# Roose + Partners

Fraudulent devices

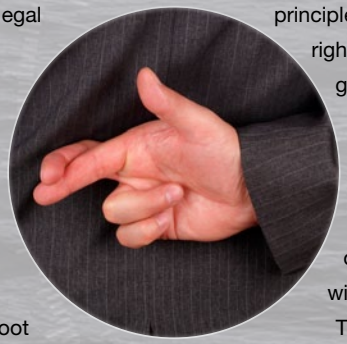
## Does a simple lie invalidate an insurance claim? Not necessarily…

On 20 July, 2016, the Supreme Court handed down a judgement which will be of great significance to insurers covering all classes of business because it changes the consequences of the use of a fraudulent device by an insured in certain circumstances in connection with the presentation of an insurance claim.

It has long been the case that an insured who tells a lie when submitting an insurance claim will jeopardise his claim even if it was in all other respects a valid claim. The Supreme Court judgement in Versloot Dredging BV and Another v HDI Gerling Industrie Versicherung AG changes this position in favour of the insured when the misleading information is immaterial to the insured's right of recovery under the policy.

Jane Martineau, our policy specialist, reports on the Judgement below:

The Insurance Act 2015, which comes into force on 12th August, 2016 covers the legal position on fraudulent claims in Part 4 and the remedies available to insurers if an insured makes a fraudulent claim. However, it does not cover the situation where a fraudulent device is used, which has been the subject of consideration in recent cases.



In the Judgement the Supreme Court judges have determined the position in regard to the use of fraudulent devices i.e. where the claim is genuine but the insured has told collateral lies to embellish its claim. In the case of Versloot Dredging BV and Another v HDI Gerling Industrie Versicherung AG the vessel "DC Merwestone", was incapacitated by a flood in her engine room. The owners, Versloot told the insurer's solicitors that the crew had informed them that the bilge alarm had sounded at noon that day but could not be investigated because the vessel was rolling in heavy weather. This was a lie told by the owners to strengthen their claim and divert insurers' focus from defects in the vessel for which owners might be responsible. The lie was in fact irrelevant as it was found the cause of the owners' loss was an insured peril, namely perils of the sea.

The judge at first instance found the lie was a "fraudulent device", which gave the insurers a defence to the claim and the Court of Appeal concurred. The Supreme Court held by a majority of 4 to 1 that the "fraudulent device" rule does not apply to collateral lies, which are immaterial to the insured's right to recover under the policy term and conditions.

There is a helpful summary of three possible situations that may arise in regard to insurance claims where fraud may have been a factor summarised by Lord Sumption in the opening paragraph of his judgement as follows:-

"Three possible situations may be relevant. First, the whole claim may have been fabricated. In principle, the rule would apply in this situation but would add nothing to the insurer's rights. He would not in any event be liable to pay the claim. Secondly, there may be a genuine claim, the amount of which has been dishonestly exaggerated. This is the paradigm case for the application of the rule. The insurer is not liable, even for that part of the claim that was justified. Third, the entire claim may be justified but the information given in support of it may have been dishonestly embellished, either because the insured was unaware of the strength of his case or else with a view to obtaining payment faster and with less hassle. The present appeal is concerned with embellishments of this kind."

The full judgment can be accessed by clicking here https://www.supremecourt.uk

**As ever, each situation will turn on its facts. The key point to consider will be whether the statement made by the insured was irrelevant in the sense that the claim would have been equally recoverable whether the statement was true or false. If you require any further information or advice on the effect of this decision or any policy issues, please email Jane.Martineau@Rooselaw.co.uk.**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