Fraudulent Devices in Insurance Claims

VERSLOOT DREDGING BV & OR V HDI GERLING INDUSTRIE VERISCHERUNG AG & ORS

[2016] UKSC 45

It is well established that an insured will not recover a fraudulent claim – the 'fraudulent claims rule'. This rule is in place to discourage fraud, having regard to the particular vulnerability of insurers, who will typically know a lot less than the insured about the facts which give rise to a claim. However caselaw had extended this rule to include claims made using a 'fraudulent device', such as a false statement made in support of a claim, even if that statement was irrelevant to whether the claim was otherwise valid or not.

The Supreme Court has now reversed this in the case of Versloot Dredging, so that now, if an insured makes a false statement in support of a claim, that claim cannot be rejected for that reason if the statement is irrelevant to the merits of the claim or the amount payable. The reasoning is that the statement does not lead to the insured obtaining more than it is legally entitled to under the insurance contract.

This should be contrasted with the situation where an insured exaggerates its claim, which leads to the whole claim being rejected. This is because the insured is using fraud to obtain more than its entitlement under the insurance contract, and the courts will not sever the exaggerated part from the honest part of the claim.

In Versloot Dredging, the ship's main engine was damaged beyond repair due to seawater flooding the engine room, and the shipowners claimed on their insurance. One of the shipowners' managers suspected that what had happened was that the ship's bilge alarm had sounded a warning about the leak but the crew had been unable to investigate or deal with it because of the rolling of the ship in heavy weather. However the manager falsely told the insurers that one of the crew members told him about the alarm activation, in order to strengthen the claim and obtain a quicker payment. He was concerned that otherwise insurers would take the time to investigate the condition of the ship, and that they might conclude that the damage had been caused by a defect in the ship's hull or machinery which should have been picked up before by the shipowners carrying out due diligence, which would mean they would then avoid the claim.

The insurers did dispute the claim. The shipowners however did not go on to repeat or otherwise rely on the false statement. At trial the judge held that the loss had been caused by crew negligence, contractors' negligence and unseaworthy pumps, but that the owners were not personally guilty of want of due diligence, or aware of the unseaworthiness of the ship, so the claim was covered by the policy. The judge's findings meant that whether the crew had heard the bilge alarm or not was irrelevant to the claim. The judge however reluctantly held that the insurers could still reject the claim because of the false statement, albeit it had been made right at the beginning of the claim, had not been persisted with at trial and was irrelevant to the merits or the amount of the claim. The shipowners appealed and were ultimately able to recover because of the Supreme Court's decision that the use of fraudulent devices (or, as it renamed them, 'collateral lies') in support of genuine claims should not lead to forfeiture of the claim, where such devices are irrelevant to the existence or amount of the claim

The fraudulent claims rule and therefore the decision in Versloot Dredging is unaffected by the introduction of the Insurance Act 2015. Insofar as fraudulent claims are concerned, the Act only operates to change the effect of a discovery of a fraudulent claim on the insurance contract, in that insurers can no longer (for contracts made after 12 August 2016) terminate the whole of the contract, only terminate it from the time of the fraudulent act, meaning that genuine claims made in respect of earlier events are still valid. However this decision is part of the general trend towards rebalancing the contractual power from the insurer to the insured, of which the Insurance Act is an obvious example, with its watering down of the insured's duty of disclosure, more proportionate remedies for breach of contract and the abolition of the 'basis of the contract' clause

amongst other things, and (from 4 May 2017) the ability for insureds to claim damages for late payment of claims.

CONTACT US

For further information about any of the issues raised in this guide, please contact:

Michael Frisby
Partner

+44 (0)1483 734244
michael.frisby@stevens-bolton.com

Valerie Fogleman
Consultant

+44 (0)1483 401226
valerie.fogleman@stevens-bolton.com

Gary Parnell
Partner

+44 (0)1483 734269
gary.parnell@stevens-bolton.com

Wey House, Farnham Road, Guildford, Surrey GU1 4YD Tel: 01483 302246 Fax: 01483 302254
www.stevens-bolton.com

Stevens & Bolton LLP