

# Court rules: collateral lies do not invalidate an insurance claim

By [Sharon Snell](#)

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Nietzsche must have been thinking about insurance claims when he said that the lie is a condition of life. In a groundbreaking [decision](#), the UK Supreme Court has ruled that collateral lies do not invalidate an insurance claim.

The court held that public policy requires that if the insured has a valid claim, the insurer should disregard any collateral lies told by the insured, which were not material to the claim. The previous position was that the insured would forfeit the whole claim in the event of fraud no matter how immaterial.



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## Insurance reforms in UK stop insurers slithering out of claims obligations

The insurance industry in the UK, like South Africa, has been undergoing the most significant reform it has faced in more than a century. This has culminated in the enactment of the new Insurance Act of 2015, which came into effect for commercial contracts of insurance and reinsurance from August 2016.

Similarly, the Consumer Insurance (Disclosure and Representations) Act 2012 was enacted and applies to contracts of insurance which are entered into with consumers.

This new legislation benefits consumers because:

- it has removed the duty for consumers entering insurance contracts to act with utmost good faith *uberrima fides* and a duty to take reasonable care not to make a misrepresentation to the insurer; and
- it prevents an insurer from avoiding a policy based upon a non-disclosure that was not material but becomes a term of the contract.

## Versloot Dredging judgment

Some commentators are of the view that despite the new legislation, the UK Supreme Court's decision went too far and will open up the flood gates to false insurance claims. The insured was a ship owner and had told lies about attending to an alarm to make his claim stronger.

The claims investigation revealed the cause of the loss was attributable to four reasons:

- The crew's negligence in failing to close the sea inlet valve in the emergency fire pumps.
- Damage to the pumps.
- The negligence of previous contractors who had failed to seal bulkheads.
- Defects in the engine room pumping system.

The insurance company repudiated the claim on the basis of the lies told about the alarm. The Supreme Court, which is the final court of appeal for civil matters in the UK, held as follows:

- That it was a disproportionately harsh sanction to deprive the insured of a valid claim of about £3,2m, as a result of a reckless untruth which was immaterial to the claim.
- If a collateral lie is to preclude the claim, then it must be material.
- Public policy requires that the collateral lie be irrelevant to the insured's claim, if the claim is valid.

The court had regard to an Australian case in which the insured had experienced loss as a result of forced entry into his premises and wanted to make his incident more believable.

In their claim submissions, the insured embellished the forced entry by damaging his door and his lock further and sent photographic evidence to the insurer.

The court held that the insurer could not repudiate the claim because there never was an intention on the part of the insured to claim more than what they had really lost.

## The position in South Africa

The South African insurance sector is also undergoing reforms. Proposed changes to the long-term and short-term insurance acts do not advance the position of the consumer to the extent that the UK legislative changes have done. However, it appears that our courts are slowly developing insurance law to bring it in line with the 21<sup>st</sup> century way of doing business through their decisions.

Most recently, in the appeal of [Jerrier vs Outsurance](#), the insured did not report two previous incidents to Outsurance and he had resolved to carry the cost of the damages sustained because he wanted to preserve his 'OUT bonus'.

The court held that Outsurance could not avoid liability under the insurance agreement in respect of loss sustained in a later, unrelated accident. The underlying intention of Jerrier was not to commit fraud, but to preserve the reward of a refund, being of a percentage of his premiums for not claiming.

## **Fraud costs the SA insurance industry billions annually**

A famous author once said that nothing quite has reality for her until she writes it all down – revising and embellishing as she goes along.

Statistics show that the humble insurance claim form often inspires people to relook at the incident that gave rise to their claim, through a more creative lens.

Claims assessors sift through thousands of claims each year: some honest and truthful, some magnified and embellished, and others show symmetry of form only achieved in pure fiction.

ASISA (Association for Savings and Investment South Africa) reported that the number of fraudulent and dishonest long-term insurance claims that were detected by insurers increased from 4,690 in 2013 to 8,306 in 2014.

Had these claims gone undetected it would have cost the long-term insurance industry R755,2m to dishonest policy holders and criminals. The cost of insurance fraud is ultimately passed on the consumer through higher premiums.

## **ABOUT SHARON SNELL**

Sharon Snell holds a masters degree in law , and she is the Chief Executive Officer of the National Museum located in Bloemfontein.

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