ICBC Insurance Claims And Wilfully False Statements

December 31st, 2008

If you are insured with ICBC and are making a claim for benefits you have a duty to act in good faith in your communications with ICBC. Similarly, ICBC has a duty to process your first party insurance claim in good faith.

What happens if you make a false statement to ICBC? Can this cause a breach of your insurance? The answer is yes, depending on whether the statement is willful and if it was material in processing the claim.

Reasons for judgement were released today by the BC Supreme Court addressing this issue. The Plaintiff owned a 2000 Porshe Boxter which was allegedly stolen in 2005. The Plaintiff purchased the vehicle in 2004 and paid $38,000.

After the vehicle went missing the Plaintiff reported the theft to ICBC and the police. He told the police that the vehicle was worth $45,000. When filling out a form titled 'Report of Automobile" to ICBC the Plaintiff he filled out the box asking 'amount paid' with the sun of $44,000.

ICBC refused to pay the Plaintiff for the value of the vehicle. The Plaintiff sued. The claim was dismissed because the court found that the Plaintiff 'inflated' the value of the vehicle when reporting the loss to ICBC and doing so was 'material to (ICBC's) assessment of the claim), thus holding the Plaintiff in breach of section 19 of the Insurance (Motor Vehicle) Act Regulations.

The court summarized the law starting at paragraph 114. I reproduce this below:

***Forfeiture Pursuant to the Provisions of the Insurance (Motor Vehicle) Act Regulations**, R.S.B.C. 1996, c. 231, S. 19(1)(e)*

[114] The section reads:

19(1) If …

(e) an insured makes a wilfully false statement with respect to a claim under a plan,

all claims by or in respect of the applicant of the insured are rendered invalid, and his or her right and the right of a person claiming through or on behalf of or as a dependant of the applicant or the insured to benefits and insurance money is forfeited.

*[115] The leading statement of law in this matter was enunciated by McEachern C.J.B.C. in **Inland Kenworth Limited v. Commonwealth Insurance Company**, (1990) 48 B.C.L.R. 2d 305 at pages 309 – 311, and cited by Rowles J.A. in **Brown v. Insurance Corp. of British Columbia**, 2004 BCCA 254 at paras. 10-11:*

***10.** In Inland Kenworth, in which s. 231(1) of the Insurance Act, R.S.B.C. 1979, c. 200 was under consideration, McEachern C.J.B.C. said, at 309-311 (B.C.L.R.):*

I agree that a wilfully false statement which is not material may not usually be relied upon by the insurer. Materiality is, however, one of the fundamental principles of insurance law and it manifests itself in many ways. The classic test of materiality in insurance law is whether a statement is capable of affecting the mind of the insurer.

* * *

It is sufficient, in my view, if the fraud or wilfully false statement is capable of affecting the mind of the insurer either in the management of the claim or in deciding to pay it. It is unnecessary to speculate about what the insurer would have done if the fraud had not occurred but I point out that the insurer may have waived appraisal and decided to pay Blue Book value. On the other hand, the insurer may have done exactly what it did in this case, that is submit the question to appraisal.

A contract of insurance is one of utmost good faith and one cannot commit frauds or make wilfully false statements about the subject matter of the claim for any purpose without risking the loss of the right to indemnity if it turns out to be material on any issue.

* * *

I do not say that any wilfully false statement will be sufficient to vitiate coverage. It must be material. I think the wilfully false statement about the subject matter of the insurance, intended to comply with the warranty, but which also related to the question of value, and was capable of affecting the mind of the insurer, destroyed the integrity of the claim, and was material at least to the latter question. Under the Act, and at law, this forfeits the right of the insured to indemnity.

11. *In **Peterson v. Bannon** , supra, s. 18(1)(e), which is now s. 19(1)(e) of the **Act**, was under consideration,. In that case, Finch J.A., as he then was, said at para. 59:*

Inland Kenworth therefore affirmed that if an insured makes a wilfully false statement about the subject matter of his or her claim, that person risks forfeiture if the statement is material to any issue arising in the claim. Although the respondent argued otherwise, there is no real distinction between the language of s. 231(1) and s. 18(1)(e). I consider myself bound by Inland Kenworth, a judgment with which I respectfully agree. A wilfully false statement will invalidate an insured's claim only if the statement is material to the claim at risk of forfeiture.

[Underlining added

[116] Mr. Chahal correctly argues that there has to be a wilfully false statement and secondly that it was material to the processing of the claim.

*[117] As well, he relied on the decision of Cullen J. in **DeCastro v. I.C.B.C.**, oral reasons given October 2, 2006, which had some similarities in a central issue arising from the effectiveness of the immobilizer in a BMW that had been apparently taken from outside a pub on March 31, 2004, and subsequently found without tires and wheels, various front-end components and destroyed by fire.*

[118] Cullen J. noted the initial burden falls on the plaintiff to show that loss falls within the coverage but that is not onerous and that secondly, the onus then shifts to the defendant to prove on a balance of probabilities intentional material conduct by the plaintiff that is in breach of one of the sub-sections of s. 19(1).

[119] The principal arguments about representations made with respect to the claim are: (1) the statement made as to the price paid; (2) the number of keys provided by Mr. Leach.

[120] Mr. Chahal paid $38,000 to Mr. Leach by official cheque on November 10, 2004.

[121] From the outset of Mr. Chahal's report to the Delta police, through the reports of loss to I.C.B.C., the initial recorded statement of August 31, 2005 and the statement on oath in December 2005, Mr. Chahal spoke of the price paid or value as $44,000 or $45,000. Only in the case of the Proof of Loss form sworn on November 8, 2005, did he say he had researched the value.

[122] I am unable to accept that he would not have known precisely the amount he paid as reflected in the official cheque.

[123] I accept the reported value of the vehicle was material to the insurance corporation's assessment of the claim and that the plaintiff sought to inflate the value of the vehicle. Further, no evidence was led by Mr. Chahal to support the alleged value.