

CASE STUDIES

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RETAIL VALUE – DEFINED IN THE POLICY

DISCOVERY INSURE LIMITED

Mr N submitted a claim to the insurer in respect of the theft of his vehicle, which occurred on 4 October 2018. The insurer authorised the claim.

Mr N's complaint is with regards to the settlement amount. The insurer offered to settle the claim in the amount of R17 000.00. This amount was based on the vehicle's retail value at the time of the loss according to TransUnion. Mr N did not dispute the vehicle value set out by TransUnion. He disagreed with the insurer's settlement offer on the basis that the insurer did not inform him that the value would be determined in this way.

The policy inceptioned on 4 October 2018 and the insured vehicle, a 1994 Toyota Conquest 1300, was insured for retail value. The insurer's Plan Schedule (schedule) was sent to Mr N. According to the cover letter accompanying the schedule, the policy document gave the insured details of what he was covered for, the premium breakdown and confirmation of his personal underwriting details. The cover letter also informed Mr N to download the Insurer Plan Guide (guide) for a 'comprehensive guide' of the benefits provided.

Mr N argued that the schedule did not define the term "retail value", and therefore, its ordinary meaning

should apply. Mr N submitted that the average policyholder understood retail value to mean the average of retail prices actually charged in the open market and not the value listed by TransUnion. He stated that the average advertised price, in terms of an Automart mobile app, for five 1994 Toyota Conquests was R46,580. In the Western Cape, three older model Toyota Conquests were advertised for an average of R36,165. On this basis Mr N made a counter-offer in the amount of R35,000 to the insurer. The insurer did not accept the counter-offer and maintained its original offer.

In its response to the complaint, the insurer pointed out that the term "retail value" was in fact defined in the guide. The following is transcribed;

"Retail Value

For vehicles, retail value is the value that the vehicle can generally be bought for, from a recognised member of the motor vehicle trade industry. This value is obtained from the Auto Dealer's Guide published by TransUnion Auto Information Solutions (PTY) Limited, or any similar publication approved by us and adjusted for mileage and condition..."

The guide goes on to state the following-

"7.7 How much are you covered for after the loss or damage to your vehicle

You may choose to insure your vehicle for:

- Market value; or
- Retail value; or
- Retail booster

You may change this at any time. If your vehicle does not have a readily available retail or market value, you may insure your vehicle on a nominated value basis.

7.7.1 How do we calculate the retail, Retail value booster, market or nominated value of your vehicle and specified extras when you claim?

We use an independent trade authority in the motor vehicle industry to determine the retail or market value of your vehicle and any extras you have specified.

Where there is no retail or market value readily available, or

Where the retail or market value available is older than six months, we will:

- Determine the value by taking the average retail value, or market value (whichever one you have chosen), including the specified extras, given by three independent motor industry sources of our choice.

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7.7.2 Retail and market value

If your vehicle is:

Repairable – we will pay the cost of the repairs to your vehicle.

Written off, including stolen or hijacked:

– We will pay the replacement value of a new vehicle of similar make and model at the date of loss if your vehicle is less than 12 months old from first registration.

– We will pay the market or retail value at the date of loss, depending on the cover option that you have chosen if your vehicle is older than 12 months.”

Mr N asserted that the insurer should not be entitled to rely on the above provisions, and consequently the values in the guide, because it had failed to draw his attention to the material fact that the retail value referred to in the schedule had a ‘restricted meaning’ set out in the guide. He stated that the title plan guide does not suggest that the document is more than a guide, or that it forms part of the contract of insurance. OSTI did not agree. The cover letter accompanying the schedule distinguished it from the plan guide and clearly indicated that the guide was a comprehensive guide in respect of the insurer’s plans, benefits and rules. Mr N was directed to read both documents.

The following is transcribed.

“Read about your plan and benefits

- Your **Discovery Insure plan schedule** attached gives you details on what you’re covered for and your premium breakdown so you can be certain about how much you pay and your cover. Please read your plan schedule carefully – particularly your personal, driver and cover details, and let us know if any information needs to be updated.
- For a comprehensive guide on the Discovery Insure plans, benefits and rules you can download the **Discovery**

Insure plan guide which you can find on www.discovery.co.za.”

In addition to the above, under the schedule, the insurer indicated that the guide would form part of the contract of insurance. The following is transcribed.

“Please note that this document must be read in conjunction with the Insure Plan Guide which contains the full terms and conditions of your insurance contract.”

In Mr N’s view the above statement was insufficient disclosure of a material fact because it was stated in ordinary text on the last sentence of page 4 of 17 pages in the documents provided to him. Again, OSTI did not agree. The statement was made on the first page of the schedule (after the cover letter) under the very clear heading “DISCLOSURE OF RELEVANT FACTS”. It was not buried within unrelated text. Mr N submitted further that the insurer must consider how consumers actually behave in practice, including the fact that most consumers do not read standard written contracts thoroughly before accepting cover. As such, the terms must be brought to the insured’s attention at sales stage and given appropriate prominence.

OSTI will always hold the insurer accountable where it falls short of its obligations in drafting its policy documents or at sales stage. OSTI also appreciates the challenges faced by consumers and is well placed to determine what is fair in relation to the circumstances of each particular case. With that said, considering that the policy explicitly set out how it will calculate the retail value, OSTI cannot overlook these terms simply because Mr N did not read policy documents which were made available to him before the cover incepted. Mr N was required to read the policy documents as they contain important information applicable to the contract of insurance.

Mr N’s further argument was that the insurer did not prominently draw his attention to a significant limitation as defined under Rules 11.1(d), 11.4.2(g) and 11.5.1(d) of the Policyholder Protection Rules, asserting that the insurer’s definition of “retail value” is restrictive. The relevant Rules are transcribed;

“11.1 Significant exclusion or limitation” means an exclusion or limitation in a policy that may affect the decision of the average targeted policyholder to enter into the policy and includes-

(d) any limit on the amount or amounts of cover.

11.4.2 An insurer must provide a policyholder with the following information-

(g) Concise details of any significant exclusions or limitations, which information must be provided prominently as contemplated in rule 10.15.

11.5.1 Disclosure after inception of policy.

An insurer must at the earliest reasonable opportunity after the inception of the policy, but no later than 30 days after such inception, provide the policyholder with all information referred to in rule 11.4 in writing, to the extent that any such information has not already been provided in writing by the insurer under rule 11.4, as well as the following information-

(d) Comprehensive details of all exclusions or limitations, including prominent disclosure as contemplated in rule 10.15 of any significant exclusions or limitations.”

The definition of retail value in the guide was suitably set out under the heading “Important definitions” on page 5, and OSTI was satisfied that the sub-heading was given appropriate prominence in the text.

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The policy document (under section 7.7.1 transcribed above) goes on to detail how the insurer calculates the retail value. These policy documents were given to Mr N before the cover inception.

Purely for the sake of completeness, we must also note that this policy was undertaken by an independent financial advisor/broker representing Mr N. If Mr N wished to contest the advice given by this broker at sales stage, he would have to approach the FAIS Ombudsman. This office does not enjoy jurisdiction on matters relating to the conduct of an independent broker or intermediary. We confirm that OSTI was satisfied that the insurer had fulfilled its obligations.

The insurer's decision under the circumstances of this case was standard in the insurance industry and was in line with the underlying purpose of short-term insurance, being to indemnify the insured. The price of a vehicle on a dealer's floor is adjusted to make a business profit. If the insurer were required to settle the claim on this price, Mr N would be unjustifiably enriched. The retail value as it is defined and calculated herein effectively indemnifies Mr N, placing him in the same financial position that he was in prior to the incident.

In its submission to our office, the insurer pointed further to the provisions under Rule 11.3.1(e) of the Policyholder Protection Rules, which state the following:

"11.3 General disclosure requirements Language and format

11.3.1 Any communication by an insurer to a policyholder in relation to a policy must –

- (a) be in plain language;
- (b) not be misleading;

(c) be provided using an appropriate medium, taking into account the complexity of the information being provided;

(d) where applicable, be in clear and readable print size, spacing and format; and

(e) in respect of any amount, sum, premium, value, charge, fee, remuneration or monetary obligation mentioned or referred to therein, be stated in actual monetary terms, provided that where any such amount, sum, premium, value, charge, fee, remuneration or monetary obligation is not reasonably pre-determinable, its basis of calculation must be clearly and appropriately described."
(own emphasis)

The insurer submitted that the vehicle's retail value is not reasonably pre-determinable as it is a variable amount which fluctuates on a monthly basis. It is also influenced by several other factors such as mileage and the vehicle's general condition. According to the insurer, the basis of calculating

the retail value was therefore set out in the guide, and in compliance with the Policyholder Rules.

Mr N asserted that if the insurer wanted to rely on the value according to Transunion, then it should make a note in the schedule indicating the vehicle's value at the time of inception, subject to changes according to Transunion at the time of the loss. OSTI agreed that this would be a practical inclusion, however, the matter did not turn on this omission. The insurer sufficiently explained its terms in the policy documents provided. The policy of insurance must be interpreted by endeavouring to ascertain the intention of the parties as expressed from the language used in the contract, which, if clear, must be given effect to.

OSTI's view was that the insurer was justified in its reliance of the definition of retail value set out in the guide and accordingly the values set out in the Transunion guide. As such, the insurer's settlement offer was upheld.

