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## **Technical Advisory**

**TA 244**

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**Subject: Mobile Equipment vs. Autos in the 2004 CGL**

**Background:** The major change in the new 2004 CGL policy is the redefinition of mobile equipment subject to state motor vehicle laws as autos. In the past, such vehicles have been handled by endorsement under the CGL policy, but now will have to be covered under the Business Auto Policy using at least two additional endorsements. And that's just the beginning of what has the potential to be a tidal wave of coverage gaps and E&O claims.

The "Virtual University" of the Independent Insurance Agents & Brokers of America (IIABA) just published the following excellent article. In fact, the Virtual University has hundreds of such articles that are an excellent and valuable resource for all agency staff.

### **Mobile Equipment vs. Autos in the 2004 CGL**

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**Note: The following article draws heavily from the 2004 CGL seminar of [John Eubank](#) and includes material copyrighted by Professional Insurance Education, Inc. and used with their permission.**

ISO is revising the Aircraft, Auto Or Watercraft exclusion and the auto and mobile equipment definitions in the 2004 edition of their CGL program to exclude coverage for bodily injury and property damage arising out of the ownership, maintenance or use of **land vehicles that are subject to a compulsory or financial responsibility law or other motor vehicle insurance law**. Such laws typically require various auto coverages, such as Uninsured Motorists Coverage (UM), Underinsured Motorists Coverage (UIM), and Personal Injury Protection (PIP). This article focuses on the [CG 00 01 12 04](#).

Since 1941, the Commercial General Liability Coverage Form has provided coverage for bodily injury or property damage arising out of the ownership, maintenance, use or operation of

“mobile equipment.” The CG 99 01 11 85 endorsement has been available to provide liability coverage for mobile equipment required to be registered for public road use. That endorsement has now been withdrawn as part of the 2004 changes.

According to ISO, their research shows some states require mobile equipment to carry Personal Injury Protection coverage on all terrain vehicles or other types of mobile equipment, in part, due to a limited over-the-road exposure. Therefore, ISO is removing the over-the-road coverage from the CGL and moving it to the Business Auto Program (BAP).

ISO is revising the CGL Definitions section to amend the "auto" and "mobile equipment" definitions and the Aircraft, Auto or Watercraft exclusion under Section I - Coverage A. They are revising these definitions to state that mobile equipment subject to compulsory or financial responsibility laws or other motor vehicle insurance laws are now "autos." Statutory coverage needs for such vehicles may be handled by an ISO Business Auto Policy for their over-the-road exposure.

## **Revised 2004 CGL definitions (changes in red):**

### **2. "Auto" means:**

- a. A land motor vehicle, trailer or semitrailer designed for travel on public roads, including any attached machinery or equipment; or
- b. 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.**

However, "auto" does not include "mobile equipment".

### **12. "Mobile equipment" means** any of the following types of land vehicles, including any attached machinery or equipment:

- a. Bulldozers, farm machinery, forklifts and other vehicles designed for use principally off public roads;
- b. Vehicles maintained for use solely on or next to premises you own or rent;
- c. Vehicles that travel on crawler treads;
- d. Vehicles, whether self-propelled or not, maintained primarily to provide mobility to permanently mounted:
  - (1) Power cranes, shovels, loaders, diggers or drills; or

- (2) Road construction or resurfacing equipment such as graders, scrapers or rollers;
- e. Vehicles not described in a., b., c. or d. above that are not self-propelled and are maintained primarily to provide mobility to permanently attached equipment of the following types:
  - (1) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment; or
  - (2) Cherry pickers and similar devices used to raise or lower workers;
- f. Vehicles not described in a., b., c. or d. above maintained primarily for purposes other than the transportation of persons or cargo.

However, self-propelled vehicles with the following types of permanently attached machinery or equipment are not "mobile equipment" but **will be considered "autos"**:

- (1) Equipment designed primarily for:
  - (a) Snow removal;
  - (b) Road maintenance, but not construction or resurfacing; or
  - (c) Street cleaning;
- (2) Cherry pickers and similar devices mounted on automobile or truck chassis and used to raise or lower workers; and
- (3) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment.

**However, "mobile equipment" does not include 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".**

**Revised 2004 CGL Exclusion g. Aircraft, Auto Or Watercraft (changes in red):**

While the over-the-road exposure of certain mobile equipment will be covered under the BAP, **the OPERATION of that equipment will remain covered under the CGL** by adding the following exception to Exclusion g.:

**This exclusion does not apply to:....**

- (5) "Bodily injury" or "property damage" arising out of:
- (a) **The operation of machinery or equipment that is attached to, or part of, a land vehicle that would qualify under the definition of "mobile equipment" if it were not subject to a compulsory or financial responsibility law or other motor vehicle insurance law in the state where it is licensed or principally garaged; or**
  - (b) **the operation of any of the machinery or equipment listed in Paragraph f.(2) or f.(3) of the definition of "mobile equipment".**

### **Revised 2004 CGL "Who Is An Insured" provision (changes in gray to denote deletion):**

ISO is also **deleting paragraph 3.** under Section II - Who Is An Insured in the CGL Coverage Part since, with these changes, mobile equipment registered under any motor vehicle insurance law will now be considered an "auto." The deleted paragraph currently says:

3. With respect to "mobile equipment" registered in your name under any motor vehicle registration law, any person is an insured while driving such equipment along a public highway with your permission. Any other person or organization responsible for the conduct of such person is also an insured, but only with respect to liability arising out of the operation of the equipment, and only if no other insurance of any kind is available to that person or organization for this liability. However, no person or organization is an insured with respect to:
- a. "Bodily injury" to a co-"employee" of the person driving the equipment; or
  - b. "Property damage" to property owned by, rented to, in the charge of or occupied by you or the employer of any person who is an insured under this provision.

### **2004 Business Auto Program Changes**

For consistency with ISO's 2004 General Liability Division and in order to track the changes made to the definitions of "auto" and "mobile equipment" in the CGL program, ISO has developed mandatory endorsement [CA 00 51 12 04 - Changes In Coverage Forms - Mobile Equipment Subject To Motor Vehicle Insurance Laws](#).

Under this endorsement, mobile equipment that meets the requirements for compulsory financial responsibility or other motor vehicle insurance laws will be considered an "auto". In addition, the Operations exclusion in the BAP liability coverages is being amended to exclude bodily injury, property damage and covered pollution cost or expense arising from the operation of any machinery or equipment that is on, attached to or part of these vehicles since that exposure will continue to be covered under the CGL.

Finally, the [CA 20 15 12 04 - Mobile Equipment](#) endorsement has been modified slightly and continues to be used to schedule mobile equipment for coverage under the BAP.

## Commentary

Nikita Kruschev once defined a politician as someone who would build a bridge where there was no river. Likewise, at least at first glance, this change appears to be a solution to a problem that doesn't exist. It also appears to be a response to a perceived need to garner more premium for the over-the-road ME exposure, as opposed to providing a superior coverage solution. How mobile equipment subject to MV laws has been handled in the past seems to have worked, from a coverage standpoint, quite well.

This change may significantly increase the opportunity for coverage gaps and will almost certainly require increased diligence and time in evaluating exposures on the part of insureds, agents and underwriters. Therefore, it is critical that this change be discussed with agency and company personnel to minimize the chances of coverage gaps.

Below are some of the issues raised by the VU faculty. Unfortunately, at this time, we have more questions and caveats than we do solutions.

**Multi-State Operations and Changes in MV Laws.** One of the biggest logistical problems will be in complying with varying and changing state MV laws. For example, in my state, financial responsibility laws apply to "every vehicle driven on the highways" (TCA 55-12-139) except for "devices moved by human power or used exclusively upon stationary rails or tracks" (TCA 55-1-103). If a piece of mobile equipment is EVER driven on a highway, it is "subject to" (as the new language says) financial responsibility laws at that time and, as a result, an "auto."

It would seem that, if there is ANY chance a piece of mobile equipment might be driven on a public road, it had better be covered under the BAP to avoid a coverage gap. As a result, the insured could be locked into paying a class-rated premium based almost exclusively on over-the-road use although such use is minimal. By the same token, the underwriter might want the predominantly CGL exposure to be reflected in the CGL premium, thus creating the potential for an excessive premium for the overall exposure.

Also what if MV laws change mid-term during the policy? Since coverages and exclusions are based on whether or not the equipment is "subject to" MV laws, must every inventory of mobile equipment in the state be reviewed whenever a MV changes. And how are agents expected to monitor and interpret such changes? Similarly, what if the garaging of mobile equipment moves from one state to another? Must agents not only be familiar with insurance laws and regulations in all states where insureds have operations, but also with all relevant motor vehicle laws?

**Different Carriers, Different Forms.** If the CGL and BAP are in different carriers, it is critical that the forms be concurrent. If the CGL is the 2004 edition, the BAP must have the CA 00 51. If the CGL is a pre-2004 edition, the BAP must NOT include the CA 00 51. Again, this can vary by state so that a multi-state insured could have several CGL and BAP forms and different endorsements, with mobile equipment covered differently in different states. As

note above, if mobile equipment is garaged in a different state, what was covered before may not be covered when moved.

What if the CGL renewed 12/01/04, but the BAP doesn't renew until 02/01/05? Will the agent or underwriter catch this and make the appropriate changes mid-term? What if forms between, or within, carriers are not ALL ISO forms? What if the auto exposure is currently written on a PAP? What if the insured only has a Hired and Nonowned auto exposure, perhaps written under an artisan contractor BOP policy?

**Physical Damage Coverage.** Although it may not be a major issue, consideration must be given to how physical damage will be provided on all mobile equipment. Will it be more cost effective or result in better or worse coverage if it is written under a BAP or an inland marine form?

**Symbol 1.** Will underwriters be willing to continue providing Symbol 1 liability coverage when the BAP could include various types of nontraditional auto acquisitions during the policy period? Will they even consider Symbols 2 or 4, or insist only on Symbol 7? Or, might they make use of the ISO [CA 99 54 -Covered Auto Designation Symbol](#) endorsement?

**Pricing.** Finally, how is this going to affect overall pricing in an already beleaguered contractors market? At this point there doesn't appear to be any plan to reduce CGL premiums, while one can almost certainly anticipate increased BAP premiums when mobile equipment are moved to the BAP for coverage.

## Additional Reading:

["The New ISO Commercial General Liability Policy: A Summary of December 2004 Policy Changes"](#) by Craig Stanovich, from IRMI

["Decipher CGL Changes With Caution"](#) by Don Malecki, CPCU, from Rough Notes

As more information comes to light on this issue, we'll update this article. In addition, we'll post additional member/subscriber Q&A below.

**Q.**

Does this mean then that an insured who retains an old pickup truck - without any BAP - used solely for removing snow in his lot is not covered by the CGL? My question assumes an accident occurs in his lot while clearing snow. It also assumes the insured has no license plate for this vehicle which is never taken on the road. Thanks for the expert opinion.

**A.**

It's excluded only if the vehicle is "subject to" state MV laws. My assumption is that, if he is legally operating that vehicle on his own property and NEVER takes it onto a public road such that it is not required by law to meeting state requirements for financial responsibility, compulsory liability insurance, UM/UIM, PIP, etc., then the CGL would continue to provide coverage. Of course, the law may vary from state to state.

**Additional commentary will be added on the member/subscriber version of this article at <http://www.iiaba.net/VU/Lib/Ins/CL/CGL/Wilson2004ME.htm>.**

**Necessary Action:** Circulate this article to all appropriate Commercial Lines staff.