



# FRAUD & FORFEITURE – MOCK TRIAL

Webber Wentzel Insurance Team – Munich Re Claims Seminar  
17 August 2023

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# Introduction

- Mock trial for the insurance market
- Fraud & Forfeiture Clauses
- Misrepresentation and non-disclosure

*Discovery Insure Limited v Masindi* (534/2022) [2023] ZASCA 101



## The Cast



Plaintiff's Counsel  
**Lisa Swaine**



Judge / Narrator  
**Maria Philippides**



Defendant's Counsel  
**Victoria Campos**



Plaintiff / Mrs Plum  
**Jodi Hardy**



Defendant / Mr Mustard  
**Erwyn Durman**

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# Synopsis

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- Policy - what is covered - dwelling and household contents
- Event causing the loss - storm damage to his residence
- Claim -
  1. Cost of repairs to the residence and damage to household contents
    - legitimate claim
  2. Emergency accommodation
    - tainted with fraud
- Legal issue -
  - **Question 1** - Can a partly fraudulent and partly legitimate claim arising from the same incident result in the forfeiture of an insured's entire claim?
  - **Question 2** – If yes, is the insurer entitled to a return of the amounts it already paid prior to the discovery of the fraud?

## The relevant clauses of the policy

*“ 5.5. Breach of conditions requiring your assistance;*

- We reserve the right to cancel your Plan and claim repayment from you for any amounts we have paid in settlement of your claim if you breach or fail to comply with our claim procedure and the rules set out in this Plan Guide.”*
  
- “48. The term “forfeit” means: “Lose or give up (something) as a necessary consequence.”*

# The forfeiture clause

*“ 5.13 Fraud, misrepresentation and inaccurate information;*

*All benefits in terms of this Plan in respect of any claim will be lost and this Plan may be voided or cancelled at our discretion:*

- Where there is a misrepresentation, non-disclosure, misdescription by you or anyone acting on your behalf; or*
- If false or incomplete information is supplied for any fact and/or circumstance in connection with an application for cover or in connection with a claim in terms of this Plan by you or anyone acting on your behalf; or*
- If any claim or part thereof under this Plan is in any way fraudulent, or if fraudulent means or devices are used by you or any acting on your behalf to get any benefit under this Plan, or if any insured event under this Plan is occasioned by your intentional conduct or any person acting on your behalf or with your involvement;*
- If any fraudulent information and/or document whether created by you or any other party is provided to us by you or anyone acting on your behalf or with your involvement in support of any claim under this Plan and whether or not the claim is itself fraudulent.*
- If the size of any claim is inflated by you or anyone acting on your behalf or with your involvement, for any reason whatsoever, and whether the claim itself is fraudulent.*

*Where any benefit under this Plan is forfeited in circumstances set out in this section, we will have the right to cancel your Plan retrospective to the reported incident date or actual incident date, whichever is the earliest.”*





LET'S GO TO TRIAL!

# 7 Key Take-Aways From Today: FOR THE INSURANCE MARKET

Insureds have duty to act in good faith to insurers

1

Courts will not come to the insured's aid if good faith is breached

2

The forfeiture clause must be categoric on rights and remedies

3

Insurers are masters of their own policies

4

A partly fraudulent claim may result in entire claim being forfeited

5

Insurer may be entitled to return of all payments from date of incident, once fraud is discovered

6

Forfeiture clause not likely to be penalty clause ito Conventional Penalties Act, 1962

7






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