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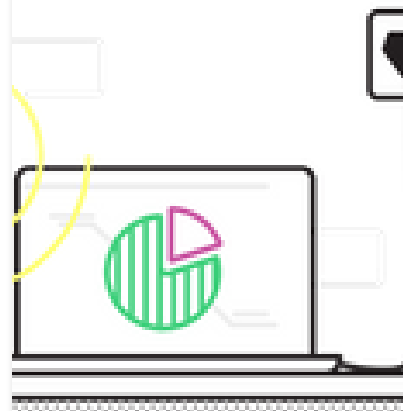
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A good expert could strengthen your case in an insurance claim battle!

📅 Nov 17, 2020 👤 jonckie 📌 Expert Evidence, Ombudsman, subsidence or landslip

During the course of 2016 into 2017, Mr S experienced extensive damage to his property allegedly as a result of subsidence caused by a burst pipe. Mr S's insurer did not agree with his assertion that a burst pipe was the culprit and rejected his claim on the basis that the cause of the damage was the gradual movement of clay subsoil.

OSTI was approached to assist in resolving the dispute between Mr S and his insurer. OSTI noted that Mr S had to prove that his claim fell within the ambit of the cover provided by the policy. Then it was up to the insurer to prove its reason for rejecting the claim.

Mr S makes his case

The first point to establish was whether or not Mr S was insured for his claim. The "insured peril" claimed for was the burst pipe, which resulted in water flowing under his house for a period of about 10

Q&A

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📅 Oct 14, 2020 👤 Media

Johannesburg, 13 October 2020 – AI-driven car, home and contents insurance provider, Naked, has announced that it has paid around R250,000



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months. This resulted in his foundations subsiding, which caused cracked floors, walls and ceilings.

The policy provided cover for loss or damage to the buildings caused by burst water pipes or water tanks.

Mr S had on the face of it a valid claim.

To prove his case, Mr S provided OSTI with reports from an engineering firm, M-Engineering, that he contracted to examine the water damage caused to the ground underneath his property.

The engineers reported that the house was built on a dense, silty, gravelly layer of ground that was interspersed with small pinholes. The gravelly soil layer had an open textured fabric. The cracks in the property were a direct consequence of the formation and disintegration of a weakened honeycomb-like soil structure in the gravelly layer. The honey-comb like structure was formed from the leaching of the clay particles from the soil.

Water from the burst pipe caused the honeycomblike soil structure to disintegrate and collapse and the foundation to subside.

Having brought the claim within the policy, the burden of proof shifted to the insurer to prove the grounds on which it had relied to reject the claim.

The insurer's assertion

The insurer cited the finding of its engineer, L-Engineering, as the basis for the rejection. These findings included:

- The floors in the lounge and kitchen cracked due to the absence of expansion joints and the movement of clay subsoil upon which the property was constructed.
- The cracks occurred over a period of time and were not sudden.
- There was no evidence of resultant damage caused by a burst pipe.
- All other damage was indicative of settlement.
- There was no evidence linking the burst pipe with the cracking in the floor and walls.
- The damage started five months after the burst pipe was repaired and there was no reason for such delay.

The settlement was not sudden, but gradual. There was no evidence of subsidence having occurred.

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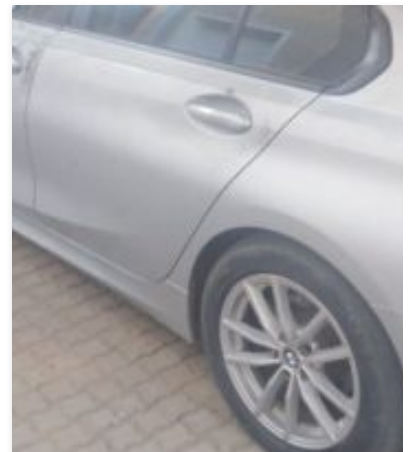


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📅 Jun 5, 2020 🧑 Media

The Northern Cape SAPS Organised Crime Detective Unit arrested one male suspect for recent alleged hijackings. On Friday, 1 May

In additional to L-Engineering's report, the insurer also relied on the policy wording related to "subsidence or landslip". The policy stated:

"SUBSIDENCE OR LANDSLIP – LIMITED COVER

We cover loss of or damage to your buildings caused by subsidence or landslip or both.

However, we do not cover loss or damage:

b) caused or made worse by the contraction or expansion of soil due to its moisture or water content, as experienced in clay and similar soil types.

f) caused or made worse by normal settlement, shrinkage or expansion of the building. If we require it, you must prove that the loss or damage you claim for was caused by subsidence or landslip."

Mr S takes things further

When Mr S's claim was rejected by his insurer, he approached M-Engineering to determine whether there was indeed natural movement of the clay subsoils, as his insurer had asserted. M-Engineering engaged an engineering geologist to test the site.

These findings refuted those of the insurer. M-Engineering reported that the clay soil beneath the gravelly layer had a low swell potential and was inactive, meaning that under normal conditions it would not have caused subsidence to the house foundations. Therefore, movement of the clay soils could be excluded as a possible cause of the cracks in the property. This finding contradicted the claim made by the insurer's engineer that the soil had medium swell potential and was active.

An engineering difference of opinion

In investigating the case, OSTI had to investigate the differences of opinion from the two engineering firms. M-Engineering asserted that L-Engineering used the incorrect method to determine the soil's swell potential.

OSTI noted that L-Engineering did not stipulate the method it had used to reach its conclusion, whereas M-Engineering not only explained the method used, but also used more than one method of evaluating the swell potential to arrive at the same conclusion.

L-Engineering then raised that M-Engineering had confused subsidence with settlement. L-Engineering defined subsidence as



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FCA What's Behind: Season 2, Episode

1 – The Engine Revolution

📅 Apr 29, 2020

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the “sudden downward movement of the ground on which the insured property is located, due to causes unconnected to the buildings” and settlement as the “gradual downward and/or sideways movement of ground resulting from stress and imposed loadings exceeding the available strength of the ground”.

In this instance, asserted L-Engineering, “settlement has occurred”.

However, M-Engineering argued that the “settlement” referred to by L-Engineering is consolidation settlement which is the “vertical displacement of the soil surface associated with the gradual reduction in volume of a saturated soil of low permeability (e.g. clays) due to a change in effective stress. This had to be distinguished from collapse settlement which refers to any additional settlement occurring due to wetting up of a partially saturated soil with a collapsible fabric.”

According to M-Engineering the collapse settlement of the soil caused the foundation to subside. This additional collapse settlement did not fall within the exclusion of “normal settlement, shrinkage or expansion of the building”. The proximate cause of the collapse settlement was, stated M-Engineering, the burst pipe, which is an insured peril under the policy.

L-Engineering then accused M-Engineering of taking a soil sample too far away from where the burst pipe was located, saying the results could not be accurate. However, in the absence of any soil test provided by the insurer, M-Engineering’s evidence could not be refuted.

The findings

In order to make a decision on the matter, OSTI had to consider which expert report was more reliable on a balance of probabilities. OSTI found that M-Engineering presented a more plausible assessment of the facts. As such, OSTI concluded that Mr S adequately demonstrated that the damage was directly caused by water from the burst pipe.

Furthermore, OSTI stated that although the insurer questioned the findings submitted by Mr S and M-Engineering, it did not actively do anything to refute these findings, except to rely on the presence of clay soil on the property.

OSTI found that the damage caused to the property did not fall within any exclusions listed in the policy.

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As such, OSTI concluded that the insured had brought his claim within the ambit of the policy. The insurer had not provided sufficient evidence to prove the exclusion on which it relied to reject the claim. Accordingly, OSTI recommended that the insured's claim be settled.

The insurer agreed to settle the claim.

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An insurance claim could be rejected if the minimum security requirements in the policy is not complied with.



The Policy wording stipulates what is Covered and Not covered under Buildings Cover



Business Interruption Complaints and the Role of the Ombudsman for Short-Term Insurance



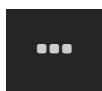
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