Neutral Citation Number: [2017] EWHC 3088 (QB)

Case No: HQ17X01371

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 06/12/2017

Before :

MR JUSTICE WARBY

- -

Between :

LIVERPOOL VICTORIA INSURANCE COMPANY LTD	**Claimant**
- and -	
(1) MEHMET YAVUZ	
(2) EYLEM YAVUZ	
(3) HASAN SEL	
(4) AYSE SEL	
(5) SALMAN GULBUDAK	
(6) MATO HUSEYIN GULBUDAK	
(7) ERCAN KAYA	
(8) AYTEN KAYA	
(9) GUNES KAYA	
	Defendants

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James Laughland (instructed by **DWF LLP**) for the **Claimant**
Adam Gersch (instructed by **Ronald Fletcher Baker LLP**) for **Defendants 1 - 6**
Oliver Newman (instructed by **Ersan & Co Solicitors**) for **Defendants 7 - 9**

Hearing dates: 20-25 November 2017

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Judgment Approved by the court for handing down (subject to editorial corrections)

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Mr Justice Warby :

Introduction

1. This judgment is given after the trial of an application for orders committing each of the nine defendants to prison for contempt of court. The application is brought by the Liverpool Victoria Insurance Company Ltd ("LVI"). Each of the defendants brought a claim for damages over an alleged car crash which was said to have been the fault of a driver insured by LVI. The insurer's allegation is that these claims were brought pursuant to "crash for cash" conspiracies to defraud, and that the defendants told lies in support of those conspiracies which amount to contempt of court.

2. Stated broadly, the issue in respect of each defendant is whether it has been proved to the criminal standard that the defendant dishonestly made, or caused one or more false statements to be made, in one or more of the documents relied on by LVI. If the answer is yes, I shall have to consider whether that amounts to contempt and, if so, sentence.

3. The claims made by the defendants involved three alleged crashes, two in September 2011 and one in November 2011, all quite close to one another in North London. LVI's primary case is that none of the alleged crashes happened. Alternatively, it argues that they did not happen in the manner alleged by the defendants. These crashes, says LVI, are inventions, concocted as part of a conspiracy to defraud.

4. In support of its case, LVI relies on three other claims made against it in respect of three further crashes alleged to have happened in the same area of North London in September and October 2011. Two of these involved proceedings. LVI points to what it says are links between the insured in the six claims, and to other common features, which are said to tend to incriminate the defendants.

5. LVI has called evidence from two witnesses, neither of whom can speak directly to any of the underlying facts. Much, indeed most, of their evidence is hearsay. Otherwise, LVI relies on documents. LVI's case is a circumstantial one, which invites inferences from the circumstances viewed as a whole.

6. The case for each of the defendants is that the accident in respect of which they brought proceedings was a genuine accident, and their claim was a genuine claim. Their claim documents were honestly made and verified. Any factual errors there may be in the statements they made, or those which were made on their behalf, in the claim documents and court documents were no more than innocent mistakes.

7. The three defendants who were allegedly the fault-free drivers in the accidents have given evidence at this trial. So have their six alleged passengers, and three other witnesses.

The law

8. The application is brought pursuant to CPR 81. It relies on CPR 32.14, which provides as follows:

> "**False statements**
>
> 32.14
>
> (1) Proceedings for contempt of court may be brought against a person if he makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.
>
> (Part 22 makes provision for a statement of truth.)"

9. LVI's case is that false and dishonest statements were made by the defendants in witness statements, schedules of loss and updated schedules of loss, claim forms, and particulars of claim, all of which were in fact verified by statements of truth.

10. I take CPR 32.14 to refer to documents which are required to be verified by a statement of truth, pursuant to CPR 22.1. The list in that rule includes "(a) a statement of case … (c) a witness statement …; and (g) any other document where a rule or practice direction requires." The Part 22 Practice Direction para 1.4 identifies further documents which must be verified by a statement of truth, including "(3) a schedule … of expenses and losses in a personal injury claim, and any amendments to such a schedule or counter-schedule, whether or not they are contained in a statement of case." The PD does not define what is meant by a "schedule … of expenses and losses" in this context. Such schedules are and were required as part of the pre-action stage, and 16PD 4.2 requires such a schedule to be attached to the particulars of claim in a personal injury claim.

11. The witness statements complained of by LVI were all verified by the defendant personally, as required by CPR 22.1(6) (b). Some of the schedules of loss and some of the statements of case were also verified by the litigants personally. Other schedules of loss, and other statements of case, were verified by a solicitor, rather than the defendant personally. For this reason, CPR 22.1(6) (a) and 22PD paras 3.7 and 3.8 are relevant. They deal with who may sign a statement of truth, and the consequences, if that person is not the litigant himself or herself.

12. CPR 22.1(6)(a), so far as material, both requires and allows a statement of truth which verifies a statement of case to be signed by the party or the legal representative on behalf of the party. The Part 22 PD provides:

> **"3.7** Where a party is legally represented, the legal representative may sign the statement of truth on his behalf. The statement signed by the legal representative will refer to the client's belief, not his own. In signing he must state the capacity in which he signs and the name of his firm where appropriate.
>
> **3.8** Where a legal representative has signed a statement of truth, his signature will be taken by the court as his statement:
>
> (1) that the client on whose behalf he has signed had authorised him to do so,

> (2) that before signing he had explained to the client that in signing the statement of truth he would be confirming the client's belief that the facts stated in the document were true, and
>
> (3) that before signing he had informed the client of the possible consequences to the client if it should subsequently appear that the client did not have an honest belief in the truth of those facts (see rule 32.14)."

Paragraph 3.8 creates a presumption, but it is clearly not an irrebuttable one. In principle, a party can rebut the presumption by giving evidence to the contrary.

13. Proceedings of this kind can only be brought with the Court's permission. Guidelines for the grant of permission are to be found in *A Barnes t/a Pool Motors v Seabrook* [2010] EWHC 1849 (Admin) [2010] C P Rep 42 [41], where Hooper LJ drew the following propositions from *KJM Superbikes Ltd v Hinton* [2008] EWCA Civ 1280 [2009] 1 WLR 2406:

> "(i) A person who makes a statement verified with a statement of truth or a false disclosure statement is only guilty of contempt if the statement is false and the person knew it to be so when he made it.
>
> (ii) It must be in the public interest for proceedings to be brought. In deciding whether it is the public interest, the following factors are relevant:
>
> (a) the case against the alleged contemnor must be a strong case (there is an obvious need to guard carefully against the risk of allowing vindictive litigants to use such proceedings to harass persons against whom they have a grievance);
>
> (b) the false statements must have been significant in the proceedings;
>
> (c) the court should ask itself whether the alleged contemnor understood the likely effect of the statement and the use to which it would be put in the proceedings;
>
> (d) "[T]he pursuit of contempt proceedings in ordinary cases may have a significant effect by drawing the attention of the legal profession, and through it that of potential witnesses, to the dangers of making false statements. If the courts are seen to treat serious examples of false evidence as of little importance, they run the risk of encouraging witnesses to regard the statement of truth as a mere formality ... "

14. Permission to bring the present application was granted by HHJ Wood QC, sitting as a Deputy Judge of the High Court, on 7 April 2017. HHJ Wood considered the threshold requirements and was satisfied they were met. I am told that this was not in the end contested on behalf of the first to sixth defendants. But Mr Gersch for the first to sixth defendants, and Mr Newman on behalf of the seventh to ninth defendants, both now rely on paragraphs [41](i) and (ii)(b) and (c) of *Barnes*, submitting that before I decide that any of their clients is guilty of contempt I must be satisfied that all these requirements are met. Mr Gersch submits that in order to establish contempt it must be

shown that the statement "interfered with the course of justice in a material respect". Further, it must be shown that the defendant was "aware of its significance and purpose in the proceedings."

15. Although Mr Laughland has not quarreled with these submissions, I am not sure that they are right, either as a matter of authority or principle. First, one must beware of treating judgments as if they were statutes. Secondly, I think it arguable that proposition (i) may have been a little too narrowly framed. The wording of CPR 32.14 reflects the common law of contempt of court (see *Barnes* at [15]). It would seem to be inherent in this wording, and consistent with principle, that the reckless individual who verifies a false statement with no care or consideration for whether it is true or false may be guilty of contempt, as well as a person who tells a deliberate lie.

16. Thirdly, Mr Gersch surely puts the matter too high. The false statement must have a tendency to interfere with the course of justice in a material way (which is how I read what Laws LJ said in *Lane v Shah* [2011] EWHC 2962 (Admin) [6]); but I do not think it can be right to say that a person can only be in contempt if they succeed in causing actual interference. Hooper LJ certainly did not say so in *Barnes*. Finally, although a trivial falsehood may not amount to contempt, the threshold requirements for permission do not define what is or is not a contempt of court. They function as a brake on the pursuit of contempt proceedings which are not in the public interest because (for instance) the allegations are not grave, or the evidence is weak or unconvincing, or both. As Moore-Bick LJ observed in *KJM Superbikes* at [20], "At the stage of the application for permission the court is not concerned with the substance of the complaint; it is concerned only to satisfy itself that, if established, it is one that the public interest requires should be pursued." This is important, but it does not seem to me to follow that if, after a trial, a claimant proves some significant dishonesty the Court would be debarred from finding contempt established just because the dishonesty was not as grave as that alleged at the permission stage, and would not of itself have justified the proceedings.

17. Having said this, as will appear, I do not think it necessary to resolve these questions in this case. I can deal with the case on the assumption that the defence submissions on this issue are correct.

18. It is not controversial that the burden of proof rests on LVI and that contempt of court being a quasi-criminal matter, the standard of proof is the criminal standard. Before I find any defendant guilty of contempt I must be sure of his or her guilt. This is a long-established principle, but CPD81 para 9 provides a reminder.

19. LVI does not have to prove all the details of the alleged conspiracy, but it does have to make me sure in respect of each defendant that he or she made a false statement and did so knowingly, with no honest belief in its truth. One consequence of this is that where a defendant gives or calls evidence which raises an issue, for instance as to whether they were aware of the nature of the document they signed, the burden lies on LVI to disprove that evidence.

20. I remind myself that although there is some overlap in the evidence relevant to the cases against the defendants, each must be considered individually, as must each "charge" against that defendant. I also remind myself that LVI's case rests entirely on circumstantial evidence. I accept the submission of Mr Gersch that I should apply the

established approach of the criminal law. I should decide which of the strands of evidence relied on I accept as reliable, and which if any I do not. I must then decide what conclusions I can fairly and reasonably draw from any strands of evidence I do accept. I should not engage in any guesswork or speculation. The ultimate question is whether I have been made sure of the defendant's guilt. To reach that point I must be persuaded that, on the view of the evidence that I take, I can reject all realistic possibilities consistent with innocence, and infer guilt: see, for instance, *R v G & F* [2012] EWCA Crim 1756 [2013] Crim LR 678 [36]-[37].

21. Other fair trial rights which the common law and Article 6 of the Convention afford to those accused of crime also apply. Any defendant has the right to silence. The defendants have not exercised that right, but by giving evidence they have not taken on themselves any burden of proof. There is no affirmative evidence of good character but, by concession, I treat them all as of good character, in the sense that they have no previous convictions or cautions for criminal offences. I therefore direct myself to have regard to their good character as a factor which both bolsters their credibility and makes it less likely that they committed the offences alleged against them.

22. These proceedings are not, however, in all respects criminal in nature. They are not subject to the procedural regime that applies to criminal cases, nor are they subject to the rules of evidence that apply in crime. The procedures are governed by the Civil Procedure Rules. The rules of evidence are those applicable to civil litigation. So, the reception of hearsay evidence on an application of this kind is governed by the domestic legislation applicable to civil cases: *Daltel Europe Ltd v Makki* [2006] EWCA Civ 94 [2006] 1 WLR 2704, *Forrester Ketley v Brent* [2012] EWCA Civ 324 [24] (Lewison LJ). The applicable provisions are therefore those of the Civil Evidence Act 1995, of which I have reminded myself.

23. The approach the Court should take to hearsay evidence in committal proceedings was identified by Lloyd LJ in *Daltel* at [56]-[57]. The effect of those paragraphs is aptly summarised in the Weekly Law Reports headnote:

> "… consistent with the jurisprudence of the European Court of Human Rights, a flexible approach to the admission of hearsay evidence was appropriate, rather than its exclusion on principle; that, in a committal application, the decision was a matter for the judge, giving reasons, from which the significance, or lack of it, of the hearsay evidence would be apparent, as would the reasoning on which its admission and the weight given to it by the judge was based; … "

24. In the end, as the evidence and submissions have developed, it has become clear that the hearsay nature of much of LVI's evidence is not of prime importance. There is little if any dispute about the accuracy of the critical aspects of the circumstantial evidence relied on. The central issues in relation to each of the defendants are whether I can and should infer from that evidence that the accident did not happen, reject the relevant defence evidence, reject any innocent explanation, and draw the inferences of dishonesty that are invited.

The key facts

The cast of characters

25. The first and second defendants ("Mr and Mrs Yavuz"), are husband and wife. They are related to the third and fourth defendants ("Mr and Mrs Sel") and to the fifth and sixth defendants ("Mr Salman Gulbudak" and "Mr Mato Gulbudak") as follows: Mr Yavuz and Mrs Sel are brother and sister. Through his marriage to Mrs Sel, Mr Sel is the brother-in-law of Mr Yavuz. Mr Salman Gulbudak is the brother of Mrs Yavuz. Mr Mato Gulbudak is their father. Mr Mato Gulbudak has another daughter, Bahar Gulbudak.

26. The seventh defendant ("Mr Kaya") and the eighth defendant ("Gunes Kaya") are husband and wife. The ninth defendant ("Ayten Kaya") is a cousin of Mr Kaya. These three all made affidavits and gave oral evidence on which they were cross-examined. Mr Kaya has a nephew called Hakki Sahin, who also features in the story.

27. Like the Yavuz, Sel, and Gulbudak families, the Kayas are of Turkish origin, but they have no family relationship with any of the first to sixth defendants. No social relationship between them has been alleged.

28. The three other claims on which LVI relies involved (i) a Mr Mehmet Ozkirdar and his alleged passenger, Veli Yilmaz (ii) a Mr Andrew Golding and two alleged passengers of his, and (iii) an alleged driver and two alleged passengers all by the name of Saliasi,

29. All of the claims brought by the defendants involved an accident management company, Park View Claims Limited ("PVC") of 306 High Road, Wood Green, London N22, and an organisation called DSA Automotive Group ("DSA"). The claims relied on invoices from PVC for recovery and storage charges said to have been incurred after the accident, and invoices from DSA for the hire on credit of substitute vehicles. The defendants' County Court claims were advanced on their behalf by solicitors. Initially, the cases were dealt with by a firm called Goldsworth. The defendants say they were referred to this firm by PVC. The claims were later passed to Nesbit Law Group, which later changed to Intricate Law.

30. Invoices from PVC and DSA also features in the claims of Mr Golding and his passengers, who also used the same solicitors' firm as the defendants. An invoice from DSA featured in the claims brought by the Saliasis.

31. Dr Ashraf Chohan provided medical reports in support of each of the defendants' claims, as well as those of Mr Golding and the two individuals alleged to have been his passengers at the time of his alleged accident, Ms Helen Jacavos and Ms Laura Bailey. Dr Chohan's examinations of all these twelve individuals took place on the same day, Saturday 11 February 2012, at the offices of Goldsworths.

32. All the defendants gave evidence at the trial, as did Bahar Gulbudak and Hakki Sahin, and Dr Chohan. There has been no evidence from PVC, DSA, or any of the lawyers involved.

33. Other names that feature in the case are those of individuals most of whom would appear or sound to be of Eastern European origin: Simon Matousek, Martin Kozar,

Roman Lukac, Roman Lukasek, Ludvik Nicema, Thomas (or Tomas) Cerlinksy, Filip Kotas, Tomas Mudra, Tonik Lackun, Antonio Suleman, and Milan Brigh Brigh. None of these individuals gave evidence, if indeed any of them exist. That may be doubted, for reasons which will become clear.

Essential factual picture

34. It is helpful to summarise the key facts relating to each of the six insurance claims in the order in which the "crashes" are alleged to have taken place. This involves a departure from the numbering system adopted by LVI and its Counsel, so in order to minimise confusion I have added their numbering in brackets.

Before any of the crashes

35. The first few relevant events took place before any of the alleged crashes. They were as follows.

(1) On 4 June 2011, the DVLA registered a Thomas Cerlinksy of 31 King Street, London E13 as the keeper of a Renault Megane, registration X253 LMJ ("the Megane"). This is the vehicle later alleged to have driven into the BMW driven by Salman Gulbudak, with Mato Gulbudak as his passenger.

(2) On 31 August 2011, an insurance policy was taken out with LVI in respect of a Renault Laguna, registration DU52 RUY ("the Laguna"). The insured was Roman Lukasek, whose address was given as Flat 1, 15 Harold Road, Margate. His date of birth was given as 10 April 1958, making him 53 at the time. His occupation was given as "cleaner". A deposit was paid using a card ending in ** 0941. The card was in the name of Roman Lukac. An email address with a Czech Republic suffix was given: romanluka@seznam.cz**.** Mr Lukazec was not the registered keeper of the Laguna at this or any time. It was registered to a Stanislav Valent of 70 Derwent Road, London, some 85 miles away from Margate.

(3) On 3 September 2011, an insurance policy was taken out with LVI in respect of a Vauxhall Vectra, registration EV55 KBZ ("the Vectra"). This was a Third Party, Fire and Theft ("TPF&T") policy, incepted online. The insured was Tomas Cerlinksy, of 18 Harold Road, Margate. His date of birth was given as 17 May 1955, making him 56 at the time. His occupation was given as "cleaner". A deposit was paid using a card ending in ** 5751, in the name of Filip Kotas. An email address with a Czech Republic.suffix was given: ludviknicema@atlas.cz**.** Another Tomas Cerlinksy was a named driver on this policy. His date of birth was given as 30 August 1977, making him 34 at the time.

5 September 2011: the first 'Crash' [aka Accident no 5]

36. It was later alleged that, on 5 September 2011, the Laguna was negligently driven by Roman Lukasek out of a parking bay and into the nearside of a car driven by Mr Ozkirdir, in which Mr Yilmaz was a passenger. Goldsworth Solicitors served claim notification forms ("CNFs") on Form RTA1 in respect of this alleged crash on behalf of Messrs Ozkirdar and Yilmaz on 14 September 2011. They alleged an accident at around 10.30am on 5 September, in Roseberry Avenue, London N17. Both driver and passenger claimed to have sustained injury to their neck and back. Mr Ozkirdar also

alleged injury to his shoulder. A conditional fee agreement was said to have been entered into with the solicitors.

37. The date of this alleged accident was two days after the inception of the insurance in respect of the Laguna. No premiums were paid on the insurance policy, which was cancelled for that reason. In the event, no proceedings were issued, and the limitation period expired in 2014. But the claim is of relevance for the similarities it bears to other claims, including those put forward by the present defendants.

9 September 2011: the second 'Crash' [aka Accident no 4]

38. The seventh to ninth defendants, the Kayas, allege that, on 9 September 2011, on a Nightingale Road, London N22, the Vectra was negligently driven by Tomas Cerlinksy into the passenger side of Mr Kaya's Renault Clio, in which Ayten and Gunes Kaya were passengers. Each of the Kayas alleges that they sustained personal injury as a result of this accident, consisting of neck, shoulder and back pain.

39. An invoice for recovery and storage charges from PVC has been produced and relied on by Mr Kaya. It purports to show that the Clio was stored for 39 days between 9 September and 17 October 2011. Mr Kaya has also produced and relied on an invoice from DSA in respect of the alleged credit hire by him of a Vauxhall Corsa from 13 September 2011 to 28 September 2011.

40. The date on which this accident is said to have taken place was six days after the insurance policy in respect of the Vectra was incepted in the name of Thomas Cerlinksy. No premiums were ever paid on that policy, which was cancelled for non-payment. The Kayas all brought proceedings, to which I shall come.

29 September 2011: the third 'Crash' [aka Accident no 1]

41. On 22 September 2011, a Mr Simon Fulton disposed of a Volkswagen Polo, registration S761 KRA ("the Polo"). No other keeper was ever registered in respect of the Polo. On the afternoon of 28 September 2011, however, an insurance policy was taken out in respect of the Polo. This was also a TPF&T policy, incepted online. The insured was Simon Matusek of 2 Buckhurst Drive, Cliftonville, Margate, CT9 3HT, Kent. His date of birth was given as 23 April 1951, making him 60 at the time. His occupation was given as "cleaner". A deposit was paid, but not in Mr Matusek's name. Payment was made It using the same card, in the name of Roman Lukac, as had been used to pay the deposit for the Laguna insurance some four weeks earlier ([32(2)] above). Again, an email address with the same Czech Republic suffix was given: martinkozar@seznam.cz**.**

42. The first four defendants, Mr Mehmet Yavuz, Mrs Yavuz, and Mr and Mrs Sel, all allege that at about 10.30pm on 29 September 2011 Mr Matousek was driving the Polo on Bury Street, Edmonton, London, when he negligently drove into the back of a Chrysler Voyager car, registration DY04 PNE, which was being driven by Mr Yavuz, with the second, third and fourth defendants as his passengers. All four allege that they sustained personal injury, in the form of neck, shoulder and back pain. All four brought claims for damages.

43. An invoice for recovery and storage charges from PVC has been produced and relied on by Mr Yavuz. It purports to show that the Voyager was stored for 109 days between 29 September 2011 and 16 January 2012. Mr Yavuz has also produced and relied on a short-term rental agreement with DSA in respect of the credit hire by him of a Volkswagen Sharan, registration FR11 UUN ("the Sharan"), from 30 September 2011 to 27 December 2011. More recently, Mr Yavuz has conceded that he did not hire the Sharan for this period. He says he had it for a matter of hours only, and hired other cars from DSA after that, over a shorter period than this agreement shows. I shall come to what he now says about the matter later on.

44. The date on which this accident is alleged to have happened was the day after the policy of insurance was taken out, some 32 hours having elapsed. No premiums were ever paid on the policy, which was cancelled for that reason.

9 October 2011: the fourth 'Crash' [aka Accident No 3]

45. On 29 September 2011, the day of the alleged accident involving the Yakuz and Sel families, one Tonik Lackun was registered as the keeper of a Vauxhall Omega registration N647 ETW ("the Omega") of 43 Ordnance Road, Enfield.

46. The following day, 30 September 2011, a TPF&T insurance policy was taken out online in respect of the Omega. This was not in the name of the registered keeper but in a different name, Tomas Mudra. Mr Mudra was said to be cleaner, born on 21 March 1954 making him 57 at the time. His address was given as 2 High Street, Steyning, West Sussex. The bank details provided at the time of inception were for an account in the name of Filip Kotas. This is the same name as was used to pay the deposit for the Vectra insurance (second accident).

47. Andrew Golding was to allege that on 9 October 2011 in Bull Lane, London N17, Mr Mudra negligently drove the Omega out of a side road into the side of Mr Golding's BMW, and thereby caused him whiplash injuries to the neck, shoulders and back. He brought a claim for damages, using Nesbit Law solicitors. So did his two alleged passengers, Ms Helen Jacavos and Ms Laura Bailey.

48. In support of his claim, Mr Golding produced and relied on an invoice from PVC for storage and recovery charges between 9 October 2011 and 12 January 2012. He also produced and relied on a short-term rental invoice from DSA purporting to show that DSA had hired him a BMW 520 for 65 days between 10 October 2011 and 13 December 2011. Mr Golding later acknowledged that he had not had a BMW 520. He claimed to have had a Toyota Avensis, then two VW Tourans in succession.

49. The date on which this accident is alleged to have happened was ten days after the policy of insurance was taken out. No premiums were ever paid on the policy, which was cancelled for that reason.

23 October 2011: the fifth 'Crash' [aka Accident No 6]

50. On 11 October 2011, two days after Mr Golding's alleged accident, a Milan Harak of Enfield was registered as the keeper of the Megane. This was in addition to Thomas Cerlinksy, whose registration as keeper of that vehicle continued until December 2011.

51. On the same day, an insurance policy was taken out with LVI in respect of a Peugeot 206, registration S626 GNU ("the Peugeot"). This was again a TPF&T policy, incepted online. The registered keeper of this vehicle at the time was one Milan Brigh Brigh, of Nottingham. The insured was however named as Antonio Suleman. His address was given as 18 Harold Road, Margate CT9 2HT. This is the same road and postcode as was used in relation to the policies taken out on the Laguna and the Vectra (the cars said to have caused the first and second 'accidents'). His occupation was said to be "cleaner". His date of birth was given as 14 April 1959, making him 52 at the time. An email address was given: anczonlosuleman@atlas.z. A Thomas Cerlinsky, aged 34, was a named driver on the Peugeot policy. He was also said to be a cleaner, and to be Mr Suleman's son. The age matches that of the Tomas Cerlinsky junior named on the insurance for the Vectra (second 'accident'). The deposit was paid using a payment card in the name of F Kotas, matching the name of the person who paid the deposit for the Vectra insurance.

52. Mr Adriatik Saliasi, Ms Sadete Saliasi, and Mr Herald Saliasi were later to allege that at 4.30pm on 23 October 2011 in Waltham Way, East London, Mr Suleman negligently drove the Peugeot out of a minor road into Mr Saliasi's Jaguar X-Type vehicle, registration MD53 DKO, causing all three individuals personal injury in the form of whiplash. All three later issued proceedings claiming damages, using Nesbit Law solicitors. Mr Adriatik Saliaisi, the alleged driver, initially produced and relied on a rental agreement with DSA purporting to show the hire of a replacement vehicle from 24 October 2011 at a daily rate of £152.48.

53. The date on which this accident is alleged to have happened was twelve days after the policy of insurance was taken out. No premiums were ever paid on that policy, which was cancelled for that reason.

6 November 2011: the sixth 'Crash' [aka Accident No 2]

54. On 26 October 2011, a policy of insurance was incepted with LVI in respect of the Megane. The insured was Ludvik Nicema, a cleaner, born on 18 February 1955, making him 56 at the time. His address was 273 London Road, St Leonard's-on-Sea, East Sussex. Ludvik Nicema was not the registered keeper. That was Thomas Cerlinksy: see [32(1)] above. A Tomas (sic) Cerlinksy was a named driver on the policy. He was said to be a cleaner born on 30 August 1977, and thus aged 34. These details match those of the Tomas Cerlinksy who was a named driver on the policy in respect of the Vectra (second accident): [32(3)] above.

55. The deposit was paid using a card in the name of Filip Kotas. This is the same name that was used for payment of the deposit for the insurance in respect of the Vectra (second accident) and the Omega (fourth accident). The same name, and the same payment card, were used to pay the deposit for the Peugeot insurance (fifth accident).

56. Salman and Mato Gulbudak allege that on Addison Road, Enfield at approximately 8:15 pm on 6 November 2011 Mr Nicema negligently drove the Megane into Mr Salman Gulbudak's BMW, registration FY58 DAO, at a time when Mr Salman Gulbudak was driving and Mr Mato Gulbudak was his passenger. The claimants' case was and is that Mr Nicema drove out of a minor road onto the major road on which Mr Salman Gulbudak was driving. Both Messrs Gulbudak claim to have sustained

whiplash-type injuries, to their necks and backs. Both brought proceedings claiming damages, using Nesbit Law solicitors.

57. In the course of his claim, Salman Gulbudak produced and relied on an invoice from PVC for recovery and storage charges between 6 November 2011 and 8 February 2012 (95 days). He also alleged in his CNF of 15 November 2011 that he had incurred credit hire charges in respect of a VW Sharan. This was the same Sharan that Mr Yakuz claimed to have hired, and the alleged hire periods overlapped. At one point, therefore, both were claiming to have the same vehicle hired to them at the same time. Mr Gulbudak has since produced a PVC invoice for the hire of a Mercedes C220 (OE60 EBF) between 7 November 2011 and 16 January 2012. He has also stated that in fact he had about a month of car hire, involving three different cars, of which the Mercedes was the first, and the Sharan was only one of two others.

58. The date on which this accident is alleged to have happened was eleven days after the policy of insurance was taken out. No premiums were ever paid on that policy, which was cancelled for that reason.

Attempts to trace the drivers

59. LVI tried without success to locate the drivers. No Mr Lukasek, nor anyone else with an East European name, was to be found at 15 Harold Road, Margate. Nor had any Tomas Cerlinsky been heard of at 18 Harold Road, where the proprietors had no record of any such person living there. Calls to the Margate address given for Mr Matousek went unanswered, and post was returned marked as "Addressee Unknown". In December 2011, a Ms Tracey Sandy called LVI to say that she had lived at that address since 1994 and that although she had received post addressed to a Mr Simon Matousek, no-one with that name had lived at that address since that time. Mr Mudra was not known at the address given for him, which was that of a takeaway restaurant. A visit to the address of Mr Brigh found no Antonio Suleman. As for Mr Nicema, LVI relies on a statement taken in February 2012 from a woman who had lived for over 25 years at the address given for him. She did not recognise his name and confirmed that it was not the name of anyone who lived in the other two flats at that address.

The claims and the alleged contempts

The statements complained of

60. On 12 January 2012, at the offices of Goldsworth solicitors, each of the first four defendants (Mr and Mrs Yavuz and Mr and Mrs Sel) was interviewed by an insurance claims investigator, Mr Moseley. Each of these defendants made a witness statement in support of their insurance claim. In those statements, they spoke of the alleged accident, their role in and experience of it, and the consequences. Each of these four witness statements ("the January 2012 Statements") was verified by the maker in a statement of truth in the form prescribed by CPR 22 and its PD. Mr and Mrs Sel were assisted in the process by an interpreter, who made statements confirming that he had translated the questions and answers, read over the statement to the witness in Turkish, explained the statement of truth, and received the witness's confirmation that he understood its meaning.

61. The statements all bore a title "In the County Court". They were in the form appropriate to a statement made in proceedings. But there were no active proceedings at the time. The January 2012 Statements are, in the case of each of these defendants, the first document which LVI alleges was false to the knowledge of the defendant in question. They are therefore **the first alleged contempt** in each of their cases.

62. On 11 February 2012, each of the nine defendants attended at Goldsworth solicitors' offices for examination by Dr Ashraf Chohan. So did Mr Golding and his two alleged passengers. Dr Chohan produced reports on each of these twelve, purporting to record what they had told him about the accidents and the injuries they had suffered as a result. LVI alleges that the defendants all made false statements on this occasion, thought these are not the subject of an allegation of contempt.

63. The **first act of contempt** alleged against Mr Kaya is the making of a false statement in a Schedule of Loss dated 19 March 2012.

64. The **first act of contempt** alleged against Mr Salman Gulbudek is the making of a false statement in a Schedule of Loss dated 20 March 2012. The **second** is the making of a witness statement in support of his insurance claim, on 20 August 2012. Mr Mato Gulbudek made a witness statement the following day, 21 August 2012, which is the **first alleged contempt** by him. All these documents were verified by statements of truth signed by the party himself.

65. On 24 March 2012 Mr Yavuz served an updated Schedule of Loss. This was verified by a statement of truth made by him. This is the **second alleged contempt** by him. Mrs Yavuz also served a Schedule of Loss dated 24 March 2012, verified by a statement of truth signed by her personally. This is the **second alleged contempt** by her.

66. On 22 August 2012, Mr Yavuz made a further witness statement in support of his County Court claim. He verified it with a statement of truth signed personally. This is the **third alleged contempt** by him.

67. On 10 November 2012, a Claim Form and Particulars of Claim were issued on behalf of Mr Yavuz against Simon Matousek and LVI. The claim was for general damages for pain, suffering and loss of amenity, and special damages for vehicle damage (£3,060), recovery and storage charges (PVC) of £2,950, and credit hire (DSA) of £17,916.77, with miscellaneous expenses of £40. It is to be noted that the total of the recovery, storage, and hire charges was over 8 times the value of the vehicle damage. This Claim Form and these Particulars of Claim are the second and third documents which are alleged by LVI to contain knowingly false statements by Mr Yavuz. They are the f**ourth and fifth alleged contempts** by him. The statements of truth were made by Mr Levy of Nesbit Law, who confirmed that Mr Yavuz believed that the facts stated were true, and that he was authorised by Mr Yavuz to sign on his behalf.

68. Four acts of contempt are alleged against Mr Sel, the first being his January 2012 Statement. The **second document** is a Schedule of Loss dated 27 March 2012, and the **third and fourth** are a Claim Form and Particulars of Claim issued on his behalf on 25 September 2014. Mrs Sel is accused of **three acts of contempt,** two in the same Claim Form and Particulars of Claim, as well as her January 2012 Statement. Mrs Yavuz's claim Form and Particulars of Claim were dated 22 January 2015 and verified by a statement of truth signed by Mr Levy. These documents represent the **third and fourth**

contempts alleged against Mrs Yavuz, of which there are four in total. Again, the defendants to the claims brought by Mrs Yavuz and the Sels were Mr Matousek and LVI. All three claimed general damages for pain, suffering and loss of amenity. Mrs Yavuz claimed the costs of 6 physiotherapy sessions at £564 and miscellaneous expenses of £40. Mr Sel made an identical claim. All these documents were verified by statements of truth.

69. On 12 October 2012 Mr Golding's claim was commenced by Claim Form and Particulars of Claim verified on his behalf with a statement of truth signed by a Mr Levy of Nesbit Law Group. The defendants were Tomas Mudra and LVI. Mr Golding claimed damages for personal injury, relying on the report of Dr Chohan. He also claimed £2,137 for vehicle damage, £2,375 for storage, £225 for recovery and other unspecified sums. It was in October 2014 that his alleged passengers, Ms Jacavos and Ms Bailey, commenced proceedings seeking damages for alleged personal injury.

70. On 23 October 2012, the claims of Mr Salman Gulbudak and Mr Mato Gulbudak were begun, by a Claim Form and Particulars of Claim issued by Nesbit Law Group. The defendants to that claim were Ludvik Nicema and LVI. Each of the Gulbudeks sought general damages for pain, suffering and loss of amenity, and £798 for the cost of physiotherapy. Mr Salman Gulbudak claimed the pre-accident value of his BMW, put at £10,492, credit hire charges (DSA) of £13,027.30, and recovery and storage charges (PVC) of £2,600. The sum of the credit hire, recovery and storage charges was 1½ times the value of the allegedly lost car. This Claim Form and these Particulars of Claim were verified by a statement of truth signed on behalf of both claimants by Mr Levy of Nesbit Law, in the form required by CPR 22. They are the **third and fourth alleged contempts** by Mr Salman Gulbudak, and the **second and third** alleged against his father. On 17 June 2013, an Updated Schedule of Loss was served on behalf of Mr Salman Gulbudak, verified by a statement of truth. This is the **fifth alleged contempt** by him.

71. On or around 31 January 2013, a Claim Form and Particulars of Claim were issued on behalf of Mr Kaya. These documents were verified by a statement of truth signed by Mr Levy of Nesbit Law. They are alleged to have contained knowingly false statements and are the **second and third alleged contempts** by Mr Kaya. In them, Mr Kaya claimed general damages for pain, suffering and loss of amenity, and the cost of 6 physiotherapy sessions at £564. He also claimed special damages comprising the pre-accident value of his car, put at £1,060, credit hire charges (DSA) of £986.45, and recovery and storage charges (PVC) of £1,200, plus miscellaneous expenses of £90.

72. On 7 March 2014, Mr Yavuz served a further Updated Schedule of Loss verified by a statement of truth made by his solicitor, Mr Murrell. This is the **sixth and final contempt** alleged against him. On the same day, Mr Kaya served an updated Schedule of Loss in which the claim for recovery and storage was put at £2,200 (£225 for recovery plus £1,975 for storage). This too was verified by a statement of truth, also signed by Mr Murrell. It is the **Fourth alleged contempt** by Mr Kaya.

73. It was on 5 September 2014 that the claims of Ayten Kaya and Gunes Kaya were advanced through a Claim Form and Particulars of Claim of that date, verified by Mr Levy on their behalf. They claimed General Damages for pain, suffering and loss of amenity of more than £3,000 but limited to £5,000. **These** documents verified by Ayten

and Gunes Kaya personally, are **the first and second alleged contempts** by these two defendants.

74. Proceedings against Mr Suleman and LVI were issued on behalf of the three Saliasis in on 29 September 2014. Each of them claimed general damages for pain, suffering and loss of amenity. Mr Adriatik Saliasi claimed to have suffered vehicle damage of £1,700. Although his CNF had claimed for vehicle hire charges, no such claim was advanced at this time.

Some claims are discontinued

75. On 20 June 2013, Mr Golding's claim for credit hire charges was discontinued. In January 2015, one of Mr Golding's two alleged passengers, Laura Bailey, discontinued her claim.

November 2014: Mayor's and City of London Court

76. On 11 November 2015, in the County Court at the Mayor's and City of London Court, the Court heard an application brought by Intricate Law on behalf of all but one of the alleged passengers (Mrs Yavuz, the Sels, and Gunes and Ayten Gulbudak) authorising substituted service of their proceedings. LVI had put them to proof of valid service on LVI's insured. Judgment on these issues was and remains reserved.

January 2016: Central London County Court

77. The claims of the three drivers, Mr Yavuz, Mr Kaya, and Mr Salman Gulbudak, and the claim of Mr Mato Gulbudak, were all listed for trial in the County Court at Central London over 5 days commencing on 16 January 2016, together with the claim of Mr Golding. For the purposes of those claims, LVI relied on a witness statement dated March 2014 made by Mr Nicholas McCaffery, an employee of LVI, in which he set out details of all six claims that are now under consideration before me, and expressed the conclusion that he found it

> "… difficult to accept that the occurrence of [the four "accidents" before the court at that stage] in such a short space of time is a pure coincidence… It is for that reason that LV have serious concerns over the actual occurrence of any of these accidents at all, or at the very least, that they were accidents in the true sense of the word."

78. On the first day of trial, Messrs Yavuz, Kaya and the Gulbudaks all served notice that they discontinued their actions. By doing so, they all abandoned ostensibly valuable claims. Mr Yavuz lost the opportunity to recover damages in excess of £25,000, and to have LVI pay his share of the costs of those proceedings. Instead, he became liable to his own solicitors for the costs and disbursements of his claim (unless his solicitors waived them), which had been estimated by his solicitors at around £40,000 (excluding success fees). The consequences for Mr Kaya were similar. He lost the opportunity to recover damages claimed at between £5,000 - £15,000. His solicitors' costs and disbursements had been estimated at £45,000 including success fees. Similarly, Mr Salman Gulbudak lost the opportunity to recover losses alleged to be in excess of £30,000, was exposed to a possible costs liability to his own solicitors of around

£55,000, and a liability to pay LVI's costs. Mr Mato Gulbudak's claim was worth less, but still something of value. In addition, and whatever may have been the position so far as their own solicitors' costs are concerned, discontinuance exposed all these defendants to a liability to pay LVI's costs which, in the event, were sought and ordered on the indemnity basis.

79. Mr Golding did not discontinue his claim (*Golding v (1) Mudra and (2) Liverpool Victoria Insurance Co Ltd*). Mr Recorder Bowers QC ("the Recorder") heard evidence and argument and gave judgment on that claim, which he dismissed on the grounds that the claimant had not proved that the alleged accident occurred. The Recorder went on to consider an allegation of fraud which he had given LVI permission to pursue by way of amendment at the start of the hearing. He said that he had taken into account some material about the alleged accidents in the Yavuz, Kaya, and Gulbudak proceedings, "on the basis that they are similar fact evidence, and some evidence of this has been placed before me". He did not uphold LVI's fraud allegations against Mr Golding, saying at [32]*:*

> "I am not, however, although I accept and it is admitted that there was a fraud, I am not satisfied to the relevant standard degree of probability that the Claimant was part of the fraud. There is no indication that I can see that he knew of any of the First Defendants, or indeed was in with Park View Claims before the accident. I also note that, in his favour, that he did not have any poor insurance claim history."

80. The claims of the remaining alleged passengers (Mrs Yavuz, the Sels, and Gunes and Ayten Gulbudak) remain unresolved. Judgment on the application heard on 11 November 2015 is still awaited. Ms Yacavos' claim remains live.

81. The Saliasis' claims were discontinued on 17 February 2017, on the negotiated basis that there would be no order as to costs.

Estoppel or abuse of process?

82. In their skeleton arguments for this trial, Counsel for the defendants submitted that the decision of the Recorder to reject LVI's allegation of fraud against Mr Golding had the effect that pursuit of the present application was barred or affected by res judicata/cause of action estoppel, or issue estoppel. In oral submissions, Mr Gersch developed an alternative argument, that in the light of the Recorder's decision, the present application represented an abuse of process.

83. I decided that these threshold questions could and should be dealt with as preliminary issues in the application. I ruled that (1) the Recorder's finding was made in Mr Golding's action only; (2) since there was no identity of parties there could be no res judicata/cause of action estoppel nor any issue estoppel in the traditional sense; and (3) although the doctrines of estoppel and abuse of process can in principle debar a party from re-litigating a claim or defence on which it has lost in previous litigation against a different party, neither doctrine had that effect in this case.

84. I did not rule on an alternative and narrower submission made by Mr Gersch: that the decision of the Recorder means that LVI is debarred from arguing in these proceedings

that Mr Golding was a party to any fraud. I saw no need to rule, as I did not take LVI to be putting forward such an argument. It relies on the facts about Mr Golding's alleged accident as part of an overall picture from which inferences are to be drawn. Nothing more has been said on that issue. In so far as necessary, I would rule that the Recorder's finding is no bar to a finding in these proceedings that Mr Golding was involved in a fraud. Chief among the circumstances that lead me to that conclusion are that the parties are different, the defendants to this claim have had a full opportunity to deal with the matter, and the standard of proof that LVI have to satisfy is higher.

85. When ruling on the estoppel and abuse issues I also expressed the provisional view that the rule in *Hollington v Hewthorn* [1943] KB 587 meant that neither side could rely in the present application on any findings of fact made by the Recorder in Mr Golding's case. I made clear that the parties were free to take issue with this view, but none has done so. I stand by my provisional view. This does not mean, of course, that I must ignore the Recorder's judgment altogether. I have not done so. A judgment can properly be relied on as evidence of what took place in the course of the proceedings before the Court, such as what statements a party made in evidence or in submissions. It is a legitimate source for historical narrative. It is the evaluative findings and conclusions of the previous tribunal that are inadmissible now: see *Three Rivers DC v Bank of England (No 3)* [2003] 2 AC 1 at, for instance, [99] (Lord Hope).

Evidence and submissions

The claimant's case

86. The first of LVI's two witnesses was Marsha Crosland, a Senior Associate in the Insurance Fraud Team at LVI's solicitors, DWF of Leeds. She had made five affidavits in support of the clam, the contents of which she confirmed on oath before me. The first affidavit was made in support of LVI's application for permission to bring these proceedings. It set out what LVI allege are the facts of the cases, as outlined above, and identified the documents in which LVI alleges the defendants made false and dishonest statements constituting contempts of court. This affidavit exhibited most of the documentation on which LVI has relied at this trial, which consists of the best part of five lever arch files. The second affidavit was responsive to the evidence served by the defendants prior to the grant of permission. The third to fifth affidavits were all made after the grant of permission and contained supplemental evidence and documents.

87. The documents included company searches showing that in the financial year to March 2012, that being the period now under examination, PVC had represented itself to be a dormant company; and that the company was dissolved in October 2013, having never filed any accounts. I admitted this evidence, though late, over the objections of Mr Newman.

88. Cross-examined by Mr Gersch, Ms Crosland accepted that she was in no position to make a positive evidential case that the accidents were staged or didn't happen. She accepted that in principle there were a number of kinds of that could be adduced to support such a case, such as evidence that the "victim" drivers, or one or both of the cars in question, were elsewhere at the relevant time; evidence that the damage to one or both of the cars did not fit the description of the accident relied on by the "victim"; evidence contradicting the victim's account of the injuries sustained. LVI has no evidence of any of these kinds. She agreed that, now the family links between the

Yavuz, Sel, and Gulbudak families were known it was perhaps less surprising that they should have used the same claims company, and relied on DSA and Goldsworth solicitors as well. She agreed that the bulk of the claims was for recovery, storage and credit hire, but not that this would have gone to PVC and DSA. She said it would in the first instance have gone to the solicitors. She did agree that there were no loss of earnings claims.

89. Mr Gersch suggested to Ms Crosland that these were "conveyor belt type" claims. It might be the case, suggested Counsel, that the CNFs and later documents submitted on behalf of the defendants were "populated" by their solicitors and the claims management firm (PVC), with witness statements being generated from the CNF, and the defendants placing substantial reliance on their solicitors and agents. Ms Crosland agreed that it would not be surprising if the CNFs were completed by the solicitors, as they have access to the online portal used for that purpose. Otherwise, she could not say how the process might have taken place.

90. Cross-examined by Mr Newman, Ms Crosland agreed that there was no suggestion that the route taken in the case of Mr Kaya's accident was impossible or unlikely. It was put to her that she could not show a link between the people named in relation to the at fault cars and any of the Kayas, and she agreed. She agreed that insurers sometimes see claimants with a long claims history. She said of the accident history of Mr Kaya (involving 3 accidents in 9 months) that it was "a little unusual". Referred to the fact that an engineering report on Mr Kaya's car reported damage to the vehicle, she did not accept the suggestion that this was positive evidence that an accident of some kind happened. It was evidence of damage, but not of how the damage was caused, she said.

91. Mr Newman also suggested to Ms Crosland that there were other enquiries that could have been made, as to the whereabouts of the registered keepers, and about the cars of the "at fault" drivers. LVI could also have visited the premises of PVC, but did not do so. She was questioned about PVC and it was suggested that there was no good reason for the Kayas to doubt its existence as a genuine business. She was cross-examined about the alleged link between Mr Kaya and PVC, via Mr Hasan Urger, a matter to which I will come. The case put to her was that there was no real link of any substance.

92. LVI's second witness was Nicholas McCaffrey, now employed by LVI as a Claims Crime Prevention Technician. He confirmed two affidavits he made on 18 August 2016, in support of the application for permission. The first of those affidavits sought to explain LVI's position in relation to claims in considers to be tainted by dishonesty, and its aims in pursuing this application. It has no relevance to the decision I am making at this stage. The second affidavit was made in order to exhibit and verify the similar fact evidence relied on by LVI. He exhibited and confirmed, with some amendments, the witness statement he had made for the County Court proceedings that were due to be heard by the Recorder.

93. Cross-examined by Mr Gersch, Mr McCaffrey confirmed that he had extensive control over the investigations that come his way, deciding what investigations do or do not get done. It was put to him that more investigation could have been done, about the policyholders and on the "non-fault side", concerning the drivers and passengers and the cars. He accepted that in an ideal world there are always more investigations that can be done. LVI had not considered involving the police. Unlike the police, LVI does not have access to ANPR systems that show where a vehicle has travelled. He did not

agree that inspection of the damaged vehicles in this case provided valuable information. It was merely a report on the area of damage and the cost of repair, and not causation. He agreed that the area of damage was consistent with the alleged accident. He was asked about the report of Hoopers, the firm that inspected Mr Yavuz' car on behalf of LVI. He agreed that they could have been instructed to look for suspicious signs, and did not know what their instructions were (they were given before his involvement) but he suggested that if they were to consider consistency they would have made some comments in their report. He agreed that he had no evidence that Mr Yavuz did not own the car in the third crash. He accepted there was real damage. He could not say when or where it occurred. He had no evidence that the injuries reported by Dr Chohan were not genuine.

94. Mr McCaffrey gave similar evidence in respect of the sixth crash. He agreed that LVI's case is circumstantial. He said, "In my experience, there isn't a silver bullet." He said there seems to be a mistaken belief on the defence side that a link has to be established between the policyholders and the claimants.

95. Mr Newman, dealing with the first crash, put it to Mr McCaffrey that there were other investigations which LVI could have undertaken but failed to undertake. First, as to PVC, Mr McCaffrey agreed that nobody went to the premises, there was no "secret shopper" visit, and the engineer's report on Mr Kaya's car had an address for PVC. He was unsure whether LVI had done a search of its own database regarding PVC. He could not exclude the possibility that the defendants in this case were directed to PVC because the company's primary business was derived from Turkish drivers in London, at whom PVC targeted its advertising. As to the policyholders, Mr McCaffrey was unaware of any link but, he said "quite often you don't; it is hard to establish a link". He agreed that LVI had not sent investigators to the addresses of the at-fault drivers; apart from Mr Yavuz' car, LVI had not examined any of the defendants' vehicles; such investigation as it had undertaken was focussed on the at-fault side. Mr McCaffrey said, "That is how these kinds of case are investigated."

96. LVI relies on the documents produced by its two witnesses and points to the following features of the case in particular, contending that they establish beyond reasonable doubt that the defendants' claims, and the statements they made in support of them, were false to the defendants' knowledge; each of the alleged accidents was a contrived collision that either did not occur, or did not happen as alleged, and the claims were brought with the intention of obtaining pecuniary advantage from LVI by deception.

(1) There were six "accidents" within a period of 2 months with these features: (a) each policyholder incepted the policy of insurance with LVI within days (1-12 days) of each alleged accident; (b) each policyholder stated in his proposal form that he was over the age of 50, employed as a cleaner and living in a seaside town outside London; (c) three of the policies (those for the first, second and fifth Crashes) used the same road & postcode for the risk address and of those three, two (the first and fifth) had exactly the same house number, 18 Harold Road); (d) two of the policies were incepted using the same email address, matinkozar@seznam.cz; (e) Where an email address was given, all of the policies were incepted using an email address with the suffix cz (including the two mentioned above); (f) The same name (Filip or F Kotas) was used to set up payment details in four polices and in the other two (the first and third Crashes) the name of Roman Lukac was used; (g) none of the premium instalment payments was made on any of the policies; (h) three of the six

alleged accidents / policies (the second, fifth and sixth) featured the same named driver (Tomas Cerlinsky) for the same period of time, despite the named policyholders being different; (i) five of the six insured vehicles had as their registered keeper a person other than the insured, according to the DVLA database.

(2) LVI was unable to trace any of the named Policyholders with the contact details provided to incept each policy. LVI invites me to find that the policyholders do not exist.

(3) All twelve of the vehicle occupants who intimated proceedings by serving CNFs were examined by the same medical expert on the same date.

(4) All twelve prospective claimants sought the services of PVC, who referred them all onto Goldsworth Solicitors and from them to the Nesbit Law Group.

(5) Five out of the six alleged non-fault drivers brought a claim for compensation for credit hire charges due to DSA.

(6) Each of the alleged accidents occurred all in a small area of North London over 80 miles away from each of the alleged home addresses of the insured.

(7) The Yavuz, Sel, and Gulbudak families are related to one another.

(8) The alleged link by address between Mr Kaya and Hasan Urger, a former director of PVC (of which more below).

(9) Mr Yavuz, both the Messrs Gulbudak, and Mr Kaya each discontinued proceedings on the first day of a 5-day multi track trial listed before a single Judge to hear the first four of the six accident claims consecutively.

The defendants' cases

97. Defence Counsel submitted in their opening arguments that LVI could not establish to the necessary standard of proof that any of their clients had told any lies. The defendants had no incriminating claims history, and were of good character. Their claims were pursued on legal advice, and supported by engineers' reports showing damage, and medical reports from Dr Chohan, an independent expert. There was no direct evidence to establish that the crashes did not happen, or that the injuries were not sustained, as alleged. There was no challenge to the engineers' reports on the vehicles, or to Dr Chohan's reports. LVI's circumstantial case, even combined with the similar fact evidence relied on, was insufficient to establish a case of fraud against any of them.

98. Each of the nine defendants has made one or more affidavits in these proceedings in which he or she denied LVI's allegations of contempt, affirming that the crashes had taken place and that they had been involved. Some of the affidavits gave a more detailed account. When each defendant came to give oral evidence, they re-affirmed the truth of their previous written statements in these proceedings. All had the services of an interpreter available. Most made use of those services. In cross-examination, each was challenged not only about the fact of the alleged accident and their involvement, but also about specific aspects of their evidence. In some instances, collateral matters were

put to them, with a view to undermining their credibility. I shall deal with key aspects of their evidence in discussing my conclusions.

99. Hakki Sahin gave evidence that he often helped his uncle, Mr Kaya, and had done so on the night of the second crash by giving him the numbers of PVC, and collecting all three of the Kayas from the scene and driving them home. He was challenged over the detail of his evidence about how he came to know about PVC, and discrepancies between his account and the version of events given by Mr Kaya in his statement in the County Court proceedings. He said nothing in his evidence in chief about another road traffic accident alleged to have taken place on 23 August 2011, just 17 days before the second crash in which, according to records in the trial bundles, Hakki Sahin himself was reported to have been involved as someone who suffered whiplash injuries when a parked car pulled out and struck a car in which he was a passenger. Nor did the witness recall that matter when first prompted by Mr Laughland, who put it to him that if that had truly happened he would have remembered it. Shown the documents, he did then claim to recall the incident,in which his cousin was the driver.

100. Bahar Gulbudak gave evidence without the need for an interpreter. She said that her brother Salman had called her after the sixth crash, and asked her to pick up their father from the scene, which she had done, later collecting Salman. She made no mention of the fact that she was Mrs Yavuz's sister and had, on the evidence of other witnesses, been involved in the third crash, in the sense that she was at home looking after the Yavuz's children at that time. Mr Laughland put it to her that she had found herself having to lie to protect other family members.

101. Dr Chohan was called as a witness for the first to sixth defendants, but his evidence was relevant to the cases of all nine, and to the cases of Mr Golding and his passengers, whom he examined on the same day. He explained the procedures on examination of an alleged accident victim. This did not in the first instance involve any review of the patient's medical records. Instead it involved taking a history, a physical examination, and a clinical assessment. He said that it is a common misconception that in whiplash cases clinicians merely rely on what they are told by the patient. He conducts a range of tests to check if the patient is telling the truth, and in 30 years of experience had found it is usually possible to get to the bottom of things.

102. Cross-examined by Mr Laughland, Dr Chohan stated that, if a patient is relying on an interpreter, he mentions it in his report. He does the same if they have poor quality English. His record of the patient's symptoms will have come from the patient's mouth, including the severity and duration of any symptoms. He routinely asks about previous accidents, and whether airbags were deployed. He was asked whether he was surprised that twelve patients whom he saw on that Saturday, involved in four separate accidents, should all describe the same symptoms and all say that these were "severe and ongoing". His answer, according to my note, was

> "No. Eighty per cent of patients say the same. This is how the system works. People do exaggerate in their statements about accidents, when you see them 6 months later or a year later. That is what people tell you. It is why they are there."

103. In closing, defence Counsel reaffirmed the submissions advanced in their initial Skeleton Arguments, adding – consistently with their cross-examination of the witnesses for LVI - that the claimant had failed to adduce any evidence to prove that any of the accidents did not occur, or directly to contradict the accounts given by the defendants and show that they knew the accidents were contrived. Those, it was submitted, are the key questions.

104. It was submitted that LVI had produced no evidence, or no evidence of any value, that there was any link between the defendants and PVC or DSA. There was no evidence to show any financial pressure or any similar motive for making false claims to make financial gain, and that there were many avenues of investigation that might have been pursued but had not been taken up. The evidence had been that the decision to discontinue was made by the lawyers and only communicated to the defendants when they attended court for trial. At that point, they did not understand but did as they were told. Discrepancies between the witnesses, and between their individual accounts, were consistent with honesty and at odds with the case put to the defendants by Counsel for LVI, that they were working to a "script".

105. My assessment of the defence witnesses can be shortly stated. Dr Chohan was a good witness, frank and straightforward in his answers, which were inherently credible, and consistent with contemporary documents of admitted or established authenticity. I accept that his evidence was honest, accurate, and reliable. None of this can be said of any of the defendants, or their two other witnesses. In the next section of this judgment I shall explain why.

Discussion and findings

106. Mr Gersch and Mr Newman represented their clients with considerable skill and ability. Despite all their efforts, however, I am left at the end of the hearing in no doubt that all the defendants told deliberate lies from the outset, and throughout the proceedings in the County Court and this Court. They lied in their witness statements, in their schedules of loss, and in their statements of case in the County Court, and (it follows) in their affidavits and oral evidence to this Court. The crashes never happened. The defendants were not injured. The drivers' cars were not recovered or stored, or not for any length of time. Nor did they take any vehicles on credit hire. To the extent that some of the defendants have sought to suggest that they did not realise the nature of the documents they were verifying, or what was being said on their behalf, I reject their evidence. Nor have any of them rebutted the presumptions that apply, where a statement of truth is made by a solicitor. Every statement made by them or on their behalf to the effect that these things did happen was a lie by them. Their claims were thoroughly false and dishonest from the start.

107. I start by asking myself this question: Might it be mere coincidence that over a two month period in the Autumn of 2011 the six drivers in the six alleged crashes were all victims of negligent driving in North London by six different middle-aged East European cleaners from Margate (or some other seaside town in the South East) who were many miles from home, driving old cars which had only just been insured TPF&T with LVI? The answer, obviously, is no. It is beyond sensible dispute that the same person or group of people was behind the taking out of all the insurance policies. The similar methodology, the use of overlapping identities, the same payment methods, false addresses, and a host of other indicia prove this beyond doubt. Clearly, the

addresses and occupations chosen for the insured were designed to minimise the premium, and hence the deposit.

108. Nor can there be any reasonable doubt that those who organised the insurance were intent on fraud. Mr Golding admitted this in the course of his evidence to the Recorder. Mr Gersch made clear that there was no challenge by his clients to LVI's evidence and submission that the insurance policies were bogus. Mr Newman accepted on behalf of his clients that the similar fact evidence might be found to prove a conspiracy to defraud LVI. No other explanation has been suggested for what was done on that side of the equation, nor can I see any possible innocent explanation. The case for Mr Golding was, and the case for the nine defendants in the present case is, that the frauds were ones in which they had no involvement.

109. That begs the question of what kind of scheme the fraudsters might have had in view. Plainly, it cannot have been a fraud in which the "insured" were themselves to claim on the bogus insurance policies. Only third parties could do that. The plan must therefore have been for the fraudsters to generate and then somehow to participate in the proceeds of a third-party insurance claim. It is not easy to see how that could be achieved, on the facts of these claims, without the knowing involvement of at least some of the defendants. Unable to see a way in which the fraudsters could have expected to get any money out of these insurance policies without such involvement, I raised that question with Counsel for the defendants, in the course of their closing submissions. Neither offered any possible explanation. I do not criticise them for that. I am convinced that there is none that can be offered.

110. For LVI, Mr Laughland offered up, in his closing submissions, a menu of three options for explaining the alleged accidents. First, that they were genuine accidents involving innocent victims, whereby the fraudsters' plans were thwarted by their inadvertent involvement in such genuine accidents, with the unfortunate consequence for them of damaging to varying degrees of severity a car which they had just insured, but on TPF&T terms. This, he submits should be rejected as utterly implausible given (a) the various ties between the insured and the related party names on that side of the equation, (b) the family links between the first six defendants, and (c) the established address links between the Kaya family and PVC, to which I shall come. I agree. For these and several other obvious reasons this is an incredible hypothesis.

111. Mr Laughland's second hypothesis is that the accidents were "induced", that is to say, they were real crashes deliberately brought about by the fraudsters with the aim of extracting some financial benefit for themselves or their associates. This too can be discounted. A situation can be imagined in which fraudsters engineer a rear-end accident of which they are the apparent victims and hence the claimants against the insured. Laughland may well be right to say that this is a well-known factual scenario. In such a case, the fraudulent "victim" will have the opportunity to steer recovery, storage, and credit hire business towards his associates and arrange to share in the proceeds. Conceivably, perhaps, a fraudster might deliberately drive into an innocent target and then induce or encourage the victim to use an accident claims management service associated with the fraudster. In the present case, however, the alleged "at-fault" driver plays no such role. In every case he disappears, and cannot be found. The three "victim" drivers (Messrs Yavuz, Gulbudak, and Kaya) all claim to have had their own separate and independent reasons for approaching PVC, through which the introductions to DSA and others followed.

112. The third and final option, to explain what happened in these cases, is that each of them was a staged / contrived accident, with the allegedly at-fault driver (if any such person exists) and the allegedly innocent victims both knowing that these were not genuine accidents (assuming there was even any collision between vehicles; more likely, no two cars collided in the manner and circumstances alleged for each 'accident'). This, Mr Laughland submits, is the only credible explanation. I agree. The inevitable inference is that the alleged victims were in fact, in one way or another, participants in the fraud.

113. This conclusion is bolstered by some further features of the case, and some additional aspects of the evidence adduced by LVI. It is not undermined by the absence of further investigation, or the lack of affirmative evidence that the alleged crashes did not happen. Nor is it undermined by the defendants' documentary evidence, nor by the written and oral evidence of the defendants themselves, nor by the evidence of the further witnesses they called. Indeed, in several respects, the defendants' evidence serves to support the case of LVI. That is in part because they have told a number of other lies, for which in my judgment the only credible explanation is that they were seeking to cover up incriminating facts. There is also the fact that, with the exception of Dr Chohan, the defendants have called no evidence from any other source independent of the families concerned. No evidence has been called from PVC, from DSA, from the defendants' solicitors, or the barristers who represented them in January 2016. I do not place great weight on this last point, but it is legitimate to draw an adverse inference from a failure to call evidence which, on the face of it, could have been adduced. Such an inference can contribute to a finding of guilt.

114. The first notable feature of the case which bolsters the inference of fraud is the striking fact that the third and sixth crashes involved no less than six members of the same extended family being "victims" of two separate "accidents" in the space of just five weeks, both crashes involving East European cleaners from seaside towns in the South of England, and both exhibiting the other remarkable common features identified above. To suggest that this is mere coincidence would be stretching credulity to breaking point.

115. Secondly, there is evidence casting doubt on the bona fides of PVC, which goes beyond the false or questionable invoices to which I shall be making reference later. The evidence of Ms Crosland leads me to conclude that in or about 2012 someone on behalf of PVC told Companies House that the company was dormant in the relevant accounting period. Either those representations to Companies House were true, which would lend weight to the case that the PVC invoices relied on by the defendants are false and fraudulent; or the representations to Companies House were untrue, which would cast a shadow over the integrity of those in charge of the company. It is hard to see any intermediate position. It is not necessary to reach a definitive conclusion on these issues in order to rely on these points as a factor in the case against the defendants.

116. Further, LVI has, in my judgment, reinforced the inference of fraud by demonstrating links between addresses which, it is to be inferred, are not just coincidental and thus tend to incriminate some of the defendants. The first such link involves the Gulbudaks. An Equifax search conducted in January 2013 suggests that at the time his claim was brought Mr Salman Gulbudak and his sister Bahar were both resident at 31 Ordnance Road, Enfield. This is in the same road as the address given for Tonik Lackun, the registered keeper of the Peugeot at the time of the fourth crash (the one allegedly involving Mr Golding). This evidence has not been disputed by the Gulbudaks. Counsel

for the defendants therefore went too far in submitting that LVI had failed to show any links between their clients and the fraudsters.

117. The second link by address is between the Kaya family and PVC. Today, Mr Kaya runs a kebab restaurant at 57 Devizes Road, Swindon, and on any view of the evidence he has done so for many years. In his witness statement of March 2014, Mr Kaya said that had had the business for 8 years. That would take his running of the business back to 2006. On their evidence, the other Kayas were helping Mr Kaya at the restaurant on the day of the second accident. The link with PVC comes from a company search report produced by an organisation called Duedil (which I take to be shorthand for due diligence). It records that (1) a man called Hasan Urger had been a director of a company called Beriwan Limited running a restaurant at 57 Devizes Road, Swindon for a period that would appear to have lasted up to 2007, thereby overlapping with the running of the business by Mr Kaya; and (2) on 1 July 2011, a matter of some ten weeks before the crash involving Mr Kaya, the same Mr Urger was registered as a director of PVC. LVI suggests these facts cannot be just coincidence; Mr Kaya and Mr Urger must know each other.

118. Mr Kaya denied this, and Mr Newman derided the suggestion. He pointed out that the records do not come from Companies House, but a third-party organisation. The records about Beriwan are confused and unreliable, and on a proper interpretation suggest that the company was out of business before 2007, he submits. Mr Kaya's affidavit of July 2017 gave a different account of his connection with 57 Devizes Road, implying that his connection with that address only started in September 2010. In his evidence on this application he suggested that this was true and that the 2014 witness statement was mistaken in this respect, possibly because of translation problems. He has relied on a document of 28 September 2010 which records a licence for the transfer of the lease from his aunt to him, following the death of his uncle. In any event, submits Mr Newman, Mr Urger was registered as a director of PVC for 1 day only. The attempt to draw a link with Mr Kaya is fanciful or at best tenuous and unreliable.

119. My conclusion on this issue is that the link is genuine and meaningful. The Duedil records are coherent enough, in my view. The link between Beriwan, Mr Urger, and Mr Kaya would be a quite remarkable coincidence, if that is all it was. Mr Kaya's evidence on this and other issues was evasive, inconsistent and unimpressive. At one stage, in evidence in chief, he accepted that he was working in the Swindon restaurant business in about 2008, or at the end of 2007. He claimed he had been working part-time for his uncle and aunt. They, he suggested, had owned the business for 2-3 years before the licence to assign, that is to say from about 2007. I reject that evidence. Mr Kaya was in my judgment playing a leading role in the restaurant business from 2006, as he suggested in his witness statement of 2014. Mr Urger was involved in the business at the same time. They must know each other. It is not just a coincidence that Mr Urger became a director of PVC not long before Mr Kaya had his "accident". The link supports LVI's case.

120. The discontinuance of the County Court claims is of course a further factor that, from an objective standpoint, lends strong support to the conclusion that the claims that were dropped were not genuine. No credible innocent explanation has been offered.

121. Turning to the defendants themselves, none of their evidence created any doubt in my mind about the right conclusions to draw. All presented in a somewhat wooden way,

mainly addressing their answers to the ceiling, the walls, or the middle distance, rather than to me or (as is common) to Counsel asking the questions. They all had a rather flat affect, showing no real emotion. They used odd turns of phrase. When asked what they had to say to the suggestion that the accident had not happened, most responded in neutral tones on the lines of "That is your opinion" or "I disagree". These are all factors on which I place some weight, but not too much. Reliance on witness demeanour is notoriously unreliable. The difficulties may be exacerbated by cultural and language differences. This is by no means the main reason for rejecting their evidence. The main reasons are the inferences identified above, and the lack of credibility of the substance of the defence evidence. I shall deal with the quality and content of each defendant's evidence individually.

Mr Yavuz

122. Mr Yavuz was a minicab driver at the time of the third "crash". By mid-November 2011 he had become a black cab driver. His evidence, having affirmed, showed him to be quite fluent in English, as one would expect given this background. I am satisfied that he was already reasonably fluent by late 2011, and will have had no difficulty understanding what he was saying in his January 2012 witness statement, and what was being said by him and on his behalf in the other, subsequent documents which LVI contends contain lies. He knew what he was doing and saying.

123. On his own evidence, Mr Yavuz made false and dishonest statements in the January 2012 Statement. His evidence now is that he had the VW Sharan for a matter of hours, before handing it back as it was dirty and smelly. He got another car, but stopped hiring any car when he got his black cab licence. The credit hire invoice from DSA said that he had the Sharan for some 3 months. Yet in his January 2012 Statement he verified its accuracy. He has offered some unimpressive explanations for this. In his statement of July 2017, he admitted the statement was wrong, but said only that he had "mistakenly stated" that he had the Sharan for 2 ½ months. At this trial, he has given the further detail I have identified. He has tried to dismiss the falsehoods in the original statement as a technicality, on the footing that he was advised that the inaccuracy was insignificant, and that to tell the truth would only cause unnecessary complication. That could hardly be an excuse, even if it was true. On Mr Yavuz' own account, the invoice did not just misidentify the vehicle he had hired, it falsely represented that he had hired it for 6 weeks longer than he had. This led to a substantial financial claim. This could not sensibly be regarded as a mistake, nor could it honestly be viewed as any kind of technicality.

124. In any event, I reject the latest explanation. The fact is, in my judgment, that he never had any hire car at all. Every version of this story is untrue, to his knowledge. His most recent account is a forlorn attempt to wriggle out of admitting his earlier dishonesty, and to fit his evidence about the Sharan to the various false accounts given by his brother-in-law, Mr Gulbadak, about his hire of the same VW vehicle.

125. Mr Yavuz' dishonesty was further confirmed by lies over his accident history; lies to Dr Chohan about his alleged injuries; and dishonest evidence he gave about the Chrysler Voyager car that was allegedly damaged in the "accident".

(1) In the January 2012 Statement Mr Yavuz said "I have had one previous insurance claim in the last 5 years", which he described as having taken place in Basingstoke.

He referred to another, older, accident in Enfield, when he was the driver at fault. In fact, he had claimed involvement as passenger in a RTA said to have occurred on 15 November 2010 and, remarkably, he had made and signed a witness statement about this, claiming to have suffered whiplash injuries, on 10 January 2012, just two days before he met Mr Moseley and made his statement. He did not mention this injury when asked by Dr Chohan about his past medical history; he said he had one previous accident "about 5 years ago." He said the same in his August 2012 statement. This November 2010 event may have been genuine injury, as there are GP notes about it. At all events, the matter was relevant. When told about it, Dr Chohan changed his assessment of the alleged injuries of 2011 to one of "exacerbation".

(2) Mr Yavuz' January 2012 Statement said his injuries were "whiplash injuries which just made me uncomfortable and I did not go to work for 1 or two days but apart from that it did not stop me going about my normal business". Less than a month later, he told Dr Chohan that he had severe, ongoing pain in his neck, shoulders, upper and central back, the latter made especially painful when bending and sitting. The account given to Dr Chohan was then relied on, over a statement of truth, in the Particulars of Claim. These accounts of Mr Yavuz's injuries cannot both be true, nor can both be honest. In my judgment, both were lies. Mr Yavuz' attempt to blame the interpreter he says was present when he was examined by Dr Chohan lacks any credibility.

(3) As to the Chrysler, some photographs of the car showing damage to the rear end were produced as an exhibit to Mr Yavuz's statement in these proceedings. He gave evidence to me that these photos were probably taken by him. He claimed never to have seen the car again after it was damaged in the accident and taken away for storage. But the photos had been taken in a residential street, and not the enclosed facility where it was inspected by Hoopers. The photos showed the car in daylight, so they cannot have been taken at the time of the accident, which was said to have taken place at night. It is not necessary to reach a definitive finding on the issue, but the strong suspicion must be that the car was returned to Mr Yavuz after its inspection by Hoopers.

Mrs Yavuz

126. Mrs Aylem Yavuz made a short affidavit in January 2017, denying contempt. In it, she said that if permission to proceed was given she would "prepare a fully detailed statement". She never did, nor has any explanation been offered for the failure to do so. She did give evidence to me, having affirmed, and she did so in fluent English. In answer to questions from Mr Gersch she said that the accident did happen, she was there, and she was injured. She said she did not initiate any dealings with accident management company or solicitors, "My husband did that." I accept this last piece of evidence, but not the remainder.

127. Her own evidence, under cross-examination, was that she realised when she made her January 2012 Statement that its contents were false. Her statement referred to one hire car only: the Sharan. Asked why she had led the investigator to believe there had been only one car, her answer was "I was led to believe by my husband that it was not an important detail." She then went on to claim that she had only known of one car. This, in my judgment, was an ineffectual attempt to cover up the reality, that there had been

no hire car. Like her husband, she gave different accounts of her injuries to Mr Moseley in the January 2012 Statement and to Dr Chohan a month later. Like him she told Dr Chohan she had severe, ongoing pain due to the accident. Like him, she adopted the later, more serious version of her injuries, as part of her claim in the County Court, verified by a statement of truth. In her evidence to me, she said that she had not had any back pain as a result of the accident; she had back pain due to pregnancy.

128. She tried to explain away Dr Chohan's record of what she had said to him as a mistake of some kind. Similarly, she sought to explain away her claim for the cost of physiotherapy on the basis that she had been to the claims company a number of times and signed papers that she "didn't read properly because we trusted the claims company." None of this is credible. Mrs Yavuz may be a malleable wife, and she may well have been subject to persuasion by her husband; but I reject the notion that there was any failure of communication when she saw Dr Chohan, and the claim documents verified by statements of truth were prepared by solicitors, not the claims company. I am sure that she knew what she was saying and signing up to in all the documents relied on by LVI.

Mr Sel

129. He was another defendant who made one short affidavit promising a further detailed statement if permission was given, but failed to produce one. No explanation for his failure has been forthcoming either. Having affirmed, in Turkish, he claimed to have told the truth in his affidavit. He said there had been an accident in which he had been sitting next to Mehmet Yakuz, with Mrs Yakuz and Mrs Sel also in the car. He said he was new in the country, his English was insufficient and so Mehmet had dealt with the accident claims company. "He told us we were entitled to make a claim so we contacted them – me and my wife." He said he went to the claims management company with an interpreter, and relied on the company. He had told the truth to the doctor.

130. Again, I accept a part of this. I am sure that Mr Yavuz played a leading role in arranging the claims. As Mr Sel said in his January 2012 Statement (at ¶35), "Mehmet said that we should put in a claim." But I reject the remainder of this evidence. It cannot be true, given my conclusions in respect of Mr Yavuz. More than that, Mr Sel has also revealed himself as a liar about the symptoms of his alleged injuries. His January 2012 statement said that his symptoms had "lasted only about two or three weeks". A month later, he told Dr Chohan that he had "severe, ongoing" central back pain. Challenged over this by Mr Laughland he stood by his account to Dr Chohan, and gave a transparently false explanation: that the pain was varied, and had come back again by the time he saw Dr Chohan. The reality is that he had no injuries, and was inventing injuries and pain to suit the legal claim. Mr Sel cannot and does not seek to fall back on any excuses about problems with interpretation. He accepted in cross-examination that he understood the purpose of taking a statement in January 2012 and knew that it was important to tell the truth. He made no suggestion that Dr Chohan had misunderstood him.

Mrs Sel

131. Again, she made an affidavit which promised a detailed statement which never appeared. She did not give evidence until the last day of the trial, when she affirmed in Turkish and gave evidence through an interpreter. I suspect that she may have been a reluctant witness. In the event, she gave quite a detailed account of events which I am

satisfied did not happen. She said that "I was told we needed to sign forms so we would go [to the claims office] from time to time and I would sign paperwork." She claimed to have told Dr Chohan the truth about her injuries.

132. She slipped up in examination in chief. Asked to explain what had happened on their way to visit cousins, she launched into her account of the alleged accident. But the defendants' story about that accident was that it took place on the way back from the cousins' house. Mrs Sel tried to deny that she had given the evidence that she did. Mr Gersch valiantly sought to excuse this as no more than an understandable mistake, but in my judgment Mr Laughland was right to characterise it as a failure to follow the script.

133. Mrs Sel is also another witness who gave inconsistent accounts of her injuries to Mr Moseley and to Dr Chohan, both of which she verified with a statement of truth. Her January 2012 Statement said she had back pain for three or four weeks and neck pain which passed after two weeks. On that account, all pain had ceased by late October 2011. She told me, in answer to questions from Mr Laughland, that this account was true. Having done so, she was understandably taken aback when confronted with Dr Chohan's record of her claiming to have "severe, ongoing" pain in February 2012. She followed a similar line to her husband, suggesting that the pains were intermittent and had flared up again when she saw Dr Chohan. This was not credible.

Mr Salman Gulbudak

134. Having affirmed, Mr Gulbudak used the interpreter, though he seemed quite fluent in English. He presented as a fluent liar. I am satisfied that he played a secondary but prominent role in the conspiracy to defraud LVI. On his account, his first step after the alleged accident was to call Mehmet because he had recently had an accident, and "because it takes a bit of time" if a claim is put to the insurance company. Again, I accept that Mehmet Yavuz was closely involved in arranging the claims made by Mr Salman Gulbudak and his father. But this defendant's evidence contained features that support LVI's case.

135. The most blatant mendacity concerns the alleged credit hire. A fundamental mistake was made by the conspirators in November 2011, when Mr Salman Gulbudak served his CNF, claiming that he was hiring the Sharan, when Mr Yavuz was alreadymaking the same claim at the same time about the same vehicle. Mr Gulbudak adopted that problematic version of events in his Particulars of Claim. Like Mr Yavuz, Mr Gulbudak has tied himself in knots attempting to extract himself from the consequent difficulty. First, he produced an invoice purporting to show car hire for 95 days. Then in his August 2012 statement for the County Court, he said that he had a hire car "for about a month." He claimed to have had a Mercedes, then a Ford Fiesta, and then the Sharan. That must have been an attempt to steer round the overlapping claims. In these proceedings, he has offered a third version of events, in which he had a Mercedes then the Sharan, for a couple of days, and then the Fiesta. He now confirms that he did not have a hire car until 16 January 2012 as claimed and verified in his statement of case. Mr Gulbudak also made a claim for recovery and storage charges for 95 days which was false on his own evidence. He told me in cross-examination that the car was not stored for more than a month. If that were true he would have known it when he advanced his claim. It is however entirely false. He is another defendant who gave what was on any view an exaggerated account of his injuries to Dr Chohan.

136. At the relevant time Mr Gulbudak was a man of 27, living with his parents, with a modest income at best. On one view of the evidence, which is my own view, he was unemployed at the time of this accident. On any view of the evidence he had monthly outgoings of about £480 (£5,700 a year) to pay off a car loan and the insurance on his BMW. It is not necessary to make a finding as to motive, but here was reason to take part in a fraud. In my judgment, the likelihood is that he was ready and willing to take part in an insurance fraud for financial motives, because it would help him cover these bills.

137. The evidence of Salman Gulbudak's sister, Bahar Gulbudak, did not help him. She, fluent in English, gave a breezy account of her alleged involvement in the aftermath of the accident. I am satisfied it was untrue. Like others, her response to the question of what she said to the suggestion that the accident was made up was to say "I don't agree with that", as if it was a matter of opinion. More significantly, she completely overlooked the fact that she had allegedly been involved in connection with the third accident. Prompted by Mr Laughland to say if there was anything else that shocked her when her brother (allegedly) called to say he had been in an accident she failed to provide the natural response, namely "Yes, it was the second accident in my family in 5 weeks."

Mr Mato Gulbudak

138. He was an altogether unimpressive witness, who gave the appearance of great reluctance, having appeared to give live evidence after failing to make good on a promise to give a detailed written account before trial. Again, there is an aspect of the evidence about his role in the alleged accident that positively supports LVI's case: the airbags. On 10 November 2011, independent assessors inspected Salman Gulbudak's BMW and took photographs. These showed the airbags in the front having deployed. But in February 2012 Mato Gulbudak told Dr Chohan that the airbags had <u>not</u> deployed. He described being "thrown from side to side." In August 2012 Mato Gulbudak's statement in the County Court claim said that his son had braked, with the result that he was forced "forward.. [then] the seatbelt locked on and I was forced back in my seat". He said nothing about airbags.

139. These are different accounts. As Dr Chohan said (and is common sense), airbags are more likely to deploy in a front/rear accident than a side-on shunt as alleged here. In any event, as Mr Laughland submits, neither account fits happily with the deployment of airbags. In his evidence to me, Salman Gulbudak tried to suggest, for the first time, that his father's airbag might have gone off. Mato Gulbudak, in his evidence, failed to remember any airbags going off. Confronted with the record of what he had said to Dr Chohan he was visibly confused. He did not know what to say. He chose to deny that Dr Chohan had asked him about the matter. As I say, I accept Dr Chohan's evidence. Deployment of airbags would be inherently memorable. My conclusion is that the deployment of the airbags depicted in the assessors' photographs occurred on some other occasion. The damage they found was not caused in the crash alleged by the Gulbudaks in the County Court and in this Court.

Mr Kaya

140. His account of the circumstances of the alleged crash and what followed is that, unsure what to do, he called his nephew Hakki Sahin, who was and is accustomed to help him

out. Sahin gave him contact details for PVC, whose advert was in the window of the shop where Sahin worked. Mr Kaya called PVC, they came swiftly, and Sahin picked up driver and passengers to take them home. Sahin gave evidence to similar effect. This is a bit odd. The two witnesses' accounts of how many numbers were provided by Sahin were discrepant, but more significantly Sahin's evidence was gravely undermined by his apparent failure to recall his involvement in an earlier alleged accident, less than three weeks before this one: [99] above. That accident was said to have involved his cousin as the driver, and several other passengers.

141. There is more. First, Mr Kaya made the standard form allegations of "severe, ongoing" whiplash injuries when he saw Dr Chohan. Secondly, he made a claim for credit hire charges which he later dropped altogether, stating that the "documentation … did not reflect the actual hire". He tried to attribute this decision to discrepancies identified by his lawyers, but I find that the real reason was that he knew the documents were false and was trying to avoid the need to confront that problem. Thirdly, there is the matter of his claims history. He made a claim in December 2011 which was repudiated by the MIB on the grounds that the alleged perpetrator was an ex-police officer who said, truthfully, that there had been no such accident as alleged. Mr Kaya then failed to pursue a claim. He made a later claim for personal injury in a RTA alleged to have happened in June 2012, but in his August 2012 witness statement for the County Court he said that the only accident after the index crash was that of December 2011. If one adds to this the link between Mr Kaya, Mr Urger, and PVC ([117]-[119] above), and Mr Kaya's incredible evidence attempting to explain this away, the picture is again one in which not only is the defendant's credibility fatally damaged, aspects of the defence evidence reveal mendacity which lends support to the prosecution case.

142. It is no wonder that Mr Kaya discontinued his County Court claim, which lends further support to the case for LVI. His evidence that discontinuance was forced on him by his lawyers for some unaccountable reason was no more credible than the similar evidence given by Mr Yavuz and Gulbudak. All three, in my judgment, must have received and acted on their lawyers' advice to discontinue, in the knowledge that they otherwise risked being found to have brought fraudulent claims.

Ayten and Gunes Kaya

143. It follows from the findings above that their evidence of involvement in the crash and of consequent injuries must be false. I agree with Mr Laughland's submission that both were wholly unconvincing. Pressed on the basic issue of how, on her case, she had managed to ensure that her children were collected from school on the afternoon of the crash, Gunes Kaya became increasingly confused and incredible.

144. According to the CNFs, verified by statements of truth, the crash occurred at 3pm. The family, they claimed, were on the way back from Swindon after cleaning at the restaurant in 57 Devizes Road. Plainly, the time taken to deal with the crash, call PVC, get the vehicle collected, and get a lift home from Hakki Sahin would have been too long to allow Mrs Kaya to collect her son when school finished at 3.30. Ayten Kaya's evidence was that they were at the scene for 30-45 minutes. The defence evidence was that the traffic was bad. Gunes Kaya therefore claimed, in her oral evidence, that she had made arrangements with neighbours the previous evening, just in case she was late back from Swindon. When the improbability of this was pointed out, she claimed for the first time to have made roadside calls to arrange the pick-up of her son.

145. As to Dr Chohan, as I have said, I accept his evidence. His records of what he was told are accurate and reliable. His evaluations of the defendants were honest. But he did not assert in his evidence to me that those assessments were correct. He was not asked to do so. I conclude that on that Saturday at Goldsworth's offices he was persuaded by these defendants that they had in fact sustained the injuries they allege, and that on this occasion his filters for dishonest or false claims did not operate successfully.

146. The fact that there could have been further investigations by LVI does not undermine these conclusions. The existence of reports that evidence the fact of damage to the defendants' vehicles is explicable on the basis that those vehicles did suffer damage, but not on the occasions alleged. They were low value vehicles, with the exception of Mr Gulbudak's. In every case, the value of the claims exceeded by a considerable margin the value of the cars. The assumed good character of the defendants is a factor which I have taken into account, but it does not of itself, or in combination with the other factors relied on by the defence, undermine the obvious inferences which I have identified.

Application of the law to the facts

147. In my judgment, proof that these defendants knowingly made false statements in their claim forms, particulars of claim, and in the schedules of loss and witness statements in the County Court proceedings establishes that each of them is guilty of contempt of court. I am therefore satisfied that Mr Yavuz is guilty of the fourth, fifth and sixth contempts alleged against him; that Mrs Yavuz is guilty of the third and fourth contempts alleged against her; that Mr Sel is likewise guilty of the third and fourth contempts alleged; that Mrs Sel committed the second and third contempts alleged against her. I find that Mr Salman Gulbudak is guilty of the third, fourth and fifth contempts alleged against him, and Mr Mato Gulbudak of the second and third alleged against him. I find Mr Kaya guilty of the second and third contempts alleged against him. Ayten Kaya and Gunes Kaya both committed contempt in the two respects alleged against them.

148. In preparing this judgment, although no issue was taken about it at the hearing, I have been left wondering whether the same is true of the January 2012 Statements, or the other witness statements made before proceedings were issued. It is not obvious that witness statements of this kind are documents falling within the scope of CPR 32.14, or the doctrine of contempt of court. Not only were there no current proceedings, I have not been shown any rule or Practice Direction that requires such a statement to be made or, if made, to be verified by a statement of truth. It seems to me at present that CPR 22 is directed at witness statements within the meaning of CPR 32, namely those which are to stand as a party's evidence in legal proceedings.

149. I have similar reservations about the initial, pre-action schedules of loss. It is clear that the CPR require verification of such schedules when they are attached to the Particulars of Claim pursuant to PD16 4.2, but it is less clear that this is so as regards a pre-action schedule.

150. I do not think it desirable to express a conclusion on these issues in this judgment, having heard no argument about them from either side. I am willing to hear such argument. But I do not think I necessarily need to resolve the issues, because I do not believe that any doubt over these questions is likely to affect sentence. Lies told before

the actions began can be treated as aggravating features of the contempts that were later committed, as part of a course of conduct.

Footnote

151. There is a related question which, again, does not affect sentence. It is not a part of LVI's case, but it is a necessary implication of that case, that false statements which these defendants did not believe to be true were made on their behalf in another class of documents verified by a statement of truth, namely the CNFs filed for them through the online portal. The statements of truth on those documents were made by their solicitors. I do not propose to make any findings about this. I mention the matter only because some evidence was led about these CNFs, which led to me query whether contempt proceedings could be brought in respect of such a statement. I express no view on whether this is desirable, but note that it must be the case that many RTA claims are resolved without proceedings, on the basis of CNFs in Form RTA1.

152. I received some submissions from Mr Laughland on these issues. He drew attention to the Practice Direction on Pre-Action Conduct of April 2010 ("the General PAP"), and to the Pre-Action Protocol for Low Value Personal Injury Claims in Road Traffic Accidents of the same date ("the PI Protocol"). These were both in force at the relevant times. The PI PAP set out a process for claims of this kind, requiring a claimant to use a CNF in form RTA1: see para 1.3(1). Para 6.1 of the PI PAP set out the requirements for completion of the CNF. These included, at para 6.6, a requirement that the statement of truth in form RTA1 be "signed by the claimant or the claimant's legal representative."

153. The PI PAP contained nothing about the consequences of false verification. But, Mr Laughland points out, the General PAP stated (at para 4.2) that "The court will expect the parties to have complied with this Practice Direction or any relevant pre-action protocol." It may be arguable therefore that a false and dishonest statement in a CNF in Form RTA1 could found an application to commit for contempt, but it cannot be said that the matter is free from doubt. To say that the court "will expect" compliance with a PAP is not necessarily equivalent to saying that parties *must* comply. The General PAP states that parties who do not comply may be asked for an explanation, and warns of costs consequences, but not of the prospect of contempt proceedings. This is a topic that may be worthy of consideration by those responsible for these PAPs, and perhaps the Civil Procedure Rules Committee.