

PERSONAL BELONGINGS MUST BE KEPT CLOSE TO THE INSURED

The policy provided that insured valuables that are governed by the "close personal custody and control requirement", in it means that the insured property shall be "held by, worn or attached to the insured at all times whilst in transit."

The Office of the Ombudsman for Short-Term Insurance (OSTI) upheld a decision by an insurer to reject a claim from the insured on the basis that he failed to comply with the Insured Property clause in the policy schedule.

The insurer rejected a claim for the loss of engagement and wedding rings on the ground that the policy only covered the Insured Property whilst away from the insured premises when in the "close personal custody and control" of the insured, within the defined meaning of that expression.

The insured was on holiday when he went to the beach with his wife and baby. He took a bank card, cash, watch and the rings and put them in his wife's bag for safekeeping. The bag was put in a baby's pram while they were at the beach. He said after a few hours they went to a shopping mall and when they opened the closed area of the pram, the bag was missing.

In respect of risks whilst staying in a hotel/motel, the insurer said the policy only covered the Insured Property when it is in the "close personal custody and control" of the insured, as defined, or in the main safe or vault of the hotel/motel. Property kept in a safe in a hotel room will be covered only if the room is occupied by the designated individual. Losses from unattended hotel rooms are excluded absolutely.

A negligent or voluntary relinquishment of close personal custody and control over the Insured Property by the insured would not constitute a loss for the purposes of recovery unless the Insured Property was deposited in a safe or vault of the hotel/motel.

A decision was made by an Assistant Ombudsman to uphold the insurer's rejection of the claim, but the insured requested OSTI to reconsider the decision on the grounds that the Jewellery Clause in the policy schedule provides the cover and the claim must be settled on this basis.

The Jewellery Clause provides that: "It is required and you warrant that any insured watch, jewellery item or precious stones worth more than R75 000, shall at all times, whilst not being worn, be kept locked away in a safe permanently attached to the interior of the residence, failing which theft cover shall be limited to that amount for each item and in total."

The insured's argument was that, as the rings were worth less than R75 000, there was no need to keep them in a safe if not worn and, therefore, the loss was covered.

The Ombudsman said: "The first issue to be determined is whether the Jewellery Clause provides cover for the insured under these circumstances. Having regard to the wording of the policy schedule, our view is that it refers specifically to jewellery worth more than R75 000 and it does not flow from the clause that cover is automatic in the event that the jewellery is worth less than R75 000 and is not kept in a safe."

The Ombudsman said the second issue to be determined was whether the insurer correctly rejected the claim on the grounds that the jewellery was not held in the close personal custody and control of the insured at the time of the loss.

"It is not in dispute that the rings were in a bag which was stowed under a pram at the time of the loss. Therefore, the insured did not comply with the close personal custody and control requirement which the policy defines as shall be held by, worn or attached to, the insured at all times whilst in transit. For the above reasons, the complaint is dismissed," the Ombudsman concluded.

Ends

About the Ombudsman for Short-Term Insurance

The Ombudsman for Short-term Insurance (OSTI) is an independent, non-profit industry ombud scheme. Short-term insurance includes: motor, house owners (buildings), householders (contents), cell phone, travel, disability and credit protection insurance, and commercial insurance for small businesses and sole proprietors. OSTI's mandate is to provide the insuring public and the short-term insurance industry with a free, efficient and fair dispute resolution mechanism through an alternative dispute resolution process, applying the law and principles of fairness and equity. OSTI is not a court of law. It examines the information and evidence placed before it by the parties to a dispute and makes recommendations that are guided by the legal position and principles of fairness and equity. In rare instances where required, OSTI may make rulings. It does not, nor is it empowered to, procure evidence or witnesses, or investigate a complaint. OSTI, it must be stressed, operates independently of both the Financial Sector Conduct Authority and the Prudential Authority in its adjudication and dispute resolution process.

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