



*Fraudulent Devices:  
When does dishonesty  
forfeit an otherwise valid  
insurance claim?*

Chirag Karia Q.C.

# The Law on Fraudulent Claims

- The Fraudulent claims doctrine has a long pedigree.
- Genuine part of claim forfeited if claim partly fraudulent or fraudulently exaggerated: *Britton v Royal Insurance Company* (1866).
- Home burglary involving theft of £16,133.94 worth of goods. Fraudulent exaggeration by addition of £2,000 claim for computer forfeited entire claim: *Galloway v. Guardian Royal Exchange (UK) Ltd* (1999).

# The Fraudulent Device Doctrine

- “*Dearth of convincing authority*” before *Agapitos v. Agnew (The Aegeon)* (2003).
- A dishonest attempt to obtain a benefit to which assured is not entitled vs. dishonest embellishment of valid claim.
- Facts of *The Aegeon*: ship destroyed by fire; post-action, insured fraudulently misrepresented date of hot work.
- Held: No defence, as § 17 MIA duty of good faith ended with litigation.

# *The Aegeon–Mance LJ’s dictum*

- Mance LJ *obiter* and tentatively suggested extending the fraudulent claims doctrine to include:

*“the use of fraudulent devices or means which would, if believed, have tended, objectively but prior to any final determination at trial of the parties’ rights, to yield a not insignificant improvement in the insured’s prospects—whether they be prospects of obtaining a settlement, or a better settlement, or of winning at trial.”*

# *1st Instance Decisions applying The Aegeon*

- *The Game Boy* (2004): claim forfeited by assured handing over documents to the insurer's solicitor after the loss which assured knew to be false.
- *Aviva Insurance Ltd v Brown* (2012): assured suggested mother's old home, which had passed to him, as rental accommodation during subsidence repairs. £2.35 million subsidence and accommodation claim forfeited.

# *DC Merwestone – the Facts*

- Loadport (Klaipeda) temperatures of  $-10^{\circ}\text{C}$  to  $-35^{\circ}\text{C}$ . Chipped ice cleared using emergency fire pump; Crew negligently failed to close the sea inlet valve and drain the system.
- Seawater in pump froze, cracking the pump and bending the restraining bar over its filter cap.
- Ice melted during voyage to Bilbao leading to seawater ingress into bowthruster room and through pipe tunnel to engine room bilges. ER flooded. Bowthruster alarm did not ring.

# *DC Merwestone – the defences*

- No peril of the seas as seawater ingress neither fortuitous nor “of the seas”;
- No crew negligence (“Inchmaree”) cover because Owners guilty of 7 separate instances of causative want of due diligence;
- Owners privy under s. 39(5) of the MIA to causative unseaworthiness; and
- Owners’ Managers’ CEO had deployed 9 separate fraudulent misrepresentations in support of the claim.

## *DC Merwestone – Popplewell J*

- All insurers' defences failed, save for one fraudulent device.
- CEO genuinely believed as realistic claim in letter to insurers' solicitors that alarm had sounded at noon but crew ignored it.
- But CEO reckless as to (implied) representation in letter that crew had reported noon alarm and said it was not investigated as it was believed to have been caused by the rolling of the Vessel.
- €3.2 million claim forfeited.

# *DC Merwestone – Appeal Arguments*

- Judge wrong on facts to find implied representation in letter and recklessness by CEO.
- Fraudulent claims doctrine should not be extended to fraudulent devices-Mance LJ's dictum in *The Aegeon* should not be followed, being disproportionate; devices are conceptually distinct from claims.
- Doctrine would violate Article 1, Protocol 1 of the European Convention of Human Rights ("A1P1") protecting right to property.

# DC Merwestone (2014) – CA

- Appeal dismissed. Policy favoured adopting Mance LJ's tentative suggestion as ratio; fraudulent devices are a sub-species of fraudulent claims.
- A1P1 engaged, but fraudulent device doctrine is proportionate as deterrence is a legitimate aim, and "*the fact that forfeiture is a harsh, in some circumstances very harsh, sanction does not mean that it is disproportionate to that aim*".
- Appeal pending to the Supreme Court.

# *DC Merwestone–Tweaked Test*

The fraudulent device doctrine requires:

1. Fraudulent devices or means;
2. Directly related to the claim;
3. Intended by the insured to promote his prospect of success; and
4. Tending to yield a significant improvement in insured's prospects of success prior to any final determination of the parties' rights.

# *Insurance Act 2015*

- §12 gives the insurer remedies in respect of “fraudulent claims”.
- Insurer not liable to pay fraudulent claim; can recover sums already paid for that claim; and can terminate cover from the time of the fraud.
- Obligations accrued before the fraudulent act are not affected.
- “Fraudulent claims” deliberately not defined and left to the courts to sort out.
- Are fraudulent devices included?

# Handling Fraudulent Device Allegations

- Don't lie!
- But existence of the defence has a chilling effect, as a mistaken statement can be alleged to be fraudulent.
- Insurers hold all the cards; an honest insured can be forced to settle due to the catastrophic consequences of an incorrect statement being found to be fraudulent.
- Materiality requirement minimal.
- Start a court action – rule ceases to apply.

**Thank you for you for listening**

CHIRAG KARIA Q.C.

Quadrant Chambers  
10 Fleet Street  
London EC4Y 1AU  
020 7583 4444

[chirag.karia@quadrantchambers.com](mailto:chirag.karia@quadrantchambers.com)

<http://www.quadrantchambers.com/barristers/profile/chirag-karia-qc>

