

TRUCK VS STOCK

Part 2



TruckSure By Trevor Toohill

A couple of months back I covered this subject and at the same time we at TruckSure were dealing with an ongoing claim that was proving to be difficult to achieve a satisfactory outcome for our client. The problem with this type of claim is in the proof of negligence and I thought that I would reprint a series of emails involving our client, their insurer and the farmer's insurer. It is easy to follow the process and see the outcome.

In the end we achieved a partial settlement covering 50% of our client's damages and excess. We would have been successful with a full recovery payment if a simple process was followed and proof of the farmer's negligence was recorded – simple, a photo of the damaged fence would have done the trick.

I would be interested in any feedback and any other transporters experiences.

Farmer's Insurer - Truck Insurer

Subject: Damage to vehicle – collision with livestock

Good afternoon,

Thanks for your email addressed to my colleague on Wednesday 2nd February.

At this stage we continue to deny liability for the accident. Our client's fences were in the process of being repaired, however there is no indication that they were not already adequate to hold stock within the paddock. The fact that an animal has escaped does not on its own prove negligence on our client's part. Do you have any photos of the fence(s) in question that you can please forward? The original email from the Assessor appears to have attachments, but these were not included when forwarded on.

Kind regards
Farmer's Insurer

Truck Insurer - Farmer's Insurer

Hi there,

Unfortunately by the time our assessor got to the scene of the accident your client had completed the fence replacement. In fact the final portion was replaced the day before the assessor attended.

The photos we have are of the new fencing which is certainly of a good standard and not of any real help.

As you will see from the assessor's email of the 26th October, the condition of the fencing on paddock (23) was such that the animal was able to escape.

There has been no denial that the animal escaped through/over the fencing. The fact that your client was in the process of replacing it in itself suggests that it was not up to the required standard.

In an effort to settle this matter we would be prepared to accept \$9,600.00 in settlement of this claim.

We look forward to your favourable consideration.

Regards
Truck Insurer

Farmer's Insurer - Truck insurer

Hi there,

Thanks for sending through the additional photos. I have discussed again with the insured, and they have confirmed that there were no breaks or gaps in the fence prior to escape, or any kind of damage after the cow had gotten out. All gates were also closed. Only the fence wiring was being progressively replaced as it was going rusty, but it was structurally sound and in no way inadequate for retaining stock in the paddocks as it was.

At this stage there appears to be no concrete proof that the fences were inadequate and not up to the fencing act requirements. However, we are prepared to offer 50% of the costs on a without prejudice basis to resolve the matter.

I look forward to receiving your reply.

Kind regards
Farmer's Insurer

Truck Insurer - Trucksure

Hi There,

As discussed, please find attached the correspondence received from farmer's insurer.

As expressed I do feel that in the absence of any concrete evidence to show the farmer was in any way negligent the offer being made may well be the best we will get. If we go to Disputes there is every reason to believe that we will get nothing.

We recommend that this offer be accepted.

Regards
Truck Insurer

TruckSure - Our client

Hi there

Please see the update on this claim and your insurer's comments. The effect is you would have 50% recovery. However, please let me have your thoughts on this offer.

To recap, the absence of vital admissible evidence against the poor state of the fence at the time of the accident has prejudiced our position quite significantly.

The full Disputes Process is still open, however, once pursued the other insurer will obviously take back the offer and let the process take its course. There is no guarantee the evidence at hand would pass muster at the hearing and it could go either way.

Any comments would be appreciated.

Regards
TRUCKSURE

Our client - TruckSure

Thanks

It is a hard one. On one hand we don't think it is at all fair especially with the farmer admitting liability at the time of the accident. On the other hand it is better than nothing. I will discuss here tonight and email you tomorrow.

What is your advice?

Kind Regards,
Our client

TruckSure - Our client

Hi there,

The general consensus is to accept the offer. This is a sure offer and will save you the time and costs for having to attend a Tribunal hearing. Even having the farmer's insurer give some ground is a step forward and we do not see them up scaling their offer.

Await your instructions.

Regards
TRUCKSURE 



MultiSure



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TruckSure

'You sit behind the wheel – we stand behind the truck'