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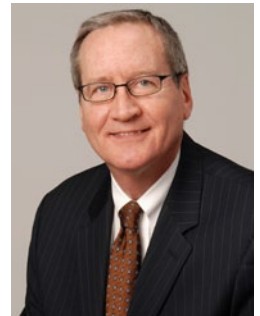
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Loading and Unloading Doctrine, Part II

There have been numerous instances of third-parties seeking defense and indemnification under a truck's liability policy merely because the injured claimant sustained injury while the truck was being loaded or unloaded. In a recent appeal we defended, New Jersey's Appellate Division affirmed that the fortuity of ongoing loading and unloading operations involving a truck at the time of an accident is insufficient to trigger the statutory obligation to provide coverage to permissive users of the vehicle under New Jersey's "loading and unloading doctrine." Rather, the negligence causing the injury must have arisen out of the use of the truck.



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New Jersey's "loading and unloading" doctrine is a judicial extension of the statutory omnibus liability coverage required in all auto liability policies for permissive users of a vehicle. Unfortunately, the public policy underlying the doctrine has frequently been misconstrued to suggest that any third party remotely related to a commercial motor vehicle being loaded or unloaded is entitled to liability coverage if they are named as a defendant in a lawsuit arising from an accident.

In this case, the negligence alleged in the injured party's underlying Complaint below was that the loading dock owner failed to replace a loading dock plate which had been "missing for years." Thus, the premises liability claim arose out of the alleged negligence of the loading dock owner, and did not arise out of negligence in the loading or unloading of the truck. The injury did not result from a dangerous condition within the truck or from misloaded freight, for example. Rather, the alleged dangerous condition existed at the loading dock long before the insured's truck arrived.

In a subsequent declaratory judgment action, the loading dock owner demanded liability coverage under a liability policy issued to our client's insured trucking company. Our argument below in support of summary judgment for the insurer and the trucking company was that the negligence which allegedly caused the underlying plaintiff's injury was unrelated to the ownership, maintenance or use of the insured's truck. In fact, the underlying plaintiff did not name the trucking company as a defendant or allege that his injury had any causal relationship with our insured's truck. The accident admittedly occurred on a loading dock during loading and unloading operations. However, contrary to a widely held misconception, the occurrence of an accident during loading and unloading operations does not mandate liability coverage for permissive users unless the negligence itself arose out of the loading or unloading operations.

Following our clients' successful Motion for Summary Judgment (see *Transportation Law Update*, Volume 14, Number 2: *New Jersey, Loading and Unloading Doctrine*), the plaintiff loading dock owner chose to appeal the decision to the New Jersey Superior Court, Appellate Division. The Appellate Division affirmed the decision of the Superior Court of Bergen County in favor of the trucking company and its insurer, declaring that they had no obligation to defend or indemnify the loading dock owner under the truck's liability policy. In its decision, the Appellate Division noted that the trucking company was not a defendant in the underlying action, and that the loading dock owner had not named the trucking company as a third-party defendant before commencing the

declaratory judgment action for coverage under the trucking company's liability policy.

New Jersey's Appellate Division has once again affirmed that the mere presence of a truck during loading and unloading operations is insufficient to invoke coverage under a trucker's policy to defend and indemnify permissive users. It does not matter that the accident arose during loading and unloading. Rather, the negligence must have arisen out of the loading and unloading operations.

Burlington Coat Factory of New Jersey, LLC, v. VJF Delivery Service and National Specialty Insurance Company, Superior Court of New Jersey, Appellate Division, Docket No. A-3611-12T3

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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