

# CASE STUDIES

Please note that each matter is dealt with on its own merits and no precedent is created by the findings in these matters. The case studies are intended to provide guidance and insight into the manner in which OSTI deals with complaints.

## FAILURE TO TAKE REASONABLE STEPS TO SAFEGUARD A CELL PHONE

Ms K submitted a claim to her insurer following the theft of her insured cell phone.

The insurer rejected the claim on the grounds that Ms K had failed to take reasonable steps to safeguard the mobile device at the time of the loss, which was a condition of cover.

In support of the rejection of the claim, the insurer relied on the following specific exceptions in the policy wording:

### **"SPECIAL NOTE REGARDING DUE CARE AND PRECAUTION**

*At all times you must take reasonable steps to safeguard the MOBILE DEVICE from loss, damage or theft."*

### **EXCLUSIONS APPLICABLE TO ALL SECTIONS OF THE POLICY (What you are not covered for)**

*viii) Loss or damage arising from the MOBILE DEVICE where it is left unattended in a public place, place of recreation, office, mall or social occasion where it is vulnerable for easy removal or damage."*

During its assessment of the claim, the insurer listened to a recorded conversation between Ms K and the insurer's claims agent which had taken place when the claim was submitted. Ms K advised that her husband had invited his mechanic for a braai at their holiday home. According to Ms K, the cell phone was left outside on the patio table when they went inside the house

to eat. When she again went outside, the cell phone was gone.

The insurer submitted that the device was left unattended. The insurer referred to the definition of "unattended" which means - "not noticed or looked after/not supervised". According to the insurer, based on the description of the event, it was a gathering of people, Ms K, her husband and her husband's mechanic. The insurer submitted further that the braai was a social affair or social gathering. Based on Ms K's description of how she had closed the music app and locked the device leaving it outside before going inside to eat, the insurer concluded that Ms K had created an opportunity for the handset to be removed without much effort as it had been left unsupervised in an open place. The insurer argued that the device had been left outside intentionally exposed, not safeguarded and therefore vulnerable to easy removal.

Ms K asserted that she was not in agreement with the insurer's rejection of the claim. She stated that the cell phone was left on the patio table of a private property, which could hardly be seen as a public place, place of recreation, office or mall. She stated further that the braai was not a social occasion as she was with her family, no friends or other people were present when the loss occurred. According to Ms K, if they were having dinner at a restaurant and she left the phone unattended on the table and it got stolen, then she would have accepted the rejection.

She also stated that she did not see any risk by leaving the cell phone on the table as she would have done the same at her private residence. Ms K concluded that a social event in her opinion would be where there are more than three people present, including friends, family and people that you might not know that had been invited by someone else, not just three people sitting down to have dinner.

The insurer submitted that the insured device had been left exposed on a patio table at a holiday home. Further, that according to Ms K's description of the events, there were other premises close to the house that she was staying in. The insurer argued that Ms K was reckless and grossly negligent by leaving the cell phone out in the open, unattended and visible to the public during a social occasion at her holiday home.

In demonstrating that Ms K had failed to take reasonable steps to safeguard the device from loss, the insurer established that Ms K had left the insured cell phone unattended on the patio table outside the house which was left exposed to by-passers and neighbours surrounding the property.

OSTI's view was that the actions of Ms K, under the circumstances, were reckless and that she was in breach of the policy condition. The insurer's decision to decline liability on the claim was therefore upheld.