THE OMBUDSMAN'S BRIEFCASE

Issue No.1 of 2019

ombudsman for short-term insurance

FROM THE EDITOR'S DESK

In our first issue of the Ombudsman's Briefcase for 2019 we take this opportunity to wish you a prosperous year ahead.

Last year we introduced a new IT system and new processes which improve the functioning and efficiency of our office. We are delighted that the launch of our online application system has allowed easier accessibility to our office and affords us a greater opportunity to provide assistance.

We look forward to the changes and challenges that lie ahead this year. We also look forward to your continued co-operation and support in resolving short term insurance disputes.

NEWS AND EVENTS

WELCOMING OSTI'S NEW INTERNS

In January 2019 OSTI welcomed four new interns into our internship programme. OSTI's interns hold legal degrees from various tertiary institutions. OSTI endeavours to assist legal graduates to broaden their practical legal skills in the area of insurance and dispute resolution, and to provide a platform for their career development.

We asked our interns about their working experience at OSTI so far and they had this to say:

From left to right: Relebogile Mashego, Tlotlego Tsagae, Respect Masuku and Vuyisile Ramakoaba

Relebogile Mashego *"I enjoy the environment and the atmosphere at work. I'm surrounded by experienced and professional people and this has helped me a lot. My knowledge in insurance has improved since I have arrived at OSTI."*

Tlotlego Tsagae *"Since I started working at OSTI, I have acquired immense insight into the insurance field. My experience at OSTI has allowed me to adapt to professional demands and expectations. All in all, OSTI has offered me plenty of room to grow personally and to develop my professional commitment to practice as a lawyer."*

Respect Masuku *"OSTI is a conducive work environment which inspires responsibility and independence for me as an employee. I have learnt to work independently and I appreciate teamwork."*

Vuyisile Ramakoaba *"I have increased my knowledge in the principles and practice of insurance law, but most importantly I have learnt the importance of Alternative Dispute Resolution (ADR). ADR assists in providing a speedy resolution to complaints as opposed to litigating which is expensive and often a lengthy process."*

ANNUAL REPORT LAUNCH

This year the Ombudsman will launch her Annual Report in May 2019. This will provide, amongst other information, statistical data and operational results for 2018.

NEW PROCESSES AT OSTI

On 1 January 2019 OSTI embarked on a new complaints handling process which allows for a more streamlined approach to dispute resolution. Our process now allows for matters that are easily resoluble to be dealt with expeditiously. Matters that are not easily resoluble and require further enquiry and investigation are dealt with under the Standard Complaints Handling process. At this stage there may be information gathering, negotiating and conciliating, where possible, and the issuing of recommendations. For the process flow chart on our new complaints handling process please visit our website at https://www.osti.co.za/lodge-a-complaint/complaints-handling-process/.

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CASE STUDIES

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MISREPRESENTATION / NON-DISCLOSURE DURING UNDERWRITING OF THE POLICY

CONSTANTIA GROUP INSURANCE

Mr S submitted a claim to his insurer following a motor vehicle accident which took place in October 2017. The insurer rejected the claim on the grounds that during the initial sales conversation, during which the policy was underwritten, Mr S had failed to disclose that he had previously been involved in criminal or civil litigation.

The insurer provided this office with a recording of the sales conversation where the questions posed to the insured were *"Have you been involved in criminal or civil litigation in the past 5 years or have you had a civil judgment against you?"* and *"Have you been convicted of any offence other than stated in the motor application?"* Mr S answered *"No"* to both questions.

The insurer submitted that during the validation of the claim it discovered that there were three previous charges laid against Mr S. All three charges were for drunk driving between October 2016 and April 2017. The insurer argued that all three charges were laid against Ms S prior to the sales conversation and there was therefore a duty on Mr S to disclose these charges during the underwriting of the policy.

The insurer argued that Mr S failed to inform it during the sales conversation that he had been arrested on allegations of drunk driving and that his failure to do so prejudiced the insurer as it was unable to underwrite the risk correctly.

The insurer submitted that the drunk driving charges were clearly offences that Mr S should have disclosed to the insurer to enable it to make an informed decision when underwriting the risk. The insurer further submitted that had Mr S disclosed these previous charges, the insurer would not have accepted the risk in terms of its underwriting criteria.

Mr S did not agree with the insurer's rejection of the claim and submitted that whilst he had been previously charged with drunk driving, none of the cases ever proceeded to court and were instead withdrawn due to a lack of evidence. Mr S argued that he understood the word *"litigation"* in the sales conversation to refer to the process of being taken to trial in respect of the criminal charges against him. Mr S thus maintained that he had answered the insurer's underwriting questions correctly and to the best of his knowledge.

In considering the submissions made, OSTI listened to the sales recording on which the insurer relied in rejecting the claim. OSTI noted that the questions put to Mr S specifically referred to litigated cases and convicted cases and did not extend to charges made against him. OSTI also considered the dictionary meaning of *"litigation"*, which refers to the process of taking a case to a court of law in order to obtain a judgment.

In this regard OSTI agreed with Mr S that as none of the charges brought against him ever proceeded to a court of law, and were instead withdrawn. Accordingly it was true that he had never been a party to criminal or civil litigation. Mr S had therefore answered the insurer's questions correctly when the policy was underwritten.

OSTI found that the insurer could not rely on charges made against Mr S which had been withdrawn to support the rejection of the claim on the grounds of undisclosed litigation.

The insurer agreed to abide by OSTI's decision and settled the claim.

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BREACH OF THE POLICY CONDITIONS

STANDARD INSURANCE LTD

Mr N was involved in a motor vehicle accident on 23 May 2018 around 19h55 on the M1 North in Woodmead. Mr N reported the claim to the insurer on 24 May 2018. He submitted that he spent the day at work in Johannesburg and was on his way home to Midrand when the accident occurred. Mr N's description of the accident is that he was driving on the far right lane of the freeway when a vehicle in front of him suddenly slowed down. He stated that he swerved to the left lane to avoid rear-ending the vehicle in front of him but collided into the left rear side of another vehicle which was travelling at high speed in that lane. According to Mr N, he drove away from the accident scene without stopping because he feared the incident was an attempt to hijack his vehicle. Mr N stated that he drove straight home as his home was close to the scene of the accident. When he later inspected the vehicle, he noticed damage to the front bumper and that the engine was leaking water.

Following the submission of this claim, the insurer appointed an assessor to validate the circumstances of the loss and inspect the vehicle. The assessor obtained a location history on Mr N's cell phone to validate his whereabouts prior to the accident. The assessor confirmed from these records that Mr N was in Johannesburg between 18h48 to 19h38. The assessor also obtained a log sheet from Mr N's biometric system which confirmed that he had left his office in Johannesburg at 19h41.

The assessor confirmed the damage to the vehicle and reported that it was consistent with Mr N's incident description. The assessor however also confirmed that Mr N, having collided with another vehicle belonging to a third party and causing damage to it, had unlawfully left the accident scene without stopping and that he had only reported the incident a week later, on 30 May 2018, at the Sandton Police Station.

The insurer rejected the claim on a breach of the policy conditions by the insured. The insurer asserted that Mr N breached the policy by unlawfully leaving the scene of the accident and by failing to report the accident to the police within 24 hours. It submitted that as a result of such breach, it was not liable to pay the claim.

The insurer argued further that Mr N's conduct affected its ability to validate the circumstances of the loss. It mentioned specifically that Mr N's sobriety at the time of the accident could not be confirmed without additional independent evidence.

During the assessment conversation, Mr N submitted that he arrived at the office around 07h30. Mr N stated that he then attended commercial court for the day during which time he drove home to collect documents and returned to court. Mr N stated that he left court at around 17h00 whereafter he went to log off on the biometric system at the office before driving home. The insurer submitted that Mr N may have consumed alcohol in the time spent out of the office and at court.

Mr N did not dispute leaving the accident scene or his failure to report the accident to the police within 24 hours. In his response to the rejection, Mr N stated that he saw no obvious reason for the driver in front of him to apply brakes or slow down. He therefore concluded that the incident was a hijacking tactic and it was not safe for him to stop at the scene. According to Mr N, he believed driving straight home was the safest thing to do. Mr N stated that he did not know the location of the nearest police station as he was new to the area. He also stated that he was not able to report the incident to the police station sooner because he had no alternative means of transport. Mr N indicated that the insurer delayed providing a rental vehicle in terms of the cover, which was only provided on 30 May 2018. He further stated that he could not drive his vehicle as it had a water leak.

It was common cause that Mr N breached the terms and conditions of cover by unlawfully leaving the accident scene and by not reporting the accident to the police within the 24 hour period stated in the policy. On the facts as they stood, the insurer had the right, in law and on a strict application of the policy, to decline liability.

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Decisions made by OSTI are not only based on the strict letter of the law. OSTI also has equity jurisdiction and each matter must be considered on its own merits having regard to the law, the insurance contract, industry codes and practice and the specific facts and circumstances of the complaint.

The policy condition on unlawfully leaving the scene of the accident echoed the provisions of Section 61 (1) (a-e) of the National Road Traffic Act (the Act), which reads as follows:

"Duty of driver in event of accident

61. (1) The driver of a vehicle on a public road at the time when such vehicle is involved in or contributes to any accident in which any other person is killed or injured or suffers damage in respect of any property or animal shall-

(a) immediately stop the vehicle;

(b) ascertain the nature and extent of any injury sustained by any person;

(c) if a person is injured, render such assistance to the injured person as he or she may be capable of rendering;

(d) ascertain the nature and extent of any damage sustained;

(e) if required to do so by any person having reasonable grounds for so requiring, give his or her name and address, the name and address of the owner of the vehicle driven by him or her and, in the case of a motor vehicle, the registration or similar mark thereof;"

Section 61 (1) also provides:

"(f) if he or she has not already furnished the information referred to in paragraph (e) to a traffic officer at the scene of the accident, and unless he or she is incapable of doing so by reason of injuries sustained by him or her in the accident, as soon as is reasonably practicable, and in any case within 24 hours after the occurrence of such accident, report the accident to any police officer at a police station or at any office set aside by a competent authority for use by a traffic officer, and there produce his or her driving licence and furnish his or her identity number and such information as is referred to in that paragraph;"

The obligations placed on a driver involved in a motor vehicle accident, in law and under the insurance contract, provide a measure independently to verify the circumstances of the incident in the event of a legal dispute or action. One of the reasons that insurers include compliance with the Act as a condition for cover is to secure the insurer's right to validate the circumstances of the loss, which include the date, time and specific location of the accident, how the accident occurred, the identity of the incident driver and third party, and, in this case, the incident driver's state of sobriety. The enforcement of the conditions of cover ensure that the insurer is not prejudiced in the event that the insured's version cannot be corroborated by independent evidence.

The insurer asserted that Mr N's conduct in this matter affected its ability to validate the claim as his version could not be corroborated by independent evidence. OSTI found the insurer's argument compelling. According to the assessor's report, Mr N did not have any passengers in his vehicle at the time of the accident. Since he did not stop at the scene, Mr N also did not have any details of the third party driver or vehicle, such as a registration number, and there were no witnesses identified at the accident scene to corroborate Mr N's version of the accident. The assessor did not indicate the date that the accident scene was inspected. It was however stated in the report that no motor accident debris was found at the scene.

The assessor, after considering the time that Mr N left his office and the time of the accident, reported that he found no reason to suspect that Mr N was under the influence of alcohol. It however remained that there was no independent evidence to verify Mr N's state of sobriety or his version with regards to the date, time and specific location of the accident, how the accident occurred and that he was in fact the incident driver. These facts would have easily been confirmed had Mr N remained at the accident scene and exchanged details with the third party; alternatively, immediately reported the incident to the police in accordance with the Act and insurance contract.

In deciding whether to exercise its equity jurisdiction to override the insured's breach of the law and of the contractual provisions, OSTI considered whether a reasonable person in the position of Mr N (considering the spate of violent hijacking incidents in this country) would have left the accident scene, driven straight home and reported the incident one week later. OSTI did not believe so.

On Mr N's version, the accident did not occur very late at night or at an isolated location which would increase any potential risk. Mr N asserted that he felt his life was in danger yet chose to drive straight home despite the possibility of being followed by the supposed hijackers.

The insurer advised that there was a police station 3km away from Mr N's residence. Mr N failed to make any effort to report the incident at this station or call 10111 for assistance. Mr N also had other options available to him. A reasonable person in the position of Mr N would have searched for the nearest police station on the navigator on his vehicle or cell phone. Alternatively, on arriving home, Mr N could have called a friend, relative or taxi for a lift to the police station in order to report the incident. OSTI did not believe that a reasonable person would have waited a week before reporting the incident to the police. In OSTI's view, Mr N's actions after the accident, even in the alleged critical situation, were unreasonable and showed no effort to remedy his breach of the policy. As a result, the insurer's right to validate this claim was prejudiced.

Mr N also argued that the insurer did not furnish him with a copy of the policy wording containing the relevant terms and conditions of cover. In this regard, the insurer submitted satisfactory proof to OSTI that a copy of the policy wording was sent to Mr N by email on 12 October 2017.

In light of the above, OSTI's view was that the insurer was entitled to exercise its right to avoid liability on the basis of Mr N's breach of the policy. The rejection of the claim was therefore upheld.

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REASONABLE PRECAUTIONS CLAUSE

AIG INSURANCE SOUTH AFRICA LIMITED

Mr B submitted a claim to the insurer for accidental damage to his vehicle. Following the submission of this claim, the insurer appointed an assessor to inspect the vehicle and determine the nature and cause of the damage.

OSTI was advised that the vehicle sustained extensive damage and was declared uneconomical to repair. The assessor's report stated that the vehicle suffered physical damage, including damage to the engine sump, which was as a direct result of impact from the collision. This portion of the claim was authorised by the insurer in the amount of R66 215.45. The report stated further that the vehicle also sustained engine damage in excess of R200 000.00. According to the assessor, the engine seized as a result of the vehicle being driven without engine oil after the collision. The assessor stated in his report that the damage to the engine sump resulted in the loss of engine oil. The continued running of the engine with a reduced oil pressure resulted in the motor seizing. According to the assessor, the loss of oil pressure would have been immediately indicated on the vehicle instrument cluster through the oil pressure warning light, to alert the driver to turn off the engine in order to prevent any further damage.

Mr B confirmed during the validation of the claim that he noticed a number of warning lights on the vehicle's dashboard and that the vehicle was not responding well after the collision. He decided however to drive the vehicle further in order to get it to a place of safety.

In view of the assessment findings, the insurer excluded the claim for the engine damage on the basis of the following clause in the policy, under the heading "General conditions",

"2. Prevention of loss

You must take all reasonable precautions to prevent loss, damage or liability."

The insurer asserted that Mr B breached a duty to take reasonable care to prevent further damage to the vehicle after the impact and as a result of such breach it was not liable to pay for the engine damage. The dispute concerned the insurer's rejection of the claim for damages sustained to the engine.

According to the information provided, the incident occurred on 3 August 2018 around 18h00 along Jan Smuts Drive towards Sandton. Mr B was involved in a single vehicle accident. He stated that he had swerved to avoid a large pothole on the road and collided into a road divider on the right hand side between two lanes. Mr B indicated that the vehicle took a "heavy blow" on the bottom front and then came to a standstill.

Mr B stated that the specific location of the incident was just after a sharp bend on the road. When the vehicle came to a standstill he realised that it was encroaching in the right lane of the road just after the bend, increasing the chances of a collision with other vehicles travelling in the same direction. Mr B stated further that, as it was early August, by 18h00 it was already dark and there were no working streetlights. He also stated that the area was well-known for smash-and-grab attempts. Mr B submitted therefore that, in the interests of the safety of other road users and himself, he did not exit the vehicle to inspect the damage. Mr B decided rather to drive the vehicle to the nearest point of safety, being a service station further down the road. Mr B admitted that during this time, there were *"a large number of lights flashing in the vehicle".* He stated however that he did not know what they meant and was unaware that there may be oil leaking from the engine which could cause major mechanical damage to the vehicle. Mr B also admitted that the vehicle did not

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respond well while driving it after the impact. He asserted however that his main concern was to get the vehicle out of the flow of traffic and to a place of safety. Mr B stated that he drove a distance of approximately 800 meters before the engine stalled. As the road was sloping downwards, Mr B was able to use the vehicle's momentum to turn into a side road where he safely stopped the vehicle, approximately 900 meters from the accident scene. Mr B stated that this was when he first inspected the vehicle and noticed that the engine was leaking oil.

In response the insurer asserted that Mr B was never in any imminent danger such as to justify his decision to drive the vehicle and ignore the warning lights. According to the insurer, Jan Smuts Drive is generally safe and the risk was not increased by the time of day that the accident occurred.

Mr B argued that the assessor's claim that the loss of oil pressure would have been immediately indicated on the vehicle instrument cluster through the oil pressure warning light was unsupported by evidence. He also argued that the distance driven before the engine seized was insignificant and this should have been taken into account in the insurer's assessment of the claim.

Mr B argued further that the insurer had an onus to prove that he was aware of the oil leak and that he knew that the engine may seize by driving the vehicle further, which he asserted the insurer was unable to discharge. Mr B contended that the insurer must prove that his conduct was reckless as establishing that he was negligent was not enough to discharge the onus. According to Mr B, his conduct under the circumstances was not reckless. He maintained that he was exercising his duty to take reasonable steps to prevent a further collision or criminal activity.

On Mr B's version, he was not aware that there was an oil leak when he drove the vehicle from the accident scene. Mr B strongly maintained that he only became aware of the oil leak when he

stopped and exited the vehicle after it shut down. Having reviewed the relevant claim form, Mr B's incident description to his broker at claim's stage and the submissions made in his details of complaint to this office, OSTI found no reason to reject Mr B's assertion that he was not aware that there was an oil leak when he drove from the accident scene. Ultimately, this fact did not change the outcome in this matter.

The insurer relied on a *"reasonable precautions clause"* to decline liability for the engine damage. There are a number of conflicting decisions about how this clause ought to be interpreted and applied. Our courts have generally recognised that the clause must be restrictively construed so as to ensure that it does not undermine the very purpose of a policy of insurance by interpreting it as the basis for an exclusion of liability for Mr B's negligence. In order to rely on such a clause and justify the repudiation of a claim arising from damages caused by Mr B's own actions, the insurer must show that Mr B acted recklessly.

In **Santam Limited v CC Designing CC, 1999 (4) SA, 199 (C)**, a full bench of the Cape Provisional Division held that what the insurer had to show, in order to take advantage of the reasonable precautions clause, was that Mr B acted recklessly. The court held that the taking of reasonable precautions, as between an insured and the insurer, was not necessarily the same thing as the absence of negligence, in the delictual sense, on the part of Mr B. What was reasonable as between Mr B and the insurer, without being repugnant to the commercial object of the contract, was that Mr B should not deliberately court a danger, the existence of which he recognised, by refraining from taking any measures to avert it. It was not enough that Mr B's failure to take any particular precautions to avoid accidents should be negligent; it had to be at least reckless, in other words made with the actual recognition by Mr B himself that a danger existed and regardless of whether or not it was averted. The purpose of a condition such as this was to ensure that Mr B would not, because he was covered against loss by the policy, refrain from taking precautions which ought to be taken.

More recently, in **Renasa Insurance Company Limited v Watson [2016] ZASCA 13**, the court in interpreting the reasonable precautions clause,

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contended that the court in CC Designing set the bar too high by requiring the insurer to prove recklessness on the part of Mr B. The Supreme Court of Appeal found that it was unnecessary to determine this issue in view of the conclusion it reached on an alternative defence raised in the matter, but held at the very least that proof of foreseeability is required. This would require proof that a reasonable person in the position of Mr B would have foreseen the reasonable possibility of the loss eventuating and would therefore have taken reasonable steps to prevent it.

On the authority of CC Designing, in determining whether an insured's conduct was reckless, regard must be had to the policy and the particular circumstances of the claim. As was recognised by the court, "the question of recklessness is predominantly one of fact". On the facts provided to this office, OSTI was tasked with determining whether the insurer had established recklessness on the part of Mr B.

Driving the vehicle from the accident scene was not in itself an indicator of recklessness. However, it is a well-known fact that a vehicle is in danger of major mechanical damage when it displays a warning light on its instrument cluster. The driver in these circumstances is required to exercise caution in his operation of the vehicle. Mr B confirmed during the claim validation that he noticed a number of warning lights on the vehicle dashboard and that the vehicle was not responding well. On the authority of *Watson*, the foreseeability of loss eventuating was established. A reasonable person in the position of Mr B would have recognized the imminent or possible danger of significant mechanical damage to the vehicle, particularly after the vehicle sustained a "heavy blow" from the impact, and would have then taken adequate steps to avert this danger. Whether Mr B was aware that the engine was leaking oil or not was immaterial in this case. Mr B's duty of care can also not be pardoned on the argument that he had no knowledge of the mechanical operations of his vehicle or that he did not have an opportunity at the time to review the manual and determine the exact meaning of the warning lights. A driver is expected to familiarise himself with the essential aspects of a vehicle's manual. At the very least, a reasonable person would know to stop the vehicle and switch off the engine.

OSTI was persuaded by the insurer's argument that Mr B was not in any imminent danger. In addition to what has already been stated by the insurer, OSTI noted that the accident scene was not at an isolated location or even very late at night which would increase any potential risk. Furthermore, Mr B had other options available to him before reconciling himself to the possibility of significant engine damage by moving the vehicle. These options included pushing or rolling the vehicle to the side of the road, securing the scene with warning lights/hazards, traffic cones or triangles and seeking roadside assistance from the insurer or from Mercedes. When Mr B continued to operate the vehicle, he courted the danger of a separate cause of damage, which in OSTI's view *prima facie* amounts to recklessness. He therefore assumed the risk for himself. The damage which occurred after Mr B's decision to drive the vehicle from the accident scene fell outside the scope of cover.

The distance travelled by Mr B in this case was also immaterial. Mr B's representative demonstrated this when he pointed out that the damage to the sump must have been quite severe for all the oil to have leaked from the engine during that short distance. It remained that the vehicle would not have sustained engine damage if it had not been driven from the accident scene. The damage would have been limited to the sump.

The insurer is not required to submit proof that the oil pressure light went on. As this is a civil matter, the issue is determined on a balance of probabilities and based on the information provided by the parties to the dispute. When evaluating the probabilities, the evidence was not considered under separate enquiries, but rather as a single investigation into the acceptability or otherwise of the versions put forward. It was therefore sufficient for the assessor to draw his conclusions from the incident description and vehicle assessment on the damage to the sump. Having regard to the evidence as a whole, the balance of probabilities favour the conclusion that the oil pressure light was one of the many lights that went on. Whilst it was noted that Mr B disputed the assessor's findings, he had not provided any independent evidence to show the contrary.

In light of the above, it was OSTI's view that the insurer was justified in its decision to decline liability for the damage to the engine on the basis of a breach by Mr B of his duty of care.

OSTI was unable to assist Mr B and the matter was resolved in favour of the insurer.

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FAILURE TO PROVE A MISREPRESENTATION AT CLAIM STAGE

GUARDRISK INSURANCE COMPANY LIMITED

Mr F submitted a claim to the insurer in respect of a vehicle accident which occurred on 17 June 2018.

Mr F advised the insurer that he had gone to a funeral in Elim on 16 June 2018 and whilst returning to his home via Rabe Street in Polokwane, he lost control of the vehicle on a curve and drove over a hill and rocks, causing damage to his vehicle.

The insurer rejected the claim on the grounds of misrepresentation and non-disclosure of material facts.

The rejection letter recorded that according to the insurer, Mr F misrepresented the facts regarding how the accident occurred in that the description and sketch of the accident did not match how the accident happened.

The insurer advised that the timeline of events did not correlate with Mr F's version which he submitted to the insurer. The insurer stated that Mr F advised the insurer's investigator that he had attended a funeral in Elim and was returning home via Polokwane. He went to the local swimming pool in Polokwane and thereafter left for his home at 24h00. The accident occurred on 17 June 2018 between 01h00 and 02h00. The swimming pool was only 1.6km from the accident scene. The accident was not reported to SAPS.

According to the insurer, Mr F stated that he had gone to Elim and returned that day but the last time his vehicle was located on the N1 highway to or from Elim was on 9 May 2018.

The vehicle diagnostic report did not show any incidents on the alleged date of loss. It indicated that the airbags deployed on 19 June 2018.

The insurer established that, according to Mr F's bank statement, no transactions were done on 17 June but he withdrew money at Elim in Limpopo, where he was allegedly at a funeral on 17 June 2018, on 3 separate occasions on 18 June.

The insurer advised that the vehicle was only towed from the accident scene at 10h21 on the day of the accident and the insurer's Assist Line was not contacted.

The rejection letter stated that the date on the tow-slip was different from the date of loss. The insurer's loss adjuster's report however stated that the date on the towing invoice was raised with the towing company and it advised that the tow operator had made a mistake in respect of the date on which the vehicle had been towed.

Whilst the insurer had raised questions regarding the time line of events prior to the accident, the loss adjuster had in fact confirmed in his report to the insurer that there was no evidence to suggest that the incident did not occur as described by Mr F. The loss adjuster's findings therefore negated the factors relied on by the insurer to reject the claim.

OSTI advised the insurer that it had failed to demonstrate how the facts relied on to indicate a misrepresentation on the part of Mr F were material to the assessment of the claim especially as Mr F had also indicated that the police had attended the scene of the accident. The insurer had, in OSTI's view, further failed to demonstrate that it had been prejudiced by Mr F not having reported the matter to the police as it indicated.

The rejection letter also stated that the events leading up to the accident were not disclosed on the claim form. OSTI considered the questions posed on the claim form. The insurer did not request Mr F to disclose events leading up to the accident but rather required Mr F to *"describe what happened"* on the claim form. OSTI thus disagreed that the insurer was entitled to reject the claim on the grounds of information not having been disclosed on the claim form, when the questions on the claim form itself did not require Mr F to disclose the events leading up to the accident. The insurer had thus not created a duty of disclosure on the claim form. The insurer's rejection of the claim on non-disclosure of events leading up to the accident was therefore not supported by the claim form.

The onus was on Mr F to prove that a loss had occurred. Mr F had discharged this onus and had therefore brought the claim within the ambit of the policy. On the loss adjuster's findings there was no evidence to suggest that the accident had not occurred as claimed by Mr F.

OSTI advised the insurer that it had not proven on a balance of probabilities that it was entitled to reject the claim in terms of the policy provisions. The evidence relied on by the insurer, in other words, the loss adjuster's report, did not support the insurer's rejection of the claim.

OSTI recommended that the insurer settle the claim. The insurer agreed to abide by OSTI's decision and the claim was settled.

OSTI CARES

In preparation for the 2019 school year, OSTI visited the Othandweni Family Care Centre and Masibambisane Centre for Orphaned and Vulnerable children.

OSTI handed over its contribution, comprising, amongst other items, stationery sets, modelling dough sets, exercise books, puzzles, oil pastels, boxes of printing paper.

"We hope that our donation sets the children up for a positive academic year", said Marilize Blignaut, project coordinator at OSTI.

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CONSUMER TIPS

1. It is a new year. Have you checked whether your insurance contract is up to date and relevant? Avoid being caught empty handed.

2. It is your insurer's obligation to provide you with the full policy terms and conditions. But if you did not receive your policy documents, you also have an obligation, as a party to the contract, to contact your insurer and request the policy terms and conditions.

3. Consumers must ask their insurers to explain terms and conditions in their policies which they do not understand and raise queries to obtain clarity. Know your cover.

4. Remember that it is your duty to insure your items for their correct values. Avoid being under insured.

5. Insurance is based on utmost good faith. Your premium is based on the information that you give to your insurer. Always be honest.

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WHAT DOES THE OMBUDSMAN DO?

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

MISSION

To resolve short-term insurance complaints fairly, efficiently and impartially.

ABOUT US

We resolve disputes between consumers and short-term insurers:

- as transparently as possible, taking into account our obligations of confidentiality and privacy;
- with minimum formality and technicality;
- in a cooperative, efficient and fair manner.

We are wholly independent and do not answer to insurers, consumer bodies or the Regulator.

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.

You can now also lodge a complaint online, please visit our website and click on "Lodge a Complaint" and follow the easy prompts

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 follow the prompts.

J7478 - PAPRIKA GRAPHICS / 0860 727 7452

WE ARE ON TWITTER AND FACEBOOK

For the latest and most up to date news, follow us on

@Ombud4ShortTerm https://www.facebook.com/Ombud4ShortTerm/

CONTACT US

If you would like to be added to our mailing list, please contact us:

Telephone: 011 7268900
Sharecall: 0860 726 890
Fax: 011 7265501
Email: info@osti.co.za
Website: www.osti.co.za

Follow us @Ombud4ShortTerm

Address:
1 Sturdee Avenue, First Floor, Block A, Rosebank, Johannesburg

We welcome your feedback and/or comments.