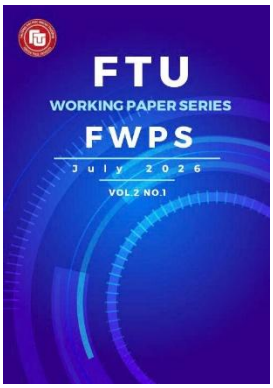

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NGUYÊN TẮC TRUNG THỰC TUYỆT ĐỐI TRONG BẢO HIỂM HÀNG HẢI: TỪ HÀNH VI GIAN DỐI ĐẾN LỜI NÓI VÔ HẠI

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Tóm tắt

Bài viết này xem xét sự phát triển trong cách áp dụng nguyên tắc trung thực tuyệt đối trong bảo hiểm hàng hải, ập trung vào cách các tòa án phân biệt giữa các dạng hành vi không trung thực trong quá trình yêu cầu bồi thường. Theo cách tiếp cận truyền thống, bất kỳ hành vi gian dối nào của bên được bảo hiểm cũng có thể dẫn đến việc bị từ chối toàn bộ yêu cầu bồi thường. Tuy nhiên, các diễn biến tư pháp gần đây đã cho thấy sự thay đổi trong cách tiếp cận này, đặc biệt trong những trường hợp mà hành vi không trung thực không ảnh hưởng đến tính hợp lệ hoặc giá trị của yêu cầu bồi thường. Thông qua phân tích so sánh hai vụ án The Brillante Virtuoso và The DC Merwestone, nghiên cứu này làm rõ sự khác biệt giữa gian lận thực chất và các lời nói dối mang tính phụ trợ. Trong khi loại thứ nhất vẫn dẫn đến việc tước quyền bồi thường một cách nghiêm ngặt, thì loại thứ hai được xem xét linh hoạt hơn, phản ánh xu hướng chuyển dịch sang cách tiếp cận dựa trên mức độ ảnh hưởng và công bằng. Kết quả nghiên cứu cho thấy nguyên tắc trung thực tuyệt đối không còn được áp dụng như một tiêu chuẩn tuyệt đối, mà được điều chỉnh dựa trên mức độ ảnh hưởng thực chất của hành vi không trung thực đối với trách nhiệm của bên bảo hiểm. Bài viết đồng thời rút ra các hàm ý thực tiễn cho cả bên được bảo hiểm và công ty bảo hiểm trong việc xử lý yêu cầu bồi thường trong bối cảnh pháp lý thay đổi.

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Từ khóa: nguyên tắc trung thực tuyệt đối, gian lận bảo hiểm, luật bảo hiểm

UTMOST GOOD FAITH IN MARINE INSURANCE: FROM FRAUDULENT DEVICES TO "HARMLESS LIES"

Abstract

This article examines the evolving application of the principle of utmost good faith in marine insurance, with focus on how courts distinguish between different forms of dishonesty in the claims process. Traditionally, any fraudulent conduct by the insured could result in complete forfeiture of the claim. However, recent judicial developments have challenged this framework, especially in cases where the dishonesty does not affect the validity or amount of the claim. Through a comparative analysis of The Brillante Virtuoso and The DC Merwestone, this study explores the distinction between fraudulent claims and collateral lies. While the former continues to justify strict forfeiture, the latter has been treated with greater flexibility, reflecting a shift toward proportionality and fairness. The findings suggest that utmost good faith is no longer applied as an absolute standard, but rather as a principle mediated by the material impact of the insured's conduct on the insurer's liability. The article draws practical implications for both insured parties and insurers in navigating claims handling under this evolving legal framework.

Keywords: utmost good faith, marine insurance, fraudulent claims, insurance law

1. Introduction

The doctrine of "utmost good faith" lies at the heart of marine insurance law, underpinning the mutual obligations of disclosure, honesty, and cooperation between the insured and the insurer. Marine Insurance Act 1906 identifies such contracts as those based upon the utmost good faith, requiring each party to act in good faith both before the contract is concluded and during the claims process (Shi, 2013). However, modern case law has revealed tensions in how strictly this principle is enforced, particularly when the assured engages in deceptive conduct that may range from deliberate fraud to collateral lies. Despite the long-standing requirement of utmost good faith, the precise boundaries between fraudulent lies and collateral lies remain unclear and controversial in marine insurance practice. While traditional doctrine tends to adopt an "all or nothing" approach that treat any fraudulent conduct as a ground for rescission or forfeiture, cases like The DC Merwestone have begun to recognize that not every lie actually undermines the insurer's risk assessment or the amount payable (Francis D Rose, 2017; UK Judiciary, 2018). This tension raises fundamental questions about fairness, proportionality, and the appropriate balance between deterring fraud and protecting the assured, especially in complex and high-value marine claims.

The main objective of this research is to analyze the application of the doctrine of utmost good faith in marine insurance, focusing on how courts treat lies by the insured in both extreme and more nuanced forms. More specifically, the study aims to: (i) clarify the legal meaning and scope of "utmost good faith" in marine insurance; (ii) analyze how fraudulent devices by the assured are

treated under this doctrine, using the case of The Brillante Virtuoso as an example; (iii) explore how courts distinguish collateral lies from material fraud, with reference to The DC Merwestone and related case law; and (iv) assess whether the current judicial approach strikes a fair and proportionate balance between preventing fraud and protecting the assured's legitimate interests.

The remainder of this article is structured as follows. Section 2 provides the theoretical framework for this research. Section 3 provides a detailed analysis of the two selected cases, examining their facts, legal issues, arguments of the parties, and judicial reasoning. Section 4 provides a discussion of the findings and sets out recommendations. Conclusion is drawn in the final section.

2. Theoretical framework

2.1. Principle of utmost good faith

insurer and the insured to deal with each other in the highest degree of honesty and transparency. In insurance contracts, this means each party must fully disclose all material facts affecting the risk and avoid any misrepresentation or concealment, so that the insurer can correctly assess the premium and the assured can receive fair protection (Denenberg, 1963; Robert Merkin and Malcolm A. Clarke, 2018). In many jurisdictions, the principle is codified in marine insurance statutes such as the Marine Insurance Act 1906, or incorporated into general insurance laws and civil codes, which impose good-faith conduct on both parties. The insured must truthfully answer questions, reveal known risks, and notify significant changes, while the insurer must not mislead about coverage terms, conditions, or claims procedures (Musjab, 2024).

Utmost good faith is applied in two key stages of the insurance relationship. At the formation of the contract, where material misrepresentation or non-disclosure can allow the insurer to avoid to conclude the contract. During the claim process, where fraudulent claims or false statements may lead to denial of payment or forfeiture, depending on whether the lie affects the insurer's risk assessment or the amount payable (Francis D Rose, 2017; Yulita and Puspitaloka Mahadewi, 2025).

The main purpose of the principle is to address the information asymmetry inherent in insurance, where the insured usually knows more about the risk than the insurer. By requiring full disclosure and honest conduct, utmost good faith aims to prevent fraud, ensure fair pricing, and protect legitimate claims, while modern case law strives to balance strict enforcement with proportionality and fairness to the insured (Robert Merkin and Malcolm A. Clarke, 2018; Musjab, 2024).

2.2. Principle of indemnity

The principle of indemnity in marine insurance means that the insured should be compensated only for the actual loss suffered to the goods, without any profit from the insured event. When the cargo is damaged or lost during transit, the insurer is under a duty to reimburse the shipper

according to the true value of the cargo at the time of the loss, as reflected in the invoice, freight and insurance terms, or other agreed valuation, rather than allowing the cargo owner to recover more than the real economic damage. This ensures that the shipper is restored to the pre-loss financial position as far as possible, not placed in a better position (Denenberg, 1963; Bazvand, 2016).

The principle of indemnity is closely linked to several supporting mechanisms, including valuation rules, constructive total loss doctrines, and the insurer's right of subrogation, which allows the insurer to step into the insured's shoes and recover from third parties responsible for the loss. These tools help prevent over-compensation and discourage insureds from intentionally creating or exaggerating losses. At the same time, the principle reflects the fact that cargo insurance is a contract of indemnity, not a wagering or speculative agreement, aligning with the broader aim of insurance to transfer and manage risk rather than create profit opportunities. From the cargo owner's perspective, indemnity therefore guarantees fair compensation for loss while requiring honest disclosure of cargo value and circumstances, so that the insurer can assess risk and set appropriate premiums (Kyriaki and Noussia, 2007; Bazvand, 2016).

2.3. Fraud in Insurance Law

Fraudulent claims

Fraudulent lies are deliberate false statements made by the insured with the intent to obtain higher or unwarranted benefits from the insurer, such as exaggerating the value of loss, fabricating part of the claim, or providing false documents. These lies go directly to the substance of the claim and usually concern what was lost, how much it was worth, or how the loss occurred, so that the insurer would not have paid, or would have paid less, had the true facts been known. Formally, fraudulent lies are treated as breaches of the pre and post contractual duty of good faith, and in many systems, insurers can void the contract or retain the premium while refusing to pay (Hjalmarsson and Johanna, 2016; Tarr and Julie-Anne R, 2025).

The insurer applies the duty of utmost good faith narrowly for this. Once fraudulent conduct is proven, the entire claim is commonly declared fraudulent, and the court may extend forfeiture beyond just the inflated part. The consequence is usually denial of the whole claim, and sometimes rescission of the policy or forfeiture of all benefits, depending on the jurisdiction and the severity of the fraud (Rawlings and Lowry, 2017).

Collateral lies

Collateral lies are false or dishonest statements by the insured that do not relate to the existence, nature, or amount of the loss, but to procedural or peripheral matters, such as the timing of the claim, the manner of notification, or small details about the documentary trail. The key idea is that the lie is "harmless" in the sense that, even if the insurer had known the truth, the profitability of

the claim or the insurer's risk assessment would not have changed. Collateral lies are applied mainly in marine and cargo insurance claims, where the insured makes a false statement about administrative steps but the underlying loss is real and can be independently verified (Sooksripaisarnkit, 2017; Soyer, 2018).

The insurer applies collateral lies by examining whether the lie was material to the decision to pay or to the amount payable. If the court finds that the lie is truly collateral, the insurer cannot strike out the claim under the traditional "fraudulent claims rule". Instead, the insurer may only avoid any part of the claim directly supported by the lie. The leading authority is cases such as *Versloot Dredging v HDI Gerling* where the English Supreme Court held that a collateral lie, even if dishonest, does not make the whole claim "fraudulent" if the underlying loss is real and legitimately recoverable. This marks a shift from strict all-or-nothing forfeiture towards a more proportionate approach, limiting the harsh effect of the fraudulent claims rule to the genuinely dishonest or exaggerated elements (Francis D Rose, 2017; Soyer, 2018; Tarr and Julie-Anne R, 2025).

Supporters of strict rules argue that any lie by the insured should disqualify the claim, because insurance is based on maximum trust, and allowing "harmless" or "collateral" lies may encourage downward erosion of honesty and make fraud harder to detect. They fear that nuanced tests on "materiality" and "impact" open the door to manipulation and increase litigation costs. However, opponents contend that modern commercial insurance should focus on substance rather than technical dishonesty. They argue that a lie about minor procedural details should not cancel a valid, large value claim. They favour proportionality, arguing that the remedy should match the nature of the breach, so that genuine insureds are not unjustly punished while deterrence of fraud is still maintained (Tarr and Julie-Anne R, 2025).

3. Case analysis

3.1. The Brillante Virtuoso Case

3.1.1 Case description

The case concerned a tanker named Brillante Virtuoso, sailing from Kerch, Ukraine, to China with a cargo of 14000 tons of fuel oil, when the incident occurred in the Gulf of Aden, near Somalia, an area known for a high risk of piracy. Shortly before midnight on 5th July 2011, the crew observed a small boat approaching the vessel. The men claimed to be "security" and were allowed on board by the Master. Once on board, those people quickly took over control of the ship and required the Master to sail to Somalia (UK Supreme Court, 2019).

In the early hours of 6th July, the main engine stopped, and the armed men detonated an explosive device in the engine room. The crew then abandoned the ship and were rescued, while the ship was left, remaining as a dead ship without power. The events gave rise to a claim on the vessel's war risk policy by Suez Fortune Investments Limited, the vessel's owner ("the Owner"), and

by Piraeus Bank AE ("the Bank"), the vessel's mortgagee. The insured value of the vessel was $55 million, plus $22 million for disbursements and increased value; the claim total was $77 million, based on the vessel being a constructive total loss due to fire damage caused without the crew's negligence (Jonathan Moss, 2019).

However, the Underwriters denied the liability, arguing that the incident is not a normal piracy but due to the Owner's deliberate misconduct. The issues raised a very complex situation, lasting around 8 years, primarily concerning whether the loss resulted from an insured peril or from the Owner's willful misconduct (UK Supreme Court, 2019; Campbell, 2022).

3.1.2. Legal issues

Regarding this case, three legal issues are concerned during the analysis process:

Firstly, in terms of the peril causes. Perils or insured perils in marine transportation are usually a very central issue, including fire, jettison, theft, and piracy (Abbot, 1893). In this case, the Owners of the ship state that the loss is due to actual piracy, which was insured in the war policy, covering perils such as piracy. However, the Insurer and related parties argued that this was a deliberate action to gain the benefit of insurance. If the loss was due to the Owner's willful misconduct, then it would be excluded from the insurance policy, because insurance covers only the sudden, unexpected circumstances, out of the control and intent of the insurer (UK Supreme Court, 2019).

Secondly, regarding willful misconduct. Willful misconduct in this case was an essential part for the High Court to give the final decision (US Legal, 2024). This term refers to a deliberate violation of a rule or policy that is reasonable and consistently enforced. Under the Marine Insurance Act 1906, the insurer is not liable for any loss caused by the willful misconduct of the insured, unless the policy provides otherwise. In this case, the insurer suspected that the piracy was not the real stage but rather a fire intentionally set with the owner's involvement. The judgment considered the case as a "scuttling" case, whether the deliberate action is insured under the policy. Therefore, this case falls within the broader scope of marine insurance, where the Underwriter responds only to fortuitous loss, not to loss intentionally caused by the assured (Thomas, 2022).

Finally, the burden of proof is also the central issue in this case. The Bank, as claimant from the subrogation policy, was in charge of providing evidence that the loss was caused by insured peril. By contrast, the Insurer bore the burden of proving willful misconduct or scuttling. In this case, the direct evidence was rare due to the nature of the maritime incidents. This is because the incident occurred in the isolated sea, where there were no independent witnesses or real – time verification. Moreover, the ship has become a "dead ship" without power, resulting in the loss or incompleteness of critical recording systems such as navigation logs or communication records. Therefore, the judgment needed to be made on the persuasive indirect evidence, such as the suspicious arrangement, the financial ability of the Owner, and the Virtual Storage Evidence remaining, such as the nautical chart of the vessel (UK Supreme Court, 2019).

3.1.3. Settlement

a) Arguments from the insured

In this case, the insured parties include Suez Fortune Investments Limited (SFIL) – the Owners of the ship and the Piraeus Bank AE, the Vessel's mortgagee. However, in 2016, the High Court found that the Owner had breached a court order to provide his solicitors with an electronic archive of documents; as a result, he was struck out from the case, and the Bank had no evidence suggesting that the Bank knew the wilful misconduct involved, therefore, became the legal co -assured that continue with the claim (Alex Kemp and Kirsten Wright, 2019).

Two main pillars constructed the Bank statement. The first one is about the insured perils, which the Bank tried to fit the facts into policy words by providing as much evidence as possible. It stated that even if the attack was deliberately carried out at the Owner's will, the presence of armed men, the use of violence, and the profit–driven nature constituted piracy. These arguments reflect a broader strategy used in marine insurance disputes, whereby insured parties bring the ambiguous fact into the scope of insured perils (Bennett, 2023).

The second one is that the Bank invoked the burden of proof applicable in cases relating to willful misconduct or scuttling. It emphasized that such situations require a high standard of proof, close to the criminal standard, and must be supported by evidence that is "sufficiently unambiguous". Importantly, the Bank argued that where the innocent explanation exists, consistent with the evidence, then the statement of fraud shouldn't be made. This reflects the judicial principle that the indirect evidence on marine insurance must be compelling and coherent before the final decision is made by the high court (Soyer, 2014).

b) Arguments of the insurer

On the opposite side, the insurer pursues the different characteristics of the incident, rejecting the Bank's attempt to bring the loss within the scope of insured perils. Their primary contention was that the loss was not caused by perils, but by the willful misconduct of the Owner, which made the loss fall outside the scope of the insured policy (UK Supreme Court, 2019).

According to the Insurer, piracy is defined by an attack which is necessary for the private purpose of the armed men or the purpose of making ransom, and must be made "indiscriminately" with any valuable ship that they encounter (UK Supreme Court, 2019). The presence of violence, including the use of an explosive device and threats to the crew, is supposed to be insufficient, where such acts may facilitate a pre-arranged fraud rather than constituting a genuine maritime attack. Moreover, the Insurer rejects the "malicious act" which this term happens based on spite or ill will (Alicia Aricia McKenzie, 2022). They also added that the vandalism or sabotage does not include the deliberate activity to gain insurance benefits.

Secondly, the insurer relied on the principle that the marine insurance covers external risks, not losses caused by the Owner's or the Insured's wrongdoing (Merkin, 2013). All the arguments

made on the burden of proof for the willful misconduct, which is a combination of many pieces of evidence: the financial position of the owner, the nature of the attack, the ambiguity of the crew, and the deliberate use of an explosive device. Taken together, these indirect evidences excluded the innocent explanation and supported the finding of fraud (Soyer, 2014).

c) Court decision and Judicial reasoning

The court ultimately held that the loss of the Brilliante Virtuoso was not caused by any perils but by the willful misconduct of the Owner, Mr.Ilopoulos. As a result, the Bank failed in its claim for $77 million (UK Supreme Court, 2019).

In its reasoning, the court evaluated the evidence and concluded that the piracy attack was rather a staged event, which was deliberately happened on the Owner's will. The presence of the armed men carrying an improvised explosive incendiary device (IED), whose action was directed towards causing the explosion on the vessel rather than hijacking, undermined the characteristics of piracy. Furthermore, the conduct of the Master and the chief engineer, who facilitated the boarding of the vessel in the Gulf of Aden strongly related to the will of making the armed men approach. This shows that in the fraud case, the court may rely on the circumstantial evidence rather than the direct evidence which linked to the loss (Chris Burks, 2025).

The court also gave significant weight to the involvement of third parties that were linked to the Owner, including evidence that the individuals associated with the activity of making the vessel burn again, while investigating it. The inconsistencies in witness testimony, especially regarding the identity of the armed, further weakened the credibility of the owner (Alex Kemp and Kirsten Wright, 2019; UK Supreme Court, 2019).

The decision also reflects the function of the willful misconduct according to the Marine Insurance Act of 1906. Insurance is designed to cover the unexpected, out-of-control loss, but not the deliberately caused one. Since this is a scuttling case, the policy could not be used as a tool for debt indemnity. Although the Bank was co-assured, it still had to prove that the loss was caused by an insured peril, such as piracy or deliberate acts. Finally, it still failed because the loss was not established by an insured peril; therefore, the Underwriters were not liable, and the Bank's claim was diminished (UK Supreme Court, 2019).

3.2. Versloot Dredging BV v HDI Gerling Industrie Versicherung AG (The DC Merwestone)

3.2.1. Case description

The case of Versloot Dredging BV v HDI Gerling Industrie Versicherung AG [2016] UKSC 45 arises from a marine insurance dispute involving damage to the vessel DC Merwestone and the insured's inaccurate statement that made during the claim process.

In January 2010 after the vessel departed from Klaipeda, Lithuania, seawater entered the engine room leading to extensive flooding and rendering the main engine beyond repair. The damage resulted from a combination of factors, including crew negligence to the emergency fire

pump system, freezing-related damage to equipment, and defect in the vessel's structure and pumping system. Despite multiple contributing causes, the loss overall was classified as resulting from "perils of the sea" and therefore within the scope of the insurance coverage.

During the claims process, the insured's representative provided an explanation suggesting that the vessel's crews had been unable to respond to a bilge alarm due to adverse weather condition. This account was later found to be inaccurate, as it was not based on actual information from the crew but was created to support and facilitate the claim acceptance. However, the court then established that this statement did not affect the factual basis of the loss or the insured's entitlement to recover under the policy. The €3.24 million claim therefore remained valid regardless of the statements that provided. The insurers nevertheless refused their liability on the basis of the inaccurate statement made during the claim process. The dispute was subsequently brought before the court, leading to a series of judicial decisions culminating in a ruling by the UK Supreme Court (The Supreme Court, 2024).

3.2.2. Legal issues

The main legal issue in this case is whether the usage of collateral lie as a support for insurance claim is sufficient to render the entire claim fraudulent and therefore forfeited it. This issue engages in the doctrine of utmost good faith, which is one of the legal principle in insurance contract that mandate honesty and full disclosure of relevant information by all parties involved, requires both parties to act completely honest and transparence (Liberto, 2026). Historically, this principle has been interpreted strictly, such that any form of dishonesty regardless of its materiality could potentially invalidate a claim.

In this context, three related questions emerge:

Firstly, whether all types of dishonesty in the claim process should be treated equally. Traditional doctrine did not clearly distinguish between a fraudulent claim - dishonest or deceitful request for financial compensation or benefits through illegal means, leading to financial loss for businesses or insurers (ScienceDirect, 2016), and a collateral lie - a lie or other falsity put forward in support of an otherwise genuine claim (Sooksripaisarnkit, 2017). The insurers argued that any lie undermine the integrity of the claim process and should lead to the same legal consequence.

Secondly, whether the application of the fraudulent device rule consistent with the purpose of insurance law. Insurance contracts are designed to insured compensation for actual loss (MacGillivray *et al.*, 2025), so denying a valid claim due to an immaterial falsehood raise question about proportionality and fairness.

Thirdly, whether the strict enforcement of honesty can justified the severe consequence it may produce. While insurers stated that allowing any form of dishonesty would encourage fraudulent behavior and weaken trust in the whole system, the insured argued that an over rigid rule would produce unjust outcomes by penalizing claimants even when the insurer suffers no prejudice.

These issues reflect a broader doctrinal tension between rule-based enforcement of honesty and a more contextual, impact-based assessment of misconduct.

3.2.3. Settlement

a) Arguments of both parties

The insurers relied on the traditional strict approach to insurance fraud. They argued that the use of fraudulent device should automatically render the claim. This approach is necessary to uphold the principle of utmost good faith and to avoid dishonest behavior. The insurers hold the view that even if the claim is valid, the use of false statement contaminated the entire claim, thereby justifying the forfeiture. This position was supported by earlier case law, which had recognized the fraudulent device rule as an extension of the doctrine of fraud in insurance.

In contrast, the insured argued that the false statement did not affect the insurer's liability since the damage to the vessel was real, and the cause of the loss was independently established, so the misrepresentation did not create the claim, nor did it increase its value. Therefore, the insured contended that the lie was collateral and should not deprive them of indemnity. They further argued that applying a blanket forfeiture rule would result in a disproportionate penalty, effectively allow insurers to avoid liability even in case where they had suffered no actual prejudice (The Supreme Court, 2024).

b) Court decision and judicial reasoning

The UK Supreme Court ruled in favor of the insured, marking a significant departure from the traditional strict approach. The Court held that the usage of collateral lie does not render the valid insurance claim fraudulent.

The Court drew a clear distinction between fraudulent claim and collateral lie and emphasized that the purpose of the fraudulent claim rule is to protect insurers from paying invalid claim and prevent fraud. However, if a lie do not bear on the validity of the claim, these objectives are not applied. The insurer is not forced to pay more than it should, and its position is not harmed.

Furthermore, the Court highlighted the issue of fairness. The denial of a valid claim entirely was an excessive response to a lie that had no actual impact. Such outcome could undermine the compensatory function of insurance and create unjust result.

The Court also considered the practical implication of maintaining the fraudulent device rule. It noted that the rule introduced unnecessary complexity and uncertainty into the law, as it required courts to determine whether a particular lie was sufficiently connected to the claim. By abolishing the rule, the Court sought to simplify the legal framework and align it more closely with the underlying principles of insurance law.

The judgment therefore established that lie told in support of a genuine claim, which does not affect the insurer's liability, does not render the claim fraudulent and does not justify forfeiture (The Supreme Court, 2024).

4. Discussion and recommendation

4.1. Discussion

The settlement of the Brillante Virtuoso and the DC Merwestone reveals a decisive doctrinal refinement in the application of utmost good faith within marine insurance law. Both cases concern dishonest conduct by the insured yet received different judgement and final settlement. While fraudulent claims regarding the root of the loss is exempt from indemnity, as seen in the Brillante Virtuoso, the Supreme Court in the DC Merwestone has limited the scope of the fraudulent claims rule by excluding collateral lies that do not affect the insurer's liability.

In the Brillante Virtuoso, the court adopted a strict stance by characterizing the incident as willful misconduct amounting to a fraudulent claim. The dishonesty in this case went to the root of the loss, effectively negating the existence of an insured peril. Consequently, the denial of the entire claim reflects the enduring principle that insurance does not cover losses deliberately caused by the assured, consistent with the indemnity framework and the exclusion of non-fortuitous events. The case reinforces that where fraud affects causation or validity, forfeiture remains absolute. By contrast, the DC Merwestone introduces a critical limitation to the traditional fraudulent claims rule. The Supreme Court distinguished between fraudulent claims and collateral lies, holding that dishonesty which does not affect the insurer's liability should not trigger forfeiture. This reasoning reflects a move toward proportionality, recognizing that the punitive denial of a valid claim may produce unjust enrichment for insurers and undermine the compensatory purpose of insurance. The Court explicitly rejected the "fraudulent device rule," thereby narrowing the scope of utmost good faith in post-contractual contexts.

Therefore, utmost good faith is no longer applied as an inflexible standard of moral purity but as a principle mediated by materiality and legal consequence. The emerging approach prioritizes whether the dishonesty has a substantive impact on the insurer's position, aligning insurance law more closely with broader principles of fairness and economic rationality (Soyer, 2018). However, this "flexibility" of the utmost good faith principle can lead to certain risks.

A potential risk is that it may generate new legal and practical risks by weakening the deterrent effect traditionally associated with the principle of utmost good faith. By removing the automatic forfeiture consequence for collateral lies, the law arguably creates a grey area in which insured parties may be incentivized to engage in opportunistic misstatements, particularly in complex claims where causation is difficult to establish (Sooksripaisarnkit, 2017). Although such lies do not formally affect liability, they may still distort the claims process by increasing investigative costs, delaying settlement, and complicating evidentiary assessment. From the insurer's perspective, the absence of a clear-cut sanction may encourage "calculated dishonesty," whereby insureds take the

risk of making false statements in the hope that they will be treated as immaterial if discovered (Soyer, 2018).

Moreover, the shift toward a materiality-based standard introduces a degree of legal uncertainty, as courts must now determine, on a case-by-case basis, whether a misrepresentation has a sufficient connection to the insurer's liability. This evaluative exercise may lead to inconsistent outcomes and increased litigation, particularly in borderline cases where the distinction between material and collateral lies is not clear-cut (Rawlings and Lowry, 2017). Such uncertainty can undermine predictability in insurance contracts, which is a key requirement for efficient risk allocation in commercial practice. Additionally, there is a concern that relaxing the strict application of utmost good faith may erode the normative foundation of trust upon which insurance relationships are built, gradually shifting the doctrine from a rule-based system of deterrence to a more discretionary and contested framework (Rose, 2017).

4.2. Recommendation

4.2.1. For the insured

First, insured parties should adopt a strict standard of substantive honesty in relation to causation and amount of loss, as any misrepresentation affecting these elements will continue to be treated as a fraudulent claim with severe consequences. The Brillante Virtuoso illustrates that where dishonesty undermines the existence of an insured peril or indicates willful misconduct, the courts will deny recovery entirely. This reflects the continuing force of the indemnity principle, which precludes recovery for non-fortuitous or self-inflicted losses. Accordingly, insureds must ensure that all representations concerning how the loss occurred and the extent of damage are supported by verifiable evidence, rather than framed opportunistically to secure coverage.

Secondly, although the DC Merwestone precedent establishes that collateral lies do not automatically invalidate a claim, insureds should not interpret this as a relaxation of the duty of good faith. They should maintain full transparency, even after loss. Even immaterial misstatements may significantly weaken the credibility of the insured, prolong claims handling, and trigger intensive scrutiny from insurers. From a litigation perspective, the presence of any dishonest element into the claim narrative creates uncertainty for settlement, as courts may reassess the reliability of the entire account. Therefore, insureds should avoid constructing "supportive narratives" where factual uncertainty exists, and instead disclose gaps or ambiguities transparently.

Thirdly, insured parties should invest in reporting systems and keep proper documentation during the time required to reduce reliance on post explanations. Both cases demonstrate that marine insurance disputes are often resolved through the evaluation of circumstantial and technical evidence, particularly where direct proof is unavailable. In such contexts, inconsistencies in documentation or testimony can be interpreted as evidence of dishonesty. The implementation of systematic incident reporting procedures, preservation of digital voyage data, and early

engagement of independent experts can enhance the evidential integrity of claims and mitigate the perceived need to supplement them with speculative or inaccurate statements.

4.2.2. For the insurer

As analyzed in the above cases, the regulation regarding collateral lies have removed the ability of automatic forfeiture as a defense of dishonesty. Therefore, the insurers should adopt more analytical claim-handling strategies.

First, insurers should implement a materiality-based evaluation framework when assessing dishonesty regarding claim. Rather than treating all misrepresentations as equal, insurers must distinguish between statements that affect the validity or value of the claim and those that are merely collateral. This requires a disciplined inquiry into whether the misstatement altered the insurer's liability position. As the Supreme Court emphasized, the purpose of the fraudulent claims rule is not to punish dishonesty, but to prevent unjustified payment (Rose, 2013). Accordingly, where the insurer cannot prove that the dishonesty has caused actual change to its liability position, a decision to deny the claim is likely to be overturned by the court. In such circumstances, the insurer not only remains liable to indemnify the insured but also engages in protracted and costly litigation. This outcome ultimately weakens the efficiency of claims handling and may adversely affect the insurer's commercial reputation.

Secondly, insurers should prioritize substantive investigation over procedural defenses. The success of the insurer in the Brillante Virtuoso was not based on technical reliance on good faith principal alone, but on the ability to prove, through substantive evidence, that the loss resulted from willful misconduct. This suggests that the evidentiary burden in complex marine disputes increasingly requires insurers to reconstruct causation through analysis, expert testimony, and data verification. Investment in investigative capabilities rather than dependence on doctrinal shortcuts will therefore be essential to achieve successful fraud defenses.

Thirdly, insurers should revise policy drafting and internal claims protocols to reflect the DC Merwestone precedent. Ambiguities in fraud clauses or overly broad forfeiture provisions may no longer be enforceable if they conflict with the proportionality principle stated by the courts. Clear differentiation between fraudulent claims and immaterial misrepresentations within policy wording can enhance predictability and reduce litigation risk. At the operational level, claims handlers should be trained to apply consistent criteria when evaluating dishonesty, thereby avoiding arbitrary or overly aggressive denial decisions.

5. Conclusion

This article has examined the evolving application of the principle of utmost good faith in marine insurance through a comparative analysis of The Brillante Virtuoso and The DC Merwestone. The analysis demonstrates that while the traditional strict approach continues to apply to fraudulent claims that affect the root of the loss, modern case law has introduced a more

reasonable distinction between material fraud and collateral lies. In particular, the rejection of the fraudulent device rule in *The DC Merwestone* reflects a shift toward proportionality, ensuring that immaterial dishonesty does not automatically reject the insured of a valid claim.

This doctrinal development suggests that utmost good faith is no longer enforced as an absolute standard, but rather as a principle mediated by the material impact of the insured's conduct on the insurer's liability. Such an approach better aligns with the compensatory nature of insurance and promotes fairness in claims settlement, while still preserving strong deterrence against genuine fraud. Overall, the current judicial trajectory reflects an effort to balance the integrity of the insurance system with the legitimate expectations of the insured, thereby enhancing both legal coherence and commercial practicality in marine insurance law.

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