



Direct Commercial & DWF Law LLP Counter Fraud Success Stories

July 2023

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Executive Summary Issue: 11 July 2023

These cases can be discussed by contacting DWF's dedicated Fraud Team

- 10 highlighted case successes
- £158,711.77 fraud savings against presented third party claims in the first instance
- 7 Claimant's discontinued
- 5 Claimant's struck out
- 5 Claimant's withdrawn pre issue
- QOCS reversed on 5 claims
- Costs Orders £24,450.80

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Counter Fraud Successes

Issue 11: July 2023

Case Summary

Haci Kanisirin v Close Brothers Limited

DWF: 2018197-356, Lucy Bevan

DCL: A2015/003589

Fraud Type: No impact, occupancy and causation

Claimant Representatives: Scott Rees

Outcome: Strike out on the morning of Trial

Costs: £5,950.80 enforceable costs Order

Headline: Claim struck out after Claimant admits via an interpreter that he cannot speak English despite signing an English witness statement

Overview:

The named driver denied any involvement in the incident but left the policyholder's employ prior to DWF obtaining a statement. The Claimant claimed that he was a front seat passenger in a vehicle driven by his partner, with his young child in the rear. His partner gave only the details of the child when asked about passengers and his partner reported no injuries suffered by the occupants of the vehicle 9 days post-accident. The Claimant claimed immediate injuries. The Claimant reported to the expert that he suffered a right foot injury yet upon investigation of the Claimant's medical records it was clear that this injury was unrelated and was caused some days post-accident.

The Claimant clearly stated in his witness statement that he could speak English and did not require an interpreter yet the Claimant included translated documents in the trial bundle which had not previously been served. The Claimant also included physio records which had not previously been disclosed and raised further issue over the alleged foot injury. Tactically, DWF advised not to file an application to strike out the claim due to the defective statement, as this would have prompted the Claimant to apply for relief. Instead, Counsel was instructed to make an oral application on the morning of Trial to strike out the claim as the Claimant only had permission to rely upon an English statement and he confirmed via an interpreter that he could not speak English. The application was successful and Counsel sought costs pursuant to CPR 44.15 and the Judge agreed that the Claimant's actions were an abuse of

process and overturned QOCS, awarding a fully enforceable costs Order. The matter is currently with DWF Recoveries team to recover DCL's legal costs from the Claimant.

Technical Interest: The Judge held that rules about witness statements and interpretation are there for good reason so there is no doubt about a party's evidence. Here a strike out application ensure certainty or result and an enforceable costs Order. While there was confidence in a successful fraud defence, the easier route is always the best route!

Savings against presented claims:

Details	Amount
PI	£4,500.00
Physio	£100.00
Claimants' Costs	£9,000.00
Total Savings	£13,600.00
Costs Order	£5,950.80

Jennifer Teke, Dr Charles Fonchingong, Master Bradley Che, Miss Loraine Che v Metro Supplies & Services Ltd

DWF: 2018197-59, Lucy Bevan

DCL: A2016/006532

Fraud Type: Phantom occupancy

Claimant Representatives: Slater & Gordon

Outcome: 4 x struck out claims

Costs: Wasted costs of £2,000.00, plus £8,000.00 costs following strike out

Headline: Second time chancers claims struck out for abuse of process

Overview:

Claims for personal injury were presented by the third party driver, her husband and their two children. Breach of duty was admitted, however the insured driver denied the presence of the two children. The father and two children issued their claims separately. The Claimants' representatives agreed to consolidate the claims and a Consent Order was signed which they then rescinded on. On the advice of DWF, DCL were successful in applying to consolidate the claims and due to the Claimants' representatives poor conduct in rescinding on a signed Order, the court awarded wasted costs of the application in the sum of £2,000.00. Thereafter, the Claimants' failed to comply with directions and DWF successfully applied to strike out the father and children's claims.

Over a year later, the mother issued proceedings, along with a second set of proceedings for the father and children despite their claims being struck out at an attended hearing. An immediate application was filed to strike out the father and children's claims as an abuse of process. Pending the listing of the application the mother failed to comply with directions and DWF successfully applied for an Unless Order for compliance and her claim was struck out without a hearing. Slater and Gordon in the meantime came off record as acting for the father and children. After numerous vacated hearings (due to lack of judicial availability) the application was successful and the 3 remaining claims were struck out with an enforceable order for costs to be assessed if not agreed. The Claimants have paid £8,000.00 in costs.

Technical Interest: Technical applications resulted in not only costs of the strike out of the claims but also wasted costs paid by the Claimants' representatives.

Savings against presented claims:

Details	Amount
PI	£8,800.00
Credit Hire	£2,374.27
Vehicle Damage	£5,600.00
Physio	£1,270.00
Misc	£200.96
Claimant's legal costs	£23,800.00
Total Savings	£42,045.23
Costs Recovered	£10,000.00

Jacqueline Wallis v 3D International Haulage Ltd

DWF: 2019226-307, Lucy Bevan

DCL: A2017/009443

Fraud Type: Farmed

Claimant Representative: Nicholson Jones Sutton

Outcome: Discontinued at Trial

Costs: Claimant agreed to pay £2,500.00 costs

Headline: Claimant discontinued at the court door when warned about fundamental dishonesty by her barrister

Overview: Whilst a genuine accident was accepted, it was not accepted that the Claimant was genuinely injured with concern that her claim had been "farmed". The Claimant did not seek any medical attention despite an 18 month prognosis yet attended her GP on numerous occasions for unrelated matters. She did not submit her claim until 2 years post-accident. Prior to the commencement of trial Claimant's Counsel approached to discuss a "drop hands agreement". Defendant's Counsel reminded that a time limited offer to discontinue with payment towards costs had been made and neither the Claimant nor Claimant's Counsel were aware of that offer. The Claimant had not been advised that breach of duty had been admitted or that fundamental dishonesty was a live issue. There was some discussion as to whether the Claimant's ATE or representatives would pay costs, however, the Claimant agreed to discontinue her claim prior to the Trial and pay £2,500.00 costs and signed the Consent Order directly.

Technical Interest: A prior offer to discontinue the claim with repayment of costs placed DCL in a stronger position on the morning of Trial to secure a costs order rather than a "drop hands"

Savings against presented claims:

Details	Amount
PI	£5,500.00
Vehicle Damage	£2,898.50
Misc	£15.00
Claimant's legal costs	£7,521.24
Total Saving	£15,934.74
Costs Order	£2,500.00

Melanie Burgess v Olmar Staislaw

DWF: 2019226-260, Lucy Bevan

DCL: A2019/006181

Fraud Type: Phantom occupancy

Claimant Representatives: Scott Rees & Co

Outcome: Discontinued

Costs: £6,000.00

Headline: Claimant pays costs after application served for a finding of fundamental dishonesty

Overview: The Claimant claimed that she was a passenger in the third party vehicle and that she suffered personal injury. This was wholly undermined not only by the insured driver, who reported that there was one male front seat passenger only, but also the Camatics footage evidenced what appeared to be a male exit the front seat. The footage was served at witness statement exchange at which point the Claimant attested by statement of truth that she was the front and only passenger. The Claimant likely realised the gravity of the evidence and its potential implications and filed a Notice of Discontinuance of her claim in full within days of witness exchange and Scott Rees & Co came off record as acting.

As this was a QOCS matter there was no entitlement to pursue recovery of the defence costs and we advised on prospects of an application for a finding of fundamental dishonesty in order to obtain an enforceable costs order. We were instructed to proceed with an application and rather than face a fundamental dishonesty hearing the Claimant agreed to pay £6,000.00 costs in a lump sum

Technical Interest: Whilst prospects of recovery on paper appeared to be balanced, the Claimant when faced with service of a robust application and potential of increased costs, borrowed money from family to pay the costs making the filing of the application a success, which highlights the power of DCL's Camatics product.

Savings against presented claims:

Details	Amount
PI	£3,200.00
Physio	£525.00
Misc	£70.00
Claimant's legal costs	£4,112.80
Total Savings	£7,907.80
Costs Order	£6,000.00

Mr John Patterson v Brian Kaye Transport Ltd

DWF: 2019226-685, Lucy Bevan

DCL: A2019/001734

Fraud Type: Farmed

Claimant Representatives: McDermott Smith Law Ltd

Outcome: Discontinued

Headline: Typical farmed claim discontinued following robust Defence

Overview: The Claimant did not submit a Claim Notification Form until 2 years post-accident and sought no medical attention and took no time off work, despite claiming that he continued to suffer from injuries almost 3 years post-accident. Proceedings were issued on limitation and medical evidence was incomplete despite a referral to an orthopaedic surgeon. The incomplete medical evidence was raised in the Defence as a preliminary issue along with the lack of contemporaneous evidence of injury, with a request for sight of the Claimant's medical records. The Defence was served with an invitation for the Claimant to discontinue his claim in full. The Claimant accepted this offer prior to track allocation of the claim resulting in an early successful conclusion to the claim.

Savings against presented claims:

Details	Amount
PI	£5,000.00
Claimant's legal costs	£3,263.00
Total	£8,236.00

Mr Yemi Suleman v Kedan Transport Ltd

DWF: 2019226-620, Lucy Bevan

DCL: 2019/000435

Fraud Type: Farmed

Claimant Representatives: McDermott Smith Law Ltd

Outcome: Discontinued

Headlines: Pre action disclosure of medical records undermines Claimant's medical history

Overview: The claim was investigated due to farmed concerns. The Claimant's medical report gave a low prognosis with no medical attention reported and a denial of prior injuries and medical problems. On the advice of DWF, DCL obtained pre issue disclosure of the Claimant's medical records which revealed that he attended his GP following 3 prior RTAs and there were attendances for prior neck and back pain, including cervical

spondylosis. This cast doubt over the reliability of the medical report given that it was predicated on the accurate reporting from the Claimant. The Claimant issued protective legal proceedings and following a repudiation pre Defence the Claimant served Notice of Discontinuance.

Technical Interest: Pre issue disclosure of medical records was key in the repudiation of the claim.

Savings against presented claims:

Details	Amount
PI	£2,500.00
Claimant's legal costs	£936.00
Total	£3,436.00

Mrs Samienna Majid, Mrs Balqees Akhtar, Mr Sajid Sharif, Ms Hibbah Majid, Ms Hannah Majid v Nijjar Dairies Ltd

DWF: 2019226-284, Elizabeth Fergus

DCL: A2018/010547

Fraud Type: Occupancy and causation

Claimant Representatives: Sterling Coopa Ltd / Abbott and Co

Outcome: 5 x withdrawn claims pre issue

Overview: This matter was referred due to concerns surrounding occupancy and causation of injury following 5 Claim Notification Forms. Whilst the insured driver failed to assist with enquiries, repeated requests for documents in support of the claim including medical records were met with silence and limitation has expired resulting in 5 closed PI claims.

Savings against presented claims:

Details	Amount
PI	£21,000.00
Misc	£500.00
Claimant's legal costs	£13,405.00
Total	£34,905.00

Mr Timothy Blackwood v Stones Distribution Ltd

DWF: 2019226-396, Lucy Bevan

DCL: A2019/008266

Fraud Type: Liability and causation

Claimant Representative: Accident Claims Lawyers

Outcome: Discontinuance

Overview: Liability and causation were in dispute as the insured driver denied fault and the third party vehicle repairs were low value with images taken at the accident scene supporting minor damage. The third party insurer also stated that they had no report of injury from the third party one month post-accident but did not clarify if this was an explicit denial or if the question of injury was never asked. DWF sought the FNOL recording to investigate further. The insured driver was, however reluctant to attend trial and following the Claimant's Part 36 Offer at £3,000.00 DWF utilised the lack of damage to push the Claimant to discontinue his claim in full.

Savings against presented claims:

Details	Amount
PI	£5,000.00
Claimant's legal costs	£6,204.00
Total	£11,204.00

Ms Karithika Rengara v Gandhi Wine Suppliers Ltd

DWF: 2019226-587, Lucy Bevan

DCL: A2020/000633

Fraud Type: Occupancy and causation

Claimant Representatives: Slater and Gordon

Outcome: 5 x withdrawn claims pre issue

Overview: DCL quickly flagged this case due to occupancy concerns. An early conference with the insured driver and Counsel took place pre Defence and unfortunately prospects on occupancy were considered to be poor. The option was provided of early settlement given the low 4 month injury or alternatively to file a Defence putting the Claimant to proof with a "drop hands" offer in the first instance. DWF proceeded to file as robust a Defence as possible in the circumstances and the Claimant accepted the offer filing Notice of Discontinuance of her claim in full.

Savings against presented claims:

Details	Amount
PI	£2,800.00
Misc	£50.00
Claimant's legal costs	£2,497.00
Total	£5,347.00

Matthew Felton, Sian Felton v R G Delivery Services Ltd

DWF: 2018197-1239, Alexandra McGrath

DCL: A2020/003219

Fraud Type: Farmed and causation

Claimant Representatives: Forsetti Law

Outcome: Struck Out

Headlines: Farmed claims struck out following breach of Direction Order

Overview: The claim was investigated due to farmed concerns. The Defence put the Claimants to proof and set out inconsistencies in their accounts. Forsetti Law reported a significant data breach, however they were aware of the dates for compliance with court directions and despite an agreed extension of time they failed to comply with disclosure and witness exchange. An application to strike out the claims was successful and QOCS was reversed owing to conduct issues that were raised. The application was approved without a hearing and the Claimants did not apply to set the Order aside. Costs are to be assessed if not agreed and debtor profiling suggests strong recovery prospects from the Claimants.

Technical Interest: Notwithstanding the data breach the court agreed that non-compliance was a conduct issue and dealt with the application ex parte, reducing the costs of an attended hearing.

Savings against presented claims:

Details	Amount
PI	£6,000.00
Claimant's legal costs	£10,096.00
Total	£16,096.00



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