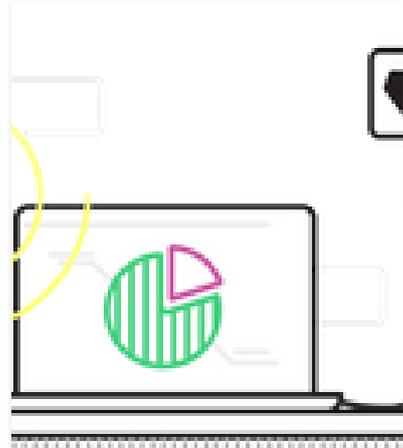




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Q & A



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



Couple to appear for possession of

Legal Ombudsman

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

Nov 17, 2020 jonckie housebreaking, Ombudsman, Security Requirements

On 27 May 2019 the home of Mr V was burgled and he put in a claim for the stolen goods with his insurer.

However, the insurer rejected Mr V's claim on the basis that Mr V's residence did not comply with the minimum security requirements listed in his policy.

Mr V, however, did not agree with the decision made by his insurer and applied to OSTI to mediate on the matter.

The burglary

Mr V had a risk insurance policy in place for his home since 1 February 2015. However, in August 2018, Mr V moved to a new place of residence, 100m from the insured address. When he moved he did not inform the insurer of the new address or even that he had changed residences.

On 27 May 2019 Mr V's home was burgled. It was established that the burglars gained entrance to the house through the front door. It was later found that Mr V's new residence was not fitted with burglar bars or security gates on the doors.

The home did have a burglar alarm. However, at the time of the robbery, the alarm was not working and was, therefore, not activated.

Claim rejected

The insurer rejected Mr V's claim on the basis that the new residence did not meet the policy's minimum security requirements – that of burglar bars on all windows and security gates on all doors, or, at least, having a working security alarm.

The insurer argued that although Mr V's original residence complied with the insurer's minimum requirements, the new residence did not. To support their argument, the insurer supplied the section of the policy that pertained to minimum security requirements and alarms.

The policy states:

"5. Security measures

5.2 Security gates

If we require security gates, as described in the Schedule, we will compensate you for theft or burglary only if:

5.2.1 the required security gates are fitted;

5.2.2 the required security gates are locked when you or any person you have authorised to look after your private residence leaves your private residence unattended;

5.2.3 the required security gates have not been removed without our permission;

5.3 Alarm system

If we require an alarm system, as described in the Schedule, we will compensate you for theft and burglary only if:

suspected stolen
vehicles and goods

📅 Sep 8, 2020



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Florida

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Defining the Digitally Determined

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2020

News



Car Insurance

Stolen Vehicle Recovery

Alleged hijacking suspect behind bars

📅 Jun 5, 2020 🧑 Media

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

5.3.1 the required alarm system is installed;

5.3.2 the required alarm system is in working order;

5.3.3 none of the “passive infrared motion detectors” of the required alarm system are obstructed or bypassed;

5.3.4 your private residence and your outbuildings are left unattended and the required Alarm system has been set by you or any person you have authorised to look after your private residence and outbuildings, or your private residence, but not your outbuildings, is left unattended and the required alarm system has been set by you or any person you have authorised to look after your private residence....”

Mr V challenges the decision

Despite the fact that his new address did not measure up to his policy’s security requirements, Mr V believed he should still be covered by his insurance, albeit at a higher premium. As such, he argued that the “Didcott principle” should apply in this instance and that the claim should be settled on a proportionate basis by the insurer, deducting from the claim settlement the increased portion of the premium which the insurer would have charged to insure the new residence.

The Didcott principle finds its name from the late Justice Didcott who was the trial judge in *Pillay v South African National Life Assurance Co. Ltd* 1991 (1) 363 (D + CLD). In that case Didcott J dealt with alleged non-disclosures on risk insurance by the deceased.

According to the Didcott principle, it is assumed that the insurer would still have issued a policy, although at a higher premium, even if the insured withheld material information that would impact the risk to the insurer.

The insurer in this instance argued that Mr V’s claim would have been paid, even though he moved residence without informing them, had the property conformed to the insurer’s minimum security requirements. The insurer argued, however, that the security requirements in the policy schedule determined not only the insurance premium but also limited the risk of burglary to which the insurer was exposed. As such, had Mr V declared to the insurer that his new residence did not fulfil the minimum security requirements, the insurer would not have insured him.

At this point OSTI found in favour of the insurer but said that Mr V was entitled to pursue the matter further through litigation.



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1 – The Engine Revolution

📅 Apr 29, 2020

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Mr V escalates his case

Mr V escalated his case with OSTI saying he was dissatisfied with the decision. OSTI convened a committee, which comprised the Ombudsman, the CEO and four Senior Assistant Ombudsmen.

When reviewing both Mr V and his insurer's cases, the committee specifically looked at the request by Mr V's representative for the case to be reviewed on the ground that the Didcott principle should apply because the insurer did not state that it would not have insured Mr V had it known that Mr V did not comply with the security measures.

The committee then studied the Pillay case and other industry texts to assess the validity of Mr V's assertion that the Didcott principle applied. The committee based its decision on the below points:

- The following is said on page 263 of Life Insurance in South Africa by Nienaber and Reinecke:

"Non-disclosure is a form of pre-contractual misrepresentation by the insurance proposer... [The insurer] would never have agreed to the insurance in the first place if the policyholder had not lied to it by omission."

- In the Pillay case the issue for determination is set out as follows in the headnote, namely: "... an insurer's right to repudiate liability on account of false answers to questions in a proposal for a domestic policy of insurance...." After examining the evidence, Judge Didcott came to the conclusion (368 D-E) that the insurer had discharged the onus to prove the materiality of the non-disclosure by the deceased of his hypertension.

- In the Law of South Africa, First Reissue, Volume 12, the authors say the following:

9.1 In paragraph 205 on page 155: "A party who has been induced to enter into a contract of insurance by a misrepresentation for which the other party to the contract is responsible, has at his disposal the ordinary remedies available to a person who has concluded a contract on the basis of a misrepresentation."

9.2 In paragraph 206 on page 155: "Irrespective of whether the misrepresentation is fraudulent, negligent or completely innocent, its effect is to make the contract voidable, unless it induces a material or fundamental mistake, in which case the contract could be void."

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9.3 In note 10 on page 157 and with reference to the Pillay case and the “lesser remedy” referred to earlier: “... where the suggestion was that the insurer should either be able to deduct from the proved claim the additional premiums it would have charged had it known the true facts, or that it should merely be liable for such a proportion of the insured’s claim as the actual premium bears to the one it would have levied.”

With regard to the above citations, the committee concluded that in this case, the claim was rejected on the basis that the security requirements were not met, and not on the basis that Mr V failed to disclose the change of address. Therefore, no question arose about any non-disclosure or any rescission of the binding policy. Accordingly, the Didcott principle did not apply.

The committee upheld the rejection of the claim.

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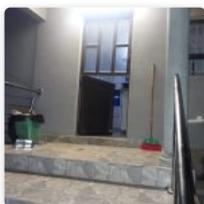
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