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CASE SUMMARY: INSURER FAILS TO MEET BURDEN OF SHOWING INSUREDS' REPRESENTATIONS WERE FALSE IN ACTION FOR FRAUD, UNJUST ENRICHMENT AND CONSPIRACY

Insurer's action for fraud, unjust enrichment and conspiracy was dismissed because the insurer failed to meet the burden of showing the insureds' representations were false.

Automobile insurance; Fraud; Evidence; Actions; Conspiracy

[Insurance Corp. of British Columbia v. Mehat](#), [2017] B.C.J. No. 1667, 2017 BCSC 1476, British Columbia Supreme Court, August 24, 2017, M.B. Blok J.

The insurer brought an action against Mr. and Mrs. Mehat for fraud, unjust enrichment and conspiracy regarding a motor vehicle accident that occurred on June 10, 2008 when their minivan was driven into a house. The insureds reported the collision to their insurer and said Mrs. Mehat was driving the vehicle at the time of the collision. The insurer alleged this representation was false and that Mr. Mehat was the driver. The insurer also alleged Mr. Mehat was impaired at the time of the collision, vitiating coverage.

At trial, there was no direct evidence Mr. Mehat had been driving the van. The insurer argued there was sufficient circumstantial evidence to prove that the insureds' representations were false.

The van drove into the ground-floor suite and injured Shakuntla Puri. Ms. Puri testified that two men and a child exited the van from the front passenger side door and she did not see a woman around the van at any time. The court found Ms. Puri was an honest witness but her recollection was vague and imprecise.

The insurer also called the next door neighbour, Parveen Khattar, as a witness. Ms. Khattar testified that she ran out of her house towards the collision scene when she heard the noise of the collision. She estimated she arrived one to two minutes after the loud noise and saw two men around the van. Ms. Khattar went back to her house to lock the front and back doors and then returned to the scene of the collision. Upon her return, Ms. Khattar noticed a woman. The court found Ms. Khattar's recollection was also vague and imprecise.

The insureds elected not to call evidence and brought an insufficient evidence motion at the conclusion of the insurer's case. The application was dismissed. The insurer asked the court to draw an adverse inference against the insureds for failing to testify or to call any witnesses. The court concluded it was not appropriate to draw an adverse inference in this case as the insureds' insufficient evidence application was a reasonable explanation for not calling any witnesses. In addition, the insurer had conducted examinations for discovery of the insureds and read-in evidence from those discoveries.

The court was not confident in the accuracy or completeness of the testimony of Ms. Puri and Ms. Khattar and thus could not conclude that Mrs. Mehat was not present at the scene of the collision and was not the driver of the van. The insurer failed to prove, on a balance of probabilities, that Mrs. Mehat was not the driver of the van and thus the insurer's action was dismissed.

This case was digested by [Aaron D. Atkinson](#) and edited by [Steven W. Abramson](#) of Harper Grey LLP. If you would like to discuss this case further, please feel free to contact them directly at <mailto:aatkinson@harpergrey.com> or sabramson@harpergrey.com or review their biographies at <http://www.harpergrey.com>.