

More On ICBC Claims And Hit And Run Lawsuits: The “Reasonable Efforts” Requirement

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Further to my previous articles on this topic, when suing ICBC for compensation for injuries sustained in a hit and run accident (Unidentified motorist claims) one of the requirements under Section 24 of the *Insurance (Vehicle) Act* is for the claimant to make “all reasonable efforts to ascertain the identity of the unknown driver”. If a claimant fails to do so their claim for compensation against ICBC will fail. Reasons for judgement were released this week by the BC Supreme Court, Vancouver Registry, demonstrating such a result.

In this week’s case (*Gonclaves v. Doe*) the Plaintiff was involved in a motor vehicle collision on Highway 1 in British Columbia in 2006. The Plaintiff was driving a bus at the time of the crash. His vehicle was struck by another vehicle. After the collision the Plaintiff failed to obtain identifying information from the other motorist. In the days and weeks following the crash the Plaintiff did not report the incident to the police or ICBC, instead he assumed his employer would take care of this. The Plaintiff then sued ICBC under section 24 of the *Insurance (Vehicle) Act* seeking compensation for his personal injuries. ICBC opposed the lawsuit and asked that the case be dismissed.

Mr. Justice Harris agreed with ICBC that the Plaintiff failed to take reasonable efforts to identify the unknown motorist. As a result the lawsuit was dismissed. In doing so Mr. Justice Harris provided the following useful summary of the requirement for claimants to make “all reasonable efforts”:

[4] Under s. 24 of the *Insurance (Vehicle) Act*, R.S.B.C. 1996, c. 231, the Insurance Corporation of British Columbia (“ICBC”) may be the nominal defendant and liable for damages to the plaintiff for damages from a motor vehicle accident where the identities of the owner and driver of the other vehicle involved are not ascertained.

[5] ICBC will only be liable as nominal defendant if the plaintiff has made “all reasonable efforts to ascertain the identity of the unknown owner and driver or unknown driver, as the case may be”: *Insurance (Vehicle) Act*, s. 24(5).

[6] The appropriate test to determine whether all reasonable efforts have been made is: Did the plaintiff do all that he would have to identify the other parties involved if he intended to pursue legal action against them, if ICBC were not potentially liable under s. 24 of the *Insurance (Vehicle) Act*? *Leggett v. Insurance Corporation of British Columbia* (1992), 72 B.C.L.R. (2d) 201 (C.A.) at para. 13.

[7] The requirement to make all reasonable efforts is not limited to the immediate aftermath of the collision. To satisfy this test, the plaintiff must have made all reasonable efforts at the scene of the collision to identify the other parties. The plaintiff must also have made all reasonable efforts to identify the other parties in the days and, possibly weeks, that followed the collision: *Slezak v. ICBC*, 2003 BCSC 1679, at para. 42.

[8] “All reasonable efforts” does not mean “all possible efforts”. “Reasonable” means “logical, sensible and fair,” and does not mean “absurd, whimsical or unwarranted”: *Slezak* at para. 40.

[9] Similarly, “not ascertainable” does not mean “could not possibly be ascertained,” but instead means “could not reasonably be ascertained”: *Leggett* at para. 11.

[10] The plaintiff is not required to take an action to identify the other parties that, while possible, is “highly unlikely” to produce any result: *Liao v. Doe*, 2005 BCSC 431, at para. 14.

[11] “All reasonable efforts” includes a subjective aspect. In deciding whether all reasonable efforts were made, consideration must be given to the plaintiff’s physical and mental state at the time of the collision, and the circumstances surrounding the collision: *Holloway v. I.C.B.C. and Richmond Cabs and John Doe*, 2007 BCCA 175, at para. 13.

