

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.

CONSEQUENTIAL LOSS

Mr B submitted a motor vehicle accident claim to his insurer on 10 October 2017. According to the information provided, there were significant delays in processing and finalizing the claim. An assessor was appointed to validate the claim on 20 November 2017. The insurer submitted that, with the beginning of the festive season, there were further delays in the repair of the vehicle.

Mr B's policy provided cover for a rental vehicle during the claims period. Mr B was provided with a Ford Fiesta through a vehicle rental company. The insurer submitted that the class of rental vehicle provided was in line with the 'car hire option' agreed to at the inception of cover and set out in the policy schedule.

On 2 February 2018, Mr B's rental vehicle was broken into. Various items of value were stolen from the boot. According to the information provided, there were visible signs of forced entry into the vehicle, namely that the key cover on the driver's door handle had been removed. Mr B submitted a claim under the All Risks section of the policy for the replacement of the stolen items.

Mr B claimed a total sum of R67 250.00. The claimed items included a 13" Apple MacBook for the replacement value of R19.600.00. According to the insurer, this item was specified under the policy for R14 000.00. This was, therefore, the maximum limit of cover. Mr B also claimed for various items under the Unspecified All Risk cover. The insurer pointed out that the limit of cover under

the unspecified All Risks section of the policy was 25% of the sum insured, per individual item and the claimed incident. The sum insured was R12 900.00, less a basic excess of R250.00.

The insurer offered to settle Mr B's total claim in the amount of R25 270.00 calculated as, R14 000 in respect of the 13" Apple MacBook and R11 270 for the total unspecified items less, the excess of R250.00. The settlement offer was declined by Mr B.

The insurer had substantiated its settlement offer based on the following provisions in the insurance contract:

"Section 3 – All Risks

This Section covers items that you decide to insure, against a wide range of risks (including loss and accidental damage). These items are also covered when they are removed from your home."

"Details of cover we provide

1. We will compensate you

- when any of your insured property is lost or damaged,
- compensation will be based on the current new replacement cost, but limited to the sum insured."

"Specific Exclusions

(your All Risks cover is limited in the following ways)

Loss or damage is NOT covered for:

- more than R1 000 or 25% of the sum insured, whichever is the greater, for any one article, pair or set (other than clothing); this limit is not

extended by any of the sub-limits that follow. (For cover up to the full amount of any of the sub-limits, you should ensure that your "General" Sum Insured is 4 times the sub-limit that is important to you);"

"Procedures and requirements when making a claim

- You must supply proof of both ownership and value of any item that you are claiming for."

Mr B stated that his claim was not based on the insurer's contractual obligation. He submitted that the insurer should be held responsible for the full loss due to the admitted delays in the administration of the vehicle claim as this had 'real-world consequences' for him.

Mr B argued that the incident would never have occurred with his vehicle, a 1990 Jaguar XJ40. He submitted that, according to the car rental company and the media, the Ford Fiesta is notoriously vulnerable to this type of theft. Mr B stated that he would not have been driving the Ford Fiesta in February 2018 had it not been for the inefficient service and claim delays on the part of the insurer.

Mr B argued further that the insurer's initial offer should be reconsidered as it had been made during the tenure of the insurer's CEO whose employment was subsequently terminated on issues relating to dishonest conduct.

The insurer submitted that it had already exercised good-will by going

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.

beyond the terms and conditions of the policy. The insurer advised that it waived the policy requirement for proof of ownership in respect of the unspecified claimed items. The insurer further offered an additional R5 000.00 as compensation for the inconvenience suffered by Mr B as a result of its delay in the administration of the vehicle claim.

Mr B declined the amended settlement offer. He submitted a counter-offer that the insurer settle the unspecified laptop in the amount of R10 775.00. The insurer did not accept the counter-offer.

The insurer, in its response to the details of the complaint, maintained that the settlement offer was reasonable and fair. It acknowledged its delay in appointing the assessor and apologized for the poor claims experience. The insurer submitted however that it could not be held responsible for the theft. It stated that this would be unfair because theft incidents in South Africa occur daily. The insurer explained that the additional R5 000.00 settlement offer was made in goodwill, as an ex gratia payment. It stated that there was no scientific calculation behind it. The insurer added that the basic excess was also subsequently waived.

The relief sought by Mr B required OSTI to determine whether the insurer's

liability in respect of the theft claim could extend beyond the scope of the cover provided in the insurance contract on account of its delay in processing the vehicle claim.

The following terms are stipulated under the vehicle section of the insurance contract;

**"SPECIFIC EXCLUSIONS
(your Motor cover is limited in the following ways)**

Limitations on cover for loss or damage

We do NOT cover:

- consequential loss from any cause (except car hire cover as it is insured in this Section);"

Consequential loss arose from a special circumstance. It was the indirect financial loss suffered by Mr B following an insured peril. The financial loss is usually not foreseeable or within the contemplation of the parties when entering into the contract. Consequential loss is often excluded in short-term insurance policies thereby limiting the insurer's liability. Consequential loss may be recoverable in terms of a damages claim - a delictual loss. In order to make out a valid claim for delictual loss, Mr B would need to establish a breach of contract of a legal duty and demonstrate that the loss was reasonably foreseeable as a

probable consequence of the breach. The aforementioned claim falls beyond the scope of the insurance contract and therefore outside of OSTI's jurisdiction.

Mr B's theft claim had been accepted by the insurer in line with the cover provided. An additional amount was offered as a gesture of good-will for the significant delays experienced by Mr B. The ex gratia settlement offer was made as a business decision. How the insurer determined this offer fell within its domain, not OSTI's. OSTI also does not have the mandate to award penalties against the insurer for gaps in the service it provided to Mr B.

The termination of the services of the insurer's employee was irrelevant to the claim. There was no evidence which indicated that the alleged dishonest conduct of the insurer's employee was related to Mr B's claim in any way.

OSTI's view was that the insurer's settlement offer was reasonable, fair and in line with the contract of insurance. OSTI therefore upheld the insurer's settlement of the claim and the matter was resolved in favour of the insurer.

