

Legal Update

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*Versloot Dredging BV v HDI Gerling
Industrie Versicherung AG
[2016] UKSC 45*

Does the fraudulent claims rule apply to fraudulent devices (collateral lies)?

Facts

Marine insurance policy provided cover for:

- a) Loss attributable to crew negligence, unless the owners were personally guilty of want of due diligence
- b) Unseaworthiness, unless the owners were aware of it

False statements by owners' director

- a) That the alarm had gone off nine hours before the water was seen in the engine room
- b) No action was taken because the alarm was attributed to the ship rolling in heavy seas
- c) He had been told this by the master and the crew

Findings at trial - Popplewell J

- Damage was caused by a combination of:
 - Crew negligence
 - Contractor negligence
 - Unseaworthy pumps
- Owners not guilty of want of due diligence, or aware of unseaworthiness
- False statements not relevant to the cause of the loss
- Held (with regret) that the false statements invalidated the claim – applied *Agapitos v Agnew (The “Aegeon”)* (2003) QB 556

The test proposed in *Agapitos*

A fraudulent device is subject to the fraudulent claims rule if:

- a) It is directly related to the claim, and intended to promote the claim;
- b) It would, if believed, tend, 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).

Majority of the Supreme Court

- Distinction between a fraudulent claim and fraudulent devices/collateral lies
- The lie is dishonest, but the claim is not
- Fraudulent claims rule is not justified in the case of collateral lies
- Already sufficient sanctions to discourage collateral lies

Majority of the Supreme Court (continued)

- The test in *Agapitos* rejected. Reasons:
 - no requirement of inducement
 - difference between an insurer's assessment at inception of policy, and at claim time
- The lie must be material to the recoverability of the claim based on the true facts, and collateral lies are not

Lord Mance - dissenting

- Proposed test in *Agapitos*
- Incorrect to assess materiality with hindsight
- Makes no sense to say “the lie is dishonest, but the claim is not”
- Deterrent effect justifies the rule

What does *Versloot* mean for insurers in New Zealand?

- Creates uncertainty
- *Stemson v AMP General Insurance (NZ) Limited*
[2006] Lloyd Rep 1 IR 852
- Express provisions