

## MEDIA RELEASE

**The Ombudsman for Short-Term Insurance comments on the implications of driving under the influence of alcohol or drugs, leaving the scene of the accident unlawfully and providing the insurer with incorrect information.**

### *Driving under the influence*

Most motorists who consume alcohol before driving a vehicle consider police detection to be the greatest threat to their reckless behaviour. They take back roads and lesser-used routes in order to avoid any consequences of their unlawful behavior, relieved if at the end of a risky drive home, they have managed to avoid a road-block or being pulled over by a law enforcement officer. What many road-users fail to consider is the devastating financial effect that driving under the influence may have on a payout from their insurer should they be involved in an accident. This is because the majority of insurance policies exclude cover for any loss or damage in circumstances where it is found that an insured driver was under the influence of alcohol or drugs at the time of an accident or that the percentage of alcohol in his or her blood exceeds the legal limit.

In criminal cases, in order to meet a charge of drunken driving or driving under the influence, the State is required to demonstrate **beyond reasonable doubt** that a driver was indeed driving in such a state. In civil cases, however, such as claims under an insurance policy, the insurer need only show that the insured was, on a **balance of probabilities**, driving under the influence.

In order to discharge this onus or duty, the insurer need not depend entirely on the results of a blood test or Breathalyzer confirming that the driver was over the legal limit at the time of the accident. It is sufficient to sway the probabilities in its favour if the insurer is able to produce circumstantial evidence to demonstrate that the driver was under the influence of alcohol. Examples of circumstantial evidence upon which insurers often rely are statements by police or emergency service personnel at the scene of the accident, doctors or nurses who attended to a driver who was admitted to hospital, eye witnesses who were able to observe the driver's demeanor, witnesses who can account for the driver's whereabouts prior to the collision and who can attest to whether he or she consumed alcohol, security or video footage from restaurants or bars.

If the circumstantial evidence establishes on a balance of probabilities that a driver was under the influence of alcohol or drugs at the time of an accident, the Ombudsman will support the insurer's decision to reject the claim.

### *Unlawfully leaving the scene of an accident*

Another common exclusion found in insurance contracts is an entitlement on the part of an insurer to reject a claim if a driver unlawfully leaves the scene of an accident. This exclusion is often located under the general entitlement to avoid liability in circumstances where an insured acts unlawfully or in breach of a legal requirement. Section 61 of the National Road Traffic Act

93 of 1996 ('the Act') requires a driver involved in an accident where a person or animal is killed or injured or any property (including another vehicle) is damaged –

1. To stop the vehicle and report the accident;
2. To ascertain any injuries sustained to a third party and if there is an injured person, to render whatever assistance he or she is capable of rendering;
3. To ascertain the nature and extent of any damage sustained;
4. Where reasonable grounds exist for a person to request the name, address and further details of the insured, to provide such details;
5. If no report is lodged at the scene of the accident, to report the accident to the relevant police department within 24 hours of it having taken place (unless prevented by injury from doing so) and to produce his or her driver's license and further details; and
6. Except on the instructions or when administered by a medical practitioner, not to take any alcohol or drugs until the accident has been reported to the police and he or she has, where it is required by a traffic officer, been examined by a medical practitioner.

A failure by an insured to comply with any one of these provisions will entitle an insurer to reject a claim and the Ombudsman will uphold a rejection on this basis provided that the facts of the case show that the insured failed to comply with one or more of these provisions.

#### *Incorrect or dishonest information*

Claims are also susceptible to rejection where an insured provides an insurer with incorrect or dishonest information regarding the circumstances leading up to and surrounding the accident. The underlying rationale behind a rejection on this basis is that an insurer suffers prejudice in investigating the circumstances surrounding an accident where the information that it given to it is not accurate.

In a specific complaint referred to the Ombudsman, the insured's claim was rejected by the insurer on the grounds that the insured provided the insurer with dishonest information regarding the manner in which the accident occurred and his whereabouts prior to the accident. When reporting the claim to the insurer, the insured informed the insurer that he had visited his sister at her house immediately prior to the accident and that he was alone in the vehicle and on his way back to a guesthouse that he planned to stay at for the evening, when the accident occurred.

The accident occurred at around 02:00 am on a Sunday morning. According to the insured, he was driving at approximately 50 km's per hour on a dual carriage road when a vehicle came into his lane from the left side and hit his mirror. This resulted in him losing control of his vehicle and colliding with an island in the middle of the road.

After investigating the claim the insurer established that the insured had in fact been at a nightclub immediately prior to the accident and that he had had two passengers in the vehicle with him at the time of the accident. Because investigations could not be carried out

immediately after the accident, the insurer was unable to determine whether or not the insured had consumed alcohol at the nightclub. This inability to investigate the claim properly resulted in prejudice to the insurer and it accordingly declined to pay the insured for the damage to his vehicle.

The insurer's decision to reject the claim was upheld by the Ombudsman.

### *Conclusion*

The exclusions outlined above do not only give insurers a right to refuse to pay for loss or damage to an insured's vehicle, but usually also contain an exclusion against liability in respect of any loss or damage to a third party's vehicle or property. This means that an insured will be responsible, not only for bearing the costs of repairing his or her own vehicle, but may have in addition to carry personally the costs of repairing damage to a third party's vehicle or property. The financial implications of this may well prove ruinous for many consumers. Furthermore, the insured will be required to disclose the fact that and the basis upon which a claim was rejected to any future potential insurer. This may result in insurers refusing to insure such person.

The Ombudsman accordingly advises consumers to be aware of the risks of driving an insured vehicle whilst under the influence of alcohol or drugs, unlawfully fleeing the scene of an accident or providing an insurer with dishonest information.

### **About the Office of the Ombudsman for Short-Term Insurance**

The office of the Ombudsman for Short-Term Insurance is an independent organisation appointed to serve the interests of the insuring public and the short-term insurance industry. By applying the law and principles of fairness and equity, it resolves disputes between short-term insurance companies and their clients.

#### **For further information contact:**

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