



20 July 2016

PRESS SUMMARY

Versloot Dredging BV and anr (Appellants) v HDI Gerling Industrie Versicherung AG and ors (Respondents) [2016] UKSC 45
On appeal from [2014] EWCA Civ 1349

JUSTICES: Lord Mance, Lord Clarke, Lord Sumption, Lord Hughes, Lord Toulson

BACKGROUND TO THE APPEAL

The issue on this appeal was whether the insurers of a ship were entitled to repudiate liability on the ground that the insured had told a lie in presenting the claim, if the lie proved to be irrelevant to the insurer's liability. The vessel *DC MERWESTONE* was incapacitated by a flood in her engine room. Her main engine was damaged beyond repair. The flood was caused by (i) the crew's negligence in failing to close the sea inlet valve in the emergency fire pumps, (ii) damage to the pumps, (iii) the negligence of previous contractors who had failed to seal bulkheads and (iv) defects in the engine room pumping system. The appellant owners presented an insurance claim to the respondent insurers for €3,241,310.60. They 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 the claim, accelerate payment under the policy, and take the focus off any defects in the vessel for which the owners might have been responsible. The lie was in fact irrelevant to the claim, since the vessel's loss was found to have been caused by a peril of the seas. But the judge held that the owners' lie was a "fraudulent device", which meant the insurers did not have to pay out under the policy. The Court of Appeal agreed.

JUDGMENT

The Supreme Court allows Versloot Dredging's appeal by a majority of 4 to 1, holding that the 'fraudulent device' rule does not apply to collateral lies, which are immaterial to the insured's right to recover. Lord Sumption gives the lead judgment. Lord Clarke, Lord Hughes and Lord Toulson give concurring judgments. Lord Mance gives a dissenting judgment.

REASONS FOR THE JUDGMENT

The common law has long prohibited recovery from an insurer where the insured's claim has been fabricated or dishonestly exaggerated ("the fraudulent claims rule"). The purpose of the rule is to deter fraud. This appeal concerns the more recent extension of that rule to "fraudulent devices", i.e. "collateral lies" told by the insured to embellish their claim, but which are irrelevant because the claim is justified whether the statement was true or false [1,9].

The fraudulent claims rule does not apply to collateral lies. The dishonest lie is typically immaterial and irrelevant to the honest claim: the insured gains nothing by telling it, and the insurer loses nothing if it meets a liability that it has always had [23-26]. If a collateral lie is to preclude the claim, it must be material. The real test of materiality is that a collateral lie told in the course of making a claim must at least go to the recoverability of the claim on the true facts as found by the court [35-36]. The test is not, as suggested by Mance LJ in *The Aegion* [2003] QB 556 and the Court of Appeal and Lord Mance

in this case, an attenuated test of materiality requiring that the prospects of the claim should apparently be improved, given the facts known at the time of the lie [18-22, 31].

Lord Clarke concurs, adding that public policy requires that the collateral lie be irrelevant to the insured's claim, and that it would make little sense to support a rule that bars claims involving collateral lies uttered before proceedings are begun, and not afterwards [39-49]. Lord Hughes agrees, pointing out that this extension of the important fraudulent claims rule has been left open by the Insurance Act 2015. The forfeiture of the entire claim is not a proportionate sanction for the teller of a collateral lie, who will suffer in other ways if his lie is discovered [65-104]. Lord Toulson, concurring, concludes that this outcome is just and appropriate [105-110].

In a dissenting judgment, Lord Mance would have dismissed the appeal, upholding the principle set out in *The Aegeon*, but modifying it so as to require a heightened threshold test of materiality of a "significant improvement of the insured's prospects" at the time of the lie (rather than retrospectively at the time that the court determines the facts), in order to bar the insured's claim [111-134].

References in square brackets are to paragraphs in the judgment

NOTE

This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at:

<http://supremecourt.uk/decided-cases/index.html>