

# In a Tennessee Coverage Dispute, All Insured Things Must Come to an End

December 01, 2013

In *Hartford Cas. Ins. Co. v. Ewan*, the U.S. Court of Appeals for the Sixth Circuit had to determine if a CGL policy issued to a landscaping service covered damage caused by a Mack truck that had a "tree spade" attached. The matter turned (in part) on the question of whether the tree spade was "permanently mounted," within the meaning of an exception to the policy's auto exclusion. The equipment was originally welded to the truck; after the welding broke, it was attached by steel rods and secured with metal bolts. Finding that it was nevertheless "not an indefinite or unchanging truck component to be considered permanent," the court held that the policy did not apply. The context mattered a lot. The truck was owned by M & W Tree Service, which obtained, in a single transaction, both the CGL policy and an automobile policy. The policies recognized that M & W purchased multiple coverages. The auto policy defined "auto" in the same way as the CGL policy, and it identified the truck as a covered "auto"—strong evidence that the truck was also an "auto" within the meaning of the CGL policy. In March 2005, the truck collided with an automobile belonging to Deshon and Patrick Ewan, who sued M & W in a Tennessee court. M & W disclosed its auto policy and settled the suit for the policy limit of \$500,000. But then the Ewans learned about the CGL policy, which had a \$1,000,000 limit, and they moved to rescind the settlement. The Hartford responded with a declaratory judgment action in federal court, seeking to establish that the CGL policy did not cover the Ewans' claim. The CGL policy expressly excluded from coverage any damages arising from either (1) the use of an "auto" or (2) the transportation of "mobile equipment" by an "auto." As the court noted, however, those exclusions *did not* include damage caused by "mobile equipment on its own"—which could be either "[v]ehicles ... on which are permanently mounted ... shovels, loaders, diggers or drills," or "[v]ehicles ... maintained primarily for purposes other than the transportation of persons or cargo." The issue, therefore, was whether a Mack truck with an attached tree crane fit either of these definitions of "mobile equipment." Considering the first definition, the court found that "permanent" means "lasting or meant to last indefinitely," or "not expected to change in status, condition, or place." In this case, M & W bought the tree spade attached to a different truck and transferred it to the insured vehicle. There was also testimony that

it had been detached from the truck for repairs at least once. The court acknowledged the welding, steel rods and metal bolts, but it held that these connections did not suffice to make the mount "permanent" within the meaning of the policy: they did not make the spade an "indefinite or unchanging truck component." The court also found that the truck was not maintained "primarily" for purposes other than the transportation of trees and employees to M & W work sites. Thus, it found that the truck and tree spade were an "auto," not "mobile equipment," and it affirmed judgment for the insurer.

## Authored By



John C. Pitblado

## Related Industries

[Property & Casualty Insurance](#)

©2024 Carlton Fields, P.A. Carlton Fields practices law in California through Carlton Fields, LLP. Carlton Fields publications should not be construed as legal advice on any specific facts or circumstances. The contents are intended for general information and educational purposes only, and should not be relied on as if it were advice about a particular fact situation. The distribution of this publication is not intended to create, and receipt of it does not constitute, an attorney-client relationship with Carlton Fields. This publication may not be quoted or referred to in any other publication or proceeding without the prior written consent of the firm, to be given or withheld at our discretion. To request reprint permission for any of our publications, please use our Contact Us form via the link below. The views set forth herein are the personal views of the author and do not necessarily reflect those of the firm. This site may contain hypertext links to information created and maintained by other entities. Carlton Fields does not control or guarantee the accuracy or completeness of this outside information, nor is the inclusion of a link to be intended as an endorsement of those outside sites.