THE "GARAGE POLICY AND OPERATIONS"

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Liberty Mutual®
INSURANCE
The Garage Policy—
And
“Garage Operations”

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This material has been designed for use in training programs for insurance industry personnel. It is not intended to be used as a complete reference resource on the programs and coverages outlined herein.

The programs use “standard” policy forms and endorsements for the purposes of discussing the exposures to loss that may exist, some of the coverage options available to treat them, and to provide a framework for discussions with carriers you represent concerning the programs they have available.

Coverages, rules and materials presented during this program may differ from those used by individual insurance companies. Contact individual carriers for details about interpretations of their eligibility requirements, particular insurance contracts and rates.

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ISO GARAGE POLICY (CA 00 05 03 10)
INTRODUCTION

ISO background changes:

The garage policy had evolved since its introduction in 1987, from a form of coverage designed to be written for a variety of auto-related businesses to a policy intended for use only with auto dealerships, including their related service operations.

- In 2002 ISO garage form eligibility was limited to franchised and non-franchised auto and trailer dealers, except in California.

- Eligible dealers sell, service, and repair new or used private passenger autos, trucks, truck-tractors, motorcycles, recreational vehicles, other self-propelled land motor vehicles, and residence type mobile home and commercial trailers.

- Franchised dealers typically sell new models produced by one or a limited number of manufacturers.

- Non-franchised dealers do not have a specific arrangement with a manufacturer and generally sell used models.

- Under current ISO guidelines non-dealers are written on CGL and BAP policies with a Garagekeepers endorsement attached.

- Many markets that write dealers on garage forms often use their own forms.

- Some markets will also offer the garage policy to non-dealers.
A. Coverage

1. "Garage Operations"—Other Than Covered "Autos"

a. We will pay all sums an "insured" legally must pay as damages because of "bodily injury" or "property damage" to which this insurance applies caused by an "accident" and resulting from "garage operations" other than the ownership, maintenance or use of covered "autos".

We have the right and duty to defend any "insured" against a "suit" asking for these damages. However, we have no duty to defend any "insured" against a "suit" seeking damages for "bodily injury" or "property damage" to which this insurance does not apply. We may investigate and settle any claim or "suit" as we consider appropriate. Our duty to defend or settle ends when the applicable Liability Coverage Limit of Insurance—"Garage Operations"—Other Than Covered "Autos" has been exhausted by payment of judgments or settlements.

b. This insurance applies to "bodily injury" and "property damage" only if:

   (1) The "accident" occurs in the coverage territory; (2) The "bodily injury" or "property damage" occurs during the policy period; and (3) Prior to the policy period, no "insured" . . . knew that the "bodily injury" or "property damage" had occurred, in whole or in part. If such a listed "insured" or authorized "employee" knew… that the "bodily injury" or "property damage" occurred, then any continuation, change or resumption of such "bodily injury" or "property damage" during or after the policy period will be deemed to have been known prior to the policy period.

c. "Bodily injury" or "property damage", which occurs during the policy period and was not, prior to the policy period, known to have occurred by any "insured" listed under Who Is An Insured or any "employee" authorized by you to give or receive notice of an "accident" or claim, includes any continuation, change or resumption of that "bodily injury" or "property damage" after the end of the policy period.

d. "Bodily injury" or "property damage" will be deemed to have been known to have occurred at the earliest time when any "insured" listed under Who Is An Insured or any "employee" authorized by you to give or receive notice of an "accident" or claim: (1) Reports all, or any part, of the "bodily injury" or "property damage" to us or any other insurer; (2) Receives a written or verbal demand or claim for damages because of the "bodily injury" or "property damage"; or (3) Becomes aware by any other means that "bodily injury" or "property damage" has occurred or has begun to occur.
2. "Garage Operations"—Covered "Autos"

We will pay all sums an "insured" legally must pay as damages because of "bodily injury" or "property damage" to which this insurance applies, caused by an "accident" and resulting from "garage operations" involving the ownership, maintenance or use of covered "autos".

We will also pay all sums an "insured" legally must pay as a "covered pollution cost or expense" to which this insurance applies, caused by an "accident" and resulting from "garage operations" involving the ownership, maintenance or use of covered "autos". However, we will only pay for the "covered pollution cost or expense" if there is either "bodily injury" or "property damage" to which this insurance applies that is caused by the same "accident".

We have the right and duty to defend any "insured" against a "suit" asking for such damages or a "covered pollution cost or expense". However, we have no duty to defend any "insured" against a "suit" seeking damages for "bodily injury" or "property damage" or a "covered pollution cost or expense" to which this insurance does not apply. We may investigate and settle any claim or "suit" as we consider appropriate. Our duty to defend or settle ends when the Liability Coverage Limit of Insurance—"Garage Operations"—Covered "Autos" has been exhausted by payment of judgments or settlements.
SECTION III—GARAGEKEEPERS COVERAGE

A. Coverage

1. We will pay all sums the "insured" legally must pay as damages for "loss" to a "customer's auto" or "customer's auto" equipment left in the "insured's" care while the "insured" is attending, servicing, repairing, parking or storing it in your "garage operations" under:

   a. Comprehensive Coverage

   From any cause except:

   (1) The "customer's auto's" collision with another object; or

   (2) The "customer's auto's" overturn.

   b. Specified Causes Of Loss Coverage

   Caused by: (1) Fire, lightning or explosion; (2) Theft; or (3) Mischief or vandalism.

   c. Collision Coverage

   Caused by:

   (1) The "customer's auto's" collision with another object; or

   (2) The "customer's auto's" overturn.

2. We have the right and duty to defend any "insured" against a "suit" asking for these damages. However, we have no duty to defend any "insured" against a "suit" seeking damages for any loss to which this insurance does not apply. We may investigate and settle any claim or "suit" as we consider appropriate. Our duty to defend or settle ends for a coverage when the Limit of Insurance for that coverage has been exhausted by payment of judgments or settlements.
DEFINITIONS – “Garage Operations”

H. "Garage operations" means the ownership, maintenance or use of locations for garage business and that portion of the roads or other accesses that adjoin these locations. "Garage operations" includes the ownership, maintenance or use of the "autos" indicated in Section I of this Coverage Form as covered "autos". "Garage operations" also include all operations necessary or incidental to a garage business.

- This definition appears the same in all editions of the ISO garage policy

- The term "garage operations" defines the scope of coverage under the garage policy's liability and garagekeepers sections.

- As insured under the policy, "garage operations" has two components:

  (1) the premises and operations involved in a garage business, with liability exposures comparable to those of any other commercial entity; and

  (2) the ownership, operation, and maintenance of covered autos, which necessitates a form of auto liability and physical damage insurance.
ISO GARAGE POLICY (CA 00 05 03 10)

Definition – “Old” Garage Policy

DEFINITIONS – “Garage Operations”

TWO PARTS:

Covered Autos:

- “Garage operations” includes the ownership, maintenance, or use of autos that are covered autos.

- In order to determine what autos are covered autos for the policy, the definition refers to the symbols that are designated in the policy’s declarations.

Operations other than Covered Autos:

Premises Exposures:

The term "garage operations" means the ownership, maintenance, or use of locations for a garage business.

- It also includes roads or accesses that adjoin these locations.

- This portion of the definition provides coverage for the garage's premises liability exposure.

Exposures other than Premises:

- The term "garage operations" also includes all operations necessary or incidental to a garage business.

- This portion of the definition provides for other garage exposures not included in the premises liability portion of the definition.
**ISO GARAGE POLICY (CA 00 05 03 10)**

**Definition – “Old” Garage Policy**

**DEFINITIONS – “Garage Operations”**

**Neither of these words are defined** in the ISO Garage policy:

- Necessary
- Incidental

**Common Usage – Dictionary (Merriam-Webster online):**

*Necessary* (adjective): so important that *you must do it or have it*: absolutely needed, unable to be changed or avoided

*Incidental* (adjective): *happening as a minor part* or result of something else, being likely to ensue as a chance or minor consequence
The Courts:

- **Carriers may find some activities as not meeting these definitions.**

- Dictionary definitions of "incidental" often support such a broad interpretation.

- **Court Cases:**

  - *Century Sur. Co. v. Seductions* (2009)—a federal circuit court adopted a widely used definition of "incidental," which may offer some indication that the concept of operations "necessary or incidental" to a given type of business should be seen as encompassing a wide variety of operations. The court found an "incidental" operation to be one "occurring merely by chance or without intention or calculation," and "likely to ensue as a chance or minor consequence."

  - *Henry v. General Cas. Co. of Wisconsin* (1999) - a customer driving a loaner car supplied by the garage-policy-insured dealership that was performing repair work on the customer's own vehicle was determined to be an **insured under the non-auto garage operations** portion of the policy. The court ruled that supplying a temporary substitute vehicle for a customer whose car is being repaired constitutes an activity "incidental" to the named insured's garage operations for which the customer has insured status.
WHO IS AN INSURED – COVERED AUTOS

Who Is An Insured

a. The following are "insureds" for covered "autos":

(1) You for any covered "auto".

(2) Anyone else while using with your permission a covered "auto" you own, hire or borrow except:

(d) Your customers. However, if a customer of yours:

   (i) Has no other available insurance (whether primary, excess or contingent), they are an "insured" but only up to the compulsory or financial responsibility law limits where the covered "auto" is principally garaged.

   (ii) 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, they are an "insured" only for the amount by which the compulsory or financial responsibility law limits exceed the limit of their other insurance.
The following are some of the services/activities currently available to auto shopper from car dealers in the Northeast area:

1. Nail Salon
2. Sale of parts and accessories (oil, windshield washer fluid, wiper blades, seat covers, brake fluid, etc.)
3. Food court
4. Massages
5. Movie theatre
6. Day Care facilities
7. Pony rides
8. Water slide
9. Dealer promotional items for sale, including:
   a. Tee shirts
   b. Coffee mugs
   c. Auto floor mats
   d. Toy cars/trucks
ISO background:

- In the spring of 2012, Insurance Services Office, Inc. (ISO), filed extensive revisions to its commercial auto insurance program, to be implemented in October 2013.

- The most significant change introduced with this filing was the replacement of the standard garage coverage form with a new auto dealers coverage form.

- The standard ISO auto dealers coverage form provides general liability, auto liability and physical damage, and related coverages.

- Those eligible for coverage are franchised and non-franchised businesses that sell and service autos in the following categories:
  - private passenger
  - truck/truck-tractor
  - Motorcycles
  - recreational vehicles
  - residence trailers
  - commercial trailers
  - equipment/implement
  - other self-propelled land motor vehicles
GARAGE FORM VS. AUTO DEALER FORM

Garage Form:

- Both auto and non-auto liability were addressed in a single section of the coverage form.

- The two categories of liability coverage had separate insuring agreements

- All of the policy's liability coverage was subject to a single set of exclusions some of which:
  - applied to both categories
  - applied only to auto (or non-auto) liability
  - existed in separate form for auto and non-auto exposures

- **Personal Injury & Advertising Injury and Medical Payments are added by endorsement**

  Broadened Coverage—Garages (CA 25 14)

  - The coverages that are included under this endorsement are as follows.
    - Personal and advertising injury liability coverage
    - Host liquor liability coverage
    - Fire legal liability coverage
    - Incidental medical malpractice liability coverage
    - Nonowned watercraft coverage
    - Spouse of partners as insureds
    - Automatic liability coverage for newly acquired garage businesses
    - Limited worldwide liability coverage
GARAGE FORM VS. AUTO DEALER FORM

**Auto Dealer Form:**

- The auto dealers form is **structured differently**
- The auto and non-auto coverages are completely separate and self-contained, under policy sections titled "Covered Autos Coverages" and "General Liability Coverages."
- Each section contains its own provisions relating to who is an insured and its own set of exclusions.
- Personal and advertising injury coverage and medical payments coverage are incorporated into the "General Liability Coverage" section of the auto dealers form.
- Also included are coverage for:
  - damage to rented premises
  - host liquor liability
  - non-owned watercraft
  - newly acquired businesses
  - incidental medical malpractice.
- An entirely new coverage section is made part of the form—"acts, errors or omissions liability coverage." This coverage insurance against claims involving (1) noncompliance with laws governing credit or lease agreements, (2) noncompliance with laws governing disclosure of odometer readings, (3) errors or omissions committed in connection with the insured's activities as a licensed insurance agent or broker for coverages sold in connection with the sale or lease of an auto, and (4) claims involving defect in title to a sold or leased auto.
The following provisions make up the indemnity promises appearing in the Auto Dealers form

A. Bodily Injury And Property Damage Liability

1. Coverage

a. We will pay all sums an "insured" legally must pay as damages because of "bodily injury" or "property damage" to which this insurance applies caused by an "accident", and resulting from your "auto dealer operations" other than the ownership, maintenance or use of "autos" . . .

B. Personal And Advertising Injury Liability

1. Coverage

We will pay all sums the "insured" legally must pay as damages because of "personal and advertising injury" to which this insurance applies, caused by an offense arising out of your "auto dealer operations", but only if the offense was committed in the coverage territory during the policy period. . .

Location & Operations Medical Payment

1. Coverage

a. We will pay medical expenses as described below to or for each person who sustains "bodily injury" to which this coverage applies, caused by an "accident" and resulting from your "auto dealer operations" . . .
E. "Auto dealer operations" means the ownership, maintenance or use of locations for an "auto" dealership and that portion of the roads or other accesses that adjoin these locations. "Auto dealer operations" also include all operations necessary or incidental to an "auto" dealership.