



'Old school' approach or
'new school' approach?
What is the difference?

Kevin Cunningham

discusses the options

Mobile crane commercial

TABLE

Defining mobile 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 crawlers 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, pump 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 equipment are not 'mobile equipment' but will be considered 'autos':
 - 1 Equipment designed primarily for
 - i Snow removal
 - ii Road maintenance, but not construction or resurfacing; or
 - iii 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

In addition to the new operations/compliance requirements with the FMCSRs (Federal Motor Carrier Safety Administration) for mobile cranes operating in interstate commerce, a more perplexing question has arisen as to whether mobile cranes operating as commercial vehicles are still considered mobile equipment for insurance considerations? So the main issue in question is: are they covered under the Commercial General Liability (CGL) policy or must they now be considered autos covered under the business auto policy?

CGL policies are intended to provide liability coverage for bodily injury and property damage arising out of the ownership, operation, maintenance or use of mobile equipment. 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 policy, and covered by the Business Auto policy.

Because mobile cranes operating in interstate commerce are now considered commercial motor vehicles, there is a concern about a potential gap in insurance coverage. A CGL carrier may now deny coverage for a loss involving a mobile crane, because it believes that a mobile crane is no longer mobile equipment, but an auto that should be covered under the Business Auto policy.

On the other hand, a Business Auto carrier may deny coverage for a loss involving a mobile crane, because either it believes that a mobile crane is still mobile equipment that should be covered under the CGL policy. Thus, there may be an insurance coverage battle with no quick and clear resolution. The problem is compounded by the realities of coverage disputes.

CGL and Business Auto carriers may simply disregard the definitions in their policies of, for example, mobile equipment, and simply rely on the FMCSRs' designation of mobile cranes operating in interstate commerce as commercial motor vehicles, and therefore,

classify them as autos regardless of the definition of mobile equipment in the CGL policy.

This tendency would more likely occur when the CGL and Business Auto policies are underwritten by different insurance carriers. Further, if a CGL carrier prevails in arguing that a mobile crane is a commercial motor carrier, and therefore an auto, in a state court through declaratory judgment action, it is quite possible that the company may not have obtained any coverage through the Business Auto policy for the mobile crane, and no coverage exists.

Old school approach

One solution to this predicament is found in certain old school insurance coverages that were used for the past 20-plus years, as opposed to being covered the new way.

This article will draw a comparative analysis between old school (ISO CGL 2001) and new school (ISO CGL 2004) approaches to identify benefits and potential pitfalls. For this comparison, we will use the SC&RA Member Insurance Program old school policy form that has been utilized by NBIS as compared to Travelers Insurance Company using the new school form of coverage. The SC&RA form has been used by NBIS since 1995 through Lexington/Lloyds and now through Tower Insurance Group.

For the most part, this month we will focus on old school coverage and next month we will discuss new school coverage.

Mobile cranes are considered mobile equipment under NBIS/Tower's ISO 2001 CGL policy. Mobile equipment means any of the types of land vehicles, including any attached machinery or equipment as listed in the Table (first column, left).

The ISO 2001 CGL policy defines auto as follows: Auto means a land motor vehicle, trailer or semi-trailer designed for travel on public roads, including any attached machinery or equipment. But auto does not include mobile equipment.

NBIS/Tower's ISO 2001 CGL definition of mobile equipment includes land



es as vehicles?

vehicles, including their attached machinery and categories of vehicles that fall within one or more of the six paragraphs (a) through (f). As the analysis of each of the six categories of vehicles in paragraph (a) through (f) makes clear, mobile cranes fall within only a limited number of the categories. Mobile cranes as they are described in the FMCSRs are even further limited.

Referring to subparagraph (a) in the Table on page 48, the vehicle's purpose will be determinative of whether the vehicle falls within this definition of mobile equipment. If the vehicle is to be used mostly off public roads, it is mobile equipment. This category does not include mobile cranes as described in the FMCSRs.

Subparagraph (b) would include vehicles that are designed for use on public roads, such as pickup trucks, but are mobile equipment because they are maintained for use solely on the premises you own or rent. If the same pickup truck is used both on and off the premises you own or rent it will be considered an auto. This category would likely not include mobile cranes as described in the FMCSRs.

Subparagraph (c) is vehicles that travel on crawler treads. Such vehicles are considered mobile equipment. These types of vehicles clearly would include mobile cranes, but not as they are described in the FMCSRs.

The vehicles in subparagraph (d) must be maintained primarily to provide mobility to the specified permanently mounted equipment, whether the equipment itself is self-propelled or not, i.e., the vehicle must provide mobility to the permanently attached equipment. This paragraph would appear to cover most commercial truck-mounted cranes and wheel-mounted cranes, and thus be considered mobile equipment covered under NBIS/Tower's CGL policy. These types of vehicles would likely include mobile cranes as described in the FMCSRs but, as we will see below, they would not be subject to the FMCSRs because they are considered private motor carriers. Further, vehicles use for

constructing or resurfacing roads are also mobile equipment whether self-propelled or not.

Under Subparagraph (f.1), the design of the vehicle is controlling. If a vehicle is not designed primarily to remove snow, for example, but is modified to remove snow, that vehicle can still be considered mobile equipment. Also, included under (f.1) and, therefore, considered an auto is any vehicle designed primarily to maintain roads, e.g., a vehicle with permanently attached salting and sanding equipment.

Under Subparagraph (f.2) includes vehicles with equipment permanently mounted on an auto or a truck chassis that are used to raise or lower workers, such as cherry pickers. Such vehicles are considered autos.

Under Subparagraph (f.3) above, with the exception of cherry pickers, this paragraph repeats exactly the equipment listed in Paragraph (e) – and considers such vehicles as autos if the equipment is permanently attached to a vehicle that is self-propelled. The following are considered autos if they move under their own power: air compressors, pumps, generators, spring equipment, welding equipment, building cleaning equipment, geophysical exploration equipment, lighting equipment, and well servicing equipment. Paragraph (f) does not include mobile cranes as they are described in the FMCSRs.

Generally speaking, coverage for owned autos is excluded under the CGL by Exclusion g., except when bodily injury or property damage arises out of the operation of any of the following types of permanently attached equipment are not mobile equipment but will be considered autos when used as autos:

Cherry pickers and similar devices mounted on automobile or truck chassis and used to raise or lower workers; and

Air compressors, pump and generator s including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment.

However, if a truck-mounted cherry picker, for example, causes damage to

an auto and injury to its passenger by its operation, both the property damage and the bodily injury are covered by the CGL policy, because they arise out of the operation of the cherry picker. On the other hand, if the driver of the vehicle carrying the cherry picker accidentally hits a car, the damage to the other auto or injury to a passenger is covered under the Business Auto policy.

Thus, self-propelled vehicles with certain types of permanently attached equipment described in (f.2) and (f.3) are, in fact, autos but nonetheless are covered by the CGL if the bodily injury or property damage arise 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 vehicles as autos (except operations) is excluded by the CGL. While the operations versus use provisions set forth in Exclusion (f) would appear to be equally applicable to truck and wheel mounted cranes, it does not appear that this distinction is made with respect to those types of cranes in ISO 2001 CGL policy.

In conclusion, the federal regulatory and compliance authorities have once again over complicated what once was a pretty straight forward environment for the crane industry as a whole. And now, the individual states interpretation of these new federal rules seems only to further complicate matters.

Sometimes the old school approach really is better than the new school of ideas, and the only certainty is that our industry has always weathered changing market conditions. There is little doubt, in this writer's opinion, that we will overcome this challenge as well. ■

EDITOR'S NOTE:

Second article in a series:

Insurance coverage for mobile equipment under the New FMCSR interpretation.