Citation: ICBC v. Katinic
2000 BCSC 1085

Date: 20000712
Docket: C943672
Registry: Vancouver

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

INSURANCE CORPORATION OF BRITISH COLUMBIA

PLAINTIFF

AND:

TOM KATINIC, MARCO BRUNI, GEORGE SANTO, FRANK BRUNO AND SPENCER AOKI

DEFENDANTS
B955595
Registry: Vancouver

BETWEEN:

TOM KATINIC

PLAINTIFF
AND:

SHERY LEAH CASTLE

DEFENDANT

B936294
Registry: Vancouver

BETWEEN:

MARCO BRUNI

PLAINTIFF
AND:

JOHN RENAUD

DEFENDANT
AND:

INSURANCE CORPORATION OF BRITISH COLUMBIA

THIRD PARTY
B930224
Registry: Vancouver

BETWEEN:

FRANK BRUNO, SPENCER AOKI AND MARCO BRUNI

PLAINTIFFS
AND:

INSURANCE CORPORATION OF BRITISH COLUMBIA
AND
ALEXANDER MILLER

DEFENDANTS
B955598
Registry: Vancouver

BETWEEN:

TOM KATINIC

PLAINTIFF
AND:

**FRANK BRUNO, ALFREDO GIOVANNI BRUNO,
INSURANCE CORPORATION OF BRITISH COLUMBIA**

DEFENDANTS
AND:

INSURANCE CORPORATION OF BRITISH COLUMBIA

THIRD PARTY

B955597
Registry: Vancouver

BETWEEN:

TOM KATINIC

PLAINTIFF
AND:

**ALEXANDER THOMAS MACKENZIE AND
IRENE CATHERINE REMEDIOS**

DEFENDANTS
B955593
Registry: Vancouver

BETWEEN:

TOM KATINIC

PLAINTIFF
AND:

**CRAIG ROSS RETTIE, BARBARA JEAN RETTIE AND
ROGERIO JESUS SILVEIRA**

DEFENDANTS

**REASONS FOR JUDGMENT
OF THE
HONOURABLE MADAM JUSTICE BAKER**

Counsel for Tom Katinic, plaintiff, in Action No. B955595:	Michael S. Menkes
Counsel for Shery Castle, defendant, in Action No. B955595:	F.G. Potts & Wesley D. Mussio
Counsel for Marco Bruni, plaintiff, in Action No. B936294:	Michael Menkes
Counsel for John Renaud, defendant, and the Insurance Corporation of British Columbia s Third Party in Action No. B936294:	F.G. Potts & Wesley D. Mussio
Counsel for the plaintiffs in Action No. B930224:	Michael S. Menkes
Counsel for the defendants in Action No. B930224:	F.G. Potts & Wesley D. Mussio
Counsel for the Tom Katinic, plaintiff in	Michael S. Menkes

Action No. B955598:	
Franco Bruno and Giovanni Bruno, defendants, in Action No. B955598:	No one appearing
Counsel for the Insurance Corporation of British Columbia as Third Party in Action No. B955598:	F.G. Potts & Wesley D. Mussio
Counsel for the Tom Katinic, plaintiff in Action No. B955597:	Michael S. Menkes
Counsel for the defendants in Action No. B955597:	F.G. Potts & Wesley D. Mussio
Counsel for the Tom Katinic, plaintiff in Action No. B955593:	Michael S. Menkes
Counsel for the defendants in Action No. B955593:	F.G. Potts & Wesley D. Mussio
Counsel for the plaintiff in Action No. C943572:	F.G. Potts & Wesley D. Mussio
Counsel for Tom Katinic and Marco Bruni, defendants, in Action No. C943572:	Michael S. Menkes
George Santo, Frank Bruno and Spencer Aoki, defendants, in Action No. C943572:	Appeared in person
Place of Hearing/Trial:	Vancouver, B.C.

[1] The trials of these seven actions were heard together, by a jury, for 21 days commencing November 1, 1999 and concluding on December 7, 1999. The seven actions involved claims arising out of five motor vehicle collisions which occurred on July 15, 1992, October 5, 1992, November 8, 1992, February 5, 1993 and May 18, 1993. The first six actions listed above were brought by Messrs. Katinic, Bruni, Bruno and/or Aoki for damages for personal injuries alleged to have been caused by the negligence of one or more of the defendants named in those actions.

[2] The six actions were defended by the Insurance Corporation of British Columbia ("the Corporation"), on behalf of the named defendants Castle, Renaud, Miller, Mackenzie, Remedios, Rettie, Rettie and Silveira. In each of the actions, the Corporation denied liability for negligence, and disputed the plaintiffs' claims of injury.

[3] In addition, however, in defence of the six actions, and as plaintiff in the seventh action, the Corporation alleged that Messrs. Katinic, Bruni, Bruno and Aoki, and a fifth defendant, Mr. Santo, had made and pursued fraudulent claims for compensation. The Corporation alleged that in filing claims with the Corporation and pursuing claims for compensation for alleged personal injuries, the plaintiffs were knowingly and fraudulently claiming compensation for injuries that did not exist or were deliberately and grossly exaggerated; or were deliberately and fraudulently misrepresenting the circumstances of the events out of which their alleged injuries arose. In particular, the Corporation alleged that Mr. Katinic, Mr. Santo and Mr. Bruni had lied, or, in the case of Messrs. Katinic and Bruni were continuing to lie, about who was driving Mr. Santo's vehicle when it was involved in the November 8, 1992 collision. The Corporation also alleged that Messrs. Katinic, Bruni, Bruno and Aoki had either "staged" the October 5, 1992 accident, or lied about how and where the collision occurred.

[4] In the seventh action, the Corporation sought damages against Messrs. Aoki, Bruni, Bruno, Katinic and Santo for fraud. Special damages were specifically claimed for the costs incurred by the Corporation in investigating and defending the plaintiffs' claims relating to the five collisions. In addition, the Corporation sought punitive damages.

[5] At the conclusion of the evidence and submissions to the jury, the jury were asked to answer 46 questions. The concluded that the July 15, 1992 collision had not been caused by the negligence of the defendant Castle. The jury did not find that Mr. Katinic had deliberately caused the collision, but concluded that he had advanced a fraudulent claim for compensation for personal injury. They awarded special damages against Mr. Katinic in favour of the Corporation in the amount of $5600 and punitive damages in the amount of $17,500.

[6] In respect of the October 5, 1992 collision, the jury concluded that the collision had not been caused by the negligence of the defendant or an unidentified driver. The jury concluded that Messrs. Aoki, Bruni, Bruno and Katinic had not been injured. They concluded that Messrs. Aoki, Bruni, Bruno and Katinic had conspired to advance fraudulent personal injury claims against the Corporation. They assessed special damages of $3600 in favour of the Corporation against each of Messrs. Aoki, Bruni, Bruno and Katinic. They assessed punitive damages of $11,400 against each of Messrs. Aoki, Bruni and Bruno and punitive damages of $17,500 against Mr. Katinic.

[7] In respect of the November 8, 1992 collision, the jury apportioned liability 75% to the defendant George Santo, and 25% to the defendant John Renaud. They concluded that Mr. Bruni had made a material wilfully false statement in relation to his claim for compensation for personal injury as a passenger in Mr. Santo's vehicle in the November 8, 1992 collision. They concluded

that Messrs. Bruni and Santo had conspired to advance fraudulent claims for compensation for personal injury or vehicle damage. They concluded that Mr. Katinic had not participated in the conspiracy. They awarded $700 in special damages and $4300 in punitive damages against Mr. Bruni; and $15,000 in special damages and $8000 in punitive damages against Mr. Santo; in favour of the Corporation.

[8] The jury concluded that the February 5, 1993 collision had not been caused by the negligence of the defendants MacKenzie or Remedios. They concluded that Mr. Katinic had advanced a fraudulent claim for compensation. They awarded special damages of $3500 and punitive damages of $17,500 against Mr. Katinic in favour of the Corporation.

[9] The jury concluded that the May 18, 1993 collision was not caused by the negligence of the defendants Craig Rettie or Rogerio Silveira. They concluded that Mr. Katinic had advanced a fraudulent claim for compensation. They awarded $400 in special damages and $17,500 in punitive damages against Mr. Katinic in favour of the Corporation.

[10] On December 10, 1999, counsel for the Corporation applied for judgment based on the jury verdicts, and submitted a draft order. The form of order, prepared by counsel for the Corporation, was not objected to by Mr. Menkes, on behalf of Messrs. Katinic, Aoki, Bruni or Bruno; or by Mr. Santo, who appeared on his own behalf, except as to the appropriate scale of costs and whether costs should be awarded jointly and severally. There is also a dispute about whether the award of damages against Messrs. Aoki, Bruni, Bruno and Katinic in relation to the October 5, 1992 collision should be joint and several. In addition, the court must specify a date for the commencement of prejudgment interest.

DAMAGES

[11] I am of the opinion that the award of special damages against Messrs. Aoki, Bruni, Bruno and Katinic in relation to the October 5, 1992 motor vehicle collision should be a joint and several award. It appears that the jury, in arriving at the award of $3600 against each of the four defendants, simply accepted the Corporation's estimate of the total cost it had incurred in relation to investigation of the claim, and allocated one-quarter of the estimated total to each defendant. In such circumstances, I am satisfied that the award should be joint and several, based on the authority of ***Hill v. Church of Scientology of Toronto***, [1995] 2 S.C.R. 1130.

INTEREST

[12] The Corporation is entitled to recover prejudgment interest on all pecuniary awards. All awards are properly treated as awards in the fraud action brought by the Corporation. In order to calculate the amount of interest, a commencement date must be selected. For the purposes of certainty, I direct that court order interest will commence on the date the writ of summons in the fraud action was filed in the court registry. Some of the special damages no doubt began to accrue prior to that date, but the evidence about special damages was not sufficiently specific to enable a calculation from any earlier date. Accordingly, I am of the view that the fairest and most efficacious way to calculate interest is from the date of the commencement of the fraud action, to the date the jury rendered its verdict. Interest accruing after that date shall be considered to be post-judgment interest.

COSTS

[13] In general, the Corporation is seeking orders for costs which would require the unsuccessful parties to fully indemnify the Corporation for all actual legal fees and disbursements paid by the Corporation to its solicitors incurred in defending the six actions brought by the unsuccessful parties; and in prosecution of the Corporation's claim for damages for fraud, qualified only, counsel submits, by the requirement that the fees and disbursements actually incurred be "reasonable". Although counsel for the Corporation has referred to the costs it is seeking as "special costs", the costs he seeks would really be in the nature of what are sometimes referred to in contracts and in these courts as "solicitor and own client costs".

[14] More specifically, the Corporation is seeking the following orders in relation to costs in Action No. C943572, in which the Corporation is plaintiff:

> This Court Further Orders that the Plaintiff, ICBC, shall have its costs and disbursements of and incidental to these proceedings taxed as Special Costs amounting to full indemnity for its actual legal fees and disbursements, provided that they were reasonably incurred, and that the Defendants Aoki, Katinic, Bruno and Bruni shall be jointly and severally liable for payment to ICBC, forthwith after taxation thereof, of fifty percent (50%) of the total of such costs and disbursements assessed; the Defendants Santo and Bruni shall be jointly and severally liable to ICBC for payment of twenty-five percent (25%) of the total such costs and disbursements assessed, and the Defendant Katinic shall be solely liable to ICBC for twenty-five percent (25%) of such costs as are assessed.
>
> This Court Further Orders that the taxation of the costs of this proceeding shall be heard at the same time as the taxation of costs in the matters of Katinic v. Castle, British Columbia Supreme Court, Vancouver Registry No. B955595; Katinic v. Bruno et al., British Columbia Supreme Court, Vancouver Registry No. B955598; Bruno et al v.

> Miller, British Columbia Supreme Court, Vancouver Registry No. B930224; Bruni v. Reynaud, British Columbia Supreme Court, Vancouver Registry No. B936294; Katinic v. McKenzie et al., British Columbia Supreme Court, Vancouver Registry No. B955597; and Katinic v. Rettie et al., British Columbia Supreme Court, Vancouver Registry No. B955593.

[15] The Corporation is also seeking an order that it have costs amounting to a full indemnity (solicitor and own client costs) against Mr. Katinic in Action #B955595; costs amounting to a full indemnity against Mr. Katinic in Action No. B955598; costs amounting to a full indemnity against Messrs. Bruno, Aoki, and Bruni, jointly and severally, in Action No. B930224; costs amounting to a full indemnity against Mr. Bruni in Action #B936294; costs amounting to a full indemnity against Mr. Katinic, except for the costs relating to the trial, in Action #B955597; and costs amounting to a full indemnity against Mr. Katinic in Action #B955593.

[16] In addition, the Corporation is seeking an order for costs on Scale 3 against Mr. Santo in Action B945436, an action that was dismissed, by consent, on October 6, 1999.

[17] In submissions made on behalf of Mr. Katinic and Messrs. Aoki, Bruni and Bruno, Mr. Menkes opposed an order for special costs or a full indemnity award to the Corporation. He argued that the court should direct the Registrar to assess costs based on success in individual actions; or on individual issues within the actions. He submitted that the Corporation should be denied a portion of its costs because the trial had been unnecessarily prolonged by the actions of counsel for the Corporation. He argued that the Corporation wrongfully persisted in taking some of the actions to trial when it was unnecessary to do so because the actions could have been settled. Mr. Menkes also submitted that the costs should not be awarded on a joint and several basis, which would permit the Corporation to recover all of its costs from any one or more of Messrs. Katinic, Aoki, Bruno, and Bruni; and that the Court should instead award a fixed proportion of the costs against each unsuccessful party.

[18] Mr. Santo argued that the Corporation should not receive an award of costs against him because he had admitted, prior to trial, that he had falsely claimed that he was not driving his vehicle at the time it was involved in the November 8, 1992 motor vehicle accident. He submitted that the Corporation's claim against him could have been settled without the expense of trial.

[19] Before some of the actions were discontinued or dismissed by consent, there were actually 12 separate actions involving these parties. All had been scheduled to be heard together at trial, as a result of applications brought by the Corporation. Fortunately, some of the actions did not proceed to trial. Even so, the combination of the seven actions; five incidents involving motor vehicle collisions; and the numerous individuals involved in the various incidents, made the proceedings difficult and complicated. Management of the concurrent trial of seven actions proved to be a daunting task for counsel and the court. The fact that Messrs. Aoki, Bruno and Santo were self-represented throughout the trial, and Mr. Bruni was self-represented on some issues for a portion of the trial, also presented a challenge.

[20] Trial by jury was the choice of the Corporation who filed jury notices. At an earlier stage of the proceedings, an application brought by opposing counsel to strike the jury notices was defended by the Corporation and dismissed by another judge of this court. Although I do, of course, accept the correctness of the decision at the time it was made, in light of the information then available, and the submissions made, in retrospect I perceive this trial, involving so many accidents, individuals, and issues, as well as self-represented litigants, to push the limits of what can be fairly and conveniently decided by a civil jury.

[21] Although the fact that the trial proceeded with a jury certainly lengthened and complicated the trial, I am not persuaded that any counsel, or any party, unduly or intentionally complicated or prolonged the trial in a manner that should be reflected in the costs award.

[22] I turn, then, to the issue of the appropriate scale or measure of costs. In support of its application for costs amounting to a full indemnity, counsel for the Corporation relies on the decision of the Court of Appeal in ***Insurance Corp. of British Columbia v. Sanghera***, (1991) 55 B.C.L.R. (2d) 125. In that case, the Court of Appeal awarded solicitor-client costs to the Corporation in a fraud action brought by the Corporation. The fraud action had been heard together with a negligence action in which the defendants in the fraud action were plaintiffs seeking damages for personal injury, but because the negligence action was not before the Court of Appeal, the Court restricted the award of solicitor-client costs in the fraud action to costs up to and including the first two days of the three-day trial.

[23] Counsel before me relied on the following passage from page 140 of the Reasons in ***ICBC v. Sanghera***:

> The regrettable result in this case is that the Corporation will be substantially out of pocket in exposing this fraud. However in any future case of this kind, because of the new rules on costs, it will be open to a judge to award, in the fraudulently brought action for negligence, full indemnity for costs of defending that action, and, in an action for a fraud of the sort perpetrated here, full indemnity for the costs of prosecuting that action. The only limitation will be the principle of the new rules that the costs have been reasonably incurred. Thus, where it is appropriate that there be full indemnity to the Corporation, the rule in ***Quartz Hill*** will cause it no difficulty.

[24] The facts of the ***Sanghera*** matter were complex, but certain of the facts are germane to the applicability of the passage quoted above. The facts are set out succinctly in the headnote to the reported decision and I quote:

> In 1985 three "plaintiffs" sued two "defendants" for damages resulting from an alleged motor vehicle accident. I.C.B.C. added itself as a third party under s. 20 of the Insurance (Motor Vehicle) Act. I.C.B.C. then sued all five for damages for fraud, alleging the accident never occurred or was intentionally caused. Both actions were heard together. The trial judge rejected the evidence of the three plaintiffs as false, dismissed their action, and ordered an assessment of damages in the fraud action. The plaintiffs' appeal as to liability failed, and the fraud action was referred back to the trial judge for assessment of damages. On the assessment, I.C.B.C. was awarded $57,672.36 which included all its expenses of investigating and defending the claims, including legal fees in both the negligence action and the appeal, and all accident benefits paid out. Additionally it was awarded punitive damages of $25,000.

[25] The Court of Appeal allowed the appeal by the unsuccessful defendants, and varied the award made by the trial judge. The Court of Appeal held that in the fraud action I.C.B.C. was entitled to recover benefits paid and its expenses of processing and investigating the claims brought by the plaintiffs, but it was not entitled to recover the costs of defending the negligence actions as damages. This was because I.C.B.C. had not defended the negligence actions as an insurer of the defendants but rather as a third party under s.20 of the ***Insurance (Motor Vehicle) Act***.

[26] The Court also held that because the fraud action as pleaded did not allege fraudulent acts in the course of the negligence actions, the costs of defending the negligence action could not form the basis of an award of damages in the fraud action.

[27] In ***Sanghera***, Justice Southin said that the court will not award damages against the plaintiff who brings an action that fails, even if it is wholly without merit; nor can damages be recovered against a plaintiff who testifies falsely at trial. Ac action can be brought for malicious abuse of civil process but, except in limited cases, only upon proof of special damage, and that in such an action, the plaintiff cannot claim the costs of the earlier proceedings as special damage.

[28] She noted also, that even where a claim has been dishonestly put forward, the courts have not awarded full indemnity for costs to the successful defendant against the fraudster. She held, however, that an insurer can recover - from an insured who has put forward a false proof of loss and witness statement - all sums paid out to the insured as a result of the false proofs of loss and the expenses of process and investigating the claims.

[29] She held, however, that I.C.B.C. could not recover the costs of the defending the negligence actions brought by the fraudulent insureds in ***Sanghera*** for three reasons: because I.C.B.C. had not defended the negligence action as the insurer of the fraudulent parties; because the fraudulent parties were not asserting a right against I.C.B.C. as their insurer in the negligence actions; and because I.C.B.C. had not specifically pleaded, in the fraud action, that the defendants' fraudulent acts included things done in the course of the negligence actions- such as giving false testimony on discovery or at the trial.

[30] As a result, the Court of Appeal held that I.C.B.C. could not recover the costs of defending the negligence action as damages in the fraud action.

[31] In ***Sanghera***, the Court of Appeal also dealt with the issue of costs in the fraud action. However, in considering the Court's Reasons on costs, it must be remembered that in ***Sanghera***, counsel for the fraudulent defendants conceded not only that I.C.B.C. should recover "taxable solicitor and client costs" in the fraud action, but also submitted that those costs should include the costs of both the fraud action and the negligence action.

[32] The Court of Appeal stated that they could not make any order for costs in the negligence action, because the only appeal before them was in the fraud action. Justice Southin held that the court could award solicitor-client costs to I.C.B.C. in the fraud action, and did so, although limiting the costs to two of the three days of trial. Justice Southin concluded her Reasons with the passage on page 140 which I quoted earlier.

[33] I take the reference to "the new rules on costs" in that quoted passage to be a reference to the introduction of a new Rule on costs in the Supreme Court Rules that had come into effect late in 1990.

[34] The reference to the rule in ***Quartz Hill*** I take to be a reference to that portion of the Reasons of Brett M.R. quoted by Justice Southin at page 135 of her Reasons, to the effect that a losing party, even one who has brought civil proceedings falsely and maliciously, is only entitled to "the costs between party and party" in the unsuccessful action, and is not entitled to recover any "extra costs" incurred as damages in a subsequent action.

[35] Although the issue of the Corporation's right to recover special costs was *obiter dicta* in ***Sanghera***, that decision has been relied upon by judges of this court in subsequent decisions as authority for an award to the Corporation of special costs amounting to a full indemnity.

[36] In ***Insurance Corporation of British Columbia v. Raymond Hung Sam and others***, unreported, March 7, 1997, Supreme Court of British Columbia, Vancouver Registry No. C963847, Justice Williamson heard an application by the Corporation for an assessment of damages in an action for damages for fraud brought by the Corporation against 18 defendants who had filed insurance claims relating to eight automobile accidents. The Corporation had obtained default judgment against all of the defendants. Although two of the defendants did appear at the damage assessment hearing, their position was that they were not liable in damages at all, submissions that Justice Williamson concluded were irrelevant to the issue he had to decide.

[37] Before Justice Williamson, the Corporation sought an order that the defendants be jointly and severally liable, and an order for special costs in the nature of a full indemnity. The Court held that the defendants were jointly and severally liable, as participants in a group involved in a fraudulent claim. The Court also awarded special costs:

> ...in an amount equal to the actual costs of proceeding against these individual defendants, such costs to be taxed by the Registrar.

[38] In ***Insurance Corporation of British Columbia v. Teo Le, and others***, unreported, September 5, 1997, Vancouver Registry No. C966020, Justice Arkell heard an application to assess damages on a summary basis against numerous defendants against whom default judgment had been obtained. The action had been brought by the Corporation against 58 individuals who were alleged to have staged 12 motor vehicle accidents in order to fraudulently obtain insurance monies.

[39] On the application before Justice Arkell, only counsel for the Corporation appeared. None of the defendants were present or represented. Justice Arkell acceded to the request of counsel for the Corporation to award special costs amounting to a full indemnification.

[40] In ***Insurance Corporation of British Columbia v. Raymond Hung Sam and others***, unreported, June 1, 1999, Vancouver Registry No. C963847, Justice Bennett heard an application for judgment and for special costs brought by the Corporation after a jury trial. The Corporation had sued 18 individuals, alleging fraud or attempted fraud, which included allegations of staged accidents, fraudulently obtained insurance, and premium fraud. The trial of the fraud action had been heard together with claims for personal injury alleged to have resulted from one of the accidents.

[41] Although one of the defendants appeared in person at the hearing before Justice Bennett, and another was represented by counsel, her Reasons do not reveal whether those parties opposed the order for special costs amounting to a full indemnity. Justice Bennett quoted the paragraph from page 140 of the Reasons in ***Sanghera*** that I also quoted above. Justice Bennett concluded that she could see no basis to depart from the reasoning in the ***Sanghera*** decision and awarded special costs, amounting to a full indemnity, to the Corporation, both in the fraud action brought by the Corporation, and in the unsuccessful personal injury action.

[42] With great respect to the learned trial judges referred to above, I do not understand the decision in ***Sanghera*** to establish that an award of special costs amounting to a full indemnity must or should be made in all cases in which the Corporation succeeds in an action for fraud, or succeeds in defending, on behalf of an insured, an action brought by a plaintiff who is found to have advanced a fraudulent claim, either by staging an accident, or by fraudulently misrepresenting the circumstances of the accident, or his or her injuries. To interpret ***Sanghera*** in such a way would not, in my view, be in conformity with the general rule that the scale of costs to be awarded is a matter within the discretion of the trial judge, in accordance with the Supreme Court Rules, in all cases, including cases where fraud is pleaded and proved. It would be anomalous, in my view, to conclude that because the fraud is alleged and proved by a public insurer, that an order for special costs amounting to "solicitor and own client costs" will automatically follow.

[43] In ***Sanghera***, the unsuccessful parties had conceded that "solicitor-client" costs, as they were called under the previous Rules, should be awarded. That issue was not in dispute on the appeal. In that respect, the comments of Justice Southin are obiter, albeit persuasive, and are only authority for the proposition that a court may, but is not required to, award special costs.

[44] In addition, the reference to a "full indemnity" in ***Sanghera*** seems to be based on an assumption that an award of special costs under Rule 57(3) is equivalent to a "full indemnity" or solicitor and own client costs. Subsequent jurisprudence has demonstrated that although special costs may come close to or may sometimes provide a full indemnity, costs recoverable as special costs, and solicitor and own client costs, are not necessarily synonymous. This is because Rule 57(3) directs the Registrar as to the factors to be taken into account in assessing special costs, and the Rule does not require a party to be fully indemnified, through special costs, for all fees and disbursements charged to the party by its own counsel. See ***Midland Mortgage Corp. v. Jawl & Bundon*** (1997) 9 C.P.C. (4th) 236, (B.C.S.C.) and ***Ridley Terminals Inc. v. Minette Bay Ship Docking Ltd.*** (1990) 45 B.C.L.R. (2d) 367 (C.A.). See also ***Bradshaw Construction Ltd. V. Bank of Nova Scotia*** (1991), 54 B.C.L.R. (2d) 309 (S.C.) affirmed at 73 B.C.L.R. (2d) 212 (C.A.).

[45] I do not think Justice Southin intended, by her obiter remarks in ***Sanghera***, to suggest that an award of costs, in excess of those to which a party would be entitled as special costs under Rule 57(3), should routinely be ordered whenever a party succeeds in proving that another party has acted fraudulently, or has attempted to perpetrate a fraud.

[46] I turn now to a consideration of the specific orders sought by the Corporation. The

Corporation is not seeking special costs against Mr. Santo in Action B945436, which was dismissed by consent before trial, and I award the Corporation costs of that action against Mr. Santo on Scale 3.

[47] The jury concluded that Mr. Katinic was acting fraudulently in filing a proof of loss, providing statements to the Corporation's adjusters, and in bringing and maintaining his claims for damages for personal injury in relation to the July 15, 1992, February 5, 1993 and May 18, 1993 motor vehicle collisions. I am not satisfied, however, that his conduct in doing so was so reprehensible that an award for special costs is warranted. There was nothing about his conduct in the proceedings, other than his conduct in pursuing what the jury concluded were fraudulent claims, that warrants a punitive cost award.

[48] However, while the costs of steps taken in the actions brought by Mr. Katinic prior to trial can be dealt with in the normal course, it is impossible to attempt to allocate the costs of the trial into separate actions or issues. I will therefore return to the matter of the trial costs later in these Reasons.

[49] In each of Actions B955595, B955597, B955593, and B955598 I award one set of costs against Mr. Katinic in favour of the defendants in each of those actions who were represented by the Corporation (4 sets of costs in total) of all proceedings up to but not including trial, on Scale 4. I have chosen Scale 4 because in my view these actions were somewhat more complex than the average, both liability and quantum being in issue.

[50] I also award one set of costs against Mr. Bruni, in favour of the defendant represented by the Corporation and the Corporation, in Action B936294, to be assessed on Scale 4, for all proceedings up to but not including trial.

[51] I also award one set of costs against each of Messrs. Aoki, Bruni and Bruno, who will be liable for the costs jointly and severally, in favour of the defendant represented by the Corporation and the Corporation, in Action B930224, to be assessed on Scale 4, for all proceedings up to but not including trial.

[52] Having carefully considered the matter, and exercising my discretion in relation to costs, I have determined that the Corporation shall have an order for special costs, including disbursements, under Rule 57(3) against Messrs. Aoki, Bruni, Bruno, Katinic and Santo, for all proceedings in Action C943572. The costs of that action, to be assessed as special costs, shall include the costs of the entire trial. As requested by the Corporation, the order shall provide that the defendants Aoki, Katinic, Bruno and Bruni shall be jointly and severally liable for 50% of the taxed costs and disbursements; the defendants Santo and Bruni shall be jointly and severally liable for payment of 25% of the taxed costs and disbursements, and the defendant Katinic shall be solely liable for the remaining 25% of the costs and disbursements assessed.

[53] The costs of the application for the entry of judgment, and the hearing about costs, as well as any taxation or assessment that is required, shall be considered costs in Action C943572, and shall be assessed as special costs and allocated in the proportions outlined in the preceding paragraph.

[54] The taxations or assessments of all costs shall proceed under Rule 57 and shall be conducted at the same time, before the same Registrar or taxing officer. For additional certainty, and for the assistance of the parties and the taxing officer, it should be understood that the order I have made for special costs in Action C943572 is an order under Rule 57(3). I have not made an order for special costs amounting to a full indemnity. The Registrar or taxing officer is simply directed to tax the costs in Action C943572 as special costs, in the usual and ordinary way, under the Rule.

[55] If further directions are required in order to carry out any of the orders dealt with in these Reasons, the parties have leave to apply.

"W.G. Baker, J."
The Honourable Mr. Justice W.G. Baker