

What Happens When Your Backhoe Becomes an Auto



PARKER | SMITH | FEEK

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You probably already know that the world of insurance produces some interesting situations and possibilities. Unfortunately, your backhoe won't become a Porsche overnight, but the definition of what constitutes an auto - for insurance purposes - is changing! Coming in December 2004, a new edition of the Insurance Services Office's (ISO) commercial general liability form will change the definition of what can be insured as "mobile equipment" and what will now need to be insured as an "auto." (The ISO form is the basic document upon which most, but not all insurance companies base their commercial general liability policies. Those that do not, often use the wording in their policies based the ISO form, so it is similar.)

With this change, mobile equipment which can be considered subject to motor vehicle registration and/or compulsory insurance law will have to be insured as a commercial auto. General liability coverage will be excluded for them. The stated intent of the change is to avoid situations that have been presenting themselves to underwriters where a piece of mobile equipment is involved in an accident while on the road and the owner has little or no general liability limits or perhaps no auto coverage and the courts have held that the equipment was an automobile and therefore subject to compulsory and other no fault laws within the states. There will be a corresponding change in the auto form to keep the two consistent.

This pending change creates three issues for contractors and other operators of mobile equipment/machinery:

- 1) How to determine what will be considered an "auto" for insurance purposes
- 2) How the cost of insurance will change
- 3) When your individual insurance company will adopt this change.

Backhoe or Porsche?

In the new general liability form, "auto" will be defined as:

a. A land motor vehicle, trailer or semi trailer 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. Please note that it's not just licensed (that would be simple and logical).

Therefore, it doesn't have to be licensed. The law keys in on capable of being moved under its own power and then requires a license. Many of our clients operate equipment on roads (usually short distances) and don't license them or get trip permits, etc. The new form does not always clearly define the new difference between mobile equipment and a vehicle. The form will use (except as otherwise specified) a state's legal definition of what constitutes a vehicle.

In Washington, for example, equipment that would be a vehicle includes every device capable of being moved under its own power (driven) on any public road. Please note again, it is "capable," not necessarily licensed or driven on the roads. Clearly this change is potentially significant for machinery operators or contractors.

The form also states specifically what mobile equipment won't be considered an auto for purposes of the insurance policy.

What's It Going to Cost?

There will be an impact on premiums. Currently, most contractors, for example, have general liability premiums based (at least in part) on payroll. These exposure measures (payroll, costs, etc.) anticipate liability from the equipment and no separate, identifiable liability premium is charged.

The real impact is in the liability premium. If certain equipment is moved to the automobile liability policy, it could generate a liability premium similar to what you pay now per auto. That results in a potentially



significant cost. (There may be some offset of cost due to the fact that your payroll reported for general liability premium purposes can be reduced by the payroll of the equipment operators if that is their principle duty.) No carriers contacted so far know how they will address premiums.

The physical damage coverages are generally provided on an equipment floater form at a rate per \$100 of values insured. This can be continued, or coverage moved to the auto policy as comprehensive and collision.

When will these Changes be Effective?

The form revision is being filed to be effective in December 2004. Revisions of the ISO general liability forms are issued from time to time, but not all insurance companies change to the new editions immediately.

What this means is that the timing and impact of this change will vary from business to business, depending on the insurance companies providing the policies.

What Next?

Parker Smith & Feek has started polling insurance companies to determine which ones plan to use the newest edition of the general liability form and when. We will further seek some indication of how they propose to develop their premiums.

Your account team will be discussing this with you in detail. The coverage and premium impacts, if any, will be a part of the market strategy and consideration.

What you can do is prepare to help determine which pieces of your equipment meet the state's definition of a vehicle (and not included in the specifically listed mobile equipment exceptions list in the form) and prepare to identify and document the payroll of the employees whose principle duty is to operate those pieces of equipment.