

fraud case update

Cases

[Radaslic -v- Ayub Zurich Insurance](#)

[Zurich Insurance -v- Ayub and 7 others](#)

Huddersfield County Court

Claim no: 8HD01957

**Hill Dickinson reference: PJO
956655.269**

Case facts

Claims arose out of a road traffic accident said to have occurred on 26 September 2006 when Zurich policyholder Abid Ayub (with three passengers) drove into the rear of a private hire taxi (containing four passengers) driven by Elmir Radaslic. Radaslic and his four passengers were represented by the same solicitors, Ramsdens of Huddersfield.

Zurich had concerns about the validity of the accident but engineering evidence was inconclusive. Nevertheless, the claims were repudiated. Although Ramsdens were acting for five claimants the only case they issued was that of the driver.

Hill Dickinson was instructed and a review of previous claims by industry databases, in particular Netfoil, revealed that the drivers were not only previously known to each other (they shared a previous address), Radaslic had previously been a witness to an alleged RTA concerning Ayub and several other claimants. It was also established that Ayub was the director of a local accident management business, and his passengers had links to other staged accidents.

Part 20 claim

To frustrate the claimant solicitors' attempts to have the claims dealt with piecemeal, a part 20 claim was issued seeking recovery of Zurich's outlay and a declaration that the accident had been contrived by the parties. Thus all nine alleged participants in the accident were drawn into the proceedings. Immediately four of the claimants abandoned their claims (two passengers from each vehicle) however, two passengers from the taxi issued their claims within the proceedings (Hanif and Davidson).

Ignoring the obvious conflict of interest Ramsdens ran the claim for Radaslic on the basis that they admitted the previous links between the drivers and attempted to pass this off as a coincidence. For the passengers, their case – never clarified until trial – was that there may have been a conspiracy between the drivers, but if there was, they were innocent passengers and knew nothing of it.

Result

In the week of trial Ramsdens obtained an order for them to come off record for Radaslic on the basis that he was not responding to their request for instructions.

At trial HHJ Spencer QC found that the parties including the two remaining passenger claimants before him had conspired to make fraudulent claims and dismissed their claims. Costs were awarded on the indemnity basis.

Comment

This case had a number of points of interest:

- The circumstantial evidence of fraud was strong. The drivers clearly had a previous link to each other and it appeared one had sought to provide evidence in favour of the other at the very least to bolster liability and to validate the presence of ghost passengers.
- However, the link was never (as is often the case) denied – indeed (almost certainly on advice) the claimants presented themselves as having nothing to hide by providing an unashamedly detailed account of their previous claims and associations.
- Had the claimants been allowed to deal with the claims individually they might well have succeeded. By drawing all of the parties into the action by the issuing of a part 20 claim, it enabled those claimants that attended court to be subject to rigorous cross-examination, and inferences to be drawn from the abandoned claims.
- The conduct of the claimants' solicitors left much to be desired. The judge commented that there had been an obvious conflict of interest for Ramsdens for many months.
- Costs recovery will be interesting as the various claimants had ATE insurance. The ATE insurers had been placed on notice of the allegations of fraud from the outset. The costs order has been made against the claimants on a joint and several basis.

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Welcome

Welcome to the autumn 2009 Hill Dickinson fraud case update. In this issue we explore a selection of case summaries to keep you informed of our fraud team's recent activity.

Sharing this information will we hope be another useful contributor in our fight against fraud.

If you have any questions relating to the points raised in this edition, or for more information on our fraud services in general, get in touch or visit:

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[Abubakar Said -v- Atjam Denir and Zurich Insurance \(2\)](#)

Liverpool County Court
Claim no: 6LV70913

[Taj Tajzai -v- Thomas Garner and Zurich Insurance \(2\)](#)

Liverpool County Court
Claim no: 7LV11573

[Khadija Munye -v- Esham Muneay and Chaucer Insurance \(2\)](#)

Liverpool County Court
Claim no: 6LV18194

Case facts

These cases were suspected to be linked via a number of common denominators, including the accident management company, the hire company, the repair garage, the claimant solicitors and the engineer.

Whilst we were entirely satisfied that the above cases were fraudulent, these were always going to be difficult cases to win. The insured invariably refused to co-operate with our enquiries and the vehicles often could not be located. This deprived us of the ability to highlight inconsistencies within the insured's evidence as well as obtaining engineering evidence. The defences to these cases were therefore entirely intelligence-led and Netfoil proved pivotal in this regard.

Notwithstanding the evidence of fraud, the claimants' solicitors continued with these claims insisting the claims were genuine. The three claims were listed together for a five day hearing starting on 9 November 2009.

Result

On the morning of the trial the claimants failed to attend court and the claims were struck out with costs on the indemnity basis resulting in considerable savings.

The second defendant also succeeded in a counterclaim against Khadija Munye for monies previously paid out, totalling in excess of £8,000.00.

Indeed the following savings in terms of claimant costs and damages have already been achieved:

[Abubakar Said -v- Atjam Denir and Zurich Insurance: £58,000.00](#)

[Taj Tajzai -v- Thomas Garner and Zurich Insurance: £70,500.00](#)

[Khadija Munye -v- Esham Muneay and Chaucer Insurance: £32,500.00](#)

Substantial monies have also been recovered from the claimant solicitors in connection with these cases and steps are now being taken to recover the second defendant's full costs, which will increase the above savings even further.

James Newby
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Rashid -v- Gomersall

Liverpool County Court
Hill Dickinson reference:
1047488.77

Case facts

Following a road traffic accident on 22 April 2008 the claimant had his vehicle repaired through his own insurers, Norwich Union. Whilst his vehicle was unavailable for use he engaged in credit hire through Bristol & London.

Liability was not disputed and when presented with the repair invoice, the defendant's insurers paid the repairs in full. The only outstanding head of claim remaining was the credit hire in the sum of £6306.70.

The claimant instructed Kayes Solicitors to recover these charges and insurers instructed Hill Dickinson to negotiate a settlement.

Following a telephone call the hire claim was agreed at £5090.57 with the claimant's costs to be considered. The claimant solicitors submitted their costs calculation based on the predictive costs contained within CPR45.

Their claim for costs was denied on the basis of CPR 45.7(2)(b) in that in order for predictive costs to be recovered the damages recovered by the solicitors must include either personal injury or property damage. It was argued that credit hire was neither of these; therefore predictive costs would not apply.

The claimant solicitors disagreed as they believed that credit hire would count as property damage. Kayes first

commenced part 8 proceedings, but following a defence being filed that claim was struck out. As the part 8 proceedings had been opposed the court was required to dismiss the claim by virtue of CPR 44.12A (4)(b).

Kayes then issued a claim form for the costs in the sum of £2130.97.

The matter was allocated to the Small Claims Track but the main issue for the court to consider was straightforward; do the predictable costs rules apply to a claim that solely consists of credit hire charges?

Result

Deputy District Judge Grant presided, and agreed with Hill Dickinson. The court found that predictive costs are not the correct basis for calculating costs in a claim restricted to credit hire. Leave to appeal was refused.

Comment

The claimant, or more accurately, his solicitors and the hire company, chose not to appeal, most likely on the basis that they did not want a higher court decision against them.

As insurers and clients will be aware, one claim can often be dealt with by two or even three sets of solicitors acting for insurers, hire companies and others with a vested interest in the claim.

No doubt many people will have been paying predictive costs on any head of claim without realising that the intention was that one firm of solicitors deal with the entire claim hence the reason for the calculation being based on the level of damages recovered.

This decision reaffirms the point that Hill Dickinson has been making to those claimants with numerous firms purporting to act on their behalf; one set of solicitors only should be claiming and one set of costs should be paid.

Solicitors acting for credit hirers can not expect to be paid several thousand pounds for doing very little, as in this case, the expectation from Kayes was that one phone call and a letter could generate £2130.97 of profit costs.

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[Mohammed Saleem -v- Ian Fellows & Eastwood Air Conditioning Limited](#)

Dudley County Court

Case no: 8RA03276

Hill Dickinson reference: 979220.235

Case facts

The claim arose from an alleged road traffic accident on 26 September 2007. The vehicle insured by Hill Dickinson's client managed to stop behind the claimant's vehicle which braked abruptly and was subsequently hit in the rear by another vehicle which then shunted the middle vehicle into collision with the claimant's vehicle.

The claim was defended not only on the basis of liability but also on the basis that the damage to the claimant's vehicle was entirely inconsistent with the damage to the front of the client's insured vehicle, which was supported by our engineering evidence. We also raised the allegation that the claimant was a bogus claimant as he was approximately 20 years younger than the individual who had been driving at the time of the accident.

The claim was identified to the insurer client by pro-active fraud investigations under taken by Hill Dickinson which had identified that ASAP Claims of 125c St Agatha's Road, Birmingham, B8 2TT were the referrer of the claim.

It was identified that features of these claims were involving claimants in the Walsall area, the accidents were occurring on A roads in the West Midlands and often the alleged driver of the vehicle was not in fact driving at the time. We prepared for the court an analysis of ASAP Claims showing some similar fact evidence.

Result

At trial the claimant attended but the insured maintained that this was not the individual driving the vehicle. After a discussion with his barrister the claimant told the trial judge he discontinued his claim and costs were awarded to both defendants and we succeeded on the counterclaim against the first defendant.

Total saving for the client was £36,000.

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[Shoukat Ali -v- Bomag \(Great Britain\) Limited](#)

Walsall County Court

Claim no: 9LV10072

Hill Dickinson reference:

JSS.956655.149

[Kala Khan -v- Graham Cyster](#)

Walsall County Court

Claim no: 8LV16277

Hill Dickinson reference:

JSS.949112.114

Case facts

Both of these claims arose from road traffic accidents which took place at the notorious A5 Wall Traffic Island, and formed part of Hill Dickinson's operation argon enquiry.

Hill Dickinson dealt with a large number of claims at this particular location and successfully repudiated 14 claims prior to litigation. However, proceedings were issued in relation to the cases of Shoukat Ali (RTA 24/08/06) and Kala Khan (RTA 31/08/06).

All accidents took place at the A5 Wall Traffic Island. On the approach to the roundabout the claimant would deliberately 'slam-on' to induce a collision with the defendant's vehicle behind. The accident circumstances were identical in each claim, and in relation to both litigated cases these involved the same accident management company who featured in the majority of the claims at this location.

Hill Dickinson dealt with the procedural matters, of the filing of defences which raised an allegation of fraud against the claimants, allocation questionnaires and disclosure of documents and thereafter put the claimants on notice that it was their intention to apply to have both matters heard in conjunction with each other given that the cases were almost identical.

Result

Shortly after, the claimants wished to discontinue the claims with no order for costs, this proposal was met with rejection and figures have been agreed in relation to payment of Hill Dickinson's costs to allow both claimants to discontinue.

Overall, Hill Dickinson has achieved savings in excess of £280,000 from all the claims that they have dealt with arising from this operation.

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[Abdul Rahim -v- Zahoor Ahmed \(1\) and The Co-operative Insurance \(2\)](#)

Sheffield Combined Court
Case no: 8DC01310
Hill Dickinson reference:
JNE.960288.2322

Case facts

Proceedings were issued by Abdul Rahim following an accident on 12 January 2008. Mr Rahim served six witness questionnaires from alleged independent witnesses pre-issue and presented a substantial hire claim as well as a claim for personal injury. Four further personal injury claims awaited the result of Mr Rahim's case.

Hill Dickinson's fraud unit had significant concerns surrounding the evidence presented. In particular we felt the independent witnesses were bogus and therefore tainted the claimant's claim. Furthermore, evidence was disclosed questioning the veracity of the hire claim and casting doubt upon the credibility of the accident management company who may have been orchestrating proceedings.

The case proceeded to trial on 27 July 2009.

Result

The claimant abandoned his case at trial resulting in global savings of approximately £80,000.00.

Costs were awarded to The Co-Operative Insurance who also received judgment in respect of a counterclaim.

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[Mr Barry Walker -v- Mr Michael Matthews \(1\) Provident Insurance PLC \(2\)](#)

Birkenhead County Court
Case no: 8BI09510

Consolidated with claim:

[Mr Philip Carr -v- Mr Michael Matthews \(1\) Provident Insurance PLC \(2\)](#)

Warrington County Court
Case no: 9WA00006
Hill Dickinson reference:
JNE.985532.125

Case facts

Eight personal injury claims were presented following an accident on 15 June 2008. Proceedings were issued by two of these claimants and the claims were consolidated.

Whilst a number of minor discrepancies existed in the evidence provided, the key finding in this case was a link between several of the occupants in the third party vehicle to occupants of the insured vehicle via the internet site, Facebook. This turned a potentially difficult case into one with very good prospects of success, and therefore instructions were received to serve a robust defence to the claims, and to put questions to the claimants regarding their apparent associations.

Result

The claims of Barry Walker and Phillip Carr were struck out following a lack of instructions and the non-litigated claims have also seemingly been abandoned. This has achieved potential savings in excess of £60,000.00.

Comment

Whilst the claims were struck out prior to disclosure of the Facebook evidence, such evidence enabled Provident to maintain a robust stance throughout proceedings in the knowledge that the parties were almost certainly linked. This demonstrates how important networking sites such as Facebook have become in establishing crucial links as claimants often forget to hide the traces that are created by corresponding on such sites.

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[Arpad Azasz -v- Kriz Leema \(1\) Provident Insurance PLC \(2\)](#)

Manchester County Court
Claim no: 8MA24265
Hill Dickinson reference:
JNE.985532.117

Case facts

Proceedings were issued following an accident that allegedly took place on 26 June 2008.

Instructions were received from Provident Insurance PLC to investigate the accident. Unfortunately, however, the insured was refusing to co-operate with his insurer's enquiries and his vehicle could not be located, effectively rendering any potential engineering evidence a futile exercise. Liability had also been conceded due to the minimal evidence available.

Detailed intelligence searches were carried out in relation to the accident history of the parties and a pattern began to emerge regarding the use of a particular accident management company. It soon became apparent that the insured address was connected to a host of accidents involving the same accident management company (or various subsidiaries) as used by the claimant in the index accident.

Result

Within days of serving the defence, the claimant discontinued his claim. Instructions have now been received to recover costs.

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[Mr Ramesh Sinnathurai -v- G4s Cash Services](#)

Wandsworth County Court
Claim No: 8LV17619
Hill Dickinson reference: 1009978.172

Case facts

This appeared to be a genuine accident and our main concerns were surrounding the storage claim which equated to £7282.65 for 288 days of storage. It should also be noted the claim included a claim for personal injury.

The claimant stated that he had no associations with the storage company, City Tech of 60 Torrington Way Maudon, SM4 5QA. However through extensive

enquiries we established through the claimant's medical records and data mining regarding previous accidents, that the claimant's previous address was that of the storage company, even though he wasn't listed as ever registered at the address.

Result

The claim was rejected on these grounds, the claimant's solicitors came off record and the claim was subsequently struck out. Hill Dickinson was awarded costs on an indemnity basis with an interim of £4500 to be paid within 14 days of the hearing.

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[Quinn -v- Chaucer Insurance](#)

Oldham County Court

Claim no: 8BI11414

**Hill Dickinson reference:
SJP/988122.960**

Case facts

The claim arose as a result of a road traffic accident involving the insured driver and claimant. The claimant alleged that the defendant collided with the rear of the claimant's vehicle and was therefore at fault for the collision. Liability was denied on that basis of the insured's evidence that the claimant had stopped unnecessarily at a set of traffic lights that had turned to green.

Whilst initially there were concerns that the collision was deliberately provoked, the defendant being in a visible company vehicle in the form of a Scania lorry and the claimant appearing to 'slam on' for no apparent reason, it was subsequently suspected following an interview with the insured driver that the claimant was intoxicated.

There were also issues as to occupancy in that the insured described the presence of two white males in the claimant's vehicle, whereas claims had ensued from a white and Asian male. A further male attended the scene of the incident purporting to be the owner of the claimant's vehicle.

Both of the alleged occupants of the claimant's vehicle attended court to give evidence, together with the owner of the third party vehicle.

Result

The judge did not accept that the passenger was present in the vehicle when the collision occurred and accepted that it was this individual who had arrived following the collision purporting to be the owner of the vehicle. The judge felt that the fact that the claimant had supported these contentions affected the veracity of his own evidence, particularly in the context of the claimant claiming that his symptoms had worsened over a one month period despite him not seeking any treatment.

The contention held by the insured driver that the third party driver smelled strongly of intoxicants was supported by a review of the claimant's GP records which revealed a history of drug and alcohol abuse. The claimant's solicitors had used their best endeavours to prevent the defendant from accessing these records, happily to no avail.

The judge further held that the claimant could not prove his case to the appropriate standard and he found that the driver of the third party vehicle had stopped for no reason and if the claimant was in the vehicle, he was not injured.

The claim was dismissed and the defendant was awarded costs.

Overall savings were achieved in the region of £25,000.

We have requested that the pre action passenger claim be dropped given that the judge held that he was not in the vehicle at the time of the collision and the point is therefore res judicata.

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[Mr Mohammed Suleman -v- Mr James Everall](#)

Oldham County Court

Claim no: 8BI10563

**Hill Dickinson reference:
960288.2378**

Case facts

The claim arose out of an accident that occurred on 7 October 2007 where the claimant alleged that the insured driver collided into the rear of his stationary vehicle, while at temporary traffic lights, causing vehicle damage and with the claimant sustaining injuries. The insured driver stated that he stopped his vehicle

behind the claimant's vehicle, he was stationary, and the claimant's vehicle rolled back and touched the front of the insured vehicle.

No claim was presented by the insured for damage as there was no damage noted. The claimant presented an engineer's report showing repairs were estimated to cost £1190.02, along with a medical report composed by Mr Mansoor which provided a prognosis for his neck and back injuries of up to six months before resolution.

Liability for the accident was denied as a statement was obtained from an independent witness supporting the defendant's version of events. Forensic engineering evidence was obtained which confirmed that there was no damage to the insured vehicle and the damage claimed by the claimant could not possibly have been caused by this incident. The report also concluded that even had the vehicles collided as alleged there would have been no occupant displacement and, therefore, no possibility of injuries being sustained.

However the claimant issued proceedings claiming that the defendant had admitted liability at the scene and had confirmed the same in writing, an allegation that the defendant strenuously denied.

The claimant was initially represented by Kirwans Solicitors yet they came off record, and the claimant became a litigant in person. Investigations revealed that the claimant's vehicle had been involved in a subsequent rear end shunt dated 25 January 2008 and that the engineering evidence presented for the index incident actually related to the subsequent accident.

Result

The claim was aggressively and robustly defended and at trial the judge deemed that the claimant had knowingly presented fraudulent documentation in support of his claim, the claimant could not have been injured as alleged and that liability would be apportioned against the claimant.

The defendant suffered no losses as a result of the collision yet was awarded expenses to the sum of £226 while costs were awarded in the sum of £9,906.45.

The policyholder/defendant Mr Everall was extremely happy with the outcome of the trial, praising not only the work conducted by Hill Dickinson in investigating and

defending the fraud, but also that of Counsel Mr Gutteridge of Exchange Chambers.

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[Shah & Shah -v- Shah & Markerstudy Insurance](#)

Stockport County Court **Claim no: 9SK00048**

This claim arose from an accident which is said to have taken place on 20 December 2006. The first and second claimants were travelling as passengers in the first defendant's vehicle.

The first defendant was proceeding along a terraced road with parked cars on either side and when faced with an oncoming ambulance managed to swerve to her left into a small gap between two parked cars and collided with a tree causing injuries to her passengers.

Astoundingly, there was no damage to the tree in the incident. The first defendant's insurance cover extended to third party fire and theft (TPFT) so the first defendant arranged for her own vehicle repairs. Her insurance company, concerned with the claim, arranged for her vehicle to be examined. The engineer concluded that there had been no evidence of impact damage to the first defendant's vehicle.

Proceedings were issued directly against the first defendant, and upon receipt of our application to join Markerstudy Insurance into proceedings as second defendants (which annexed our defence putting the claimants to strict proof of the occurrence of the accident, occupancy and injuries) the first and second claimants filed a notice of discontinuance.

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[Shafique Ullah & others -v- Dovar \(1\) & Chaucer Insurance \(2\)](#)

Clerkenwell & Shoreditch County Court **Claim no: 8LV 19683**

Case facts

The claimants, Shafique Ullah, Kaiser Ullah and Jaber Chowdhury, claimed damages for personal injury and miscellaneous expenses out of an accident on 14 September 2006 on Linthorpe Road, North London.

The claimants alleged they were parked at the side of the road when the first defendant collided with the rear of his vehicle.

Proceedings were issued out of the Liverpool County Court by Armstrongs Solicitors on behalf of the claimants. A defence was filed neither admitting nor denying liability, but rather putting the claimants to proof regarding the accident circumstances and their presence in the vehicle at the time of the accident.

The matter was transferred to Clerkenwell & Shoreditch County Court and the usual fast track directions being ordered.

Result

The claimants failed to serve witness evidence, signed medical authorities or replies to part 18 requests for further information. Accordingly, an application was made for the claims to be struck out unless the claimants complied with the directions within a tight timeframe. The application was successful and the claimants were ordered to pay the costs of the application.

The claimants failed to comply with the Unless Order and as such, the claim stands as struck out. Enquiries are now in hand regarding the financial status of the claimants so that an application may be made to recover the second defendant's costs of defending the claim.

Comment

This case highlights the importance of maintaining a robust approach when defending suspected fraudulent claims and applying procedural pressure to the claimants.

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