MBIE Review of Insurance Contract Law

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Key Question 18 – What has your experience been of the claims handling process?

My background is insurance claims. I was the New Zealand claims manager at the head office of NZI for 12 years which involved, amongst other things, writing the NZI insurance claims deadlock letters. I was an Insurance & Savings Ombudsman board member and I also served on a number of ICNZ committees. Since retiring I have provided pro bono insurance claims advocacy support for any member of the public who has an insurance claims issue. These enquiries have come to me via the Citizens Advice Bureau where I work as a volunteer.

Over the last seven years I have acted as an advocate for about fifty members of the public who have asked me to help them resolve their insurance claims dispute. With just two exceptions, all of these complaints have been resolved to the customer's satisfaction without the need to refer the matter to one of the licensed dispute resolution schemes that ICNZ have approved. Possibly my involvement in the claim has had a "Fair Go" effect on the claims handler – they know (from my work experience) that I know what really should happen. And once we agree upon the correct approach to take with the claim things have usually progressed very quickly.

The two exceptions that I mentioned above were eventually settled to the customer's satisfaction, but it is the journey that had to be undertaken to arrive at the favorable outcomes that I believe needs closer examination.

Both claims involve different divisions of Allianz Insurance, and both claims also involve Section 11 of the Insurance Law Reform Act. I am quite certain that the two Allianz claims managers who wrote the Allianz deadlock letters do not have any understanding of Section 11 of the Insurance Law Reform Act. My concern is this: How many other valid claims have Allianz declined because of their lack of understanding of Section 11 of the Insurance Law Reform Act 1977?

The two claims, which have occurred within the last 18 months, can be summarized as follows:

Mr. Harris – Motor Claim – Protecta/Allianz.

On the 25th December 2016, Mr. Harris was driving along State Highway 4, about 40klm north of Taumarunui when his vehicle hit a patch of surface flooding on the road. He lost control of the vehicle, crashing into a fence. Mr. Harris was travelling alone. No other vehicles were involved and there were no witnesses. Mr.

Harris was taken to hospital where he was interviewed by the Police. The Police were aware of the weather conditions prevailing at the time of the accident and they were also familiar with the stretch of road where the accident happened. Mr. Harris was in New Zealand on a Work Visa. He had held a full driver's license in his home country for nine years, where they also drive on the left. For his first 12 months in New Zealand Mr. Harris was able to use his overseas license, which he did without incident. Mr. Harris then applied for a New Zealand driver's license. NZTA issued Mr. Harris with a provisional NZ license that included a requirement that he have a supervisor with him in the car at all times. The Taumarunui police were aware of the Supervisor requirement on Mr. Harris's license (it is mentioned in the police report) but they did not issue him with an infringement notice. They did not believe the absence of a supervisor was a factor that contributed to the accident. The police report says that the cause of the accident was water flooding the road, and not driver error.

Protecta/Allianz declined Mr. Harris's claim because he was driving his vehicle in breach of his temporary NZ driver's license that required him to have a supervisor in the car. We made a submission to Protecta/Allianz pointing out that the police say the accident was not caused or contributed to by the absence of a supervisor, so under Section 11 of the ILRA the claim should be paid. We asked Protecta/Allianz to review their earlier decision, or alternatively to issue a deadlock letter. Protecta/Allianz did not agree that the ILRA applied and continued to decline Mr. Harris's claim. They issued a deadlock letter on the 30th March 2017. We made a submission to FSCL pointing out that the claim should be paid for two reasons. The first was that the police did not believe that the absence of a supervisor was a factor that caused or contributed to the accident, so Protecta/Allianz could not use a non-causative exclusion clause to decline the claim. The second reason was that had this accident happened a few months earlier, when Mr. Harris was within the 12 month window of his arrival in New Zealand, then his overseas license, which expired in 2029, would have been valid.

FSCL reviewed the file for approximately two months and then to my suprise decided that Protecta/Allianz had correctly declined the claim because Mr. Harris had breached the terms of his temporary driver's license. It seemed clear to me at that time that neither Protecta/Allianz nor FSCL fully understood the correct way to interpret the Insurance Law Reform Act. The letter from FSCL had been signed by their CEO, Susan Taylor, so I wrote to Susan enclosing some cases from the Insurance & Financial Services Ombudsman's website that were similar to Mr. Harris's claim. FSCL initially offered a 50% settlement, and finally on the 5th October 2017 agreed to pay Mr. Harris's claim in full.

In the meantime, Mr. Harris had lost his job – he needed his car for his work – and so without any money or other forms of income he had to return to his home country.

In late December 2017, Luke Saunders visited Thailand with five other young friends and stayed in a Villa that was located within a large compound on an island in the Gulf of Thailand. One of the boys in the group hired a 250cc motorcycle for his own use, to travel from the Villa to the local shops and back. Luke borrowed the motorcycle and went for a ride around the compound grounds. He was travelling down a steep track when the brakes of the motorcycle failed. Although Luke had been riding trail bikes since he was six years old he was unable to stop the bike. He had to jump off the bike to save himself from running over a cliff. Luke was wearing a crash helmet but unfortunately he hit his head on a rock. This caused serious head injuries – a fractured skull, broken eye socket plus some brain damage. There were no witnesses to the accident. Luke was taken to hospital in an ambulance and because of the serious nature of his injuries he had to be transferred to a second hospital. One of the boys in the group, Josh, contacted Allianz/AGA who then started to quiz Josh about the accident. They asked Josh if the accident happened on a public road. Josh said he didn't know, but it may have. Allianz/AGA then asked Josh if Luke held a motorcycle license. Josh said that he didn't think that Luke did have a motorcycle license. But Josh told Allianz/AGA in a number of recorded phone conversations that the cause of the accident was in fact faulty brakes. Josh is an apprentice mechanic so he was particularly interested in what caused the accident. Fortunately Josh had the presence of mind to take some photos of the faulty brakes which later we were able to show to an A Grade mechanic in New Zealand. He confirmed that the brakes were indeed faulty.

However, on the strength of the earlier telephone conversation with Josh, which produced only hearsay evidence as to where the accident occurred, Allianz/AGA declined Luke's travel claim, leaving him to fend for himself in a foreign land without any funds, and while still in hospital suffering serious head injuries.

Luke's family in New Zealand had to find $22,000 to pay for Luke's hospital and surgical costs, before he was allowed to leave Thailand. Luke's family are not wealthy – they had to increase the mortgage on their home to pay for Luke's return to New Zealand.

We asked Allianz/AGA for a deadlock letter. By this stage Allianz/AGA had changed their position over the reasons why the claim should be declined. Allianz/AGA realized that the accident had not in fact happened on a public road so instead they said Luke did not have a valid claim because (1) the engine size of the motorcycle was 250cc, and the travel policy only covered motorcycle riding on bikes that were 200cc or less, and (2) Luke did not hold an NZ motorcycle license, as required by the travel policy.

We pointed out to Allianz/AGA that the accident was not caused by either the size of the engine, or whether or not Luke held a motorcycle driver's license. Luke was travelling downhill when the accident happened – the brakes failed – so the size of the engine did not cause or contribute to the accident, and secondly the accident was in private Villa grounds. No other vehicles or pedestrians were involved and the rules of the road were not a factor, so Luke holding a motorcycle license would not have prevented the accident from occurring. The accident was caused by faulty motorcycle brakes, as confirmed by an A Grade mechanic.

Allianz/AGA continued with their declinature of the claim (I am quite sure their claims manager does not understand Section 11 of the ILRA) so the matter was referred to FSCL. From the emails that I exchanged with the FSCL case manager I could tell that she was not sure whether or not Luke had a valid claim, but once Susan Taylor the CEO got involved it was agreed that Allianz/AGA should never have declined Luke's claim.

When listening to the heart wrenching phone calls that took place between Luke's mother and the overseas Allianz/AGA claims handler it is hard not to get angry at insurance companies, such as Allianz, who have authorized inadequately trained staff to make life changing decisions that have significant impact on their customers.

In my view, both Mr. Harris and Luke Saunders have been harshly and unfairly treated by Allianz.

And what about all the other claims that Allianz have incorrectly declined? Is this something that your colleagues at the FMA should be investigating?

Key Question 40 – Do you consider the operation of Section 11 of the ILRA to be problematic?

My background is insurance claims. I was the New Zealand claims manager at the head office of NZI for 12 years which involved, amongst other things, writing the NZI insurance claims deadlock letters. I was an Insurance & Savings Ombudsman board member, and I also served on a number of ICNZ committees. For the last seven years I have provided pro bono insurance claims advocacy support for any member of the public who has an insurance claims issue. These enquiries have come to me via the Citizens Advice Bureau where I work as a volunteer.

In my view, the fundamental problem with Section 11 of the Insurance Law Reform Act is that nobody knows about it. I believe this piece of New Zealand consumer legislation is just as important and as powerful as the Fair Trading Act or the Consumer Guarantees Act. But nobody has heard of it, and very few people understand how it works. There is even one insurance company (Allianz) that is currently declining claims where in fact the claims should be paid, if Section 11 of the ILRA were to be correctly applied to the circumstances of the loss. *(I have made a separate submission under Key Question 18 that addresses the issue of Allianz.)*

From time to time I hold Ongoing Training sessions on insurance issues of interest for Citizens Advice Bureau volunteers. I generally start each session with two questions. 1. If a drunk driver was stationary, sitting in his car waiting for the lights to change to green, and his car was hit in the rear, would his insurance claim be paid? 2. If a vehicle didn't have a current Warrant of Fitness because the headlights were not working, would an insurance claim be paid if the driver ran off the road at 3.00 o'clock in the afternoon? Without exception, the answer to both questions is "No – both of these claims would not be paid because the driver has not complied with the policy conditions."

I then explain that it was neither the driver being drunk nor the car not having a WoF that caused either accident, and that Section 11 of the ILRA forbids insurance companies from applying non causal exclusions so both claims should be paid, and a look of dis-belief comes over their faces!

Put simply, there is not too much wrong with Section 11 of the ILRA as it presently stands. The problem is with the Ministry of Consumer Affairs who seem to have done nothing (that I am aware of) to explain this important consumer legislation to members of the public. At CAB we get inundated with pamphlets and booklets from the Ministry of Consumer Affairs that explain all sorts of important consumer legislation, but nothing about my personal favorite - Section 11 of the Insurance Law Reform Act.