

Auto versus Mobile Equipment in the 2004 CGL—An Update

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Just when you start to figure it out, they change it! The definitions in the Insurance Services Office, Inc. (ISO), commercial general liability (CGL) policy of "mobile equipment" and "auto" have remained *exactly* the same for almost 20 years. But with the December 2004 edition of the ISO CGL policy, both definitions have changed—and with major consequences.

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The good news is that you don't have to unlearn everything you already know about "mobile equipment" in the CGL. In fact, the better you understand the prior "mobile equipment" and "auto" CGL definitions, the easier it will be for you to grasp the changes. After all, there really is just one more factor to consider in determining whether a vehicle is "mobile equipment" or an "auto." The bad news is that that last factor is, to quote a colleague, "heavy sledding." Sans the metaphor (an interesting description from a Floridian), this newly added factor is extraordinarily difficult to nail down.

The 2004 CGL "auto" versus "mobile equipment" change boils down to this—even if a vehicle fits squarely into the CGL definition of "mobile equipment," *it will be considered an auto IF that vehicle is "subject to" a compulsory or financial responsibility law or other motor vehicle insurance law in the state in which the vehicle is licensed or principally garaged.*

This article addresses the "auto" versus "mobile equipment" predicament and includes, but is not limited to, the changes which first appeared in the December 2004 edition of the ISO CGL policy.

As insurers commonly use earlier editions of the ISO CGL policy (October 2001 or earlier), it is important to recognize that portions of this article only apply to the December 2004 edition of the ISO CGL policy. If your insurer is using an earlier ISO CGL edition, or a claim or loss involves an earlier ISO edition, you may want to refer to a previous article entitled [Auto versus Mobile Equipment in the CGL](#), published in late 2002, to read more about autos and mobile equipment prior to the December 2004 CGL changes.

What Is the Big Deal?

As most commercial insurance practitioners know, the CGL policy is intended, in most cases, to provide liability coverage, with no additional charge, for bodily injury and property damage arising out of the ownership, operation, maintenance, or use of mobile equipment. They also know that, in most cases, liability coverage for bodily injury and property damage arising out of the ownership, operation, maintenance, or use of an auto is *excluded* by the CGL. Autos are certainly *supposed* to be covered for liability by a business auto, truckers, or motor carrier policy.

This distinction can become a big deal—especially if a sizeable liability claim involves a land vehicle that was initially thought to be "mobile equipment," but is later determined to be an "auto."

Autos versus Mobile Equipment—The Challenge

The first challenge is to figure out what is considered an "auto" and what is considered "mobile equipment," a task that now requires making determinations of both fact and law—an unenviable position at best.

The second challenge is to understand the specific situations in which the CGL and Business Auto Coverage policy *both* provide liability coverage for the *same vehicle or piece of equipment—and when each applies*.

The Definitions—CGL and Business Auto Coverage

One thing has not changed—the difference between "auto" and "mobile equipment" is determined by policy definitions. Therefore, our first challenge, distinguishing between "auto" and "mobile equipment," can only be met by understanding the "auto" and "mobile equipment" definitions, including the 2004 changes, in the CGL policy.

However, this analysis may be a bit more complicated than in previous years. In the past, the definitions of "auto" and "mobile equipment" under the ISO CGL policy and the ISO Business Auto Coverage (BAC) policy *were* virtually identical. The advantage was simple—if you can decipher the definitions under one policy, you have deciphered the definitions under the other.

Unfortunately, that advantage may or may not be available today. While ISO filed the new CGL policy with a December, 2004 edition date, ISO did not file a similar Business Auto Coverage form with a 2004 edition date. Although a 2006 edition of the BAC form is to be filed in a most jurisdictions for use in early 2006, which includes new definitions for "auto" and "mobile equipment" that are identical to the 2004 CGL, at this writing, the new edition of the BAC form is not available.

Bridge Endorsement

What has been filed by ISO in most (but not all) jurisdictions is a new mandatory "bridge" endorsement (Changes in Coverage Forms—Mobile Equipment Subject to Motor Vehicle Insurance Laws, CA 00 51 12 04) to be attached to the BAC form. This endorsement, among *other things*, amends the Business Auto definition of "auto" and "mobile equipment" to match the 2004 CGL "auto" and "mobile equipment" definitions. More later on the "other things" this endorsement changes.

A General Distinction

A general distinction may be helpful in understanding the *conceptual* difference between the two definitions:

- Vehicles "designed for travel on public roads" are usually "autos."
- Vehicles "designed for use principally off public roads" are often "mobile equipment."

While the above is helpful in *thinking* about autos and mobile equipment, we cannot lose sight of one overriding concept—regardless of its design features, a land vehicle is an "auto" if it is "subject to" a compulsory or financial responsibility law or other motor vehicle insurance law.

Motor Vehicle Registration

Unlike the pre-1986 CGL policy, motor vehicle registration or even eligibility for motor vehicle registration is not a *direct* factor in determining whether a vehicle is an "auto" or "mobile equipment." In other words, eligibility for registration (or even the actual registration) is not, by itself, dispositive.

Nevertheless, a great majority of states' compulsory motor vehicle insurance laws are *triggered* by motor vehicle registration. In other words, if a vehicle is registered (or is required to be registered) under the state law, it is very likely that the vehicle is subject to the compulsory insurance law and thus considered an "auto" under the CGL. In short, while motor vehicle registration is not a *direct* factor, registration very likely *indirectly* suggests that mandatory insurance applies.

Inland Marine Coverage

Is a vehicle covered by an inland marine policy "mobile equipment?" While it may be in some circumstances, this also is not a particularly reliable measure of what the CGL considers to be "mobile equipment." Although the NAIC Nationwide Marine Definition excludes "motor vehicles designed for highway use," all states do not follow this model definition. For example, New York insurance regulations state that "marine and inland marine insurance ... means insurance against loss or damage to ... cars, automobiles, trailers and vehicles of every kind." Therefore, while it may be helpful as guidance, how physical damage coverage applies is not a decisive approach to determining whether a vehicle is "mobile equipment" or "auto."

The Definition of Mobile Equipment—The First Step

We still need to understand what types of land vehicles are included within the "mobile equipment" definition of paragraphs 12 a. through 12 f. Once we understand if the vehicle fits into that definition, then we can analyze whether or not it is subject to financial responsibility or motor vehicle insurance laws. So here goes.

The CGL definition of "mobile equipment" is any type of land vehicle, *including its attached machinery and equipment*, which meets the requirements of one or more of the six paragraphs (12 a. through f.) that follow.

The Concept—Paragraph a.

This paragraph, which begins by listing specific types of equipment (bulldozers, farm machinery, and forklifts) is significant in that it shapes the CGL's initial approach to "mobile equipment." By including "other vehicles designed for use principally off public roads," the definition begins with a very expansive description. The paragraphs that follow either add to or refine this concept.

Whether a vehicle is *actually* used on public roads is not the gauge here—the determining factor is the vehicle's *design*. To be "mobile equipment," the vehicle must be intended by the manufacturer to be used mostly off public streets and roads.

Autos That Are Mobile Equipment—Paragraph b.

Vehicles that are designed for use on public roads, such as pickup trucks, vans, dump trucks, etc., are "mobile equipment" if the vehicles are "maintained for use solely on the premises you own or rent." How paragraph b. applies may be illustrated with an example of a trucking company who owns an old tractor they keep and use only for moving trailers around on the trucking company's premises.

"Maintained for use solely on the premises you own or rent" would *not* include an "auto" taken off the road due to the seasonal nature of a business, as the vehicle is not "maintained"—or continued to be kept in existence *solely* for use on the insured's premises. In the case of seasonal use, the vehicle is being maintained or kept for use away from the premises and thus is not maintained exclusively for use on the premises. Liability coverage for a seasonal vehicle that is "off the road" needs to be included on the BAC form policy by including the appropriate coverage symbol (such as Symbol 2—Owned Autos).

On the other hand, "maintained for use" would include the tractor in the previous example even if the tractor is being operated *on a public roadway*—such as driving the tractor across the street to have it serviced, repaired, or to obtain motor fuel.

In short, "maintained for use" is not identical to "use." However, at the risk of being repetitive, if the operation of the tractor on a public roadway triggers the state's motor vehicle registration law and thus the compulsory insurance law or financial responsibility law, then the tractor would be an "auto." The CGL would not apply to the tractor when it is (or should be) registered.

The Tank—Paragraph c.

Vehicles that move on crawler treads are considered "mobile equipment." For example, when Michael Dukakis test drove a tank during his presidential campaign, it would have been considered "mobile equipment." I am not sure if it would have helped had Mr. Dukakis known that, but it is interesting to note that the CGL has specifically listed this category, even though most, if not all, vehicles that travel on crawler treads would be considered "vehicles designed for use principally off public roads."

Heavy Equipment—Paragraph d.

Any vehicles with permanently attached cranes, shovels, loaders, diggers, or drills are considered "mobile equipment" provided the vehicle affords mobility to the equipment. Further, equipment used for constructing or resurfacing roads is also "mobile equipment." Specifically listed are road graders, road scrapers and steam rollers. Paragraph d. applies *whether or not* the equipment is able to move under its own power.

To view examples of this type of equipment, find a major traffic jam on any highway in America, look for the cones or barriers reducing traffic to one lane, look beyond the flashing caution lights and you will see plenty of examples of this equipment.

None of the Above—Paragraph e.

Vehicles that afford mobility to specifically listed permanently attached equipment *and* which cannot move under their own power are also considered "mobile equipment." The listed equipment is:

- Air compressors
- Pumps
- Generators
- Spraying equipment
- Welding equipment
- Building cleaning equipment (power washers)
- Geophysical exploration equipment (geophysics deals with the physical properties of the Earth)
- Lighting equipment
- Well servicing equipment
- Cherry pickers or similar devices used to raise or lower workers

If none of the above falls within the first four paragraphs, paragraph e. acts as a catchall by adding specific items that are not capable of moving under their own power and which are to be considered "mobile equipment."

A Bit More Complex—Paragraph f.

To fully meet the challenges of determining "mobile equipment" versus "auto," this part of the definition requires considerable attention. This section begins with a catchall. If a vehicle is not already described in the first five paragraphs, a vehicle that exists predominantly for use *not involving* the transportation of persons or cargo is considered "mobile equipment."

If a vehicle is permanently fitted with equipment designed chiefly for snow removal, road maintenance, and street cleaning, and is capable of moving under its own power, it is an "auto" and not "mobile equipment." And despite the 2004 changes, vehicles included in paragraph f. are considered "autos" regardless of whether or not insurance laws apply.

Subparagraph f. (1) lists equipment that is designed primarily for:

- Snow removal
- Road maintenance (but not road construction or resurfacing equipment—paragraph d. expressly includes as "mobile equipment" such equipment)
- Street cleaning

Once again, the idea of "design" is governing. In times of heavy snow in particular, it is not unusual for real estate owners and municipalities to use front end loaders to remove snow. As front end loaders can be used for snow removal, but are not primarily designed for snow removal, such vehicles remain "mobile equipment." However, sidewalk snow plows would fit squarely into this definition and are therefore "autos."

Any vehicle with permanently attached equipment designed primarily to *maintain* roads is an "auto." The distinction between road construction and resurfacing and road maintenance is very important but may be a challenge to determine. Here is where a good relationship with your local Department of Public Works may be helpful. Vehicles with permanently attached salting and sanding equipment would likely be considered road maintenance equipment and thus "auto."

Likewise, any type of street cleaning equipment, such as street sweepers, are clearly considered "autos" and are *not* covered by the CGL for any liability arising out of their use. Don't let it throw you that such equipment may be covered for damage by an inland marine policy—the vehicles are "autos." Even without the "bridge" endorsement, the BAC form considers category f.(1) vehicles not as "mobile equipment" but as "autos," and thus liability coverage applies to such autos provided these autos have been designated on the BAC policy as covered autos.

Workers Rise Up. Vehicles with equipment permanently mounted on autos or truck chassis and are used to raise or lower workers are considered an "auto." Cherry pickers or bucket trucks are examples that qualify under paragraph f. (2). Equipment that is used to raise and lower workers that is *not mounted* on an auto or truck chassis, but is self-propelled, does not fit within section f.(2). For instance, a motorized scaffold used by workers to change indoor ceiling lights would not be considered an "auto," but would be considered "mobile equipment."

With the exception of cherry pickers, paragraph f.(3) repeats exactly the same list of equipment enumerated in paragraph e.—and considers such equipment "autos" if the equipment is permanently attached to a vehicle that is self-propelled. The following are considered "autos" if they can move under their own power.

- Air compressors
- Pumps
- Generators
- Spraying equipment
- Welding equipment
- Building cleaning equipment
- Geophysical exploration equipment
- Lighting equipment
- Well-servicing equipment

The 2004 Changes to Definitions Mobile Equipment and Auto

An additional paragraph has been inserted into the definition of "mobile equipment" in the 2004 edition of the CGL and reads as follows:

- However, "mobile equipment" does not include any land vehicles that are subject to a compulsory or financial responsibility law or other motor vehicle insurance law in the state where it is licensed or principally garaged. Land vehicles subject to a compulsory or financial responsibility law or other motor vehicle insurance law are considered "autos".

Further, the definition of "auto" has added a second paragraph, which reads "Auto" means:

- Any other land vehicle that is subject to a compulsory or financial responsibility law or other motor vehicle insurance law in the state where it is licensed or principally garaged.

There you have it! Land vehicles that plainly meet the definition of "mobile equipment" as spelled out in paragraphs 12 a. through 12 f. become "auto" and not "mobile equipment" if the vehicle is "subject to" a compulsory or financial responsibility law or other motor vehicle law in the state where it is licensed or principally garaged. To obtain liability coverage for the vehicle, it must be added as a covered auto to the BAC.

If your BAC contains the mandatory "bridge" endorsement, the task of adding the land vehicle to the policy (which would otherwise be "mobile equipment") is as simple as using the appropriate symbol on the BAC (and if using symbol 7, listing the vehicle on the declarations). However, if your BAC does not contain the mandatory "bridge" endorsement, there is still a solution, but one in which you have to take an additional step. You must endorse the BAC with the Mobile Equipment endorsement (CA 20 15). The Mobile Equipment endorsement specifically states that the land vehicle (the vehicle is listed on the endorsement) is considered an "auto" and not "mobile equipment." Without this endorsement (and absent the "bridge" endorsement), the land vehicle would not be a "covered auto," regardless of the symbols that apply as it does not fit the definition of "auto."

Land Vehicles Subject to Insurance or Financial Responsibility Laws

Here is where a determination of both fact and law has to be made. First, how is the land vehicle used? A determination of fact. Keep in mind, however, that the use of the land vehicle, and thus the facts, may change from day to day or week to week or even job to job. Second, presuming you can determine the use of the land vehicle, does that use require the owner or user of that land vehicle to:

1. Purchase compulsory Insurance; or
2. Demonstrate financial responsibility; or
3. Purchase other motor vehicle insurance.

This is a determination of law—how does the insurance or financial responsibility law apply to this land vehicle? Of course, if the answer is one or more of the above laws apply, the land vehicle is considered an "auto."

Registration Laws

As alluded to earlier, if it is clear that the land vehicle's use *requires* motor vehicle registration, in most cases it follows that the land vehicle will require some type of insurance or will be subject to a state's financial responsibility law—and thus is an "auto." However, it can be very difficult to determine if the use, does, in fact, require motor vehicle registration. For instance, it is common for states to treat "special equipment," "special mobile equipment," or "special construction equipment" differently as respects motor vehicle registration. This equipment, as defined in the applicable state statute, may be exempt from motor vehicle registration or compulsory insurance. Here is a definition of "special mobile equipment" that contains elements that are found in many, but not all, states motor vehicle registration laws or compulsory insurance laws:

- "Special mobile equipment" means every vehicle not designed or used primarily for the transportation of persons or property and **only incidentally operated or moved over a highway**, including but not limited to: ditch-digging apparatuses, moving dollies, pump hoists and other water well-drilling equipment, street-sweeping vehicles, and other machinery such as asphalt spreaders, bituminous mixers, bucket loaders, tractors other than truck-tractors, ditchers, leveling graders, finishing machines, motor graders, road rollers, scarifiers, truck-mounted log loaders, earth-moving carryalls, scrapers, power shovels, draglines, self-propelled cranes, and earth-moving equipment. The term does not include travel trailers, dump trucks, truck-mounted transit mixers, truck-mounted feed grinders, or other motor vehicles designed for the transportation of persons or property to which machinery has been attached. [Emphasis added.]

As can be seen, the definition is conditional—use of the vehicle must be only incidental as respects operating on or moving over a highway. A vehicle that regularly operates on a highway but which otherwise fits within the above definition appears to require motor vehicle registration and thus compulsory insurance applies—which makes it an "auto" under the 2004 CGL.

For example, a backhoe would likely be included within the type of vehicle described in "special mobile equipment" noted above (the backhoe is not designed or used primarily for the transportation of persons or property). If the backhoe is normally transported from job site to job site on a flatbed trailer, and will, *on occasion*, move across a public street, it is likely that the backhoe is not subject to motor vehicle registration law and thus not subject to compulsory insurance or a financial responsibility law.

Contrast this to a backhoe that regularly moves from job site to job site on public roads under its own power. In the latter example, the operation of the backhoe on public roads would likely be considered more than incidental operation on highways and thus would *not* fit into the conditional requirement of "special mobile equipment." Motor vehicle registration and compulsory insurance is likely to apply to the backhoe and thus the backhoe would be considered an "auto" under the 2004 CGL.

The above is an illustration only and is not dispositive—any determination must be made considering the actual use and specifics of the law that applies to the land vehicle. The CGL does expressly state that it is the law in which the land vehicle is either principally garaged or licensed that governs.

"Subject to ..."

Further complicating the issue is exactly what is meant by "subject to." As pointed out earlier, the same land vehicle's actual use may vary considerably during any one policy period. Again, let's use the backhoe illustration. The owner has several jobs in which the backhoe is used. For all but one job, the backhoe is brought to the job site on a flatbed trailer, and only briefly crosses a public road and then only on one or two of the jobs. However, during that same policy, for one job that is 2 months long (let's call it the State Highway Job), the backhoe is driven on a public road everyday due to the nature of the job. Is this backhoe "subject to" insurance or financial responsibility laws?

The actual words of the policy and their arrangement do matter. A closer look reveals the CGL uses either the phrase "*is* subject to" or "*are* subject to" in the context of "mobile equipment" and "auto." This strongly indicates present tense—the land motor vehicle must fall within the insurance law at the present time. ISO could have chosen the phrasing "may be subject to," "was subject to," or "is or was at any time subject to," but has elected otherwise.

Considering the above, the most compelling interpretation of "subject to" is that land vehicles are considered "autos" *only* if the vehicle falls under the state's financial responsibility or motor vehicle insurance law at the time of the occurrence that results in bodily injury or property damage. Therefore, in the above illustration, the backhoe should be considered "subject to" compulsory insurance or financial responsibility law and thus an "auto" only while engaged in the State Highway Job. In other words, if the backhoe injures a pedestrian while traveling to the job site during the State Highway Job, the motor vehicle registration law applies to the backhoe and thus compulsory insurance applies. The backhoe is an "auto" for injuries to the pedestrian and is not covered by the 2004 CGL.

The BAC, with the mandatory "bridge" endorsement, would automatically provide liability coverage for the backhoe and the injuries to the pedestrian provided the BAC has Symbol 1 or 2 for liability (or Symbol 7 with the backhoe listed on the policy declarations).

When an Owned Auto Is Covered by the CGL—The Second Step

Owned autos are simply not covered for by the CGL, with a few exceptions. The aircraft, auto or watercraft exclusion (exclusion g.) of the CGL provides two very important exceptions. The second exception, which will be addressed first, states the exclusion does not apply to bodily injury or property damage arising out of the *operation* of any machinery or equipment attached to autos listed in paragraph f.(2) and f.(3) of the definition of "mobile equipment." In short, vehicles expressly described as "autos" are covered by the CGL, but only for liability arising out of their "operation"—use of the described autos attached equipment.

The first exception, and this is a change in the 2004 CGL, states the exclusion does not apply to liability for the *operation* of equipment or machinery attached to land vehicles that would otherwise fit within paragraphs 12 a. through f. of the definition of "mobile equipment," but now fall outside of the definition solely due to a financial responsibility law or insurance law that applies to that land vehicle.

The intent of both exceptions is to provide bodily injury or property damage coverage under the CGL policy if the injury or damage results from the use of the land vehicle's attached equipment or machinery, but not if the injury or damage results *while moving or traveling in the vehicle*. Accidents involving an "auto" that take place during "mobility" that result in bodily injury or property damage are not covered by the CGL and therefore liability coverage must be included on the BAC form policy.

Covered by the CGL

While in a truck mounted cherry picker, a worker trimming tree branches carelessly allows a limb to fall on a passing auto, causing damage to the auto and injury to a passenger. Both the property damage and bodily injury caused by the limb falling are covered by the CGL as they arise out of the "operation" of equipment of the cherry picker—the bucket. The BAC form policy has a corresponding exclusion for the "operation" of this same "auto" and therefore the BAC form policy does not provide coverage.

While digging with a backhoe that *is subject to compulsory motor vehicle insurance*, the operator hits and damages an underground sprinkler system. The property damage to the sprinkler system is covered by the 2004 CGL policy, despite the fact that this backhoe is considered an "auto." The CGL exception applies to this "auto" because this backhoe would otherwise qualify as "mobile equipment," but is considered an "auto" solely because of the compulsory auto insurance law which applies.

The BAC with the mandatory "bridge" endorsement amends (the "other things" mentioned earlier in the article) the "operations" exclusion of the policy to expressly eliminate liability coverage from the BAC for the operation of machinery or equipment that is attached to a land motor vehicle that would qualify as "mobile equipment" if it were not subject to a financial responsibility law or other insurance law.

Not Covered by the CGL

After lowering and securing the bucket, the worker climbs into the truck cab and drives to the next job site which is located two towns away. En route to the new job site, the worker is talking on his cell phone when he accidentally hits a car that had stopped in front of him.

The damage to the other auto and injury to the driver of the other auto is *not* covered by the CGL as the bodily injury and property damage did not arise out the operation of equipment attached to the "autos" listed in f.(2) or f.(3). The CGL exclusion would apply in a similar manner to the backhoe subject to compulsory insurance that struck the pedestrian while driving to the job site—the injury did not arise out of the use of attached equipment, but out of the use of the backhoe as an "auto."

Thus, the self-propelled vehicles described in f.(2) and f.(3) of the definition of "mobile equipment" and the backhoe subject to compulsory insurance, are, in fact, "autos," but are nonetheless covered by the CGL provided the bodily injury or property damage arises out of the "operation" of attached equipment.

Conclusion

Agents, brokers, sales personnel, other insurance intermediaries and advisers will undoubtedly be asked, if not expected, to make determinations of both fact and law regarding whether "mobile equipment" is subject to motor vehicle registration and financial responsibility laws or compulsory insurance laws. While assisting clients with such determinations is well within the realm of insurance advice and counsel, actually determining on the client's behalf how the law applies to them is problematic at best—particularly when considering the complexity of each state's motor vehicle registration law.

It may be helpful to keep in mind that it is the owner of the vehicle to whom these laws apply—and thus ultimately their responsibility to understand its application to them. That said, advice from an insurance professional that is both prompt and clear as to how the insurance applies to "auto" and "mobile equipment" in the 2004 CGL policy is critical. Once a client has a firm grasp on how their insurance works, the importance of determining how the law applies to them will become evident. The recommended approach is for the client/owner to engage competent legal counsel to determine matters of law, and not demand legal advice from insurance professionals simply because of the relationship between insurance and the law.

Insurance claims personnel, either in-house or independent, face the same challenges as respects "auto" and "mobile equipment," albeit with actual claims. A careful reading of the policy wording that applies, followed by due consideration of the evidence, is a must to properly determine coverage. And, as is recommended to the insurance professional providing advice, matters of law, such as is if the vehicle's use requires registration, should be decided by competent legal counsel.

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