

## INSURANCE LAW BULLETIN

June 5, 2013 – Hermina Nuric

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### ONTARIO COURT SIDES WITH INSURER:

### FRAUDULENT INSURANCE CLAIMS WARRANT PUNITIVE DAMAGES

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On May 7, 2013, the Guarantee Company of North America advanced a motion for default judgment against Rajadural Kugananthan. The motion was heard by the Honourable Madam Justice Rady in London, Ontario. Hermina Nuric of Shillingtons LLP appeared on behalf of the insurer.

The insurer sought to recover \$41,730.13 for the expenses that it incurred as a result of a fraudulent or misrepresented claim advanced by Mr. Kugananthan in relation to an alleged motor vehicle accident. Evidence showed that this accident did not occur in the manner alleged by Mr. Kugananthan. The insurer further sought to recover its costs of the action, interest, and punitive damages without a trial of the issue.

In support of its claim for punitive damages, the insurer relied on case law from British Columbia, as there has not yet been a reported decision on the issue from Ontario courts. The courts in British Columbia have allowed summary assessments of punitive damages immediately following successful hearings for default judgment, specifically in cases involving staged motor vehicle accidents and fraudulent insurance claims. The courts in British Columbia have concluded that punitive damages are appropriate in cases involving fraudulent insurance claims. They have established an acceptable pre-determined range of damages in the amount of \$10,000.00 to \$15,000.00 per accident. Higher amounts were reserved for individuals responsible for orchestrating larger fraud schemes.

Justice Rady issued her written endorsement on May 8, 2013. She awarded \$41,730.13 in damages, plus pre-judgment interest, costs on a substantial indemnity basis, and \$10,000.00 in punitive damages. Justice Rady held that the various allegations of fraud and associated damages were deemed admitted as a result of Mr. Kugananthan's failure to defend the insurer's claim against him. With respect to the award of punitive damages, Justice Rady opined as follows:

*“Fraudulent insurance claims are of concern particularly because the cost of insurance is increased to law-abiding members of the public. I am persuaded that such an award is warranted here. I award the sum of \$10,000.00. The plaintiff shall have its substantial indemnity costs.”*

Judgment was signed in accordance with Justice Rady’s endorsement on May 30, 2013.

**COMMENTARY**

Justice Rady’s endorsement represents the first known instance of a court in Ontario awarding punitive damages without a trial of the issue. This is significant because it sets a precedent for future restitution claims by insurers in cases involving staged accidents. Punitive damages are intended to serve as a deterrent, not only to those people involved, but also to other people who may be inclined to commit similar acts of fraud in the future.