

Citation:

I.C.B.C. v. Hoang, Nguyen, et  
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2002 BCSC 1162

Date: 20020806

Docket: S004632  
Registry: Vancouver

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

BETWEEN:

**INSURANCE CORPORATION OF  
BRITISH COLUMBIA**

**PLAINTIFF**

AND:

**THI DINH HOANG, QUANG THUONG NGUYEN, HIEN GIA HOANG,  
HA THI VU, VAN HONG NGUYEN, PHI LONG DINH, THI BAC DO,  
THI HIEN NGUYEN, TRONG DAI TRAN, THUY THI NGUYEN,  
CHUNG MINH TRAN, THI LUYEN BUI, VAN QUYET NGUYEN,  
THEM THI TO, NGUYEN SON TRAN, VAN QUANG VU,  
QUOC THAI DIEP, VAN HUY NGUYEN, MINH SON NGUYEN,  
LAP THI LE, EM THI BUI, HUONG THI HOANG, XUAN TINH DONG,  
Y VAN LE, HAI TRONG LE, THU QUYET DANG, KIN MY CHE,  
SON NHU NGUYEN, VAN CUONG NGUYEN, VAN THONG NGUYEN,  
PHUNG SUNNY WONG, LOAN THI NGUYEN, QUOC THANH TU,  
MANH CONG TRAN and HUONG THI NGUYEN**

**DEFENDANTS**

**REASONS FOR JUDGMENT**

**OF THE**

**HONOURABLE MADAM JUSTICE SINCLAIR PROWSE**

Counsel for the Plaintiff:

J.C. Gopaulsingh

No One appearing for the  
Defendants:

Date and Place of Hearing/Trial:

April 5, 2002  
Vancouver, BC

**(I) NATURE OF APPLICATION AND RELIEF SOUGHT**

[1] In this action, the Plaintiff has alleged that the Defendants conspired to defraud it by staging various motor vehicle collisions and then making claims for personal injuries and/or property damage arising from them.

[2] Default judgments have been granted against 14 of the 35 Defendants. The claims against the remaining Defendants are scheduled for trial in February or March 2003.

[3] In this hearing, the Plaintiff is seeking an assessment of damages arising from these judgments and an order for special costs against each of the 14 Defendants. The assessment of damages includes a claim for punitive damages.

[4] Although all of the Defendants were given notice of this proceeding, none attended.

**(II) CLAIMS FOR DAMAGES ARISING FROM THE MOTOR VEHICLE ACCIDENTS**

[5] With respect to each of the 14 Defendants, the Plaintiff seeks damage awards to compensate it for all monies that it paid out on the claims; for the costs it incurred to adjust, review, and investigate the claims; and for pre-judgment interest arising from these awards.

[6] These classes of damages are recoverable in cases of insurance fraud, such as this case. See *ICBC v. Sanghera* (1991), 55 B.C.L.R. (2d) 125 (C.A.); *ICBC v. Sam*, [1997] B.C.J. No.571 (S.C.); and *ICBC v. Le*, [1997] B.C.J. No.3135 (S.C.).

[7] The general principle for damages for the tort of deceit is that the award should place the plaintiff in the same financial position that it would have been in had the fraudulent representation or statement not been made. See *K.R.M. Construction Ltd. v. British Columbia Railway Co.* (1982), 40 B.C.L.R. 1 (C.A.); *C.R.F. Holdings Ltd. v. Fundy Chemical International Ltd.* (1981), 33 B.C.L.R. 290 (C.A.); and J. Cassels, *Remedies: The Law of Damages* (Toronto: Irwin Law, 2000). The damage award should reflect the lost value to the plaintiff as well as consequential losses, suffered as a result of the fraudulent misrepresentation or statement. See *K.R.M. Construction Ltd.*, *supra*; *C.R.F. Holdings Ltd.*, *supra*; and J. Cassels, at p. 54.

[8] The specific issue to be addressed regarding the costs of processing, reviewing, and investigating the claims is not whether these costs are recoverable, generally, but rather whether the amounts claimed are reasonable, having regard to

the hours expended and the corresponding hourly rate. See e.g. *Sam*, *supra*.

(A) Application Of The Plaintiff For An Award Of Damages Granted Jointly And Severally Against Mr. Nguyen Son Tran, Mr. Van Quang Vu, Mr. Quoc Thai Diep, and Mr. Van Huy Nguyen Arising From The December 30, 1995 Accident

[9] On December 30, 1995, Mr. Van Huy Nguyen drove his vehicle through a stop sign and collided with a vehicle which was driven by Mr. Van Quang Vu; which was owned by Mr. Nguyen Son Tran; and in which Mr. Nguyen Son Tran and Mr. Quoc Thai Diep were passengers.

[10] The Plaintiff was granted default judgments regarding its claims against Mr. Van Huy Nguyen, Mr. Van Quang Vu, Mr. Nguyen Son Tran, and Mr. Quoc Thai Diep that this collision was staged and that their personal injury and/or property damage claims were fraudulent.

[11] With respect to the damages suffered by the Plaintiff as a result of this fraudulent conduct, the evidence proved that the Plaintiff paid out in regard to Mr. Van Huy Nguyen's claims \$733.04; to Mr. Van Quang Vu's claims \$10,398.61; to Mr. Nguyen Son Tran's claims \$7,139.81; and to Mr. Quoc Thai Diep's claims \$7,143.55.

[12] Moreover, the evidence showed that the Plaintiff incurred the cost of having an adjuster (who had a minimum hourly rate of \$30.06 per hour) process these claims - that adjuster having spent 30 minutes on Mr. Van Huy Nguyen's claims at a cost of \$15.03; 3 hours and 15 minutes on Mr. Van Quang Vu's claims at a cost of \$97.70; 3 hours on Mr. Nguyen Son Tran's claims at a cost of \$90.18; and 3 hours on Mr. Quoc Thai Diep's claims at a cost of \$90.18.

[13] In addition, the Plaintiff incurred the costs of having members of its Special Investigation Unit (who had a minimum hourly rate of \$30.06 per hour) review and investigate these claims, those members having spent a total of 8 hours and 30 minutes on Mr. Van Huy Nguyen's claims at a cost of \$255.51; 7 hours and 10 minutes on Mr. Van Quang Vu's claims at a cost of \$215.53; 7 hours and 10 minutes on Mr. Nguyen Son Tran's claims at a cost of \$215.53; and 9 hours and 30 minutes on Mr. Quoc Thai Diep's claims at a cost of \$285.57.

[14] Having reviewed the materials tendered, I am satisfied that the cost incurred to process, review, and investigate these claims was reasonable, having regard to the hours expended and the corresponding hourly rate.

[15] The Plaintiff is awarded the damages claimed to compensate it for monies paid out as a result of these claims

and for the costs incurred to process, review, and adjudicate these claims. The Plaintiff is also awarded pre-judgment interest on these awards.

[16] As the only claims arising from this collision pertain to Mr. Van Huy Nguyen, Mr. Van Quang Vu, Mr. Nguyen Son Tran, and Mr. Quoc Thai Diep and as the Plaintiff has been granted judgment against all of them, these damage awards are granted jointly and severally.

**(B) Application Of the Plaintiff For Individual Damage Awards Against Ms. Thi Dinh Hoang, Mr. Quang Thuong Nguyen and Mr. Van Hong Nguyen Arising From The Accident Of April 24, 1993**

[17] On April 24, 1993, Van Hong Nguyen drove his vehicle through a stop sign and collided with a vehicle owned and driven by Thi Dinh Hoang and in which Quang Thuong Nguyen, Hien Gia Hoang, Ha Thi Vu, and Hong Gia Hoang (an infant) were passengers.

[18] The Plaintiff has been granted default judgments against Mr. Van Hong Nguyen, Ms. Thi Dinh Hoang, and Mr. Quang Thuong Nguyen regarding its claims that this collision was staged and that their personal injury and/or property damage claims were fraudulent.

[19] With respect to the damages suffered by the Plaintiff as a result of this fraudulent conduct, the Plaintiff proved that it had paid out \$2,517.45 in respect of Mr. Van Hong Nguyen's claims; \$6,706.54 in respect of Ms. Thi Dinh Hoang's claims; and \$7,589.21 in respect of Mr. Quang Thuong Nguyen's claims.

[20] Further, the Plaintiff proved that it has incurred the cost of having an adjuster (who had a minimum rate of \$26.65 per hour) process these claims, that adjuster having spent 1 hour and 30 minutes on Mr. Van Hong Nguyen's claims at a cost of \$39.98; 3 hours on Ms. Thi Dinh Hoang's claims at a cost of \$79.95; and 3 hours on Mr. Quang Thuong Nguyen's claims at a cost of \$79.95.

[21] In addition, the evidence showed that the Plaintiff had incurred the cost of having members of the Plaintiff's Special Investigation Unit (who were paid \$26.65 per hour) review and investigate these claims, those members having spent a total of 9 hours and 30 minutes on Mr. Van Hong Nguyen's claims at a cost of \$253.18; 7 hours and 30 minutes on Ms. Thi Dinh Hoang's claims at a cost of \$199.88; and 7 hours and 30 minutes on Mr. Quang Thoung Nguyen's claims at a cost of \$199.88.

[22] Having reviewed the materials tendered, I was satisfied that the cost incurred to process, review, and investigate

these claims was reasonable, having regard to the hours expended and the corresponding hourly rate.

[23] The Plaintiff is awarded the damages claimed to compensate it for monies paid out as a result of these claims and for the costs incurred to process, review, and adjudicate these claims. The Plaintiff is also awarded pre-judgment interest on these awards.

[24] Because there are outstanding claims against other Defendants arising out of this collision, these awards are made severally, leave being granted to the Plaintiff to apply to have them made jointly after the claims against the other Defendants have been resolved.

**(C) Application Of The Plaintiff For Individual Damage Awards Against Ms. Thi Bac Do, Mr. Van Hong Nguyen, Ms. Thi Hien Nguyen, and Mr. Trong Dai Tran Arising From The January 15, 1994 Accident**

[25] On January 15, 1994, Mr. Van Hong Nguyen drove his vehicle (in which Ms. Thi Hien Nguyen, Mr. Trong Dai Tran, and an infant Ngoc Cuong Doan were passengers) through a stop sign and collided with a vehicle which was owned and operated by Mr. Phi Long Dinh and in which Ms. Thi Bac Do and an infant Linh Tuan Dinh were passengers.

[26] The Plaintiff has been granted default judgments against Ms. Thi Bac Do, Mr. Van Hong Nguyen, Ms. Thi Hien Nguyen, and Mr. Trong Dai Tran regarding its claims that this collision was staged and that the personal injury and/or property damage claims subsequently made by them were fraudulent.

[27] With respect to the damage claims, the evidence established that the Plaintiff paid out in regard to Ms. Thi Bac Do's claims \$88.00; Mr. Van Hong Nguyen's claims \$422.25; Ms. Thi Hien Nguyen's claims \$50.00; and Mr. Trong Dai Tran's claims \$75.00.

[28] In addition, the Plaintiff proved that it had incurred the cost of an adjuster (who had a minimum rate of \$27.18 per hour) to process these claims, that adjuster having spent at least 3 hours on Ms. Thi Bac Do's claims at a cost of \$81.54; 1 hour and 30 minutes on Mr. Van Hong Nguyen's claims at a cost of \$40.77; 1 hour and 15 minutes on Ms. Thi Hien Nguyen's claims at a cost of \$33.98; and 1 hour and 15 minutes on Mr. Trong Dai Tran's claims at a cost of \$33.98.

[29] Furthermore, the evidence showed that the Plaintiff had incurred the cost of members of its Special Investigation Unit (who had a minimum rate of \$27.18 per hour) to review and investigate these claims, those member having spent a total of 8 hours and 30 minutes on Ms. Thi Bac Do's claims at a cost of

\$231.03; 4 hours and 10 minutes on Mr. Van Hong Nguyen's claims at a cost of \$113.34; 8 hours and 30 minutes on Ms. Thi Hien Nguyen's claims at a cost of \$231.03; and 8 hours and 30 minutes on Mr. Trong Dai Tran's claims at a cost \$231.03.

[30] Upon reviewing the materials, I was satisfied that the cost incurred to process, review, and investigate these claims was reasonable, having regard to the hours expended and the corresponding hourly rate.

[31] Given all of these findings, the Plaintiff is awarded the damages claimed to compensate it for monies paid out as a result of these claims and for the costs incurred to process, review, and adjudicate these claims. The Plaintiff is also awarded pre-judgment interest on these awards.

[32] Because there are outstanding claims against other Defendants arising from this collision, these awards are made severally, with leave to apply to have them made jointly once the claims against the other Defendants are resolved.

**(D) Application Of The Plaintiff For Individual Damage Awards Against Mr. Xuan Tinh Dong and Ms. Hai Trong Le Arising From The August 26, 1996 Accident**

[33] On August 26, 1996, Mr. Xuan Tinh Dong drove his vehicle through a stop sign and collided with another vehicle. Ms.

Hai Trong Le was a passenger in Mr. Dong's vehicle at the time of this collision.

[34] The Plaintiff has been granted default judgments against Mr. Xuan Tinh Dong and Ms. Hai Trong Le regarding its claims that this collision was staged and that the personal injury and/or property damage claims subsequently made by the Defendants were fraudulent.

[35] As far as damages arising from this fraudulent conduct is concerned, the Plaintiff proved that it had paid out in regard to Mr. Xuan Tinh Dong \$2,766.74 and to Ms. Hai Trong Le \$3,954.44.

[36] In addition, the Plaintiff paid an adjuster (who had a minimum rate of \$30.06 per hour) to process these claims, that adjuster having spent at least on 1 hour on Mr. Xuan Tinh Dong's claim at a cost of \$30.06 and 3 hours on Ms. Hai Trong Le's claims at a cost of \$90.18.

[37] Furthermore, the Plaintiff paid members of its Special Investigation Unit (who had a minimum rate of \$30.06 per hour) to review and investigate these claims, these members having spent a total of 7 hours and 10 minutes on the Mr. Xuan Tinh Dong's claims at a cost of \$215.53 and 8 hours and 30 minutes on Ms. Hai Trong Le's claims at a cost of \$255.51.

[38] Moreover, I am satisfied after reviewing the materials that the cost incurred to process, review, and investigate these claims was reasonable, having regard to the hours expended and the corresponding hourly rate.

[39] Having reached all of these conclusions, the Plaintiff is awarded the damages claimed to compensate it for the monies paid out as a result of these claims and for the costs incurred to process, review, and adjudicate these claims. The Plaintiff is also awarded pre-judgment interest on these awards.

[40] Because there are outstanding claims against other Defendants arising from this collision, these awards are made severally, leave being granted to the Plaintiff to apply to have them made jointly once the claims against the other Defendants are resolved.

**(E) Application Of The Plaintiff For Individual Damage Awards Against Mr. Van Thong Nguyen and Mr. Xuan Tinh Dong Arising From The October 11, 1996 Accident**

[41] On October 11, 1996, Mr. Xuan Tinh Dong was the passenger in a vehicle that was driven through a stop sign and collided with a vehicle in which Mr. Van Thong Nguyen was a passenger.

[42] The Plaintiff was granted default judgments against Mr. Xuan Tinh Dong and Mr. Van Thong Nguyen pertaining to its

claims that this collision was staged and that the personal injury claims of these Defendants were fraudulent.

[43] As far as the Plaintiff's damages are concerned, it has proven that it has paid out in regard to Mr. Van Thong Nguyen's claims \$30.00.

[44] Further, it incurred the cost of having an adjuster (who had a minimum rate of \$30.06 per hour) process their claims, that adjuster having spent 1 hour on Mr. Van Thong Nguyen's claim at a cost of \$30.06 and 1 hour on Mr. Xuan Tinh Dong's claim at a cost of \$30.06.

[45] In addition, the Plaintiff paid members of its Special Investigation Unit (who had a minimum rate of \$30.06 per hour) to review and investigate these claims, these members having spent a total of 8 hours and 30 minutes on Mr. Van Thong Nguyen's claim at a cost of \$255.51 and 3 hours and 10 minutes on Mr. Xuan Tinh Dong's claim at a cost of \$95.29.

[46] Furthermore, after reviewing the materials presented I am satisfied that the cost incurred to process, review, and investigate these claims was reasonable, having regard to the hours expended and the corresponding hourly rate.

[47] Given all of these findings, the Plaintiff is awarded the damages claimed to compensate it for the monies paid out as a

result of these claims and for the costs incurred to process, review, and adjudicate these claims. The Plaintiff is also awarded pre-judgment interest on these awards.

[48] However, because there are outstanding claims against other Defendants arising out of this collision, these awards are made severally, leave being granted to the Plaintiff to apply to have them made jointly once the remaining claims are resolved.

(III) CLAIM FOR PUNITIVE DAMAGES

[49] As was touched on at the beginning of this Judgment, the Plaintiff has applied for orders for punitive damages against all of these 14 Defendants.

[50] Punitive damages are a separate head of damages. Their purpose is to punish the defendant through specific and general deterrence and denunciation. See *Vorvis v. Insurance Corp. of British Columbia*, [1989] 1 S.C.R. 1085; and *Huff v. Price* (1990), 51 B.C.L.R. (2d) 282 at 298 (C.A.).

[51] Punitive damages may be granted in situations in which the defendant has committed an actionable wrong; that wrong has injured the plaintiff; and the conduct of the defendant in committing that wrong is deserving of the condemnation of the court. See *Vorvis*, *supra*. Conduct that is deserving of the

condemnation of the court includes conduct that is extreme in the sense that it is harsh, malicious, high-handed, oppressive, vindictive, and/or reprehensible. See *Vorvis, supra*; *Hill v. Church of Scientology of Toronto*, [1995] 2 S.C.R. 1130; *Whiten v. Pilot Insurance Co.*, 2002 SCC 18; *Huff, supra*.

[52] Applying these principles to the facts in this case, all of the 14 Defendants have committed an actionable wrong (namely, they committed fraud) and that wrong injured the Plaintiff as was set out in the preceding section.

[53] This conduct of these Defendants in deliberately participating in a scheme to defraud their insurer is the type of reprehensible conduct that calls for an award of punitive damages. (Although each case must be addressed separately, this conclusion is in keeping with the conclusions reached in *Sanghera, supra*, *Sam, supra*, and *Le, supra*, which were cases with similar facts to the present case).

[54] An award for punitive damages in the circumstances of this case is not a duplication of the damage awards made in the preceding section. Rather those awards compensate the Plaintiff for the losses and the expenses that it has incurred as a result of these frauds. They do not address the reprehensible aspect of this conduct and of the need for

specific and general deterrence and denunciation of the conduct of the Defendants.

[55] For all of these reasons, the Plaintiff is granted an award of punitive damages against all of these 14 Defendants.

[56] As far as the determination of the quantum of these punitive damage awards is concerned, the proper approach is to focus on the defendant's misconduct and not the plaintiff's loss. A formulaic approach, such as imposing a fixed ratio between compensatory and punitive damages, does not permit a consideration of the many variables necessary to reach a fair award. The facts of each case should be related to the underlying purposes of punitive damages. The quantum of the damages should be the lowest award that will serve those purposes. Proportionality is the governing rule for quantum. See *Whiten v. Pilot Insurance Co.*, *supra* at paras. 71-74.

[57] As suggested in cases such as *Sanghera*, *supra*, *Sam*, *supra* and *Le*, *supra*, when reviewing the defendants' conduct and the underlying principles of punitive damages, consideration should be given to such factors as:

- 1) Whether the claims pertain to a fraud on the public and, if so, the public interest, and, in particular, to the multiplied effect of those fraudulent claims on that public body and the public taxpayers;

- 2) Whether the defendant's conduct includes criminal conduct. If it does, the criminal penalty for that conduct and the amount of the punitive damage award should be consistent with it. If the defendant has been charged criminally, that fact should be taken into account;
- 3) All of the circumstances of the conduct. If, for example, the conduct is based on the commission of fraudulent acts, consideration should be given to such facts as whether: the acts were planned, organized, and/or deliberate; specialized knowledge was used; persons were recruited for profit; families and children were used; and/or the defendants participated in multiple claims;
- 4) Whether the defendant has abused the court process by such conduct as commencing actions in pursuit of his or her fraudulent claims; and
- 5) The financial means of the defendant.

[58] To say the least, the evidence presented is limited in the information provided as to the specific circumstances of each of these Defendants and of the extent of their involvement in the planning and orchestration of these fraudulent schemes. Because of this situation, the calculation of the quantum of punitive damage awards against all of these Defendants, save and except for Mr. Nguyen Son Tran, Mr. Van Quang Vu, Mr. Quoc Thai Diep, and Mr. Van Huy Nguyen, are adjourned until after the conclusion of the trial. The trial will no doubt provide much of this relevant

information. Needless to say, I am seized of these outstanding 10 punitive damage claims.

[59] As far as Mr. Nguyen Son Tran, Mr. Van Quang Vu, Mr. Quoc Thai Diep, and Mr. Van Huy Nguyen are concerned, however, an adjournment until after the trial will be of no assistance, as their collision will not be addressed at it and as they are not involved in any of the other collisions.

[60] A consideration of the conduct of these Defendants reveals that: they devised and participated in a fraud of a public body; this conduct is criminal in nature; the penalties for such conduct include the imposition of fines of sufficient amount to accomplish specific and general deterrence and denunciation; these Defendants have not been criminally charged; and these Defendants did not commence actions in pursuit of these fraudulent claims nor did they oppose these claims.

[61] As far as the degree of planning and organization is concerned, nothing was disclosed as to their involvement other than the role that they played (that is, driver or passenger) in the actual collision. Given these circumstances, I concluded that they all participated equally in devising and carrying out this fraud. The evidence did not show that any of the Defendants were used because of a specialized

knowledge; that any of them were recruited for profit; or that any of them belonged to the same family. Moreover, none of these 4 Defendants participated in any of the other staged collisions.

[62] As far as their means or financial circumstances are concerned, with respect to Mr. Van Huy Nguyen, he has already been ordered to pay the Plaintiff an award of \$1,003.58, plus pre-judgment interest. This award is comprised of \$733.04 which are the monies paid out on his behalf by the Plaintiff and \$270.54 which are the costs incurred by the plaintiff to process, review, and investigate his claim.

[63] Aside from the fact that his vehicle, at the time of the accident, was valued at less than \$750.00 (it was written off), there was no information that indicated his financial circumstances. (Although the Plaintiff in the Statement of Claim describes Mr. Nguyen as being unemployed, there was no evidence of that in the materials provided). However, I have concluded that, on the basis of the value of his vehicle, Mr. Van Huy Nguyen is probably a person of modest means.

[64] Upon having considered all of the facts set out above, a punitive damage award of \$1,000.00 is made against Mr. Van Huy Nguyen. In my view, an award in that amount will achieve the

objective of specific and general deterrence and as well denunciation of Mr. Van Huy Nguyen's conduct.

[65] As far as Mr. Van Quang Vu's financial circumstances are concerned, an award totalling \$10,711.84 plus pre-judgment interest has been made against him in the previous section. This award is comprised of \$10,398.61 which are the monies paid out on his behalf by the Plaintiff and \$313.23 which are the costs incurred by the Plaintiff to process, review, and investigate his claim.

[66] As disclosed in the materials presented, at the time of the accident, Mr. Van Quang Vu was 30 years old and had his own carpet installation company. His income from that business ranged from \$2,000.00 to \$5,000.00 per month.

[67] Having regard to his means and to the other circumstances set out above, a punitive damage award in the amount of \$5,000.00 is made against Mr. Van Quang Vu. An award in this amount achieves the objectives of punitive damages.

[68] With respect to Mr. Nguyen Son Tran's financial circumstances, an award totalling \$7,445.52 plus pre-judgment interest has been made against him. This award is comprised of \$7,139.81 which are the monies paid out on his behalf by the Plaintiff and \$305.71 which are the costs incurred by the

Plaintiff to process, review, and investigate his claim. The materials show that Mr. Nguyen Son Tran is a handicapped person who cannot work. He is 42 years old.

[69] Upon considering his financial circumstances and the other factors set out above, a punitive damage award in the amount of \$1,000.00 is made against Mr. Nguyen Son Tran. In my view, an award in this amount achieves the objective of specific and general deterrence and a denunciation of Mr. Nguyen Son Tran's conduct.

[70] With respect to Mr. Quoc Thai Diep's financial means, pursuant to my findings in the previous section, he is required to pay the Plaintiff \$7,519.30 plus pre-judgment interest. This award is comprised of \$7,143.55 which are the monies paid out on his behalf by the Plaintiff and \$375.75 which are the costs incurred by the Plaintiff to process, review, and investigate his claim. The evidence showed that, at the time of the accident, Mr. Diep was unemployed. He is 40 years old.

[71] Given his financial situation and the circumstances set out above, a punitive damage award in the amount of \$1,000.00 is made against him. An award in that amount will achieve the objectives of punitive damages.

(IV) COSTS

[72] In this hearing, the Plaintiff sought an order for full indemnification of its legal costs or, alternatively, an order for special costs.

[73] Although in obiter, the court in *Sanghera, supra* suggested that it is 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 fraud of the sort perpetrated here, full indemnity for the costs of prosecuting that action." In *Katinic v. Bruno*, [2000] B.C.J. No. 1453 (S.C.), the court made an order for special costs in a case in which fraudulent claims had been made to an insurer. However, *Sanghera, supra* and *Katinic, supra* do not stand for the proposition that these types of orders will be made, as a matter of course, in all cases involving fraudulent claims against an insurer. See *Katinic, supra*.

[74] Rather, as set out in *Katinic, supra*, even in cases involving fraudulent claims against insurers, this court retains its discretion to determine the type and scale of the costs to be awarded, that discretion to be exercised having regard to the particular circumstances of the case.

[75] As far as the application for a full indemnification for legal costs is concerned, in my view, the decision in *Sanghera, supra* indicates that orders of this kind are reserved for extreme situations - situations in which the conduct of a party is such that it constitutes an abuse of the court process. (Although a full indemnification for legal costs was granted in *Sam, supra* and *Le, supra*, neither of those cases provided any explanation as to the basis upon which such costs were granted).

[76] Applying what I have understood as the principle arising from *Sanghera, supra* to the facts of the present case, the conduct of these 14 Defendants did not constitute an abuse of the court process. That is, none of them commenced actions to pursue their fraudulent claims nor did they raise or pursue defences in this action. They did not oppose the Plaintiff's claims.

[77] Given this situation, the Plaintiff's application for a full indemnification of legal costs is dismissed.

[78] As far as the application for special costs is concerned, those kinds of orders are granted in situations in which a party has acted (before or during the litigation) in such a reprehensible manner that that their conduct calls for the reproof or rebuke of the court. See *Garcia v. Crestbrook*

*Forest Industries Ltd. (No.2)* (1994), 9 B.C.L.R. (3d) 242 (C.A.); and *Stiles v. British Columbia (Workers' Compensation Board)* (1989), 38 B.C.L.R. (2d) 307 (C.A.).

[79] As far as the conduct of these 14 Defendants during these proceedings is concerned, they did not conduct themselves in a manner calling for the rebuke or reproof of the court. As was set out above, they did not commence fraudulent actions against the Plaintiff nor did they oppose the Plaintiff's claims in this action.

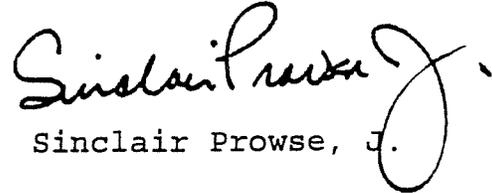
[80] With respect to their conduct prior to this litigation, as was set out earlier in these Reasons, their conduct in devising and perpetrating fraudulent claims against the Plaintiff was reprehensible and does call for the condemnation of the court.

[81] However, that prior conduct has already been recognized and punished through the award of punitive damages.

[82] Given all of these circumstances, the evidence falls short of establishing a basis for an order for special costs. This application is dismissed.

[83] As the successful party, however, the Plaintiff is entitled to an order for costs under *Rule 57*. It is awarded

costs, those costs to be calculated at Scale 3 as this case was of ordinary difficulty and importance.

A handwritten signature in cursive script that reads "Sinclair Prowse, J.". The signature is written in black ink and is positioned above the typed name.

Sinclair Prowse, J.