ICBC's Trial Policy Gets Judicial Attention

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It used to be that when ICBC claims went to trial ICBC would only require the people they insure to participate at trial as necessary. For example if fault was at issue the defendant would testify as to how the crash happened or if the Plaintiff seemed uninjured at the scene the Defendant would share his/her observations with the court.

More recently, ICBC has created a policy where the people they insure have to get extensively involved in the trial even if they have no vital role to play. Reasons for judgement were released today by the BC Supreme Court discussing this ICBC trial policy.

In today's case (Coates v. Marioni) the Plaintiff was injured 2006 car crash. The at fault driver was insured by ICBC. In the lawsuit the issue of fault was admitted leaving the court to only deal with the issue of the value of the ICBC claim. The matter went to jury trial. Just before trial ICBC made an offer to settle. The Victoria jury returned a verdict just below ICBC's formal settlement offer. The trial judge was asked to decide what costs consequences should follow under Rule 37B since ICBC beat their formal offer

Madam Justice Gerow, who presided over this jury trial, refused to give the Defendant their costs despite beating their formal offer. The Plaintiff was awarded costs through trial. 2 factors leading to this decision were the late delivery of ICBC's formal settlement offer and the fact that the jury award was very close to the formal offer.

In asking that the Plaintiff be deprived of trial costs the lawyer hired by ICBC noted that the Plaintiff attended fewer days of the trial than the Defendant. The court rejected this argument and in doing so discussed ICBC's policy of forcing their insured defendants to sit through trial even if they have nothing to add to the evidence at trial. Below are the highlights of this discussion:

[53] The defendant also argues that the plaintiff should be deprived of her costs because the defendant attended all of the trial and the plaintiff did not. However, the defendant chose to attend the trial. Although she testified, her evidence was very brief as liability had been admitted. There was no requirement that the defendant attend throughout the trial, particularly in circumstances where she had to take time off work and travel to Victoria.

[54] The plaintiff argues the fact that the defendant attended more of the trial than the plaintiff is not a factor to be considered in assessing whether the plaintiff should be deprived of her costs. The plaintiff points to an ICBC claims bulletin dated June 13, 2008 outlining a policy that requires defendants to attend the trials from start to finish. In the bulletin it sets out that: "This policy applies even if they will not be testifying. The intent of the new requirement is to present a 'face' for the defendant to the court. Defence counsel will be instructed to have the defendant sit at counsel's table if possible." In the circumstances, I do not accept the defendant argument that her attendance at the trial is a factor that should favour depriving the plaintiff of her costs.

[55] Having considered the factors set out in subrule 6, including the relationship between the offer and the award, I have concluded that this is not an appropriate case in which to exercise my discretion to deprive the plaintiff of her costs on the basis of the offer to settle.

If you are insured with ICBC and are at fault for a car crash and injure another do you think there is any value in being forced to trial even if you have nothing to add? Does giving a 'face to the defendant' make any sense when the lawsuit is an insured claim? As always, feedback is welcome.