

A faint, stylized illustration of a pair of scales of justice is visible in the background, centered behind the text. The scales are rendered in a light teal color, matching the background. The central pillar and the two pans are clearly defined, with the pans hanging from a horizontal beam.

Insurance Fraud: A Legal Summary

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Elements of a Fraudulent Claim



- A **false** statement.
- The insured made the statement **dishonestly**:
 - **knew** the statement was false, or
 - was **reckless** as to its truth or falsity.
- The insured **intended** the insurer to act on the statement.
 - *Gate v Sun Alliance Insurance Ltd* (High Court, Auckland, 17 December 1993, Fisher J)
 - *Blanshard v National Mutual* (High Court, Auckland, 22 September 2003, Harrison J)

Fraud by way of non-disclosure

- The insured knows the facts.
- The insured knows that the facts are relevant to the insurer's decision whether to accept the claim or investigate it further.
- With that knowledge, the insured deliberately withholds the facts from the insurer.
 - *NZI v Forbes* (1988) 5 ANZ Ins Cas 75,449 (NZCA)
 - *The Star Sea* [2001] 2 WLR 170 (House of Lords)
 - *Blanshard v National Mutual*

Exaggeration and fraud



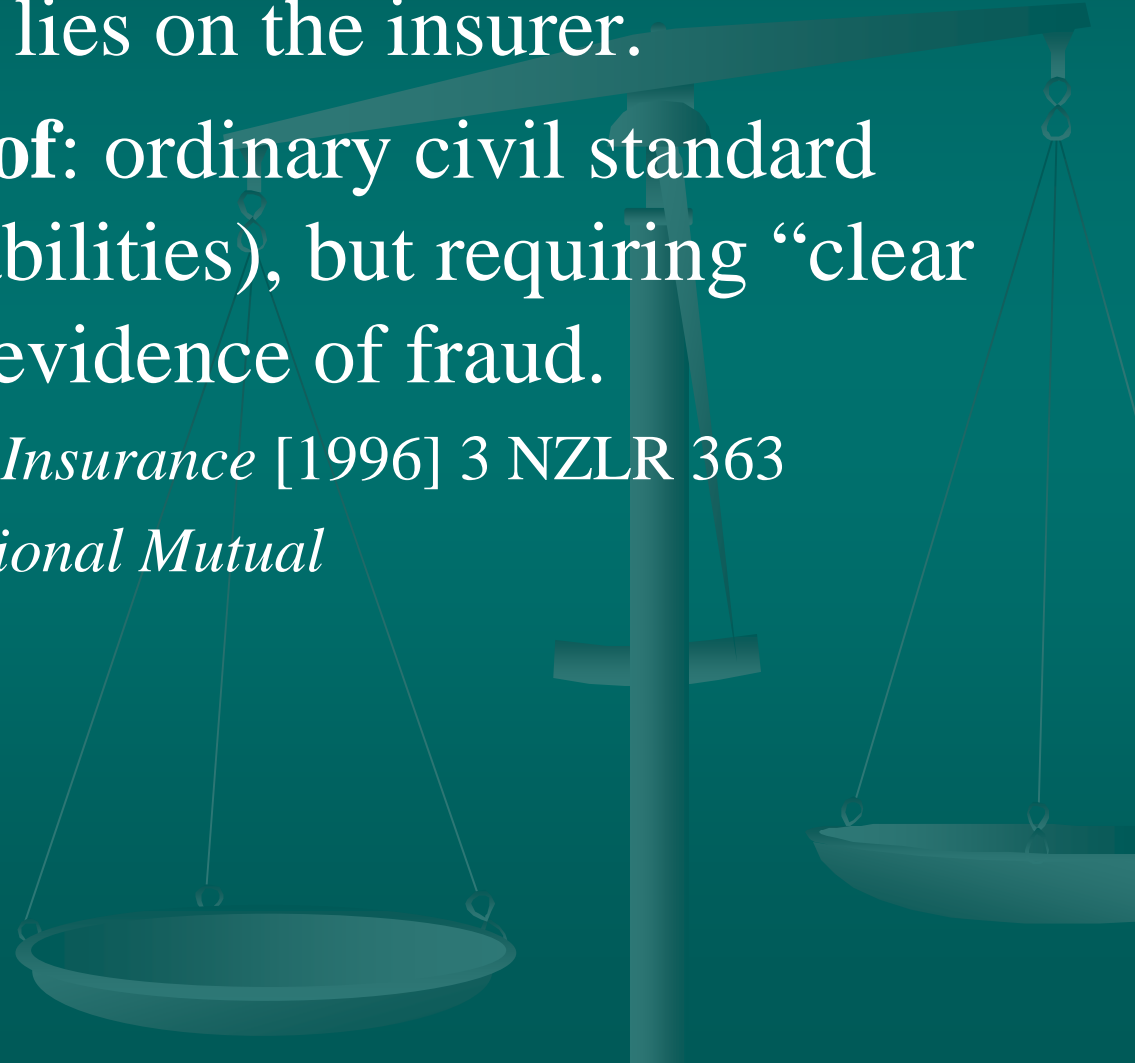
- Alright so long as the exaggeration is only a “bargaining position”.
 - *Ewer v National Employers’ Mutual General Ins* [1937] 2 All ER 193
- But a gross exaggeration is likely to be regarded as dishonest.
 - *Orakpo v Barclays Insurance Services* [1995] LRLR 443 (English Court of Appeal)

Contractual Modification

- A clause requiring statements to be “truthful” merely replicates the insured’s duty to act honestly.
- A clause requiring statements to be “correct” imposes a stricter standard.
 - *FAME Insurance Co Ltd v McFadyen* [1961] NZLR 1070
 - *Vermeulen v SIMU* (1987) 4 ANZ Ins Cas 74,983 (HC of NZ)

Burden and standard of proof

- **Burden of proof** lies on the insurer.
- **Standard of proof:** ordinary civil standard (balance of probabilities), but requiring “clear and convincing” evidence of fraud.
 - *Back v National Insurance* [1996] 3 NZLR 363
 - *Blanshard v National Mutual*



The Insurer's Remedies for Fraud

- Start with the policy.
 - What if the policy is silent?
 - The insurer can decline any otherwise valid claim that the insured has attempted to support by fraud. Eg, *NZI v Forbes*.
 - The insurer can cancel the policy (Contractual Remedies Act 1979, s 7).
 - But the insurer cannot avoid from inception: *The Star Sea* [2001] 2 WLR 170 (House of Lords).
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