

# **Advising insurers where claims are fraudulent**

**Matthew Flynn**  
McElroys



**McELROYS**  
INSURANCE LAWYERS

[www.mcelroys.co.nz](http://www.mcelroys.co.nz)

**Fraudulent Marine Claims**

**Advising the Insurer**

## Fraudulent Claims - are they happening?

### General Insurance Industry

- NZ \$130m
- Aust AUS\$2.1 billion
- Canada CA\$1.3 billion
- UK £1.0 billion life insurance alone
- USA \$130 billion

## Attitudes: – are people likely to make them?

### Australia:

1993 14% - padding a claim OK

2002 18% - padding a claim OK



**UK: 2002**

7%: Admitted making a fraudulent claim

40%: Acceptable or borderline to exaggerate

29%: OK to make up a claim

48%: Did not rule out making a false claim



**US: 2003**

24%: OK to pad a claim

11%: OK to fabricate



## Conclusion:

10% of the value of claims contain an element of fraud

No reason why this won't occur in marine insurance



## 3 Main Categories

- Opportunist padding
- Premeditated fabrication: claim for something that didn't happen
- Fraudulent non-disclosure or misrepresentation of facts

## What is fraud?

- A method or means of deceiving
- The use of false representations to gain unjust advantage

## Insurance Context

If it is false and the persons making the claim intend to deceive the insurer by getting out of it money or some other benefit they have no right to

## Three key elements:

- **Substantial**

eg: *Engle v Southern British Insurance*

- 1) \$1737 for \$17524: fraudulently included therefore out. Could equally apply to missing fishing gear
- 2) Statement about length of time of sale not "de minimus". Could equally apply to stolen boat

- **Wilful**

-knew it was incorrect

-deliberately reckless as to truth or falsity

eg; *Central Bank of India v Guardian Assurance Co.*



## ■ Material

- Ormsby: damage to factory - would have paid
- Mercadia Continent: jurisdiction clause - deceitful conduct
- Agapitos v Agneau



## Wilful Complicity

- Deliberately causing loss to benefit from insurance

Scuttling the vessel

= "grave accusation"



## Fishing vessel sinks

- 3pm
- calm weather
- skipper alone
- no mayday
- lousy season
- high finance on vessel
- no explanation at all as to water ingress
- very deep water
- picked up by cousin
- never got feet wet!

Yeah Right

General considerations:- "North Star"

- high level of confidence
- avoid 'Popi M' heresay
- motive alone not enough
- weight to attach to previous dishonesty

## Motive:

- "Northstar" – "irretrievably hopeless"  
compare with
- "Grecia Express" – "detrimental effect  
exceeded any possible benefit"
- Gate v Royal & Sun Alliance – "lack of an  
alternative"

## Circumstances:

- Unlikely to know what happened
- What were the opportunities?
- Grecia Express : Northstar
- All about evidence: can we get it?

## Balance of Probabilities

- Civil or criminal
- Fisher J in 'Gate' – criminal (insurance)
- Other NZ cases=civil
- UK – civil but
- .....is there a "high degree of confidence"?
- (Coleman J)

## Conclusion

- Can the insurer decline for fraud when complicity suspected?
- people commit fraud
  - do we have a combination of circumstances and motive?
  - to prove that with a high degree of confidence, the insured did it.
  - if so...
- .....Decline. Stop the fraudsters

