STATE OF MICHIGAN

COURT OF APPEALS

JERRY RAYMOND, personal representative of the estate of JAMES JACKSON, deceased,

Plaintiff-Appellee,

v No. 94091

COMMERCIAL CARRIERS INSURANCE, INC.,

Defendant,

and

OLD REPUBLIC INSURANCE COMPANY,

Defendant-Appellant.

Before: Holbrook, Jr., P.J., and Doctoroff and C.W. Simon, Jr.,* JJ.

PER CURIAM

Defendant Old Republic Insurance Company appeals by leave granted from an order denying summary disposition to defendant and awarding summary disposition to plaintiff Jerry Raymond, personal representative of the estate of James Jackson, in this action for no-fault personal injury protection benefits. In its order of summary disposition, the trial court found that Jackson was not injured during a loading/unloading process and therefore no-fault coverage was available. We reverse and remand.

The facts are undisputed. Jackson was employed by Commercial Carriers to drive a tractor-trailer of new cars from Dearborn to the east coast. Jackson would load the cars on the trailer and unload them at the destination. As a regular practice, Jackson checked the load at every stop along the way to make sure that the chains were tight, the cars in their proper place, and the trailer and tires all right. If the chains had become loose, Jackson would use a ratchet bar to tighten the chains and pull the cargo securely down.

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*Circuit judge, sitting on the Court of Appeals by assignment.

On the day of his injury, Jackson loaded the new cars onto the trailer at the terminal in Dearborn and secured them with chains. While stopped at a rest stop on the Ohio turnpike en route to the east coast, Jackson checked the chains on the trailer and found them loose. He climbed up the side of the trailer to tighten the chain with the ratchet. While pulling down with his right hand and reaching up through the trailer to hold part of the ratchet with his left hand, Jackson's foot slipped off the ladder, leaving Jackson hanging by his left arm. Jackson received worker's compensation benefits for injuries to his shoulder, arm, and neck.

The sole issue presented on appeal is whether Jackson's injury was sustained while loading or unloading a vehicle. No-fault coverage is not available where worker's compensation benefits are available to an employee who sustains injury in the course of his or her employment while loading, unloading, or doing mechanical work on a vehicle unless the injury arose from the use or operation of another vehicle. MCL 500.3106(1)(c) and (2); MSA 24.13106(1)(c) and (2).

In Bell v F J Boutell Driveway Co, 141 Mich App 802; 369 NW2d 231 (1985), this Court examined the intent of 1981 PA 209, the amendment to §3106 which added subsection (2) and the prefatory phrase in subsection (1)(c). We found it appropriate to broadly interpret the terms "loading" and "unloading" to effectuate the Legislature's intent to eliminate duplication of benefits (worker's compensation and no-fault) for work-related injuries except where the actual driving or operation of a motor vehicle is involved. Bell, supra, p 810. The interpretation set forth in Bell has been followed by this Court in subsequent cases analyzing whether the injury at issue was sustained while loading or unloading a vehicle. See, e.g., Gibbs v United Parcel Service, 155 Mich App 300; 400 NW2d 313 (1986) (the terms "loading" and "unloading" a parked vehicle include acts incidental to the completion of the loading or unloading process for purposes of §3106(2), so that a UPS clerk, whose job included

loading trailers and who, after finishing stacking packages in the back of a trailer, tripped when leaving the trailer, was held to have sustained her injury in the process of loading the trailer); Gray v Liberty Mutual Ins Co, 149 Mich App 446; 386 NW2d 210 (1986), lv den 425 Mich 885 (1986) (UPS driver who sustained injury when he bent over to pick up packages which had fallen on the truck floor while at a delivery destination was held to have sustained his injury while "unloading" his vehicle).

The factual circumstances presented in the instant case are almost identical to those presented in Crawford v Allstate Ins Co, 160 Mich App 182; 407 NW2d 618 (1987). In Crawford, plaintiff's employment as a driver included loading, unloading, and hauling new cars on a tractor-trailer. On the day of his injury, plaintiff loaded his trailer, secured the chains, drove a short distance, but before leaving his employer's grounds, parked the truck and went to the employer's office to get some coffee. Upon returning to the truck, plaintiff noticed a loose chain, and climbed on the trailer to tighten the chain with a ratchet. Plaintiff was injured when the chain broke, plaintiff lost his balance, and fell to the ground. Recognizing that the activity of loading involved more than just putting freight onto a carrier, but in the case of loading automobiles, necessarily includes the requirement of securing the automobiles into place, this Court held that plaintiff was injured during the process of loading in the course of his employment within the meaning of §3106.

We do not find the fact that Jackson was not on his employer's premises at the time of his injury a basis for distinguishing between the instant case and Crawford. In light of the intent behind §3106(1)(c) and (2) and the fact that Jackson's job required loading and unloading the cars from his trailer and that the process of loading and unloading necessarily included ensuring that the chains properly secured the vehicles into place, we believe the trial court erred in finding that plaintiff's injury was not sustained while loading or unloading the trailer.

We reverse the order of summary disposition in favor of plaintiff and remand this case to the trial court for entry of an order of summary disposition in favor of defendant on plaintiff's claim for no-fault personal injury protection benefits.

Reversed and remanded. Jurisdiction is not retained.

/s/ Donald E. Holbrook, Jr.
/s/ Martin M. Doctoroff
/s/ Charles W. Simon, Jr.