STATE OF MICHIGAN

COURT OF APPEALS

JAMES RAYL,

Plaintiff-Appellant,

v No. 98214

OLD REPUBLIC INSURANCE COMPANY,

Defendant-Appellee.

Before: Kelly, P.J., and MacKenzie and P.D. Schaefer,* JJ.

PER CURIAM

Plaintiff appeals as of right from an order granting defendant's motion for summary disposition. We affirm.

Plaintiff seeks to recover from defendant first-party no-fault benefits on account of injuries sustained in the course of his employment with Commercial Carriers, Inc., on December 3, 1984. As a result of his injuries, plaintiff was off work for approximately 4 1/2 months, during which time he received workers' compensation benefits.

No-fault coverage is not available where workers' 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). This case presents the issue of whether the plaintiff's injury herein was sustained while loading or unloading a vehicle.

The parties stipulated in the trial court as follows:

> "James Rayl is an employee of Commercial Carriers, Inc. He is employed as a truck driver hauling new cars. . . .
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> * * *
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> "In connection with his job, Mr. Rayl is responsible to load and unload the cargo (new cars) onto and off his tractor trailer unit. The cargo units are secured to the trailer by chaining them down. In con-

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

nection with securing the cargo to the trailer, the driver has to keep the cargo within certain clearance distances from other cargo and the superstructure of the trailer. The purpose of such clearance is to prevent the cargo from being damaged while it is being transported from the shipping point to the delivery point.

"During his routine activity Mr. Rayl, as is typical of all truck drivers, is required to periodically recheck his cargo to make sure it is properly secured to the trailer.

"Mr. Rayl loaded his trailer on the Friday before this date of injury, which would have been November 30, 1984. He then proceeded to drive home in Vermilion, Ohio for the weekend. On Monday morning, December 3, 1984 he was beginning to start his trip to deliver his cargo to Youngstown, Ohio. At a Chevrolet Dealership in Amherst, Ohio, which is near Vermilion, Ohio, he stopped to check his cargo. At that time he noted a loose chain on one of the cargo units. Mr. Rayl proceeded to retighten the chain and resecure the cargo to the trailer. While in the process of retightening the chain and securing the cargo the tightening mechanism slipped resulting in the claimed injuries."

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 for C & J Commercial Driveaway, Inc., 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.

In determining whether plaintiff was in the process of loading his truck within the meaning of §3106 when he climbed onto the trailer to tighten the loose chain, the Crawford Court concurred with the opinion expressed in Bell v F J Boutell Driveaway, Co, 141 Mich App 802; 369 NW2d 231 (1985), that the terms "loading" and "unloading" should be broadly interpreted to effectuate the Legislature's intent to eliminate duplication of workers' compensation and no-fault benefits for work-related

injuries except where the actual driving or operation of a motor vehicle is involved. Crawford, supra, p 186. Recognizing that the activity of loading involves 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, the Crawford 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 Mr. Rayl 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 facts that Rayl'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 agree with the trial court that plaintiff Rayl was injured while loading or unloading cargo onto his vehicle. Accordingly, we affirm the summary disposition in favor of defendant.

Affirmed.

/s/ Michael J. Kelly
/s/ Barbara B. MacKenzie
/s/ Phillip D. Schaefer