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TRANSPORTATION LAW UPDATE



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NEW JERSEY

LOADING & UNLOADING DOCTRINE

New Jersey's loading and unloading doctrine is essentially an extension of the insurance coverage for permissive users required under New Jersey's motor vehicle financial responsibility law. The doctrine is somewhat unusual in that it requires a trucker's liability insurance to provide coverage to permissive users of a vehicle for liability to those injured during loading and unloading operations, regardless of the policy's conditions or exclusions to coverage.



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However, the doctrine does not mean that coverage is owed to the owner of a loading dock merely because a truck was present when an accident occurred. Unfortunately, we have been confronting more and more claims for coverage in cases where the accident is really caused by the owner's alleged negligence in maintenance of the premises, a set of facts to which the loading and unloading doctrine is not applicable.

For example, where a truck driver or loading dock worker is injured from a fall on ice near a truck, or injured by a faulty loading dock plate, the loading and unloading doctrine will not extend liability coverage to the premises owner. Coverage is not due unless the negligence that caused the accident arose directly out of the loading or unloading operations.

We were recently retained to defend National Specialty Insurance Company and its insured trucking company in a declaratory judgment action commenced by a company which owned a loading dock. The premises owner demanded coverage for a personal injury suit brought by a loading dock worker who was injured when a makeshift set of boards meant to act as a loading plate shifted, causing the worker to fall and sustain injuries. In his Complaint, the worker alleged that he and his co-workers had asked the employer/owner to replace the missing loading plate "for months, if not years." The Complaint did not name the trucking company or allege any negligence related to the loading or unloading of the truck.

Our clients moved for Summary Judgment on the coverage issues based on the allegations in the underlying Complaint. The New Jersey Superior Court, Passaic County, granted Summary Judgment, relying upon the Appellate Division's holding in a factually analogous

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case, *Forsythe v. Teledyne Turner Tube*, 209 N.J. Super. 608, 508 A.2d 1156 (1986). *Forsythe* also involved negligence in the maintenance of a loading dock plate. The Court in *Forsythe* ruled as follows:

In summary, we conclude that unless the alleged negligent act which is alleged to have caused the accident was an integral part of the overall loading or unloading operation, so that the mishap is causally connected with such loading and unloading and did not merely occur during it, the person charged with the negligent act is not considered to have been using the vehicle so as to be covered by the vehicle's liability policy for such act as an additional insured. *Id.* at 614

The *Forsythe* Court cited *Atlantic Mutual Ins. Co. v. Richards*, 100 N.J. Super. 180 (Chanc. Div. 1968) wherein Judge Furman stated:

The regular inspection of the loading platform, the remedying of a hazardous condition or the communication of an adequate warning may be viewed broadly as necessary for safe unloading. But the fulfillment of such duty was not a step in the specific operation of unloading the [defendant's] truckload. To construe the maintenance of the loading platform as a "use of the automobile" in unloading would be to extend automobile liability coverage to negligence occurring prior to the arrival of the truck, that is, failing to remove dunnage from proximity to the open stairwell, and to a nuisance grounded in negligence, that is, the stairwell without guard rail. No New Jersey reported opinion has so held. *Id.* at 183.

Thus, New Jersey's loading and unloading doctrine is inapplicable to extend coverage to premises owners where the accident actually arose from a defective condition of the premises, and not from negligence connected with the loading and unloading operations.

New Jersey's loading and unloading doctrine can impose far-reaching coverage consequences. Since it is a creature of statute, the Courts have frequently ruled that the customary conditions and exclusions to coverage in a liability policy cannot prevent coverage if the injury arose out of negligence in loading or unloading a vehicle.

Thus, in reviewing a tender of defense and indemnification under a trucking policy from a loading dock owner, careful attention must be paid to both the specific allegations in the underlying Complaint and the extrinsic facts of the claim. An owner is not entitled to coverage merely because a truck was on the premises, or even if it was being loaded or unloaded at the time of the accident. Rather, the negligence causing the accident must have arisen out of the loading and unloading operations before any coverage is due.

Burlington Coat Factory of New Jersey, LLC, v. VJF Delivery Service and National Specialty Insurance Company, Superior Court of New Jersey, Passaic County, Docket No. PAS-L-2564-12

James Callan, of counsel, concentrates his practice on the defense of commercial motor vehicles and their insurers. He also handles insurance coverage and appellate matters. James received his undergraduate degree from Temple University and a J.D. degree from Temple University Law School. He completed the Integrated Trial Advocacy Program and he was a member of the Moot Court Honor Society. James is admitted to practice in New York, New Jersey and Pennsylvania, as well as the U.S. District Courts for the Northern, Eastern, Western and Southern Districts of New York, the Eastern and Middle Districts of Pennsylvania, the District of New Jersey and the U.S. Court of Appeals for the Third Circuit.

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