

SPECIAL REPORT

LIABILITY COVERAGE FOR OWNED AND NON-OWNED TRAILERS

(12-05-08)

This Special Report was written by Daniel P. Hale, J.D., CPCU, ARM, CRM, LIC, AIC, AIS, API of Marsh & McLennan Agency LLC. Mr. Dan Hale can be contacted at 734-525-2429 or dhale@mma-mi.com. More Special Reports are available at www.mma-mi.com.

How exactly will my auto insurance respond if I get into an accident while pulling a trailer?

Does it make a difference if I drive a company car and am pulling my personal trailer?

Can my company be sued as well?

Will my employer's auto insurance policy cover me?

Will my personal auto insurance cover my employer?

Unfortunately, runaway trailers are all too common in the world of auto accidents. In most cases, the operator fails to adequately secure the trailer to the vehicle which allows the trailer to break free and cause a head-on, high-speed collision with a vehicle traveling in the opposite direction.

The purpose of this Special Report is to first review the reality of trailer exposures and then to analyze the various insurance provisions related to the use of own and non-owned trailers.

The following is a summary of just a few of the major trailer accidents that occurred across the United States between April and August of 2008, a mere five month period. These cases illustrate the importance of having well-written insurance policies and high liability limits.

**“Trailer Becomes Unhitched, Causes Accident;
Motorist and Passenger Die”**

July 21, 2008

Tecumseh, Oklahoma

A man was killed Monday afternoon when his truck hit a loose trailer that became unhitched from another pickup. His passenger died hours later at an Oklahoma City hospital. The driver of a 2004 Chevrolet pickup pulling a 15-foot trailer was eastbound while two other vehicles, a 1988 Dodge Dakota pickup and a 1995 Dodge Intrepid, were westbound. Police said the trailer on the pickup detached and entered the westbound lane. The trailer was struck by the Dodge pickup. The Intrepid attempted to avoid hitting the Dodge pickup and ended up hitting the trailer. One driver was pronounced dead at the scene from massive head, internal and external injuries. Witnesses say he was pinned in the wreckage for about one hour before being freed by firefighters. A Medi-Flight helicopter ambulance landed on the highway and transported the other driver to Oklahoma City, where he was admitted in critical condition with head, arm, leg, internal trunk and external injuries. The second driver died later that evening. The driver of the vehicle pulling the trailer was not hurt.¹

**“3 Hurt as Landscaper’s Trailer
Detaches, Hits Car”**

August 12, 2008

Chicago, Illinois

A man and two children were taken to the hospital on Tuesday afternoon after a landscaping trailer became detached from a pickup truck and smashed into their Chevrolet Camaro. The accident occurred after 3 p.m. in the eastbound lanes of 119th Street. The pickup truck in the westbound lane became separated from the trailer it was towing. The trailer, which held a landscaping vehicle, rolled into the other lane and collided with the Camaro. A 31-year-old man and two children, ages 12 and 7, were injured. The driver of the pickup truck was cited with failing to secure a load and other moving violations, officials said.²

**“Camper Crash Slows Traffic
on Turnpike”**

August 11, 2008

Portland, Maine

Traffic along the Maine Turnpike was slowed Monday afternoon after a camper trailer broke free from the SUV that was towing it and slid to a rest in the median. The driver of the SUV lost control of the 1995 Ford Bronco he was driving, causing the 27-foot camper trailer to swerve and break away from the truck. The camper rolled over onto its side and came to a rest in the median and left lane of the turnpike.³

**“Road Closes as Trailer Collapses
Utility Pole”**

*August 9, 2008
Jamestown, New York*

A runaway horse trailer sheared a utility pole in half. Police said the Ford pickup pulling the trailer was driving east on Route 62 towing an empty horse trailer when he hit a bump and the trailer broke loose. The trailer crossed the center line and struck the utility pole.⁴

**“Woman Hurt When Loose Trailer
Causes Crash on I-90”**

*May 10, 2008
La Crosse, Wisconsin*

A small utility trailer pulled by a pickup truck on westbound Interstate 90 became detached, traveled through the median, hit a guardrail on eastbound I-90 and was struck by a car about 7:45 a.m. Friday. The driver was taken to the hospital in critical condition.⁵

**“Pickup Towing Trailer Loses
Control, Kills Child”**

*July 25, 2008
Boise, Idaho*

A 17 year-old boy was headed to a cross country camp when a truck pulling a trailer lost control and smashed into the car he was riding in. The impact killed him and sent five others to the hospital – including two of his classmates. Idaho State Police said a Dodge Durango was pulling a trailer when the driver lost control and jackknifed. He smashed into a Subaru, killing the boy and also ran into a van. Five people were taken to the hospital.

**“Teen Hurt When Loose U-Haul
Trailer Slams Car”**

July 24, 2008

Prices Corner, Delaware

Delaware State Police say a local teen is in serious condition after a trailer came loose and hit the teen's car. According to police, a 24-year-old driver was hauling a cargo trailer on Route 2 when the trailer came loose at about 11 a.m. Police say the trailer hit the 17-year-old's Hyundai Elantra in the westbound lanes of Route 2. Emergency crews had to free the teen from the car and took him to a local hospital in serious condition. Police say the operator has been cited with operating an unsafe motor vehicle.

**“Two Confirmed Dead in
Ohatchee Trailer Wreck”**

June 27, 2008

Etowah, Alabama

Two individuals are confirmed dead as the result of a trailer accident. Reports from the scene indicate the victims were driving eastbound in the vicinity of a pickup truck pulling a utility trailer. Witnesses said the trailer came loose from the pickup. The victims swerved to avoid hitting the trailer and ran off the bridge and into the water. It was unclear if the victims were killed in the wreck or drowned. The Etowah County Sheriff's Department dive team was called to assist local police in searching for victims. The bodies of a male driver and female passenger were pulled from the water.⁶

**“Trailer Breaks Loose, Kills
Eastbound Motorist”**

June 18, 2008

Jackson, Mississippi

An eastbound motorist died this afternoon after her vehicle was hit head-on by a trailer that had come loose from a truck and crossed the median. The accident happened after a trailer broke loose from a westbound Ford F-150, crossed the median, and hit the woman's Toyota in the eastbound lanes. The driver of the Toyota was pronounced dead at the scene.

**“I-84 Trailer Wreck Stalls
Rush Hour Traffic”**
June 10th, 2008
Treasure Valley, Idaho

A 21-year-old driver was traveling eastbound on I-84 in a white 2000 Ford F-250 Pickup when the flatbed trailer he was pulling came off of his vehicle and traveled through the median and struck a westbound semi trailer.

“Trailer Hauling Lumber Injuries Two”
June 3, 2008
Fulton, Mississippi

According to Fulton police the driver of a pick-up was hauling a trailer full of lumber when it came off the truck’s hitch and collided with a nearby vehicle. The victims were taken to the hospital in critical condition.⁷

**“North Carolina Man Killed
By Loose Hay Trailer”**
May 19, 2008
Camden, North Carolina

A Camden man was killed Saturday when a hay trailer came unhitched from an oncoming pickup and crossed the center line. The operator of the trailer was charged with misdemeanor death by motor vehicle.⁸

“3 Families, 2 Tragedies...Another Loose Trailer Wipes Out a Family”
May 20, 2008
Boise, Idaho

A Saturday morning crash claimed the life of a father and his two daughters – ages 8 and 4. Another daughter, age 6, is in critical condition at the Pediatric Intensive Care Unit at St. Luke’s Regional Medical Center in Boise. The three girls were spending time with their dad Saturday – headed to a church service project at a local cemetery. Police say a trailer carrying pipe came loose from the vehicle pulling it and hit the victim’s car and sending them off the road and into a creek. The pickup pulling the trailer was being operated by an 18-year-old driver.

**“Former Councilman Hurt in
Trailer Crash”**

May 27, 2008

Fredericksburg, Maryland

A former city councilman was taken to the hospital this morning after a landscaping trailer came loose from its truck, crossed into oncoming traffic, and hit his car head-on. The mechanism that connected the trailer to the truck went through the victim’s windshield, and the trailer body ended up on the hood of his car. The 24-year-old driver of the truck was charged with having an expired inspection for the trailer, defective brakes on the trailer, defective equipment and not wearing a seatbelt. The vehicle and trailer are owned and operated by his employer, Commonwealth Irrigation and Landscape.⁹

**“Runaway Trailer Causes Serious
Injury to Local Youth”**

March 27, 2008

Seagoville, Texas

On March 24, 2008, a local Crandall student was headed westbound on 175 delivering pizzas. Witnesses say a trailer that was attached to a vehicle heading eastbound, came loose and plowed across the median striking the car on the driver’s side. The student suffered severe injuries.¹⁰

**“Millville Man Dies When Trailer
Hits His Pickup”**

March 27, 2008

Maurice River Twp., New Jersey

A Millville man died as the result of a freak accident after a trailer broke loose from a work truck and struck his vehicle. The victim was operating his blue 2002 Ford pickup on Route 47 when an enclosed Comcast trailer became separated from a 2008 white Ford bucket truck that was towing it. Lovell’s vehicle collided with the trailer and came to rest on its passenger side against a utility pole. The victim was pronounced dead at the scene.¹¹

POLICY LANGUAGE

The following is an analysis of the coverage provided for owned and non-owned trailers under the terms of the standard commercial and personal automobile insurance policies drafted by the Insurance Services Organization (“ISO”).

Actual policy language can vary great from the language of the standard policy forms. In order to determine your specific terms coverage, you should consult the particular policy in question.

COMMERCIAL AUTO POLICIES

Insuring Agreement

The insuring agreement of the standard commercial auto policy provides as follows:

We will pay all sums an “insured” legally must pay as damages because of “bodily injury” or “property damage” to which this insurance applies, caused by an “accident” and resulting from the ownership, maintenance or use of a covered “auto.”

* * *

Definition of an “Auto”

The first matter of business is to determine how the policy defines an “auto.”

“Auto” means:

1. A land motor vehicle, “**trailer**” or **semitrailer** designed for travel on public roads; or...

In this case, a trailer is considered an auto as long as it was designed for travel on public roads.

Definition of an insured

The second step in our analysis is to determine who, besides the “named insured”, qualifies as an “insured” under the policy.

The policy broadly defines an insured as any permissive user of an auto the named insured owns, rents, or borrows, with the exception of certain categories of individuals.

The following are “insureds”:

- a. You for any covered “auto”.
- b. Anyone else while using with your permission a covered “auto” you own, hire or borrow **except**:
 - (1) The owner or anyone else from whom you hire or borrow a covered “auto” This exception does not apply if the covered “auto” is a “trailer” connected to a covered “auto” you own.
 - (2) Your “employee” if the covered “auto” is owned by that “employee” or a member of his or her household.
 - (3) Someone using a covered “auto” while he or she is working in a business of selling, servicing, repairing, parking or storing “autos” unless that business is yours.
 - (4) Anyone other than your “employees,” partners (if you are a partnership), members (if you are a limited liability company), or a lessee or borrower or any of their “employees,” while moving property to or from a covered “auto.”
 - (5) A partner (if you are a partnership), or a member (if you are a limited liability company) for a covered “auto” owned by him or her or a member of his or her household.
- c. Anyone liable for the conduct of an “insured” described above but only to the extent of that liability.

In short, the following individuals are not insured under the commercial auto policy:

- We do not cover the owner of a car or trailer you rent or borrow but we will provide coverage if the rented or borrowed trailer is connected to a covered auto owned by the named insured.
- We do not cover your employees if the car or trailer was owned by the employee or anyone in his household.
- We do not cover anyone who is using your car or trailer and is working in the auto business unless that business is owned by the named insured.

- We do not cover anyone while they are moving property to or from a covered auto or trailer except for your employees, partners, members, lessee or borrower.
- We do not cover your partner for any auto or trailer owned by him/her, or a member or their household.

Definition of a Covered Auto

Our third step is to analyze the policy definition of a covered auto. At the time of policy application, the insured selects which autos are to be covered under the policy based on premium, the extent of their exposure, and most likely the advice of their insurance agent. In an effort to reduce premiums, insureds will often times select a more limited category of coverage which excludes coverage for certain vehicles.

The declaration page of the insurance policy will display the number 1 through 9 (which is also known as the coverage “symbol”) in order to indicate which category of autos the insured has selected. The coverage symbol used within the policy’s liability section governs the extent of coverage for a trailer.

For example, if Symbol 1 is listed under the liability section, the policy provides liability coverage for all auto and trailers, whether owned or non-owned, regardless of the load capacity. On the other hand, a symbol 3 would only provide coverage for “owned private passenger autos” which impliedly does not include a trailer.

In light of the forgoing example, it is somewhat confusing that Subsection C(1) of the policy would provide an additional coverage for trailers with a load capacity of 2,000 pounds or less. Some might suggest that this provision effectively limits liability coverage in all instances, even under Symbol 1 coverage, where the insured operates a trailer with a load capacity of 2,000 pounds or less. As explained below, this is not the case.

Subsection C provides, in relevant part, as follows:

C. Certain Trailers, Mobile Equipment and Temporary Substitute Autos

If Liability Coverage is provided by this Coverage Form, the following types of vehicles are also covered “autos” for Liability Coverage:

1. *“Trailers” with a load capacity of 2,000 pounds or less designed primarily for travel on public roads.*

2. “Mobile equipment” while being carried or towed by a covered “auto.”

* * *

The purpose of Subsection C is to automatically extend the policy’s liability coverage for certain types of autos without regard to whether they would otherwise be covered by virtue of the covered auto symbol that applies. If any liability coverage is provided under the policy, Subsection 1 will automatically extend liability coverage to trailers that have a load capacity of 2,000 pounds or less which are designed primarily for travel on public roads.

As discussed earlier, the policy’s definition of an “auto” is broad enough to include trailers and semi-trailers; therefore, if the policy includes Symbol 1 (any auto) for liability coverage, coverage would apply for any trailer regardless of size.

However, absent the C(1) extension, there is a possibility that liability coverage would not be available for trailers depending on the liability coverage symbol.

For example, consider an insured who purchases liability coverage on “owned private passenger vehicles only” (Symbol 3) and then purchases a utility trailer. The trailer is not a private passenger vehicle but it could easily be pulled by such a vehicle; without this policy provision, there could be a question as to whether the trailer is covered for liability insurance. If the trailer has a load capacity in excess of 2,000 pounds, even if it is being towed by a private passenger auto, one of the appropriate symbols that includes commercial autos (e.g., Symbol 1 for any auto, Symbol 2 for owned autos only, or Symbol 4 for owned commercial autos only) must be shown in the policy’s declarations before coverage will apply.

PERSONAL AUTO POLICIES

The personal auto insuring agreement is quite similar to the commercial provision and provides as follows:

Insuring Agreement:

We will pay damages for “bodily injury” or “property damage” for which any “insured” becomes legally responsible because of an auto accident...

Definition of “Auto” and “Trailer”

The standard personal auto policy defines a trailer as follows:

“Trailer” means a vehicle designed to be pulled by a:

1. Private passenger auto; or
2. Pickup or van.

“Your covered auto” means:

1. Any vehicle shown in the Declarations.
2. A “newly acquired auto.”
3. Any “trailer” you own.
4. Any auto or “trailer” you do not own while used as a temporary substitute for any other vehicle described in this definition which is out of normal use because of its:
 - a. Breakdown;
 - b. Repair;
 - c. Servicing;
 - d. Loss; or
 - e. Destruction.

This Provision (J.4.) does not apply to Coverage For Damage To Your Auto.

Based on this language, the standard personal auto policy covers any trailer owned by the insured whether scheduled on the policy or not, as well as non-owned trailers that are specifically listed on the policy.

Definition of an Insured

“Insured” as used in this Part means:

1. You or any “family member” for the ownership, maintenance or use of any auto or “trailer.”
- * * *
4. For any auto or “trailer,” other than “your covered auto,” any other person or organization but only with respect to legal responsibility for acts or omissions of you or any “family member” for whom coverage is afforded under this Part. This Provision (B.4.) applies only if the person or organization does not own or hire the auto or trailer.”

The policy will cover the named insured and any “family member” (as defined) for claims arising out of any trailer, even if that trailer is not listed on the policy. The policy also provides limited coverage for certain other individuals and entities with respect to legal responsibility for the negligence of the named insured or a family member.

Business Pursuits Exclusion

The policy excludes coverage for all claims arising out of any business pursuits, trade, profession or occupation.

We do not provide Liability Coverage for any “insured”:

Maintaining or using any vehicle while that “insured” is employed or otherwise engaged in any “business” ...

This Exclusion does not apply to the maintenance or use of a:

- a. Private passenger auto;
- b. Pickup or van; or
- c. “Trailer” used with a vehicle described in a. or b. above.

The business pursuits exclusion generally excludes coverage for *large* commercial trailers. The exclusion does not apply to the maintenance or use of a small trailer being hauled by a private passenger auto, pickup, or van. As long as the trailer is used with a private passenger auto, pickup, or van, even if it is being used for a business enterprise, the business pursuits exclusion would not apply.

SCENARIOS

I was using my personal car on personal time to pull my 39’ camping trailer that weighs 15,500 lbs. Both vehicles are titled in my personal name. The trailer came lose and caused an accident that resulted in bodily injury and property damage.

Will my personal auto policy provide me with liability coverage even though the trailer was not specifically listed on my auto insurance policy?

YES. The standard auto insurance policy automatically extends coverage to all trailers that the named insured or any resident family member owns.

What if I am hauling this trailer with my company car and that car is titled and insured in the name of the corporation? Am I covered personally?

NO. Assuming that you do not have a personal auto policy and that your company car was the only vehicle in your household, there is no coverage for your personal liability for any bodily injury or property damage arising out the negligent operation of the trailer.

On the other hand, if you do maintain a personal auto policy, that policy should extend liability coverage for your personal use of an owned trailer.

Can my employer be sued even though I was hauling a personal trailer?

YES. Your employer will likely be sued under the Michigan's owners' liability statute since it was the owner of the vehicle that was pulling the trailer.

Will my employer have liability coverage under their commercial insurance policy even though I owned the trailer personally?

MAYBE. Assuming that the company has Symbol 1 auto liability coverage, the company will be covered for any lawsuits arising out of the trailer accident.

Will my employers' auto insurance policy cover me personally if I am sued?

NO. Your employer's auto insurance policy specifically excludes coverage for employees who are operating vehicles that are owned by the employee or anyone in the household. Coverage will not extend personal coverage to you for the negligent operation of the vehicle or the trailer. Note: The "employees as additional insured" endorsement can be added in order to provide limited coverage.

Will my personal insurance cover my employer?

NO. Since the accident occurred on personal time, your employer is not vicariously liable for the negligent operation of a personally owned vehicle

and/or trailer. Even if the vehicle pulling the trailer was titled to and insured by your employer and you maintained a personal auto insurance policy for other vehicles in your household, that policy would not extend coverage to the employer since that employer owned the vehicle you were driving.

If I am using my personal trailer for a company marketing event, am I covered under my personal auto policy?

MAYBE. The policy excludes coverage for liability arising out of business pursuits. The exclusion does not apply to coverage for trailers that are capable of being pulled by a private passenger auto, truck or van. Therefore, personal coverage might apply depending on the size of the trailer. Coverage would be excluded if you were using the trailer as a “public or livery conveyance.”

If an employee is using their personal trailer for a company marketing event, is the company covered under their commercial auto policy for the liability arising out of the non-owned trailer?

MAYBE. This depends on the liability symbol used on the policy. See Exhibit A for a more detailed analysis.

My company owns a transport trailer with a load capacity of 16,000 pounds. The trailer is not listed as a schedule auto on the company’s auto insurance. Are we covered?

MAYBE. If the policy is written with a Symbol 1 for liability, there is coverage for any trailer, owned or non-owned, regardless of weight.

If the policy is written with a Symbol 2 for liability, there is coverage for a trailer of any capacity as long as it is owned by the named insured. Non-owned trailers are only covered while they are attached to a power unit owned by the named insured.

If the policy is written with a Symbol 3 for liability (“Owned private passenger autos only”), there is no coverage for either owned or non-owned trailers with a load capacity of over 2,000 pounds since the trailers do not qualify as a private passenger auto. There is coverage for owned and non-owned trailers with a load capacity of less than 2,000 pounds if designed primary for use on public roads.

If the liability coverage is written as a Symbol 4 (“Autos other than private passenger autos), there is liability coverage for all owned trailers but non-owned trailers would only be covered while attached to a power unit you own.

Finally, if liability was written as a Symbol 7, the policy would only cover owned trailers with a load capacity of less than 2,000 lbs. Non-owned trailers of any load capacity would only be covered while attached to any schedule power unit. This assumes the trailer is not one of the schedule vehicles.

CONCLUSION

Trailers present a number of serious liability exposures. Depending on the ownership, operator, hauling vehicle and weight of the trailer, coverage may or may not apply.

Exhibit A:
Trailer Coverage Under The Commercial Auto Policy

Symbol	Description	Owned Trailers Over 2,000 lbs.	Owned Trailers Under 2,000 lbs.	Non-owned Trailers Over 2,000 lbs.	Non-owned Trailer Under 2,000 lbs.
Symbol 1	Any auto	<i>Covered</i>	<i>Covered</i>	<i>Covered</i>	<i>Covered</i>
Symbol 2	Owned "autos" only	<i>Covered</i>	<i>Covered</i>	<i>Covered while attached to power units you own</i>	<i>Covered while attached to power units you own</i>
Symbol 3	Owned private passenger "autos" only	<i>Not Covered</i>	<i>Covered if load capacity is 2,000 pounds or less and designed primarily for travel on public roads</i>	<i>Not Covered</i>	<i>Covered if load capacity is 2,000 pounds or less and designed primarily for travel on public roads</i>
Symbol 4	Owned "autos" other than private passenger "autos" only	<i>Covered</i>	<i>Covered</i>	<i>Covered while attached to power units you own</i>	<i>Covered while attached to power units you own</i>
Symbol 7	Specifically described "autos"	<i>Covered if listed on schedule</i>	<i>Covered</i>	<i>Covered while attached to any scheduled power unit</i>	<i>Covered while attached to any scheduled power unit</i>

¹ Tecumseh News Star, July 21, 2008

² Chicago Tribune, August 13, 2008

³ Central Main Newspaper, August 12, 2008

⁴ Buffalo News, August 9, 2008.

⁵ McClatchy-Tribune Regional News, May 10, 2008

⁶ Gadsden Times, June 27, 2008

⁷ Itawamba County Times, June 3, 2008

⁸ The Virginian-Pilot, May 19, 2008

⁹ The Free Lance-Star, May 27, 2008

¹⁰ The Suburbia News, March 27, 2008

¹¹ South Jersey News, March 27, 2008

This document is not intended to be taken as advice regarding any individual situation and should not be relied upon as such. Marsh & McLennan Agency LLC shall have no obligation to update this publication and shall have no liability to you or any other party arising out of this publication or any matter contained herein. Any statements concerning actuarial, tax, accounting or legal matters are based solely on our experience as consultants and are not to be relied upon as actuarial, accounting, tax or legal advice, for which you should consult your own professional advisors. Any modeling analytics or projections are subject to inherent uncertainty and the analysis could be materially affective if any underlying assumptions, conditions, information or factors are inaccurate or incomplete or should change.