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Loading and Unloading Under the Standard Automobile Policy

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LOADING AND UNLOADING UNDER THE STANDARD AUTOMOBILE POLICY*

BY P. MAGARICK**

Section (c) of the declaration concerning the purposes for which the automobile is to be used states: "Use of the automobile for the purposes stated includes the loading and unloading thereof." This wording remains unchanged from the original wording in the first Standard Automobile Policy. The explanatory reference note in the original edition of the policy permitted optional placing of the wording concerning loading and unloading in the conditions, rather than the declarations, if so desired.[1] Subsequent revisions of the Standard Automobile Policy have permitted optional placement in the insuring agreements, as well as the conditions or the declarations. For the most part, however, the wording concerning loading and unloading was, and continues to be, found in the declarations section of the Standard Automobile Policy. Since the words of the loading and unloading clause are so intimately connected with the insuring agreement concerning the ownership, maintenance and use of the automobile and have been held to be an extension of this insuring agreement, it would certainly seem as though this would be the more logical place to incorporate the loading and unloading clause.

The wording of the clause seems plain enough. Coverage depends on some causal relationship between the accident and the act of loading and unloading the insured vehicle. There are, however, so many varied situations that can and have touched upon loading or unloading operations, either directly or remotely, that what initially appears to be disarmingly uncomplicated wording can and does become quite complex on occasion. In the simplest possible terms, "loading" consists of getting an object onto or into a truck or automobile, and "unloading" consists of taking an object from or out of a truck or automobile. Obviously, however, there must be a beginning and an end to the process and therein lies the rub. At what point does loading begin, and exactly when does unloading end?

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* This Article and its forerunner, *The Application and Declarations in the Standard Automobile Insurance Policy*, 66 DICK. L. REV. 403 (1962), are advance printings of portions of Mr. Magarick's proposed book.

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1. For an extensive treatment of the individual declarations in the Standard Automobile Policy, see Magarick, *The Application and Declarations in the Standard Automobile Insurance Policy*, 66 DICK. L. REV. 403 (1962).

Principal Legal Doctrines

In defining the loading and unloading operations, two principal legal doctrines have evolved: the Coming to Rest rule and the Complete Operations rule. Of the two, the Coming to Rest doctrine is the narrower minority view and the one which is becoming more and more outweighed by the trend of modern decisions. Under this theory, loading is the period of time which begins when the object is last picked up and kept in continuous movement, without interruption, pause or rest necessitating setting down of the object, until it is placed on or in the vehicle. Unloading is that period of time which begins when the object is first picked up from the vehicle and kept in continuous movement without interruption, until it is set down at its first place of rest outside the vehicle.[2]

The Complete Operations rule, by far the majority view and certainly the present trend, is much more difficult to define since there is no uniformity in the decisions professing to hold to this doctrine. Generally speaking, under this theory loading begins when the object is first picked up en route to the vehicle and unloading ends when the object has reached its delivery point or final destination. The number of temporary or intermediate stops or resting places is immaterial under this doctrine, since the loading or unloading operation is not terminated until the object has finally been placed in the hands of the receiver and at the properly designated reception point.[3]

2. American Cas. Co. v. Fisher, 195 Ga. 136, 23 S.E.2d 395 (1942); St. Paul Mercury Indem. Co. v. Standard Acc. Ins. Co., 216 Minn. 103, 11 N.W.2d 794 (1943); Franklin Co-op. Creamery Ass'n v. Employers' Liab. Assur. Corp., 200 Minn. 230, 273 N.W. 809 (1937) (teams policy with a loading and unloading clause); American Oil & Supply Co. v. United States Cas. Co., 19 N.J. Misc. 7, 18 A.2d 257 (Sup. Ct. 1940); Zurich Gen. Acc. & Liab. Ins. Co. v. American Mut. Liab. Ins. Co., 118 N.J.L. 317, 192 Atl. 387 (Sup. Ct. 1937); Stammer v. Kitzmiller, 226 Wis. 348, 276 N.W. 629 (1937). In some cases the doctrine is not specifically stated, but the effect is the same. See Maryland Cas. Co. v. United Corp., 35 F. Supp. 570 (D. Mass. 1940); Jackson Floor Covering Inc. v. Maryland Cas. Co., 117 N.J.L. 401, 189 Atl. 84 (Sup. Ct. 1937); Travelers Ins. Co. v. Employers Cas. Co., 335 S.W.2d 235 (Tex. Civ. App. 1960).

3. Lumbermens Mut. Cas. Co. v. Employers' Liab. Corp., 252 F.2d 463 (1st Cir. 1958) (sofa being lowered from upstairs porch to truck and plaintiff fell off porch while assisting); Red Ball Motor Freight Co. v. Employers Mut. Liab. Ins. Co., 189 F.2d 374 (5th Cir. 1951); Maryland Cas. Co. v. Dalton Coal Co., 184 F.2d 181 (8th Cir. 1950); Earl W. Baker & Co. v. Lagaly, 144 F.2d 344 (10th Cir. 1944) (bus driver responsible where child alighted from school bus, walked in front of it while it was parked and was struck by passing truck); Allstate Ins. Co. v. Valdez, 190 F. Supp. 893 (E.D. Mich. 1961); American Auto. Ins. Co. v. Master Bldg. Supply & Lumber Co., 179 F. Supp. 699 (D. Md. 1959); Maryland Cas. Co. v. Tighe, 29 F. Supp. 69 (N.D. Cal. 1939), *aff'd*, 115 F.2d 297 (9th Cir. 1940) (after making delivery, driver ran toward truck to get more vegetables and hit pedestrian); Coulter v. American Employer's Ins. Co., 33 Ill. App. 631, 78 N.E.2d 131 (1948); August A. Busch & Co. v. Liberty Mut. Ins. Co., 339 Mass. 239, 158 N.E.2d 351 (1959); State *ex rel.* Butte Brewing Co. v. District Court, 110 Mont. 250, 100 P.2d 932 (1940); American Motorists Ins. Co. v. Nashua Lumber Co., 103 N.H. 107, 167 A.2d

A number of cases have been decided on the basis of the Complete Operations theory without a statement of the doctrine itself.[4]

Use of the Automobile

Some of the cases which have been decided without mention of either the Coming to Rest theory or the Complete Operations theory have merely stated that the facts fall within the loading and unloading clause, but a great number of them have been based merely on the determination whether or not the accident arose out of the *use* of the vehicle involved.

Insuring agreement I, coverage A and B (bodily injury and property damage liability) of the Standard Automobile Policy reads:

> To pay on behalf of the Insured all sums which the Insured shall become legally obligated to pay as damages because of bodily injury, sickness or disease, including death at any time resulting

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681 (1961); Wagman v. American Fid. & Cas. Co., 304 N.Y. 490, 109 N.E.2d 592 (1952) (department store manager, while "checking" loading of a truck, turned and bumped into pedestrian and was "using" the truck despite the fact he was neither loading nor unloading); Lamberti v. Anaco Equip. Corp., 16 App. Div. 2d 121, 226 N.Y.S.2d 70 (1962); Hudson River Concrete Products Corp. v. Callanan Road Improvement Co., 5 App. Div. 2d 803, 168 N.Y.S.2d 801 (1957); Mohawk Valley Fuel Co. v. Home Indem. Co., 8 Misc. 2d 445, 165 N.Y.S.2d 357 (Sup. Ct. 1957); Lowry v. R. H. Macy & Co., 119 N.Y.S.2d 5 (Sup. Ct. 1952); B & D Motor Lines v. Citizens Cas. Co., 181 Misc. 985, 43 N.Y.S.2d 486 (Sup. Ct. 1943), *aff'd*, 267 App. Div. 955, 48 N.Y.S.2d 472 (1944); Maryland Cas. Co. v. New Jersey Mfrs. Cas. Ins. Co., 28 N.J. 17, 145 A.2d 15 (1958), *affirming* 48 N.J. Super. 314, 137 A.2d 577 (1958); Turtletaub v. Hardware Mut. Cas. Co., 26 N.J. Misc. 316, 62 A.2d 830 (Dist. Ct. 1948); Wheeler v. London Guar. & Acc. Co., 292 Pa. 156, 140 Atl. 855 (1928); Pacific Auto. Ins. Co. v. Commercial Cas. Ins. Co., 108 Utah 500, 161 P.2d 423 (1945); London Guar. & Acc. Co. v. C. B. White & Bros., 188 Va. 195, 49 S.E.2d 254 (1948); Hardware Mut. Cas. Co. v. St. Paul Mercury Indem. Co., 264 Wis. 230, 58 N.W.2d 646 (1953).

4. See Travelers Ins. Co. v. Peerless Ins. Co., 287 F.2d 742 (9th Cir. 1961); Connecticut Indem. Co. v. Lee, 168 F.2d 420 (1st Cir. 1948); Maryland Cas. Co. v. Cassety, 119 F.2d 602 (6th Cir. 1941); Federal Ins. Co. v. Michigan Mut. Liab. Co., 172 F. Supp. 858 (E.D. Pa. 1959), *aff'd*, 277 F.2d 442 (3d Cir. 1960); Bituminous Cas. Corp. v. Travelers Ins. Co., 122 F. Supp. 197 (D. Minn. 1954); London Guar. & Acc. Co. v. Shafer, 35 F. Supp. 647 (S.D. Ohio 1940); Columbia So. Chem. Corp. v. Manufacturers & Wholesalers Indem. Exch., 11 Cal. Rptr. 762 (Dist. Ct. App. 1961); Employers Mut. Liab. Ins. Co. v. Pacific Indem. Co., 167 Cal. App. 2d 369, 334 P.2d 658 (Dist. Ct. App. 1959); Raffel v. Travelers Indem. Co., 141 Conn. 389, 106 A.2d 716 (1954); Bituminous Cas. Corp. v. American Fid. & Cas. Co., 22 Ill. App. 2d 26, 159 N.E.2d 7 (1959); Spurlock v. Boyce-Harvey Mach. Inc., 90 So. 2d 417 (La. Ct. App. 1956); Lang v. Jersey Gold Creameries, 172 So. 2d 389 (La. Ct. App. 1937); Schmidt v. Utilities Ins. Co., 353 Mo. 213, 182 S.W.2d 181 (1944); Kemnetz v. Galluzzo, 8 Misc. 2d 513, 163 N.Y.S.2d 998 (Sup. Ct. 1957); R. H. Macy & Co. v. General Acc. Fire & Life Assur. Corp., 4 Misc. 2d 89, 148 N.Y.S.2d 10 (Sup. Ct. 1955); Krasilovsky Bros. Trucking Co. v. Maryland Cas. Co., 54 N.Y.S.2d 60 (N.Y. City Ct. 1945); Bobier v. National Cas. Co., 143 Ohio St. 215, 54 N.E.2d 798 (1944); United States Fid. & Guar. Co. v. Nationwide Mut. Ins. Co., 110 Ohio App. 363, 163 N.E.2d 46 (1959); Panhandle Gravel Co. v. Wilson, 248 S.W.2d 778 (Tex. Civ. App. 1952); American Employers' Ins. Co. v. Brock, 215 S.W.2d 370 (Tex. Civ. App. 1948).

therefrom, sustained by any person, caused by accident and *arising out of the ownership, maintenance or use of the automobile.*[5]

Some decisions based on the use of the automobile have been made without consideration of the loading and unloading clause.[6] Other cases are decided on the basis of the use of the vehicle and a determination whether the loading or unloading operation was involved.[7]

The decisions in one group of cases make a special point of using the word "delivery" in arriving at a conclusion.[8] Some of these cases fall under the Complete Operations rule; others use the word "delivery" without reference to either rule and fall on both sides of the fence.

Causal Relationship

One small group of cases decided principally in Illinois and Pennsylvania holds that there must be some causal connection or relationship between the use of the vehicle and the accident. These cases appear to be

5. Emphasis added.

6. Owens v. Ocean Acc. & Guar. Corp., 194 Ark. 817, 109 S.W.2d 928 (1937) (employees dropped stretcher on which woman was being carried to ambulance); Ocean Acc. & Guar. Corp. v. J. B. Pound Hotel Co., 69 Ga. App. 447, 26 S.E.2d 116 (1943) (accident occurred an hour after oil had been unloaded from truck); Morgan v. New York Cas. Co., 54 Ga. App. 620, 188 S.E. 581 (1936); Kienstra v. Madison County Mut. Auto. Ins. Co., 316 Ill. App. 238, 44 N.E.2d 944 (1942) (no loading and unloading provision); General Acc. Fire & Life Assur. Corp. v. Hanley Oil Co., 321 Mass. 72, 72 N.E.2d 1 (1947); Woodrich Constr. Co. v. Indemnity Ins. Co., 252 Minn. 86, 89 N.W.2d 412 (1958); Schmidt v. Utilities Ins. Co., *supra* note 4; Hudson River Concrete Products Corp. v. Callanan Road Improvement Co., *supra* note 3.

7. Kaufman v. Liberty Mut. Ins. Co., 264 F.2d 863 (3d Cir. 1959); Connecticut Indem. Co. v. Lee, *supra* note 4 (cellar doors were opened by driver who left scene to pick up a box and pedestrian fell into opening); Commercial Standard Ins. Co. v. New Amsterdam Cas. Co., 272 Ala. 357, 131 So. 2d 182 (1961) (nursery salesman had placed shrubbery in the car and after talking with customer for 3 or 4 minutes closed the door on the fingers of the customer's baby); American Auto. Ins. Co. v. American Fid. & Cas. Co., 106 Cal. App. 630, 235 P.2d 645 (Dist. Ct. App. 1951) (oil being unloaded from tank trailer overflowed and polluted nearby water); Ocean Acc. & Guar. Corp. v. J. B. Pound Hotel Co., *supra* note 6; Travelers Ins. Co. v. Buckeye Union Cas. Co., 170 Ohio St. 507, 178 N.E.2d 792 (1961); Thompson Heating Corp. v. Hardware Indem. Ins. Co., 74 Ohio App. 35, 58 N.E.2d 809 (1944) (pedestrian fell over hose extending across sidewalk leading from truck to house); Ferry v. Protective Indem. Co., 155 Pa. Super. 266, 38 A.2d 493 (1944); Handley v. Oakley, 10 Wash. 2d 396, 116 P.2d 833 (1941); Smedley v. Milwaukee Auto. Ins. Co., 12 Wis. 2d 460, 107 N.W.2d 625 (1961).

8. Liberty Mut. Ins. Co. v. Hartford Acc. & Indem. Co., 251 F.2d 761 (7th Cir. 1958) (not covered under auto policy); Maryland Cas. Co. v. Cassety, *supra* note 4 (policy expressly covered "delivery and use"); Commercial Standard Ins. Co. v. New Amsterdam Cas. Co., *supra* note 7 (not covered under auto policy); Caron v. American Motorists' Ins. Co., 277 Mass. 156, 178 N.E. 286 (1931) (not covered under auto policy and accident held not to arise out of "delivery"); Wheeler v. London Guar. & Acc. Co., *supra* note 3 (covered by auto policy and "loading" held to include "delivery"); London Guar. & Acc. Co. v. C. B. White & Bros., *supra* note 3 (covered under auto policy and Complete Operations doctrine stated).

saying that the mere use of the vehicle out of which the accident arises is not enough to warrant coverage under the automobile policy and that there must be some direct connection between this use and the accident.

Of the two Illinois cases holding causal relationship to be essential, *Kienstra v. Madison County Mut. Auto. Ins. Co.*[9] involved a policy that had no loading and unloading clause. In this case the trucker's employee was delivering a cake of ice to a customer's house. The ice slipped out of the employee's hands and struck a small boy in the customer's yard. The court held that there was no causal relationship between the use of the truck and the accident and, therefore, no coverage under the automobile policy. The second Illinois case, *General Acc. Fire & Life Assur. Corp. v. Brown*,[10] involved a trucker's employee who was loading a truck at the customer's plant. While doing so, he fell and injured his leg as a result of alleged defective premises. The court conceded that the truck was being used by the customer and that loading was taking place, but stated that there must be a causal connection between the use of the truck and the injury and held that in this case there was no such causal connection.

Kaufman v. Liberty Mut. Ins. Co.[11] involved a driver and his helper who had placed a barrel of beer on the sidewalk after taking it from a truck. The helper went into the cellar, started to open the cellar doors and, in the process, injured a passing pedestrian. The court held that the loading and unloading clause of the automobile policy applies only where there is a "connection between the accident and the use of the vehicle insured," and since the beer truck was not "in active operation and use" there was no coverage under the automobile policy. In *Ferry v. Protective Indem. Co.*,[12] the driver of a truck went into the basement to pick up some ashes. He set the can of ashes on the steps leading to the sidewalk and then went into the building to push up the cellar doors. In the process, he injured a pedestrian. The Superior Court of Pennsylvania held that "there must be a connection between the accident and the use of the vehicle." The court further stated that the cause of the injury was too remote from the vehicle or the container to be considered "loading" and that there was no "use" of the truck since the accident was not caused by the articles being transported.

Time Interval

Although the courts rarely refer specifically to the time lag or interval between the removal of the truck or automobile from the premises and the accident, some such distinction should be made and discussed separately.

9. *Supra* note 6. *Accord*, Caron v. American Motorists' Ins. Co., *supra* note 8.
10. 35 Ill. App. 2d 43, 181 N.E.2d 191 (1962).
11. *Supra* note 7.
12. *Supra* note 7.

Many of these cases involving an interval of anywhere from one-half hour to one week between the time the truck left the scene and the time when the accident occurred have been decided on the basis of the Complete Operations theory, holding that coverage was afforded under the loading and unloading clause of the automobile policy.[13] In those states applying the Coming to Rest theory, however, any time lag would take the accident out of the scope of automobile coverage under the loading and unloading clause, since the operation would have been considered terminated when the object being moved first came to rest.[14]

In some cases involving time interval, the decisions holding that automobile coverage under loading and unloading did not apply were based on the fact that either delivery had been completed and the object placed in the position intended, or simply on the basis that loading or unloading had terminated and the accident did not occur during the periods of loading or unloading.[15] In two instances the courts did not mention either the time interval, the Complete Operations theory or the Coming to Rest theory and simply held that the incidents were covered under the automobile policy because the accident arose out of the use of the truck.[16]

There are a few cases where the courts make mention of the time interval factor. In *Raffel v. Travelers Indem. Co.*,[17] for example, a householder bought some linoleum and the store sent a roll of it to her home with instructions to cut off what she needed and return the remainder. The roll was delivered and left standing on end on the porch. Some time later it fell over onto the householder's daughter and injured her. The Connecticut court held that this case came under the loading and unloading clause of the automobile policy and went so far as to state that unloading did not end until the linoleum was placed where it could be used. Even though this case does not mention

13. Red Ball Motor Freight Co. v. Employers Mut. Liab. Ins. Co., *supra* note 3 (time interval not stated); Maryland Cas. Co. v. Dalton Coal Co., *supra* note 3 (3½ hours); American Auto. Ins. Co. v. Master Bldg. Supply & Lumber Co., *supra* note 3 ("sometime later"); London Guar. & Acc. Co. v. Shafer, *supra* note 4 (time interval unknown); Lang v. Jersey Gold Creameries, *supra* note 4 (1 week); American Motorists Ins. Co. v. Nashua Lumber Co., *supra* note 3 (occurred "sometime after delivery"); Employers Mut. Liab. Ins. Co. v. Aetna Cas. & Sur. Co., 7 App. Div. 2d 853, 181 N.Y.S.2d 813 (1959) (1 hour and 40 minutes); Mohawk Valley Fuel Co. v. Home Indem. Co., *supra* note 3 (time interval not stated); London Guar. & Acc. Co. v. C. B. White & Bros., *supra* note 3 (time interval not stated).

14. St. Paul Mercury Indem. Co. v. Standard Acc. Ins. Co., *supra* note 2 (time interval not mentioned).

15 Liberty Mut. Ins. Co. v. Hartford Acc. & Indem. Co., *supra* note 8 ("sometime later"); Maryland Cas. Co. v. United Corp. of Mass., *supra* note 2 (time interval not stated); Ocean Acc. & Guar. Corp. v. J. B. Pound Hotel Co., *supra* note 7 (time interval not stated); Morgan v. New York Cas. Co., *supra* note 6 ("sometime later").

16. John Alt Furniture Co. v. Maryland Cas. Co., 88 F.2d 36 (3d Cir. 1937) (½ hour); Schmidt v. Utilities Ins. Co., *supra* note 4 (time interval not stated).

17. *Supra* note 4.

the exact time lag, the logical assumption is that if the roll remained on the householder's porch a week, a month or even a year, the case would still come under the loading and unloading clause since the linoleum had not actually been placed on the floor. This and similar cases seem to call for some remark from the court to the effect that the time lag should not be allowed to go beyond a reasonable period.[18]

In *Hardware Mut. Cas. Co. v. St. Paul Mercury Indem. Co.*,[19] a truck had to be moved from a space where it was double parked after sidewalk cellar doors had been opened in order to deliver beer. During the period when the truck was being moved, a pedestrian fell into the cellar door opening. The Wisconsin court held that no time had needlessly elapsed between the driver's opening of the trap door and the intended continuing movement of the beer into the basement for storage, and accordingly held that coverage fell under the loading and unloading clause of the automobile policy.

Miscellaneous Cases

Some cases do not fall into any particular pattern, cannot be categorized, and hence have not been previously discussed in detail; however, they do warrant individual consideration.

The case of *Allstate Ins. Co. v. Valdes*[20] involved a Michigan statute which provides that it is unlawful to have a shotgun in an automobile unless it is unloaded and carried in the trunk. Three of a party of four men had already placed their unloaded guns in the trunk of their auto. The insured was still hunting. After he had finished, he stood about twenty-five feet from the automobile and began ejecting shells in the process of unloading his gun so that he too could put his unloaded gun in the car. In the process he slipped and the shotgun went off, killing one of the members of the party. The court held that since the insured was fulfilling a legal obligation by ejecting shells preparatory to loading his shotgun into the trunk of his car, the act was part of the loading operation of the automobile and was covered under the automobile policy. There has been quite a bit of humorous comment concerning this case, most of which resulted from a confusion concerning the

18. In General Acc. Fire & Life Assur. Corp. v. Hanley Oil Co., *supra* note 6, oil was being pumped into a tank in a home from an oil tank truck. The oil overflowed into the cellar and several hours later, after the truck had left the scene, the oil became ignited and burned the house. The Massachusetts court held that the accident arose out of the use of the truck and it was therefore not necessary to decide whether the accident arose out of loading and unloading. The court did specifically mention the time element but stated that in a case like this no time limit could be set since the oil in an improper receptacle was a continuous agency for harm. *Accord*, St. Paul Mercury Indem. Co. v. Crow, 164 F.2d 270 (5th Cir. 1947) (oil overflowed and later ignited, destroying a mill).

19. *Supra* note 3.

20. Allstate Ins. Co. v. Valdes, *supra* note 3.

loading of the automobile and the unloading of the shotgun. Nevertheless, in view of the requirements of the statute, the decision has some basis in logic.

In *Hartford Acc. & Indem. Co. v. Fireman's Fund Indem. Co.*,[21] a truck driver was attempting to make a delivery of propane gas in cylinders carried on the truck. The driver had parked his truck and was attempting to locate the correct house where the delivery was to be made. Of two homes in the immediate vicinity, he went to the wrong one and there opened a valve on a propane gas cylinder, which valve led into an open basement. The driver subsequently learned of his mistake but neglected to shut off the valve. He delivered a tank of gas to the right house and then drove off. About four hours later an explosion occurred in the basement of the home where he had mistakenly opened the valve. The trucker's insurance carriers settled the claim and brought an action against the trucker's liability carrier for reimbursement. The Seventh Circuit Court of Appeals held that the truck driver's act in turning on the valve in the wrong house had nothing to do with the unloading of the propane gas cylinder, which was supposed to be delivered in a different house, nor did the truck have anything to do with the negligent act of the driver. The court further stated that the fact that unloading had not been completed was immaterial as long as the negligent act bore no relationship to the unloading operation. Up to this point the decision appears logical and correct, but the court then went on to say that Illinois recognizes the Complete Operations rule and declared that this case falls within that rule. The decision should not have been concerned with the Complete Operations rule, and had this rule applied the result should have been the opposite. Actually, the court seems to have completely misconstrued this doctrine.

In *Gamble-Skogmo Inc. v. St. Paul Mercury Indem. Co.*,[22] an employee of a customer where a delivery was being made was assisting in the assembling of a complicated piece of machinery on the truck from which it was to be unloaded. In the course of this work, he was injured due to faulty instructions concerning the assembling of the machine. The Michigan court held that while the injury undoubtedly arose out of the unloading operation, the assembling of the machinery was not considered to be a use of the automobile and the accident was accordingly not covered under the automobile policy. This is one of several cases in which the court stated that the injury arose as a result of a business risk of the seller rather than out of the use of the automobile.

In *Eastern Chems. Inc. v. Continental Cas. Co.*,[23] a truck which was

21. 298 F.2d 423 (7th Cir. 1962).
22. 242 Minn. 91, 64 N.W.2d 380 (1954).
23. 23 Misc. 2d 1024, 199 N.Y.S.2d (Sup. Ct. 1960).

hauling chemicals was being unloaded. At one point, however, "when there was no activity in the unloading process, one of the containers on the truck exploded" resulting in injury to the truck driver. This was a declaratory judgment action between the chemical company and the automobile insurer for the trucker. The New York court held that there was no coverage under the automobile policy for either the named insured or the chemical company because there was no allegation of negligence in the loading or unloading and because no act of loading or unloading was taking place at the time. In *Moore-McCormick Lines v. Maryland Cas. Co.*,[24] which at first glance seems to go against the weight of authority in New York, an employee of a trucker was injured while loading bags onto a truck from a ship. In this instance, however, the allegation of negligence was directed entirely against the ship-owner for improper stacking of the bags. The court accordingly held that since no negligence had been alleged in the loading or unloading operation, there was no coverage under the automobile policy.

Handley v. Oakley[25] involved an ice cream truck which was parked near a baseball field. The driver of the truck was dispensing ice cream to a boy purchaser when a foul ball hit the boy. The court held that the injury was not connected with the act of unloading the ice cream and the proximate cause of the injury was the ballgame. The accident did not arise out of the ownership, maintenance or use of the automobile.

In a relatively early New Jersey case,[26] a milkman, in the process of arranging the ice in an icebox after the milk had been delivered, had his ice pick sticking out of his back pocket. A passerby was injured by the protruding ice pick. The court held that unloading had been completed and that there was accordingly no coverage under the automobile policy.

The Omnibus Clause

As previously shown, the ownership, maintenance and use of the truck ties in with the loading and unloading clause, and it is now necessary to examine both of these provisions in connection with the omnibus clause. Paragraph III of the insuring agreements, entitled "Definition of Insured" (otherwise known as the omnibus clause), reads:

> With respect to the insurance for Bodily Injury Liability and for Property Damage Liability the unqualified word "insured" includes the named insured and, if the named insured is an individual, his spouse if a resident of the same household, and also includes *any person while using the automobile and any person or*

24. 181 F. Supp. 854 (S.D.N.Y. 1959).
25. *Supra* note 7.
26. Zurich Gen. Acc. & Liab. Ins. Co. v. American Mut. Liab. Ins. Co., *supra* note 2.

organization legally responsible for the use thereof, provided the actual use of the automobile is by the named insured or such spouse or with the permission of either.[27]

If an outsider who is helping to load or unload a truck is also using it,[28] he is probably doing so with permission of the insured. It then follows quite naturally that this outsider becomes an "insured" under the policy according to the language of the omnibus clause.[29] It also becomes obvious that the firm for which he is working and who may be held legally responsible for his acts is also an insured under the policy by virtue of the fact that it may be legally responsible for the use of the vehicle.[30] In a very recent

27. Emphasis added.

28. In Travelers Ins. Co. v. Buckeye Union Cas. Co., *supra* note 7, a tank truck was parked preparing to load fuel oil. A pipe being moved toward the truck discharged oil onto the driver knocking him off the truck before the loading operation had actually begun. In an action for declaratory judgment against the truck carrier to get coverage as an omnibus insured for Gulf Oil Corporation, the party charged with negligence, the court held that the loading and unloading clause is of no consequence unless or until the party charged with negligence is shown to have been using the truck. Since the act that caused the injury related only to Gulf's operations, the company was not using the truck and the loading and unloading clause did not apply.

29. *But see* Nichols & Co. v. Travelers Ins. Co., 179 N.E.2d 593 (Mass. 1962), where an employee of a truck owner was dropping bales of wool to Nichols' employees who were standing on the ground. One of the bales hit a passerby and Nichols brought a declaratory judgment action to get coverage under the loading and unloading clause of the trucker's policy. The court held that in order for Nichols to become an omnibus insured, his employees had to be *responsible for the operation of the motor vehicle.* The court stated that their participation in unloading was immaterial, and since they were not responsible for the operation of the truck they were not omnibus insureds. This decision completely disregards the fact that the loading and unloading clause must be interpreted in conjunction with the use of the vehicle and is an extension of the ownership, maintenance and *use* insuring agreement.

30. Indemnity Ins. Co. v. Old Dominion Hoisting Serv., 251 F.2d 382 (D.C. Cir. 1958) (owner of crane held omnibus insured under automobile policy); American Auto. Ins. Co. v. Transport Indem. Co., 19 Cal. Rptr. 558 (Dist. Ct. App. 1962) (receiver of steel blocks was held to be an omnibus insured under the trucker's policy); Bituminous Cas. Corp. v. American Fid. & Cas. Co., *supra* note 4 (customer's employee was unloading and customer was covered as ominibus insured under automobile policy); Garvey v. Great Atl. & Pac. Tea Co., 125 So. 2d 634 (La. Ct. App. 1961) (employee of food market who was delivering groceries to a customer's car injured child in car, and court held employee and employer covered under omnibus clause); Woodrich Constr. Co. v. Indemnity Ins. Co., *supra* note 6 (general contractor who had complete control of turntable upon which truck was being unloaded was held to be an omnibus insured under the truck policy); Wagman v. American Fid. & Cas. Co., *supra* note 3 (department store manager who was checking suits being loaded onto truck and who bumped pedestrian was held to have been *using* the truck, and accordingly was an omnibus insured); Stole v. United States Steel Corp., 34 Misc. 2d 103, 227 N.Y.S.2d 595 (Sup. Ct. 1962) (erecting contractor was covered as an omnibus insured under the automobile policy of the trucker); D'Aquilla Bros. Contracting Co. v. Hartford Acc. & Indem. Co., 22 Misc. 2d 733, 193 N.Y.S.2d 502 (Sup. Ct. 1959) (automobile policy was held to cover subcontractor's employee under the omnibus clause); R. H. Macy & Co. v. General Acc. Fire & Life Assur. Corp., *supra* note 4 (Macy's was held to be an omnibus insured under the trucker's policy); Lowry v. R. H. Macy & Co., *supra* note 3; Travelers Ins. Co. v. Motorists Mut. Ins. Co., 178 N.E.2d 613 (Ohio

New Mexico case,[31] "Service Company" was involved in the job of cementing an oil well, and "Rowland" was furnishing the water for this operation. While "Service" was pumping cement from their truck into the casing, a pocket of oil and gas escaped and exploded, injuring two men and killing two others. The general liability carrier for the Southern California Petroleum Corporation settled the claims and brought suits against the two automobile carriers for "Service" and "Rowland." The Supreme Court of New Mexico held that omnibus coverage extends only to persons who are legally responsible for the vehicle or who are using it. Since Southern California Petroleum Corporation was admittedly not operating or using the vehicles, the fact that unloading might have been involved was not enough. The court held that the accident resulted from the negligent acts of the Southern California Petroleum Company and released the two automobile carriers from responsibility.

Severability of Interests

As pointed out previously, it is usually impossible to make a clear-cut coverage determination on the basis of one particular clause of the policy since they are so often interrelated. Where the injury or damage involves a third party who is not an employee of the omnibus insured, there is no need to delve further concerning coverage under the omnibus clause. Where, however, coverage is extended to an omnibus insured in a case that involves injury to an employee of the named insured, there is an additional problem regarding employee exclusion that requires further discussion. Exclusion (d) reads as follows:

> This policy does not apply under Coverage A, to bodily injury to or sickness, disease or death of any employee of the insured arising out of and in the course of (1) domestic employment by the insured if benefits therefor are in whole or in part either payable or required to be provided under any Workmen's Compensation Law, or (2) other employment by the insured.

Even before the severability of interests condition was added to the Standard Automobile Policy some courts were interpreting the employee exclusion as being applicable only against an employer if he was the em-

Ct. App. 1961) (grocery store owner and employee held omnibus insureds under auto policy of private passenger car); Coletrain v. Coletrain, 238 S.C. 555, 121 S.E.2d 89 (1961) (husband, while getting out of a taxi, closed the door on the hand of his wife, and the court held this to be unloading and gave omnibus coverage to the husband as being one who was *using* the cab); Panhandle Gravel Co. v. Wilson, *supra* note 4 (on return trip from Panhandle's quarry, rock fell from truck hitting windshield of passing car, injuring passenger, and court held trucker's auto policy covered Panhandle as an omnibus insured as a result of improper loading).

31. Southern Cal. Petroleum Corp. v. Royal Indem. Co., 70 N.M. 24, 369 P.2d 407 (1962).

ployer of the employee who was injured.[32] For example, this exclusion was not applied by some of the courts against a named insured if the injured claimant was an employee of an omnibus insured or vice versa. This interpretation permits recovery in the case of an employee of the named insured injured by the omnibus insured.

When the severability of interests clause was added to the policy, it was an attempt to clear up any misunderstanding once and for all. This clause reads as follows: "The term 'the insured' is used severally and not collectively, but the inclusion herein of more than one insured shall not operate to increase the limits of the Company's liability." We are not concerned in this particular discussion with an increase in the company's possible exposure, but the first part of this condition makes it clear beyond any doubt that the employee exclusion refers only to the employee of the particular insured claiming coverage under the policy.[33] Despite the severability clause, some courts have arrived at what might be considered wrong decisions in that they are at variance with the wording and intent of the policies.[34] In *Transport Ins. Co. v. Standard Oil Co.*,[35] there was a severability clause in the policy and the court incorrectly held that the employee exclusion did apply. In that case a truck was being loaded with diesel fuel on the property of Standard Oil Company when an explosion occurred, injuring the truck driver. The lower court correctly held that Standard Oil was covered as an omnibus insured and was not excluded from coverage

32. See Risjord & Austin, *Who Is the Insured?*, 24 U. KAN. CITY L. REV. 65, 70-74 (1955).

33. Federal Ins. Co. v. Michigan Mut. Liab. Co., *supra* note 4; United States Fid. & Guar. Co. v. Church, 107 F. Supp. 683 (N.D. Cal. 1952), *aff'd sub nom.* Canadian Indem. Co. v. United States Fid. & Guar. Co., 213 F.2d 658 (9th Cir. 1954); Travelers Ins. Co. v. General Cas. Co., 187 F. Supp. 234 (D. Idaho 1960); Bituminous Cas. Corp. v. Travelers Ins. Co., 122 F. Supp. 197 (D. Minn. 1954); Canadian Indem. Co. v. State Auto. Ins. Ass'n, 174 F. Supp. 71 (D. Ore. 1959) (employee exclusion did not apply since the injured was not employed by the particular insured being sued); Columbia So. Chem. Corp. v. Manufacturers & Wholesalers Indem. Exch., *supra* note 4 (truck driver injured but employee exclusion not effective against defendant); Employers Mut. Liab. Ins. Co. v. Pacific Indem. Co., 167 Cal. App. 2d 369, 334 P.2d 658 (Dist. Ct. App. 1959); Pleasant Valley Lima Bean Growers & Warehouse Ass'n v. California Farm Ins. Co., 142 Cal. App. 2d 126, 298 P.2d 109 (Dist. Ct. App. 1956); Maryland Cas. Co. v. New Jersey Mfrs. (Cas.) Ins. Co., 28 N.J. 17, 145 A.2d 15 (1958), *affirming* 48 N.J. Super. 314, 137 A.2d 577 (1958) (employee exclusion applies only against the employer of that particular insured seeking coverage); Greaves v. Public Serv. Mut. Ins. Co., 5 N.Y.2d 120, 155 N.E.2d 390, 181 N.Y.S.2d 489 (1959), *affirming* 4 App. Div. 2d 609, 168 N.Y.S.2d 107 (1957) (employee exclusion did not apply in view of the severability clause); Employers' Liab. Assur. Corp. v. Liberty Mut. Ins. Co., 84 Ohio L. Abs. 58, 167 N.E.2d 142 (C.P. 1959).

34. See American Fid. & Cas. Co. v. St. Paul-Mercury Indem. Co., 248 F.2d 509 (5th Cir. 1957); General Acc. Fire & Life Assur. Corp. v. Brown, *supra* note 10; Simpson v. American Auto. Ins. Co., 327 S.W.2d 519 (Mo. Ct. App. 1959).

35. 337 S.W.2d 284 (Tex. 1960).

since the injured party was not an employee of Standard. Unfortunately, the Supreme Court of Texas reversed the decision in spite of the severability clause and, for some unknown reason, decided that Standard was not an omnibus insured.

Overlapping Coverage

Until recent years, a large portion of the suits arising out of the loading and unloading clause developed because of the controversy concerning coverage between the general or public liability insurance carrier on the premises where the loading or unloading was being done and the trucker's automobile insurer.

The wording of the general liability policy, exclusion (A), reads as follows: "This policy does not apply (a) . . . to the ownership, maintenance, operation, use, loading or unloading of (1) automobiles, *if the accident occurs away from the premises.*"[36] The general liability policy also defines "premises" as "the ways immediately adjoining on land." At least by implication where the loading or unloading is being done either on the assured's premises or on a street or roadway immediately adjoining the assured's premises, there may be coverage under the general liability policy applicable to the premises. It must, however, be kept in mind that there is no omnibus coverage under any of the general or public liability policies. It is also to be assumed that both the automobile and the general liability policy involved in the controversy have an "other insurance" clause which would ordinarily make both policies co-insurers.

The difficulty arises when an employee of the general liability policyholder is instrumental in injuring the driver or helper on the truck, or a third party, at a time when he is assisting in the loading or unloading operations. Since the general liability policyholder's employee is not insured under the general liability policy, were it not for the automobile policy covering the truck under the loading and unloading clause, he personally would be left completely without insurance protection.[37] Because of this and as a result of the increasing number of actions that were being brought by one insurance company against another on this question of overlapping coverages, the Combined Claims Committee of the Association of Casualty Insurance Companies and the National Association of Mutual Casualty Companies in joint action promulgated some principles on the handling of

36. Emphasis added.

37. See Brown & Risjord, *Loading and Unloading: The Conflict Between Fortuitous Adversaries*, 29 INS. COUNSEL J. 197 (1962), and Gowan, *Loading and Unloading—Hired Cars—Concurrent Coverage—Industry Recommendations*, 26 INS. COUNSEL J. 93 (1959), for interesting and detailed discussions of this subject, including discussion of policies involving hired and non-owned vehicles.

this problem which were adopted by many of the companies belonging to the two groups. It must be emphasized that these principles are advisory only and are not binding on the signatory companies, especially in states where the decisions contradict the principles or where an insured's interests might be prejudiced as a result of adherence to them.

The first agreement reads as follows: "Where a vehicle is being loaded or unloaded at a customer's premises [or other locations where there is general liability coverage] and the driver or a member of the public is injured by reason of the negligent actions of the employees of the customer engaged in the loading or unloading, the auto carrier should cover."[38] For example, suppose the truck of B is being loaded at the premises of A and the employees of A drop a pipe, which is being loaded, on the driver of B. The driver of B sues A. The auto carrier of B should cover. If held liable, A would have an action against its negligent employees and since the liability policy of A normally would not cover A's employees, the ultimate obligation would fall on B's auto carrier in most cases anyway. The great weight of authority follows this recommendation.[39] The decisions that deny coverage under the automobile policy[40] and those that hold the general carrier in as co-insurer[41] do so on the basis of a variety of reasons, mostly tortured.

Century Food Markets Co. v. Nationwide Mut. Ins. Co.[42] involved an

38. Brackets added.

39. Lumbermens Mut. Cas. Co. v. Employers' Liab. Corp., *supra* note 3; Pacific Employers Ins. Co. v. Hartford Acc. & Indem. Co., 228 F.2d 365 (9th Cir. 1955); Travelers Ins. Co. v. General Cas. Co. *supra* note 33; Federal Ins. Co. v. Michigan Mut. Liab. Co., *supra* note 4; Bituminous Cas. Corp. v. Travelers Ins. Co., *supra* note 33; United States Fid. & Guar. Co. v. Church, *supra* note 33; American Auto. Ins. Co. v. Transport Indem. Co., *supra* note 30; Employers Mut. Liab. Ins. Co. v. Pacific Indem. Co., *supra* note 33; Pleasant Valley Lima Bean Growers Warehouse Ass'n v. California Farm Ins. Co., *supra* note 33; Bituminous Cas. Corp. v. American Fid. & Cas. Co., *supra* note 4; Maryland Cas. Co. v. New Jersey Mfrs. Cas. Ins. Co., *supra* note 33; Wagman v. American Fid. Cas. Co., *supra* note 3; Lamberti v. Anaco Equip. Corp., *supra* note 3; D'Aquilla Bros. Contracting Co. v. Hartford Acc. & Indem. Co., *supra* note 30; R. H. Macy & Co. v. General Acc. Fire & Life Assur. Corp., *supra* note 4; Lowry v. R. H. Macy & Co., *supra* note 3; Travelers Ins. Co. v. Motorists Mut. Ins. Co., *supra* note 30; United States Fid. & Guar. Co. v. Nationwide Mut. Ins. Co., *supra* note 4; Employer's Liab. Assur. Corp. v. Liberty Mut. Ins. Co., *supra* note 33.

40. Pavlik v. St. Paul Mercury Ins. Co., 291 F.2d 124 (7th Cir. 1961); American Fid. & Cas. Co. v. St. Paul-Mercury Indem. Co., 248 F.2d 509 (5th Cir. 1957) (no severability clause); Ocean Acc. & Guar. Corp. v. J. B. Pound Hotel Co., *supra* note 6; Simpson v. American Auto Ins. Co., *supra* note 34; Travelers Ins. Co. v. Buckeye Union Cas. Co., *supra* note 7; Century Food Markets Co. v. Nationwide Mut. Ins. Co., 81 Ohio L. Abs. 205, 161 N.E.2d 650 (C.P.), *aff'd*, 81 Ohio L. Abs. 301, 161 N.E.2d 652 (Ct. App. 1958); Smedly v. Milwaukee Auto Ins. Co., *supra* note 6.

41. Travelers Ins. Co. v. Peerless Ins. Co., *supra* note 4; Ermis v. Federal Windows Mfg. Co., 7 Wis. 2d 594, 97 N.W.2d 485 (1959).

42. *Supra* note 40.

employee of a food market who delivered a package to the automobile of a customer parked on the premises of the market. The employee closed the door on the hand of the owner. The Ohio court held that there was no coverage under the auto policy on erroneous generalities that it was inconsistent for the named insured to recover against his own carrier and that in any event the coverage was provided by the general liability carrier for the market.

In *Smedly v. Milwaukee Auto. Ins. Co.*,[43] involving a crane mounted on a truck chassis, the truck, which had to be stationary and operated from a separate power unit, caused the plaintiff to lose his balance and fall. The court held that the operation of the crane did not involve the use or operation of the truck. There was, accordingly, no coverage under the loading and unloading clause of the automobile policy.

The second agreement recommended by the Combined Claims Committee reads: "Where an accident occurs by reason of defective equipment of one insured used in loading or unloading the vehicle of another insured, the carrier of the insured owning the defective equipment should cover." For example, suppose the truck of B is being loaded at the premises of A by the use of A's crane and the cable of A's crane breaks, dropping the load on B's driver who sues A. The liability carrier of A should cover. The insurance carriers in proposing this rule of thumb recognized that this was a troublesome area and that there was some conflict in the decisions of the various states. The carriers believed that in order to avoid litigation between companies and in the absence of local decisions to the contrary, adherence to this principle was logical and fair to all in the long run.

In principle the rule seems good except that it would come into head-on conflict with the Complete Operations theory as defined by the courts of some of our states in some instances. In *Columbia So. Chem. Corp. v. Manufacturers & Wholesalers Indem. Exch.*,[44] a truck was being loaded with soda ash. The truck driver pulled a rope which released a loading spout, but the rope broke and knocked the driver off the truck. The soda ash company, owners of the rope and spout, paid the claim of the truck driver and sued the owner of the truck. The California court held that the soda ash company was covered as an omnibus insured under the automobile policy because of the loading and unloading clause.[45]

43. *Supra* note 41.

44. *Supra* note 4.

45. *Accord*, Stole v. United States Steel Corp., *supra* note 30 (cables, which were attached to a crane and totally unconnected with a truck that had delivered steel beams, were left lying across the sidewalk and a pedestrian tripped over one of them).

The conflict with the Complete Operations theory does not arise, however, where the defective equipment belongs to the trucker. See Krasilovsky Bros. Trucking Co. v.

In a situation where it appears the court is adhering to the Coming to Rest doctrine, the recommended principle regarding the defective equipment is easier to apply. *Travelers Ins. Co. v. Employers Cas. Co.*[46] involved a truck which was unloading cement into a bucket. When the crane operator attempted to lift the bucket, it buckled and killed some men in the vicinity. The Texas court held that there was no coverage under the trucker's automobile policy since the cement had been completely unloaded and further held that the general liability policy covered the loss.[47]

Two other cases deserve some mention at this point. The first is *General Acc. Fire & Life Assur. Corp. v. Brown*[48] where a trucker's employee, while loading the truck, was injured as a result of the allegedly defective premises of the customer. The Illinois court held the general liability carrier liable and declared that there was no coverage under the automobile policy on the basis of lack of causal connection between the accident and the use of the truck. As pointed out previously in this Article, Illinois is one of the few states which hold that there must be some causal connection between the use of the vehicle and the accident in order for there to be coverage under the automobile policy.[49] The other case of interest in connection with allocation of coverage between the general liability carrier and the automobile-policy carrier where defective equipment is involved is *Canadian Indem. Co. v. State Auto Ins. Ass'n.*[50] In that case the federal district court in Oregon held both insurers. The automobile policy covered the consignee because of its employee's negligence, and the general liability policy of the consignee covered the defective winch which was on a separate truck owned and operated by the consignee and his employees.

Conclusion

In the decisions involving an interpretation of the loading and unloading clause of the Standard Automobile Policy, two principal doctrines stand out as being decisive in many of the cases. The Complete Operations rule holds that loading begins when the object is first picked up en route to the vehicle, and unloading ends when the object has reached its final delivery point or ultimate destination. In this doctrine, the number of intermediate stops or

Maryland Cas. Co., *supra* note 4, where an employee was moving a power press in an elevator cage by a power winch attached to the truck that had delivered the press. The rope broke and damaged the elevator as well as the press. The court held that the damage to the elevator was covered under the loading and unloading clause of the automobile policy.

46. *Supra* note 2.

47. See Jackson Floor Covering Inc. v. Maryland Cas. Co., *supra* note 2 (equipment not defective, but if it had been, result would obviously have been the same).

48. *Supra* note 10.

49. See pp. 260-61 *supra.*

50. *Supra* note 33.

resting places are immaterial. The Coming to Rest rule holds that loading is the period of time which begins when the object is last picked up and kept in continuous movement without interruption, pause or rest necessitating setting down of the object, until it is placed on or in the vehicle. Unloading, according to this doctrine, is that period of time which begins when the object is first picked up from the vehicle and kept in continuous movement without interruption, until it is set down at its first place of rest outside the vehicle.

A great number of cases have been decided without reference to either theory. Some have merely stated that the facts fall within the loading and unloading clause, some have been decided merely on the question whether or not the accident arose out of the *use* of the vehicle involved, and others have been decided on an interpretation of both loading or unloading and use. A few cases made a point of using the word "delivery" in arriving at a conclusion, with no consistency in the decisions. While the time interval between the pick-up and the accident should be an important factor in some of the decisions, very few of the courts actually refer to it. A small group of cases holds that there must be some causal connection between the use of the vehicle and the accident.

Most cases, particularly those based on policies containing a severability clause, hold that the consignee or customer and its employees are omnibus insureds under the automobile policy where they have participated in the loading or unloading. In cases of overlapping coverage involving both the vehicle automobile policy and the general liability coverage, the Combined Claims Committee has promulgated some principles which many companies follow:

1. Where the vehicle is being loaded at a customer's premises and the driver or a member of the public is injured by reason of the negligent actions of the employees of the customer engaged in the loading or unloading, the auto carrier should cover.
2. Where an accident occurs by reason of defective equipment of one insured, the carrier of the insured owning the defective equipment should cover.