricted coverage. You could have a processing facility using this endorsement but they have activities elsewhere from time to time related to that facility. Or they might open a retail outlet next door or a block away. You can now specifically insure off premises operations using this endorsement, but you have to schedule them on the form. I don't know how much detail underwriters will require in identifying those off-premises operations, but it gives an opportunity for a coverage gap.

Subscriber: Thanks Bill. So if all locations on the policy are under this endorsement the good news is they get a separate limit of coverage but the bad news is they now have basically OL&T coverage. The solution is leave one premises off if this endorsement is being used and that will fix the problem plus protect the main policy limit against limits impairment for OL&T losses at the various locations. If you have this then I think you are fine.

If however you have one location or you have more than one location and all are scheduled under this endorsement then you multiple levels of OL&T coverage and all the problems you reviewed in your piece.

Bill: Each scheduled location wouldn't get a separate limit as I understand the ISO form, but that's off the top of my head, so take it with a grain of salt. The policy limits would apply to all scheduled premises and ONLY those premises. If you do ANYTHING off those premises, you'd better schedule those "operations" on the form. My brain hurts.

Subscriber: Thanks Bill. Companies using this will be headed to trouble. Taking a Commercial General Liability policy and reducing coverage to this is going to be tough to defend in court given what you have written. It may have a use time to time but that and hen teeth are probably equal in number.

Bill: It's never been a good endorsement for the insured, but it was better when it contemplated some off-premises exposures that were connected to that particular premises. Perhaps some underwriters will be willing to insert the old language in the Scheduled Operations field. But that won't stop courts from opining that the coverage applies where it allegedly was never intended to apply. In justifying the change, ISO cited *C. Brewer & Comp. vs. Marine Indemnity, Ins.,* 347 P.3d 163 (Haw. Sup. Ct. 2015) and *Western Heritage Insurance Company v. Cyril Hoover* DBA Okanogan Valley Transportation, No. C15-1154RSM, 2016 WL 1242091 (W.D. Wash. Mar. 30, 2016).

Subscriber: Thanks Bill. We both know who wins if there can be developed a scintilla of ambiguity.

About the author. Bill Wilson is the founder of InsuranceCommentary.com. He retired from the Independent Insurance Agents & Brokers of America in December 2016 where he served as Assoc. VP of Education and Research and was the founder and director of the Big "I" Virtual University for over 17 years. For questions or comments about Bill's article, contact him at Bill@insuranceCommentary.com. Article reprinted with permission.

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.