

OSTI CASE STUDY 2



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.

The case of Mrs N and the stolen cellphone

Mrs N claimed for a cell phone that was stolen from her bag. Mrs N stated that she had placed her phone in her bag and left her bag on the side of the netball court whilst she was playing netball.

The rejection

The insurer relied on the following provision in the policy to reject her claim:

"7.3 Prevention of loss

7.3.1 The Insured shall take all reasonable steps and precautions to safeguard the Equipment, including but not limited to, ensuring that the Equipment is:

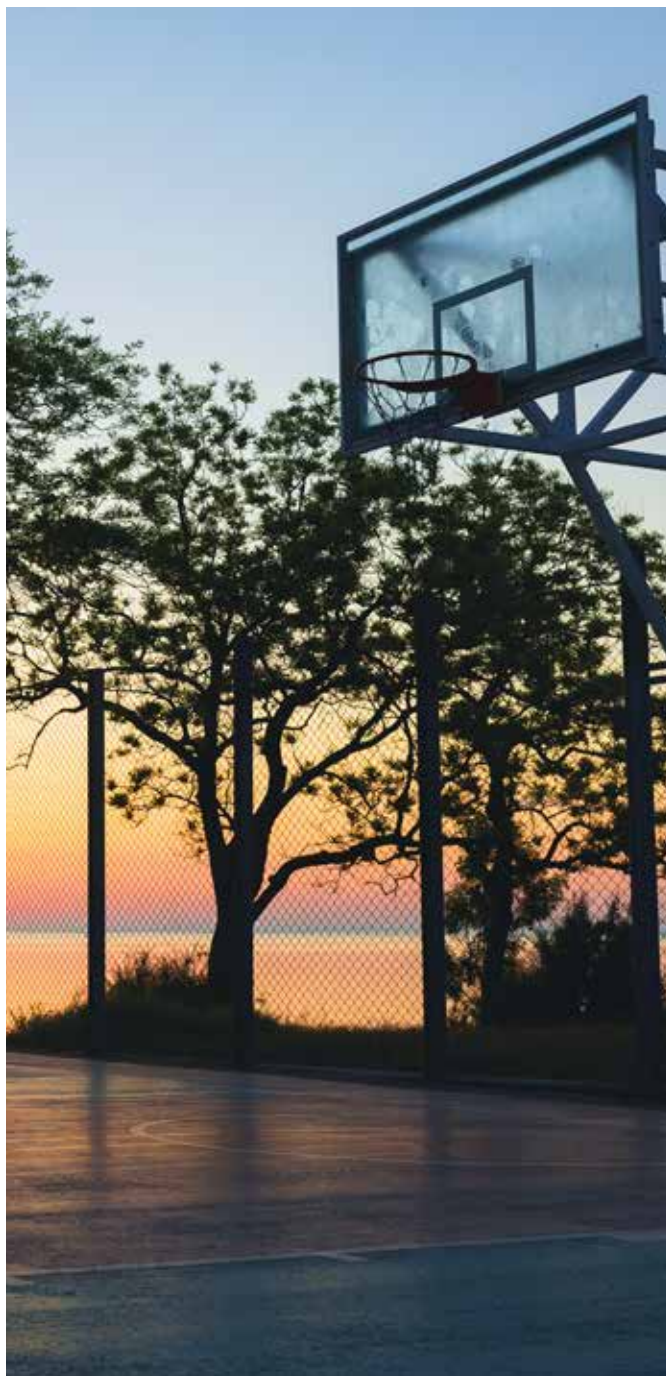
7.3.1.2 not left exposed in a public place, place of recreation, mall or social occasion where it is vulnerable to easy removal or damage."

The insurer argued that the cell phone was not safeguarded and it had been left in a vulnerable situation where easy access could be gained to Mrs N's bag.

OSTI Recommends

OSTI stated that the ordinary grammatical meaning of the word ***"exposed"*** is not ***"covered or hidden; visible"***. Since the phone was in Mrs N's bag, it was not exposed. Mrs N was playing netball and it would be unreasonable for the insurer to expect her to safeguard her bag all the time.

OSTI recommended that the insurer settle the claim and the insurer agreed to do so.



OSTI CASE STUDY 3

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.

The case of Mrs G and her stolen luggage

In August 2018, Mrs G and her husband were catching a train from Paris to Disneyland in France. During the trip, Mrs G's luggage was sliced open and items within it were stolen. Her insurer rejected her claim saying she was not present with her luggage when the theft took place, as required by the policy.

Mrs G disagreed with the insurer and approached OSTI to mediate the dispute.

Mrs G's side of the story

The train from Paris to Disneyland was busy and, on boarding, Mrs G was separated from her husband. She also found herself surrounded by a group of

young teenage girls. When the girls exited the train, Mrs G noticed that her luggage had been tampered with and certain items within the bag had been stolen.

The police report stated that Mrs G and her husband lost several high-end items, including a camera and its accessories, sunglasses, a tablet, headphones, jewellery, a speaker, a watch, a hair straightener and cash, among other belongings.

After reporting the incident to the police, along with a description of the girls, Mrs G and her husband were informed that the girls, more than likely, belonged to an organised crime ring.



OSTI CASE STUDY 3



The insurer's reason for rejecting the claim

The insurer rejected Mrs G's claim on the basis that Mrs G had failed to take the necessary measures to ensure the safety of her personal baggage. The wording in Mrs G's policy stated that, "[The] insured must take safety measures to make sure that personal baggage is safe and must not leave it unsecured or unattended or beyond reach at any time in a public place."

The insurer stated that, according to Mrs G's claim form, her baggage was not on her person at the time of the incident. The insurer based this assessment on the wording of Mrs G's statement on her insurance claim, as well as the wording the French police had used to describe the robbery. The insurer said that the police report notes the cause of loss as 'Vol a la tire' which translates to 'robbery' and not 'pickpocketing'.

A final point the insurer made was that the items could not possibly have been pick pocketed from Mrs G's bag without her noticing. The insurer said that Mrs G had further prejudiced her claim by disposing of her bag after the incident. This meant that her insurer could not verify Mrs G's account of how the thieves had gained access to the items inside the bag.

OSTI finds in favour of Mrs G

After studying the case, OSTI found in favour of Mrs G.

The insurer provided different examples demonstrating the context in which the phrase 'vol a la tire' was used. OSTI noted that the most common translation for 'vol a la tire', based on the information provided, was pickpocketing. The term was used most in the context of pickpocketing, street crimes, purse snatching and shoplifting. All the examples, said OSTI, referred to the theft of items from the victim's pocket or person without the victim noticing at the time.

OSTI explained that pickpocketing is a crime that typically takes place in the presence of crowds, making it difficult for the victim to notice the theft. As per Mrs G's statement to the police, she was indeed surrounded by a group of girls. She only noticed the loss once the girls had disembarked from the train. This indicated that Mrs G was on the train and had her bag with her at the time, said OSTI.

Based on Mrs G's account of the event, and the police statement, OSTI found that Mrs G had demonstrated on a balance of probabilities that the items were stolen from her bag, which she had on her person, while she was on a crowded train. The insurer had failed to demonstrate otherwise.

Satisfactory outcome for Mrs G

OSTI recommended that Mrs G be paid out in full for her loss to which the insurer agreed.

