

complaint

The trustees of R have complained that Markel International Insurance Company Limited refused to accept their claim made under their management risks policy. R is a club and the trustees are three members of the club. There is a separate trustee arrangement in respect of the land the club is situated on/uses.

background

A deal took place with company K, the details of which are disputed. As part of the deal £30,000 was given by K to either secure an option to buy the land or as part of a sponsorship deal. The parties to the deal fell out and K lodged a court claim against five named individuals; three of which are the trustees of R as well as trustees of the land, the fourth is a club officer and a land trustee and a fifth who is unconnected with either trust. The claim form stated that the first four individuals were being sued in their capacity as trustees of R. The trustees of R made a claim to Markel as they felt the policy gave protection to them in this instance. Markel declined the claim.

Markel said the claim was about securing the option to purchase the land. It acknowledged that the court claim form referred to the defendants as being sued in their capacity as trustees of R. However, it also said that, looking at the particulars of claim showed that there was no wrongful act alleged to have taken place against the trustees of R in their role as officers of the club. It pointed out that the particulars of claim named the four defendants again but this time stated they were being sued as themselves and on behalf of all other members of the club (not as trustees of R).

The trustees of R complained to this service. Our adjudicator didn't think the complaint should be upheld. She felt that looking at the particulars of claim was necessary to establish if a wrongful act had occurred as required by the policy wording. She said that, in her view, any wrongful act alleged had been against the individuals as members of the club, rather than in their role as officers of the club. The trustees weren't satisfied with the adjudicator's findings and asked that the matter be reviewed by an ombudsman. I reviewed the complaint and issued a provisional decision on it. I've reproduced my findings from that decision below in italics.

my provisional findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. Having done so I think this complaint should be upheld and I'll explain why.

It isn't clear why there is a difference between the details on the court claim form and the particulars of claim. But it is the details on the claim form that get logged. If a claim is not contested by the defendants stated on the claim form then a default judgment will be made against them. Therefore, in my view, it's not really fair to say the details on this form can just be ignored or written off as some kind of error. If an error has occurred then that could be a relevant defence against the claim.

I also don't think it's right to delve too deeply into the particulars of claim to try and work out from that exactly what has occurred. To my mind, particularly in this case, that goes to the heart of the dispute that is the subject of the claim. To do so risks pre-judging the court claim which surely isn't fair.

That's not to say that the content can't be reviewed at all – to some extent the policy wording requires that it has to be. I say this because the policy wording defines a claim as "a claim form" or similar but goes on to say that a "claim" has to be in respect of a "wrongful act". Therefore, it's not logical to say that a claim form alone is enough to bring cover under the policy into play. In this case particularly I think a fine line has to be trodden between seeing what the particulars say and trying to interpret that to make determinations that border on making a judgement on the claim itself.

The key, for me, is that the particulars allege that the £30,000 given by K was kept unfairly when it should've been refunded. Only officers of the club could withhold money that has been paid to it. And only officers of the club would have been able to enter into a deal in respect of this money in the first place. Individual members would have had no part in or control over this. Now, it may be that the officers involved were acting in their capacity as land trustees at the time (as opposed to club trustees) but, for me, that issue steps over the fine line I mentioned above.

That being said, in the case of the fourth individual I mentioned in my background details, it's clear he was only a land trustee at the time (not a club trustee) so he isn't entitled to benefit from the policy that relates to the trustees of R.

Overall, I think Markel should reasonably have accepted and dealt with this claim. Consequently, I intend to make Markel provide settlement to the trustees of R, as allowed for by the cover in place and, apart from in relation to anything I've commented on above, in line with that policy's wording.

responses to my provisional decision

The trustees of R said they were pleased with my findings. Markel said it was surprised and disappointed by my provisional decision. It said I had, incorrectly;

- assumed and concluded that the claim had been made against the trustees;
- suggested that the particulars of claim shouldn't be considered in detail.

Markel argued in some detail about why the act at the heart of this court claim was an act of the club and not an action undertaken by or capable of being pursued against individuals. It said any claim for breach of contract, which this was, against the trustees was legally bound to fail. It said it had covered the trustees previously but this time, when the particulars were considered, it was clear K had changed tack and made a claim against them in their role as representatives of the club.

Markel went on to say that it hadn't considered the merits of the claim when deciding not to offer cover. It felt I had suggested that parts of the particulars of claim were selectively ignored which made no sense given each line has to be defended. Markel wondered if getting further court documents would show that the incorrect details on the claim form had been challenged. It said that any default judgment would (or could) easily have been set aside by any competent solicitor and probably by no more than pointing out the discrepancy between the claim form and the particulars.

Markel also asked for clarification and my agreement on various issues to do with settlement if my final decision did not move away from my provisional one. It sought to remind me that this service's fair and reasonable remit extended to both sides of the dispute.

my findings

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

I understand that Markel doesn't agree with my findings but I'm satisfied they are fair and reasonable, to both sides. I did not suggest that the particulars (or any part of them) should be ignored or that their content wasn't important. Rather I said that there's a difference between considering the contents and interpreting them or drawing conclusions from them in the way that a court judge would. There is a difference between taking the content at face value and delving into it to determine liability.

Markel has sought to explain at length why, legally, this claim could not have succeeded against the individuals. But that argument, to me, steps into determining the outcome of the court claim.

The fact that the particulars draw a direct contradiction with the complaint form could have been part of any defence lodged. But here, with limited funds, the trustees of R felt they had to settle the claim. If there hadn't been a "claim" against the trustees of R then any request for support from Markel would have fallen at the first hurdle and the content of the particulars would have been completely irrelevant. But that isn't what happened here. Having considered Markel's response carefully, I remain of the view that I provisionally stated.

While I've noted Markel's comments and queries about settlement, it's not for me to respond to or answer these at this time. Markel will, if the trustees of R accept my provisional decision within the timescale set, have to settle this matter in line with the cover in place. While I hope another dispute won't arise, if the trustees of R are not happy with anything Markel does in this respect then they will be able to make a further complaint, the merits of which can then be considered.

my final decision

I uphold this complaint. I require Markel International Insurance Company Limited to provide settlement to the trustees of R, as allowed for by the cover in place and, apart from in relation to anything I've commented on above, in line with that policy's wording. Under the rules of the Financial Ombudsman Service, I'm required to ask the trustees of R to accept or reject my decision before 30 October 2015.

Fiona Robinson
ombudsman