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CASE SUMMARY: CAR RENTAL COMPANY'S POLICY APPLIES IN PRIORITY OVER EMPLOYER'S NON-OWNED POLICY IN CAR ACCIDENT INJURY CASE IN BC

The court considered the engagement of multiple Alberta insurance policies in a settled claim arising from a fatal BC car accident, and the applicable priority scheme. The BC legislative priority scheme applied, given the accident happened in BC and there was no express language in the insurance policies which would support choosing the Alberta priority scheme.

Insurance law – Automobile insurance – Lessors and lessees – Priority coverage – Multiple policies – Owner – Obligation – Statutory provisions – Interpretation of policy

[Northbridge Insurance Corporation v Trinidad Drilling Ltd.](#), [2021] B.C.J. No. 956, 2021 BCSC 836, British Columbia Supreme Court, May 3, 2021, A.D. Francis J.

After a collision by an employee in a rental car, the employer's insurer and the car owner's insurer disputed which was responsible for damages suffered by a third party. Each insurer argued the other was responsible for payment of a settlement in a separate lawsuit arising from the motor vehicle accident in BC (the "tort action"). The at-fault driver of the vehicle in the accident was an employee in the course of his employment at the time of the accident. The owner of the car was a rental company who leased the vehicle to the employer under a rental contract which did not specify a return date. The vehicle in question had been rented for a period of eleven months at the time of the accident. All were sued in the tort action. The tort action was settled for \$1.2 million. The owner's insurer had insured the rental company under an owner's policy (the "Owner Policy"). The employer's insurer insured the employer under a Non-Owned Automobile Policy (the "Non-Owned Policy") and denied coverage when indemnification was sought by the employer. Both policies were issued in Alberta.

The employer's insurer brought a summary trial application seeking a declaration that it was not required to indemnify the employer, or alternatively if it was, that the Owner Policy applied in priority to the tort action settlement, which would have the effect of making the owner's insurer solely responsible for the tort action settlement. The alternative involved a consideration of whether the Alberta or British Columbia priority scheme applied.

The court held that the employer was covered under the Non-Owned Policy because, contrary to the insurer's arguments, the policy did not restrict coverage for bodily injury or death with respect to non-owned vehicles and, alternatively, the vehicle was leased in a series of short term 30-day rentals and not a long-term rental as argued. The court held that the owner was vicariously liable for the driver, and therefore the Owner Policy covered the owner and the driver. The court determined there was no express agreement of the employer to assume tort liability of the owner, which was argued would prevent the Owner Policy from being engaged altogether.

The court held that where multiple insurance policies are engaged, a statutory priority scheme applies to determine which policy is first loss insurance, regardless of whether one liable party is covered by multiple policies, or multiple liable parties are insured by one policy each. In considering whether the BC or Alberta scheme applied, the court held that a dispute among insurers was restitutionary rather than contractual and the law of the obligation applies. The law of the obligation in this case provided that the BC priority scheme applied, as the jurisdiction with the closest connection to the obligation to make restitution. The language in the policies was considered and there was no explicit wording in the policies that said the law of Alberta applied to vehicle claims made in other jurisdictions. The court then followed the wording of s. 179 of the Insurance (Vehicle) Regulation, and ruled that with respect to the tort settlement, the Owner Policy applied in priority to the Non-Owned Policy, up to the limits of the Owner Policy.

This case was digested by [Mark A. McPhee](#), and first published in the LexisNexis® Harper Grey Insurance Law Netletter and the Harper Grey Insurance Law Newsletter. If you would like to discuss this case further, please contact Mark A. McPhee at mmcphee@harpergrey.com.