

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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OHIO CASUALTY INSURANCE COMPANY,

Plaintiff-Appellant,

v

DISCOUNT MARBLE & GRANITE, INC.,  
JOSEPH RICHARD PARKS, SUSAN PARKS,  
CHIEF'S TRUCKING CO., GENERAL NOLI,  
U.S.A., INC., RAMILO, S.A.,  
MEDITERRANEAN SHIPPING COMPANY, and  
MEDITERRANEAN SHIPPING COMPANY,  
SA,

Defendants-Appellants,

and

MAERSK, INC.,

Defendant.

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UNPUBLISHED

June 20, 2006

No. 267494

Oakland Circuit Court

LC No. 04-057873-CK

Before: Whitbeck, C.J., and Zahra and Donofrio, JJ.

PER CURIAM.

In this declaratory action, plaintiff, Ohio Casualty Insurance Co (Ohio Casualty), appeals as of right the trial court's order denying its motion for summary disposition, and granting summary disposition in favor of defendant, Joseph Parks.<sup>1</sup> We reverse.

I Basic Facts and Proceedings

Joseph Parks was injured while assisting his son-in-law, John Hall, move granite slabs at the Discount Marble and Granite (Discount Marble) loading yard.<sup>2</sup> Hall, the owner of Discount

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<sup>1</sup> Susan Parks filed a derivative claim. Hereafter, "Parks" will refer only to Joseph.

<sup>2</sup> Parks is not an employee for workers compensation purposes, rather a subcontractor.

Marble, had ordered a shipment of granite slabs from Ramilo, a company in Spain. The granite was placed in a container and shipped first by boat to New York and then by train to the Detroit area. The container was then placed on the trailer chassis of a semi-truck and brought to the Discount Marble yard.

Hall expected the shipment to arrive in an open-top “box container.” He had even hired an overhead crane to lift the slabs from the open container and place them in the storage yard. However, when the container arrived, he discovered that the granite had been shipped in a closed container. The 1,000-pound slabs of granite were secured inside the container upright with the tops of the slabs slightly angled toward the outside walls of the container. There were seven granite slabs altogether. Four granite slabs leaned against one wall and three leaned against another wall.

To move the granite slabs, Parks stood inside the container and separated the closest slab from the others, and then pushed the slab forward approximately 11 inches. Hall and Norman Ellison, another Discount Marble employee, then attached the forklift arm to the slab and pulled the slab toward the container doors. The set of four slabs were moved, though the fourth broke when it struck a fence while being moved. Parks testified that, when starting to move the set of three granite slabs, he pulled the closest granite slab toward him to an upright position. He testified that a pallet underneath the granite slabs collapsed. Parks was knocked over and fell on his back, hitting his head. Three slabs fell on him, resulting in severe injuries.

On November 17, 2003, Parks filed suit against Discount Marble for his injuries.<sup>3</sup> Discount Marble is the named insured on a commercial general liability insurance policy issued by Ohio Casualty. On November 19, 2003, Discount Marble requested that Ohio Casualty provide its defense in the underlying lawsuit and, if found liable, indemnify Discount Marble. Ohio Casualty filed the instant action for a declaratory judgment on April 27, 2004, to determine whether it had a duty to defend Discount Marble. Ohio Casualty specifically asserted that Parks’ injuries arose from the “loading or unloading” of an “auto” as defined in the policy and, therefore, fell within the policy’s “auto exclusion.”

Parks filed his motion for summary disposition on Ohio Casualty’s declaratory judgment action under MCR 2.116(C)(10), which Discount Marble filed a concurrence. Parks and Discount Marble contended that the box container was not an excluded “auto” under the policy, and, that even if the container was an “auto,” the injury arose while unloading with a mechanical device, which is an exception to the auto exclusion. Parks and Discount Marble also argued that the injury fell within the “Products-Completed Operations Hazard” coverage endorsement and, therefore, was a covered event.

At the close of the December 7, 2005, hearing on the cross-motions for summary disposition, the trial court ruled that:

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<sup>3</sup> Later amended complaints included the additional named defendants.

The policy at issue provides an exclusion for bodily injury arising out of the use of an auto and includes loading or unloading. An auto is defined in part as a trailer, including any attachment [sic] machinery or equipment, but does not include mobile equipment. Mobile equipment is also defined in paragraph 12(f). Further, unloading or loading means the handling of property, but does not include the movement of property by means of a mechanical device that is not attached to the auto.

The relevant facts are that when the shipment arrived, it was in a closed top container with wheels under it. That's out of the deposition of John Hall, page 37 to 40.

There was a truck attached to the trailer, attached to the container, had its wheels underneath it. The driver of the truck then disconnected the trailer, so they could unload it.

Further, the evidence is undisputed that [Parks] was not operating a hi-lo at the time he was injured and he was injured while guiding the slabs of granite out of the container.

First, this Court is satisfied that [Parks'] injury arose out of the act of unloading the granite from the container and not from the fact that it sat on the trailer. The container was not an auto being unloaded, and, thus, [Parks'] injuries did not arise out of the use of an auto.

Focussing [sic] on the container, this Court finds that the container does not fall within the definition of an auto in the policy. For that reason, the Court further finds that the exclusion does not apply to preclude coverage under auto – correction – Ohio Casualty's policy and it has a duty to defend and indemnify Discount Marble. Therefore, Plaintiff Park's [sic] Motion for Summary Disposition is granted and Ohio Casualty's Motion for Summary Disposition is denied. . . .

This appeal followed.

## II Standard of Review

This Court reviews de novo a trial court's determination regarding a motion for summary disposition. *MacDonald v PKT, Inc*, 464 Mich 322, 332; 628 NW2d 33 (2001). A motion under MCR 2.116(C)(10) tests the factual support of a plaintiff's claim. *Auto-Owners Ins Co v Allied Adjusters & Appraisers, Inc*, 238 Mich App 394, 397; 605 NW2d 685 (1999). "In reviewing a motion for summary disposition brought under MCR 2.116(C)(10), we consider the affidavits, pleadings, depositions, admissions, or any other documentary evidence submitted in [the] light most favorable to the nonmoving party to decide whether a genuine issue of material fact exists." *Singer v American States Ins*, 245 Mich App 370, 374; 631 NW2d 34 (2001). Summary disposition is proper when, "[e]xcept as to the amount of damages, there is no genuine issue as to any material fact, and the moving party is entitled to judgment or partial judgment as a matter of law." MCR 2.116(c)(10).

This Court also reviews de novo “questions involving the proper interpretation of a contract or the legal effect of a contractual clause.” *Rory v Continental Ins Co*, 473 Mich 457, 464; 703 NW2d 23 (2005).

### III Analysis

The commercial general liability policy issued to Discount Marble by Ohio Casualty covers “bodily injury.” However, the policy excludes:

“Bodily injury” . . . arising out of the ownership, maintenance, use or entrustment to others of any . . . “auto” . . . owned or operated by or rented or loaned to any insured. Use includes operation and “loading or unloading.”

#### A. Whether the Container Sitting on a Chassis is an “Auto” Excluded Under the Policy?

Where there is no ambiguity of language, an insurance contract must be enforced as written. *Henderson v State Farm Fire & Cas Co*, 460 Mich 348, 354; 596 NW2d 190 (1999). “Coverage under a policy is lost if any exclusion in the policy applies to an insured’s particular claims. Clear and specific exclusions must be given effect because an insurance company cannot be liable for a risk it did not assume.” *Century Surety Co v Charron*, 230 Mich App 79, 83; 583 NW2d 486 (1998).

Ohio Casualty challenges the trial court’s determination that “the container was not an auto being unloaded, and, thus, [Parks’] injuries did not arise out of the use of an auto.”

If the insurance contract expressly defines certain terms, the policy language must be interpreted according to those definitions. *Cavalier Mfg Co v Employers Ins of Wausau (On Remand)*, 222 Mich App 89, 94; 564 NW2d 68 (1997). An “auto” is specifically defined in the policy as “a land motor vehicle, trailer or semitrailer designed for travel on public roads, including any attached machinery or equipment.” We agree with the trial court that the container was not an auto. Only the trailer was an auto under the policy definition. However, the trial court’s focus only the container is misplaced. The policy states that, “[u]se includes operation and ‘loading or unloading.’ The policy provides the following definition for the terms “loading or unloading”:

“Loading or unloading” means the handling of property:

- a. After it is moved from the place where it is accepted for movement into or onto an . . . “auto;”
- b. While it is in or *on an* . . . “auto;” or
- c. While it is being moved from an . . . “auto” to the place where it is finally delivered. (Emphasis added.)

The trial court held that Parks’ injuries did not arise out of the use of an auto. However, regardless of whether the container is considered part of the trailer, the policy states that use of an auto includes unloading and handling of property while it is in *or on* an auto. Though the

granite slabs were inside the container, the granite slabs and the container were nonetheless on the trailer. The auto exclusion applies because, the container and the granite were on the trailer when the slabs were being unloaded. Therefore, we conclude that Parks' injuries arose out of the use of an auto.

B. Are Parks' Injuries Covered Under the Policy Because the Unloading was Accomplished with a Mechanical Device?

As mentioned, the policy does not cover "[b]odily injury" . . . arising out of the ownership, maintenance, use or entrustment to others of any . . . "auto" . . . owned or operated by or rented or loaned to any insured. Use of an auto includes operation and "loading or unloading." However, the policy also indicates that "'loading and unloading' does not include the movement of property by means of a mechanical device, other than a hand truck, that is not attached to the . . . "auto."

We conclude that Parks' and Discount Marble's reliance on the "complete operation" doctrine is misplaced. The "complete operation" doctrine is one of two guides used to determine "whether loading or unloading had begun or ceased at the time of the accident." *Jervis B Webb Co v Everest Nat'l Ins Co*, 251 Mich App 692, 701; 650 NW2d 722 (2002). The "complete operation" doctrine "expands both the loading and unloading process to include the entire process involved in the movement of goods from the moment they begin their movement toward the insured vehicle to be placed therein until they have been turned over at the place of destination to the party to whom the delivery is to be made." *Id.* (citations omitted). Under the other doctrine, the "coming to rest" doctrine, "loading and unloading are construed restrictively to include only those activities beginning with the actual movement of the goods onto the insured vehicle and ending when the goods have been removed from the vehicle and have first 'come to rest.'" *Id.* (citations omitted). Neither of these doctrines need be considered here because there is no dispute that Parks was in the process of unloading the granite slabs. Even under the more restrictive "coming to rest" doctrine, Parks was in the process of unloading.

More importantly, the policy here expressly defines the scope of coverage in regard to loading and unloading. As previously stated, the term "loading or unloading" is defined in the policy. To apply the "complete operation" doctrine would render meaningless the definition of loading and unloading in the policy. Indeed, *Jervis* only adopted the "complete operation" doctrine in cases which did not involve "interpretation of either statutory provisions governing automobile insurance, such as § 3106 of Michigan's no-fault act, MCL § 500.3106, or insurance policies that contain 'loading and unloading' clauses. See e.g. *Gibbs v United Parcel Service*, 155 Mich App 300, 400 NW2d 313 (1986)." *Jervis, supra* at 700-701.

Parks and Discount Granite argue that Parks was not unloading the auto because a mechanical device was used to move the property, namely a forklift and a crowbar. The policy states that "'loading and unloading' does not include the movement of property by means of a mechanical device, other than a hand truck, that is not attached to the . . . "auto."

Consistent with the conclusion that the complete operation doctrine cannot apply under this policy, we reject Parks' and Discount Granite's claim that the auto is not being used if a mechanical device is used at any point during the loading or unloading process. Simply stated, defendant's interpretation is not reasonable as it would exclude from "loading and unloading,"

for instance, the unloading of property exclusively by hand where the property had been loaded by forklift.<sup>4</sup> The provision plainly exempts from the auto exclusion injuries arising from the contemporaneous movement of property by means of a mechanical device. Here, there is no dispute that Parks was injured using only his hands to move the granite.

C. Are Parks' Injuries Covered Under the Products-Completed Operations Hazard Provision?

In the alternative, Parks asserts that coverage is applicable under the "Products/Completed Operations Liability Coverage" provision to the Ohio Casualty insurance policy. We disagree.

"Products-completed operations hazard" is specifically defined, in relevant part, in the policy as including "all 'bodily injury' . . . occurring *away from premises you own* or rent and arising out of 'your product' or 'your work' . . . ." (Emphasis added). Parks completely ignores the "occurring away from premises you own" language when interpreting the provision. There is no dispute that Parks was injured on Discount Marble's premises. Accordingly, Parks' injury does not fall within the scope of the "Products-completed operations hazard" provision.

Reversed.

/s/ William C. Whitbeck  
/s/ Brian K. Zahra  
/s/ Pat M. Donofrio

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<sup>4</sup> Defendant's interpretation would also exclude from "loading and unloading," the loading of property exclusively by hand where the property had been unloaded by forklift.