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Supreme Court: overturned Court of Appeal decision

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Supreme Court: insurers can revisit PI settlements after discovering fraud

The Supreme Court has ruled that an insurer can use the law of misrepresentation to unpick a personal injury settlement where there had been a suspicion of fraud, leading the Court of Appeal said to say the insurer had acted with its "eyes wide open".

Overturning the appeal court's decision, Lord Clarke said: "It is difficult to envisage any circumstances in which mere suspicion that a claim was fraudulent would preclude unravelling a settlement when fraud is subsequently established."

In *Hayward v Zurich Insurance Company plc* [2016] UKSC 48, Mr Hayward injured his back at work in 1998, and in 2001 started proceedings against his employers, claiming damages of just under £420,000, excluding losses for pain and suffering.

Zurich admitted liability, but contested quantum on the basis that Mr Hayward had exaggerated the consequences of his injury. The insurer relied on video surveillance, which "appeared to show" Mr Hayward doing heavy work at home. But shortly before the trial on quantum in 2003, the case settled for just under £135,000.

About two years later Mr Hayward's neighbours approached his employers to say they believed his claim to have a serious back injury was dishonest.

Zurich successfully claimed damages for deceit at first instance, in a ruling by HHJ Moloney QC that the Supreme Court praised, but in the Court of Appeal Lord Justice Underhill ruled that "parties who settle claims with their eyes wide open should not be entitled to revive them only because better evidence comes along later".

Giving the main judgment of the Supreme Court, Lord Clarke said Zurich did as much as it reasonably could to investigate fraud before the settlement. "The evidence was not as good from its point of view as it might have hoped but the fact is that Zurich did not know the extent of Mr Hayward's misrepresentations."

He ruled there was no authority to support the contention that in order to set aside a compromise on the basis of fraudulent misrepresentation, the "defrauded representee" has to prove that it was induced into settlement because it believed that the misrepresentations were true.

Instead it sufficed to establish "that the fact of the misrepresentations was a material cause of the defrauded representee entering into the settlement".

He added: "I am not persuaded that the importance of encouraging settlement, which I entirely agree is considerable, is sufficient to allow Mr Hayward to retain monies which he only obtained by fraud."

Lord Toulson, concurring, described bogus or fraudulently inflated personal injury claims as a "serious problem".

He said: "The question whether there has been inducement is a question of fact which goes to the issue of causation. The way in which a fraudulent misrepresentation may cause the representee to act to his detriment will depend on the circumstances.

"[HHJ Moloney] rightly focused on the particular circumstances of the present case. Mr Hayward's deceitful conduct was intended to influence the mind of the insurers, not necessarily by causing them to believe him, but by causing them to value his litigation claim more highly than it was worth if the true facts had been disclosed, because the value of a claim for insurers' purposes is that which the court is likely put on it.

"He achieved his dishonest purpose and thereby induced them to act to their detriment by paying almost ten times more than they would have paid but for his dishonesty. It does not lie in his mouth in those circumstances to say that they should have taken the case to trial, and it would not accord with justice or public policy for the law to put the insurers in a worse position as regards setting aside the settlement than they would have been in, if the case had proceeded to trial and had been decided in accordance with the corrupted medical evidence as it then was.

Lords Neuberger and Reed, and Lady Hale concurred with both of their colleagues.

Catherine Burt, a spokeswoman for the Forum of Insurance Lawyers and head of counter fraud at DAC Beachcroft Claims, which acted for Zurich, said: "This decision confirms that fraud does unravel all. Insurance companies will be free to revisit settlements made before hard evidence of fraud comes to light and will be able to pursue those who thought they had got away with it.

"The guiding principle of this judgment – and indeed that of the Versloot judgment of last week – is whether any lie told by the claimant is material or not.

"Given the introduction of the duty of the courts to strike out fundamentally dishonest claims under section 57 of the Criminal Courts and Justice Act 2015, the risk that any lie about the claim may bring down the whole claim is one which no genuine claimant should want, or need, to take."

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