

## This Week's Feature

# Loading and Unloading: Causal Connection Is the Key for Insurance Coverage

By Adam R. Durst and Ashlyn M. Capote



Insurance coverage disputes often arise between general liability insurers, automobile liability insurers, and/or their insureds when losses occur while a vehicle is

being loaded and unloaded. These disputes generally pertain to whether the loss falls within the scope of the automobile liability insurer's insuring agreement, or the general liability insurer's "Aircraft, Auto or Watercraft" exclusion (the auto exclusion) most often found in the CG 00 coverage form issued by the Insurance Services Office, Inc. Typically, determining whether there is a causal connection between the accident and the use of the subject vehicle is essential when deciding which policy provides coverage.

Couch on Insurance observes,

There is general agreement with the concept that a policy under which an insurer stipulates to pay all losses and expenses imposed by law arising from the loading or unloading of an automobile does not carry the liability of the insurer beyond what may be described as the natural physical limits of the automobile and the process of loading and unloading it.

Steven Plitt et al., *Couch on Insurance* 3d ed. § 121:6 (2018).

General liability insurers, however, can explicitly exclude from coverage losses arising out of the loading and unloading of an automobile. For this reason, courts have often observed that the auto exclusion found in most general liability policies contemplates that the insured will obtain automobile liability coverage through a separate policy, thus preventing a duplication of coverage. See *Essex Ins. Co. v. Grande Stone Quarry, LLC*, 82 A.D.3d 1326, 1328 (N.Y. App. Div. 2011) (quoting 21 Holmes' Appleman on Insurance 2d § 132.7(A)(2) ("In general, the liabilities excluded under the CGL insurance policy by reason of these provisions are covered under 'mirror image' insuring agreements of automobile, aviation, and marine insurance policies."). Therefore, decisions governing the interpretation of a general liability policy's auto exclusion are instructive on whether an accident falls within the scope of an automobile liability policy's insuring agreement.

While courts generally recognize that a causal connection is required to determine whether a loss falls within a policy's "loading and unloading" clause, decisions vary on the type of causation required to trigger coverage and whether "use" of the auto must be the exclusive cause of the loss. Some courts have adopted a "predominating/substantial factor" test, while others have resorted to lower standards, such as a "minimal causal connection" test (i.e., a minimal causal connection between the accident and the auto), or even merely "but-for" causation. See generally *Gradillas v. Lincoln Gen. Ins. Co.*, 792 F.3d 1050, 1054 (9th Cir. 2015) (collecting cases); *New Hampshire Ins. Co. v. Jefferson Ins. Co. of New York*, 213 A.D.2d 325 (N.Y. App. Div. 1995); *Cont'l Cas. Co. v. Fireman's Fund Ins. Co.*, 403 F.2d 291, 320 (10th Cir. 1968).

One court recently recognized other courts' varying interpretations on this exact issue and noted that the issue continues to remain unresolved in California. *Maxum Indem. Co. v. Kaur*, No. 117CV01467LJOJLT, 2018 WL 6528427, at \*9 n.9 (E.D. Cal. Dec. 12, 2018).

Other courts have forgone the analysis regarding whether the vehicle was an actual or proximate cause of the accident and have instead applied a "reasonable contemplation" test. This test contains a subjective component, focusing on whether the parties "reasonably contemplated" that the risk would be covered by the policy, or stated another way, whether the negligent act that caused the injury was a natural and reasonable incident or a consequence of the use of the automobile. *Menard, Inc. v. Country Preferred Ins. Co.*, 2013 IL App (3d) 120340, ¶ 28 (3rd Dist. 2013). See also *Blasing v. Zurich Am. Ins. Co.*, 356 Wis. 2d 63 (Wis. 2014).

It is generally understood that causation is always an element necessary to establish whether a loss falls within the loading and unloading clause in an automobile insurer's insuring agreement or a general liability insurer's auto exclusion. However, practitioners and insurance professionals must be cognizant of the varying levels of causation that courts have applied in making such a determination, which often differ from state to state, and are often extremely fact sensitive.

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