

# Keoghs Client ALERT

27 July 2016

## Aviva Insurance Ltd v Steffen (2016)

Queen's Bench Division (Garnham J), 17 May 2016

Aviva Insurance Limited has recently been granted permission to bring contempt proceedings in an ongoing case being handled by Keoghs.

The court also gave further guidance on the proportionality and public interest tests.

### The Claim

The defendant alleged that he was the driver of a Ford Mondeo that was involved in a road traffic accident on 11 July 2013 with a vehicle being driven by a learner driver under the supervision of her driving instructor, who was Aviva's policyholder.

The defendant had brought a claim for personal injury and consequential losses including a claim for physiotherapy for £1,026. Liability for the accident was disputed.

During the course of the litigation, the defendant served a List of Documents, verified by him with a Statement of Truth, providing disclosure of a physiotherapy invoice and discharge report.

Witness statements were subsequently exchanged and the defendant's witness statement, again accompanied by a Statement of Truth, asserted that he was the Mondeo's driver and the statement also asserted that he had not yet undergone any physiotherapy treatment but intended to do so.

Given the claimant had already inspected the physiotherapy discharge report and this contained patient-specific information about the defendant together with the treatment dates and the defendant's range of movement after the treatment had been completed, Keoghs wrote to Asons Solicitors asking why an invoice and

treatment letter had been served in support of a claim for physiotherapy when the defendant was saying that he had not undergone any such treatment.

Asons' response was that they had been sent the physiotherapy Discharge Report 'in error'.

Keoghs asked Asons for a detailed explanation as to how a discharge report could be sent in error and asked for confirmation of who attended the physiotherapy treatment if not the defendant.

Asons responded suggesting that Keoghs take the matter up directly with the physiotherapy company. Keoghs contacted the physiotherapy company but they maintained that somebody had attended and undergone the treatment.

### The Trial

The matter was listed for trial on 2 October 2014 in Doncaster County Court. At the hearing a man in his late 20's or early 30's, with brown hair and brown eyes, turned up with an interpreter because he claimed to have a poor grasp of English.

He claimed to have been the Mondeo driver at the time of the accident.

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However, the claimant's witnesses provided unequivocal instructions that he was not the Mondeo driver, saying he was taller and thinner than the man they spoke to at length at the accident scene.

The hearing was adjourned and Aviva was given leave to amend its pleadings to advance a positive case of fundamental dishonesty.

Aviva served further statements from their witnesses in which they described the Mondeo driver as an athletic man of eastern European appearance with blonde hair and blue eyes, roughly 5'9" – 5' 10" tall and in his late 30's or early 40's. He spoke fluent English in an east European accent.

An amended defence was also served setting out the claimant's positive case, summarised above, and alleging fundamental dishonesty against him.

The matter was re-listed for trial on 14 May 2015 but in April 2015, Asons served a notice of discontinuance. Aviva made an application for permission to enforce their costs on the basis that the claim made by Mr Steffen was fundamentally dishonest, which was heard in September 2015. The court made a finding that the claim was, on a balance of probabilities, fundamentally dishonest in accordance with CPR 44.16(2) and disapplied the QOCS costs regime, ordering the defendant to pay Aviva £10,758.34.

## Contempt

In an effort to crack down on insurance fraud, Aviva sought to go one step further by seeking permission to bring committal proceedings against Mr Steffen. The applicant contended that the claim was dishonest to its core in that:

- (1) The person who purported to be Mr Steffen at the trial of this matter in the Doncaster County Court on 2nd October 2014 was not the driver at the time of the accident.
- (2) He had signed a Statement of Truth to pleadings and a List of Documents stating that he had undergone a physiotherapy assessment and 12 sessions of physiotherapy at a cost of £1,026. He served a report from the physiotherapist who allegedly provided the treatment to him. This contradicted his subsequent witness statement that stated he had not yet undergone any such treatment.
- (3) He provided an account of how the accident happened which was fundamentally different to the account provided by the applicant's insured and witness, a difference that could not be explained away by an innocent misremembering of the accident circumstances.

For the purposes of the permission hearing the court had to conduct sufficient enquiry into the factual matter of the claim to enable it to be satisfied that there was a strong prima facie case of establishing the contempt alleged against Mr Steffen to the criminal standard of proof, whilst stopping short of straying into the merits of the claim. The court also had to be satisfied that it was in the public interest to bring the proceedings, and that it was proportionate to do so.

Mr Steffen attended the permission hearing and maintained that he was the driver of the Mondeo and Aviva's witnesses must have been mistaken. He confirmed that he had signed the various statements of truth that were referred to in the permission hearing but said he understood little of how the proceedings were being prosecuted so he simply signed what he was told to sign as he trusted his solicitors to conduct the litigation properly on his behalf.

Mr Justice Garnham found there was a powerful case that the defendant had known when he signed the schedule of loss that he had not undergone any physiotherapy sessions and that no fees had been incurred. There was a strong, arguable case of fraud on that basis. Further, the witness evidence that the defendant had not been the driver was considered to be striking.

The court found that there was a public interest in the pursuit of contempt proceedings, namely in highlighting the potential consequences of witnesses making false statements and the importance of discouraging fraudulent claims could not be overstated.

As for proportionality, the court stated that if the defendant was lying and the claim for the cost of the physiotherapy sessions had been fraudulently advanced, the modest size of that claim would not make prosecution disproportionate. The size of the claim could not govern proportionality. The defendant's prosecution on the facts as advanced would be entirely proportionate to the damage done to the administration of justice by his alleged conduct.

Permission was therefore granted and Aviva has now issued and served committal proceedings and the case continues.

## What does this mean for insurers?

On considering the public interest test, the court considered whether the false statements would have been significant in these proceedings.

In this case the alleged false statements were central to both determining negligence and also valuing the claim.

Aviva's motivation for bringing the committal proceedings was to address the problems affecting many insurance companies and to raise greater awareness of the nature of the problems that insurers face in civil litigation from fraudulent claims. This problem has escalated since the introduction of 'no-win no-fee' funding where the financial risks of litigating false or inflated claims is borne by lawyers rather than litigants. This is particularly a problem in the field of personal injury litigation.

This case serves to highlight types of fraud infecting claims arising from genuine accidents, and the knock-on effect on the wider public, through increased premiums.

This case highlights the court's intolerance to opportunistic litigants seeking to use the court's process to attempt to obtain pecuniary advantage by deception.



Aviva hopes that this case will help send a message to all prospective litigants and to all lawyers who have the opportunity of advising such prospective litigants, that no litigant, however sympathetic their plight, can consider him or herself to be insulated from the threat of committal proceedings if they deal dishonestly with an insurer in the conduct of an injury claim.

The other important issue addressed in this case was proportionality. Whilst this was a modest claim, the court repeated the comments made by Spencer J in *Quinn Insurance v. Altintas* as to the fact that the size of the claim cannot govern the question of proportionality. The prosecution of committal proceedings on facts such as those alleged in this case were deemed to be entirely proportionate to the damage done to the administration of justice by the conduct alleged.

Fraud is significantly more of a problem for the lower value claim which statistically are more numerous than higher value claims.

However, the willingness of insurers to fight these issues of fraud head on should assist in deterring prospective litigants from pursuing fraudulent claims.

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