

DAC Beachcroft success as Court strikes out 'fraudulent' claim as an abuse of process at interlocutory hearing

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DAC Beachcroft's Casualty Fraud Team has secured an interlocutory strike out of a claimant's claim as an abuse of process on the ground that it was fundamentally dishonest pursuant to the clear endorsement of the interlocutory jurisdiction by the Supreme Court in *Summers v Fairclough Homes Ltd* [2012] 1 WLR 2012. This provides the current highest level judgment and uses as the marker for 'abuse of process' the test for fundamental dishonesty as per *Howlett v Davies* [2017] EWCA Civ 1696 (endorsing HHJ Moloney's formulation). It is also the first judgment on the issue following the line of case authorities interpreting s.57 and CPR r.44.16.

Claire Laver Head of Casualty fraud at DAC Beachcroft commented that "My colleague, Helen Laight's deployment of legal strategy and appropriate investigations has led to significant savings for [the insurer] who is committed to fighting fraudulent claims. I am delighted that we were able to identify the potential for fraud within our casualty injury team and go on to achieve this excellent outcome."

In November 2011, the Claimant Paul Matthews had a minor incident at work alleging that he had hurt his back when swapping a defective bed for a new one. He continued to allege, more than six years later, that he was in "agony"; that he was unable to work and would require permanent and significant care. He also alleged that he was grossly disabled by his accident-related injuries and presented as such to various treating experts, medico-legal experts and the DWP. When the claim was issued it was issued for up to and £100,000 but pleaded at £150,000.00, and if the Claimants blatant untruths were made out at trial, a much larger sum of in excess of £1million might have been awarded.

The Claimant's claim began to unravel when further investigations commenced and surveillance evidence was obtained. The surveillance footage significantly undermined the Claimant's case that his life had changed considerably. One of the medico-legal experts had video recorded the examination with the claimant's consent and this was compared with the surveillance evidence undertaken before and after the same examination.

Helen Laight at DAC Beachcroft made an application to a) rely upon the surveillance evidence, b) to amend the Defence to plead fraud and c) to list the matter for an interlocutory application to strike out the claim, which, unusually, the Claimant consented to. Soon after the Consent Order was filed, the Claimant became a litigant in person and represented himself at the contested application hearing.

After reviewing both the documents and watching the surveillance footage in court, and making the decision to strike out the claim at this stage, His Honour Judge Simpkins, who had reserved the matter to himself as the Designated Civil Judge, making this judgment the most authoritative judgment on point, commented of the 'extreme' dishonesty: *"I am satisfied that there is no real prospect of a court at trial finding that the claimant has not intentionally exaggerated his disability to a significant extent and for the purpose of greatly increasing the amount of damages that he might be awarded...the picture presented by the Claimant to all his experts is a false one...His claim that he suffered a short term exacerbation of an existing back condition may also be doomed to fail because of the effect on his credibility. Even if that were not the case, he had forfeited the right to continue any part of his claim as a result of his abuse of the process in misleading the experts and bringing a dishonest claim...I therefore strike out the whole of the claim as an abuse of the process on the ground that it is fundamentally dishonest, indeed a very significant part of it has been dishonestly exaggerated..."*

Angela Rainey of 39 Essex Street Chambers representing the Defendant at the two-day hearing commented that this case was *"one of the most blatant examples of a dishonestly exaggerated injury that she had seen in her practice"*.

The costs savings achieved from this successful interlocutory application are £175,000 and include avoiding a trial estimated to require a 10-day listing, however, there is little doubt that in the absence of appropriate and tactical fraud strategy including effective deployment of covert surveillance, the Claimant may have sought to include significant future loss claims exceeding £1million, with an estimated length of trial of 10 days.

The Claimant was ordered to pay the Defendant £50,000.00 on account of costs.

Representation:

Solicitors: DAC Beachcroft Claims Limited (Helen Laight; Beverley Brooks)

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