

STATE OF MICHIGAN
COURT OF APPEALS

AUTO OWNERS INSURANCE COMPANY,

Plaintiff- Appellant,

v

MICHIGAN MUTUAL INSURANCE COMPANY,

Defendant- Appellee.

-and-

ROBERT AHRNDT, et al,

Defendants

UNPUBLISHED

May 13, 1997

No. 189992

Menominee Circuit Court

LC No. 95-7377 CZ

Before: Corrigan, C.J., and Young and M.J. Talbot*, JJ.

MEMORANDUM.

Plaintiff appeals by right summary disposition of its declaratory claim for contribution or indemnification against defendant vehicle insurer. Robert Ahrndt, an employee of James Johnston d/b/a Johnston's Crane Service, was injured in the course of his employment while assisting in the loading of a steel catwalk onto a flatbed truck owned by R. Becker Enterprises ("RBE") and driven by David Linsmeier.

The catwalk was initially loaded, but did not fit the truck trailer properly, and it was unloaded and placed on the ground. Ahrndt was then tasked by his employer to remove the legs from the catwalk with a cutting torch. Overlooking the fact that the catwalk was standing on those legs, Ahrndt followed instructions, the catwalk toppled over onto him, and he was injured. Ahrndt then sued RBE and Linsmeier for negligence. Plaintiff, as general liability insurer of RBE, assumed the defense of that action, and asked Michigan Mutual, RBE's no fault insurer, to either take over or share the burdens of

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

the defense and any eventual liability. Defendant declined, and this action ensued. Pursuant to MCR 7.214(E), this case is being decided without oral argument.

Plaintiff's reliance on *Celina Mutual Ins Co v Citizens Ins Co*, 136 Mich App 315; 355 NW2d 916 (1984), is misplaced, as in that case the injury occurred while property was being loaded onto a motor vehicle. Similarly, with respect to the "preparation for loading or unloading" cases, the injuries involve the injured person preparing the *vehicle* to be loaded or unloaded. *Bell v F J Boutell Driveway Co*, 141 Mich App 802; 369 NW2d 231 (1985); *Temam v Transamerica Ins Co of Michigan*, 123 Mich App 262; 333 NW2d 244 (1983). Where, as here, the cargo has been removed from the vehicle and set on the ground, and the injury occurs by virtue of something being done to the *cargo* itself, even if it involves preparation for reloading the cargo, such injury does not arise out of the ownership, maintenance or use of a motor vehicle. *Dowdy v Motorland Ins Co*, 97 Mich App 242; 293 NW2d 782 (1980). The *Dowdy* result was approved in *Celina Mutual Ins Co, supra*. 136 Mich App at 319-320. Accordingly, where the Michigan Mutual policy provides insurance only for bodily injury resulting from ownership, maintenance or use of a covered vehicle, such insurance has no application to the claims made in the underlying suit by Robert Ahrndt against the insured, RBE and David Linsmeier.

Affirmed.

/s/ Maura D. Corrigan
/s/ Robert P. Young, Jr.
/s/ Michael J. Talbot