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.

EXERCISING REASONABLE CARE

OAKHURST INSURANCE

Mr N was travelling at night on a gravel road when he felt a slight bump underneath the vehicle. He continued to drive the vehicle, when a warning light came on, indicating that the oil level was low. Mr N drove a further 500 meters to a garage, where he called a towing company to assist to tow the vehicle from the garage. The vehicle was taken for an assessment and Mr N obtained repair quotes. He received a repair quote of R 11,000.00 to replace the sump that was damaged. However, the repair centre advised him that the vehicle's engine had also seized.

The insurer declined liability for the damage to the engine on the ground that Mr N had failed to comply with the terms of the policy which required him to exercise due care and precaution in preventing loss or damage.

The insurer submitted that after the impact with the rock or hump on the road, Mr N did not stop to assess the damage to the vehicle but continued to drive. After the warning light displayed on the dashboard, Mr N ignored this warning and still continued to drive to the nearest garage. As a result of the impact, the vehicle's sump was damaged and oil leaked from a hole in the sump, which would have been noticeable if inspected. As a result of the vehicle being driven after the impact, further damage occurred to the engine. Mr N had failed to take reasonable care and precaution to mitigate the damage, according to the insurer.

The insurer relied on a general condition in its policy which stipulated that an insured must take all reasonable precaution and all reasonable care to prevent or minimize loss or damage.

Mr N argued that he had acted reasonably in the circumstances and stated that he was driving at a speed of 30km/h at the time of the impact. He advised that he did not feel the need to stop the vehicle as it was only a slight bump and he did not want to stop in an unfamiliar location for his own safety.

Mr N stated that when he left the gravel road and joined the tarred road, he did not notice anything strange with the vehicles' handling. He submitted further that, when the warning light came on, he only drove for a further 500m to a safe place.

OSTI upheld the rejection of the claim for the following reasons: The vehicle's engine seized after it was driven following the impact with the rock. There was no evidence to indicate that the engine was damaged at the point of impact with the rock. While Mr N argued that he had only driven an additional 500m after the warning light displayed, regard must be had to the vehicle manufacturer's manual which states that the vehicle must be immediately stopped and not driven any further once the oil warning light is displayed.

OSTI found that there were two points during Mr N's journey at which he could and should have exercised due care to minimise the damage to his vehicle. The first was after the impact with the rock and the second was when the warning light was displayed. When Mr N continued driving after the initial impact with the rock, without assessing the damage to his vehicle, and when the warning light was displayed, he assumed the risk of any further damage to the vehicle. A warning light that displays, especially in respect of the engine, is there precisely to warn a driver that something is wrong with the vehicle and a reasonable person faced with this type of warning light, should have, in Mr N's position, immediately stopped the vehicle.

OSTI also considered Mr N's argument that it was not safe to stop in an unfamiliar area at night. In this specific matter, no proper assessment was done of the road on which the incident occurred and OSTI was not able to establish whether or not there was any degree of danger to the insured. However, notwithstanding the danger that Mr N may have found himself in, the insurer has limited the extent to which it is willing to assume liability in these circumstances by way of express contractual provisions. The insurer was therefore entitled to rely on these contractual provisions.

OSTI was unable to assist Mr N in his complaint and the matter was resolved in favour of the insurer.

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MOTOR POLICY UNDERWRITTEN ON A "LOSSES OCCURRING" BASIS

STANDARD BANK INSURANCE

> Policies can be written on two bases: "claims made" or "claims occurring" (sometimes also "claims arising" or "losses occurring"). A "claims made" policy will pay out for any valid claim made during the policy period, regardless of when the incident/accident occurred. With a "claims occurring" or "losses occurring" policy, the policy does not have to be in subsistence when claiming, as long as the loss occurred during the subsistence of the policy or period of insurance.

Mr M submitted a claim to the insurer in respect of a motor vehicle accident which occurred on 8 October 2017. After validating the claim, the insurer noted that the premium had not been paid for the preceding month of September 2017 as the payment had been stopped by Mr M. This meant that Mr M provided the bank with a "stop order" instruction on the debit order for his insurance premium. The policy was cancelled and Mr M did not therefore have cover for October 2017, being the month in which the accident had occurred.

After investigating the matter, Mr M established that the bank had made an error and that the debit order collection by the insurer should have been successful, as he had not placed a "stop order" on his account. This information was relayed to the insurer.

After making contact with Mr M's bank it was confirmed that Mr M's premium was unpaid as a result of a bank error.

The insurer was willing to reinstate the policy in order for the claim to be considered provided Mr M paid his premiums from October 2017 up to January 2018.

Mr M was not willing to pay all the premiums demanded by the insurer and a complaint was registered with OSTI in this regard.

Having considered the matter, OSTI pointed out to the insurer that the policy was underwritten on a "losses occurring" basis and therefore the policy did not have to be in subsistence on the date that the claim was intimated or considered by the insurer.

Since the loss only occurred 1 month after the cancellation of the policy, due to an erroneous "stop order" notification received from the bank, the policy only had to be reinstated for 1 month. The claim could therefore be considered on the receipt of 1 month's premium from Mr M, in order for him to have cover for October 2017.

The insurer was not entitled to the payment of premiums up to the date of consideration of the matter in January 2018 before validating the claim, which arose in October 2017. If the policy had been underwritten on a "claims arising" basis, the policy would have had to be in force at the time that the claim was registered. This, however, was not the case.

The insurer agreed to abide by OSTI's recommendation and the claim was accepted by the insurer on receipt of one month's premium only.