

Duty of Care

The obligation to take reasonable care of insured property is a standard requirement in insurance policies, which cover tangible property such as house, contents, motor vehicle and personal baggage during overseas travel. The reasonable care obligation is included to ensure that the insured person does not fail to take precautions that he/she knows ought to be taken, just because he/she is insured against loss or damage.

The ISO receives many complaints about claims being declined, because the insurer believes the insured failed to take care over the safety and security of their property, leading to loss or damage.

In some situations, an insured's conduct may contribute to the loss of his/her property. Therefore, insurers include policy conditions to limit or exclude liability if the insured does not take reasonable care of, or is reckless with, his/her property.

To decline a claim under such a policy condition, an insurer must prove the insured's conduct was grossly careless, grossly negligent, or reckless. Proof of mere negligence or carelessness is not sufficient. This is because insurance, by its very nature, protects the insured against his/her negligence and mere inadvertence.

Therefore, the purpose of a reasonable care condition in a policy is to exclude claims for loss or damage where the insured has been reckless, grossly careless or grossly negligent with regard to the safety and security of their property. In other words, the insured should take the necessary precautions he/she knows ought to be taken, whether or not he/she is covered against loss by insurance.

Policy wordings

Policy wordings vary considerably regarding the reasonable care clause. Examples are:

- ***House - Care of insured property*** – *You must maintain the insured property in good repair and take all reasonable steps to safeguard it.*
- ***Contents - Protecting your property*** – *You and anyone else covered by this policy must take every care to protect all property covered by this policy.*
- ***Motor Vehicle - Reasonable care*** – *You must always take reasonable care to avoid circumstances that could result in a claim. You won't be covered if you are reckless or grossly irresponsible.*
- ***Travel - Care of Your Baggage, Personal Effects, Money and Documents*** – *You must take reasonable care to protect your baggage, personal effects, money and documents and to prevent loss or damage.*

Legal test for reasonable care

The courts in New Zealand consider what a reasonable person would have done in the same circumstances as the insured. The duty of reasonable care will be breached where the insured disregarded a significant risk, which would have been obvious to the reasonable person who would not have taken such a risk. However, each case is decided on its own facts.

In general terms, the question is whether the reasonable person would, in all the circumstances, have done what the insured did in exposing themselves to the risk that led to the damage or loss.

Examples of declined claims referred to the ISO

- Keys left in unlocked vehicle – vehicle stolen
- Valuables left on beach while owner swimming – items stolen
- Valuables left in full view in vehicle while parked in quiet area – vehicle broken into and items stolen
- Windows left open when house vacant – up long driveway out of sight of street – house burgled
- Door left unlocked – house burgled
- Damage to house through lack of maintenance
- Unattended baggage stolen in airport terminal
- Damage to vehicle when vehicle became stranded while being driven on beach

Factors which may be considered by the ISO

As each case has to be considered on its individual merits, the following are examples of factors the ISO might take into consideration when deciding whether an insured's actions have been grossly careless, grossly negligent, or reckless:

- The environment where the loss or damage occurred e.g. in a crowded public place or an isolated beach or up a long driveway
- Whether the action which led to the loss was an inadvertent or habitual practice
- Period of time an unlocked vehicle was left unattended
- Value of items
- The time of day/night
- Proximity of place to the house, neighbours, the public
- The locality and its known reputation
- General foreseeability of the risk – public knowledge of the likelihood of the loss/damage

Consumers must appreciate that they have certain obligations and responsibilities to exercise reasonable care for the safety and security of their property. While insurance cover will apply in certain circumstances, it is unwise to rely on insurance in cases where there is clear evidence of gross carelessness, gross negligence or recklessness.

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