

FRAUDULENT MISREPRESENTATION: A CLAIMS NARRATIVE

Dr. Dure Shahwar Naseem

CASE STUDY

As the clock in her office hit 3:00 pm, on 5th October 2015, Dr. Asmara, newly appointed Head of Department of Claims at EFU Life Assurance rubbed her temples while she stares unblinkingly at the thick, brown file that lay on her desk. Focusing on the bold characters of the title 'Policy no. 801435' printed in Arial Black was giving her a throbbing headache. The dilemma she was faced with was not an unfamiliar one for a claims examiner, but ever since she was promoted to HoD, the simplest of decisions felt like a herculean task. As of late, the COD (Claim Operations Department) had been receiving an increasing number of death claims, under policies that were obtained out of anti-selection and with fraudulent intent. Identifying these cases was becoming an increasingly challenging task for COD. The stressful decisions on such fraudulent cases were the conundrum left to senior officials. Dr. Asmara took a deep breath, and with all the composure she could muster, she called out to the junior claims examiner.

- Dr. Asmara: Arghal (Voice low, probably inaudible) Arghal? (Tries again, this time a little louder. She hears no response and her patience is running thin now)
Dr. Arghal ! Please come in here? (Shouting this time)
- Dr. Arghal: Yes Dr. Asmara? (Stands nervously at the door, trying to test the waters before crossing over to what seems like very hostile territory at the moment)
- Dr. Asmara: Did you have your earphones on again? (She did not have anything against earphones. In fact, the pair she owned herself was very dear to her and was frequently put to use. However, at this moment, she would have gladly taken Arghal's precious pair of Beats and snipped them into tiny useless pieces of wire with a pair of scissors)
- Dr. Arghal: No Dr. Asmara, I was, umm, just.. (His voice trails off in guilt. He just stands there, shifting his weight from one leg to the other while nervously picking at his fingernails).
- Dr. Asmara: (Putting on her stern, authoritative face) I was about to go through this death claim you submitted yesterday. This case (briefly glances at the file, reconfirming the details) of Parveen Akhtar, Policy no. 801435, would you mind telling me why you left the recommendation portion blank?
- Dr. Arghal: I, uh, (still fidgeting with his fingers) I haven't been able to reach a conclusion (his eyes are darting, focusing on every spot in the room, trying to avoid Dr. Asmara's unblinking eye-contact)
- Dr. Asmara: Dr. Arghal, you have been working at EFU Life for almost a year now. You have to start thinking like a claims examiner!
- Dr. Arghal: Yes, I understand that, but the facts of this case are just not compelling enough to make a decision outright! (His voice attains a higher pitch than usual when he's trying to make a point) I know it feels like a straightforward case for refusal but please take another look at it.
- Dr. Asmara: And why is that? (Rocking her recliner, its comic rhythmic squeaking serves to lighten the initial tension)
- Dr. Arghal: All I am saying is, we need to think this one through, Dr. Asmara. I'm not sure we have enough evidence on this one... (This was followed by a long pause, indicating that a point had been made)
- Dr. Asmara: (After what feels like eons, lets out an exasperated sigh) Let me take another look at this. Let's see...
- Dr. Arghal: Thank you ! That's all I ask.

Dr. Arghal was a junior claims examiner and the most recent (8 months, to be precise) addition to the Claim Operations Department at EFU Life. Almost as eccentric as his name and fresh off the boat, he had yet to shed the cloak of naivety that often clouded his judgment when assessing claims. Like all other claim examiners in the Claim Operations Department, Dr. Arghal was a recent MBBS graduate turned corporate climber. Needless to say, it takes these doctors quite some time to adapt to the corporate culture. Dr. Arghal was still referring to "Life Assureds" as "patients". He often faced difficulty making decisions, even more so when the claims had to be refused. He had a tendency to form personal attachments with the deceased policy holders and their families; a habit that could prove to be unhealthy to his insurance career. His indecisiveness was contagious and he frequently managed to confuse the senior claim examiners with his divergent thought process. This is exactly what he had managed to accomplish with policy no. 801435.

Dr. Asmara, on the other hand, was a seasoned claims examiner with a notable track record in the corporate sector. She worked for 2 years as a physician and then spent a year working with the marketing department of Novartis before deciding that she needed a job a little less dynamic than the pharmaceutical industry. She joined EFU Life 4 years ago and was on a steady rise to the top ever since. She was appointed as the HoD six months

ago and had to fill the very large shoes of her male predecessor (who was considered a bit of a legend in the world of claims). Needless to say, Dr. Asmara was currently in the limelight and the pressure was not only overwhelming, but also petrifying.

As the HoD, she was fully aware of how the Claim Operations Department at EFU Life took great pride in diligently fulfilling its obligation to its claimants by handling all claims promptly and by paying as many claims as possible. However, this also meant that the claim examiners had to thoroughly satisfy themselves of the legitimacy and validity before paying claims, while denying liability for any claim that were not covered by a policy or claims that were fraudulent. EFU Life has the highest number of medical doctors as claim examiners in Pakistan and was the only Life Insurance Company in the country with a claims department that comprises entirely of medical doctors. This fact alone gave EFU Life an edge over other insurance companies operating in the country. With over 20 years in the business, the Claim Operations Department has had a history of effectively handling all sorts of claims including very complicated cases such as foreign disappearance and organized fraud.

As of late, owing to various factors, the number of fraudulent cases was continuously increasing. The public was becoming increasingly aware of methods to defraud to insurance companies and insurance was becoming a means to earning a quick buck. As more and more people got familiarized with technology, con-artists used the opportunity to polish their forgery skills, and this meant easier access to counterfeit documents. To top it off, there are insurance laws in place and the regulatory bodies in the country ensure that the insurance providers abide by the law and practice in accordance with the predetermined guidelines. In short, there was no room for errors.

As Dr. Asmara flips through the file titled Policy no. 801435, she allows her thoughts to wander as she ponders over her career choice and what it means to be a claims examiner. The job of a life insurance claims examiner is a complicated one, to say the least. To stereotype a claims examiner would be to draw parallels with the likes of Sherlock Holmes, but in reality, the job delves into depths much further than simply having an eye for detail. Behind the doors of Claim Operations at EFU Life, you find a team of doctors turned claim examiners with brains working at full throttle, trying to find the balance between subjectivity and objectivity, trying to match the scales between fact and presumption, and most importantly, lending a very keen ear to their ever evolving gut feeling.

Dr. Asmara reads the file slowly and carefully, becoming consciously aware that this case was not going to be a straightforward one because it was within contestability. This was an early death claim (infamously known as a suspicious death claim) and there were high chances that there had been concealment of material fact at the time the policy was procured. This would lead to the unfolding of a series of predicaments; was the non-disclosure and concealment deliberate? Is this a case of fraudulent intent or innocent misrepresentation? (Refer to Annexure 1). If we feel it is fraudulent intent, how sure can we really be? Would we end up paying or refusing this case?

The initial red-flags that scream fraud can be found in the most basic information. As the case progresses, step-by-step scrutiny of the obscure details is what makes the picture crystal clear. At the very first glance, most fraudulent death claims seem to be fairly benign, with only a faint fishy smell that you can't quite put your finger on. On the other hand, one does occasionally encounter cases that reek of a truckload of decomposing shrimp, from the very beginning. Parveen Akhtar, policy no. 801435 initially seemed to be the latter but one could never really be sure.

Dr. Asmara puts on her spectacles and gets into detective mode and continues to read the first page of the claim file out loud:

'Parveen Akhtar, female, life age 56. The policy commenced at standard rates, on 1st July 2014. The Sum Assured is Rs. 1,000,000 with 1 premium of Rs. 100,000 paid. Parveen Akhtar was a housewife and her husband was an agriculturist. The intimation was received on 25th April 2015 and as per the death claim intimation form, Parveen Akhtar died of a sudden heart attack at home, on 3rd April 2015. The union council death certificate confirms natural death on 3rd April 2015.'

Dr. Asmara frowns as she takes note of the high sum assured and early death. "Intimation was received within

25 days of death... interesting," she thinks to herself and then flips a few pages of the file to search for the proposal form signed at the time of policy issuance. She notices that insurance details of Parveen's husband have not been mentioned. "Now why would a housewife decide to get a policy for herself if her husband is not insured?" she thinks to her herself. Her husband's occupation has been stated as 'Landlord'. She turns to the section titled 'Nominee(s)' and notices that the Assured's ten year old daughter; Ambar is the beneficiary of the policy with her father, Akhtar Javaid as the designated Guardian. She also notices that as per the proposal form, Parveen Akhtar has not suffered from any major health concerns. The contract has been sealed with the thumb impression of Parveen. Dr. Asmara stares at the faded ink blotch for a few seconds and wonders how literate Parveen Akhtar is. She shakes the thought out of her head before reading on:

'The case was sent for investigation due to the suspiciously early death via third party investigators, Factum & Co. (Refer to Annexure 2). The investigators first met with Parveen Akhtar's family in Bosan and they were able to verbally confirm her death at home, on 3rd April 2014. The investigators were able to determine that Parveen Akhtar's family came from a low socio-economic background and her husband's income was approximately Rs. 35,000 a month. They had four children, three daughters and a son. The eldest child, Saba was 24 years old, followed by 21 year old Zahida and 18 year old Mukhtar. The youngest daughter, Ambar Javaid, was the 10 year old beneficiary to the policy proceeds.'

Dr. Asmara again takes note of the nominee and wonders why one of the older three children were not nominated as beneficiaries. "It would certainly make sense to nominate someone who was not a minor," she thinks to herself but soon dismisses the thought after realizing how much she herself favours her youngest child, the most. She continues to read:

'According to her husband, Akhtar Javaid, she was perfectly healthy and was not suffering from any serious ailments; her death was sudden and unanticipated. The events that led to her death are as follows:

Akhtar had just returned home from the fields, during his mid-day break. Parveen was preparing lunch and they were in mid-conversation when he noticed her feeling faint. He rushed over to help her and according to him, she was complaining of a sharp pain in her chest. Moments later, she collapsed and died. He did not feel the need for a doctor to confirm the death, their next door neighbor was a hakeem and he verified her death by checking her pulse.

Akhtar Javaid has categorically stated these facts in writing (Refer to Annexure 3).

Dr. Asmara finds this puzzling. She wonders how a middle-aged, healthy person dies at home without being rushed to the hospital, that too in broad daylight. The rural lifestyle is beyond her understanding and she almost feels bad for this poor woman. Nevertheless, she carries on:

The investigators proceeded to meet with a few local doctors in the area; each of these doctors stated that they were all well acquainted with Parveen and that she had never consulted them for any illness; she only brought her children for seasonal cough and flu. An enquiry was also carried out with the Assured's neighbours and area people. According to them, Parveen was perfectly healthy and not suffering from any ailments. The investigators took special note of the fact that this was a close-knit community.

"That's strange..." thought Dr. Asmara, as she wondered how a middle-aged woman had never, not even once, felt the need to consult a doctor in her lifetime. Once again, she shakes the thought out of her head, attributing these doubts to the plight of rural women.

'The investigators then expanded the scope of their search to the distant neighbouring areas. They met Rauf Iqbal, a distant relative of Akhtar Javaid who lived at a 30 minute drive from their residence. He was a wagon driver and owned a private transport wagon that was used for taking passengers back and forth from the rural area to the city. He revealed that Akhtar Javaid had been borrowing his wagon every two weeks, for the past 10 months or so. According to Rauf, Parveen had to make fortnightly visits to a hospital in Multan (Rauf did not know which one) and Javaid needed the wagon for this purpose. Rauf was not aware of the details but had assumed that Parveen was suffering from TB or Hepatitis, an illness that required regular treatment. Rauf was initially cooperative but mid-enquiry he became apprehensive as to where the questions were leading; he refused to oblige further.

Please note: Rauf refused to provide his statement in writing'

"That's very helpful Rauf, what are we going to do with your verbal statement," Dr. Asmara mumbles to herself. Nevertheless, she mentally thanks Rauf for the lead.

'Based on the statement given by Mr. Rauf, the investigators used their sources to carry out a search into the handful of medical laboratories in Multan. The search was successful and a blood report was retrieved from ABC Labs. This blood report dated 6th July 2014 was that of a tumour marker CA-125 and the levels were raised.' (Refer to Annexure 4).

Dr. Asmara's eyes widen as she begins to feel a little excited at this bit of information. She knows that CA-125 is a very specific tumour marker; she knows that the test was probably conducted after a series of doctor's consultations and after a panel of other tests. She has just realized that Parveen was suffering from cancer, ovarian cancer to be more precise. Dr. Asmara wonders why the neighbours and area doctors were so unaware of Parveen's condition. She was terminally ill and yet, no one around her had a clue? Or did they? As Dr. Asmara asks herself how many people it takes to construct a well-executed scam, she flips pages till she comes across the lab report in question. As she scrutinizes this single piece of evidence, her elation at detecting foul play soon subsides. Her eyes fixated on each detail of the report, one particular at a time, she suddenly does not feel all that optimistic anymore. She sighs and continues to read, in pursuit of substantial evidence:

"The investigators visited the tertiary care hospitals in Multan and after thorough research they were able to pin-point and track down the oncologist who had been treating Parveen - Dr. Sabeen Ansari, of Health Care Hospital. Dr. Sabeen Ansari has a very tight schedule and visits to her clinic were initially unfruitful as she refused to meet with the investigators. They made several calls to her clinic at Health Care Hospital but to no avail. After many attempts, Dr. Sabeen met with the investigators and verbally confirmed that Parveen Akhter was her patient and was diagnosed with ovarian cancer a few months before death. According to her, Parveen had a surgery for removal of her uterus and was on chemotherapy. Dr. Sabeen refused to allow the investigators to access the medical records (hospital policy did not allow it) but did draft out a medical summary. It reads as follows:

"Parveen Akhtar w/o Akhtar Javaid, was my patient. She came to me a year ago, with presenting complaints of abdominal pain. After a complete and total work-up, she was diagnosed as a case of ovarian cancer. She was placed under the care of my team and underwent TAH + BSO (total abdominal hysterectomy plus bilateral salpingo oophorectomy) followed by 6 cycles of chemotherapy. She was recovering well.

Please note: The medical summary bears no date.

The case is currently under re-investigation; the investigators tried to meet Parveen's family again, in light of the new developments. The family has been tight-lipped and is refusing to cooperate.'

"So this is what a catch-22 feels like," Dr Asmara mutters to herself as she closes the file shut and rummages through her purse for an aspirin that she desperately needed (this would be her third one for the day). She goes on toying with the options she was faced with, considering all possible outcomes, mentally crunching numbers, assessing the medical evidence in her head and so on. A number of perplexing questions race through her head: Can we prove that there was non-disclosure of material facts at the time the policy was issued? Is the evidence compelling enough to repudiate this case? Is the evidence admissible? If we refuse the case on weak evidence, what would be our legal grounds to defend this case if the need arises? What if we decide to pay this claim, would that be justified? For a fleeting moment, Dr. Asmara thought of Parveen Akhtar's children and what it must have felt like to witness their mother's struggle with cancer and that too, on a very tight income. Her thoughts were interrupted by the loud, startling ringtone of her office phone; it was the investigator from Factum & Co.

"Hello, Mr. Ihsan?" she wonders what this was about. There is disturbance in the line and the voice at the other end is speaking loudly to be heard. "Dr. Asmara? Hello? Can you hear me? I am calling to give you an update on the case of Parveen Akhtar. We are in the field for reinvestigation and we came across a bit of information that you might find useful. Javaid Akhtar has a second wife and the girl Ambar, the nominee? She is not Parveen Akhtar's real daughter. The nominee is her step-daughter."

Annexure 1

Key Concept 6 Misrepresentation and Fraud¹

- A **misrepresentation** is an assertion that is not in accord with the truth. When a person enters a contract because of his justifiable reliance on a misrepresentation about some important fact, the contract is voidable.
- Misrepresentations can be either:
 1. “innocent” (not intentionally deceptive) or
 2. “fraudulent (made with the knowledge of falsity and intent to deceive).
- Contracts induced by misrepresentation or fraud are generally considered **voidable**. This means that the person whose consent was not real has the power to **rescind** (cancel) the contract.
- The **elements** of misrepresentation and fraud are as follows - *notice the similarities. (author’s addition)*

Innocent misrepresentation	Fraud
1. Untrue assertion of fact (or equivalent)	1. Untrue assertion of fact (or equivalent)
2. Assertion relates to material fact	2. Assertion made with knowledge of falsity and intent to deceive
3. Actual reliance	3. Actual reliance
4. Justifiable reliance	4. Justifiable reliance
	5. Economic loss

1. **Untrue Assertion of Fact or Equivalent** (author’s addition)

To have misrepresentation, one of the parties must have made:

1. An untrue assertion of fact **or**
2. Engaged in conduct that is equivalent to an untrue assertion of fact.
 - The **fact** must be a *past or existing fact*, as distinguished from:
 - I. An opinion or
 - II. A promise or prediction about some future happening.
 - The **concealment** of a fact through some active conduct intended to prevent the other party from discovering the fact is considered the **equivalent of an assertion**. For example, if Summers is offering his house for sale and paints the ceilings to conceal the fact that the roof leaks, his active concealment constitutes an assertion of fact.
 - **Nondisclosure** can also be the **equivalent of an assertion of fact**. Nondisclosure is the failure to volunteer information. Disclosure of a fact is required when:
 - I. The person has already offered *some* information but further information is needed to give the other party an accurate picture or
 - II. There is a relationship of trust and confidence between the parties or
 - III. A party has access to information that is not readily available to the other party.

2. **Materiality**

Innocent misrepresentation

- If the misrepresentation was **innocent**, the person seeking to rescind the contract must establish that the fact asserted was material.
- A fact will be considered **material** if it is:
 - I. Likely to play a significant role in inducing a reasonable person to enter the contract or
 - II. If the person asserting the fact knows that the other person is likely to rely on the fact.

Fraud

- Even if the fact is not material, the contract may be rescinded if the misrepresentation was fraudulent. Fraud is the type of misrepresentation that is committed knowingly, with the intent to deceive. The rationale for this rule is that a person who fraudulently misrepresents a fact should not be able to profit from his intentionally deceptive conduct.
- A person making a misrepresentation would be considered to do so “knowingly” if she:
 - i. knew her statement was false or
 - ii. knew that she did not have a basis for making the statement or
 - iii. made the statement without being confident that it was true.
- The intent to deceive can be inferred from the fact that the defendant knowingly made a misstatement of fact to a person who was likely to rely on it.

¹Source of materials: Mallor, et al., *Business Law and the Regulatory Environment: Concepts and Cases* (McGraw Hill/Irwin, 11th Edition, 2001). Bold print, bullets, and numbers have been added to the Mallor text to indicate particular emphasis.

Annexure 2

Factum & Co.

September 2015

Reporting Investigation: Death claim of Parveen Akhtar under policy no. 801435

We, Factum & Co. were appointed by EFU life Assurance Company Limited to investigate the Death claim of Ms. Parveen Akhtar (the life assured).

We visited the assured’s residence (i.e. Mohalla Bosan near Multan) to meet the assured’s family, to know details about the assured as well as to confirm the assured’s death, cause, place and circumstances of death and to find out if the assured had any past medical history, who had diagnosed it and any treatment details. There we met Mr. Javaid Akhtar, the Assured’s husband.

We visited the assured’s residence and met above mentioned family there. Mr. Faiz Muhammad told that he was married to the assured about 25 years ago and had four children, the eldest child, Saba was 24 years old, followed by 21 year old Zahida and 18 year old Mukhtar. The youngest daughter, Ambar Javaid, was 10 years old. Mr. Javaid Akhtar used to work as farmer in Bosan. His income from farming of mangoes was Rs. 35,000 per month. He told that the Assured bought the policy with her committee money as a means of savings.

Mr. Javaid Akhtar confirmed that the Assured died on 3rd April 2015 at around 04:00 p.m. due to a sudden death at home. Talking about the assured’s past, Mr. Javaid Akhtar told that the she was a healthy person and she was not suffering from any other illness.

On request, Mr. Faiz Muhammad provided his written statement (in Urdu) attached with our report. The people of the area were keen to help and it seems they were close to each other. We met local doctors but all of them said that they knew Parveen well and that she had never come for any disease herself illness; she only brought her children for seasonal cough and flu. All neighbours and area people said that the Assured was healthy and never suffered from any disease.

We then went to distant areas to expand our search. We came across Mr. Rauf Iqbal, a distant relative of Akhtar Javaid who lived at 30 minute drive from their residence. He owns a private transport wagon for taking people from rural area to the city. He revealed that Akhtar Javaid took his wagon every two weeks, since last 10 months for taking Parveen Akhtar to some big hospital in Multan. He thinks she may have had TB or Hepatitis, and needed routine injections. He got scared after we asked him these questions and refused to talk further or provide any written statement.

Using the information provided by Mr. Rauf Iqbal, we went and searched in all the big laboratories in Multan. We found a blood report (attached) from ABC Lab – After this blood report we searched all the prominent hospitals in Multan and came to know through our sources that the Assured was taking treatment for cancer from Health Care Hospital, under Dr. Sabeen Ansari, cancer specialist. Dr. Sabeen did not allow us to search the hospital records and it was very difficult to meet her. We tried many times and when we finally met her she gave us a medical summary of the Assured (attached).

We have been trying to contact the family to meet them again after these developments but they have avoided us so far.

Annexure 3

میں اختر جاوید ولد جاوید اقبال خاندان بی بی پروین اختر سکند بوسان ملتان حلقہ
 بیان دیتا ہوں کہ میری شادی مرحومہ سے ۲۵ سال قبل ہوئی تھی جس سے میرے چار
 بچے تھے جن کے نام عبا، زاہد، امبر اور مختار ہیں جن کی عمریں ۲۴، ۲۱، ۱۵ اور
 ۱۸ سال ہیں۔

مورخہ ۱۳ اپریل ۲۰۱۵ روزمرہ کی طرح میں کھینے بارہی کر کے دوپہر کھانے کیلئے گھر آیا
 وہ روٹی ڈال رہی تھی کہ اچانک اُس کے دل میں درد شروع ہوا اور کہنے لگی کہ گھبراؤ
 یورپی ہے۔ میں نے کہا کہ ذرا بیٹھ جاؤ، غور سے طبیعت بہتر ہو جائے تو کام کرینا۔
 اتنی دیر میں وہ اچانک گر پڑی۔ میں نے اپنی بیٹیوں کی مدد سے اُسے اٹھا کر
 چارپائی پر لیٹا دیا۔ وہ بالکل حرکت نہیں کر رہی تھی۔ پڑوس سے حکیم چایا کو
 بلدیا۔ انہوں نے نبض دیکھی اور کہا کہ پروین اختر اللہ کو پیاری ہو چکی ہے۔
 عصر کے بعد اسی دن نماز جنازہ ہوئی اور علاقہ کے قبرستان میں
 سپرد خاک کر دیا گیا۔

میں حلقہ بیان دیتا ہوں کہ بی بی پروین اختر انتقال سے پہلے کسی قسم کے
 کی بیماری میں مبتلا نہیں تھی۔


قدیر کو لکھو پڑھو اور سن لی ہے جو میرے علم و یقین کے مطابق درست ہے۔
 اور بوقتِ ضرورت کام آئے گی۔

گوٹہ مختار اختر جاوید

اختر جاوید ولد جاوید اختر

7/8/2015

Annexure 4

 **ABC Laboratory & Diagnostic Centre**
Hazoori Bagh, Road Multan

BIOCHEMISTRY III

LAB REPORT


CLINICAL INFORMATION / COMMENTS

Consulting Physician: Not known	L34167429 MS. AKHTAR, PARVEEN Female 48Y ACC# D4316229
	LOC BOSAN
	COLL 06/07/2014 - RECD 08/07/2014 - 10:37

Test	Result	Normal Ranges
SERUM CA-125	43.50 IU/ml	<30.2 IU/ml

REFERENCE RANGE
NORMAL HEALTHY PEOPLE LESS THAN 30.2 IU/ml

Annexure 5


OPD Clinic
Health Care Hospital
Gulshan Road, Multan
Mon-Fri: 2:00 - 6:00

Dr. Sabeen Ansari
Consultant Oncologist
MBBS, MCPS, FCPS

Parveen Akhata w/o Akhtar Tarsaid
was my patient. She came to
me about 1 year ago, with presenting
complaints of abdominal pain. After
a complete and total work-up, she
was diagnosed as a case of
ovarian cancer. She was placed under
the care of my team and underwent
TAH + BSO (total abdominal hysterectomy +
bilateral salpingo oophorectomy) was done
followed by 6 cycles of chemotherapy.
She was hearing well.

