



## THE OMBUDSMAN'S



# BRIEFCASE

Newsletter of The Ombudsman for Short-Term Insurance

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## FROM THE EDITOR'S DESK

In our first issue of the Ombudsman's Briefcase of 2016, the Office of the Ombudsman for Short-Term Insurance takes this opportunity to wish you a prosperous and successful 2016.

This year sees exciting change at the office with the appointment of the new Ombudsman, Deanne Wood, while we bid a sad farewell to the outgoing Ombudsman, Dennis Jooste.

# HOT OFF THE PRESS

## THE BOARD OF THE OMBUDSMAN FOR SHORT-TERM INSURANCE APPOINTS NEW OMBUDSMAN



Deanne Wood, Ombudsman

The Board of the Ombudsman for Short-Term Insurance has appointed a new Ombudsman. Ms. Deanne Wood has been appointed as the new Ombudsman with effect from 01 March 2016. She has practiced as an Advocate for the past sixteen years and has a wide range of experience in dispute resolution, including in insurance related matters. Ms. Wood has recently been recommended by the Johannesburg Bar Council for Senior Council status. This recommendation is awaiting confirmation from the President. Martin Brassey SC, Chairman of the Board, explained that she was the Board's unanimous choice from a list of candidates compiled after an exhaustive and transparent recruitment process. "We are confident that she will continue to focus on the main objective of the office, namely to resolve Short-Term Insurance disputes in an impartial, informal and cost effective manner. In addition, she is well qualified to deal with the regulatory changes that the industry faces and the Ombudsman's schemes in particular".

Mr. Brassey also paid tribute to the outgoing Ombudsman, Dennis Jooste, for the sterling work he has done in enhancing the status of the office and in securing the support of the insurance industry and consumer organisations.

Ms. Wood can be expected to build on these notable achievements in order to develop and nurture the organisation so that it will appropriately utilise contemporary communication and meeting the challenges of the regulatory change.

We welcome Deanne on board and look forward to working with her. Deanne was introduced to the industry at a function held at the Johannesburg Country Club on 25 February 2016.

# ADVICE FROM THE OMBUDSMAN: CASE STUDIES

Please note that each matter is dealt with on its own merits and no precedent is created by the findings in these matters. The case studies are intended to provide guidance and insight into the manner in which OSTI deals with complaints.

## GROSS NEGLIGENCE

### *RMB Structured Insurance*

Ms. S reported a claim to her insurer for the theft of her vehicle. The claim was rejected by the insurer on the ground that the nominated driver had immediately prior to the theft, been grossly negligent. The policy excludes cover under circumstances where there is gross negligence on the part of the insured or the nominated driver.

The nominated driver of the insured vehicle was noted as Ms. S's boyfriend, Mr. J. On the evening of the incident Ms. S asked Mr. J to go to the shops in her vehicle in order to purchase a cold drink and cigarettes. Mr. J then left their home to go to the shop in order to purchase these items. Upon arriving at the shops, Mr. J left the vehicle's keys in the ignition and left the vehicle unlocked while he went into the shop. He did this because he was of the view that, as he only needed to purchase two items, he would not leave the vehicle at risk for a material length of time, and that it would thus be safe to leave the vehicle exposed in this manner. Whilst he was inside the shop he

heard the vehicle's ignition start and ran out of the shop to see what was happening.

*He realized that the vehicle was in the process of being stolen and although he tried to prevent the theft, he could not.*

The insurer was of the view that Mr. J was grossly negligent in leaving the keys in the vehicle's ignition and not locking the vehicle whilst it was left unattended. The insurer also provided photographs of where the vehicle was left when it was stolen and advised that Mr. J would not have been able to keep an eye on the vehicle whilst in the shop.

Ms. S was of the view that, even though Mr. J may have been negligent in leaving the keys in the ignition and the vehicle unlocked, this does not equate to her, as the insured, having been negligent.

The policy wording that the insurer relied on for rejecting the claim states that:

*"1. What the Policy Words mean:*

*1.2 "Grossly negligent, illegal or criminal behavior" includes any action or activity that is not careful, honest and diligent or which is against the law."*

*"2. Important exceptions:  
We do not pay:  
2.1 If the loss was caused or contributed to by any grossly negligent, illegal, criminal or fraudulent act by you, a family member or a nominated driver at the time of or just prior to the loss."*

The insurer therefore advised that the claim was capable of rejection in terms of the exclusion relating to gross negligence as Mr. J's actions caused and/or contributed to the theft of the vehicle. Mr. J was a nominated driver under the policy and accordingly his actions fell to be considered in determining the validity of the claim.

# ADVICE FROM THE OMBUDSMAN: CASE STUDIES

*It was noted that Ms. S (and Mr. J) did not dispute that Mr. J had left the keys in the vehicle's ignition and unlocked, whilst it was unattended, in a public area. Mr. J was clearly grossly negligent as a reasonable person would have foreseen the possibility of the vehicle being stolen under these circumstances and would have taken steps to prevent the loss.*

As Mr. J failed to take such steps to prevent the loss from occurring, he was grossly negligent and the insurer was therefore entitled to reject the claim as Mr. J's action did in fact cause and/or contribute to the theft of the vehicle.

The rejection of the claim was therefore upheld.

## MATERIAL MISREPRESENTATION ± CHANGE IN RISK

*King Price Insurance*

Mr. D contacted the insurer to insure a vehicle which he had just purchased. During the underwriting of the policy, Mr.

D informed the operator that he had purchased the vehicle for his daughter, Ms. L, who was only in possession of a valid learner's license at the time of the call. Mr. D also informed the operator that Ms. L was scheduled to take her driver's license test approximately one month thereafter.

The insurer required the details of the regular driver to underwrite the risk and could only list a driver with a valid driver's license. The operator enquired whether Mr. D would be the regular driver until the daughter obtained her license. He confirmed that he would be. The operator advised Mr. D that he would need to call the insurer once his daughter became the regular driver as the premium would then be calculated based on his daughter's risk profile. Mr. D agreed and the policy inception.

*Ms. L obtained her driver's license approximately one month after inception of the policy. However, Mr. D failed to inform the insurer that she had become the regular driver. Ms. L was involved in an accident approximately six months after she had become the regular driver.*

The insurer repudiated the claim on the ground that there was a material change in risk.

The insurer advised that it would have charged a higher premium had Ms. L been noted as the regular driver. Accordingly, as a result of the lower premium that was paid, the insurer suffered prejudice in the premium that it had received. In the Ombudsman's view, there was no evidence that Mr. D intentionally failed to inform the insurer that Ms. L had become the regular driver. The fact that he had disclosed, during the underwriting call, that the vehicle was bought for Ms. L and that she would be the regular driver once she obtained her driver's license, was evidence that Mr. D did not intend to misrepresent this information in order to pay a lower premium.

*Based on the jurisdiction of the office to apply equity, where appropriate, the Ombudsman made a recommendation for the claim to be settled proportionately. The insurer, after much deliberation, agreed to settle the claim on that basis.*

# ADVICE FROM THE OMBUDSMAN: CASE STUDIES

A proportionate settlement is where the insurer settles a claim in proportion to the percentage of the premium received in relation to the premium that should have been received. For example, if the insurer only received 50% of what the premium should have been with the correct risk noted, 50% of the claim will then be settled.

## COVER EXCLUSION ± THEFT BY FALSE PRETENSES

*Outsurance Insurance Co Ltd*

Mr. R's vehicle was stolen under false pretenses. The insurer rejected the claim after finding out that the loss occurred in circumstances where the vehicle was released to a potential buyer, in terms of a sale agreement, without validating legal payment.

Mr. R placed his vehicle for sale on a website. He was contacted by a potential buyer. They proceeded with the necessary paperwork in order to transfer ownership. When Mr. R received a bank automated SMS indicating that the agreed purchase price had been deposited into his account, he released the vehicle to the buyer. When the funds did not reflect in his account, Mr. R contacted his bank. The bank informed him that EFT transactions can take up to three days to clear and reflect in the bank account. The bank did not

confirm that the funds had cleared before the vehicle was released. Needless to say the funds never appeared in Mr. R's account.

The policy wording specifically excludes cover for any loss, damage or liability, directly or indirectly arising from selling the insured property. More specifically, cover is excluded in circumstances where the insured releases the insured property to a potential buyer without prior confirmation from the bank that valid and legal payment had been made. The clause in the policy wording is illustrated by the following example;

*People sometimes "buy" items using fraudulent cheques or counterfeit money. In order to avoid becoming a victim of this kind of theft, you need to make sure that your bank confirms that the cheque has been honoured, or that the money is not counterfeit, before you give the item to the other person.*

After reviewing all the information and documents furnished by both parties, the Ombudsman upheld

the insurer's decision to reject the claim. While an insurance policy will cover the insured in the event of a loss, including theft, this cover is typically subject to specific exclusions which are set out in the policy wording. The onus is on the policyholder to familiarise himself with the terms and conditions of the insurance contract and to ensure compliance with the terms and conditions. The policy exclusion in this case was very clear. The insurer further furnished the office with proof that the policy terms and conditions were sent to the complainant at the inception of cover, in accordance with the Policyholder Protection Rules.

The Ombudsman pointed out that an SMS from the bank is not irrefutable transactional proof of activity on a bank account. In fact, to ensure that its users are informed and aware of the various scams that are out there, some websites offer precautionary advice. One of the scams highlighted by these sites is the use of a commercial SMS messaging service to send the seller an apparently legitimate confirmation that they have deposited money into his bank account. This SMS is a convincing replica of the ones a banking institution might send when someone makes a deposit into your account. Sellers have therefore been advised not to release their goods until the

# ADVICE FROM THE OMBUDSMAN: CASE STUDIES

deposit has actually reflected in their bank account.

In the view of the Ombudsman this practice goes hand in hand with the insured's duty to exercise due care and precaution to prevent and/or minimise loss or damage.

As a result the Ombudsman could not fault the insurer.

## MECHANICAL DAMAGE TO A VEHICLE AFTER THE VEHICLE IS DRIVEN THROUGH WATER

*RMB STRUCTURED*

Mrs. S suffered damage to the engine of her vehicle when she drove through a pool of water and the engine's vehicle cut out. She did manage to start the vehicle again but as she drove further, there was a noise emanating from the engine, which according to Mrs. S, became progressively louder.

The insurer advised the Ombudsman that, during the validation of the claim it was discovered that Mrs. S had driven the vehicle over a low-level bridge, which was flooded with water.

The insurer rejected her claim on the ground that the damage sustained to the engine was of a mechanical nature and the damage was not caused as the result of an insured event as listed in the policy. Mechanical damage was not an insured event in terms of the policy.

The Ombudsman advised the insurer that, based on Mrs. S's description of how the loss occurred, it was evident that the damage was as a direct result of the vehicle's engine sucking in water, resulting in damage to the internal components of the engine.

The fact that Mrs. S started the vehicle again and drove further did not result in the damage to the engine as the damage had already been caused when the vehicle entered the water.

*The Ombudsman advised that, based on the circumstances under which the loss occurred, it would appear that the policy indeed covered such a loss, as the damage was caused by water. The insurer was asked to pay the claim.*

The insurer agreed and accordingly settled the claim.

## LATE NOTIFICATION ± WAS ACTUAL PREJUDICE SUFFERED?

*Constantia Insurance Company Limited*

Mr. C took out a legal expenses policy with the insurer which covered him, inter alia, for attorney's costs on conveyancing matters. In terms of the policy Mr. C enjoyed a maximum benefit of R6000.00 for such costs. Mr C bought property in July 2014 and subsequently incurred attorney's costs relating to the conveyancing procedure of such property. For a number of reasons not relevant to this discussion, he only submitted a claim for indemnification to the insurer after a period of 30 days.

The insurer declined the claim on the basis of the following exclusion contained in the policy:

*"All claims must be lodged within 30 (thirty) days from date of occurrence of the event giving rise to the*

# ADVICE FROM THE OMBUDSMAN: CASE STUDIES

*claim. The onus will be on you to prove that you have lodged your claim timeously”*

The insurer held the view that proper procedure had not been followed by Mr. C since the policy clearly states that claims must be submitted within 30 days.

Having considered the merits and circumstances of the matter the Ombudsman informed the insurer that it did not suffer any “actual prejudice” due to the fact that the claim was submitted outside the 30 days specified in

the policy. As the insurer was unable to indicate that it had indeed suffered any prejudice due to the late notification of the claim, the Ombudsman was of the view that a strict interpretation of the applicable terms pertaining to late notification would therefore result in an inequitable outcome.

In terms of Section 10 of the Financial Services Ombud Schemes Act 2004, the Office of the Ombudsman is mandated to apply equity and fairness. This means that the office is able to make decisions on matters which are not solely based on the strict interpretation of the terms and

conditions of a policy. This is especially so in instances where the results of a rejected claim based on the policy terms and conditions are unfair or unjust or if the insurer cannot demonstrate that it suffered prejudice as a result of the breach of the contract by the insured.

Since the insurer did not suffer any actual prejudice due to the late notification of the claim, the Ombudsman recommended that the claim be settled in terms of the maximum indemnity provided by the policy. The insurer agreed to settle the claim accordingly.



# OSTI CARES

In December 2015 the Office of the Ombudsman for Short -Term Insurance donated stationary to two children's homes.

The first children's home is Masibambane, which is an after care facility taking care of approximately 300 children from around the Eldorado Park area. The children are assisted with school supplies, a meal and homework, before being sent home each day.

The second home is Othandweni Children's home that looks after approximately 100 children from ages 0 – 18. These children are permanently housed within the home and are taken care of with the help of Johannesburg Child Welfare.





# WORLD CONSUMER RIGHTS DAY 15 MARCH 2016

15 March is World Consumer Right's Day and was established to promote the awareness of basic rights of consumers.

Our consumer tips for this issue of the Briefcase are in the spirit of World Consumer Right's Day:

1. You have the right to receive your policy documents within 30 days of taking out a policy. However, if you do not receive it you should request it. It is important that you familiarise yourself with the policy terms and conditions.
2. If you take out a loan (home loan/car finance), you do not have to accept the insurance cover provided or suggested by the financier. You have the right to shop around and to take out your own insurance policy. The financier may, however, insist that your

policy meets certain minimum requirements to be acceptable.

3. You are entitled to receive written confirmation of the insurer's decision on your claim and the reasons for the decision within a reasonable time period.
4. If you disagree with the insurer's assessment of your claim, you are entitled to appoint your own assessor and to submit your own assessor's report to the insurer for consideration. Remember that you bear the onus of proving that your claim is valid.
5. The Policy Holder Protection Rules (PPR) entitle you to a minimum of 90 days to make representation to the insurer on a rejected claim and to be informed of any dispute or resolution mechanisms available to you. You have a further and separate period of a minimum of 6 months thereafter, to issue a Summons against the insurer if you are still not satisfied.



# WHAT DOES THE OMBUDSMAN DO?

How we can assist you if you have a complaint with your short-term insurer

The Ombudsman for Short-Term Insurance (OSTI) resolves disputes between insurers and consumers. We are an independent organisation appointed to serve the interests of the insuring public and the short-term insurance industry. Our mission is to resolve

short-term insurance complaints fairly, efficiently and impartially. We offer a free service to consumers whose claims have been rejected or partially accepted by their insurer. We apply the law and principles of fairness and equity.

## WHAT TO DO

### IF YOU HAVE A COMPLAINT?

Before contacting our Office, we would advise you to complain to your insurance company first. It is best to complain in writing. Make sure that you keep copies of all correspondence between you and your insurer.

If you are not happy with your insurer's decision you can complete our complaint form and send it back to us either by post, fax or email.



If you would like to lodge a complaint or require assistance, please contact our Office by calling

**011 726 8900 or 0860 726 890**

or download our complaint form via our website at

**www.osti.co.za**, click on lodge a complaint and then click on steps to follow.

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