A series of unfortunate events: proving fraud in the insurance context

Over a three-month span, three vehicle collisions occurred in Surrey, British Columbia. Each was a rear-end accident, and there were no independent witnesses to any of them. The Insurance Corporation of British Columbia ("ICBC") paid vehicle damage and personal injury damages to the vehicles' occupants. Over several years, ICBC paid out over $83,000 plus additional legal costs related to the claims. But there were connections between the people involved in the car crashes, including their passengers. These connections begged explanation, and ICBC subsequently sued Inderjit Singh and others for civil fraud, conspiracy, and fraudulent misrepresentation claiming they were staged accidents.

Evidence at trial revealed that the collisions were indeed staged, as Singh had connections with the drivers and passengers of each vehicle involved. But the judgment at trial was appealed, and the Court of Appeal's dismissal of the fraudsters' appeal clarifies the test for civil fraud in the insurance law context.

The case is *Singh v. Insurance Corporation of British Columbia*, 2022 BCCA 320 and can be found here:

https://www.canlii.org/en/bc/bcca/doc/2022/2022bcca320/2022bcca320.html?autocompleteStr=Singh%20v.%20Insurance%20Corporation%20of%20British%20Columbia%2C%20%20%20%20%202022%20BCCA%20320&autocompletePos=1

In the words of the trial judge, an accident is an unexpected or unforeseen event, usually an unfortunate one. The trial judge applied a four-part test for civil fraud which had been tailored to insurance claims arising from stage accidents. Among other requirements, this case requires that the alleged fraudster either knew of or was willfully blind to the fact that he or she was going to be involved in stage accident before it occurs.

The trial judge accepted ICBC's evidence on a balance of probabilities by finding that the collisions, as described by the defendants, were inherently improbable to have occurred and that the defendants lacked credibility when giving their explanations. In applying the four-part test, the trial judge held that the defendants had staged the collisions and were thus liable for fraudulent insurance claims.

On appeal, Singh argued: (i) that the judge had failed to apply the proper test for civil fraud, and (ii) that she had reversed the burden of proof.

The fraudsters specifically argued that civil fraud based on misrepresentation requires proof that they had made a false representation, either through actual knowledge or recklessness. They said the trial judge had failed to consider their state of mind, as is necessary for civil fraud based on misrepresentation. She had further equated her rejection of the fraudsters' evidence that the collisions were accidental as determinative of civil fraud. In doing so, they argued, the trial judge had effectively reversed the onus of proof.

In rejecting these arguments, however, the Court of Appeal harkened to the roots of civil fraud which are grounded in the so-called tort of deceit. This nineteenth century tort, affirmed by the Supreme Court of Canada in 2004, has four requirements:

1. a false representation made by the defendant;
2. some level of knowledge of the falsehood of the representation on the part of the defendant (whether through knowledge or recklessness);
3. the false representation caused the plaintiff to act; and
4. the plaintiff's actions resulted in a loss.

When multiple parties make a common plan to stage an accident, this test does not require that the defendant make a false representation, either through actual knowledge or recklessness, so long as the defendant understood and assisted with the plan to defraud the insurer.

Rejecting the fraudsters' evidence, further, is not the same as reversing the burden of proof. Like many civil cases, the plaintiff bears the burden of proof against the defendants on a balance of probabilities. The plaintiff's case "relies on the inherent improbability of things occurring as the defendants claimed to the plaintiff immediately after the accident, when the details of those claims are examined in a broader evidentiary context." The fraudsters' evidence was "riddled with inconsistencies", both internal to their testimony and externally when considering the whole body of evidence.

Their evidence was part of the entire body of evidence considered by the trial judge in finding that ICBC met its burden of proof. Thus, no reversal had occurred.

In the result, the five-member Court of Appeal was satisfied that the judge had applied the proper legal test and burden of proof, and had made no legal error in respect of the causes of action advanced. The appellate court dismissed the appeal.

This case is good news for insurers: when hearing a claim for civil fraud in the insurance context, the Court is not required to find that every participant in the fraud made a false representation (whether through actual knowledge or recklessness) if they understood and assisted with the fraudulent plan. When assessing the facts and evidence, furthermore, a judge is entitled to weigh the evidence from all parties, and to reject evidence when issues with credibility arise to determine whether civil fraud has occurred.

Should you have any questions with respect to this bulletin, or if you would like more detailed information, please contact the Brownlee LLP Insurance practice team.