

# fraud case update

## Cases

### Yasar Mahmood -v- David Thackrah

**Claim no: 8PF00760**  
**Leeds County Court**

#### Background

The claimant, Yasar Mahmood, claimed damages for personal injury, hire charges, and recovery and storage charges out of an accident which occurred at a roundabout on Junction 39 of the M1 motorway.

The claimant stated his vehicle was leaving the roundabout when he was "spooked" by an Audi ahead when it suddenly changed direction causing the claimant to brake sharply. As a result, the defendant, Mr Thackrah, collided with the rear of his vehicle.

Thackrah claimed that the accident had been caused deliberately by the claimant who slammed on his brakes in order to provoke a collision. A defence was lodged which alleged that the collision had been caused deliberately by the claimant, acting in conjunction with the driver of the Audi, who had deliberately slammed on his brakes with the sole purpose of facilitating a collision.

The defendant was shown a series of images of the claimant vehicle in its post accident condition and was able to confirm that the damage displayed with the exception of one minor scrape in the middle of the bumper had not been caused by the collision.

The claimant also contended that he was accompanied by two passengers at the time of the accident, again contradicted by the defendant who was adamant that the claimant was alone.

Engineering evidence lent support to the defendant's version of events confirming that the damage to the claimant vehicle was inconsistent with the minimal damage present on the defendant vehicle. A joint statement was ordered by the court and the claimant's engineer confirmed his complete agreement with the findings of the defendant engineer.

#### Trial: 23 July 2009

The claimant attended trial to give evidence in support of his claim and relied upon witness evidence presented by the two alleged passenger occupants in his vehicle. Evidence was also given by the defendant, Mr Thackrah.

The court was persuaded by the account of Mr Thackrah and the uncontested engineering evidence prepared by the defendant. In the circumstances, it was ordered that the claim be dismissed. The judge found that the damage to the claimant vehicle was the scuff described by the defendant rather than the extensive damage alleged by the claimant. This negated the need for hire and recovery and/or storage. In addition, the claimant's account of injuries as provided to his medical examiner, Dr Khan, was not believed.

The judge invited the defendant to apply for a wasted costs order against Britannia Claims Management, the claimant's accident management business, on the basis that they had a controlling interest in conducting the litigation.

The claimants solicitors' have been ordered to show cause why they failed to warn the after the event (ATE) insurer that fraud had been alleged when they were placed on notice, as was required by Hill Dickinson.

#### Comment

This was an interesting case for a number of reasons.

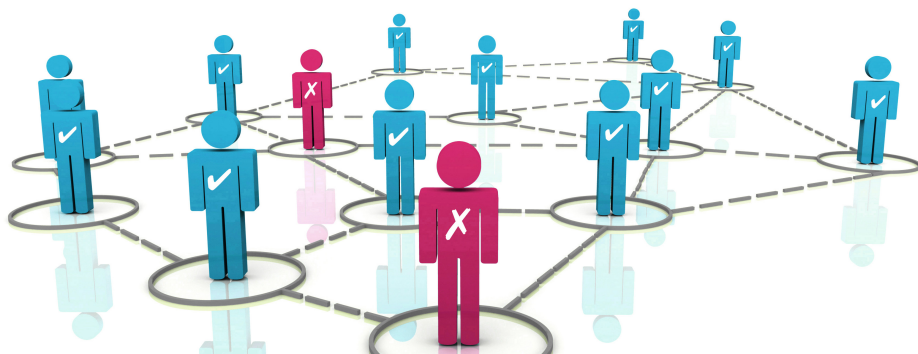
Deliberately provoked collisions can be extremely difficult to defend. The defendant's prospects of a successful outcome depend on the ability of the insured in the witness box, similar fact evidence (either previous similar accidents concerning the claimants or the accident management business), or other evidence to damage the credibility of the claimants.

In Yasar Mahmood -v- David Thackrah, the insured gave excellent evidence. The defence was assisted by the claimant's bogus special damage claim revealed by the engineering evidence.

The judge did not use the word 'fraud' at all in his judgment (not untypically judges are reluctant to find fraud if there is room for them not to have to). He actually found that the insured was liable for the accident having been positioned too close to the rear of the claimant vehicle. However he dismissed the claim on the basis that in relation to his claim the claimant could not be believed on any aspect. The judge avoided a finding in relation to the occupancy of the claimant vehicle, merely stating that wherever there was a difference between the evidence of the parties he preferred the defendant's version of events.

This case highlights the common judicial tendency to avoid an overt finding of fraud, even where defence has made strong allegations of fraud and the judicial findings all support the defendant's contention. In the absence of a specific fraud finding, however, the ATE insurer will find it more difficult to evade liability.

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## Welcome

Welcome to the Summer 2009 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 to 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 [www.hilldickinson-fraud.com](http://www.hilldickinson-fraud.com)

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### Mazar Hussain -v- Zulfuqur Ahmed (1) and Zurich Insurance (2)

**Claim no: 8bl02791**  
**Manchester County Court**

#### Background

Proceedings were issued by the claimant, one of no less than 15 occupants of a minibus travelling through the suburbs of Blackburn when it was allegedly struck by the policyholder as he emerged from a side road. Investigations revealed no link between the parties, but doubts remained regarding the credibility of the policyholder and the validity of the accident. Industry and Netfoil datamining revealed some of the claimants had previous claims but no overt evidence of fraud was unearthed. Our insurer clients were added to the proceedings, a defence was lodged putting the claimant to proof, and after exchange, witness statements and an evasive response to Part 18 questions the claim came before Manchester County Court.

#### Trial: 20-21 July 2009

The claimant was subject to detailed cross-examination on the accident circumstances, his alleged injuries and his previous accident history. The court found the inconsistencies between the claimant's pleadings medical evidence, witness statements and evidence given in court fatal to his case. The court found it particularly disturbing that the claimant had failed to support his case without one single other occupant of the vehicle.

#### Comment

The judge stopped short of a finding of fraud, but concluded that he could not find the accident happened in the manner alleged by the parties. As a result the claimant's ATE insurers will be unable to waive their rights and seek to avoid payment of the second defendant's costs.

Once again, the timing and content of the Part 18 questions was of significance

in enabling the second defendant to exploit the discrepancies in the claimant's evidence. The court was ready to draw an adverse inference from the failure of the other passengers to bring their claims at the same time as the claimant.

The remaining passenger claims have already been abandoned.

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### Yaseen -v- Akhlaq & The Co-operative Insurance Society

**Birmingham County Court**  
**Claim no: 7LV11583**

#### Background

The claimant, Mohammed Yaseen of 26 Herbert Street, West Bromwich B70 6HY, alleged that he had been involved in a collision with a Mohammed Akhlaq of 7 Bedcote Place, Stourbridge DY8 1LD on the 9 October 2006. Driving a Citroen Picasso (X215 OFF) Yaseen claimed to have been hit by Akhlaq as they were proceeding around a bend, in the opposite directions, when Akhlaq lost control of his vehicle and hit Yaseen's vehicle.

Initially, Akhlaq cooperated and provided a statement but reservations remained regarding his honesty and so The Co-operative Insurance Society (CIS) joined as a second defendant and a defence was lodged putting the claimant to strict proof.

The claimant's solicitors, Armstrongs, amongst other heads of claim presented a hire claim from Direct Accident Management to the sum of £14377.55 up to 22 February 2007. Indeed, the claimant's solicitors made an application for an interim payment of the pre-accident value of the vehicle in March 2007, claiming the claimant was still in a hire vehicle when this was not the case.

Both vehicles were forensically examined:

- The claimant’s vehicle was inspected outside the claimant’s property in March 2007, and was clearly being used as a private hire taxi.
- The defendant’s vehicle, when examined, was found to have a fundamental problem with a clutch failure which meant that the vehicle could not have been driven at the time of the accident. However, it was conceded that the problem could have manifested itself in a short window after the accident; albeit this was unlikely on the balance of probabilities.

The damage to the vehicles was also deemed to be inconsistent. The defendant avoided all contact after this evidence was obtained.

**Trial: 10 July 2009**

The matter was heard before Recorder Hill in Birmingham County Court. The claim presented consisted of:

- Personal injury £3,000 approx
- Hire £14,377.55
- Recovery £180
- Storage £2,268
- Pre-accident value £5,050

The claimant’s counsel initially presented the judge with the case of Armstrong -v- York, where the lay evidence of the claimant was accepted over that of expert evidence; which was the same scenario in this matter.

Following cross-examination of the claimant, in which the claimant performed poorly, counsel for the claimant was asked if he wanted to re-examine the claimant. Counsel declined and reminded His Honour of the caselaw he had provided. The judge’s comments were:

“I have had the opportunity to consider that case, but that matter is distinctive to this matter is it not? In that matter, the claimant was deemed to be entirely honest, that is not the case in this matter, is it?”

In giving his judgment, Recorder Hill commented that he was not convinced

the accident happened at all, and if it had, that it had happened in the manner described by the claimant. He considered that there were so many inconsistencies within the claimant’s testimony that he could not ignore the same and so dismissed the claim.

Costs were awarded in the sum of £11,784.93.

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[Mr Muzam Razaq \(1\) and Faisal Mahmood \(2\) -v- Elite Rentals Ltd \(1\) A Hill Dickinson client \(2\)](#)

**Claim no: 7BBU1548  
Preston County Court**

**Background**

The claim arose out of an accident that occurred on 19 July 2004. The claimant alleged that the policyholder driver pulled his vehicle from a stationary position and collided with the third party vehicle causing the vehicle to be written off. As a result the third party driver and his passenger pursued personal injury claims. The defendant driver, who had hired a vehicle through Elite Rentals, provided evidence that the vehicle had not been used that evening and that he was not involved in an accident. In addition Elite Rentals provided evidence that the vehicle had been returned from hire without any damage and therefore the vehicle had not been involved in an accident.

Liability for the accident was denied and it appeared the claims had been abandoned. However the claimants issued proceedings on the day of limitation and served proceeding one day before the expiry of the claim form.

Enquiries in respect of the claimants revealed that they had a rich history of accidents which they had failed to disclose to the medical experts or had failed to refer to in Part 18 replies. Details of the previous claims together with medical reports in relation to the previous

accidents were obtained and it was noted that the claimant had consistently failed to refer to any of his previous accidents.

The claims were aggressively and robustly defended and one week before trial the claimants filed Notice of Discontinuance.

**Comment**

Part 18 questions can be a double-edged sword. Whilst presenting an opportunity to clarify details of the claimant’s case they can alert the claimant to the weaknesses of his case and allow him to tailor his evidence accordingly. In fraud cases in particular, precise drafting and, crucially, appropriate timing are necessary to ensure, as in this case, they have maximum impact.

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[Mr Farid Fardaie -v- Mr Sohail Abbas and Equity Insurance](#)

**Claim no: BI22075  
Central London County Court**

**Background**

The claimant alleged he had been involved in an accident on 10 September 2007 on Keats Way, Middlesex, when the first defendant, Sohail Abbas, negligently collided with the side of his vehicle. Equity Insurance were joined to proceedings in order to protect their position given it was their firm belief that this accident was a fraud perpetrated by the claimant and the first defendant.

A robust defence was entered on behalf of the second defendant denying all liability, causation and quantum on the basis of fraud. Following service of this defence, the claimant’s solicitors, Carpenters, sought to come off record as acting for the claimant.

The claim proceeded with the claimant acting as a litigant in person. On breach of court directions an application was made to the Central London County Court requesting that the claim be struck out for

non-compliance. The claimant telephoned the court and indicated he was "sick" and would not be able to attend the hearing. He requested that the hearing be vacated to a later date.

### Judgment

The court had no sympathy with the claimant and in fact sympathised with the position of the insurance providers faced on a daily basis with these types of claims. The claimant's claim was struck out without further order and the claimant ordered to pay the second defendant's costs.

Savings banked for the client were in the region of £32,000.

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## Strefford & Philpot -v- Metcalfe

**Claim no: 8RC00265**  
**Chester County Court**

### Background

Hill Dickinson received instructions to defend the issued claim in relation to quantum; liability was admitted. The claimants were a driver and passenger in a road traffic accident. Liability was not disputed.

Early Part 36 offers were made on a global basis for each of the claimant's damages excluding the hire claim. Both claimed similar losses and medical reports carried identical prognosis.

An offer of £1765 in accordance with CPR 36 was made to each claimant prior to the litigation commencing. The offers were rejected and proceedings issued by Leech & Co.

The proceedings included the hire claim of £4090.65. We advised our defendant client to pay this in full as the matter would have greater grounds for the court to order for costs against the claimants if the only matters before the court were those heads of claim protected by the

pre-litigation Part 36 offers. The hire claim was paid in full with the defence thus restricted to the personal injury claim and accompanying special damages.

The claimants made their own Part 36 offers in the sum of £2,400.

### Trial: 8 January 2009

At the disposal hearing the judge awarded each claimant the sum of £1774.10 and summarily assessed costs in the sum of £7158.37.

The judge split the award for each claimant as follows: £1750 for general damages plus interest of £14.10, plus special damages of £10 for miscellaneous expenses.

Counsel for the defendant challenged the judgment in relation to costs but the judge refused to entertain any argument stating that the Part 36 offer was said to be inclusive of interest and therefore, as the judgment had similarly included interest, the claimant had obtained a settlement more favourable than the offer. Permission to appeal was refused.

Hill Dickinson sought permission to appeal.

### Appeal: 21 April 2009

Hill Dickinson argued that the judge had misdirected herself because the decision was 'wrong' as per CPR 52.11(3)(a) as the settlement was not more advantageous than the Part 36 offer, as set out in CPR 36.14(1)(a).

Although the offer was deemed to include interest calculated until the expiry of the 21 day period for which the offer was open for acceptance, as the offer had been made before the litigation had commenced no interest would have been due as interest on general damages only accrues after the proceedings had been commenced.

The judge had erred in including the £14.10 in the calculation for the purposes of CPR 36.14(1)(a).

The claim had ultimately been assessed at £1760 which was lower than the

defendant's offer of £1765.

In addition it was arguable that in any event the award was not more advantageous; the proceedings only resulted in the claimant receiving an additional £9.10 on the original offer and in line with the decisions in Morgan -v- UPS and Lisa Carver -v- BAA plc it was not 'more advantageous' to issue proceedings and incur the costs of the litigation for a mere £9.10.

The appeal sought that the costs order be set aside and the claimants pay the defendants' costs from the 21 days after the Part 36 offer had been made.

Permission to appeal was granted and a hearing date set.

The claimant solicitors consented to the appeal on all grounds in order to reduce the costs that they would have been liable to pay. The claimants also agreed to pay the costs of the appeal.

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## Mr Sehgal Tanvir -v- Dennis McLaughlin

**Claim no: 8LS53716**  
**Leeds County Court**

### Background

Claims arose out of an accident that occurred on 15 December 2005. The defendant alleged that the accident had been induced by the claimant, who slammed on his brakes for no good reason. There were also concerns surrounding the occupancy of the third party vehicle, the purported recovery of the third party vehicle and an extensive claims history attached to the claimant.

The claimant's solicitors remained adamant throughout the course of the case that their client was genuine and there would be no possibility of him discontinuing. The case proceeded to trial before His Honour Judge Cockroft.

**Trial: 28 May 2009**

The claimant was cross-examined for a full day. Whilst he remained calm and composed under cross-examination, a number of alarming discrepancies arose. At the end of the first day, the claimant agreed to discontinue his claim and pay a proportion of the defendant's costs.

Savings of approximately £35,000 were achieved.

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## Mr Mozhan Hussain -v- Mr Tariq Hussain (1) and The Co-operative Insurance Society (2)

**Claim no: 7BI27634**  
**Leeds County Court**

**Background**

The claim was brought by Mr Mohzan Hussain for alleged personal injury after an accident 21 September 2006. The defence entered pleading that the claim was fraudulent and that the accident was contrived by the parties.

The September accident was also linked to two other accidents, 10 March 2007 and 30 June 2006 featuring members of the Hussain family and in particular, the insured Mr Tariq Hussain. These claims remained pre-litigation and were repudiated on the basis of fraud.

Inter alia we were concerned with the following points:

- The claims all arose from members of the Hussain family resident either at 29 Wycombe Street or 138 Tempest Road
- In each incident a vehicle had been placed on cover with The Co-operative Insurance Society (CIS), just under or just over two months before an accident occurred.
- In each incident Tariq Hussain was involved in a key capacity and failed in his duty to provide assistance to his insurers.
- The accident circumstances were

- always unsubstantiated by an independent witness and the police and emergency services were not called.
- In each incident the accident involved either a collision without another vehicle or a collision with another vehicle where the driver or the third party of the vehicle was unwilling to assist.
  - In each incident CIS were faced with personal injury claims from multiple passenger occupants.
  - Multiple concerns and discrepancies arose from the evidence of the parties.

**Trial: 11 February 2009**

The day before trial the claimant's solicitors made an application to come off record as acting on behalf of the claimant on the basis that he had never provided them with photographic identification/ was not providing full instructions. The claimant failed to attend trial and his solicitors narrowly avoided a wasted costs order. The claim was dismissed with the claimant to pay the full legal costs of CIS.

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## Manvir Hayre -v- The Co-operative Insurance Society

**Claim no: 8CV04384**  
**Coventry County Court**

**Background**

The claimant, Mr Hayre, was involved in a genuine albeit minor accident in which his vehicle sustained a dented bumper. He hired a vehicle through Albany and pursued a claim against the defendant's insurer, The Co-operative Insurance Society (CIS).

The claimant was in a hire vehicle whilst his own was being repaired however part of the way through the hire period he was involved in another accident which was his fault. The hire company placed him in another vehicle, but as it was smaller he refused to accept the vehicle.

Mr Hayre then changed hire companies,

submitted a claim for over £600 worth of taxi fares for three days and then proceeded to hire a vehicle through Swift for over £16,000.

Some six months had passed since the accident and he eventually collected his vehicle from the repairers. The repairs had cost £550; his first hire bill of £2,500 had been dealt with by CIS however he continued to claim the additional £16,000 for the second vehicle.

On the day he collected his vehicle from the garage he was involved in another accident. It transpires that for that incident he is submitting a hire claim for £45,000. The matter was defended on a number of grounds, but with the claimant refusing to divulge any information about the second incident.

Hill Dickinson issued an application to strike out the claimant's claim or in the alternative ordering the claimant to provide full disclosure of the details surrounding the other two accidents. The application was issued in April 2009 and was heard in June 2009.

**Trial: 19 June 2009**

At the hearing, listed for two hours, the defendant's barrister was in attendance but no-one was present for the claimant. The judge asked counsel to call Hill Dickinson to ask them to chase the claimant's solicitors, CS2 lawyers, and get them to call the court as they could be represented by telephone.

We called the claimant solicitors who confirmed that they had received the original application but not the order for the hearing date. They were told that the judge had asked them to call the court to attend by way of telephone; we even provided them with the court phone number so they could do so swiftly as the judge and counsel were waiting.

Half an hour later counsel called to say that both he and the judge had sat waiting but no call.

The judge struck the claim out, not just on the merits of the application, but also as he was not too pleased at having sat

waiting for the claimant's solicitors to call. Costs were awarded.

Ten minutes after the phone call a fax was received from the claimant's solicitors with a copy of the letter to the court asking to adjourn the hearing. No explanation has been offered for why they never called the court.

The order stands.

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## Osman Abdelaziz -v- Morad Mahjoup

**Claim no: 8BF04001**  
**Central London County Court**

### **Background**

The claim arose out of an accident that occurred on 28 November 2007. The policyholder, Mr Morad Mahjoup, was driving a BMW registration LB02 JYN. It is alleged that he reversed his vehicle into the third party, being Mr Osman Abdelaziz, who was driving a Mercedes registration Y52 XGS.

The claimant claimed as a result of the accident his vehicle was un-driveable and therefore hired a like for like Mercedes through Accident Exchange for a period of 189 days incurring over £93,000 worth of hire.

The policyholder driver was interviewed and he provided witness evidence confirming that he did not collide with the third party vehicle.

Our forensic engineer inspected both vehicles and stated the damage was inconsistent. Furthermore, photographs of the damage to the third party vehicle did not appear to render it immobile, which was supported by the engineer.

Extensive intelligence enquiries were undertaken and Netfoil revealed that the claimant had been involved in three previous accidents on 28 October 2003, 3 February 2005 and 15 February 2006. In addition, Netfoil revealed that the claimant

had been involved in an accident on 12 April 2008 whilst driving the hire vehicle registration LT57 VAK.

The claimant's engineer stated the vehicle was not driveable as a result of the accident however, repairs were not undertaken until April 2008 through the claimant's insurance company. The repairs amounted to £1,700.

### **Result**

A very aggressive defence was filed disputing liability and claiming that the damage was inconsistent and the vehicle was driveable. Arguments were raised as to why the claimant was unable to claim on his insurance when bearing in mind his no claims bonus had already been affected due to the previous accident. Mitigation arguments were raised as to why the claimant saw fit to hire a vehicle incurring just over £93,000 worth of hire when the repairs amounted to £1,700.

A very detailed Part 18 request was put to the claimant who failed to respond to the same. As such, the court struck the claimant's claim out in its entirety, saving our defendant client in excess of £100,000.

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## Embassy of the United Arab Emirates -v- A Hill Dickinson client

**Wandsworth County Court**

### **Background**

Following a road traffic accident on 26 April 2008 a claim was submitted by Ahmed Soliman for repairs to his vehicle plus credit hire charges. Although liability was admitted and the repair element of the claim settled promptly, the level of hire charges remained in dispute.

Johnson Yates Solicitors commenced proceedings however the claim form named the claimant as the 'Embassy for the United Arab Emirates'.

The matter was defended on a number of grounds not least of which were that the claimant would surely have had access to numerous vehicles (not to mention many billion pounds with which to mitigate its loss), but more importantly the claimant was not a legal entity capable of bringing a claim. An embassy has no legal title and is in actuality a building housing representatives of the UAE.

The defence and Part 18 questions clearly indicated this issue. The claimant's solicitors then failed to comply with any directions, failed to respond to the Part 18 questions and so Hill Dickinson issued an application to strike out the claim for all of the above reasons, and also applied for summary judgment in the alternative given the fact that the claimant was not a legal entity.

### **Trial: 23 July 2009**

At the hearing the judge granted the application, "The Embassy could not have succeeded at trial". Counsel for the claimant sought relief from sanction given that there was an application listed after the defendant's that there be a substitution of claimant from the embassy to Mr Soliman. This was dismissed.

On that point the judge indicated that as the issue of the claimant's legal status was indicated in the defence, "for some seven months the claimant did nothing to get its tattle in proper order".

Costs were awarded in full.

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## Thornman -v- Scallan

**Claim no: 8BV01218**  
**Cambridge County Court**

### **Background**

The claim related to a road traffic accident which took place on 25 March 2006. The claimant, an international standard rower who had represented Germany, was knocked off his bicycle by the defendant. He sustained soft tissue injuries together with a gash to his head. Liability was admitted.

The claimant obtained medical evidence from a Mr Sherif, a consultant in accident and emergency medicine.

Two weeks following the accident the claimant was able to partake in the university boat race. Five weeks post accident he presented at hospital with severe back pain. An MRI scan was performed and it was found that he had a lumbar disc prolapse. Mr Sherif reached the view that notwithstanding that the claimant had been able to row in the boat race, the accident was responsible for the disc prolapse. The claimant had surgery and was unable to return to competitive rowing. He presented a special damages claim for approximately £35,000. The majority of this related to loss of earnings following his retirement from competitive rowing.

On receipt of the medical evidence and schedule a Part 36 offer in the global sum of £5000 was made. This was on the basis that other experts would almost certainly take a different view to that taken by Mr Sherif with regard to causation of the disc prolapse. This offer was rejected and we successfully applied to obtain our own medical evidence. Evidence was obtained from a consultant orthopaedic surgeon who took the view that the accident was not responsible for the disc prolapse. The two experts met and prepared a joint report in which they essentially stood by their original opinions.

**Result**

The matter was litigated and listed for a two day multi-track trial in Cambridge County Court (the claimant had rowed for Cambridge in the boat race!). A matter of days before the trial the claimant effectively folded and settlement was achieved in the sum of £10,000 inclusive of costs. This represented a saving of approximately £50,000 as against reserve.

**Comment**

The Part 36 offer clearly put the claimant at risk and this was made notwithstanding that the evidence at that stage supported a claim for £50,000. The offer was made on the assumption that a different expert would reach the view that it offends common sense to suggest that the

accident caused a latent injury, the nature of which was such to allow the claimant to row in the most strenuous of boat races, before becoming apparent some three weeks following the race. The offer was also made on the basis that our own evidence would be obtained from a consultant orthopaedic surgeon specialising in spinal injuries and as such was likely to be preferred to the evidence of a consultant in accident and emergency medicine.

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[Simba Mudunge -v- Nadia Malik \(1\) AXA Corporate Solutions \(2\) Safi Malik \(3\)](#)

**Claim no: 7BI23100  
Leeds County Court**

**Background**

These proceedings concerned an accident that was said to have taken place on 10 November 2005. On the surface, this appeared a relatively straight forward road traffic accident but Hill Dickinson held concerns surrounding a number of inconsistencies between the parties' evidence. Unfortunately however the vehicles were not available for inspection and the insured would not cooperate with our enquiries.

AXA Corporate Solutions were added to proceedings as second defendant and the claimant was put to proof as to the veracity of the accident.

Two weeks before the trial the first defendant wrote to Hill Dickinson advising that she was not involved in the accident, her vehicle instead being effectively taken without her permission by her younger brother. The trial was therefore vacated, the brother was added as third defendant and fraud was pleaded.

The claimant however refused to abandon his claim and argued that he was the innocent victim of a genuine collision, only complicated because of a family dispute between the first and second defendant

(who in turn blamed each other for the accident).

**Result**

Approximately a month before the second trial, the claimant agreed to discontinue his claim, saving AXA Corporate Solutions approximately £55,000.

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[Mr Mohammed Azhar, Mrs Rashida Azhhar, Mrs Shanaz Hussain and Mrs Serwori Bibi -v- Hamza Sethi and The Co-operative Insurance Society](#)

**Claim no: 7HD02038 and 8BD01002  
Bradford County Court**

This claim arose out of an alleged road traffic accident on 28 February 2005 at Firth Street in Huddersfield. It was alleged that the first defendant's vehicle collided into the rear of the claimant vehicle. The first defendant vehemently denied that any incident occurred. The insured vehicle was owned by his father who also supported this view, saying there was no accident damage. However, Mr Sethi was involved in a collision 11 days later which caused the vehicle to be written-off, preventing either side from being able to examine the vehicle and substantiate the claimants' claims.

We filed an amended defence, which fully set out our concerns arising from the claim. The claimants' solicitors had allowed us to interview their clients at an early stage and these investigations revealed a considerable number of anomalies in the claim, which taken together suggested that the claim either did not occur or did not occur in the manner suggested. These concerns included inconsistencies:

- in the time of the alleged accident;
- in the accounts about what the claimants had been doing prior to commencing their journey;
- between the mechanism of the alleged

accident and the manner in which the vehicles made contact; and

- in describing the medical treatment sought in connection with their alleged injuries.

The claimants' solicitors subsequently took steps to try and address the issues raised in the amended defence through witness evidence. Some of the explanations provided were feasible whereas others were fanciful. The fact remained though that despite their best efforts to explain away the inconsistencies the claimants went to trial with inconsistent evidence.

In terms of quantum, all the claimants advanced personal injury claims and in addition the third party driver sought £467.65 for damage to his alleged vehicle. In fact, we ascertained through a fee paying DVLA enquiry that the third party vehicle was owned by Mohammed Ashraf at the time of the accident. Mr Ashraf is the brother of the third party driver and became the claimants' most important witness.

Mohammed Ashraf is an employee of the CPS and a qualified solicitor. Mr Ashraf's witness evidence was that he telephoned Mr Sethi after the accident and he admitted that he had been involved in the accident. We were advised that telephone records would be produced but these were never disclosed.

### **Trial: 13 and 14 July 2009**

At trial we highlighted the numerous inconsistencies in the claimants' evidence. As regards Mohammed Ashraf, we were able to turn his employment with the CPS against him by successfully arguing that as a CPS lawyer should have known about the importance of substantiating evidence and should have produced phone records supporting his claims that he contacted Mr Sethi. Mr Sethi gave his evidence well and was adamant that he was not involved in any accident.

The circuit judge took the view that the parties were equi-poised. He was clearly concerned by the quantity of anomalies we highlighted in the claimants' evidence and accordingly held that they had failed

to convince him on the balance of probabilities that an accident had occurred with Mr Sethi. This left their witness, Mohammed Ashraf, as either the "white knight", as he was referred to by the claimants, or a person who was involved at a later stage to bolster the claim. The judge made no finding as regards his integrity. He agreed with our view that itemised telephone records could and should have been at the forefront of the case and that Mohammed Ashraf should have known this given his employment as a CPS lawyer. Without any corroborating evidence the judge was unable to prefer the evidence of Mohammed Ashraf over Mr Sethi. Accordingly the claim failed and the claimants were ordered to meet the defendant's costs of the action.

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## About Hill Dickinson

The Hill Dickinson Group offers a comprehensive range of legal services from offices in Liverpool, Manchester, London, Chester, Piraeus and Singapore. Collectively the firms have more than 1,100 people, including 160 partners.

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