

Tales of a gum shoe: investigating fraud

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Fraudulent Marine Claims
The Importance of an Early Claimant Statement

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Recognition of Signs of Fraud

In almost 20 years of handling suspect claims, one of the strongest impressions I have been left with, is the likelihood that fraud features in far more claims than any of us appreciate. I am not referring simply to outright scuttling, but to the full range of deceit insureds are capable of, from suppression of risk elements on inception or renewal, through to concealment of unseaworthiness and breaches of policy terms during the assessment phase.

So often over the years, I have been appointed to briefly check the merits of an otherwise non-suspect claim, only to discover circumstances pointing to anything from deliberate scuttling to claim killing breaches of the duty of utmost good faith.

I appreciate that the appointment of investigative assessors is neither practical nor economic in every case. However, I have long advocated the appointment of an investigator to *any* maritime claim where the likely loss breaches a certain financial threshold.

In the NZ environment, I am firmly of the view that if *any* claim is likely to exceed \$100,000.00, there is justification for an investigator to be authorized to interview the insured and review the circumstances of loss to an appropriate budget threshold. Even 10 hours of enquiry by an experienced investigator, is in my view, a small price to pay for the piece of mind of knowing that a claim is either above board, or deserving of further scrutiny.

In my early years of looking into maritime fraud, I was a good deal more aware of the religion of "red flags" practiced by claims staff, than I hear of these days.

It may well be that a generation of healthily cynical claims officers has emerged from those days, but I suspect not across the board.

At times I have seen signs that claims officers have not, as a matter of routine when first logging a claim, run a credit check on the claimant, nor checked on advertised attempts at pre-loss sale, nor taken note of the fact that a policy is only months or even weeks old at the time of loss. In this modern internet era, such resources are readily available at the desktop stage of claim management.

This is not to say that the instincts of experienced staff do not prevail. In most cases, investigative assessors are appointed. But alarm bells occasionally ring, when I have been appointed “just in case”, only to discover these warning signs. One is often left wondering how many slip through. Fundamental “red flags” often pop up, that should have been evident at the outset. If staff training does not include ready reference to a list of typical “red flags”, perhaps the time has come for that discipline to regain its former emphasis.

The Importance of Early Interview

If there is one survey or investigative priority that should be emphasised above all others, it is that of securing the insured at the very earliest stage, for interview. Too often these days we see claimants who are pursuing suspect claims, not being subjected to the process of signing a statement in support of a claim. Sometimes evidence of considerable value is lost when a cornered insured declares;

“I didn’t say that to the assessor”

I believe that the most powerful weapon insurers have when faced with a suspect claim, is an early claimant interview and signed statement.

Such statements should address (at the very least) the following:

- Issues related to the initial duty of disclosure at policy inception including moral risk (convictions, debt and prior legal proceedings (whether civil or criminal)).
- Insurance history including cancellations, claims (whether declined or not) and refusals by insurers to provide cover or renew.
- In cases of commercial claims, maritime qualifications (master and (in some cases) crew) and manning levels.
- In commercial cases - survey refusals, uninsured prior casualties and repairs between surveys.

- In commercial cases - maritime prosecutions (insured, master and crew), seizure of vessels, equipment or catch.
- State of business solvency and owner's financial position.
- Mortgages, loans and ability to service liabilities.
- In cases involving fishing vessels, quota and costs of leasing.
- Loss of customers and market changes.
- Circumstances of loss.
- Proximity of rescue resources at time of casualty (another often an under-emphasised issue)
- In some cases – alibi of master and crew.
- Radio traffic and circumstances of emergency notification.
- Seaworthiness of vessel at time of casualty.
- Alcohol consumption by master and crew (a frequently overlooked factor).
- Inventory and personal property on board, or removed prior to casualty.
- Fuel and equipment on board on sailing.
- In fishing boat claims - catch taken or lost.
- Individual and sequestered interviews of master and crew.

I have always adopted the parallel priorities of seeking a high level of detail when interviewing a claimant, and then subjecting the story to intense scrutiny in the first hours or days of assessment. Critics might suggest that the goal of such an approach is to “trap” a claimant into misrepresentation.

However, my view has always been that a claimant who tells the truth about all matters raised by the insurer, has nothing to fear from the assessment process.

Even in the case of a genuine casualty, claimants sometimes lie – be it to recover a deductible or premium, or to simply profit in some small way from their otherwise genuine loss.

But it is not the role of the assessor or investigator to overlook or under-emphasise such deceit in a claim otherwise thought to be genuine. There are checks and balances available both in law, policy and claim management, for concessions to be made by the insurer at its discretion.

For my part, I will give any claimant the opportunity to tell either the truth or to lie. It is their choice. Insurers and surveyors need to know at any early stage if they are dealing with a claimant who is prepared to lie. So, my goal is always to "credibility test" every claimant in the very early stages of my instructions.

One example of the enthusiasm that I believe should be applied to the securing of a signed statement arose in the case of a Mr and Mrs K three or four years ago in Northland. In that case, I followed the insured couple to Australia - just to secure their signatures.

Mr and Mrs K had decided that both their financial future and retirement bliss would be best served by selling their home, and buying a big volume, but very tired Hong Kong built launch. Needless to say, within a few months, a new and fascinating world of diesel bug, fibreglass pox, strange noises and oil consumption that rivalled that of diesel, was being experienced.

Having sat in a berth at Tutukaka through a beautiful Northland summer whilst their neighbours came and went, they quietly slipped their tethers one gentle autumn morning and cruised, no doubt with some trepidation, a short distance to nearby Mimiwhangata Bay where they dropped anchor and went ashore for a picnic.

To their later professed horror and astonishment, barely had the first sips of chardonnay been supped, when their magnificent home at sea exploded in flames (photograph) and burned to the waterline.

A local surveyor was appointed, but concentrated on recovery of the remains, paying scant regard to further consideration of the insureds' version of events. I was appointed about a week after the event, when a claims manager became concerned. I made interview of the insured couple my first priority and quickly discovered to my alarm, the history of the vessel, the insureds' dire financial circumstances, a recent increase in sum insured subject to a very doubtful valuation (and valuer).

Of greatest concern was my discovery in interview that the insured had rowed ashore equipped only with sandwiches, chardonnay, and that most essential of all picnic requisites - **their passports and credit cards!**

I became even more alarmed when, on the day after interview (a Friday) I contacted the insured to arrange to meet for the signing of comprehensive statements prepared overnight, only to discover that the couple was an hour away from leaving for the airport.

I then learned that they had, some weeks earlier booked to travel to Australia to live indefinitely with Mrs K's ailing mother in Winchelsea, a country town south of Melbourne.

Despite my readiness to meet them at the airport for signing of statements, they put every possible obstruction in my way. Only then on questioning the couple further by phone, did I become aware that many of their personal possessions and clothes had been removed from the vessel in the weeks prior to their "unexpected" loss, packed in suitcases and stored with a daughter in Auckland.

Not wishing to put Mr and Mrs K on notice, I took details of their Australian contact address and made an arrangement to "talk again on Monday". For some reason, they obviously thought I meant – by phone.

On the Monday morning I knocked on the couple's door in Winchelsea, reminding them of our agreement to "*talk again on Monday*", and proceeded to go through their detailed statements with them. Their subsequent signing of the documents confirmed that several significant misrepresentations had been made. These were to ultimately be their undoing.

I was to later find a farmer who had heard the explosion echo across the bay. He had grabbed his binoculars, and had noted with some surprise, the fact that the only people on the beach (whom he assumed to be the owners) appeared to be strolling towards the burning ship as it lay at anchor, seconds after it exploded. With some justification, the witness thought it odd that owners would not be running towards the developing casualty. This sighting was of course at odds with the insureds' signed statements to the effect that they had been sitting on a blanket on the beach opposite the vessel, when it had mysteriously exploded.

Needless to say, the claim was successfully defeated, without the insured even seeing the justification to issue legal proceedings.

It would be fair to say, that most dishonest claimants fail to see the potential risks of signing statements in support of their claims. However, I have occasionally come across some claimants who go to extraordinary lengths to avoid signing a statement.

These are the sort of folk who I believe, conduct their affairs generally, with such duplicity, that they avoid putting anything in writing wherever possible.

A few examples come to mind such as:

1. Most of you will have heard of the now infamous "Gate Case", where Christopher Gate facilitated the removal of his million dollar luxury launch from its berth at Half Moon Bay, and its scuttling in the Hauraki Gulf.

Sun Alliance was immediately suspicious of the claim, for reasons well known to most. I was instructed within hours of claim notification, and undertook - because I was determined to get him "on record" as soon as possible, an initial telephone interview with Mr Gate, with the intention of getting him committed to a statement the next day.

In the circumstances I would normally have tape recorded such an initial interview, but the urgency involved, meant that I did not have that resource available to me. Having secured Mr Gate's description of events, I immediately had a draft statement typed, and set out to secure his signature.

With suspect insureds, I invariably give as short a notice of such a requirement as possible, so that minimal avoidance tactics are engineered.

In Mr Gate's case, I waited until I was a 20 minute drive from his home, before contacting him and asking to see him. He put me off, claiming he was busy, but grudgingly agreed to see me later that afternoon - which was a Sunday.

On my arrival at his home, I discovered that the long driveway leading to his property was completely covered with felled tree branches and small trees. I was to later be told by a neighbour (who became a useful source over the many months of investigation that followed), that Mr Gate had rushed outside with a chainsaw at about the time that I made my first call, and started felling trees and branches. Such were the lengths Mr Gate went to, to avoid signing of that initial statement.

As it transpired, he did not sign then. He manipulated the situation that day, to my having to leave the draft with him. But having done so, I deliberately used the ambiguous word "*recorded*" in a fax to him the next day about our earlier telephone discussion.

Mr Gate then faced a conundrum. Did I have a tape recording of the initial interview? If I did not, he could lie in his statement.

If I did, he could not afford to risk producing a statement that contradicted what he had said on tape.

Mr Gate went to extraordinary lengths in the days that followed Sun's requirement that he sign the statement. He even instructed solicitors to demand disclosure as to whether or not we had a recording. Sun (in a carefully worded response drafted by its legal adviser Mike Ring), refused to say. In the end, he signed a statement that contained pretty much all the material I had covered in the first draft.

That statement was in part, his undoing. It contained several highly material misrepresentations that Mr Justice Fisher was to later resolve breached his duty of utmost good faith. It was not for another 18 months (during discovery) that Mr Gate's curiosity was at last quenched when the Plaintiff finally disclosed that there had never been a recording.

Mr Gate's interest in discrediting my evidence – which primarily related to the contents of his statement knew few bounds.

As the High Court trial approached, he went to desperate lengths. In once case, he persuaded a Wellington prostitute I had interviewed about a matter contrary to his interests, to swear an affidavit alleging that I had threatened her with prosecution if she did not make a false statement against Mr Gate.

In the days when he still had some credibility, he was able to engineer a serious Police investigation resulting in my being interviewed as suspect for perjury and attempting to pervert the course of justice. Fortunately, I had covered myself, and the matter came to nothing. But it was not an experience devoid of stress, and illustrated the lengths he was prepared to go to.

In another desperate move (a matter of weeks before the trial), he tried to dissuade me from giving evidence in a more permanent way. He put out a contract to have me killed!

His plot was to later be discovered by an informant who Gate believed was sympathetic but who was secretly informing to me and investigating Police. Months later, in the course of the execution of a Police search warrant on Gate's Howick home, close up photographs of most of the exits and layout of my home were found in his possession, indicating that there had been a serious plan to silence me, and (at least in his mind) prevent the production of the statement he had made.

In then end, (after he had lost the civil case against Sun in the High and Appeal Courts), it was the prospect of a charge of conspiracy to murder me, that ultimately prompted Gate to plead guilty to fraud charges against Sun Alliance, resulting in his imprisonment.

2. Whilst some go to great lengths to avoid committing to a signed statement, others make them and then try to undo the damage done.

Some of you will be familiar with the case of Harbour Inn Seafoods Ltd v. Switzerland General Insurance. In that case, the insured's managing director Nino D'Esposito gave me a statement that was to later come back to haunt him.

Not only did it contain several important misrepresentations but he acknowledged the dangerous practice of "*laying to*", in this case, in a busy shipping lane off the west coast of the North Island, resulting in the ship going ashore on the Wairarapa coast.

Mr D'Esposito initially tried to suggest that I had written the statement and had insisted that he sign it without being given the opportunity to read it. However, in the end he resorted to a practice at the High Court trial that he obviously thought was intimidating, but which I found amusing.

As his barrister the late Mike Bungay cross examined me from the front of the court, Mr D'Esposito, seated at the back of the Court with several "mafiosa-looking" henchmen glared at me as I quoted from his statement, forming their forefingers and thumbs into the shape of pistols – engaging in the comical gesture of taking pot-shots at me as if to warn of some imminent dire consequence.

Having given evidence for many years in criminal trials against people who really knew how to intimidate, my obvious amusement at Mr D'Esposito's tactics, served only to further infuriate him.

3. In another marine case 3 or 4 years ago, I presented a typed statement to a claimant for signing, based on our earlier discussions. He was reluctant to sign, but had little option, if he was to appear to be a credible claimant pursuing a genuine claim. I have always adopted the practice in these circumstances, of getting insureds to sign each page, and hand it over immediately after signing. I have always considered the signing of a multiple page statement on the last page only, as a dangerous and unreliable practice.

In this particular case, the insured's face grew more and more thunderous as each page was signed and handed over. As he saw his story unfold in writing, the significance of what he had said slowly dawned on him.

It all became too much for him as he read the last page. Part way through, he refused to continue and demanded the first four pages back. I refused, which resulted in an attempt to snatch them from me, and then a physical attack. Needless to say, I retained the first four pages. The claim was ultimately declined.

These are but a few examples of the importance of the securing of an early signed statement, and the lengths some folk go to in their efforts to avoid either making a statement, or repudiating it at a later time.

A Few "War Stories"

A few brief yarns about interesting claims before I finish.

1. PT was a Hawkes Bay fisherman with a serious alcohol problem, though he claims to this day, to be a "controlled alcoholic".

Until a few years ago, he owned a fishing boat operating out of the Port of Napier. Though he sternly warned any crewman against bringing alcohol on board, he would never sail without a couple of litres of home brewed whiskey and sufficient cans of beer to ensure whiskey chasers every night.

On the last voyage of the FV San C... he and his crewman fished south of Cape Kidnappers, with PT starting the usual round of straight whiskey and beer from about 1700 hours each day. If the catch was good, he remained merry. If they'd had a bad day, his mood was black, and his sobriety non-existent.

The third day out, was disastrous, with a net being lost and virtually no catch. Completely plastered, he ordered the crewman to head back to Napier, promising to sober up with a few hours kip. He undertook to take over the last watch in the early hours of the ship's final voyage.

The master took the helm in the early hours, after rounding Cape Kidnappers. The crewman was to later say that the insured was "still pissed". But the unfortunate "deckie" was too exhausted to care, heading below. PT set the GPS for the end of the Napier breakwater, and settled in for the long boring haul across the bay.

Not surprisingly, the ship hit the Napier breakwater some hours later at cruising speed.

With all pumps underway, PT backed off the bricks and nursed the vessel around to Ahuriri. Though salvaged, for all practical purposes she became a constructive total loss, with a claim being made for the full sum insured.

PT signed a statement a short time later to both the insurer and MSA, that his crewman had fallen asleep at the helm, and that he was below decks asleep, when the casualty occurred. The contrite crewman made a similar statement. Needless to say, alcohol consumption was denied by both.

Many months later, I found a security officer who had seen the masthead light approaching across Hawke Bay. As it got closer, he worried that the vessel was on course for mid breakwater and that the helmsman might be asleep.

He was standing on the breakwater, only about 10 metres from the bow as she hit. He remembered an older man staggering from the wheelhouse bleeding from his forehead, whilst the younger crewman emerged from below decks and started abusing the skipper.

This (new) version of events led me to suspect the claimant's story and to challenge the crewman. He ultimately gave me a statement confirming that the claimant had been at the helm at the time of collision, telling of the skipper's alcoholism and drinking sessions, and describing how his employer had persuaded him with an offer of \$50,000.00 from the insurance settlement, to "take the rap" and say that he was at the helm at the time of the casualty.

Though legal proceedings were threatened, they were not pursued.

2. Some years ago, I was sent urgently to the Port of Tauranga where a large launch was being pumped out, having been saved just as water lapped the gunwhales.

Recreational fishermen in a nearby vessel had seen the casualty unfold, had rescued the master, and had facilitated getting divers on board with pumps. They were from Feilding and had returned home by the time I arrived.

On arrival in Tauranga, I took a statement from the skipper and owner, who claimed that he had been happily fishing at anchor off Mt Maunganui, when the launch had started to sink – as far as he was concerned, for no reason he was aware of. He denied (in the statement) having been in the engine room at any time since leaving port.

Soon after the statement was taken, the hull had been pumped out, and I was able to carry out an initial inspection. In the engine room, I discovered engine hoses completely severed, with what appeared to be a serrated edged blade. In the saloon, I found a large serrated edged bread knife, with what appeared to be black material in the teeth.

I went to Feilding and interviewed the witnesses. They told an interesting and (to them) highly amusing yarn.

They claimed to have been sitting at anchor in a blue hulled runabout, on a blue sea against a blue sky. They took little notice of the launch in question when it stopped a mere 100 or so metres away, but were curious to note that the master did not drop the anchor, but sat on an oily sea with the engines running.

They became more curious when, after about an hour, the launch appeared to have settled considerably in the water. In paying greater attention from that point on, they noted with interest that the sole occupant, appeared to be in the process of launching the vessel's tender.

Their curiosity became too much for them, when they heard a mayday call from the vessel. Within 2 or 3 minutes they were alongside, and assisting the insured onto their vessel. He claimed that his launch had begun to sink for no apparent reason, and rejected their suggestion that if they acted quickly, she could be saved.

Whilst there was never any confession from the insured, his signed statement ultimately proved his undoing. The claim was successfully declined without ensuing litigation.

3. I once took a statement from a Kaikoura fisherman when assessing his claim for the total loss of his fishing vessel in a bay north of Kaikoura. He too claimed that he had been at anchor, when his vessel had simply sunk for no apparent reason.

In a situation strikingly similar to the Tauranga one, I found the master and crew of another fishing vessel that had been at anchor some 200 metres away when the casualty occurred. They were in a beige hulled vessel inshore from the insured.

Viewed from his seaward perspective, the witnesses vessel was invisible against the beige cliffs of the Kaikoura coastline.

The witnesses described watching the insured vessel slowly settle in the water, the sole occupant – the insured, casually launch the tender, place a few belongings and his pet dog on board, issue a mayday, and step into the tender as his boat disappeared below the waves.

Needless to say, the insured's signed statement ultimately proved his undoing. The claim was successfully declined, without ensuing litigation.

Conclusion

I hope these few examples of defeated suspect claims, illustrate the importance of early recognition of warning signs, and the importance of a signed statement being secured at the earliest possible stage.

In my 20 year experience of fraudulent marine claims I would regard the early securing of a signed statement in order to "credibility test" an insureds' story, as the single most effective tool in the insurer's arsenal to defeat suspect claims.

Thank you.