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CASE SUMMARY: THE COURT CANNOT RELY ON LEGISLATIVE INTENT OF ANOTHER PROVINCE TO MANUFACTURE AMBIGUITY IN AN OTHERWISE UNAMBIGUOUS EXCLUSION CLAUSE

Insurance law – Automobile insurance – Interpretation of policy – Exclusions – Consent to drive – Contra proferentum rule – Practice – Appeals – Standard of review

Cardinal v. Alberta Motor Association Insurance Co., [2018] A.J. No. 195, 2018 ABCA 69, Alberta Court of Appeal, February 21, 2018, P.T. Costigan, B.K. O’Ferrall, T.W. Wakeling JJ.A

The plaintiff was severely injured while a passenger in a car driven without the owner’s consent. The owner’s insurance policy excluded coverage for a person who was an occupant of any automobile which was being used without the owner’s consent. The plaintiff sought coverage on the basis that she did not know the vehicle was driven without consent and the insurer denied coverage.

In the first instance, the Master determined that the exclusion applied. The chambers judge concluded the exclusion was ambiguous, relying on an Ontario amendment which evidenced the intention of Ontario legislators to provide coverage to occupants who lacked knowledge the vehicle was being used without the owner’s consent.

The Court of Appeal allowed the insurer’s appeal and the claim was dismissed. The exclusion was not ambiguous and applied to the plaintiff’s claim and it was an error for the chambers judge to suggest an amendment in Ontario could give an indication of the intention of Alberta legislators.

This case was digested by [Laura E. Miller](#), 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 Laura E. Miller at lmiller@harpergrey.com.