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Insurance - Liability Insurance - Injury Arising out of Unloading Vehicle

Kenneth Yri

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ment procedure was held valid subsequent to legislation[30] extending the scope of the writ of habeas corpus to include not only the question of wrongful confinement, but also the determination of the question of insanity.[31] In Rhode Island, temporary confiinement without hearing in a non-emergency case has been held justified on the ground that the nature of the action always calls for emergency procedure.[32]

The conflict seems to arise from the divergent interpetations of the concept of due process, while the importance of the issue stems from the fear of unjust confinement.[33] Nevertheless, the fact of insanity is largely if not completely a matter of scientific diagnosis,[34] and where a finding of insanity is attested to by qualified physicians,[35] the presence or absence of judicial approval would seem to be of little significance. Though there exists the possibility of fraudulent confinement in case of dishonesty of the two attesting physicians, determination of insanity by an appointed body of qualified psychiatrists would leave little room for serious concern.[36]

It would be unwise to construe due process to mean the strict application of notice and hearing. No hard and fast rule can be laid down.[37] The welfare of the mentally ill is an all important consideration, and their treatment would seem to call for special procedure consistent with the necessities of their unfortunate malady.

WILLIAM C. KELSCH

INSURANCE — LIABILITY INSURANCE — INJURY ARISING OUT OF UNLOADING VEHICLE — Plaintiff had insured its delivery truck with defendant. The policy covered damages for bodily injury caused by accidents arising out of the ownership, maintenance or use of the truck. The "use" of the vehicle included the "loading and unloading" thereof. In the course of its business plaintiff delivered a roll of linoleum to a customer. Plaintiff's employee removed the linoleum from the truck and with the help of another lifted the roll to the porch of the customer's home. Later the same day, because of the negligence of plaintiff's employee in placing the linoleum on the porch, the linoleum fell on the customer's daughter causing serious injury. *Held*, the injury was within the provisions of the policy because it arose out

30. R.I. Laws 1896, c. 82 § 19. It should be noted that North Dakota has extended the application of the writ of habeas corpus to include determination of the question of insanity. N.D. Rev. Code 25-0328 (1943).

31. *In re* Crosswell, 28 R.I. 137, 66 Atl. 55 (1907).

32. *Cf. id.* at 58.

33. Note, 56 Yale L.J. 1178 at 1182 (1947).

34. Curran, *supra* note 9 at 283; Note 3, Stan. L. Rev. 109 at 110 (1950).

35. In most jurisdictions physicians licensed in general practice are considered qualified experts on insanity. Glover v. State, 129 Ga. 717, 59 S.E. 816 (1907); Holt v. State, 840 Okla. Crim. 283, 181 P.2d. 573 (1947); Brody v. State, 116 Tex. Crim. 427, 34 SW.2d 587 (1931). However, from within the field of medicine itself comes strong criticism of this majority rule. The expert psychiatrist considers this unrealistic in view of the inadequate training of the general practitioner in the field of psychiatry or in the lack of interest in the subject of mental disorder. See Overholsen, *Psychiatric Expert Testimony in Criminal Cases Since McNaghten—A Review*, 42 J. Crim. & Criminology 283, 295 (1951). On the other hand it has been held that the trial judge can exclude a general practitioner as an expert unless he qualifies by having either special knowledge or special study in the field of mental illness. McElroy v. State, 146 Tenn. 442, 242 S.W. 883 (1922).

36. An administrative board of qualified psychiatrists as proposed for the State of California, outlined in Note, 3 Stan. L. Rev. 109 (1950).

37. *See* Brock v North Carolina, 344 U.S. 428, 427-428 (1953).

of the unloading of the truck. *Raffel v. Travelers Indemnity Co.*, 106 A.2d 716 Conn. 1954).

In an effort to reach a fair result in determining when unloading begins and ends the courts have applied either the "coming to rest" doctrine or the "complete operation" doctrine. According to the former, unloading comprises only the actual removing (or lifting) of the article from the motor vehicle up to the moment when the goods removed have actually come to rest.[1] Under the complete operation doctrine, unloading includes the entire process involved in the movement of goods from the moment when they are given into the insured's possession until they are turned over at the place of destination to the party to whom delivery is to be made.[2] The former theory distinguishes between unloading and delivery[3] while the latter claims the unloading is one continuous operation; that is, the unloading includes the dilevery.[4] A recent case stated that coverage under the complete operation theory includes any act done by insured's employee which proximately causes the accident arising out of the use of the insured's automobile.[5]

The decision in the instant case is not inconsistent with the complete operation doctrine which the Connecticut court has apparently adopted. The unloading was still taking place when the plaintiff's employee set the linoleum on the customer's porch, and it was through the negligence of this employee that the linoleum later fell on the injured girl. The cause of the accident was the result of the unloading of the truck. If the peril insured against is the efficient, predominating cause of the loss, it is regarded as the proximate cause.[6] n a number of past cases the injury occurred during the controversial unloading,[7] while in the instant case the injury occurred after the unloading had been completed. However the injury did arise out of the unloading. Two other courts have followed the same line of reasoning.[8]

The term "unloading" must be taken in its plain and ordinary sense.[9] No definite rule can be set down as to what unloading should include, but but each case must be treated separately according to the facts involved.[10] The policy in the instant case does not define "unloading" and because of its apparent ambiguity, it should be construed most favorably toward the plaintiff.[11] The insurance policy involved covers injuries arising out of

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1. *See* Pacific Auto Ins. Co. v. Commercial Cas. Ins. of New York, 108 Utah 500, 161 P.2d 423, 424 (1945).
2. *See* id, 161 P.2d at 425.
3. *See* St. Paul Mercury Indemnity Co. v. Standard Acc. Ins. Co., 216 Minn. 193, 11 N.W.2d 794, 796 (1943); American Oil and Supply Co. v. United States Cas. Co., 19 N.J. Misc 7, 18 A.2d 257, 259 (1940).
4. *See* State *ex rel.* Butte Brewing Co. v. Dist. Ct. For Silver Bow County, 110 Mont. 250, 100 P.2d 932, 934 (1940).
5. *See* Red Ball Motor Freight Inc. v. Employers Mut. Liability Ins. Co., 189 F.2d 374, 377 (5th Cir. 1951).
6. Maness v. Life and Cas. Ins. Co., of Tenn., 161 Tenn. 41, 28 S.W.2d 339 (1930).
7. Maryland Cas. Co. v. Cassety, 119 F.2d 602 (6th Cir. 1941); B & D Motor Lines Inc. v. Citizens Cas. Co. of New York, 181 Misc. 985, 43 N.Y.S.2d 486 (1943); Pacific Auto Ins. Co. v. Commercial Cas. Ins. Co. of New York, *supra* note 1; London Guarantee and Acc. Co. v. C. B. White and Brothers Inc., 188 Va. 195, 49 S.E.2d 254 (1948).
8. Maryland Cas. Co. v. Dalton Coal and Material Co., 184 F.2d 181 (8th Cir. 1950); Schmidt v. Utilities Ins. Co., 353 Mo. 213, 182 S.W.2d 181 (1944).
9. *See* United States Fidelity and Guaranty Co. v. Church, 107 F. Supp. 683, 687 (N.D. Cal. 1952).
10. *See* American Oil and Supply Co. v. United States Cas. Co., 19 N.J. Misc. 7, 18 A.2d 257, 259 (1940).
11. See Bobier v. National Cas. Co., 143 Ohio St. 215, 54 N.E.2d 798, 801 (1944).

ownership, maintenance or use of the vehicle, and the term "use" includes the loading and unloading thereof. The words "arising out of" seem to have a broad significance. One could understand it to mean originating from, having its origin in, growing out of or flowing from, incident to or having connection with the use of the vehicle.[13] In the instant case the accident clearly flowed from or grew out of the unloading.

The adoption of the complete operation theory appears to be the more modern view,[13] and where the liability policy does not define unloading it would seem that this theory would more effectively implement the intent of the parties.[14]

North Dakota has not had to deal with the problem, but Minnesota[15] and Wisconsin[16] are among the states[17] which have adopted the more limited[18] coming to rest doctrine. Montana[19] follows the view which appears to be that the majority of courts in accepting the complete operation doctrine.[21]

KENNETH YRI

JUDGMENT — DECLARATORY JUDGMENTS — NECESSITY OF A JUSTICIABLE CONTROVERSY. — The action involed a petition for declaratory judgment of the validity of a city zoning ordinance, which prohibits the plaintiff from erecting signs on the roofs of its buildings. In an impending eminent domain proceeding, an electric company sought to condemn a right of way to string wires over the plaintiff's buildings. The amount of compensation due plaintiff from the electric company was dependent upon the validity of the ordinance, since the space above the buildings had value only for the display of signs, and the electric company agreed to delay its proceeding pending the declaratory judgment. It was *held,* on appeal, that there was no justiciable controversy between plaintiff and city. *Mayor, etc. of Savannah v. Bay Realty Co.,* 82 S.E.2d 710, (Ga. 1954).

It is well settled that the existence of a justiciable controversy is essential

12. *See* Schmidt v .Utilities Ins. Co., 353 Mo. 213, 182 S.W.2d 181, 184 (1944).

13. *See* Maryland Cas. Co. v. Dalton Coal and Material Co., *supra* note 8; Red Ball Motor Freight inc. v. Employers Mut. Liability Ins. Co. of Wisconsin, *supra* note 5; Schmidt v. Utilities Ins. Co., *supra* note 8; Pacific Auto Ins. Co. v. Commercial Cas. Ins. Co. of New York, *supra* note 1.

14. *See* Turtlelaub v. Hardwars Mut. Cas. Co., 26 N.J. Misc. 316, 62 A.2d 830, 834 (1948).

15. St. Paul Mercury Indemnity Co. v. Standard Acc. Ins. Co., *supra* note 3. (Goods were taken off insured truck and put on sidewalk. The injury occurred when they were put on hand trucks and moved into a building. Held, the unloading process terminated when goods were removed from the truck and placed on the sidewalk). *Contra*: B & D. Motor Lines Inc. v. Citizens Cas. Co. of New York, 181 Misc. 985, 43 N.Y.S.2d 486 (1943).

16. Stammer v. Kitzmiller, 226 Wisc. 348, 276 N.W. 629 (1937) (The insured truck was used to deliver beer. Driver removed a cover from the manhole in the sidewalk and placed the beer keg on the sidewalk and later placed the keg through the hatchway. While driver was inside making out a sales slip plaintiff fell into the hatchway. Court held that the unloading process had been completed when the beer keg was placed on the sidewalk.)

17. Ferry .v Protective Indemnity Co., 155 Pa. Super. 266, 38 A.2d 493 (1944); American Cas. Co. v. Fisher, 195 Ga. 136, 23 S.E.2d 395 (1942).

18. *See* Red Ball Motor Freight Inc. v. Employers Mut. Liability Ins. Co. of Wisconsin, *supra* note 6 at 377.

19. State *ex rel* Butte Brewing Co. v. Dist. Ct. for Silver Bow County, *supra* note 4. (Beer was lowered from the truck to the sidewalk. Employee theen went into establishment and was raising a door from the sidewalk when a person stepped on the door and was injured. Court held that the unloading of the beer was a continuous operation from the time the truck came to a stop until the beer was delivered to its destination.)

20. See note 8 *supra*.

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