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Insurance claim and risks - Do not inflate the claim or try to shine your story

Insurers (Hull, Cargo and P& I Club) can avoid Claim if the story told in order to claim has false elements in it - BE VERY CAREFUL as a mere attempt to deceive is sufficient to attract the penalty of forfeiture of the valid claim

In a very important case *Versloot Dredging BV v HDI Gerling Industrie Versicherung AG (the DC Merwestone)* [2014] EWCA Civ 1349, the Court disallowed the appeal of the Owners in the marine insurance claim as they misrepresented by giving a gloss to their story to advance their claim.

In this case, when proceeding on a voyage in Northern Europe, the vessel's fire line was not emptied, and the water was frozen inside it. It led to damage to pump casing in the engine room and subsequently the engine room was flooded causing damage.

The Appellants (the "Owners") were the owners of the "DC Merwestone" (the "Vessel"). The Respondents (the "Underwriters") were the hull and machinery underwriters of the Vessel under a 12-month policy incepting on 1 April 2009 (the "Policy"). The Policy terms provided coverage for loss caused by "perils of the sea" and under Inchmaree clauses which were qualified to the extent that coverage was not available for losses resulting from want of due diligence by the Owners (the "Inchmaree Provisos").

The Owners claimed under the Policy. The claim was rejected by the Underwriters on the basis of the following:

(i) loss had not been caused by a peril of the seas and did not fall within the Inchmaree clauses as a result of the Inchmaree Provisos as due diligence was required;

(ii) the loss was caused by the Vessel's unseaworthiness to which the Owners were privy (to the extent that there were blockages when the Vessel embarked) so that no liability attached pursuant to section 39(5) Marine Insurance Act 1906 ("MIA");

(iii) the Owners had effectively forfeited their claim due to the fact that its presentation of claim was supported by a fraudulent statement as Managers had advanced a false narrative about the flooding alarm in engine room to advance a favorable case.

Owners succeeded in the first step that the peril of sea was risk covered under the policy and the Owners could succeed as this was the proximate cause of the loss. However, as Owners advanced a false narrative to boost their case, they lost the appeal and this means Insurers could avoid the full claim.

The decision was based on following reasons:

- It is a special rule at common law that an insured, who has made a fraudulent claim forfeits all part of claim including any lesser claim which he could properly have made and claimed from the insurers. This rule applies even where there is no express clause in the policy of such forfeiture.

- Long before this case, there was a dicta of Mance LJ's (as he then was) said in the passing (*obiter dicta)* in *Agapitos v Agnew (The Aegeon) (No. 1)* [2002] EWCA Civ 247 and he said :

  *"a fraudulent device is used if the insured believes he has suffered the loss claimed, but seeks to **improve or embellish the facts** surrounding the claim, by some lie*".

- In this case, this it was proved on facts, that the managers of the vessel tried to improve upon their case by suppressing and giving a spin on facts to improve the chances of their claim. This proved to be fatal. Telling a false story to improve the chances is sub-species of the fraudulent claim, and there are strong policy reasons of deterrence in the insurance law. The contract of insurance is one where there is continuing duty on all parties to maintain good faith (even after the marine contract has been signed).

FDD department based in Shanghai advice to the client of Andrew Liu is that:

a) When making a claim, every word that is said to the insurer should be carefully weighed and discussed. It is better to use lawyers or take the assistance of FDD department to prevent such instances where the claim is avoided successful by the insurers. There is no point blaming others if the insurers avoid the claim completely.

b) There is also a need for the insured not to inflate the claims as there is a strong chance , even the good part of the claim can be avoided by the insurers.

c) FDD department has recently assisted various clients on salvage negotiations, dealing with insurer, assisted the client in telling the right story for a claim from the start and as to what evidence that needs to be collected.

Source of Information: Andrew Liu & Co., Ltd www.andrewliu.com.hk