

Telephone: (deleted)
Email: (deleted)

(address deleted),
(address deleted),
(address deleted),
(address deleted)

Financial Ombudsman Service,
South Quay Plaza,
183 Marsh Wall,
London,
E14 9SR

9 February 2004

Dear Sirs,

Dispute between D.R. Wilson and WHA Limited
Repairs to Mitsubishi Lancer Evolution 6 TME Reg No T10 MML

I am currently in dispute with the above company who have refused to accept a claim made against the failure of a Transfer Box on the above vehicle.

I was sold a Mechanical Breakdown Insurance with WHA by the dealer, Dobies Mitsubishi when I bought this two year old vehicle in 2002. During September of last year, the vehicle developed a fault and was taken into the dealer for repair. Their diagnosis was that the Transfer Box had failed. Basically, this unit is bolted to the rear of the gearbox, houses the front differential and delivers power to the rear prop shaft and wheels. They informed me that it was not possible to *repair* the unit and that it would have to be totally replaced at a cost of £2,386.99. I was advised that they would submit a claim to WHA on my behalf. However, I was advised that it was their policy not to proceed with the repair until they either received confirmation that the claim had been accepted or that I would personally settle the bill should it be rejected and I agreed to this condition.

WHA sent an Independent Assessor to inspect the vehicle and I subsequently learned through the dealership that my claim had been rejected. Obviously, I was unhappy with this outcome as I believed the claim to be fully justifiable under the terms of the policy and I wrote to the company to request a copy of the report. A copy of the Assessor's findings is enclosed **[Appendix A]** which would appear to imply that the damage to the Transfer Box casing had been caused by loosened bolts. This Assessor therefore gives two possible reasons for the bolts to loosen:

- The lack of a thread-locking agent during assembly, and/or
- Incorrect torque applied during assembly

Through the Mitsubishi Lancer Register, I contacted Mr Douglas Wragg, an Independent Motor Engineer for advice as to how to check these findings and he advised me to contact Mitsubishi's Head Office in the UK. I subsequently received a response from their Customer Services Manager based on advice supplied by Mitsubishi Motors in Japan **[Appendix B]** stating that:

- Mitsubishi do not use thread compound.
- This pre-assembled Transfer Box would be manually installed.
- This model had never been subject to a recall modification.

It was obvious at this point that this matter was going to take some considerable time to resolve one way or the other. As the Dealer was pressing of their loaned car to be returned and I needed transport for work, I paid the bill as an interim measure. Being unable to immediately obtain funds for the original amount quoted, I was able to secure the same replacement unit at less cost (thereby reducing the overall charge to £1216.06) and the repair was concluded.

I wrote to WHA on the 25 November 2003 [Appendix C] to relay the statements made by the manufacturer and therefore refuting their Assessor's conclusions. In view of this, I requested them to re-consider the claim but their reply dated 24 January of this year [Appendix D] finally stated that they would not be prepared to do so. I have searched their Terms and Conditions [Appendixes E and F] and I cannot find any clause which would prejudice this claim. I list below each relevant point from their Terms and Conditions and add my own responses:

Appendix F EXCEPTIONS

Section 2

None of the exceptions stated apply to my car.

Section 3 'No liability will be accepted for damage caused by:

- Neglect. *Neglect or negligence does not apply. The car has been serviced well within the manufacturer's recommendations.*
- Corrosion. *Not applicable.*
- Any foreign matter getting into or onto a part. *Not applicable.*
- Lack of servicing. *The vehicle has been serviced before the recommended intervals.*
- The effects of over-heating, etc. *Not applicable.*
- Freezing. *Not applicable.*
- Abuse. *Not applicable.*
- Damage to parts not covered by this policy, etc. *There is nothing, as far as I can see in their warranty booklet which would indicate that this particular cause precludes this claim.*
- Damage to parts we cover caused by parts not covered, etc. *Same comment as above.*

Section 4

- The effects of poor repairs, faults or defects at the time of sale. *There is nothing to suggest this was the case when the car was bought.*
- Parts which have been fitted incorrectly. *According to the manufacturer's statement, the unit was fitted in a controlled manner.*
- Parts which are of faulty manufacture or design. *As there has been no re-call since this car was manufactured, it would appear this is not valid.*
- Parts not fitted as standard, etc. *Not applicable.*

In their final letter [Appendix D], WHA define a Mechanical Breakdown as 'the failure of a component causing a sudden stoppage of its function for a reason other than wear and tear, normal deterioration or negligence'. It simply cannot be determined how long it took for the bolts to loosen and as far as the breakdown is concerned it

did cause a 'sudden stoppage'. The failure was of the *Transfer Box*, no matter how it was caused. Their apparent premise that 'bolts are not a mechanical item' as was mentioned by them in a telephone conversation with me, is questionable to say the least. There is certainly nothing to support this in their warranty booklet. The Casings clause simply states 'If any of the covered parts fail and this damages the casings, they will also be covered'. Even in the 'Exclusions' box on the same page, no reference is made to bolts causing or contributing towards any component failure. A copy of the relevant pages from their warranty booklet is enclosed for your inspection [\[refer to Appendixes D & E\]](#).

In conclusion, I strongly challenge their arguments for rejecting this claim as they appear to be without substance. Additionally, neither the manufacturer nor the dealer would appear to have any responsibility for the failure in this case. The problem simply appears to have been one of those failures down to chance and I feel the Insurer is being evasive and unreasonable.

Finally, I feel it may be prudent to mention that I am a car enthusiast; a committee member of the Mitsubishi FTO Owners Club; have involvement with the Mitsubishi Lancer Register and am an advanced driver currently training to be a Qualified Observer within the Institute of Advanced Motorists. My life therefore revolves around cars and associated matters and having talked over this problem with many of my knowledgeable co-enthusiasts, all are as surprised by the Insurer's conclusions as I am.

I would be grateful if you could review this case and let me have your findings as soon as possible.

Yours sincerely,

D.R. Wilson

Appendix A

Assess Ref. No: MN0789 ZN5509 Policy No: WHGG6677 Insured: Wilson

CONCLUSION/OPINION:

In our opinion being based on the evidence observed reported and presented, the differential steel casing has become fractured due to the gradual loss of torque/loosening of the four securing set of screws/bolts

The casing has become cracked with a section detached away across one of the bolt holes

Examination revealed no trace of any form of thread locking agent such as "Loctite" or similar.

The loosening has mostly possibly occurred initially due to a lack of thread-locking agent, incorrect torque during assembly or a combination of the two.

Once the loss of torque starts, vibration due to vehicle operation, will have occurred between the de-clamped surfaces. This has then resulted in the fracturing of the casing.

No liability was admitted along with no comment or undertaking that maybe prejudicial to your case.

Parts and Labour:	£
Transfer differential unit	1743.48
Labour: 6 hrs @ £48.00	288.00
Total all + Vat	

Service history:
Date illegible @ 24504 miles
11.07.2002 @ 26920 miles
27.07.2002 @ 29625 miles
19.12.2002 @ 31560 miles
24.05.2003 @ 34090 miles
04.09.2003 @ 37500 miles

Stemma Assessors Limited
N.A. Heaton AMIMI AMSOE AMIRTE

Appendix B

— Original Message —

From: "Customer Relations" <CustomerRelations2@mitsubishi-cars.co.uk>

To: <dave@mivec.co.uk>

Sent: Friday, November 21, 2003 1:57 PM

Subject: Transfer Box Information

865/17318

21 November 2003

Mr Dave Wilson
5 Hamilton Terrace
Whitehaven
Cumbria
CA28 7TT

Dear Mr Wilson

MITSUBISHI LANCER EVOLUTION VI TME

Your e-mail dated 17 October to Darren Hughes has been forwarded to me, and in turn the advice of Mitsubishi Motors Corporation in Japan has been sought.

With regard to the questions raised in your e-mail, I can offer the following answers:

- Mitsubishi would tighten the bolt without any thread compound.
- The transfer box would be installed by Mitsubishi by a worker with a tool. However, as this transfer box is not a disassembled type, open data is not available.
- There is not any recall or modification on this model.

I hope this will be of assistance, but please let me know if any further information is required.

Yours sincerely

NIKI GILPIN
Customer Services Manager

Appendix C

5 Hamilton Terrace,
Whitehaven,
Cumbria.
CA28 7TT

07770 520000
dave@mivec.co.uk

25 November 2003

Warranty Holdings Limited,
Unit 7,
Acorn Business Park,
Commercial Gate,
Mansfield,
Nottingham.
NG18 1EX

Dear Sirs,

Re: Vehicle: Mitsubishi Lancer Evolution 6 TME (T10MML)
Policy number: WHGG006677
Assessment ref: MN0789 ZN5509

With reference to my recent claim for a replacement transfer box on the above vehicle, I have been checking your reasons for rejecting the claim directly with the manufacturer and these are my findings based on statements supplied by Mitsubishi UK Customer Relations;

- Mitsubishi do not use any kind of thread locking agent during the assembly of their transfer boxes. The boxes are assembled by hand, and therefore the torque settings of the bolts would have been correct at the time of manufacture.
- The transfer box was manufactured, assembled and installed by Mitsubishi according to strict guidelines. There is no documentary evidence available to show that the transfer box was other than the original equipment installed in the vehicle at the time of manufacture.
- There has been no recall or modification on this model by the manufacturer relating to this problem.

In light of this information from the vehicle manufacturer, your engineer's assessment report submitted by Stemma Assessors Limited is inaccurate and therefore invalid. I would respectfully request that my claim be re-assessed in view of the manufacturer's statements above.

The claim is for a total of £1216.06 for the repair (broken down as listed below). If I do not get full satisfaction I will have no other option but to refer this matter to the relevant authorities for their investigation.

Cost of repairs

- £730.00 for the transfer box, inc carriage
- £486.06 for parts & labour charged by the Mitsubishi dealer

Yours sincerely,

D.R. Wilson

Sent Recorded Delivery
SJ 3500 7647 808



Date: 24.01.2004

Mr D Wilson
5 Hamilton Terrace
WhiteHaven
Cumbria
CA28 7TT

Dear Mr Wilson

Re: Policy Number WHGG 006677

Thank you for your letter

The policy that you have is Mechanical Breakdown Insurance.

Mechanical Breakdown is defined in your policy document as 'the failure of a component causing a sudden stoppage of its function for a reason other than wear and tear, normal deterioration or negligence'.

In the policy 'parts covered' section there is a separate section about casings and the way that they would be insured. The Transfer gearbox casing would only be insured if it was damaged by a mechanical component and that is not the case with your vehicle.

As we have been advised that the failure would not be classed as mechanical breakdown, we regret to advise that we are unable to make payment of this claim.

If in the future a mechanical fault arises with your vehicle fitting the policy guidelines, please call our claims department on 08705 329696, who will be happy to assist you with your enquiries.

Yours sincerely

A handwritten signature in black ink, appearing to be 'AB', written over a horizontal line.

Andrew Brown
Claims Administration



Mechanical Breakdown Insurance

Parts covered

Please see your Proposal Form for details of the maximum amounts that may be paid for each and any claim. These may be subject to lower limits as stated on these pages. All limits include VAT. There is no restriction to the number of claims you can make.

This policy covers all mechanical and electrical parts (including labour to fit them), of the insured vehicle against mechanical breakdown as defined on page 12.

Oil seals

Crankshaft front seal, camshaft oil seal, auxiliary shaft oil seal, gearbox rear seal, drive shaft[s] seals, differential pinion seal and any oil seal or gasket where removal of the engine, gearbox or differential/ drive unit is essential in order to effect repair.

Casings

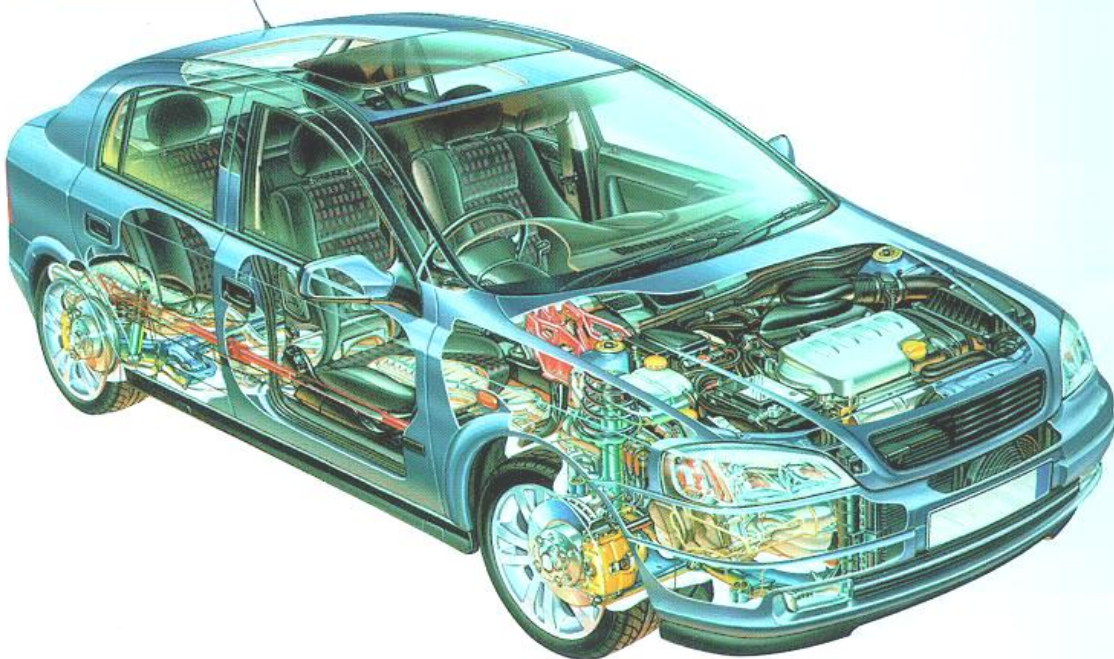
If any of the covered parts fail and this damages the casings, they will also be covered.

Working materials

Oils, oil filter and anti-freeze are covered only if it is essential to replace them because of the failure of a part which is covered under this policy.

Excluding:

Cracks and failure to valves and cylinder heads as a result of carbon build-up. Body, paint, glass, interior/exterior trim, in-car entertainment/communication systems and connected equipment, catalytic converters, wheels, airbag and system, electrical wiring and wiring looms. Normal wear and tear/service items and other components subject to routine maintenance or periodic repair or replacement such as [this is not a complete list] plugs, HT leads, brake frictional material, clutch facings, wiper blades/rubbers, V belts, hoses, light bulbs/units, tyres, batteries, exhaust systems.



This picture is for illustration purposes only and does not indicate the parts covered

Mechanical Breakdown Insurance

Terms and conditions

The Proposal Form is part of the contract between you and The National Insurance and Guarantee Corporation plc trading as NIG for the Mechanical Breakdown Insurance Policy. Your Policy covers the vehicle shown on the Proposal Form.

The National Insurance and Guarantee Corporation plc trading as NIG ["NIG"] is the insurer responsible for the provision of the benefits under this Policy of insurance. Warranty Holdings Limited ["Warranty Holdings"] has been appointed by NIG as its agent to issue this Policy of insurance. WHA Limited ["WHA"] has been appointed to deal with all matters relating to claims handling and settlement, including payment, of claims arising under this Policy.

EXCEPTIONS

- No liability will be accepted for any claim which is reported to WHA more than 14 days after the relevant fault is discovered.
- This Policy does not apply to:
 - vehicles used for hire or reward [for example, taxis, self-drive hire or driving schools];
 - vehicles used for any kind of timed competition or race; or
 - non-standard, customised or modified vehicles.
- No liability will be accepted for damage caused by:
 - neglect;
 - corrosion;
 - any foreign matter getting into or onto a part;
 - lack of servicing;
 - the effects of over-heating, whether caused by an insured part or not;
 - freezing;
 - abuse;
 - damage to parts not covered by this Policy or consequential damage flowing therefrom; or
 - damage to parts we cover caused by parts not covered by the Policy.
- No liability will be accepted for:
 - the effects of poor repairs, faults or defects at the time of the sale;
 - parts which have been fitted incorrectly;
 - parts which are of faulty manufacture or design; or
 - parts not fitted as standard or optional extra by the manufacturer, unless cover for such items is agreed beforehand.
- This Policy excludes any damage caused by fire accident or any road hazard whether or not insured under any motor insurance or accidental damage Policy. It does not provide cover for other people or physical injury.
- This insurance excludes the cost of any alteration, repair or replacement caused by the failure of electrical equipment, computer hardware and/or associated equipment to process that change from the year 1999 to 2000 and beyond.
- No liability will be accepted for damage caused by war risks, sonic booms or nuclear radiation.

GENERAL CONDITIONS

- Before selling you the car, the dealer must check the vehicle to make sure that the parts covered under this Policy are in good condition.
- NIG may declare void any Policy where the Proposal Form does not correctly show the exact vehicle type, model, age and mileage. If you give incorrect information on the Proposal Form, your Policy may be void or, at Warranty Holdings' option, allowed to continue subject to the payment and receipt of any additional premium that may be required to reflect the correct information.
- The mileage quoted on the Proposal Form does not guarantee that this is the true distance the vehicle has covered.
- If it is discovered that you have not kept to the conditions of the Policy, you agree that your claim will be rejected and that your Policy may be cancelled.
- The vehicle must be serviced in accordance with the schedule described in the Service standards section of this Policy. You must retain all VAT service invoices.

- NIG will not pay more than the limits shown on the Proposal Form or as otherwise restricted in this Policy document.
- Your Policy will only be valid if your Proposal Form has been received by Warranty Holdings and the premium has been paid and received in accordance with these terms and conditions. Warranty Holdings has the right to refuse an application for cover.
- Warranty Holdings and NIG are not responsible if the dealer does not pay the premium to either Warranty Holdings or NIG. If the Policy is renewed and Warranty Holdings has agreed to your paying in instalments and one of your payments is late, your cover will immediately cease but may at Warranty Holdings' sole discretion be reinstated if your payment is received at a later stage.
- The dealer who sold you the car acts as Warranty Holdings' agent only for the purpose of supplying this Mechanical Breakdown Insurance Policy. The dealer is not Warranty Holdings' agent for the purpose of receiving premiums. Warranty Holdings is not responsible for any mistakes or incorrect information provided by the dealer about the nature or value of the Policy.
- There is no return of premium.
- Your rights as set out in this Policy are in addition to your legal rights. This insurance is subject to the laws of England and Wales.
- Warranty Holdings may sometimes send you information about other goods and services which may interest you. Or your name and address may be made available to other companies providing these services. If you would rather not receive this information, please write to: Customer Relations Dept, Warranty Holdings, Stuart House, Queens Gate, Britannia Road, Waltham Cross, Herts EN8 7TF.
- If you want to sell the vehicle you will be able to transfer this Policy to the new owner. You must apply to Warranty Holdings to transfer the Policy before you sell the vehicle. There is a fee of £25 which you must enclose with your application. The fee will be returned if your application cannot be accepted.

If you sell the vehicle to a dealer or trader, this Policy will automatically be cancelled. No refund of your premium will be given if your Policy is cancelled on the sale of your vehicle.

CLAIMS CONDITIONS

- All matters relating to claims handling and settlement including payment of claims arising under this Policy will be dealt with by WHA Limited, PO Box 246, Waltham Cross, Herts EN8 7ZE.
- No repairs may be carried out under the Policy until a claims authority number is provided by WHA for those repairs. No liability shall exist in respect of parts supplied, repairs carried out or any other claim under this Policy other than claims made in accordance with the procedures set out in this Policy document and for which specific authorisation is given by WHA.

The Insurers reserve the right to provide replacement parts and to carry out repairs under this Policy or to arrange for their provision by other persons.
- The amount of time allowed for labour will be in line with the manufacturer's standard repair time. The cost of diagnosis or testing is not included.
- NIG and WHA reserve the right to examine the vehicle, to subject it to expert independent assessment and to name the repairer to be used.

WHA will use the results of any expert independent assessment to determine the amount to be paid in respect of a claim. This will be subject to the claimable limits and the terms and conditions of your Policy.
- If you or a repairer make a false or dishonest claim, your Policy will be cancelled and legal action may be taken against you.
- You cannot change these terms and conditions unless you have NIG's written agreement. NIG may appoint any person to deal with settlement and claims or payments. NIG reserves the right to change at any time any of the parties providing sales or claims handling or related services under this Policy.