

Isaac Hogarth has road traffic claim struck out for fraud

Khalid v AXA Insurance UK PLC (26 January 2017, DJ Fine) Success for Isaac Hogarth in fraud case. District Judge Fine sitting at Mayor's and City of London Court struck out the Claimant's claim after hearing his evidence on the alternate bases that his conduct was likely to obstruct the just disposal of the proceedings, and that his claim was fundamentally dishonest. She awarded the Defendant's costs on the indemnity basis. **Background** The claim arose from a road traffic accident on 6 September 2013. The Claimant, a taxi driver, claimed that he was driving along a main road with a passenger in his taxi, when the Defendant's insured negligently drove into the back of his taxi. He suggested the Defendant's insured was performing a U-turn at the time. The Defendant's insured, who worked at an underground station on the main road, said he was turning right out of the station car park when the Claimant suddenly pulled out from the mini-cab office from behind him at speed and glanced across the front of his vehicle. During the course of proceedings, the Claimant served a non-CPR-compliant witness statement from a Mr Butt. This statement purported to be an independent account and gave a version of events supportive of the Claimant's case. The Defendant conducted various credit searches on the Claimant and was able to link him to Mr Butt's address. **The Trial** During the course of cross-examination:

- The Claimant admitted that the accident happened directly outside his minicab office, but said this was a coincidence;
- The Claimant had no good explanation for inconsistencies between his evidence to the Court and his GP records regarding the accident circumstances, suggesting that his GP made a lot of mistakes;
- The Claimant had no good explanation for failing to inform his medical expert when asked of previous road traffic accidents, and also long-standing relevant medical history;
- The Claimant admitted that he knew Mr Butt and gave inconsistent evidence about the circumstances in which they first met. His ultimate answer was that he had not known Mr Butt at the time of the accident, that Mr Butt was present at the scene, and that they had coincidentally met again around a year later, at which point Mr Butt offered the Claimant the use of his address for the purposes of receiving his post.

Application for Strike Out Counsel for the Defendant made an application to have the claim struck out on the basis that the Claimant was dishonest, the claim was fraudulent, and the Claimant's conduct was likely to obstruct the just disposal of proceedings. He relied on the recent case of *Hanif v Patel*, (HHJ Main QC, 11 May 2016).

Judgment District Judge Fine found that she was satisfied "on the civil standard and beyond" that Mr Butt's statement was not as it seemed. She noted the significant inconsistencies in the Claimant's evidence about who witnessed the accident, and also in regard to his relationship with Mr Butt. She found also that he was fundamentally dishonest in that he deliberately misled the medical expert in relation to his accident history and his long-standing relevant medical history. She noted that he had denied being linked with Mr Butt's address and then changed his mind when challenged. She found as a fact that Mr Butt was not present. The claim was struck out and the Claimant was required to pay the Defendant's costs on the indemnity basis. **Comment** This was a case with clear fraud indicators. However, there was no pleading of fraud. In the event, the Claimant evidence was so unconvincing under cross-examination that the Court allowed the Defendant to make a without notice strike out application at the conclusion of the Claimant's evidence, which was successful. There were several other options that would have been open to the Defendant depending on the judge's views. If, having heard all the evidence, the claim failed, then an application could have been made to have QOCS disapplied for fundamental dishonesty under CPR r.44.16. If, notwithstanding the fact that the Claimant was fundamentally dishonest, the Court had nevertheless taken the view that the accident was the Defendant's insured's fault in full or in part, then an application could have been made under section 57 of the Criminal Justice and Courts Act 2015. I note that had the claim been dismissed on an application under this section, the Defendant would have been significantly worse off in relation to costs.