Auto v. Mobile Equipment in the CGL

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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 article is intended to assist those who are confronted with the challenge of distinguishing between mobile equipment and autos, including commentary on why that distinction is crucial.

Autos v. 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 can reduce even an experienced practitioner to incoherent muttering. The expression "chasing your tail" comes to mind.

This is, of course, more than an academic exercise – you have a client on the phone who is purchasing a "vehicle" and wants to know *instantly* if this item is to be added to the auto policy or not. Life, or at least your errors and omissions (E & O) coverage, hangs in the balance.

The second challenge is to understand the specific situations in which the CGL and business auto policy *both* provide liability coverage for the *same item – and when each applies.*

The Definitions

There is some good news; the definitions of "auto" and "mobile equipment" under the ISO CGL policy and the ISO business auto policy are *virtually identical*. If you can decipher the definitions under one policy, you have deciphered the definitions under the other.

The bad news is that the CGL definition of "mobile equipment" is more of a listing of broadly described categories than a specific definition. While some specific types of equipment are listed and thus clearly included in the definition (i.e. bulldozer), the 251-word definition is sometimes vague and a little intimidating.

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 "autos."

- Vehicles "designed for use principally off public roads" are "mobile equipment."

While the above may serve as a guide, the numerous exceptions found in the definitions render these distinctions far short of conclusive in the "auto" versus "mobile equipment" challenge. Several other issues need be considered to make the proper determination.

Motor Vehicle Registration. Unlike the pre-1986 CGL policy, motor vehicle registration or even eligibility for motor vehicle registration *is no longer relevant* in whether a vehicle is an "auto" or "mobile equipment." In other words, registering a vehicle under a motor vehicle registration law does not change the vehicle from "mobile equipment" to an "auto." If you have been in a line of 35 cars crawling along a public way behind a backhoe that is traveling 12 miles per hour in a 50 miles per hour zone (causing you to be embarrassingly late for an appointment), you may have noticed that the backhoe does have motor vehicle tags or plates. Nonetheless, the backhoe is still "mobile equipment."

If the owner of this backhoe is your client and the state in which the backhoe is registered *requires auto liability insurance* for the backhoe, then you also *must* endorse the business auto policy with the mobile equipment endorsement (CA 20 15). The mobile equipment endorsement specifically states that the backhoe (which is listed on the endorsement) is considered an "auto" and not "mobile equipment." However, any bodily injury or property damage *resulting from the operation of any machinery* attached to the backhoe (such as the digging with the bucket) is *excluded* by the business auto policy. Without this endorsement to the business auto policy, the backhoe would not be a "covered auto," regardless of the symbols that apply as the backhoe is not an "auto."

The CGL continues to provide liability coverage for the backhoe, *despite being listed on the business auto policy*, for *any* ownership, operation, maintenance or use of the backhoe. After all, the backhoe is still "mobile equipment." The CGL will be *excess* over the business auto policy to the extent the business auto policy provides liability coverage for the backhoe as a "covered auto."

Inland Marine Coverage. Is a vehicle covered by an inland marine policy "mobile equipment?" While it may be in some circumstances, this is not a completely 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, do not rely solely on how damage to the vehicle is insured to determine whether it is "mobile equipment" or "auto."

The Definition of Mobile Equipment – A Closer Look

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 (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 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 *exclusively* for use on the premises. Liability coverage for a seasonal vehicle that is "off the road" needs to be included on the business auto 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 when driving the tractor to have it serviced, repaired, or to obtain motor fuel. In short, "maintained for use" is not identical to "use."

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" *providing* 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 the following:

- 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" and deciding which coverage applies, this part of the definition requires considerable attention.

This section begins with a catchall. If a vehicle is not already described in the first four paragraphs, a vehicle that exists predominantly for use *not involving* the transportation of persons or cargo, that vehicle is considered "mobile equipment."

If a vehicle is permanently fitted with equipment designed chiefly for snow removal, road maintenance and street cleaning, *and* capable of moving under its own power, it is an "auto" and not "mobile equipment."

Snow Removal and Street Maintenance and Cleaning

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 principally 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 an "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."

Vehicles described by the f. (1) categories must be added to the business auto policy for liability coverage. As the business auto policy definition of "mobile equipment" and "auto" is identical to the definition included within the CGL policy, such vehicles are also considered "autos" under the business auto policy.

Workers Rise Up. Vehicles with equipment permanently mounted on autos or truck chassis that are used to raise or lower workers are considered autos. 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."

If It Can Move by Itself

With the exception of cherry pickers, paragraph f. (3) repeats exactly the equipment listed 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

When an Owned Auto is Covered by the CGL

Owned autos are simply not covered for by the CGL, *except for here*.

The aircraft, auto or watercraft exclusion (exclusion g.) of the CGL does have a very important exception – it does not apply to bodily injury or property damage arising out of the *operation* of any equipment listed in paragraph f.(2) and f.(3) above.

In short, vehicles expressly described as "autos" are covered by the CGL, but only for liability arising out of their "operation."

The intent is to provide bodily injury or property damage coverage under the CGL policy if the injury or damage results from the *use of the permanently attached equipment*, but not if the injury or damage results *while moving or traveling in the vehicle*. Over-the-road accidents that result in bodily injury or property damage are not covered by the CGL for "autos", and therefore liability coverage should be included on the business auto 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 the cherry picker. The business auto policy has a corresponding *exclusion* for the "operation" of this same "auto", (remember, the definition of "mobile equipment" is exactly same in the business auto policy and the CGL policy) and therefore the business auto policy does not provide coverage.

Not Covered by the CGL. After lowering and securing the bucket, the worker climbs into the truck cab and drives to next job site which is located two towns away. In route to the new jobsite, 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 listed in f.(2) or f.(3).

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

These same vehicles *must* also be included for liability coverage on the business auto policy, as bodily injury or property damage arising out of any *other use* of these "autos" (except "operations") is excluded by the CGL.

In sum, either the business auto policy or CGL policy will apply to liability arising out of these specifically described autos, depending upon the use of the vehicle when the injury or damage occurred.

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