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## **CASE SUMMARY: INSURER’S MOTION FOR SUMMARY JUDGMENT IS DISMISSED**

Insurer’s motion for summary judgment dismissed as it was unclear which version of the policy applied.

### **Insurance law – Interpretation of policy – Contra proferentum rule – Practice – Summary judgments**

*SSQ Insurance Co. v. Sutherland*, [2018] A.J. No. 1337, 2018 ABQB 934, Alberta Court of Queen’s Bench, November 15, 2018, Master S.L. Schulz

The insurer alleged it overpaid its insured and sought repayment by way of summary judgment.

The insured was a riding instructor and was injured when she fell from a horse. The insurer paid out \$40,250 under her insurance policy. There were two versions of the policy: one version was printed in two columns and the other was printed in one column. The two-column version was not clearly formatted and had words “floating” between lines of text.

The insurer argued that while the policies were clear and unambiguous, the payments were made under a mistake of fact or error, or alternately that the insured had been unjustly enriched. The insured argued that the insurer reviewed the policies three times, each time coming up with a different interpretation of the amount owing. She asserted the confusing layout of the policy resulted in ambiguity and the *contra proferentum* principle should apply. Further, she relied on principles of estoppel by representation and change of position.

While the Court would have liked to have decided the matter by way of summary trial, the evidence was not sufficiently clear on one key point: which version of the policy was sold to the insured and which version was relied upon by the parties at different times. Accordingly, the Court concluded that summary judgment was not appropriate and the insurer’s application was dismissed.

This case was digested by [Paul R. Saunders](#), 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 Paul R. Saunders at [psaunders@harpergrey.com](mailto:psaunders@harpergrey.com).