

A curious case of arson

By [Sharon Snell](#)

13 May 2016

There is nothing more frustrating for an insurer than having a suspicion of insurance fraud, but not having sufficient evidence to prove it.



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The facts of the case of [Renasa Insurance Company Limited v Watson](#) reads like the perfect insurance fraud set up. Only the courts didn't think so. Watson, the insured, discovers the arson plot and reports it to the police in a curious curtain-raiser hours before his factory is set alight by an unknown person.

The Supreme Court of Appeal (SCA) recently heard the appeal of Renasa and confirmed that the insurer had failed to discharge their onus of proving that insured was the arsonist or that the insured is precluded from claiming losses due to his failure to take reasonable steps and precautions to prevent the loss.

The facts of the case

A fire erupted during the morning of 10 January 2011 in an industrial premises in Elsies River, Cape Town. The property was owned by Flashcor 201 CC which let the premises to CB Watson. Watson conducted a business from the premises as a sole proprietor.

Renasa had insured both Watson and Flashcor under a written short-term insurance policy. Watson was insured against the loss or damage of plant, machinery and stock suffered as a consequence of fire for R17, 5m. Flashcor was insured against the loss or damage to the buildings on the premises as a consequence of fire for an agreed insured sum of R640,000.

“Elementary, my dear Watson”

Did Watson create an ingenious alibi?

He gave evidence that on the same morning of the fire he had arrived at the premises at 6.19am and found that the main door unlocked and the CCTV system and burglar alarm disabled.

He was met with the smell of petrol and a carefully constructed arson scene with a number of plastic drums filled with petrol strategically suspended from the cable trays above the printing and other machines in the factory area.

Watson alerted the Elsie's River police, who arrived within a few minutes and they found no one else on the premises and no evidence of forced entry. His GPS supported this evidence.

Watson was requested to follow the police to the police station to open a criminal case docket. He locked the door and security gate and no steps were taken to secure the scene, nor to cordon off the premises or the building and apparently and no attempt was made to notify the fire brigade or any other emergency services of the potential fire threat.

Evidence was led that Watson was told by the police not to attend the scene in order to preserve forensic evidence.

Two hours later that same morning a neighbour discovered smoke from the premises and summoned the fire brigade who arrived in minutes. There were multiple fire starting points.

It was common cause from the evidence led that the fire was caused by arson and that access had been gained to the premises by a person who had a key to the premises.

After investigation of the arson, Renasa repudiated the claim relying on two provisions of the insurance contract:

- **Fraud:** "If any claim under this policy is in any respect fraudulent or if any fraudulent means devices are used by the insured or anyone acting on their behalf or with their knowledge consent to obtain any benefit under this policy or if any event is occasioned by the wilful act or with the connivance of the insured, the benefit afforded under this policy in respect of any such claims shall be forfeited."
- **Prevention of loss:** "The insured shall take all reasonable steps and precautions to prevent accidents or losses."

Elaborately constructed alibi?

In proving its case of fraud, Renasa struggled to explain why Watson would have called the police to the scene and they were not successful in showing that his conduct was part of an elaborately constructed alibi.

The court's view

The court held that one would ordinarily expect the police, when summoned to such a scene, to take the necessary steps to manage the scene and prevent the flammable liquid from being ignited.

Watson's phone call to the police would therefore effectively have thwarted his carefully planned operation to burn the factory down. Such an elaborate gamble did not make sense in the circumstances to the courts.

The courts also found that a reasonable person in the position of Watson would not have foreseen, as a reasonable possibility, that an unknown arsonist would have attempted to manually ignite the fire after he left the premises.

Insurance fraud affects the consumer

Committing arson to make a false insurance claim is not uncommon. Some common motives are:

- The business is in trouble and can't meet its financial obligations or is carrying a high inventory of obsolete goods
- The property is difficult to sell and or the owner wants to relocate
- Marital problems

The insurance industry passes on increased losses from insurance fraud to policyholders, which results in higher premiums. The industry has a vested interest in curbing arson claims in order to maintain competitively low premiums.

In addition, insurers must not be seen to be rewarding crime. It is in both the industry's and consumers' interest that all suspected arson cases be investigated thoroughly by the insurance company. Where a case of suspected arson is found, the insurer should deny the claim on the basis of fraud.

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