IT WASN'T MY FAULT!
Can you claim when your car is hit by a boom or damaged in a car park?

BY LETITIA WATSON
Send suggestions for topics and requests for info to yourmoney@you.co.za. We may answer your questions in this column but won’t reply personally.

HELP! My car was damaged by a shopping centre boom!” This distress call came from a reader who wanted to know what his options were. If he’d had insurance, the answer would’ve been relatively simple, as it’s the insurance company’s job to deal with incidents and accidents.

But he wasn’t insured so we asked two experts, Ernest North of Naked Insurance and Charl Marais of legal firm JS Marais Inc, what he could do.

WHAT IF YOU’RE FULLY INSURED?
} If you have comprehensive insurance, you must submit a claim with your insurance company. Your insurer will deal directly with the other party to claim the amount required to get your car repaired, says Ernest North of Naked Insurance.

} You need to have comprehensive insurance to claim. If you have only third-party insurance, which covers you if you cause damage to someone else’s property or car, it won’t be covered.

} If you aren’t satisfied with the way your insurer dealt with the claim you can lodge a complaint with the Ombudsman for Short-Term Insurance (see Get Help Here).

WHAT ABOUT DISCLAIMER?
Most parking garages have signs saying “parking at vehicle owner’s risk”, stating they accept no liability for injury, loss or damage while cars are parked there. Does this mean you don’t have a right to claim if something happens to your car?

Charl Marais of legal firm JS Marais Inc says car park owners have a right to indemnify themselves against certain liabilities, but legislation dictates a notice must be in plain language and be prominently displayed. And disclaimer notices don’t indemnify car park owners against loss or damage caused by gross negligence.

TIP
You can also approach the National Consumer Commission, but phone beforehand and explain your situation to find out if you can lodge a complaint. Find information on how to complain on its website thencc.gov.za

GET HELP HERE
- Ombudsman for Short-Term Insurance: osti.co.za
- Small claims court: justice.gov.za
- Find a lawyer to represent you: lawyer.co.za

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WHAT IF THE CENTRE DOESN'T ACCEPT LIABILITY?
If the company that owns the mall or parking garage won’t accept liability or reimburse you and it was unquestionably its fault, you can claim damages by taking legal action through the courts, Marais says.

If the amount needed to repair your car is less than R20 000 you can approach the small claims court. You don’t need a lawyer to represent you.

If the amount is higher and you’re intent on suing, you’ll need legal help. Legal costs will initially be for your account but some of the money could be recouped at the end of the proceedings if your claim is successful and a cost order is granted against the owner of the car park.

But to stand a chance of success you’ll have to prove the owner of the car park was negligent, Marais warns.

It’s important to gather as much information as possible at the scene – take pictures of the boom and the mechanism, ask witnesses for a statement and make sure you have all their contact details for follow-up purposes.

The customer doesn’t have to inform the shopping centre’s insurance company – it’s the centre’s responsibility to do so.

But, you can claim for damage to your vehicle only if you didn’t violate laws such as speeding or driving under the influence, North says.

The insurance company may contact you to assess the damage to your car. It may also ask that you use its preferred service providers to get quotes for the repairs.

The company that owns the car park or the shopping centre usually has what’s known as public liability cover, North says.

This is cover for any legal liability to someone else, such as the vehicle owner (called the “third party” in insurance terms), because of an incident on their premises.

So the company can claim from its insurer for damage to a customer’s property on its premises and any accident involving injury to a customer.

LIKELIHOOD OF BEING REIMBURSED

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9 962 formal complaints were finalised by the Ombudsman for Short-Term Insurance in 2017.

49,3% of these complaints were about vehicle claims.

74% of vehicle claims were about accidental damage.

SOURCE: AUTOMOBILE ASSOCIATION

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