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FRAUD UPDATE

FACING UP TO THE CHALLENGE OF FRAUD RINGS

Thank you for reading this second edition of TGC Fraud Update, a publication which was set up with the stated aim of facilitating the sharing of information about decided claims involving issues of road traffic fraud and related matters. Thank you also for all of the kind words and helpful feedback received about the inaugural edition.

Some of the trickiest types of fraud cases to defend at trial are those involving fraud rings – linked cases involving several separate purported road traffic accidents featuring the same or overlapping personnel (sometimes organised criminals, albeit frequently caught out by their disorganisation!) and usually deliberately staged, contrived or induced accidents. Often there is an overall 'guiding mind' linking seemingly unrelated incidents, be it an individual, an accident management or hire company or even a firm of solicitors.

However, one of the challenges that arises is that intelligence can never be perfect and often the identities of some of the *dramatis personae* will never be known (this may well often be because they do not exist). Often the fraud ring cases that do reach trial are those where the links between the claims and the claimants are at their most oblique- direct evidence of communication and co-operation between individuals who claim not to know each other is usually enough to scare off even the most stubborn claimant solicitors!

As with most rapidly developing areas of law, information about the outcome of decided claims, and more importantly the reasons behind them, is a great way equipping oneself to best tackle future claims where the same or similar issues are raised. Fortunately, TGC has had a glut of fraud rings successfully defended to trial in the last couple of months- the lead article focusses on the particular challenges posed (and duly overcome) in some of these cases. It can be seen that thorough preparation is critical, as these types of cases are invariably 'document heavy', but also that there is no substitute for demolishing the credibility of a suspect individual through robust cross-examination.

The TGC fraud team are more than happy for you to contact them if you have any queries about any of the contents of this issue, or indeed about any other issues relating to insurance fraud and related matters.

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RECENT FRAUD RING SUCCESSES: *OVERCOMING THE CHALLENGES*

Northampton Fraud Ring

George Davies

I was recently instructed to act for Aviva and its two defendant policyholders (instructed by Ian Toft of Messrs Keoghs) in a 4-day trial heard at Northampton County Court in November 2015. The two claimant drivers were seeking damages for personal injury and consequential losses (including credit hire charges) arising out of two seemingly unrelated road traffic accidents. The defendants' position was that the claims were fraudulent because they had been deliberately induced for the purpose of financial gain. Both claimant vehicles had multiple-occupancy but there were issues as to who had actually been driving each car and who was actually in each vehicle.

It was also contended that both claims were part of a wider pattern of nine other induced collisions sharing a similar modus operandi and the use of the same companies. One of those other related collisions was the underlying subject matter of *MRH Solicitors v The County Court Sitting at Manchester* [2015] EWHC 1795 (Admin) in which the Administrative Court gave some helpful guidance as to how far a trial judge could go in expressing his concerns about parties involved in litigation but who had not been before the Court.

Because of the links between the two index claims and the nine other collisions, the defendants had ensured that these two remaining claims were heard consecutively before the same trial Judge (Mrs. Justice Patterson – who happened to be on circuit in Nottingham). Happily for the defendants, the first claimant and his alleged passengers were not at all credible. Indeed, a judicial eyebrow had been raised after the first claimant's father proclaimed that although he had not seen the defendant driver he couldn't have been female because 'women can't drive fast'! Because of the first claimant and his passengers' disastrous performance in the witness box, both claimants decided to discontinue their actions after evidence was heard only in the first claim. Consequently none of the claims in the ring ever succeeded and they were all either defeated at trial or repudiated without challenge.

These cases are a reminder that despite the raft of similar fact evidence linking the various claims, it is important not to lose sight of the fact that the testing of a claimant's credibility is still key to the successful defence of fraudulent claims.

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Nottingham Fraud Ring

Edward Hutchin

I recently represented the successful Defendant insurers in a high profile fraud ring case in which I was instructed jointly by Keoghs, Clyde & Co, DWF, and DAC Beachcroft. After around fifteen claims were identified with strikingly similar features, the cases were case managed together as an alleged fraud ring. At trial, five claims remained, each with multiple Claimants, which were ordered to be heard together over ten days before the presiding civil judge in Nottingham, HHJ Godsmark QC *(Rafanvicius & ors. v. Motley & ors, 25.09.15)*.

After a 10-day trial involving the consideration of complex and detailed intelligence, engineering and medical evidence, the claims were rejected (save for one in which the damages were very substantially reduced), and the judge made a finding of fraud, holding that the claims formed part of a fraud ring involved in arranging false road traffic collision claims. Indemnity costs orders were subsequently made against the unsuccessful Claimant, and committal and enforcement proceedings are underway.

The case illustrates the importance of cooperation between insurers to combat fraud. Although the five claims were heard consecutively at trial, and the claims challenged on their own (lack of) merits, an order was also sought at case management stage for cross-disclosure by all Defendants of the full papers in all the claims presented. This enabled a common defence to be put forward, by pointing to a number of common and recurring features across all the claims which demonstrated a link between them, and so led to a strong inference that they were part of a fraudulent enterprise. In his judgment, the Judge held that *"there are just too many co-incidences, each compounded upon the other, for this to be innocent"*, which in turn led him to make an express finding of fraud.

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Operation Timis

Charles Curtis

I was instructed by Keoghs and a number of insurance companies to act on their behalf in defending a number of claims made against three policyholders. Links were uncovered between the three policyholders and Defences on all claims alleged fraud. Ultimately, two of the claims, made by Mrs. Jehangir and Mr. Maruf against Tesco Underwriting Limited and their insured, came before HHJ Mitchell in Central London County Court in October 2015. The Claimants contended that, whether or not Tesco's insured was a fraudster, they were the innocent victims of road traffic accidents.

During the course of the 3-day hearing the Claimants disclosed considerable additional evidence which had not been served earlier in the proceedings in order to bolster their claims. Notwithstanding this evidence, HHJ Mitchell dismissed the claims, concluding that there was a strong suspicion of fraud. The Judge was satisfied, on the evidence provided by Tesco's solicitor and an investigator, that Tesco's insured was a fraudster.

In respect of the claim by Mr. Maruf, the Judge noted that there was no direct evidence of fraud, but commented that that is the nature of the beast and that there is seldom direct evidence as to what is going on with staged accidents. He concluded that Mr. Maruf had failed to prove that there was any accident, let alone one at the time or place alleged.

In respect of Mrs. Jehangir, the Judge concluded, in particular, that the documents from the hire company appeared to be falsified, and he was again not satisfied that she had established that the accident had occurred. Both claims were dismissed with costs.

While the evidence as to Tesco's insured being a fraudster was strong, key to a successful defence of the claims was to undermine the credibility of the Claimants. This was achieved as a result of numerous inconsistencies in their evidence. As Operation Timis had started with sixteen linked collisions and considerable savings were made to the insurers concerned.

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"If the quality of the evidence of fraud is good enough, it doesn't matter if the source of the evidence is not independent."

Marcus Grant

I was instructed by Hamida Khatun of Keoghs to appear for Churchill Insurance in a committal action in the Queen's Bench Division in December 2015. The committal action concerned an alleged Contempt of Court in respect of signing statements of truth on documents in County Court proceedings that the Defendants knew to be untrue, in a way that was likely to interfere materially with the course of justice.

Ms. Dunn and her two passengers claimed that they sustained injuries in a road accident on the Wirral in April 2011. Churchill Insurance received a tip off that the alleged accident was a staged 'crash for cash scam' and that its insured, Mr. Reilly knew the occupants in the other vehicle. Churchill's case depended on the evidence of Mr. Reilly's ex-wife, Mrs. Reilly, who provided evidence of links between the passengers and of a conversation to which her husband was privy in which he was invited to participate in such a scam.

Her evidence was challenged as the fabrications of a scorned woman. One of the alleged conspirators in the fraud was a woman whom Mrs Riley discovered was having an affair with her husband. Shortly after the alleged accident she found out about the affair and threw him out of the house, and after a rancorous twelve months which included a violent assault on each other, Mr. and Mrs. Reilly divorced.

Not only was Mrs. Reilly able to give evidence that Mr. Reilly was privy to an invitation to participate in a staged accident a week or so before it occurred, but she was able to provide specific details of connections between him and the three alleged occupants in the other vehicle. It was the detail of those links that were too bizarre to have been the product of fabrication that resulted in Churchill pressing ahead with its committal application.

At the permission hearing to bring committal proceedings, the Court focused on the substance of the alleged links between the occupants in the respective vehicles and considered that there was a strong prima facie case that the action should proceed to trial. In the documentary preparation ahead of the trial, none of the Defendants addressed the substance of the alleged links. However, a flurry of late affidavits were produced on the first day of trial.

As the insurer suspected, the Defendants were unable properly in cross-examination to deal with the evidence of the links between them. The Court found that the Contempt was proven to the criminal standard of proof against all four Defendants. Each Defendant received a custodial sentence (the sentencing hearing was attended by Paul McGrath whose note follows).

The point to take out of the case is that it is always the substance of the evidence rather than the status or obvious credibility of the person attesting to its truthfulness that is the critical factor when assessing the strength of these cases.

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In a long and detailed judgment from His Honour Judge Wood QC (sitting as a High Court Judge), now reported on Lawtel, one can pick up on the Court's excoriating criticism of the referral system that existed in the accident claims industry, until such fees were abolished by the Jackson Reforms. Further details of this case may be found at:

http://www.insurancetimes.co.uk/four-jailed-after-elaborate-crash-for-cash-investigation/1416844.article

Sentencing

Paul McGrath

After making the findings of Contempt referred to above, HHJ Wood QC listed the matter for sentencing on 22 December 2015. The Judge determined that the protestations of innocence throughout the committal action, despite the overwhelming evidence against them, meant that there was no mitigation in relation to the Contempt. Further, notwithstanding childcare commitments and other items of mitigation relating to third parties (which went towards reducing the sentence), the Judge nevertheless concluded that the offence was so serious that nothing other than immediate prison sentences were appropriate. He sentenced the First Defendant to four months' imprisonment, the Second Defendant to six months, the Third Defendant to six months and the Fourth Defendant to eight months in prison.

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Combatting Last-Minute Discontinuance

Matt Waszak

All too often, defendant insurers face the last-minute discontinuance of personal injury claims before trial which have seemed from their outset to be tainted by potential dishonesty. Before 1 April 2013, discontinuance was seldom a problem for defendants, with the usual costs order for the claimant to pay the defendant's costs of the proceedings to the date of discontinuance.

Though in the event of discontinuance that remains the usual costs order under CPR 38.6, it has been rendered redundant by the introduction of the Qualified One-way Costs Shifting (QOCS) regime under CPR 44, whereby a defendant's costs can only be enforced against a claimant if the their claim is struck out, or is found on the balance of probabilities to be fundamentally dishonest. A costs order for the claimant to pay the defendant's costs up until the date of discontinuance is obviously meaningless unless it can be enforced against the claimant.

There can, of course, be many genuine reasons for discontinuance. But in the context of a road traffic accident claim, where liability for the accident is admitted and the sole issue is causation of injury, it is difficult to reconcile last-minute discontinuance with a genuine injury claim. Not unfairly, the usual view reached in those situations is that claimants who have brought exaggerated or quasi-dishonest claims have been unnerved by the prospect of pursuing them at trial.

Doubly frustrating in those situations is that insurers may have defended such claims on the basis of their inconsistencies with a view to obtaining a finding of fundamental dishonesty against the claimant in order to recover their costs. If such a claim a discontinued, a defendant is potentially deprived of that opportunity.

In the event of the last-minute discontinuance of a claim which has seemed from its outset to be dishonest, what avenue should a defendant insurer, who has already incurred substantial costs, pursue? There are three obvious routes.

First, if the claimant's discontinuance is so late that the trial remains listed before a judge, an application can be made at the preserved trial hearing for a finding of fundamental dishonesty on the papers in the absence of the claimant. Though the usual course under CPR 44 PD 12.4 is that *"the court will normally direct that issues arising out of an allegation that the claim is fundamentally dishonest be determined at the trial"* (paragraph 12.4(a)), *"the court may direct [where the claimant has served a notice of discontinuance] that issues arising out of an allegation that the claim was fundamentally dishonest be determined notwithstanding that the notice of discontinuance has not been set aside pursuant to rule 38.4"* (paragraph 12.4(c)).

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Importantly, the Court can determine an issue of fundamental dishonesty without setting aside the Notice of Discontinuance. Furthermore, there is nothing in the Rules which prevents a finding of fundamental dishonesty being made by a judge on the papers without hearing oral evidence, though a judge is unlikely to be persuaded to pursue this route unless the claimant is put on notice. However, given the financial repercussions of a finding of fundamental dishonesty against a claimant, many judges, in the interests of justice, may be reluctant to make such a finding without hearing oral evidence.

Obtaining a finding of fundamental dishonesty against a claimant on the papers is a difficult hurdle to surmount. Though the last-minute discontinuance of a claim where the only issue at trial is causation of injury is difficult to reconcile with a genuine injury claim, that of itself is unlikely to satisfy the court that a claim is fundamentally dishonest: there will need to be a number of other cogent points to support the argument.

This is a difficult but not impossible exercise: see the case of *Hanen v Moss* (Watford County Court, 10.07.15) reported in the last issue of TGC's Fraud Update, in which a finding of fundamental dishonesty was obtained against a claimant on the papers. Supporting evidence may include evidence that the damage sustained to the claimant's vehicle in the accident was very trivial and seemingly irreconcilable with an injury having been sustained, or inconsistent evidence given by the claimant on the papers about the effects of their injury or the treatment they sought for it. Where such evidence is thin on the ground there may be tactical merit in delaying the fundamental dishonesty application for further evidence to be obtained.

The second course is to seek directions for a hearing at which an allegation of fundamental dishonesty can be determined after both parties (including the claimant) have given evidence. Such directions should include provision for a witness statement from the claimant which explains the circumstances of discontinuance. Unless the case for fundamental dishonesty is sufficiently persuasive on the evidence on the papers alone, this may be a preferable route as it allows the defendant to build a case against a dishonest claimant.

The third avenue is to set aside the Notice of Discontinuance with a view to obtaining a finding of fundamental dishonesty at trial. An application to set aside a Notice of Discontinuance must be made by a CPR 23-compliant application with supporting evidence. However, under CPR 44 PD 12.4, the Notice of Discontinuance does not need to be set aside in order for fundamental dishonesty to be pursued, and an application to set aside the Notice of Discontinuance for that reason alone may be viewed as disproportionate. Though theoretically possible, this is a course that is unlikely to be pursued by defendants- and indeed one which is unnecessary.

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Though therefore the post-Jackson landscape of civil procedure has created problems for defendants faced by discontinued personal injury claims, there are clear routes of redress which can be pursued if there is sufficient evidence that the discontinued claims are dishonest. The following article by Tim Sharpe illustrates that Courts will be willing to make Orders for Committal in cases where the discontinuance has been properly handled by the Defendant's insurers.

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Committal Secured Following Discontinuance

Tim Sharpe

I acted for ERS Ltd. in this case in which a Mr. Fearon alleged that he had suffered personal injury in a road traffic accident in August 2013 caused by the negligence of a driver that they insured; Mr. Fearon's claim alleged that he was a passenger in the insured vehicle (a minibus). The Claim Form and Particulars of Claim were verified with Statements of Truth signed on Mr. Fearon's behalf by his solicitors. The pleadings were accompanied by a medical report from a GP medical expert. The report included a further description of the accident in which he recounted that he was a passenger in a minibus when it collided with a car. The claim was defended on the basis of it being fraudulent, the insured driver and his insurer contending that Mr. Fearon was not a passenger in the vehicle at all. He discontinued his claim shortly after the defence was filed. ERS then issued proceedings seeking permission to bring Committal proceedings for Contempt of Court. Permission was granted.

The basis of the Contempt proceedings was CPR 32.14 ("making a false statement in a document verified by a statement of truth") in that Mr. Fearon had caused his legal representative to verify statements of truth on the Claim Form and the Particulars of Claim when each document contained statements of fact that *(a)* were untrue; *(b)* were untrue in such a way that the untruths interfered with the course of justice in a material respect; and *(c)* were made or caused to be made in the knowledge by the defendant that they were untrue.

The proceedings were signed by Mr. Fearon's legal representative rather than himself. The Defendant relied on the provisions of CPR 81.17 which expressly refer to *"making or causing to be made"* a false statement and to CPR 22 PD 3.7 and PD 3.8, which provide (in essence) that the legal representative's signature is taken by the Court as his statement that the client had authorised him to so sign and that the possible consequences to the client of a false statement of truth had been explained to him.

ERS relied on affidavit evidence from the driver of the minibus and the genuine passengers (his family). Contempt was admitted by Mr Fearon. He provided a statement to the court stating that a colleague told him how he could make some money and that he went along with this in an *"act of complete and utter stupidity"*.

In considering the appropriate penalty, the Court noted that the he had admitted his contempt and expressed remorse and had provided ERS with evidence of the person who arranged for the false claim to be made. He had also discontinued his claim and paid his solicitors for their fees.

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The Court (Sir David Eady, sitting on 23rd October 2015) noted that some people saw such false claims as a victimless crime, but dismissed this view as 'nonsense', noting that such claims abuse the court system and undermine justice, and create a cost passed on to customers via premiums. He considered that the custody threshold had been passed but the Court was 'just persuaded' that the sentence should be suspended in view of the frank admissions, the lack of illicit gain and the assistance provided to the insurer to find the 'underlying villains'. The Court was satisfied that he had learned a lesson and took into account his domestic and family circumstances. The sentence was suspended for two years on condition of him paying costs of £5,000 to ERS (the Claimant in the Contempt proceedings) within that period (an order suggested by his counsel and agreed by the court).

Costs Consequences of Accepting a Part 36 Offer Out of Time in an Exaggerated Claim

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This was the issue that was before the Court in the costs proceedings in the claim of *Karl Worthington v. 03918424 Ltd.* (Manchester DR, 18.06.15). The Claimant was injured in an incident in 2010 and issued a claim with a pleaded value of £500,000. The Defendant admitted a breach of duty in June 2011 but causation remained in issue. The Defendant undertook surveillance of the Claimant as the litigation progressed and, as a result of the surveillance, made a Part 36 offer of £40,000 in around May 2014. After the offer was made, the surveillance evidence was finalised and the Defendant invited the experts to comment upon it. The experts stated that they could no longer support the Claimant's position. The Defendant then served the surveillance evidence and latest expert reports on the Claimant. The Claimant accepted, out of time, the Defendant's Part 36 offer.

The previous version of CPR 36.10 was in force when the offer was accepted. It stated that the court would make an order for costs where a Part 36 offer was accepted after the expiry of the relevant period and the parties could not agree liability for costs. The parties failed to agree and the Defendant applied for a costs order. CPR 36.10(5) specified that the costs order would be that the Claimant will pay the Defendant's costs after the date that the relevant period expires *"unless the court orders otherwise"*.

DJ Harrison heard the application and gave judgment. He made reference to CPR 44 (CPR 44.2(4) and 44.2(5) in particular) and found that "to move from a claim where I say, *"My case is worth half a million pounds" to settling for £40,000 in those circumstances invites the inference that the claimant indeed accepted that his case was exaggerated in the extreme and that is the inference which I draw upon this evidence"*.

The Judge did not criticise the Defendant for failing to disclose the surveillance evidence at an earlier stage. He held that it was appropriate for the Defendant to wait for the Claimant to nail his colours to the mast before disclosing the surveillance evidence. He said that any criticism of the Defendant for delay was *"footling"* in comparison to the Claimant's actions.

The Judge concluded that it was appropriate for the court to order *"otherwise"* as per CPR 36.10(5). An issue based order would create difficulties in assessing and apportioning costs and so, therefore, he made a time based order. He found that the claim would have resolved on 30th June 2012 if the Claimant had not exaggerated his case. The Claimant was awarded his costs up until 30th June 2012 on the standard basis. The Claimant was ordered to pay the Defendant's costs on an indemnity basis, *"against the background of clear exaggeration of the claim"*, from 30th June 2012 onwards and also any costs the Defendant had incurred in respect of surveillance throughout the duration of the claim. This was all notwithstanding that the Part 36 offer was made in June 2014. If the Claimant had accepted the offer in time at that stage, then the Defendant would have had to pay the Claimant's costs up until the date of acceptance (see what is now CPR 36.13(1)). Finally, the

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Claimant was ordered to pay the costs of the application, also on an indemnity basis. The judge stated that this was largely as a sanction to show the Claimant that exaggeration of claims would not be tolerated.

The decision demonstrates the court exercising its discretion, under the old CPR 36.10(5), to penalise a Claimant who exaggerated his claim. The fact that the Claimant did not accept the offer within the relevant period led to severe costs consequences. The decision does leave the door open to tactical use of early Part 36 offers while withholding evidence, in an attempt to circumnavigate the usual consequences of Part 36 (i.e. the Defendant pays the Claimant's costs up until the offer is accepted or the relevant period expires). However, the court must consider all the circumstances of the case and one would expect a court to take a dim view of any such behaviour. Defendants should therefore prepare strong reasons to justify any evidence being withheld in these circumstances.

The equivalent rule in the amended Part 36 is CPR 36.13(5) which states that the court will make the usual order discussed above *"unless it considers it unjust to do so"*. CPR 36.13(6) specifies that the court must take into account all the circumstances of the case including the matters listed in CPR 36.17(5), when considering whether it would be unjust to make the usual order. CPR 36.17(5) requires the court to consider, in summary, the terms of the offer, the stage of proceedings the offer was made, the information available to the parties at the time the offer was made, the conduct of the parties regarding the giving of information to allow the offer to be evaluated and whether the offer was a genuine attempt to settle the proceedings. These factors show that a court must carefully scrutinise a case where evidence has been withheld.

Do Not Under-Estimate the Evidential Value to an Insurer of a Claimant Having No Corroborating Evidence…

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… there appears to be increasing intolerance from the Bench toward such claimants in road traffic claims.

With the advent of Internet-based motor insurance, there has been there has been an increase in policies incepted to provide cover on vehicles that cannot be traced and in the name of individuals that don't exist, in order to set up fraudulent insurance claims. Invariably, insurers repudiate such claims and a 'Mexican stand-off' results, with claimants challenging insurers to establish a link between them and the first defendants in order to defeat the claims on the basis that they are part of a wider conspiracy to commit insurance fraud.

Judges in Central London have become increasingly fed up with such claims. A lot of court time is allocated to determining them. Invariably such claimants turn up at trial with short form witness statements providing scant details about the accident, and without any corroborating evidence in the form of photographs taken at the accident scene, oral evidence from alleged passengers, contemporaneous emergency services attendance records, independent witnesses, collection receipts provided by recovery company drivers or recovery company call logs.

In the conjoined cases of *Denkewicz et al v. Aviva Insurance Limited* (Central London CC, 13.02.14, reported on Lawtel) His Honour Judge Mitchell, the Designated Civil Judge, was asked to hear eight cases consecutively arising out of alleged 'slam on' collisions, all involving a decoy vehicle with the claimants using accident management companies that could be linked to the same individuals. It was a feature of those cases that the drivers did not call evidence from their passengers, which prompted the Judge to make the following pronouncement at § 161:

> *'Finally, I return to the absence of witnesses who are in the cars. I have made comments in some of the judgments and I have said this before: solicitors who bring these cases should think long and hard, particularly when fraud is pleaded, before putting evidence before a Court where it is clear that there is, for example, a passenger who has not been called. It is or may be a pointer to the fact that the accident is staged and the reason they are not being called is because they are in some way involved in the fraud. In my judgment, it could be an abuse of process. In this case, apart from the findings that seven witnesses were not in the cars, I have counted eight witnesses who could and probably should have given evidence.'*

The matter came up again in four conjoined cases that were listed for trial before Recorder Bowers QC in the week commencing 11th January 2016. I was instructed by Marsha Crosland of DWF LLP to represent Liverpool Victoria Insurance in these cases that were to be heard consecutively over 5 days before the same Judge in Central London.

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LV was able to demonstrate that their four insureds could not be traced to the addresses provided when incepting the policies. None of the insured cars could be traced either. The four policies could be linked to one another through either common email or bank account details, and a similar profile was provided for each insured of a man over the age of 50 employed as a cleaner living in Kent or West Sussex. The four accidents all allegedly happened within a 57-day period in late 2011, within days of incepting each policy and all twelve injury claimants from the four alleged collisions instructed the same accident management company and law firm in Wood Green. The accident management company declined to participate in the litigation even though it was invited.

No independent corroborative evidence was provided that any of the alleged accidents had taken place. All twelve injury claimants were allegedly examined by the same doctor at the same solicitor's office on the same day. Defences putting the claimants to proof were filed in three of the four alleged accidents and a Defence pleading a positive case of fraud was served in the fourth claim. An application was made shortly before trial to plead fraud across the board. The Claimants in three of the four claims discontinued on the morning of the first day of the trial.

Indemnity costs orders were made against them and LV were permitted to make an application for a Wasted Costs Order against the legal representatives, such application to be determined in March 2016.

The fourth claim proceeded to trial and was dismissed after two days of evidence with the Court finding that the Claimant had not discharged the burden of proving that he had sustained injury and loss in the way alleged, but finding also that the allegation that he had been a party to a conspiracy to commit fraud was not proven either. The claim was dismissed and the Claimant was ordered to pay LV's costs of the action on the standard basis.

A critical part in the Judge's reasoning was that the Claimant had brought forward no independent evidence to corroborate that the accident had happened in the way he described. Specifically, the failed to call his two alleged passengers to give oral evidence. He failed to adduce any evidence from the recovery company who allegedly attended upon the accident scene to collect his car. He failed to adduce any photographic evidence of his car at the alleged accident scene. He was unable to produce any evidence that he had paid for the repairs he alleged to have taken place.

All he was able to point to were some undated photographs of his damaged car, though not at the accident scene, and two contemporaneously created medical records, one at the local hospital and a second at his GP, that documented his subjective self-reported symptoms. The Recorder cited and endorsed the sentiment of the above paragraph from *Denkewicz* in his judgement.

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In my view, insurers should press claimants to provide independent corroborative evidence that there was an accident in the way they allege. In the absence of such corroboration when the first defendant cannot be traced and is suspected to be fictitious, then such claims should be contested to trial.

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Recent Noteworthy Cases

Nazir v. (1) Nagshbandi (2) UK Insurance Limited (Central London CC)

Paul McGrath (instructed by Courtney Skitterall of Keoghs) represented the Defendant in this appeal.

At first instance, the Judge had rejected the Defendant's positive case of fraud and found that the accident had been proven on the balance of probabilities. The Judge, in doing so, considered the fact that claims had been discontinued and abandoned, and that witnesses who were relevant had not been called, but determined that without more evidence this could not assist him one way or another and then went on to balance the competing cases. The Defendant appealed, arguing that the Judge ought to have drawn an adverse inference from the facts and that, in any event, in dismissing the issue and then moving on to balance the factors on either side of the case, the Judge had impermissibly discounted relevant evidence which ought to have least formed part of the balancing act. Permission to appeal on paper was denied, but when restored at an oral hearing, HHJ Hand QC gave permission to appeal, finding that there was a real prospect of success as required under CPR 52.3.The matter is listed for an appeal hearing in the New Year

Vasile v. Ioan & AXA Insurance UK PLC (Willesden CC, November 2015)

Lionel Stride (instructed Simon Hammond of BLM) represented the Second Defendant insurance company in a successful application to strike out a claim as an abuse of process (applying *Summers v. Fairclough Homes Ltd.* [2012] UKSC 26) on grounds of fundamental dishonesty in a related but unissued personal injury claim. The issued claim was for credit hire and motor-related expenses alone, but there was clear evidence that the claimant had submitted a claim for personal injury through the RTA Portal despite later admitting that she had not been present in her vehicle at all. The Judge accepted that such dishonesty vitiated her credibility in respect of all elements of her claim, such that she had forfeited her right to a full trial. The claim was struck out with enforceable costs orders in favour of the Second Defendant.

Harris v. Aviva (Boston CC, 08.01.16)

Anthony Johnson (instructed by Maria Franchetti of Keoghs) represented the Defendant insurance company where its suspicions about whether the Claimant had actually been injured had been initially aroused by the amount of time (over 2½ years) that had elapsed between the date of the accident and when it was first notified of the claim, and crystallised when he was unable to provide any corroborative evidence in support. Having the claim dismissed proved to be extremely straightforward, as the Claimant was unable to give a coherent account of the injuries that he had previously claimed to have suffered. Most of the Court's time was taken up by the Defendant's Application for a declaration that the Claimant had been 'fundamentally dishonest'. Although after very careful

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consideration the Judge (DJ Hudson) declined to make such a finding, his reasoning in support is of interest to Defendants. He took the view that the accident management company were at fault for the 'unfortunate' situation that he had arisen. He made a finding that the Claimant had not been 'personally' dishonest and noted that he had said he was from a generation where he was not inclined to bring a claim for something like this. He concluded: *"this is a classic case where a person has been pressured against their better judgment to bring a case that should never have been brought."*

Shala v. Muttock (Slough CC, 09.12.15)

Emma-Jane Hobbs (instructed by David Green of Keoghs) successfully represented the Defendant in this case in which the Claimant alleged that the accident (a 'rear shunt') had been caused by the negligence of the Defendant. The Defendant alleged fraud; that the accident had been caused deliberately by the Claimant carrying out an emergency braking manoeuvre for no apparent reason. The Judge (Deputy District Judge Wheeler) preferred the evidence of the Defendant and found that *"this was a deliberately induced accident"*. The Judge considered that, of most significance when assessing the Claimant's evidence, was the difference between what was written in the Claimant's witness questionnaire and witness statement about the accident circumstances, and his oral evidence. Under cross-examination, the Claimant admitted having been previously convicted of an offence of dishonesty, something the Judge considered was *"also a point against him when assessing the truthfulness of his evidence"*. The Judge gave judgment on the counter-claim and made an order for costs pursuant to CPR 44.16(1). In the absence of such a response, DDJ Gill determined that it was proportionate to determine the allegation in respect of fundamental dishonesty without ordering a further hearing. After considering the evidence on paper, and highlighting that it was hard to reconcile the last minute discontinuance with a claim that had been brought honestly, he found the Claimant to have been fundamentally dishonest. The Defendant's costs were summarily assessed and held to be enforceable against the Claimant. The Claimant has sought permission to appeal.

Duzgunce & ors. v. (1) Dirie (2) CIS (Central London CC, 06.01.16)

Julia Smyth (instructed by Catherine Goodwin at Weightmans) successfully represented the Co-Operative Insurance Society at trial. The Claimants, who had been put to proof by CIS, argued that CIS was alleging fraud by the back door; that the starting point should be that the claims were bona fide and that inconsistent evidence in relation to injuries could not taint a claimant's evidence on other issues. DJ Avent, in a detailed reserved judgment following oral and written submissions, analysed the relevant case-law and the evidential task for the Court, finding that it was for the claimant *"to adduce such sufficient or compelling evidence before the trial judge to enable the picture to be clear enough for the judge to declare that the balance of probability threshold is reached… it is not sufficient for a claimant simply*

to bring evidence; that evidence has to be of a quality which establishes a prima facie case. If the picture, after all the evidence, remains opaque and unclear, the judge is entitled to conclude that the case has not been proved." Each Claimant's claim was dismissed, the Judge commenting on their *"apparent willingness to sign documents without apparent heed as to their truth,"* as well as numerous inconsistencies and implausibilities in their evidence.

Shamansouri & ors. v (1) Pistolas (2) Advantage Insurance Company Ltd.
(Mayors & City of London CC, October 2015)

Lionel Stride (instructed by Jaspreet Riyat of Grenwoods/Plexus) represented the Second Defendant insurance company in a claim for personal injury and compensation arising out of an alleged accident. The Second Defendant alleged fraud in large part on the basis of engineering evidence that the Claimants' vehicle was stationary at the time of the accident, which would have been wholly incompatible with their account; and that there could not have been a front seat passenger because the side airbag did not deploy. After a three-day trial, HHJ Collender QC found that the claimants perpetrated a fraud by staging or contriving a collision at a junction. Both engineering experts gave oral evidence at trial, with the Judge being persuaded to prefer the Second Defendant's evidence. In a reserved judgment, the claims were dismissed with indemnity costs awarded.

Mahamud v Frazer (Bromley CC, 26.11.15)

Edward Hutchin (instructed by Keoghs) represented the successful Defendant insurer in this unusual case in which the Claimant was claiming damages following an alleged road traffic accident in South London. The claim was defended on the basis that the Claimant's evidence about the accident could not be believed, and that he had driven deliberately into the Defendant's stationary vehicle. It was also disputed that there were four occupants in his vehicle as he alleged, and that the damage for which he was claiming for was caused in the collision. Surprisingly the Claimant attended court and gave evidence, but the Defendant and his witness both denied that the person in court was the individual present at the scene. After a lengthy trial, involving careful consideration of identity, intelligence and engineering evidence, the judge dismissed the claim, finding that it was fraudulent, and that the Claimant in court had not been present at the time of the collision. The judge found that the claim was fundamentally dishonest, and the Claimant was ordered to pay the Defendant's costs of defending the claim on an indemnity basis, resulting in a substantial costs award.

Dvni & ors. v. Co-operative Insurance; Suleman & ors. v Co-operative Insurance (Cardiff CC, November 2015)

Paul McGrath (instructed by Catherine Goodwin of Weightmans) represented the Second Defendant in these two cases that were heard together by Mr. Recorder Treverton-Jones QC over the course of five days at the end of

November 2015. The Claimants and First Defendant all made claims against the Second Defendant (four experienced junior Counsel appeared against the Second Defendant; the Second Defendant resisted the claims. Expert evidence was called on both sides of each case. After substantial evidence and argument, the claims in the Dvni action were successful but the claims in the Suleman action were entirely dismissed.

BT v. Aviva (Mayors and City of London CC, 12.11.15)

In a case that may be relevant to some fraud practitioners, Anthony Johnson (instructed by Alec Pemberton of Horwich Farrelly) successfully resisted BT's case that its engineer's van had been diminished in value *purely by the fact that it had been repaired.* Aviva argued that a finding in the Claimant's favour would open up the floodgates for such claims be included in just about every RTA case. The issue was approached as a test case by both sides and a detailed judgment given by DJ Parfitt. The Judge's decision was focussed upon the fact that, applying first principles of the assessment of loss in tort law, the Claimant had not provided evidence of the vehicle's value in its pre-accident, damaged and repaired states which would have enabled the Court to determine whether any loss had been sustained. He also accepted the Defendant's criticism of the methodology adopted by the Claimant's 'diminution expert'.