

## INSURANCE LAW BULLETIN

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### COST CONSEQUENCES IMPOSED FOR “EMPTY” BAD FAITH ALLEGATIONS

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Substantial indemnity costs have recently been imposed on a party found to have made empty bad faith allegations against an insurer. In *Sagan v. Dominion of Canada General Insurance Company* [2014] O.J. No. 1722, the insurer brought a motion for costs following its success in having the action dismissed on summary judgment. The plaintiff initiated an action for non-earner benefits, mental distress and contractual damages. Numerous allegations of bad faith, misconduct and incompetence were included in the statement of claim but no evidence was put forward to support these claims. Counsel for the insurer took the position that the court should impose substantial indemnity costs to discourage unfounded allegations of bad faith.

A review of the case law confirmed that substantial indemnity costs were appropriate in situations where a party makes empty bad faith allegations. Justice Lofchik imposed substantial indemnity costs for the day of the hearing of the motion and partial indemnity costs up to the day of the motion. Several factors were listed as the rationale for imposing cost consequences including: (1) diminishing frivolous litigation; (2) forcing litigants to focus on the real issues; and (3) encouraging reflection beyond an emotional response.

Justice Lofchik’s costs ruling in *Sagan* will hopefully serve as a precedent to discourage plaintiffs from making unwarranted bad faith allegations against insurers.