

## complaint

S, a company complains that HCC International Insurance Company Plc won't pay the full amount of the debt, subject to policy limits, owing to it from an insolvent company under its Constructor whole turnover Credit policy.

## background

In March 2015 S made a claim to HCC following one of its customers becoming insolvent whilst owing a substantial sum to it. Following negotiations HCC made a payment to S of the amount it had assessed that it could pay under the terms of the policy. This was in May 2015. It then issued a further payment to account for a wrongly deducted excess. S disputed that this was the full amount owed. In particular it said that it was owed payments for losses and expenses owed by the insolvent company, legal expenses and interest. HCC wouldn't make any further payments.

On referral to this service our adjudicator didn't uphold the complaint. He thought that HCC's payment was fair and reasonable. He also thought that S hadn't shown that it was entitled to any further payment under the policy. S's representative has since produced evidence which he says confirms the debt wasn't disputed.

The matter has been referred to me for a decision.

## my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

### *"disputed" debt*

HCC won't pay a portion of the debt as it says it wasn't agreed before the insolvency and is a disputed debt. The policy specifically says it won't cover *"debts ..that are disputed debts"*.

The definition of this in the policy is a debt that is: *"disputed or is from an unresolved dispute where agreement remains outstanding 12 months from the original due date for payment"*. I don't know if there's an unresolved dispute here or whether the debt couldn't be agreed at the time of the insolvency. But I do think that as the debt wasn't agreed it was *"disputed"*.

In response S has produced letters from two surveyors who worked for the company in question. Both refer to a loss and expense claim and remember it being in the region of £230,000. One confirms that it was still being negotiated at the time of the insolvency. I don't know to what extent they have authority to speak for the company. But my reading of this is that there was a claim for losses and expenses but it was still under negotiation at the time of the insolvency. Without an agreed figure nor clear documentary evidence that it was accepted I can't say that HCC should pay the claim.

I have also seen an email from the administrator saying that a figure in excess of £400,000 *"has been noted in the administration."* I don't know what part of that figure relates to losses and expenses. But merely being noted doesn't mean that the debt has been accepted. It may be at some time in the future but at this stage I can't say that the debt has been agreed.

*interest*

The policy terms allow for the claim to be paid within 28 days “.....of your completed claim form and supporting information arriving. Otherwise you will receive interest until such time as the claim is paid.”

Although the original claim was made in March 2015, a full offer of payment wasn't made until 18 May but HCC says it didn't receive further information until 21 April

Full payment was made on 27 May. I think that the “*supporting information*” wasn't received until 21 April. But the offer made on 18 May was disputed and following further representations about materials on site the offer was increased. In view of this I don't think the payment was “late” under the terms of the policy. Technically the refund of the excess of £1000 was late but the sum involved is small I won't direct interest to be paid.

*legal expenses*

HCC says the terms of the policy don't allow for this. I agree and can see nothing in the policy which does allow for this. The claim was accepted in principle so S didn't need to incur any legal expenses in pursuing its claim.

*terms of the policy unclear*

S's representative argues that the terms of the policy are ambiguous and should be resolved in S's favour. He hasn't explained why, but the terms I have considered in respect of this complaint seem quite clear to me.

**my final decision**

I don't uphold the complaint. I make no award.

Under the rules of the Financial Ombudsman Service, I'm required to ask the representative of S to accept or reject my decision before 29 January 2016.

Ray Lawley  
**ombudsman**