

## Insurance - Switzerland

### Supreme Court decides on ambiguous clauses in general insurance terms

Contributed by **BADERTSCHER Rechtsanwälte AG**

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**Facts**  
**Decision**  
**Comment**

The Federal Supreme Court recently issued a decision<sup>(1)</sup> on the rule of ambiguity in the context of the interpretation of general insurance terms. The court found that a provision which excludes accidents as a result of the deliberate causation of a crime or offence is neither considered unusual nor ambiguous, and can therefore be validly be relied upon by the insurer.

#### Facts

A motorcyclist overtook several vehicles with excessive speed and disregarded the safety line. He collided with a truck driving in the opposite direction. The motorcyclist was found guilty of multiple violations of traffic regulations. He was seriously injured during the accident. Due to his severe lasting injuries, the motorcyclist claimed insurance benefits under an individual accident insurance policy. The accident insurer declined coverage based on the following provision contained in the applicable general insurance terms: "Accidents which are the result of a deliberate causation of a crime or offence are excluded from coverage."

Article 14 of the Insurance Contract Act provides that an insurer can reduce the insured benefits in case of grossly negligent conduct of the insured. In the general insurance terms at issue, the insurer waived its right to reduce the insured benefits in case of gross negligence.

After the cantonal courts had supported the insurer's view, the policyholder appealed to the Federal Supreme Court.

#### Decision

The Supreme Court first held that the provision was neither ambiguous nor unclear, and was therefore valid under Article 33 of the Insurance Contract Act, which allows an insurer to exclude certain events from coverage provided that it stipulates such restrictions specifically and unambiguously in the wording.

Regarding the interpretation of the disputed clause, the court referred to a 1989 decision<sup>(2)</sup> in which the court found that the insured need not necessarily understand the words "deliberately caused crimes or offences" in a legal sense, but merely as offences of a certain severity, according to common linguistic usage. The insured must have considered that road traffic offences are covered by the provision in question.

With regard to the insurer's contractual waiver to reduce the insured benefits in case of gross negligence, the court held that Article 14 is aiming at the result (ie, the accident), whereas the exclusion in question focused on the conduct (ie, the offence) which led to the accident.

Given that a multitude of traffic regulations had been violated, the court found that the insured had undoubtedly committed such violations deliberately. The court also held that the insured's conduct would clearly be considered as an offence of a certain severity from the perspective of a layperson in legal matters.

Accordingly, the court supported the findings of the cantonal courts and dismissed the insured's appeal.

#### Comment

While the decision appears correct, the Supreme Court has been inconsistent regarding the question of how legal terms must be interpreted. This decision followed an older ruling which found that legal terms used in an insurance agreement may be understood in their legal meaning if that meaning is also understood in the usual use of language. In other decisions<sup>(3)</sup> the court found to the contrary, whereby if legal terms are used they are generally to be understood pursuant to their legal meaning.

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Recently, the court ruled, in the context of interpretation of general contract terms, that the specific meaning of a specialist term prevails only if both contractual parties belonged to the respective circle of experts. It remains to be seen in which direction the court will develop its case law.

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#### Endnotes

(1) 4A\_166/2014, September 16 2014; unpublished.

(2) ATF 115 II 264.

(3) For example, ATF 119 II 368.

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