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CASE SUMMARY: DECISION ADDRESSING DISTRIBUTION OF INSURANCE PROCEEDS WHERE INSUFFICIENT FUNDS TO SATISFY ALL JUDGMENTS AND SETTLEMENTS ARISING OUT OF A MVA

Insurance law – Automobile insurance – Third parties – Excess liability – Practice – Settlement of action

House (Litigation Guardian of) v. Baird, [2019] O.J. No. 1312, 2019 ONSC 1712, Ontario Superior Court of Justice, March 15, 2019, C.D. Braid J.

The parties to a series of claims arising out of a motor vehicle accident sought the assistance of the court with the distribution of insurance proceeds. The motor vehicle accident involved four young men. House was driving Baird's vehicle when the vehicle went out of control and was struck by a vehicle being driven by Murray. As a result of the accident, Samms lost his life. Baird was seriously injured. House was catastrophically injured.

The Baird vehicle was insured by State Farm with third party liability limits of \$1 million. House was insured by Nordique Insurance with third party liability limits of \$1 million.

The Samms family settled its claim against House and Murray for \$200,000. Baird settled his claim against House and Murray for \$500,000. House obtained a judgment of \$1.4M against Baird.

The State Farm policy was the primary policy. It therefore responds first to all three claims. Samms and Baird can recover the shortfall from the Nordique policy but House cannot recover against his own liability policy.

The court addressed the following issues:

1. the legal framework for distribution of insurance funds;
2. whether the equitable remedy of marshalling is available;
3. enforceability and ambiguities in the Baird settlement; and
4. whether House can garnish the Baird settlement funds.

The court concluded the doctrine of marshalling was not available to allow House to recover from the State Farm policy before Samms and Baird. The court concluded the State Farm policy was required to respond to the three claims made against it on a pro rata basis and the House policy must pay the remaining amounts to Baird and Samms. House was entitled to garnish 20% of the Baird settlement because, notwithstanding the shortfall in insurance, House was entitled to recover from Baird personally.

This case was digested by [Cameron B. Elder](#), 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 Cameron B. Elder at celder@harpergrey.com.