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PUBLICATION

Priority Dispute: Third Party Vehicle Renter vs. the Defendant Vehicle Owner

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In a very recent decision - *Elias v. Koochek* – the Court addressed the issue whether the insurer of a renter of a vehicle who is not named as a defendant in the main action, but has been brought into the action as a third party, has priority over the insurer of the owner of the rental vehicle.

The third party Moshe rented a car from Avis. The defendant Koochek was operating the vehicle with Moshe's consent when he was involved in a collision. Koochek's passengers sued him and Avis. Koochek refused to add Moshe as a defendant. Avis third partied Moshe and brought a motion for determination of a question of law – i.e., whether Moshe's insurer, Intact, was required to respond first to the plaintiffs' claim. The issue focused on the meaning of the term "insurance available" as that term was used in subsection 277(1.1) of the *Insurance Act*.

The Court concluded that the renter's policy issued by Intact responded first and that it did not matter that Moshe was not named as a defendant by the plaintiffs. In coming to this conclusion, the Court noted that finding otherwise would circumvent the clear intent of the legislature that renter's policies should respond in priority to those of the owner of the rental car.

Although most plaintiff's lawyers will add renters as defendants when requested by the rental car's insurers, some still refuse to do so. This decision confirms that the priority provisions still apply even if the renter is brought into the action by way of third party claim.