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OCI Order helps Restaurants and their Temporary Delivery Drivers Obtain Insurance During COVID-19 Crisis

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As many businesses are aware, Wisconsin Department of Health Services (DHS) Emergency Order #5 ordered restaurants to close during the public health crisis related to COVID 19, except they are allowed to offer take-out and delivery services. As a result, many restaurants that had not previously offered take-out or delivery services began doing so in an effort to survive the crisis. Among many other issues facing these restaurants new to the delivery and take out industry, was the issue of how to insure their drivers.

On March 23, 2020, the Wisconsin Office of the Commissioner of Insurance (OCI) issued an order that provides assistance to restaurants in two main ways: (1) requiring coverage for temporary delivery drivers under personal auto policies; and (2) requiring commercial general liability coverage (CGL) insurers to offer their restaurant clients, at no extra charge, coverage for delivery drivers to the extent not otherwise provided.

Personal Auto Policy Coverage

Typically, personal auto policies do not provide coverage for an individual engaged in commercial food delivery for an employer. However, OCI recognized that it would not be practical for those individuals not typically engaged in food delivery to obtain a temporary policy for that purpose. Therefore, to the extent that an individual does not otherwise have coverage for deliveries, OCI ordered that insurers not deny a claim under a personal auto policy for an insured engaged in delivering food on behalf of a restaurant. The order to provide coverage applies to an occurrence falling between March 17 until the public health emergency order is lifted, or restaurants are restored to normal operations.

Restaurant Delivery Auto Coverage

Restaurants not normally engaged in delivery service typically would not have coverage for the delivery services under their

standard CGL policies. However, insurers offer this coverage, typically as a rider to a CGL policy, called hired and non-owned auto coverage. Many restaurants, which did not previously have the need for this coverage, are now involved in delivery of food. Therefore, OCI ordered that CGL insurers notify their restaurant clients of the availability of hired and non-owned auto coverage, and to provide it to those customers free of charge if they request it, effective as of the date requested.

OCI's willingness to step in and order that insurers not enforce specific exclusions in their personal auto insurance policies provides hope to some that OCI will consider similar action regarding business interruption policies with a virus exclusion that precludes coverage for COVID-19 related losses.

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