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CASE SUMMARY: BCSC DISMISSES PERSONAL INJURY CLAIM OF CYCLIST WITH NO MEMORY OF ACCIDENT CITING LACK OF EVIDENCE TO ESTABLISH UNIDENTIFIED MOTORIST NEGLIGENCE

The plaintiff cyclist who was found unconscious and injured was unable to prove negligence against an unidentified driver because there was no evidence as to what caused the plaintiff to fly from his bike, or that the unidentified vehicle had moved at all prior to the accident.

Automobile insurance; Statutory provisions; Negligence; Action; Summary trial; Evidence; Personal injury; liability

Salo v. Insurance Corp. of British Columbia, [2017] B.C.J. No., 1578, 2017 BCSC 1418, British Columbia Supreme Court, August 11, 2017, B.D. MacKenzie J.

The plaintiff cyclist brought an action pursuant to s. 24 of the *Insurance (Vehicle) Act*, R.S.B.C. 1996, c. 231, against ICBC for serious personal injuries sustained in an alleged hit and run by an unidentified motorist. The cyclist's evidence was that he approached a T-intersection intending to turn right, but he had no recollection of how he was injured. There was one witness to the incident. The witness's evidence was that he saw an SUV stopped at the T-intersection, presumably waiting to turn right, as he drove towards the intersection. As the witness was abreast of the SUV to his right, he saw the bicycle and the cyclist in mid-air about ten feet behind the SUV. The witness did not see the cyclist prior to seeing him mid-air. He could not tell whether the cyclist collided with the SUV, whether the SUV had moved, or whether there was any collision at all. The driver of the SUV drove away in a normal manner and was never located by the police.

The action proceeded by way of summary trial on liability only. Both counsel agreed that something drastic happened to catapult the cyclist in the air behind the SUV. The cyclist argued that the court should accept that the events were unlikely to have happened absent negligence and asked the court to draw an inference of negligence against the SUV driver since, according to the cyclist, he was not negligent. The cyclist further argued that the fact that the driver drove away supported an inference of negligence. ICBC argued that a collision in and of itself did not equate to a finding of negligence. Further, ICBC noted that there was no evidence the SUV had moved prior to the cyclist being injured, meaning any conclusions with respect to negligence would be purely speculative.

The court held that the evidence fell short of establishing negligence against the SUV driver and dismissed the action. There was no direct evidence as to what caused the cyclist to become airborne and there was no evidence that the SUV had moved at all. Given this paucity of evidence, the court was unable to draw an inference of negligence.

This case was digested by [Michael J. Robinson](#) 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 mrobinson@harpergrey.com or sabramson@harpergrey.com or review their biographies at <http://www.harpergrey.com>.