

LEGAL UPDATE

No analogous application of Section 7:941 of Dutch Civil Code BW with regard to 'third party'

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Last Friday, the [Dutch Supreme Court](#) answered the question as to whether the cancellation of the right to payment due to a violation by the insured of its obligation to inform the insurer should be applied analogously in the case of liability under the Motor Vehicles Liability Act (WAM).

The reason for the proceedings was that the WAM insurer of the car that caused the accident questioned whether the (alleged) injured party was actually a passenger in the car that was struck. The injured party had summoned a number of witnesses who gave testimony, which subsequently proved to be false, that they had seen the woman step out of the struck car after the collision.

The WAM insurer asserted that by summoning false witnesses, the injured party had violated its obligation to inform the insurer.

The obligation to inform the insurer under Section 7:941 of the Dutch Civil Code means that when the insured risk materialises, the insured must report this to the insurer as soon as possible. In addition, the insured must within a reasonable period provide the insurer with all the information that is relevant for the insurer in order to assess whether the insurance claim must be paid. If the insured fails to meet this obligation with the intent to deceive the insurer, this will – insofar as this is justified by the deception – result in the cancellation of the right to payment of the insurance claim.

In the case of personal injury caused by a motor vehicle, the injured party has an autonomous right to compensation from the WAM insurer and the owner of the motor vehicle under Section 6 of Motor Vehicles Liability Act.

The question before the Supreme Court was whether a violation of the obligation to inform the insurer – in this case by summoning witnesses that gave false testimony – entitles the WAM insurer to invoke the cancellation of the injured party's right to payment, analogous to the provisions of Section 7:941 of the Dutch Civil Code.

The Supreme Court held that the cancellation of the right to the payment of an insurance claim by a 'first party' is justified by the confidential nature of the insurance agreement, because, after the risk has materialised, the insurer is heavily dependent on information from the insured which cannot be verified by the insurer. This relationship between the insured and the insurer is of a completely different nature than that between an injured party and a WAM insurer. The Supreme Court ruled that the cancellation of rights cannot be applied analogously, because there is no contractual relationship in the latter case. In this respect, it is important to note that Section 7:941 of the Dutch Civil Code provides for sanctions that potentially have far-reaching consequences, meaning that a legal basis must exist for invoking it. The Supreme Court concludes that there is no place for accepting an extra-statutory rule whereby deliberate deception would result in the cancellation of the insured's autonomous right to compensation.

The Supreme Court referred the case back to the Court of Appeal, which will have to determine whether the (alleged) injured party – despite the false witness testimonies – succeeds in providing evidence that she was a passenger in the car when it was struck.

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