

Fabricated care invoices lead to fundamental dishonesty finding in forklift truck claim

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The impact of the dishonest exaggeration of heads of loss on the whole of a claim has been the subject of a number of recent judgments including *London Organising Committee of the Olympic and Paralympic Games v Sinfield* (Insurance Adviser Alert April 2018) and, more recently *Kamara v Builder Depot Limited*, the judgment in which was handed down by HHJ Baucher on 1 May 2019.

The Claimant alleged that he had suffered orthopaedic and psychiatric injuries when, in the course of his employment, he was struck by a forklift truck driven by a colleague. Primary liability was conceded, subject to contributory negligence as the Claimant had failed to move out of the way of the forklift truck and had deliberately walked slowly in front of it.

The Claimant's claim included claims for future lost earnings, and the total sum claimed exceeded £200,000. A claim was presented for commercial care provided to the Claimant which was supported by invoices. Investigations on behalf of the Defendant discovered that the care provider did not exist and the carers alleged to have provided care denied that they had done so. The Defence was amended shortly before the trial to plead that the Claimant had been fundamentally dishonest.

At trial, stating that *if there was a shred of truth in the provision of care then those witnesses should have been in court* the trial judge found that the Claimant had created the fabricated care invoices and went on to find that he had been fundamentally dishonest in relation to the question of care and in relation to his pre-accident medical history and the mechanics of the accident. The judge decided that the claim for care, despite being limited to £3,250, *was substantial on the reasonable ambit for damages in this claim and went to both the root and heart of the claim.*

The entire claim was dismissed, and the Claimant ordered to pay the Defendant's costs.

Whilst the care claim was a relatively small proportion of the claim presented, through securing evidence that the Claimant had fabricated that part of the claim, the Defendant persuaded the Court that the Claimant had been fundamentally dishonest. This judgment, whilst a County Court first instance decision, should be of assistance to insurers and Defendants in persuading Courts to dismiss claims which have been exaggerated dishonestly.

A team of specialist large loss and counter-fraud lawyers from DAC Beachcroft represented the Defendant in this claim.

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