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THE INSURANCE DEFINITION OF "AUTOMOBILE"

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I. INTRODUCTION

The word "automobile" has a relatively precise meaning in its generic sense. But when used in insurance contracts it may have a meaning varying from such an illogical definition as "animal-drawn equipment" to that of a private-passenger automobile as recognized in the modern age. And by specific definition, the term may include many types of vehicles not included in the generic meaning. In some insurance contracts the term is defined carefully, and here there may be little disagreement in interpretation. In others the term is not defined at all, or the definition is so broad that any attempt to determine the meaning with any degree of precision leads to substantial disagreement.

We shall be concerned with the generic meaning only as it would be applied in those insurance contracts in which the word "automobile" is *not* defined. Our major interest involves interpretation of the term as it is used in various insurance contracts, and particularly in those in which the meaning is subject to substantial confusion and disagreement. We shall not attempt to consider all the uses of the term in these insurance contracts, but only those which in our opinion are of sufficient importance to justify analysis. We shall consider the term in its generic sense and then in six of its insurance contract uses: general insurance contract definition, temporary substitute automobile, non-owned automobile, automobile furnished for regular use, trailer, and equipment of an automobile.

II. GENERIC MEANING

When the term "automobile" is used in a general sense, *i.e.*, without specific definition as in an insurance contract, it embraces perhaps all motor vehicles designed for use on roads or highways for the conveyance of persons or property. Black defines the term "automobile" as "a vehicle for the transportation of persons or property on the highway, carrying its own motive power and not operated upon fixed tracks."[1] This definition is broad and could

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[1] BLACK, LAW DICTIONARY (4th ed. 1951). See also Jernigan v. Hanover Fire Ins. Co., 235 N.C. 334, 69 S.E.2d 847 (1952), for an excellent discussion and definition of the meaning of the term.

encompass practically all those land motor vehicles designed to transport persons or property on streets and highways. It would include private passenger automobiles, trucks of all kinds, buses, and the like, and could include motorcycles and motor scooters. However, there has been a distinct trend in the courts to exclude motorcycles, and perhaps motor scooters, from the generic use of the term. For example, in the case of *Jernigan v. Hanover Fire Ins. Co.*,[2] a motorcycle was held not to be an automobile. In considering the meaning of the term the court stated that "the term automobile in the general sense embraces all motor vehicles except motorcycles, designed for use on highways for conveyance of persons or property, and in the particular sense it includes such motor vehicles, other than motorcycles, as are intended for use on highways for carriage of persons only." Other decisions, of which *Beeler v. Pennsylvania Threshermen & Farmers Ins. Co.*[3] is typical, also indicate that a motorcycle is not an automobile within the generic meaning of the term. In addition, self-propelled golf carts, farm-type tractors, and most of the self-propelled equipment of contractors and farmers are not included in the generic definition, because they are not designed for use on highways and streets. However, it is important to note that the generic meaning may be qualified by specific definition in a contract. For example, in insurance policies the term "automobile" by definition may be more restricted than the generic meaning or may be substantially broader. Here the generic definition will be applicable only if there is nothing to the contrary in the insurance-contract definition.

III. THE GENERAL INSURANCE CONTRACT DEFINITION

The term "automobile" has many different meanings in insurance policies, although there has been a recent tendency to bring the definitions more in line with the generic meaning of the term. Since careful attention must be given to the definition in the specific contract involved, it is desirable at this point to review some of the more important definitions.

In the family automobile policy,[4] which is probably the broadest and the most extensively used contract for the purpose of

[2] Jernigan v. Hanover Fire Ins. Co., 235 N.C. 334, 69 S.E.2d 847 (1952).

[3] 48 Tenn. App. 370, 346 S.W.2d 457 (1960). See also LeCroy v. Nationwide Ins. Co., 251 N.C. 19, 110 S.E.2d 463 (1959); Mittelsteadt v. Bovee, 9 Wis.2d 44, 100 N.W.2d 376 (1960); Paupst v. McKendry, 180 Pa. Super. 646, 145 A.2d 725 (1958).

[4] The policies used here as illustrations are those formulated by the National Bureau of Casualty Underwriters and the National Automobile Underwriters Association, and are those used by most property and casualty insurance companies today.

insuring individually owned private passenger automobiles, the term is not defined in any sense. This obviously was not an oversight, but was intended to provide a meaning at least comparable to the generic use of the term. In the family policy, then, it is highly debatable whether a motorcycle could be considered an automobile for any purpose in the contract, *e.g.*, an owned, a nonowned, or a temporary substitute automobile. In the special automobile policy, on the other hand, the formulators of the contract intended to be more precise. Here the automobile is defined as meaning "a four wheel vehicle designed for use principally upon public roads." This leaves no doubt concerning the status of a motorcycle or a motor scooter in the special policy. In the basic automobile policy[5] the term more nearly approximates the generic meaning. It is defined as "the motor vehicle described in this policy." It is possible, then, that the described automobile could include a motorcycle or motor scooter.

In the garage liability policy, the term "automobile" has a uniquely broad meaning. The term includes "a land motor vehicle or trailer, other land equipment capable of moving under its own power, equipment for use therewith, and animal drawn equipment." Here an automobile could be private passenger, a truck of any kind, a bulldozer, a house trailer, a self-propelled combine, and even a farm wagon. The reason for the broad definition, however, is not difficult to determine. This policy is designed for a type of business in which many different types of equipment could involve the insured in legal liability. The least complicated approach would be that of defining the term "automobile" with a broad rather than a restricted meaning.

In those policies that are normally included in the category of general liability,[6] a definition of the term "automobile" is necessary because automobile liability is excluded completely or is excluded in cases in which an accident occurs away from the premises or the ways immediately adjoining the premises. These contracts must be specific with respect to what is excluded. In the comprehensive personal liability policy an automobile is defined as "a land motor vehicle, trailer or semitrailer; but the term 'automobile' does not include, except while being towed by or carried on an automobile, any of the following: any crawler or farm-type

[5] This is the traditional contract used today for the insuring of many types of private passenger automobiles as well as trucks, buses, etc.

[6] These are mainly contracts involving liability arising from premises-operations, such as the owners', landlords' and tenants', manufacturers' and contractors', comprehensive general, comprehensive personal and comprehensive personal farm liability policies.

tractor, farm implement or, if not subject to motor vehicle registration, any equipment which is designed for use principally off public roads."[7] Here the term "automobile" must be interpreted in much the same manner as in its generic use. While a farm-type tractor and a self-propelled golf cart would be covered, motorcycles and motor scooters will be excluded.

In the older general liability insurance policies involving liability insurance for business operations, the term "automobile" was defined as "a land motor vehicle, trailer, or semitrailer." The definition also encompassed, and thereby excluded from coverage, certain types of mobile equipment while being operated on streets and highways solely for purposes of locomotion, such as a power shovel with wheels and rubber tires, even though this equipment was not designed to be used on roads and streets.

Recently, however, some rather substantial changes were made in the general liability contracts and one of these was a new definition of automobile. It is now defined as "a land motor vehicle, trailer or semitrailer designed for travel on public roads (including any machinery or apparatus attached thereto), but does not include mobile equipment." Mobile equipment, which includes most of that used by a building or road contractor, will now be covered in its entirety[8] under general liability policies and not partially under general liability and partially under automobile-liability contracts, as was the case under the former definition. The new definition has the result of bringing the meaning of the term "automobile" in general-liability contracts more in line with the generic definition of the term.

Two recent changes in the automobile medical-payments and uninsured-motorists coverages involve a change in the traditional definition of the automobile. First, in the customary automobile medical-payments insurance, indemnity was formerly payable to the insured who sustained bodily injury while occupying an owned automobile, while occupying certain non-owned automobiles, and through being struck by an automobile. In the family automobile policy, for example, the term "automobile" would be comparable with the generic use of the term, and could exclude a motorcycle. By means of a specific exclusion, however, the medical-payments coverage on the owned automobile would not be appli-

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[7] This definition is similar to that in the comprehensive personal farm liability policy.

[8] However, automobile insurance must be utilized for legal liability arising in those cases in which such equipment is carried on or towed by an automobile, even under the new definition.

cable for bodily injury sustained while occupying an automobile owned by a relative who is a resident of the named insured's household. This would mean that should the father have medical-payments coverage on his automobile, this coverage would not be applicable to the father while he is occupying his son's uninsured automobile. Nor would the son have any coverage from his father's insurance for injuries sustained while he was occupying his own automobile. But if the son should purchase a motorcycle, and while operating the vehicle, be struck by an automobile, indemnity for his bodily injuries could be recovered under his father's medical-payments insurance. The exclusion would not apply because he was not occupying an automobile. This may have all the appearances of complete absurdity, and insurance adjusters may argue that this was never intended. However, a greater degree of precision in definition could have avoided this complication.

The result is essentially the same in the traditional uninsured-motorists coverage. For example, if the son in the above example were operating his uninsured motorcycle and was struck by an uninsured automobile, he could collect indemnity under his father's uninsured-motorists insurance in spite of the fact that this insurance is not applicable to an automobile or trailer owned by a resident of the same household as the named insured. A motorcycle may not be an automobile. If so, the son was not occupying an automobile.

In order to avoid this apparently unintended result, the new insuring agreements for medical-payments and uninsured-motorists insurance exclude coverage for bodily injuries sustained while occupying a *highway vehicle* owned by any insured. The medical-payments insurance also limits coverage through being "struck by a highway vehicle" only to the insured in his status as a pedestrian. A "highway vehicle" is defined as a "land motor vehicle or trailer." Since the definition is broader than the term "automobile," it follows that it could include a motorcycle. This would then exclude coverage for the son in the above examples. Since it is contemplated that all automobile policies containing coverage for medical payments and uninsured motorists will eventually contain these new insuring agreements, this will eliminate a source of payments in many existing policies that could become widespread because of the growing popularity of motorcycles.

IV. TEMPORARY SUBSTITUTE AUTOMOBILE

All three automobile policies referred to previously provide coverage beyond the owned or described automobile, for the use of a "temporary substitute" automobile. In the family policy the term

"temporary substitute" is defined to mean, "any automobile or trailer, not owned by the named insured, while temporarily used with the permission of the owner as a substitute for the owned automobile or trailer when withdrawn from normal use because of its breakdown, repair, servicing, loss or destruction." The definitions in the special and the basic policies are essentially the same, except that in the special policy a temporary substitute cannot include an automobile owned by the named insured or any resident of the same household.[9]

The major concern here is the interpretation of that portion of the definition of a temporary substitute automobile involving "any automobile." Just how far will this concept extend? If the named insured, for example, should borrow a mix-in-transit cement truck to use temporarily while his own automobile is being repaired, would this truck be a temporary substitute and would all the coverages on the owned automobile, including comprehensive and collision, be applicable to the truck? The answer is "Yes." As long as the temporary substitute vehicle falls within the definition of the term "automobile," coverage will be applicable.

In our analysis of the cases involved, and in the absence of a definition to the contrary, "temporary substitute automobile" falls within the generic meaning of the term "automobile." For example, in the case of *Mittelsteadt v. Bovee* referred to above, the specific question involved a motorcycle. Here the defendant's automobile was temporarily out of service for repairs, and the defendant was using a motorcycle to make a trip because of the unavailability of his automobile. The court referred to the use of the term "automobile" in all sections of the defendant's insurance policy and concluded that "the motorcycle is not an automobile as defined under the terms and definitions contained in the policy, and therefore fails to qualify as a temporary substitute automobile." The court also reaches the same conclusion in the *Paupst v. McKendry* case mentioned above.[10]

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[9] In the family and the basic policies, an automobile owned by a resident relative could be a temporary substitute.

There are differences in the application of the insurance coverage to the temporary substitute automobile, even though the definitions are essentially the same. For example, in the family and special policies, all coverages on the insured automobile, including physical damage, will apply to the temporary substitute automobile as excess insurance. But in the basic policy, only the liability and medical payments coverages would be applicable to the temporary substitute.

[10] Here the court even held that the use of the words "motor vehicle" in defining the automobile covered did not extend the ordinary meaning to include a motorcycle. It pointed out that the operation of

It is reasonable to assume that if the definition of "temporary substitute" includes *any automobile*, then any motor vehicle that qualifies under the generic meaning of the term can be a temporary substitute automobile. A case in point is *Brown v. Security Fire & Indem. Co.*[11] in which the court held that a sawmill truck used temporarily as a substitute for the insured automobile was a temporary substitute automobile.

In most of the cases in which the definition of a temporary substitute automobile has been involved, the most important question has been that of what constitutes "withdrawal from normal use because of its breakdown, repair, servicing, loss or destruction." Does a flat tire constitute breakdown of the insured automobile? This was the specific question in *Caldwell v. Hartford Acc. & Indem. Co.*[12] Here the court held that an automobile belonging to the wife of the insured was a temporary substitute automobile within the meaning of the provisions of his policy when he used the car to make a trip because his own automobile had a flat tire. In *Atlantic Ins. Co. v. Gonzalez*, however, an automobile was not a temporary substitute where the insured automobile was not in good running order and was left at home for the owner's son to drive around town.[13] And an automobile which a son hoped to purchase to replace his own car which had not been in operating condition for a considerable time was not a temporary substitute automobile within the terms of the policy issued to the father covering the family automobile.[14] In other cases involving the same question, the courts reach essentially the same conclusions.[15]

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motorcycles entails a greater danger of accident than an ordinary automobile and that it was unlikely that the insurer intended to assume such a risk.

In a few decisions, however, of which Hartford Acc. & Indem. Co. v. Come, 100 N.H. 177, 123 A.2d 267 (1956), is an example, the court held that a motorcycle was an automobile in a policy that incorporated by reference the Financial Responsibility Act of a state. The act used the term "motor vehicles" and the court said that the term "automobile" must be construed as equivalent to the statutory words "motor vehicle" and hence a non-owned motorcycle would be covered by the policy, although there was no coverage of the insured's own motorcycle.

11 244 F. Supp. 299, 304 (D. Va. 1965).

12 248 Miss. 767, 776-77, 160 So. 2d 209, 212-13 (1964).

13 358 S.W.2d 716 (Tex. Civ. App. 1962).

14 Ellis Elec. Co. v. Allstate Ins. Co., 153 So. 2d 905, 909 (La. Ct. App. 1963).

15 See Grundeen v. United States Fid. & Guar. Co., 238 F.2d 750, 753 (8th Cir. 1956); Densmore v. Hartford Acc. & Indem. Co., 221 F. Supp. 652, 654 (W.D. Pa. 1963); Central Nat'l Ins. Co. v. Sisneros, 173 F. Supp. 757 (D.N.M. 1959); Safeco Ins. Co. of America v. Banks, 275 Ala. 119, 122, 152 So. 2d 666, 670 (1963); Iowa Mut. Ins. Co. v. Addy, 132 Colo. 202,

V. NON-OWNED AUTOMOBILE

All automobile policies provide in some measure that the insurance coverage on the owned or described automobile will be applicable for legal liability arising from the insured's operation or occupancy of a "non-owned automobile." A non-owned automobile is customarily defined as "an automobile or trailer not owned by or furnished for the regular use of either the named insured or any relative, other than a temporary substitute automobile." Both the family and the special policies also require that the non-owned automobile 1) be operated with the permission of the owner and 2) that it be operated within the scope of the permission granted. Few court decisions are available for the interpretation of the term because the policies are relatively precise in their definitions and exclusions.

A problem that sometimes arises concerning interpretation of the contract provisions is one that some insurance adjusters refer to as "pyramiding of the insurance coverage." This concerns the application of the insurance coverage, for example the liability limits, from the owned automobile or automobiles to legal liability arising from the operation of a legitimate non-owned automobile. In the experience of the author there is some confusion among adjusters and others in this application of the insurance to a non-owned automobile. While this does not involve a legal interpretation of the meaning of non-owned automobile, it is a feature of the automobile insurance policy about which there should be no excuse for misinterpretation.

As an example, let us assume that the insured owns three automobiles and that he has purchased 50/100/50,000 dollar limits of liability insurance on each automobile, all from the same insurance carrier. He borrows an automobile from a friend and the friend has 50/100/50,000 dollar limits of liability coverage also. While operating the non-owned automobile, the named insured sustains a serious accident for which he is legally liable. The primary insurance will be that on the friend's automobile. In both the family and the basic policies the total of all three limits on the owned automobiles will be applicable to the accident as excess insurance. There is nothing in the policies that will prevent the application of the limits in this manner. This is not an unjustified pyramiding of the insurance as some uninitiated adjusters would be inclined to be-

286 P.2d 622 (1955); Davidson v. Firemen's Fund Indem. Co., 4 App. Div. 2d 759, 760, 165 N.Y.S.2d 598, 600 (2d Dep't 1957); Ranson v. Fidelity & Cas. Co., 250 N.C. 60, 64, 108 S.E.2d 22, 25 (1959); Lewis v. Bradley, 7 Wis. 2d 586, 591-92, 97 N.W.2d 408, 411-12 (1959); DeMarco v. Lumberman's Mut. Cas. Co., 153 So. 2d 594, 597 (La. Ct. App. 1963).

lieve.[16] The only instance in which the so-called pyramiding of coverage would be inapplicable would be one in which the named insured operates an owned uninsured automobile or an automobile owned by a relative residing in his household. Because the definition of non-owned automobile excludes automobiles owned by the named insured or relatives residing in his household, it is obvious that if the insured has three automobiles and has liability insurance only on one car, this coverage would not be applicable to an accident arising in the operation of either of the other two automobiles.

In the absence of a definition of the term "automobile," it is reasonable to assume that a non-owned automobile must fall within the generic meaning of the term. Therefore, in the family automobile policy, a motorcycle perhaps could not be a non-owned automobile. Under certain circumstances, however, a truck could be a legitimate non-owned car. For example, if the named insured borrows a two-ton truck and uses this vehicle for non-business purposes, the truck will be a legitimate non-owned automobile and the liability and medical payments coverages from his owned automobile will apply in an accident involving the truck.

There are a few decisions involving the question of ownership versus non-ownership. In *Garlick v. McFarland*,[17] the court held that an automobile technically may be considered non-owned until title is vested either as legal owner or as registered owner. The words "owner" and "ownership" as used in an automobile liability policy are to be construed and applied as those words are defined in statutes relating to title to automobiles, in the absence of language in the policy prescribing a different meaning for such terms. This same conclusion appears to be the majority opinion in other cases involving the question of ownership.[18] Thus an automobile for which the entire consideration has been paid to the seller who gave possession thereof to the buyer was a non-owned automobile under the buyer's liability policy extending coverage to the operations of a non-owned automobile by the named insured or any rela-

[16] Because of a condition in the special automobile policy, there is a restriction of the application of the insurance from an owned automobile to a non-owned automobile. Here, if the insurance coverage on the three owned automobiles was in the same insurance carrier, then only the highest applicable limit of liability or benefit under one policy would be applicable to the non-owned car.

[17] 159 Ohio St. 539, 544-46, 113 N.E.2d 92, 95 (1953).

[18] See Matsuo Yoshida v. Liberty Mut. Ins. Co., 240 F.2d 824, 827 (9th Cir. 1957); Phoenix Ins. Co. v. Guthiel, 2 N.Y.2d 584, 587-88, 141 N.E.2d 909, 912 (1957); Pioneer Mut. Comp. Co. v. Diaz, 178 S.W.2d 121, 123 (Tex. Civ. App. 1943); Oil Base Inc. v. Transport Indem. Co., 143 Cal. App.2d 453, 463-64, 299 P.2d 952, 959 (1956).

tive, where the seller had not signed a transfer on the certificate of title and no new certificate of title to the automobile had been issued to the buyer.[19] And an automobile which an unemancipated and unmarried minor had purported to purchase and which he was driving when he became involved in a collision while returning it to the seller pursuant to his father's directions was a non-owned automobile within his father's automobile liability policy covering the family automobile.[20]

A few cases involving non-owned automobiles have been concerned with the definition of the term "relative." A problem arises because of the exclusion of automobiles owned by a relative in the definition of "non-owned automobile." While the cases are not necessarily conclusive, it would appear that the definition of a "relative" as "one related to and a resident of the named insured's household" will be applied literally. Thus, in *Carr v. Home Indem. Co.* the court stated that an automobile belonging to the insured's brother, who was a member of her household, was not covered by her policy as a non-owned automobile.[21] And in *American Cas. Co. v. Crook*,[22] the court held that a brother-in-law who had resided in the insured's household for several months in 1959 but only three or four days before the named insured's son was involved in an accident while driving his uncle's automobile was not a resident of the household. Therefore, to the son the uncle's automobile would be a legitimate non-owned automobile.

VI. AUTOMOBILE FURNISHED FOR REGULAR USE

Most automobile insurance contracts provide coverage for liability arising from the use or maintenance of non-owned automobiles, but with a number of important qualifications. Perhaps the most important restriction, and the one causing the most difficulty, is the exclusion of coverage for automobiles furnished for the regular use of the named insured or a relative. In the family automobile policy, a non-owned automobile does not include one "furnished for the regular use of either the named insured or any relative." The framers of the special automobile policy were more precise in their exclusion. Here a non-owned automobile does not include one "furnished *or available for* the regular use of either the named insured or any resident of the same household."[23] Although

[19] Colbrese v. National Farmers Union Prop. & Cas. Co., 227 F. Supp. 978, 982 (D. Mont. 1964).

[20] Ellis Elec. Co. v. Allstate Ins. Co., 153 So. 2d 905, 910 (La. Ct. App. 1963).

[21] 404 Pa. 27, 170 A.2d 588 (1961).

[22] 197 F. Supp. 345 (S.D.W.Va. 1961).

[23] Emphasis added.

the insertion of the words "available for" adds clarity to the intent of the definition, the courts, as will be discovered later, have been inclined to interpret the exclusion in this manner even in the family and the basic policies. What constitutes "furnished for regular use" or "furnished or available for regular use" has long been a source of dispute. A number of court decisions have clarified some aspects of the problem, yet many issues still exist.

One of the most important interpretations of the expression has made the right of the insured to use an automobile determinative rather than the number of times he actually uses it. For example, the author is a member of the faculty of the University of Nebraska. The university has a fleet of automobiles, any one of which a faculty member may use in university business under certain circumstances. Is a university automobile then furnished for the regular use of a faculty member? If so, the faculty member's own automobile insurance contract would not be applicable to an accident involving the use of the university automobile. Is it necessary that the faculty member use the university automobile frequently for the exclusion to apply?[24] These questions may be answered with some degree of assurance. For example, in *Farm Bureau Mut. Auto. Ins. Co. v. Marr*,[25] the insured worked for a government office under the usual arrangement of using whatever automobile was available when he needed one. His own policy was held not to apply to an accident which occurred while he was driving a pool automobile. Therefore, any automobile available to the insured may be considered furnished for regular use. This means also that the automobile furnished does not need to be a specific automobile. A similar conclusion is reached in the older case of *Farm Bureau Mut. Auto. Ins. Co. v. Boecher*,[26] where the insured was employed by an automobile sales agency and had not previously driven the particular automobile involved in the accident. The same result was obtained in *Moore v. State Farm Mut. Auto. Ins. Co.*,[27] in which the insured drove some automobile regularly in his work, but not the same one each day. In each of these cases, the fact that some automobile was available to the named insured was held sufficient to make the particular one used at the time of the accident an automobile "furnished for regular use." This means that the right of use is apparently more important to the courts than the num-

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[24] Whether the automobile is or is not furnished for regular use could be an important problem to an employee in those instances in which the employer does not insure his automobiles.

[25] 128 F. Supp. 67 (D.N.J. 1955).

[26] 37 Ohio L. Abs. 553, 48 N.E.2d 895 (Ct. App. 1942).

[27] 239 Miss. 130, 121 So. 2d 125 (1960).

ber of times the insured actually used the furnished automobile.[28]

In *Voelker v. Travelers Indem. Co.*,[29] a federal appellate court held that even a military vehicle driven by the insured, a national guardsman, in the line of duty, must be considered to be furnished for his regular use, although he apparently had not driven that particular automobile previously. This case, however, went one step further, in that it also held that the insured's duties with the National Guard were a part of his business or occupation, although like most guardsmen, he had other regular employment, participating in guard activities once a week and during annual encampment. This decision could have an important bearing on the use of a non-owned automobile by the named insured for business purposes. Perhaps one may conclude that business purposes could include part-time activities, other than the insured's regular occupation, so long as they are activities which involve remuneration for their performance.

In some cases the court has possibly gone to an extreme in order to hold for coverage. But these cases have been few and far between. For example, in *Pacific Auto. Ins. Co. v. Lewis*,[30] the insured regularly drove an automobile of his employer during the day and was involved in an accident while using the same automobile, with special permission of his employer, on an errand that evening. The court held the employee's insurance coverage applicable on the ground that the automobile, although furnished for the regular use of the insured, was not being employed in this "regular use" at the time of the accident.

Most of the decisions have involved employer's automobiles furnished to employees. However, the "furnished for regular use" may also involve a personal relationship rather than that of employer-employee. For example, if an automobile belonging to a friend is made available for the insured to use at any time he needs the car, would this automobile be one furnished for the insured's regular use? This could be the case, although there are few court decisions that have involved this situation. In *Lincombe v. State Farm Mut. Auto. Ins. Co.*,[31] an automobile which a dealer

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[28] See also Moore v. State Farm Mut. Ins. Co., 239 Miss. 130, 121 So. 2d 125 (1960); Rodenkirk v. State Farm Mut. Auto. Ins. Co., 325 Ill. App. 576, 60 N.E.2d 269 (1945); Dickerson v. Millers Mut. Fire Ins. Co., 139 So. 2d 785 (La. Ct. App. 1962).

[29] 260 F.2d 275 (7th Cir. 1958).

[30] 56 Cal.App.2d 597, 132 P.2d 846 (1943). See also Schoenknecht v. Prairie State Farmers Ins. Ass'n, 27 Ill.App.2d 83, 169 N.E.2d 148 (1960).

[31] 166 So. 2d 920, 924 (La. Ct. App. 1964).

furnished for her regular use until delivery of her new automobile was not considered one furnished for her regular use, but was considered to be a non-owned automobile. However, in a situation in which the insured had unrestricted use of his sister's automobile, for which he had temporarily exchanged his own (the insured) automobile for the sister's benefit, the court held that the sister's automobile was furnished to the insured for his regular use within the exclusion of the insured's policy.[32] And in *Campbell v. Aetna Cas. & Surety Co.*,[33] where a father received possession of an automobile for his regular use when he gave up possession of another automobile to his son, and he had no other automobile for the personal use of himself and his family, the automobile which the father was using was held furnished for his regular use. His policy was therefore not applicable to an accident which occurred while operating this automobile. In a similar decision, the court held that an automobile provided the insured for his regular use by his mother-in-law came within the exclusion of the policy excluding automobiles furnished for regular use of the named insured.[34] And in *Fidelity & Cas. Co. v. Johnson*,[35] where incident to purchase of a new automobile the insured sold an old car to his son for a nominal price as part of an understanding that the father could continue to use the automobile along with the son, the insurance company was held not liable to the insured for a loss suffered by the insured arising out of an accident which occurred while the insured's wife was operating the son's automobile, because the automobile was furnished for the regular use of the named insured.

While these decisions do not establish a precise set of criteria, they do suggest that a personal relationship involving the furnishing of an automobile may in some instances involve the exclusion of an automobile furnished for regular use of the named insured or a relative.

There is one additional situation in which the exclusion of automobiles furnished for regular use may apply, and this involves rented automobiles. Here the question arises as to whether a short-term rental amounts to regular use and is consequently subject to the furnished-for-regular-use exclusion. In the only decision to come to our attention, it was held that a three-week rental of an

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32 Hartford Acc. & Indem. Co. v. Hiland, 349 F.2d 376, 377, 378 (7th Cir. 1965).

33 211 F.2d 732 (4th Cir. 1954).

34 Aler v. Travelers Indem. Co., 92 F. Supp. 620 (D. Md. 1950).

35 134 F. Supp. 156 (D. Minn. 1955), *rev'd*, 238 F.2d 322 (8th Cir. 1956).

automobile did not constitute regular use.[36] Perhaps the casual renting of automobiles, *i.e.*, for one or two days on a business trip, vacation, and the like, does not constitute regular use. However, there may be a possibility that frequent rentals for extended periods such as several weeks could be interpreted as regular use and coverage thus excluded from the insured's own automobile policy.

VII. TRAILERS

Practically all automobile insurance contracts include trailers in their definition of the term "automobile." However, the definition of the term "trailer" either appears nowhere in the contract or the definition is somewhat inconclusive. For example, in the family automobile policy a trailer means "a trailer designed for use with a private passenger automobile, if not being used for business or commercial purposes with other than a private passenger, farm or utility automobile, or a farm wagon or farm implement while used with a farm automobile." This policy does not require that the trailer be attached to the automobile in order that coverage be applicable, except for the farm wagon and farm implement while used with a farm automobile. The term in the family policy then would include a house trailer and all the other vehicles that may be included in the concept of trailers, so long as they are designed to be used with a private passenger automobile. The special policy is more restrictive in its definition, in that only trailers of the utility type are included automatically. This has the effect of excluding home, office, store, display, or passenger trailers. Automatic coverage is applicable to utility-type trailers also, but only when the trailer is used with an insured automobile. The definition in the basic policy is similar to that of the special, except that there is no requirement in the basic that the trailer be used with the insured automobile. In the general liability policies, the term "trailer" is not defined at all. The definition of the term "automobile" includes a trailer or semitrailer designed for travel on public roads.

The automobile policies provide scant evidence of the physical nature of a trailer. In its generic meaning, Black defines trailer as "a separate vehicle, not drawn or propelled by its own power, but drawn by some independent power." He also defines a semitrailer as "a separate vehicle which is not driven or propelled by its own power, but which, to be useful, must be attached to and become a part of another vehicle, and then loses its identity as a

[36] Factory Mut. Liab. Ins. Co. of America v. Continental Cas. Co., 267 F.2d 818 (5th Cir. 1959).

separate vehicle."[37] These definitions have some merit, but do not define the terms with the degree of precision necessary for their application in automobile insurance contracts. For instance, would a concrete-mixing machine mounted on wheels and drawn behind a private passenger automobile be considered a trailer? If it is included in the meaning of a vehicle, then the answer could be "Yes," according to the generic definition. However, one could argue reasonably that it is not a vehicle. Its function certainly is not that of carrying or conveying persons or property, but that of making concrete. If the function of carrying persons or property is required (and this requirement seems reasonable) then a large sled towed by an automobile would come closer to being a trailer than the cement-mixing machine.

The little discussion of the physical characteristics of a "trailer" from court decisions has involved mainly an exclusion in the basic automobile policy, which states that the policy does not apply under the liability section of the contract "while the automobile is used for the towing of any trailer owned or hired by the insured and not covered by like insurance in the company; or while any trailer covered by this policy is used with any automobile owned or hired by the insured and not covered by like insurance in the company."[38] This exclusion is extremely important because, for example, if an insured should tow a trailer behind a truck in a business operation, not even the liability coverage on the truck would be applicable, unless the insured had purchased liability insurance on the trailer from the same company. It becomes important, then, to determine precisely the physical characteristics that make something a trailer.

The few court decisions available are quite helpful. They establish rather conclusively that an automobile being towed behind another automobile is not a trailer within the meaning of the exclusionary clause in the automobile policy. For example, in *Safeguard Ins. Co. v. Justice*,[39] the court held that there is nothing in the policy that states that a towed automobile is a trailer. It is not a trailer in common parlance. In another case, the court held that the towing of a temporarily disabled automobile to a repair shop did not fall within the exclusionary clause because a

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[37] BLACK, LAW DICTIONARY (4th ed. 1951).

[38] However, this exclusion is not applicable to utility-type trailers that are being towed by private passenger automobiles or being towed behind other types of automobiles and not being used for business purposes.

[39] 203 Va. 972, 128 S.E.2d 286 (1962).

disabled automobile is not a trailer.[40] In practically all the cases involving the towing of automobiles, the court was more concerned with the purpose of the towing rather than the physical characteristics of the object being towed. While the function of an automobile is that of carrying persons or property, it does not have this function if it is a racing car that is being towed to some place where it can perform its function of racing, nor does it have this function if it has broken down and is being towed to a garage for repairs. Thus, to be a trailer, one may conclude that, in the absence of definition to the contrary, the conveyance must have a use of transporting or carrying persons or property, and must not be towed with some other purpose in mind.

Several decisions involved specifically the towing of certain equipment behind an automobile. In one case,[41] a concrete mixer which was attached to a truck at the time of the injury was not a trailer within the exclusionary clause of the policy on the truck. And in *McConnell v. Underwriters at Lloyds of London*,[42] the court held that a portable air compressor was not a trailer, and also held that coverage was applicable from the truck policy when the air compressor came loose due to negligence and struck an approaching automobile. These cases support our general conclusion concerning the purpose or function of the object being towed. However, it is dangerous to consider the problem as settled, because in *Moffit v. State Auto Ins. Ass'n*,[43] a hay grinder mounted on four wheels while being drawn by a truck on a public highway was held to be a trailer within the meaning of the exclusionary clause of the automobile insurance on the truck. In spite of the *Moffit* decision, it seems reasonable that in order to be a trailer the object towed must serve the primary function of transporting or carrying persons or property.

Problems may arise in automobile insurance policies involving house or home trailers.[44] The few cases involving the definition of a house trailer are not conclusive. In *Maryland Cas. Co. v. Hoff-*

[40] Littlefield v. Phoenix Indem. Ins. Co., 86 N.H. 87, 163 Atl. 420 (1932). See also Eastern Trans. Co. v. Liberty Mut. Cas. Co., 101 N.H. 407, 144 A.2d 911 (1958).

[41] Maryland Cas. Co. v. Aguayo, 29 F. Supp. 561 (S.D. Cal. 1939).

[42] 16 Cal. Rptr. 362, 365 P.2d 418 (1961).

[43] 140 Neb. 578, 300 N.W. 837 (1941).

[44] It is important to determine whether a vehicle is or is not a house trailer, because both the special and basic policies do not provide automatic liability and medical payments coverage for house trailers. And in the family policy, coverage automatically is provided. However, medical payments coverage would not be applicable when the vehicle becomes located as a residence or premises.

man,[45] the court concluded that whether a trailer is a "home trailer" within the automobile policy depends not upon the size of facilities of the trailer but on whether the trailer is the dwelling place of a person or persons, and the trailer does not become a home merely because such person stays there only two or three nights a year. And in *Pothier v. New Amsterdam Cas. Co.*,[46] it was held that an automobile liability insurance policy covering a trailer does not cover a trailer of sufficient size for living purposes, which is fully enclosed, equipped with a window and door, furnished with a cot, and obviously designed for the comfort of the occupants, although it contains no facilities for cooking or eating. Here the court was more interested in the physical characteristics of the vehicle than in the use of it as in the *Maryland* case. In a third case, the court was concerned both with the physical characteristics and with the use of the vehicle. Here, in *Maryland Cas. Co. v. Hoffman*,[47] the insured had a small trailer with windows, containing a bed, cooking equipment, and other furnishings. He used it on a trip primarily to carry baggage, not cooking in it, and sleeping in it only occasionally. In an action involving a medical-payments claim for injuries incurred while the trailer was being used for sleeping purposes, the court held that the vehicle was a camp trailer and not a home trailer, and hence the claim was covered.

While these cases still leave considerable doubt as to the definition of a home trailer, they at least provide evidence that either the physical characteristics of the vehicle or the actual use at the time of the accident will be important determining factors.

VIII. THE EQUIPMENT OF THE AUTOMOBILE

One of the most perplexing problems in automobile insurance today is that of determining the equipment that may be considered a part of an automobile. Automobile policies all provide in the definition of the term "automobile" that equipment of the automobile is included. For example, in the family automobile policy the term "automobile" is defined in the physical-damage section of the contract as "the automobile, including its equipment." In the basic automobile policy the definition of the term is somewhat more meaningful. Here the term "automobile" includes its equipment and other equipment permanently attached thereto. In general liability contracts the term "automobile" is defined to include any machinery or apparatus attached thereto. In none of these, how-

[45] 75 Ariz. 103, 252 P.2d 82 (1952).

[46] 192 F.2d 425 (4th Cir. 1951).

[47] 75 Ariz. 103, 252 P.2d 82 (1952).

ever, is the term "equipment" actually defined.

It should be obvious that substantial differences of opinion will arise in an attempt to determine precisely what equipment is or is not included. As mentioned above, the basic policy, which is the oldest of the three contracts included in this discussion, provides more evidence of the meaning of the term than the others, in that it specifies not only equipment but *other equipment permanently attached thereto.* For example, it is possible that the jack, the chains, and car tools would be considered as equipment. In addition, since the radio and the stereo are permanently attached to the car, they would also be equipment. A camper unit attached to a truck body could also be equipment of the automobile, as well as the equipment of a mix-in-transit cement truck, well-drilling equipment, and the like. In the later policies, *i.e.*, the family and the special auto policies, the phrase "other equipment permanently attached thereto" has been deleted. Does this mean that the framers of these contracts intended the term "equipment" to be broader or narrower than its use in the basic automobile policy?

The few court decisions available provide us with little guidance. For example, in *Old Colony Ins. Co. v. Kolmer*,[48] the court held that the theft of a rectifier used in charging the battery of an electric automobile was covered, notwithstanding the fact that the rectifier was not attached to the automobile nor carried with it, but was kept in the garage. Here the court considered the term "equipment" to include anything needed for efficient action or service. In *State v. Royal*,[49] the court ruled that a jack is equipment within the meaning of the term "automobile." And in *Banks v. St. Paul Fire & Marine Ins. Co.*,[50] the court went so far as to include a tarpaulin used to cover the cargo on a truck as equipment of the truck. It should be noted, however, that the loss occurred when the tarpaulin was stretched over the load of the truck. In the case of *Moore v. American Ins. Co.*,[51] the court held that the policy did not cover a concrete mixer installed on the chassis of a truck after issuance of the policy. Here the court said that the term "its equipment and other equipment permanently attached thereto" meant equipment permanently attached at the time of the issuance of the policy. The court would perhaps have

[48] 78 Ind. App. 479, 136 N.E. 51 (1922).

[49] 66 N.M. 416, 349 P.2d 332 (1960).

[50] 131 Neb. 266, 267 N.W. 454 (1936).

[51] 81 Ga. App. 219, 58 S.E.2d 197 (1950). See also Drexler Motor Co. v. Bruce, 95 So. 2d 207 (La. Ct. App. 1957); Boston Ins. Co. v. Wade, 203 Miss. 469, 35 So. 2d 523 (1948).

considered it equipment had the concrete mixer been on the truck at the inception of the contract. The other cases involved damage to or destruction of parts and equipment removed from automobiles in cases in which the automobiles were torn down for repairs. These parts were held to be covered regardless of a requirement that the equipment be permanently attached to the automobile.[52]

From these decisions one may conclude that equipment needed for the efficient action or service of the automobile, and other equipment that is permanently attached thereto, may be considered part of the automobile. While they do provide some evidence of the nature of equipment, a rigorous, clearcut definition is still lacking. Equipment obviously would include articles such as tire-changing tools, spare tires, tire chains, floor mats, and the like. With respect to trucks, however, it is doubtful that shovels, chutes, and articles used in the loading and unloading of the truck would be considered equipment necessary to the operation of the truck. As to the number of tools and spare tires, some difference of opinion exists. For example, if the insured had all the tools in the trunk of his car necessary to take the motor apart and put it back together, would all the tools be considered equipment of the automobile? If we adhere to the requirement that the term "equipment" includes only those articles that are necessary to the action or service of the automobile, then only a part of the tools would be included, perhaps only those customarily kept by an automobile operator in his car. This would appear to be a reasonable approach. And with respect to spare tires, how many would one include as equipment of the automobile? In some areas of the country one could expect to have one normal spare tire and perhaps two snow tires. In this circumstance, three spare tires would be necessary for proper operation of the automobile. However, one may argue that four or five would also be desirable. Some insurance adjusters would pay for only three, while others would pay for more. There is no clearcut criterion.

In determining the equipment of an automobile, there is an important insurance coverage situation with respect to insurance contracts other than automobile insurance. If the equipment involved is not to be considered equipment of the automobile, then it must be considered personal property that may be insured under a "contents" coverage in another type of insurance policy such

[52] See Trantham v. Canal Ins. Co., 220 F.2d 752 (6th Cir. 1955); David B. Kaplus, Inc. v. Home Ins. Co., 26 N.J. Super. 163, 97 A.2d 509 (Super. Ct. 1953); Steiker v. Philadelphia Nat. Ins. Co., 11 N.J. Super. 55, 77 A.2d 513 (Super. Ct. 1950).

as a homeowner's contract. For example, if the insured has seven spare tires that are stolen and the automobile insurance adjuster considers only three to be equipment of the automobile, then the other four will be paid for under the insured's homeowner's policy. This latter policy has a specific exclusion of automobiles. On the other hand, should the adjuster consider the four tires not part of the automobile, their loss would not be excluded in the homeowner's policy. Or if the adjuster does not consider the cartridges used in the stereo player attached to the automobile as equipment of the automobile, their loss could be covered under a homeowner's policy. It is also possible that a camper unit which is removed from a truck might be considered no longer part of its equipment, and after removal it would be considered personal property covered under the homeowner's policy.

Some adjusters attempt to determine a criterion in terms of the use of the article. If it can be used both on the automobile and in the home, it is not considered to be equipment of the automobile. A whisk broom, or records that can be played both on the automobile's record player and on the home record player would not be considered equipment of the automobile. On the other hand, an automobile camper unit, the cartridges for the stereo, a rear-view mirror, and a bumper jack would have little if any reasonable utility in or about one's home. This criterion may be the result of pure expediency. However, it does provide a reasonable approach to the problem of determining the policy which will provide coverage.

Most insurance adjusters today will consider equipment permanently attached to the automobile to be equipment, and coverage will be provided for damage to or destruction under the automobile policy. Examples would include the car radio, the stereo player, air-conditioning equipment, camper units, well-drilling equipment, and the like. Normally the existence of the well-drilling equipment mounted on a truck or a camper unit so mounted would not pose any substantial problem for the insurance company because here the physical damage insurance on the truck will be written on a stated-value basis. This means that the value of the equipment must be included along with the value of the truck if the insured desires complete physical damage coverage. And if the value of the equipment is included in the stated amount of insurance, then generally the equipment is insured whether it is on or off the truck. In the case of other equipment permanently attached to the automobile, such as the car radio, it appears that it would still be insured under the automobile insurance if the radio were temporarily removed for the purpose of repair.

There is perhaps some speculation and wishful thinking in the conclusions that we have drawn concerning the equipment of an automobile. However, until some more law can be developed, or until the formulators of the insurance contracts provide more precise definitions, the only approach is to attempt to establish reasonable criteria. More adequate definitions in the contracts would perhaps be best, because it is unlikely that litigation will arise in this area due to the fact that the relatively small values generally involved do not justify litigation.