



University of HUDDERSFIELD

University of Huddersfield Repository

Swaby, Gerald

The Price of a Lie

Original Citation

Swaby, Gerald (2012) The Price of a Lie. In: Insurance Law Reform Association Meeting, April 2012, Norton Raod Solicitors, London.

This version is available at <http://eprints.hud.ac.uk/id/eprint/14740/>

The University Repository is a digital collection of the research output of the University, available on Open Access. Copyright and Moral Rights for the items on this site are retained by the individual author and/or other copyright owners. Users may access full items free of charge; copies of full text items generally can be reproduced, displayed or performed and given to third parties in any format or medium for personal research or study, educational or not-for-profit purposes without prior permission or charge, provided:

- The authors, title and full bibliographic details is credited in any copy;
- A hyperlink and/or URL is included for the original metadata page; and
- The content is not changed in any way.

For more information, including our policy and submission procedure, please contact the Repository Team at: E.mailbox@hud.ac.uk.

<http://eprints.hud.ac.uk/>

The Price of a Lie:
Discretionary flexibility in Insurance Fraud

by
Gerald Swaby

Australia

Insurance Contracts Act 1984 s. 56

*(2) In any proceedings in relation to such a claim, the court may, if only a **minimal or insignificant** part of the claim is made fraudulently and non-payment of the remainder of the claim would **be harsh and unfair**, order the insurer to pay, in relation to the claim, such amount (if any) as is just and equitable in the circumstances.*

(3) In exercising the power conferred by subsection (2), the court shall have regard to the need to deter fraudulent conduct...

ALRC Report 20



“\$3000 lost baggage would usually be met even if a fraudulent claim that a camera worth \$200 was included in that baggage was rejected.”

Quantitatively = 6%

ALRC in its notes to its draft Bill referred to fraud of A\$100 in a claim of A\$10,000, and the Explanatory Memorandum leading to the Act referred to fraud of A\$50 in a claim of \$100,000.”

Quantitatively 1% and 0.05%

Ricciardi v Suncorp Insurance Ltd [2001] QCA 190.

Held – House fire – Not minimal or insignificant. = 30-50%

Tiep Thi To v Australian Associated Motor Insurers Ltd [2001] VSCA 48

Held: Stolen car. Entire claim tainted.

Entwells Pty Ltd v National and General Insurance Co Ltd (1991) 6
WAR 68

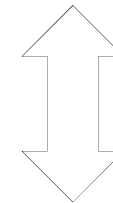
Held

- C's directors had connived with 3rd party to set fire to C's building to claim for the building and stock.
- Entire claim tainted.

Quantitative – Initial claims genuine

- Galloway – Burglary, 11%
- Direct Line v Khan – Fire, 10%
- Gottlieb –
 - 1. Dry rot necessitating alternative accommodation, 33% and
 - 2. An electrician's invoice, 8%
- Micro Design Group – forged documents, 2%

Grey Area



- Tonkin – Fire. Claimed for new kitchen twice, 0.3%

Qualitative

- Aviva v Brown
- Sharon's Bakery v Axa

A possible FOS solution to *Aviva v Brown*

- FOS focus on the insurers ultimate liability, based on the *Mercandian Continent*.
- *Aviva v Brown* –
 - C would recover.
 - C would not be induced by the misrep.
 - C's ultimate liability would be to pay for D's alternative accommodation.
 - Additional possibility for FOS to award compensation for distress caused by C?