



27 July 2016

## PRESS SUMMARY

**Hayward (Respondent) v Zurich Insurance Company plc (Appellant) [2016] UKSC 48**  
*On appeal from [2015] EWCA Civ 327*

**JUSTICES:** Lord Neuberger (President), Lady Hale (Deputy President), Lord Clarke, Lord Reed, Lord Toulson

### BACKGROUND TO THE APPEAL

The respondent, Mr Hayward, suffered an injury at work in June 1998. Mr Hayward brought proceedings and the employer admitted liability, but he deliberately and dishonestly exaggerated the extent of the injury in order to achieve a higher settlement figure of £134,973.11 from the appellant, the employer's liability insurer. At the time of the settlement in October 2003, the insurer had video evidence of the exaggeration. But by February 2009, the insurer had gathered further evidence showing that Mr Hayward had fully recovered a full year before the settlement. It sought to set aside the settlement and claimed damages for deceit. Mr Hayward applied for summary judgment on the basis that the claim had already been compromised in the previous proceedings. His application for summary judgment or strike-out was successful before the County Court, but overturned by the Court of Appeal. The insurer's claim was therefore allowed to proceed.

On the claim itself, the judge found that Mr Hayward had deliberately exaggerated the effects of his injury, set aside the settlement agreement, and awarded Mr Hayward a much reduced sum of £14,720. A second Court of Appeal allowed Mr Hayward's appeal, holding that the insurer could not be allowed to set aside the settlement agreement since it was aware of Mr Hayward's fraud at that time.

### JUDGMENT

The Supreme Court unanimously allows the insurer's appeal, restoring the judge's conclusion that the settlement agreement should be set aside and that Mr Hayward be paid the reduced sum. Lord Clarke gives the lead judgment. Lord Toulson gives a concurring judgment. The other Justices agree with both judgments.

### REASONS FOR THE JUDGMENT

The critical issue on appeal is whether, in order to show the requisite influence by or reliance on the misrepresentation in a claim to set aside a compromise on the basis of fraudulent misrepresentation, the defrauded representee (i.e. the insurer in this case) must prove that it settled because it believed that the misrepresentations were true. The answer is "no". There is no authority supporting a freestanding requirement of belief that the misrepresentations are true. The representee's state of mind is instead relevant to, but not necessarily decisive of, the court's consideration of inducement into the settlement agreement, and causation [18, 23, 25]. There may be factual circumstances in which a representee knows that a representation is false but nevertheless relies on it, but this is not such a case. The insurer in this case did not know that Mr Hayward was deliberately exaggerating his injuries to such an extent as later became clear, and did everything that it could to investigate. Qualified belief in a misrepresentation does not rule out the conclusion that the insurer was induced by it [20-22, 40].

Lord Toulson, concurring, adds that the issue in this case is whether a suspicious insurer, who nevertheless settles the claim on the basis that it is likely to succeed but then later discovers a fraud, can set aside that settlement and recover damages for deceit [52]. It must be shown that the false representation caused the insurer to act to its detriment, but such inducement is always a question of fact going to the issue of causation. Mr Hayward's misrepresentation induced the insurer to enter into the settlement agreement in this case [70].

It is not necessary to decide whether knowledge of the falsity of a representation would always prevent a representee from nevertheless proving that he was induced by it [40-48].

*References in square brackets are to paragraphs in the judgment*

#### **NOTE**

**This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at:**

<http://supremecourt.uk/decided-cases/index.html>