

Excess/Surplus/Specialty Lines Interest Group

Volume 24 • Number 2 • July 2012

The Specialist

Chairman's Message

by Carl R. Sadler, CPCU, ASLI



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Welcome to your revived ESSL Interest Group! During the past year, we made great strides in reviving the Excess/Surplus/Specialty Lines (ESSL) Interest Group, so now is an opportune time to review our progress and describe our plans for the next year.

We have recruited nine committee members and a small group of volunteers. Since our last newsletter, two new members have been appointed to the ESSL Interest Group committee.

Rajesh Narayan, PMP, CPCU, CIOP, is general manager and head of P&C insurance at ValueMomentum, a global professional services and pre-packaged IT solutions firm serving the insurance and financial services industries. As both an insurance and an information systems professional, Rajesh is the ideal person to work with **James W. Macdonald, CPCU, ARM**, to improve our web site.

Lou Nunez, CPCU, is senior training specialist, Chartis Global Learning & Development. The combination of

Lou's strong underwriting background, previous CPCU Society leadership roles, and training skills make him a valuable addition to our educational endeavors.

We have made great progress in recruiting, but we still need additional ESSL committee members. Our goal is for better geographic balance, a reasonable spread of ages and experience, various functional roles (underwriting, claims, administration, systems, and marketing), and participation by all segments of the business (brokers, insurers, and reinsurers). We especially need members from the wholesale (E&S) broker community. Anyone interested may e-mail me at csadler@TIC-LLC.com.

Committee-member candidates must complete the Society's "Application for CPCU Society Service." Interest group committee members, per Society

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Chairman's Message

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guidelines, serve for three-year terms and are expected to attend both the CPCU Annual Meeting and the Leadership Summit each year. In addition, committee members agree to participate in monthly teleconference meetings and committee work. For planning purposes, see Table 1 for future annual meeting dates.

We have reactivated our newsletter, *The Specialist*. This is our fourth recent issue and the second under our new editor, **Gregg Rentko, CPCU**. We are seeking interesting articles for future issues.

We proposed four 2012 (Washington, D.C.) Annual Meeting seminar topics and were chosen to present three, one by ourselves and two with other interest groups. Short descriptions of these seminars appear on page 10 of this newsletter. Because of the long lead times involved in Annual Meeting seminar planning, we are now beginning to formulate our 2013 (New Orleans) seminars.

While we are proud of having recruited an effective committee, reactivated *The Specialist*, and developed 2012 Annual Meeting seminars, a great deal is left to accomplish. In the coming months, we plan to (1) reactivate the ESSL website, (2) encourage use of our new LinkedIn capability, (3) develop our first webinar, and (4) encourage articles and research projects.

As a result of the recent affiliation between The Institutes and the CPCU Society, there has been a change in liaison responsibilities. **John Kelly, CPCU**, had been our CPCU Society liaison for the last year, and **Arthur L. Flitner, CPCU, ARM, AIC**, our liaison with The Institutes. These positions have been combined, and now Arthur is our liaison with both organizations. We thank John for his many contributions to reactivating ESSL during the last year and look forward to working even more closely with Arthur.

Table 1
Future CPCU Society Annual Meeting and Seminar Dates

2012 Annual Meeting	Washington, D.C.	September 8–11, 2012
2013 Annual Meeting	New Orleans	October 26–29, 2013
2014 Annual Meeting	Anaheim	September 20–23, 2014
2015 Annual Meeting	Indianapolis	October 3–6, 2015
2016 Annual Meeting	Honolulu	September 17–20, 2016
2017 Annual Meeting	Nashville	October 7–10, 2017

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Gregg Rentko, CPCU, is second vice president at Western World Insurance Group, where he is responsible for the Professional Lines Department in the Brokerage Division. His insurance career includes jobs at AIG, CNA, and ACE. He is a former ESSL chairman. He can be reached at (201) 847-2820 and at g.rentko@westernworld.com.

James W. Macdonald, CPCU, ARM, of JW Macdonald Associates, LLC, is an independent consultant in insurance and reinsurance. He has forty years of insurance experience, having worked for a number of major insurers and reinsurers.

He has arbitration experience and a large number of publications. He can be reached at (215) 925-2188 and at jameswmacdonald@mac.com.

Elaine George, CPCU, ARM, has volunteered to help the ESSL Interest Group. She is currently a member of the International Interest Group committee. Having newly accepted a job as a commercial regional underwriter at USLI in southern California, she is eager to increase her exposure to the surplus lines and specialty insurance areas. Her experience with interest group administration has been most helpful. Elaine can be reached at (949) 421-9610 or at egeorge@USLI.com.

To continue to be successful, we need additional ESSL committee members. Contact Carl Sadler about volunteering, at (610) 783-6644 or csadler@TIC-LLC.com. ■

Auto or Mobile Equipment Decision Tree

by Arthur L. Flitner, CPCU, ARM, AIC and Carl R. Sadler, CPCU, ASLI

Correctly classifying a vehicle as an auto or mobile equipment can be essential to arranging commercial auto coverage, underwriting and rating commercial auto coverage, and determining whether a claim is covered by a commercial general liability (CGL) policy or a commercial auto policy. Errors in classifying a vehicle as an auto or mobile equipment can have bad consequences for the insured, the insurer, the producer, or the claim adjuster.

To help insurance and risk management professionals avoid making such errors, this article introduces a decision tree for correctly classifying vehicles as autos or mobile equipment according to the definitions of those terms found in these forms developed by Insurance Services Office, Inc. (ISO): the 2004 and later editions of the Commercial General Liability Coverage Form and the 2006 and later editions of the Business Auto Coverage Form and Motor Carrier Coverage Form.

Applying the auto and mobile equipment definitions has long been a potentially difficult task, but the task became even more challenging in 2004, when ISO revised the definitions to say that a land vehicle subject to a motor vehicle insurance law in the state where the vehicle is licensed or principally garaged is an auto and not mobile equipment, even if it would otherwise meet the mobile equipment definition. Accordingly, insurance and risk management professionals will benefit from a structured approach for applying the revised definitions correctly and consistently.

The Auto or Mobile Equipment Decision Tree, which appears in the exhibit, shows the decisions that the user must make to classify any vehicle as an auto or mobile equipment, or as neither of those things. To make these decisions, however, the user must understand and apply key words and provisions contained in the definitions. For example, is the vehicle a land vehicle,

and is the vehicle subject to a motor vehicle insurance law where it is licensed or principally garaged? Accordingly, this article offers commentary to help the user make each required decision. The authors' goal is to make the commentary useful while keeping it concise. Therefore, the article is not a definitive guide to applying the auto and mobile equipment definitions to gray-area situations. In some cases, extra research or legal services will be needed to apply the decision tree correctly.

In addition, the article does not address the coverage interpretation issues that arise after the status of a vehicle has been determined to be an auto or mobile equipment. For example, the article does not address interpretation of whether a particular vehicle that has been determined to be an auto qualifies as a covered auto under a commercial auto policy, or whether the Aircraft, Auto or Watercraft exclusion in a CGL policy applies to a particular vehicle that has been determined to be an auto. The article's purpose is limited to providing a framework for deciding whether a particular vehicle is an auto or mobile equipment.

Decision 1: Is It a Land Vehicle?

Both the auto definition and the mobile equipment definition require that the vehicle be a land vehicle at the very least. The ISO coverage forms do not define vehicle or land vehicle, so interpretation of the phrase should conform to common dictionary definitions. Dictionaries generally do not define land vehicle, but a common dictionary definition of vehicle is "a means of transporting or carrying something" (*Merriam-Webster's Collegiate Dictionary*, 11th ed.). By extension, a land vehicle is a vehicle capable of transporting or carrying something on land, as opposed to on or under water or through the air or outer space. Consequently, the land vehicle requirement would seem to exclude watercraft and aircraft from being either autos or mobile equipment. Whether an

amphibious vehicle qualifies as a land vehicle is the type of gray-area question that this article does not try to resolve.

If the outcome of Decision 1 is NO, the vehicle under consideration is neither an auto nor mobile equipment. If the outcome of Decision 1 is YES, go to Decision 2.

Decision 2: Is the Vehicle Subject to a Motor Vehicle Insurance Law?

The question shown for Decision 2 in the decision tree is a shortened version of the actual question that must be asked: Is the vehicle subject to a compulsory or financial responsibility law or other motor vehicle insurance law in the state where it is licensed or principally garaged?

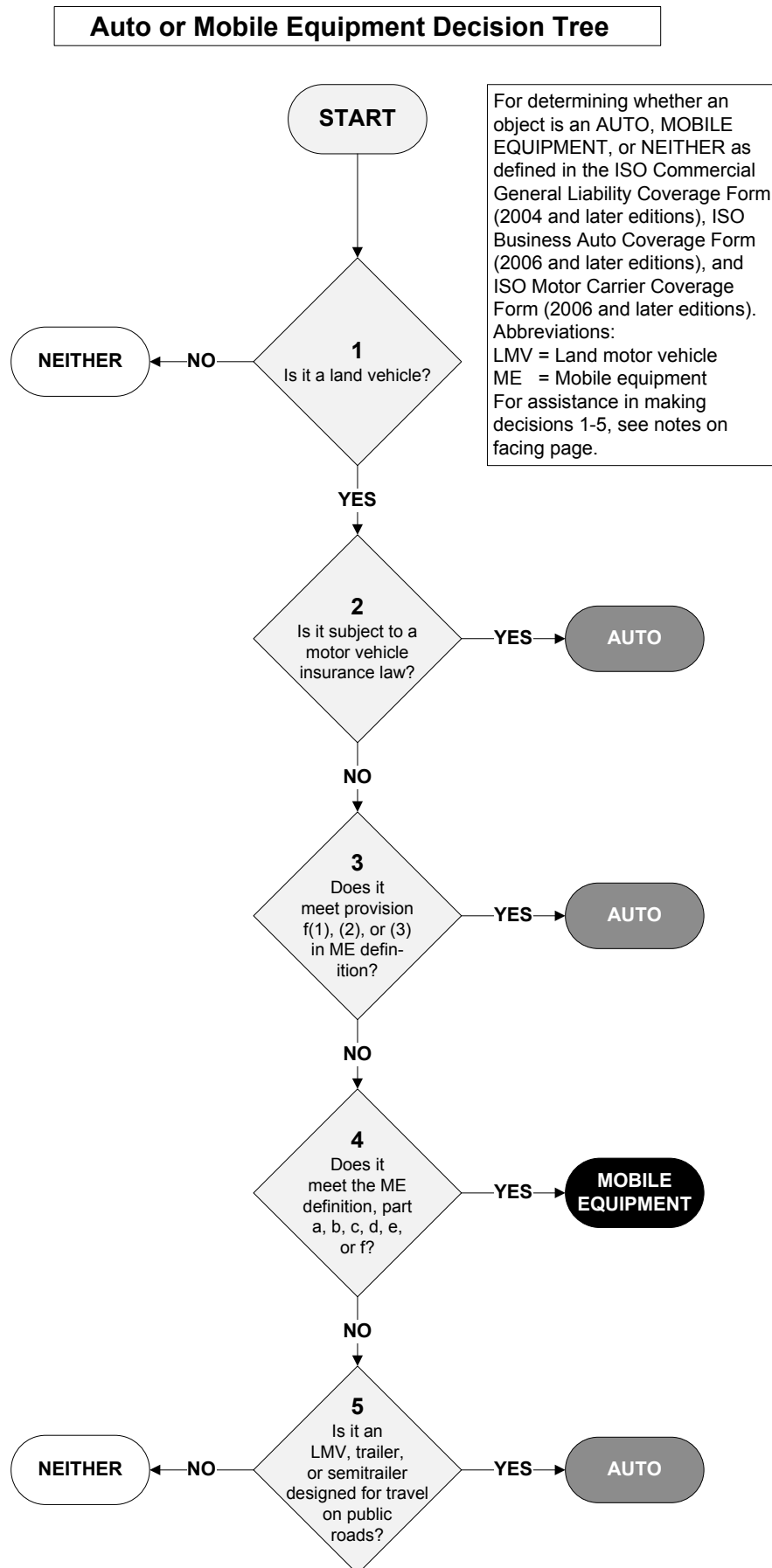
In addition to compulsory liability insurance laws and auto financial responsibility laws, the other types of motor vehicle insurance laws include laws requiring the purchase of auto no-fault (personal injury protection) insurance or uninsured/underinsured motorists insurance. In addition, motor vehicle registration laws often determine whether a particular vehicle is subject to a financial responsibility law or another type of motor vehicle insurance law. The relevant motor vehicle insurance laws are those of the state in which the vehicle is licensed or principally garaged—not those of the state in which the vehicle is being operated at any given time.

A motor vehicle that is designed for travel on public roads and also subject to motor vehicle registration is almost always subject to one or more motor vehicle insurance laws in the state in which it is licensed. Answering the question for Decision 2 correctly is more difficult when considering types of vehicles that appear to be mobile equipment instead of autos.

For example, construction equipment, farm implements, snowmobiles, and all-terrain vehicles might be assumed to

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Auto or Mobile Equipment Decision Tree



Notes To Help Apply The Decision Tree

Decision 1: If an object does not qualify as a land vehicle, it is neither an auto nor mobile equipment. A watercraft or an aircraft is a vehicle but is not a *land* vehicle. A land vehicle does not have to be motorized or self-propelled. A trailer or semitrailer, for example, is a land vehicle even though it is not a land *motor* vehicle.

Decision 2: If a land vehicle “is subject to a compulsory or financial responsibility law or other motor vehicle insurance law where it is licensed or principally garaged,” it is an auto. In addition to compulsory auto liability insurance laws and auto financial responsibility laws, other types of motor vehicle insurance laws include laws requiring the purchase of no-fault (personal injury protection) auto insurance or uninsured/underinsured motorists coverage.

Decision 3: If a land vehicle is a self-propelled vehicle with any of the types of permanently attached equipment listed in paragraphs f.(1) through f.(3) of the mobile equipment definition, it is an auto.

[S]elf-propelled vehicles with the following types of permanently attached 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.

Decision 4: If a land vehicle is not subject to a motor vehicle insurance law (as established in Decision 2) and is any one of the types listed in paragraphs a. through f. of the mobile equipment definition, other than a self-propelled vehicle with the equipment described in f. (1), (2), or (3), it is mobile equipment.

“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 Paragraph 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 Paragraph a., b., c. or d. above maintained primarily for purposes other than the transportation of persons or cargo.

Decision 5: If a land motor vehicle, trailer, or semitrailer (1) is designed for travel on public roads, (2) is not subject to a motor vehicle insurance law, and (3) does not meet the mobile equipment definition, it is an auto. If the answer to Decision 5 is NO, the vehicle is neither an auto nor mobile equipment.

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Auto or Mobile Equipment Decision Tree

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be exempt from motor vehicle insurance laws because they are designed primarily for use off of public roads. However, depending on the wording of a state's motor vehicle insurance laws, any of these types of vehicles could, depending on the circumstances, be subject to a motor vehicle insurance law in that state. Therefore, one should never assume that a vehicle is not subject to a motor vehicle insurance law. Referring to the applicable motor vehicle insurance laws and correctly applying them to each vehicle in question is required.

Motor vehicle insurance laws can vary substantially by state, and there can also be inconsistencies between a state's own motor vehicle laws that complicate their application. Therefore, deciding whether a particular vehicle is subject to a motor vehicle insurance law in a state often requires expert knowledge of the motor vehicle insurance laws in that state.

Insurance agents and brokers, in general, should avoid making Decision 2 for their customers—particularly before answering NO, which suggests that the vehicle is automatically covered as mobile equipment under the insured's CGL policy and therefore that commercial auto coverage is not needed. Producers who answer this question incorrectly could ultimately face errors and omissions liability claims made by their customers. An alternative course of action for a producer is to ask the insured to provide the answer to this question and to suggest that the insured obtain legal advice as needed to make the correct determination.¹

If the outcome of Decision 2 is YES, the vehicle is an auto and should be insured as such with the appropriate covered auto symbol(s) shown in the insured's commercial auto coverage form. If the outcome of Decision 2 is NO, go to Decision 3.

Decision 3: Does the Vehicle Meet Provision f. (1), (2), or (3) of the Mobile Equipment Definition?

In the mobile equipment definition, paragraph f. describes a category of vehicles that qualify as mobile equipment, but it contains this exception, quoted from the coverage form:

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:
 - (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.²

Any land vehicle that is subject to a motor vehicle insurance law will already have been recognized as an auto by Decision 2. Therefore, the purpose of Decision 3 is to properly classify as an auto any vehicle of a type described in f. (1), (2), or (3) that is not subject to a motor vehicle insurance law in the state where it is licensed or principally garaged. In reality, almost any vehicle described in provision f. (1), (2), or (3) will meet the auto definition regardless of provision f. (1), (2), or (3). However, Decision 3 is a necessary step to rule out the possibility, however slight, of a vehicle being misclassified.

Paragraph f. (1) refers to "equipment designed primarily for" any of the activities listed in subparagraphs (a), (b), and (c). It is important to recognize the difference between "designed" for the listed activities and "maintained" or "used" for the listed activities. Design is essentially a manufacturing/engineering issue, independent of how the ultimate owner

maintains or uses that vehicle. For example, the fact that a vehicle is maintained or used for street cleaning does not necessarily mean that the vehicle is designed for street cleaning. Unless the vehicle is *designed* for street cleaning, it would not qualify as an auto under paragraph f.(1)(c). A further distinction is that the equipment has to be designed "primarily," but not "exclusively," for any of the listed activities.

A cherry picker, as referred to in f. (2), consists of a bucket (in which a worker stands) on a powered boom. It can be used for any type of work that requires raising and lowering workers, not just for picking cherries. When a cherry picker is attached to a truck, the combined unit is commonly called a bucket truck.

If the outcome of Decision 3 is YES, the vehicle is an auto and should be insured as such. If the outcome is NO, go to Decision 4.

Decision 4: Does the Vehicle Meet the Mobile Equipment Definition, Part a., b., c., d., e., or f.?

If a land vehicle is not subject to a motor vehicle insurance law (as established in Decision 2) and is any one of the types listed in paragraphs a. through f. of the mobile equipment definition (other than the types determined to be autos in Decision 3), it is mobile equipment.

"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 Paragraph 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 Paragraph a., b., c. or d. above maintained primarily for purposes other than the transportation of persons or cargo.³

Paragraph a. includes not only the specific types of vehicles listed (bulldozers, farm equipment, and forklifts) but also any other vehicle that is designed for use principally off public roads. This description encompasses a very wide range of vehicles.

Paragraph b. does not specify the types of vehicles to which it applies. All that is required is that the vehicle be maintained for use solely on or next to premises the named insured owns or rents. The vehicle could be a lawn tractor, a golf cart, a forklift, or even a dump truck or a flatbed truck that is used exclusively on the named insured's premises.

Paragraph c. applies to any vehicle that travels on crawler treads, such as a bulldozer or crawler crane.

Paragraph d. applies to vehicles, whether self-propelled or not, maintained primarily to provide mobility to permanently mounted equipment of the types listed. Examples of vehicles that would qualify under this paragraph are a mobile crane (a crane permanently mounted on a truck chassis) or a mobile drilling rig (a drilling rig permanently mounted on a truck chassis).

Paragraph e. applies only to vehicles that are not self-propelled. In most cases, such vehicles are a nonmotorized chassis or trailer to which one of the listed types of

equipment has been permanently attached.

Paragraph f. includes any vehicles, other than those described in paragraphs a. through d., that are maintained primarily for purposes other than transporting persons or cargo. Although the preceding paragraphs encompass the vast majority of vehicles qualifying as mobile equipment, paragraph f. serves as a catchall for unusual or one-of-a-kind vehicles that can qualify as mobile equipment even though they are not of a type described in the preceding paragraphs.

If the outcome of Decision 4 is YES, the land vehicle is mobile equipment. If the outcome is NO, go to Decision 5.

Decision 5: Is the Vehicle a Land Motor Vehicle, Trailer, or Semitrailer Designed for Travel on Public Roads?

The status of most vehicles will be determined before the decision tree user reaches Decision 5. However, Decision 5 is included in the Decision Tree because the auto definition includes a land motor vehicle, trailer, or semitrailer that is designed for travel on public roads, even if it is not subject to a motor vehicle insurance law. Note that the actual wording of the definition is "designed" for travel on public roads, as opposed to "maintained" for travel on public roads. The meaning of "designed," as opposed to "maintained," was discussed previously.

Most land motor vehicles, trailers, and semitrailers designed for travel on public roads are subject to a motor vehicle insurance law, so there should be few instances in which the outcome of Decision 5 will be YES, meaning that the vehicle is an auto. Most autos will be classified as such in Decision 2.

However, it is possible that a vehicle would not be recognized as an auto until Decision 5. For example, a semitrailer has been parked on the insured's premises for several years, used to store business

personal property that does not fit in the insured's building. The semitrailer is no longer subject to motor vehicle registration or an insurance law in the insured's state. However, according to the auto definition, the semitrailer is an auto because it is designed for travel on public roads.

If the outcome of Decision 5 is YES, the vehicle is an auto, according to the auto definition, and should be insured as such. If the outcome of Decision 5 is NO, the vehicle is neither an auto nor mobile equipment. For example, a railcar is a land vehicle (thus clearing Decision 1), but does not trigger a YES outcome for Decision 2, 3, 4, or 5. Therefore, the railcar is neither an auto nor mobile equipment.

Conclusion

The Auto or Mobile Equipment Decision Tree provides a structured approach to aid underwriters, claim adjusters, producers, risk managers, and insureds to correctly classify a vehicle as an auto or mobile equipment according to the definitions of those terms in current ISO coverage forms. Correctly classifying each of an insured's vehicles as an auto or mobile equipment is essential to arranging coverage, to underwriting and rating, and to determining coverage. ■

Endnotes

- (1) For an article that addresses the difficulty of determining whether a vehicle is subject to a motor vehicle insurance law, see "Dealing with the Auto/Mobile Equipment Issue," International Risk Management Institute, IRMI Online, www.irmi.com/online/cai/ch003/11031000-dealing-with-the-auto-mobile-equipment-issue.aspx (accessed June 18, 2012).
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When it Comes to Data Breaches: Show Me the Injury

by Andrea Cortland and Stephanie P. Gantman



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Stephanie P. Gantman is an associate with Cozen O'Connor in Philadelphia in the Global Insurance Group. Ms. Gantman earned her law degree from the George Washington University Law School, where she was a member of the executive Mock Trial Board and competed in an American Bar Association Labor and Employment mock trial competition. Upon graduating, Ms. Gantman received an American Bar Association/Bureau of National Affairs Award for demonstrating excellence in the study of health law. She earned her undergraduate degree, *magna cum laude*, from the University of Pennsylvania. She is admitted to practice in Pennsylvania and New Jersey.

Editor's note: Article reprinted with permission from the Cozen O'Connor Global Insurance Group March 13, 2012, Alert

Two recent decisions, one by Oregon's highest court and the other by the First Circuit Court of Appeals, reveal a growing trend finding legitimacy in claims asserted by plaintiffs whose personal information has been stolen or compromised only if such information is actually used by a third party to cause harm or perpetuate identity theft. In other words, a data breach alone does not constitute injury giving rise to recoverable damages—there must be use of the information stemming from the data breach.

In *Paul v. Providence Health System-Oregon*, the Supreme Court of Oregon addressed whether a health provider was liable for damages when the provider's negligence allowed theft of patients' personal information, but the information was never used or viewed

by a third party.—P.3d—, 2012 WL 604183 (Or. Feb. 24, 2012). In *Paul*, the plaintiffs alleged that their health care provider was negligent in allowing the theft of unencrypted computer disks and tapes containing names, social security numbers, and clinical information for approximately 365,000 patients. The plaintiffs sought both economic and noneconomic damages for financial injury and emotional distress.

The *Paul* court presumed, without deciding, that a health care provider owed a duty to protect its patients from economic loss and a duty to protect patient information. The court then focused on plaintiffs' failure to allege an actual, present injury that resulted in economic loss. The court found the threat of future harm was insufficient. In explaining its rationale, the court

Much like the Oregon Supreme Court, the First Circuit Court of Appeals reached a similar conclusion in *Katz v. Pershing, LLC*, No. 11–1983 (1st Cir. Feb. 28, 2012). Katz addressed whether the plaintiff, who maintained an account with a company for which the defendant provided brokerage clearing services, had standing to bring various claims against the defendant for the defendant’s alleged failure to protect sensitive nonpublic

Where do these recent decisions and other opinions addressing stolen or compromised personal information leave us? There is a growing trend to

find damages for stolen information compensable only when such information is actually used to perpetuate harm by a third party. Whether this trend will continue, or if courts in other jurisdictions will reach differing conclusions, remains to be seen. ■

In the previous issue of *The Specialist*, **Carl R. Sadler, CPCU, ASLI**, name was left off the list of contributors for the article, “Book Review—*The Power Formula for LinkedIn Success—Kick-start Your Business, Brand, and Job Search*, by Wayne Breitbarth.” The CPCU Society ESSL Interest Group regrets this error.



The ESSL Interest Group Takes the Lead on Three Seminars in Washington

Mark your calendars for the 2012 CPCU Society Annual Meeting, to be held in Washington, D.C., from Sept. 8–11. Your CPCU Society ESSL Interest Group committee members are hard at work preparing a number of sessions on topics ranging from cyber liability to windstorm/natural CATs to the A to Z mechanics of the surplus lines marketplace.

What better time to brush up on your wind underwriting knowledge than at the height of hurricane season? Our first session will do just that! ESSL will be presenting, in tandem with the Loss Control and Underwriting interest groups, a sessions titled “Winds of Change—Underwriting the Wind Peril in the United States.” Addressing the challenges faced when underwriting the peril of wind, this two-hour session, moderated by the ESSL Committee’s **Maureen Brown, CPCU, ARM-P, AIC**, will be a panel discussion with **Debra T. Ballen, CPCU**, of IBHS, **Glen Daraskevich** of Karen Clark and Co., and **Stephen C. Clarke, CPCU** of ISO. Ballen will discuss the evolution of building code laws and the use of wind engineering in building construction. Daraskevich will discuss modeling the wind peril and how rates are affected by the modeling results, and Clarke will explain the ISO-enhanced Group II Wind Rating Program. This session is scheduled for Sunday, Sept. 9, from 2:45 p.m. to 4:45 p.m., and has been filed for two CE credits.

Our second session, “Emerging Issues in Privacy Protection, Network Security and Cyber-Liability,” is being co-sponsored by the ESSL, Information Technology, and Loss Control interest groups and addresses a growing concern among companies of all sizes: loss of client and employee proprietary data, and the legal ramifications of these breaches. More and more small and mid-size firms

have to wrestle with issues related to evolving privacy regulations, complying with e-commerce standards, and meeting the data- and information-protection expectations of customers and vendors. This session will provide an overview of the issues and exposures that create privacy liability for business, discuss the current developments in ID theft and privacy legislation and regulations, explore trends in recent litigation, and discuss risk management techniques and insurance solutions that are available in the market today. Panelists will include **Mark Greisiger**, president of NetDiligence; **Rick Bortnick**, chief of Professional Liability Practice Area for Cozen O'Connor; **Toby Merrill**, vice president and product leader for ACE Professional Risk; and **Kirstin Simonson, CPCU, ARM, AU**, underwriting director—global technology for The Travelers Companies, Inc. The panel will be moderated by ESSL committee member **Gregg C. Rentko, CPCU, AU, MSIM**. The session is scheduled for Tuesday, Sept. 11, from 9:30 a.m. to 12:15 p.m., and has been filed for three CE credits.

We round out the ESSL contributions to the Annual Meeting seminars with a Tuesday afternoon session, “The Surplus Lines Marketplace From A to Z.” This session will address the following topics:

- (1) Purpose of the surplus lines market
- (2) How to access the surplus lines market
- (3) Types of accounts / lines of business that are frequently placed in the surplus lines market
- (4) How the mechanics of the surplus lines market differ from the admitted market



- (5) How and why the surplus lines market is regulated and how this regulation differs from admitted market regulation
- (6) Timely market topics (i.e., cyber liability, weather-related/CAT, etc.)

Panelists will include former CPCU Society President **Betsey Brewer, CPCU**; frequent CPCU Society national speaker **Eric Nordman, CPCU** of the NAIC; **Scott Wolf**, executive vice president of AmWins; and yours truly again, ESSL committee member **Gregg C. Rentko, CPCU, AU**. Moderating the session will be ESSL committee member **Fred Parcels, CPCU, ARM, ARe**. The session is scheduled for Tuesday, Sept. 11, from 1:30 p.m. to 3:30 p.m., and has been filed for two CE credits.

Please make your plans now to join us for “Reflections of Progress” at the 2012 Annual Meeting and Seminars! ■

Surplus Lines Fundamentals: A Short Course for New Hires

by Arthur L. Flitner, CPCU, ARM, AIC



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As The Institutes' liaison to the ESSL Interest Group, I am pleased to announce that The Institutes have developed a new course titled Surplus Lines Fundamentals.

The idea and impetus for this new product came from NAPSLO, which saw the need for an "E&S primer" for anyone who wants to understand how the surplus lines market works.

Surplus Lines Fundamentals is an ideal course for "onboarding" new hires at surplus lines insurers, wholesale brokerages, MGAs, and program managers. It is also an appropriate course for retail agents and brokers who want to learn how to access the surplus lines market when they encounter a hard-to-place risk.

The new online course consists of four concise assignments, which explain (1) why the surplus lines market is needed,

(2) how the surplus lines distribution system works and how it is regulated, (3) how surplus lines insurers differ from admitted insurers, and (4) how underwriting expertise and form/rate flexibility allow the surplus lines market to successfully insure risks that the admitted market has declined.

Most people can complete the course in a half-day of online instruction. Learners who complete the course and built-in assessments earn an online certificate of completion. A separate online exam will be required only if the learner wishes to earn continuing education credit.

For more information about Surplus Lines Fundamentals, please call The Institutes' Customer Service Department at (800) 644-2101 or visit The Institutes' Web site at www.TheInstitutes.org. ■

Medical Liability Insurers Facing New Environment: Moody's

Editor's note: This article originally appeared on www.MyNewMarkets.com on January 7, 2012, and is reprinted with permission of Wells Publishing.

Although it comprises just over two percent of annual direct premiums for the U.S. property and casualty insurance industry, the medical professional liability (MPL) insurance business is integral to the U.S. healthcare system, which today accounts for almost one-fifth of the nation's gross domestic product.

Historically among the most volatile sectors, the MPL insurance business has performed strongly in recent years, according to a new report from Moody's Investors Service. But the report also suggests that this MPL track record could be tested as competition heats up, investment returns remain low, tort law challenges arise and the nation's healthcare system undergoes change.

"The MPL sector has broadly outperformed the overall P/C sector in the past few years as a result of strong pricing in the early 2000s, coupled with substantially reduced claims frequency," says Moody's vice president and author of the report, Alan Murray. "Nevertheless, historically strong operating margins are likely to come under some pressure due to intense premium rate competition and lower fixed-income investment returns."

With claims trending down since the middle of the decade as a result of favorable judicial decisions, as well as state-level tort reform measures, insurers have reported favorable reserve development trends.

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Nonetheless, some recent challenges to state laws aimed at controlling MPL litigation costs have raised the possibility of their repeal. "Claim frequency and severity trends, and therefore insurer profitability and premium rates, can be highly sensitive to changes in the legal environment as well as medical cost inflation," Murray says.

But the most fundamental force acting on the medical professional liability insurance sector is the evolving nature of healthcare delivery in the U.S. The shift toward multi-specialty and multi-state physician networks and hospitals, as well as integrated regional and national healthcare organizations, in particular, are likely to drive structural change in the sector, Murray says. "And we expect a corresponding shift in market share toward MPL insurers with multi-specialty and multi-state underwriting and claim-

servicing capabilities for both individual medical practitioners and institutional healthcare organizations over time."

The Moody's report is titled "U.S. Medical Professional Liability Insurance: A Specialty P&C Insurance Sector Tied Closely to Structure of Healthcare Delivery." <http://www.mynewmarkets.com/articles/180992/medical-liability-insurers-facing-new-environment-moody-s> ■

The Excess/Surplus/Specialty Lines Interest Group newsletter is published by the CPCU Society Excess/Surplus/Specialty Lines Interest Group.

Excess/Surplus/Specialty Lines Interest Group
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