

# Supreme Court: scope of full and final settlement clause in insurance matters

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## Facts

## Decision

## Comment

The Supreme Court recently dealt with the scope of a full and final settlement clause in an insurance matter (A\_23/2107, December 21 2017).

### Facts

On March 9 1995 A fell over her dog and suffered a femoral neck fracture. The next day, she had an artificial hip joint implanted. A notified her accident insurer on March 17 1995. The insurer assessed the degree of A's disability with the aid of a consulting physician and wrote to A on March 21 1997 stating that, based on the known facts, it had – pursuant to medical theory and taking into account a possible deterioration in the coming years – determined 20% disability. It finally approved 24% disability and awarded A a disability pension of Sfr16,800 (ie, 24% of the Sfr70,000 sum insured). The insurer enclosed a settlement agreement with its letter of March 21 1997. The agreement contained the reference "settlement agreement for disability to right leg" and stated that the parties had agreed a payment of Sfr16,800 under the policy for the consequences of the March 9 1995 accident as compensation for any and all claims. On March 27 1997 A signed the settlement agreement and the insurer paid the settlement amount.

In October 2008 A experienced discomfort in region of her right groin. After a fall these symptoms intensified and urgent treatment was necessary. On February 17 2009 A notified the insurer of a relapse and requested a cost credit. After two surgeries, the attending doctor certified an increased degree of disability. In October 2012 A claimed further compensation of Sfr46,200 from her insurer as a result of the March 9 1995 accident. The insurer declined A's request with reference to the settlement agreement of the parties. In April 2015 A filed legal action against her insurer which was dismissed. A appealed and also lost the case in the second instance.

A asserted before the Supreme Court that the previous instance had unlawfully concluded that she had waived additional claims regarding the March 9 1995 accident by signing the settlement agreement of March 27 1997. The court held that a full and final settlement clause relieved the insurer from all claims of the insured of which the insurer had knowledge or which it at least had suspected. If the subjective interpretation of the statements of the parties leads to no result, the statements must be interpreted according to the principle of trust and good faith. To that end, in order to interpret the specific language of the settlement agreement objectively, the court had to determine how the insurer could and had to understand A's statement considering:

- the wording;
- its context; and
- the entire surrounding circumstances.

### Decision

The Supreme Court confirmed the opinion of the previous instance, whereby the parties had

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explicitly considered deterioration when defining the disability pension and concluding the settlement agreement. The court concluded that the parties had clearly taken into account a possible increase in the degree of disability and had decided to exclude any additional claim for compensation resulting from the March 9 1995 accident.

A argued that the parties had considered a possible increase in the degree of disability of up to 20% only. Therefore, the parties excluded additional claims to that extent, whereas exceeding claims should have remained covered because the parties had not thought that such a severe financial relapse as the 2008 crash was possible. The Supreme Court disagreed and held that a deterioration which deviates from the parties' forecasts does not mean that resulting claims are not encompassed by the full and final settlement language of the agreement. The contrary would apply only if A had not thought such claims possible. However, the court found no evidence for such circumstances and therefore dismissed A's appeal.

### **Comment**

The decision confirms the rules for interpreting settlement agreements in insurance matters and emphasises the importance of carefully drafting the wording of such agreements if they are intended to be full and final settlement agreements of certain insurance claims.

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