

## THE HIGH COURT

[2008 No. 8392P]

BETWEEN

THOMAS BERRY

PLAINTIFF

AND

QUINN INSURANCE LIMITED trading as QUINN DIRECT

DEFENDANT

## JUDGMENT of Mr. Justice Keane delivered on the 10th March 2015

## Introduction

1. In this case the plaintiff motorist seeks an Order directing payment of a claim that he has made under a motor insurance policy or, in the alternative, damages for breach of contract in respect of the defendant insurer's failure to pay out on foot of that claim. The defendant admits the policy but denies any obligation to pay out on the basis that the claim is fraudulent.

## Background

2. It is common case that, on the 6th January 2008, a contract of motor insurance was made between the plaintiff and the defendant covering the interest of the plaintiff in a Mercedes Benz ML 280CDI motor vehicle ("the jeep"), bearing the registration number 08 CW 264, of which the plaintiff was at all material times the registered owner. The value of the jeep was stated to be €60,000 in the schedule to the policy. It was an express term of the policy that the defendant would provide the plaintiff with a high degree of service.

3. Some time after midnight on the 18th July 2008, the jeep, which was being driven by the plaintiff, was involved in a collision with another vehicle at a place called Friarstown Cross on the R726 regional road between Killerig Cross and the town of Carlow in County Carlow.

4. The plaintiff has claimed under the policy in respect of the damage caused to the jeep by the collision. The defendant has repudiated the policy and in its amended defence, delivered on the 11th October 2012, pleads that the claim is fraudulent. According to the defendant, in claiming under the policy the plaintiff has asserted that, as he was driving along the road at 50 km/h, a truck came from his left hand side, having come through a stop sign, and hit the rear door and quarter panel of the jeep, pushing it across the road, whereas the defendant alleges that the damage to the jeep establishes that it was stationary at the time of the collision.

## The defence of fraud

5. The parties broadly agree on the legal principles that govern the defence of fraud, differing only on points of emphasis and on the facts to which those principles are to be applied. As Denham J. confirmed in *Superwood Holdings plc v. Sun Alliance and London Insurance plc* [1995] 3 I.R. 303 (at 329), the onus of proof is on the party who alleges fraud. In this instance, that is the defendant. Moreover, there is a presumption that an insured making a claim is acting honestly. As Finlay C.J. stated in *Banco Ambrosiano s.p.a. v. Ansbacher & Co.* [1987] I.L.R.M. 669 (at 691):

"...the onus is to prove the matters necessary to establish fraud as a matter of probability, and that where, as in the present case, such proof is largely a matter of inference, that the inference must not be 'drawn lightly or without due regard to all the relevant circumstances, including the consequences of a finding of fraud'."

6. In the same case, Henchy J elaborated (at 702):

"Proof of fraud is frequently not so much a matter of establishing primary facts as of raising an inference from the facts admitted or proved. The required inference must, of course, not be drawn lightly or without due regard to all the relevant circumstances, including the consequences of a finding of fraud. But that finding should not be shirked because it is not a conclusion of absolute certainty. If the Court is satisfied, on balancing the possible inferences open on the facts, that fraud is the rational and cogent conclusion to be drawn, it should so find."

## The evidence

7. The plaintiff gave evidence that, at the material time, he was living at an address in St. Brigid's Place, Pollerton Road, Carlow town. On the date in question, he was returning home from Dublin in his jeep with his cousin, James Berry.

8. At Castledermot, County Carlow, the plaintiff turned off the R488 regional road, which is the direct route between Castledermot and Carlow town. The plaintiff turned instead onto the R418 regional road, travelling in the direction of Tullow until he came to Killerig, where he turned right onto the R726 regional road for Carlow town. According to the Ordinance Survey *Official Road Atlas Ireland*, (5th ed., 2013), the relevant contents of which were admitted in evidence without objection, this means that the plaintiff was travelling a distance of just less than 18 kilometres between Castledermot and his home in Carlow town along the "dogleg" route that he chose to take, instead of a distance of just less than 11 kilometres on the R488.

9. In his evidence, the plaintiff said that he took the more roundabout route because he wanted to avoid road works, involving temporary traffic lights, on the direct one. When it was put to the plaintiff in cross-examination that the time taken to traverse the longer distance of the route he took at the speed he claimed to have been travelling must significantly exceed the period, if any, that he would have had to wait at the temporary traffic lights on the more direct route at that hour of the night, the plaintiff stated that he would rather take the route he did; that it was his decision; and that it was not a crime to do so.

10. In any event, on the plaintiff's evidence, that was how he and his cousin found themselves travelling through Friarstown Cross on the R726 at some time between 12.30 a.m. and 1.00 a.m. on the date in question. It is common case that Friarstown Cross comprises the intersection between the R726 regional road and a lesser third class road, and that vehicles travelling on the latter must stop and give way at either side of that junction. The intersection is in the countryside at a location without any public, or other form of, lighting.
11. The plaintiff gave evidence that he was travelling at approximately 40 to 50 km/h because the junction is on a slight bend in the road. The road both in front of him and behind him was quiet. There were no vehicles coming against him and none behind him. He was using dipped, rather than full, headlights because, although there was no other traffic on the road, he considered them sufficient, since the jeep was a big vehicle with very effective lights. The plaintiff said that, as he was travelling through the junction, he heard a screeching noise, applied his foot to the brake pedal of the jeep, and that "the next thing was bang, I was pushed across the road." Under cross-examination, the plaintiff stated that he did not see the other vehicle at all before the jeep was struck, thereby suggesting either that the other vehicle did not have any lights on, while driving along a minor country road at night, or that the plaintiff entirely failed to see the headlights of the other vehicle converging on the otherwise dark crossroads.
12. It is common case that the plaintiff's vehicle was struck on the near side rear quarter panel, over the near side rear wheel arch, and that the near side rear panel and wheel were pushed inwards by another vehicle which emerged from the minor road, known as Killeen Lane, on the south side of the relevant crossroads.
13. The plaintiff continued his evidence by stating that the jeep slid across the road before coming to a halt at an angle with the front pointing towards the left hand verge. He said that the jeep was making a clicking noise. Under cross-examination, he stated that he put the jeep in reverse and then drove it forward again because he wanted to put it as close to the junction as he could. He put it beside the other vehicle. He said he did this because he wanted to put the jeep in a safer place than that in which it had initially come to rest. However, he acknowledged that the vehicle was therefore left stationary on the left hand carriage of the R726 at the Friarstown Cross junction. Evidence subsequently given by Garda Michael O'Driscoll established that, when he came on the scene a short time after the collision, the jeep was stationary at the junction less than a foot away from the other vehicle to its left and with its off side rear sticking out over the broken white line in the centre of the R726. When asked in cross-examination why he did not move the jeep up onto the verge or ditch, the plaintiff responded variously that he felt more comfortable parking it where he did and that he was in a panic at the time.
14. The plaintiff stated that, having parked the jeep as just described, he turned the ignition off and remained sitting in the vehicle with his cousin because he was still in a panic or in shock. He stated that that is why there were no lights on in his vehicle when the first person on the scene, a local taxi-driver named Mr Pat Tierney, arrived.
15. Mr Tierney gave evidence that he arrived on the scene at around 12.40 a.m., travelling from Carlow town on the R726 towards Killerig, where he was due to pick up some passengers. Mr Tierney confirmed that it is a road upon which there was not usually much traffic at that hour of the night. Mr Tierney confirmed the relative positions of the two vehicles he found at the scene. He stated that he pulled in and parked his own vehicle 20 or 30 yards beyond the junction, put on its hazard warning lights and walked back. He said that neither of the other vehicles had its lights on. He said that he told the plaintiff to put the hazard warning lights of the jeep on and the plaintiff did so. He said that he walked around to the cab of the other vehicle, an Isuzu Elf recovery truck ("the recovery truck"), and looked inside but there was no one there. He said that he returned to the jeep and told the plaintiff that there was no one in the recovery truck, in response to which the plaintiff passed a comment to the effect that he was surprised by that, before getting out of the jeep and walking around to inspect the recovery truck himself.
16. When cross-examined about why he did not get out of the jeep before the arrival upon the scene of Mr Tierney, the plaintiff answered variously that he was afraid and, later, that Mr Tierney had in fact arrived within two or three minutes of the accident, and not some five to ten minutes after the accident as he had initially testified. The plaintiff said that, in fact, he could see Mr Tierney's headlights immediately after he turned off the jeep's engine.
17. Subsequent investigations have established that the recovery truck involved in the collision had been stolen from a car park in Tullow, County Carlow, at some time after 6 p.m. that evening. Garda Michael O'Driscoll who, with Garda John Morrissey, was the first member of An Garda Síochána to attend upon the scene of the collision, observed only minor damage across some of the front of the recovery truck. There was a strobe light flashing on the roof of the cab and the engine of the recovery truck was still running, although its gearbox was in neutral and the head lights of the vehicle were off. Garda O'Driscoll gave evidence that, although the recovery truck was later forensically examined, no useful fingerprint or other forensic evidence was obtained from it. The driver of the recovery truck was not found and was never identified. It is one of several peculiar features of this case that, while it has never been suggested that the recovery truck incurred anything other than light damage or that it was in any way inoperable after the collision, it is implicit in the plaintiff's account of the incident that the unknown driver of that vehicle must have abandoned it at the scene of the collision in the middle of the countryside in the early hours of the morning before making good his escape on foot.
18. Garda Sergeant Peter McConnon gave evidence that, on the night in question, he was made aware that Garda O'Driscoll and Garda Morrissey were at the scene of a collision at Friarstown Cross while he was *en route* from Tullow Garda Station to Carlow Garda Station on other business. He said that he made his way to the scene. In material part, his evidence was that he observed the damage caused to the two vehicles involved as already described and that he did not observe any debris on the road. Under cross-examination, he testified that he observed tyre marks at the scene but they were back from the junction on the minor road, Killeen Lane. He said that, from their position on Killeen Lane a short distance back from the junction with the R726, those tyre marks looked to him as if they were left by a vehicle taking off in a hurry, rather than by a vehicle braking in an emergency.
19. The plaintiff and his cousin were taken from the scene by ambulance to St. Luke's Hospital, Kilkenny, from which the plaintiff discharged himself some days later. Garda Morrissey drove the plaintiff's jeep from the scene to Tullow Garda Station. The recovery truck was winched onto a flatbed recovery vehicle and was removed for forensic examination.
20. The plaintiff called Mr Charles Hegarty, a motor assessor, who examined the jeep on the plaintiff's behalf on the 16th October 2009. Mr Hegarty expressed the opinion that the value of the jeep before the collision would have been approximately €55,000, including VAT. At the time he examined it, Mr Hegarty said the jeep would have had a salvage value of between €10,000 and €15,000, although that value would have diminished further since then, as the jeep's condition is deteriorating while it is left lying up. Mr Hegarty testified that the jeep would be classed generally as beyond economic repair in view of the panel and suspension damage to it. Mr Hegarty accepted that a firm named Corcoran Motor Repairs in Portlaoise had provided a repair estimate of €28,261.32, but offered the view that this was just an estimate and that the real cost of repair was likely to be higher and, therefore, uneconomic.
21. The passenger in the plaintiff's vehicle at the time of the collision, Mr James Berry, did not give evidence.

### **The expert evidence**

22. Garda Bernard O'Halloran was called to give evidence on behalf of the defendant. He stated that, at the material time, he was a PSV inspector attached to Naas Garda Station in County Kildare. He testified that his role as such involved the examination of motor vehicles and, frequently, the examination of motor vehicles after accidents. He stated that he is a qualified motor mechanic, having served a recognised apprenticeship, and that he has passed both junior and senior examinations under the auspices of the Department of Education, through Waterford Institute of Technology. He said he was an assistant PSV inspector from 1996 to 2002 and that he has been a fully-fledged PSV inspector from 2002 to the present.

23. Garda O'Halloran testified that he examined the jeep at Carlow Garda Station on the 26th August 2008, some weeks after the accident. He confirmed that he prepared a report in respect of that examination. It is common case that, in that report, he had concluded: "The damage indicates that the jeep was stationary when the offending vehicle struck it and the two vehicles appear to have been at right angles to each other." In evidence, Garda O'Halloran stated that he formed that view because the impact damage to the rear near side door and quarter panel of the jeep showed no signs of a tear. All of the damage was concentrated inwards. Garda O'Halloran had heard the term "punch-type damage" used in the course of the trial, and that seemed to him an appropriate description. If the vehicles had collided at a roughly 90 degree angle while the jeep was travelling at just 10 metres per second (equivalent to 36 kilometres per hour), which is a slower speed than the plaintiff testified he had been moving at, Garda O'Halloran stated that, in his opinion, there would have been substantial tearing damage backwards from the point of impact on the jeep. Garda O'Halloran testified that he would expect to see considerable damage to the jeep's nearside chrome tail light guard, its nearside tail light and its rear bumper, whereas none of those parts of the jeep was damaged at all. By reference to such damage, he would also expect there to be significant debris on the roadway after any such collision.

24. Under cross-examination, Garda O'Halloran accepted that, in view of the limited width of the damage to the side of the jeep, the statement in his report that the collision occurred with the two vehicles at right angles to one another was not strictly accurate. Garda O'Halloran said he had used the term "right angles" in his report as a rough description and that, insofar as the strict meaning of that term was "at a ninety degree angle", his use of it was, to that extent, incorrect. He fully accepted that the angle of the collision between the two vehicles might have been one of 75 degrees or 80 degrees, rather than 90 degrees.

25. Mr Kevin Byrne also gave evidence on behalf of the defendant. He testified that he is a motor assessor with a firm of consulting engineers and assessors named Edge Anderson & Company Ltd. He stated that he has worked for that company for the last nine years, having been 25 years in the motor trade as a qualified motor mechanic, and that he has extensive experience of examining damaged vehicles on a regular basis.

26. Mr Byrne stated that he had been asked to examine the jeep on behalf of the defendant, paying particular attention to the site of the impact upon that vehicle, and that he did so on the 26th August 2008 at Carlow Garda Station. He observed damage to the near side rear door, near side rear quarter panel, nearside rear wheel and rear suspension. That damage was inflicted from a near side to off side direction. In other words, the force applied was directly inwards.

27. When asked for his opinion on how that damage had occurred, Mr Byrne testified that the vehicle had been "t-boned" or nearly "t-boned." It was explained that a "t-bone" collision is one that occurs when a vehicle strikes another vehicle broadside or at right angles. Mr Byrne expressed the opinion that the jeep had been stationary at the moment of collision. He based this view on the absence of any glancing damage on the jeep. Mr Byrne explained that, by glancing damage, he meant something like a paint transfer and scrape along the side of the jeep or the dragging backwards of its rear bumper, none of which damage was present when he examined it. Instead the damage was overwhelmingly near side to off side, demonstrating a flat impact. The damage was therefore completely inconsistent with the jeep moving at 40 km/h or, indeed, at all.

28. The defendant next called a witness named Kevin John Gallagher. Mr Gallagher is managing director of a company named Allied Irish Assessors Ltd, a firm of professional motor assessors. Mr Gallagher testified that he is a qualified forensic and general motor vehicle assessor, affiliated to the Institute of Road Traffic Investigators, with 30 years experience as a motor engineer, engaged in both mechanical and vehicle examinations. He is a member of the Institute of Motor Assessors; the Institute of the Motor Industry; and the Society of Operating Engineers.

29. Mr Gallagher stated that he was asked to examine the jeep by the defendant and that he did so on the 8th October 2008. He said that he looked specifically for the main point of impact, which he found above the near side rear door and wheel arch. He said that there was no evidence of glancing or movement damage, which is what he would have expected to see in the form of, for example, paint transfer from the front of the recovery truck. He noted that the rear bumper of the jeep is a plastic bumper, held on by a plastic clip, and is largely cosmetic, rather than functional, in nature. He also noted the chrome rear tail light guard. He stated that he would have expected some damage to, or at least distortion of, the rear bumper. There was no such damage. Instead, the damage demonstrated a punch impact from which it is only possible to infer that the jeep was stationary at the time of the collision at issue.

30. Mr Gallagher went on to express the opinion that, from his experience, the damage to the jeep demonstrates that the recovery truck had not been travelling at a high speed when the two collided. Mr Gallagher stated that the maximum vehicle weight of the recovery truck is 3.5 tonnes or 3,500 kilos, whereas the jeep weighs 1.6 or 1.7 tonnes (less the weight of its occupants), so that the mass of each was not too dissimilar. The calculation of relative speed is a complicated one and to make an accurate finding you would need to be in a position to measure things like tyre striation marks, if any, in respect of the vehicle pushed across the road.

31. In respect of the plaintiff's account of the accident, Mr Gallagher testified that the damage to the jeep that you would expect to find, as the result of such a collision, would be glancing or gouging damage, and distortion to its near side rear quarter panel, near side rear corner and near side rear bumper section. None of that was present. The impact was at a specific point and was punch or impact damage. Mr Gallagher continued that he would expect to see debris over that part of the roadway across which the plaintiff testified his vehicle was pushed sideways, comprising fragments of the rear tail light guard, the rear tail light itself and the rear bumper, whereas none of those components sustained any damage at all. Based on his 25 years experience of observing the physical damage to motor vehicles resulting from various types of motor vehicle collision, the damage to the jeep in this case is consistent with its being stationary at the time of the impact. Mr Gallagher stated that he observes equivalent damage almost every day in accidents that involve a collision with a parked vehicle.

32. Mr Gallagher was invited to view photographs of the recovery truck. He gave his opinion that, if the collision had occurred as the plaintiff alleges, he would expect to see scraping or paint transfer damage across the front of that vehicle also, whereas the damage depicted is a localised dent on the front off-side to front centre area of the cab of that vehicle.

33. It was put to Mr Gallagher in cross-examination that Garda O'Halloran's view that the collision between the two vehicles was a right-angled collision was inconsistent with the limited width of the damage observed on the side of the jeep. Mr Gallagher

acknowledged that the angle of impact was, indeed, more probably one of 75 to 80 degrees, rather than 90 degrees, but described the issue as, in his view, a red herring, because neither his opinion concerning the nature of the damage to the jeep nor his conclusion on foot of that opinion that the jeep was stationary at the time of the collision were in any way dependent upon the collision having occurred at an angle of precisely 90 degrees, rather than one of, say, 75 or 80 degrees.

34. The final expert witness called on behalf of the defendant was Mr Liam Cotter. Mr Cotter testified that, having qualified as a mechanic technician, he has been in business on his own account as a loss adjuster for the last twenty-five years. He stated that he holds corporate membership of all of the relevant professional institutes, including the Institute of Automotive Engineers Assessors. He has a law degree from University College Cork and is currently doing a master's degree in motor vehicle engineering and transport studies at the University of Bolton in the United Kingdom.

35. Mr Cotter stated that he received instructions on behalf of the defendant on the 20th November 2009. He was requested to examine the plaintiff's jeep to assess the nature of the damage it had sustained in the collision at issue. He travelled to the plaintiff's home where the jeep was then located on the 17th December 2009. He examined the damage to the jeep and took photographs. Mr Cotter expressed the opinion that the damage to the plaintiff's jeep was extremely localised. The plaintiff, who was present at the time of the inspection, indicated to Mr Cotter that he had been travelling at 50 to 60 km/h at the time of the collision.

36. Mr Cotter stated that, even if it was accepted that the plaintiff was travelling at just 40 km/h, there was a lack of movement evident in the damage. Mr Cotter qualified this by saying that what he observed was not a total lack of movement because, even where there is a shunt impact between two vehicles when one of them is stationary, they will move slightly relative to one another before they separate. Mr Cotter expressed the view that some such slight movement (or scraping) damage was evident at the back of the off side left wheel arch of the jeep but that the extent of that damage was not consistent with the jeep moving at a speed of 40 km/h. Mr Cotter pointed out that a speed of 40 km/h translates to one of over 11 metres per second. Therefore, he stated that, even if the vehicles were only in contact for one second in the circumstances the plaintiff alleges, there would have been parallel graze marks from the point of first contact to the point at which the vehicles separated. Those graze marks would be in the form of rash or scrape marks. The nature of the damage would demonstrate the point of first contact, the point of separation, and would involve a scrape or tear along the distance between those points. No such extensive damage was evident on the plaintiff's jeep.

37. The plaintiff called as an expert witness Mr Stephen Mooney, a consulting engineer, who confirmed that he has extensive experience in giving evidence before the courts. He testified that, on the 19th September 2008, he inspected the jeep at Carlow Garda Station and visited the scene of the collision with the plaintiff and the plaintiff's solicitor. He took photographs of the scene of the collision and of the jeep.

38. Mr Mooney was asked to comment on the opinions expressed by the various experts called on behalf of the defendant to the effect that the jeep was stationary when the collision at issue occurred. Mr Mooney expressed the view that it is not possible to make that determination, given the accident that occurred.

39. Mr Mooney commented on a report he had seen of the damage to the recovery truck, demonstrating that the damage to that vehicle occurred across a width of approximately 1.3 metres along its front off side and front centre. Mr Mooney also noted that the length of the damage to the jeep was no more than 1.2 metres, whereas the width of the front of the recovery truck must be greater than that. Mr Mooney pointed out that this establishes that the two vehicles were not orthogonal (i.e. strictly at right angles) at the point of impact but were, rather, diagonal.

40. Mr Mooney stated that the plaintiff had informed him that the jeep had been struck on the rear near side, which caused it to rotate, and that it ended up in the other lane, facing towards the left hand side grass bank, viewed from the perspective of the direction in which the jeep had been travelling. Mr Mooney expressed the view that the plaintiff's account is perfectly consistent with the impact to the jeep that the plaintiff describes. Mr Mooney further testified that the plaintiff had told him that his vehicle had originally come to rest approximately 10 metres from the point of impact, which Mr Mooney considered to be a distance consistent with a pre-accident speed of 42 km/h.

41. Under cross-examination, Mr Mooney conceded that the only glancing damage he could see was in the area above the nearside rear wheel arch of the jeep and quite small, although he went on to express the view that you would not necessarily expect to see glancing movement evident in the damage to two vehicles involved in a collision of the sort the plaintiff describes. Mr Mooney's view was that it was possible for the recovery truck to have hit the rear of the side of the moving jeep with sufficient force to make it immediately rotate away, thereby incurring only inward damage rather than significant glancing damage. This possibility would depend on, amongst other factors, the relative speed of the vehicles.

## **Conclusion**

42. The central factual dispute in this case concerns the damage caused to the plaintiff's jeep and whether it establishes, as the defendant contends, that the jeep was stationary at the point of impact, thereby fundamentally contradicting the plaintiff's account of the collision. Having carefully considered the evidence, I am satisfied that it does.

43. I strongly prefer the evidence of Garda O'Halloran, Mr Byrne, Mr Gallagher and Mr Cotter to that of Mr Mooney on the question of whether the damage to the jeep is consistent only with that vehicle having been stationary when the collision occurred. The possibility that the recovery truck struck the jeep with sufficient force to make it cleanly rotate away from the point of collision, thereby avoiding any significant glancing or scraping damage, is one that the various experts called on behalf of the defendant discount entirely. It seems to me to be - at best - the remotest possibility only.

44. Accordingly, I am satisfied that, on the balance of probabilities, the jeep was stationary when the recovery truck collided with it. In consequence of that finding, I am driven ineluctably to the conclusion that, in asserting that he was driving the jeep at between 40 to 50 km/h through the junction at Friarstown Cross when the other vehicle struck it, the plaintiff was making a false representation to the defendant. The nature and circumstances of the distinction between the representation of fact made (that the jeep was travelling at between 40 and 50 km/h) and the relevant fact as found (that the jeep was, in reality, stationary), do not permit a finding that the said representation was made unknowingly or with genuine, though mistaken, belief in its truth. Accordingly, I find that the presumption that the plaintiff was acting honestly in making a claim under the policy stands rebutted.

45. While the fact that the vehicle was stationary at the time of the collision is the primary fact from which I feel compelled to draw an inference of fraud, I derive further support, in drawing that inference, from a number of other surrounding circumstances, including: the route taken by the plaintiff on which the collision occurred; the tyre marks that Sergeant McConnon observed on Killeen Lane in a position that suggested to him a vehicle taking off in a hurry, rather than one braking in an emergency; the circumstance whereby either the stolen recovery truck was being driven on a minor rural road in the dark without any lights on or else the plaintiff

entirely failed to notice the lights of that vehicle converging on the junction before the collision; the fact that only light damage was observed to the front of the recovery truck, which, if the plaintiff's case were to be accepted, must have struck the rear left side of the moving jeep with sufficient force to make it rotate clean away from the point of impact without any glancing damage; the location of the point of impact at the rear left of the jeep (away from the position in the vehicle of both the driver and front seat passenger); the actual position of the jeep on the roadway when independent witnesses arrived on the scene of the collision; the credibility of the plaintiff's proffered explanation that he had deliberately driven the jeep into that position on the roadway while in a panic in the immediate aftermath of the collision; and the credibility of the plaintiff's explanation that he had remained seated in that vehicle in the darkness until someone else came on the scene because he was afraid or in shock.

46. Although I am conscious that the consequence of a finding of fraud from the plaintiff's perspective is also one of the relevant circumstances to which I must have regard, it is not sufficient to alter the conclusion I have reached on the evidence that I have considered in this case. In balancing the inferences open to the Court on the facts as found, I am satisfied that fraud is the only rational and cogent conclusion to be drawn, and I so find.

47. I would therefore dismiss the plaintiff's claim.