Osbert Andoh, Plaintiff, v. Vincent Milano et al., Defendants. Penske Truck Leasing Co., L.P., Third-Party Plaintiff-Respondent, v Police Athletic League, Inc., et al., Third-Party Defendants-Appellants.

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SUPREME COURT OF NEW YORK, APPELLATE DIVISION, FIRST DEPARTMENT

11 A.D.3d 241*; *783 N.Y.S.2d 25*; *2004 N.Y. App. Div. LEXIS 11675

October 7, 2004, Decided
October 7, 2004, Entered

PRIOR HISTORY: [***1]
Andoh v Milano, 271 A.D.2d 358, 707 N.Y.S.2d 81, 2000 N.Y. App. Div. LEXIS 4603 (N.Y. App. Div. 1st Dep't, 2000)

HEADNOTES

Insurance--Contribution among Insurers.--Since lessee's $ 1 million policy plainly stated that it was primary insurance for any vehicles leased by named insured, i.e., lessee, from additional insured, i.e., lessor, and lessor's policy, which insured lessor for $ 1 million and lessee in "step-down" amount of $ 10,000, plainly stated that it was to be excess of any other collectible insurance obtained for lessor's benefit pursuant to lease agreement, intent was that lessee's policy was to be primary; since lessee's policy was primary, lessor's insurer was not responsible even for step-down amount.

COUNSEL: Wade Clark Mulcahy, New York (David F. Tavella of counsel), for appellants.

Clemente, Mueller & Tobia, New York (William F. Muller of counsel), for respondent.

JUDGES: Concur--Nardelli, J.P., Mazzarelli, Sullivan, Williams, Catterson, JJ.

OPINION

[*241] [**25] Order, Supreme Court, Bronx County (Patricia Anne Williams, J.), entered September 18, 2003, which, in a third-party action involving insurance coverage of a leased truck, upon the parties' respective motions for summary judgment, inter alia, declared that the lessee's policy is primary and the lessor's policy is excess, unanimously affirmed, with costs.

The lessee's $ 1 million policy plainly states that it is primary insurance for any vehicles leased by the named insured, i.e., the lessee, from the additional insured, i.e., the lessor. In contrast, the lessor's policy, which insures the lessor for $ 1 million and the lessee in the "step-down" amount of $ 10,000, plainly states that it is to be excess of any other collectible insurance obtained for the lessor's benefit pursuant to a lease agreement. Thus, the plain terms of the two policies [***2] show a clear intent that the lessee's policy is to be primary (*see State Farm Fire & Cas. Co. v LiMauro, 65 N.Y.2d 369, 373, 482 N.E.2d 13, 492 N.Y.S.2d 534 [1985]*). Since the lessee's policy is primary, the lessor's insurer is not responsible even for the [*242] $ 10,000 step-down amount. The lessor is not relying on the indemnification clause, which, if invoked, would require the lessor's payment of the statutory minimum (*see ELRAC, Inc. v*

Ward, 96 N.Y.2d 58, 748 N.E.2d 1, 724 N.Y.S.2d 692 [2001]).

Concur--Nardelli, J.P., Mazzarelli, Sullivan, Williams and Catterson, JJ.