

# THE OMBUDSMAN'S BRIEFCASE

*Official Newsletter of the  
Ombudsman for Short-Term  
Insurance*



**THE OMBUDSMAN**  
*For Short-Term Insurance*



## ***Mission***

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

**Issue No. 4 of 2013**

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## OMBUDSMAN HOSTS SUCCESSFUL ONE DAY WORKSHOP

THE OMBUDSMAN  
FOR SHORT TERM INSURANCE

Ombudsman Workshop  
8 October 2013

The Ombudsman hosted a very successful one day workshop for industry representatives on 8 October 2013, where topics were presented to promote an improved understanding of industry issues. Guest speakers included Professor J.P. van Niekerk of the School of Law at UNISA, Francisco Khoza and Kirsten Kern of Bowman Gilfillan Attorneys, as well as Lee Anne Jackson of the Financial Services Board.

The guest speakers spoke on an “abolitionist’s” view of South African insurance law, the future of gap and top-up cover in short-term insurance and treating customers fairly, respectively. Delegates received a copy of the Ombudsman’s Handbook for 2013.

A printed copy of the handbook can be requested from the office on 0860 726 890 or email: [info@osti.co.za](mailto:info@osti.co.za)



## OMBUDSMAN’S ADVICE: CASE STUDIES



### THEFT OF MOTORCYCLE: BREACH OF SECURITY REQUIREMENTS RMB STRUCTURED INSURANCE

#### Details of Claim:

The insured purchased a motorcycle in May 2012 and placed it on cover with the insurer through a broker. The motorcycle was stolen in August 2012 from his father’s residential property. The insured reported the claim to the insurer and the claim was rejected on the grounds that the motorcycle was not stored in a locked garage at the time and that it was not fitted with a coded key or tracking device approved by Risk Guard Alliance, as required by the insurer. According to the insurer, these were the security requirements in order for the insured to enjoy theft cover for the motorcycle, and that these had been communicated to the insured prior to the inception of the policy.

#### The Complainant’s View:

The insured argued that the motorcycle was only being kept at his father’s property during that evening as he needed to use his father’s vehicle that same evening. His own vehicle was being used by his girlfriend at the time as her vehicle was at the panel beater for repairs as a result of an accident. According to the insured, it was therefore not necessary for

the motorcycle to be fitted with a coded key or tracking device on the grounds that the motorcycle was not usually kept/stored at his father’s place and that this was a once off occasion. The motorcycle was usually kept/stored in a locked garage at his own place of residence and this was the reason why he did not, at any stage, arrange for the fitment of a coded key or tracking device to the motorcycle as the policy only required these devices should the vehicle not be stored in a locked garage at the noted risk address.

#### The Insurer’s View:

The insurer was of the view that as the loss occurred almost three months after the inception of the policy, the insured had sufficient time to familiarise himself with the policy documents. The policy schedule contained a provision regarding the security requirements for the motorcycle, which provision stated that “Theft cover at night is subject to the motorcycle being stored in a locked garage at the risk address for theft cover to exist. Theft must be accompanied by forcible and violent means. Motorcycles



## THEFT OF MOTORCYCLE: BREACH OF SECURITY REQUIREMENTS RMB STRUCTURED INSURANCE (CONTINUED)

not stored in a locked garage must be fitted with a coded key OR Tracking device approved by Risk Guard Alliance.' The insurer also argued that the insured had failed to provide any explanation as to why he did not have the motorcycle fitted with the required security device. As the insured had failed to comply with the policy condition, the insurer was not prepared to reconsider its stance in respect of the outcome of the claim.

### The Ombudsman's View:

On the interpretation of the policy condition, theft cover at the risk address was clearly conditional upon the motorcycle being stored in a locked garage and if the motorcycle was not being stored in a locked garage, it would be necessary to have the motorcycle fitted with a coded key or tracking device in order to enjoy theft cover. As the motorcycle was not parked at the risk address when it was stolen, it would be unreasonable for the insurer to expect that the motorcycle should be fitted with the security device for the odd occasion when the motorcycle was parked at a place other than the risk address. Furthermore,

the policy condition was not to the effect that theft cover under any circumstances would be conditional upon the motorcycle being fitted with the required security device. The insured had further taken some precaution in that the motorcycle was parked behind locked gates at a part of his father's property where the insured reasonably believed that the motorcycle would be safe. His father did not have a lock up garage at this property. As the motorcycle was also kept in a locked garage at the usual risk address, the insured did not take any steps to fit the security device as this was not a requirement of the policy.

The insurer was therefore requested to settle the claim on the grounds that the insured did not breach the security requirements where the motorcycle was not being kept in a locked garage on a once off occasion, at an address other than the risk address.

The insurer agreed to settle the claim in full, subject to the relevant excesses.



## POLICY EXCLUSION: UNROADWORTHY VEHICLES SANTAM INSURANCE

### Details of Claim:

The complainant was involved in a motor vehicle accident on 3 June 2012. The insured vehicle was a 2010 Toyota Avanza 1.3 SX. According to the complainant, the accident occurred while he was attempting to overtake a large truck on the R51. The road surface was tarred and dry, however, visibility was affected by heavy mist conditions as well as by the fact that there were no street lights. The complainant submitted that he did not see an oncoming vehicle. He swerved to avoid a head-on collision and in the process lost control of the vehicle and it overturned. A claim was submitted to the insurer, who repudiated the claim based on a policy exclusion which states that no cover will be provided in circumstances where the insured vehicle is not in a roadworthy condition at the time of the loss.

At the time of registering the claim the insurer appointed an assessor to assist with the validation of the claim. On reviewing the Natis documents provided in respect of the vehicle, it was noted that a certificate of roadworthiness was not available. The insurer argued that the vehicle was deemed to be un-roadworthy in terms of the applicable legislation and for purposes of the claim.

The insurer argued that the roadworthiness test entails a comprehensive review of the vehicle in order to determine whether it is safe for use and meets all of the roadworthiness requirements. The insurer added that, because the roadworthiness certificate was not available, it was unable to determine whether there had been any defects on the vehicle prior to the loss. The insurer, further, argued that the vehicle had suffered extensive damage after the loss and this made it difficult for their assessor to review

the components of the vehicle in order to determine whether it had been in a roadworthy condition or not at the time of the loss. The insurer concluded that, from the complainant's incident description, the possibility existed that the loss had been the result of a defect on the vehicle. Therefore, according to the insurer, the complainant's failure to provide a certificate of roadworthiness indicated that the vehicle was not in a roadworthy condition at the time of the loss and this contributed to the damages.

### The Ombudsman's View:

The Ombudsman was of the view that the complainant had demonstrated that a peril covered by the policy had taken place. In these circumstances the complainant was not in breach of any clearly defined obligation of the policy. As the insurer sought to rely on a policy exclusion to repudiate the claim, the onus of proof rested on the insurer to establish the existence of the exclusion that they relied on. The insurer had to prove that the complainant's vehicle was in fact not in a roadworthy condition at the time of the loss. Once this had been established, the insurer was then required to demonstrate the materiality of the specific exclusion to the loss suffered by the complainant.

The absence of a roadworthiness certificate was not sufficient to prove that the vehicle was in fact not in a roadworthy condition at the time of the loss. This could only be established by a physical examination of the vehicle. As far as the description of the accident was concerned, this office was of the view that the conclusions drawn by the insurer lacked justifiable grounds. The insurer argued that





## **POLICY EXCLUSION: UNROADWORTHY VEHICLES SANTAM INSURANCE (CONTINUED)**

the complainant 'may have' lost control of the vehicle due to either the steering, braking or suspension of the vehicle not being in a roadworthy condition. The insurer, however, failed to provide this office with any evidence to substantiate these assumptions. It was further ascertained that the complainant's vehicle had undergone an inspection on 24 April 2012 at the insurer's insistence and prior to the inception of cover. The inspection certificate recorded no damages to the complainant's vehicle and its general condition was noted as "good".

In our view, we were not satisfied with the reasons and submissions advanced by the insurer and found that the insurer could not rely on the exclusion. The Ombudsman overturned the insurer's repudiation of the claim. The insurer then made an offer to the complainant, to settle the claim in full.



## **DRIVING UNDER THE INFLUENCE COMPASS INSURANCE**

### **Details of Claim:**

The dispute arose from a motor vehicle accident claim which had been rejected by the insurer. According to the insurer, their policy excluded cover where the loss or damage occurred while the driver of the insured vehicle was driving under the influence of alcohol or drugs, or while the alcohol content of the driver's blood was above the legal limit.

The insured's contention was that as the court had dismissed the state's case against the insured driver for driving while his blood alcohol content was in excess of the statutory limit or driving while under the influence of alcohol on the grounds that the calibration certificate of the instrument used to measure the blood alcohol content had been declared inadmissible, the insurer could not rely on these two grounds to reject the claim. In addition, there were apparently issues regarding other evidence including the chain of evidence regarding the blood kit, the forensic report and the fact that the blood kit had been left lying around the police station for approximately 9 days (in summer) before being processed. The dismissal of the criminal case appeared to have been based on technical grounds.

### **The Ombudsman's View:**

During the investigation it came to light that the Insured's arguments were simply based on the acquittal and his persistence that he had the right to be presumed innocent until found guilty. It was his contention that nobody

(including the insurer) was above the law or in a position to find the insured driver guilty where the court had found him not guilty. It was the insured's contention that as there was no admissible evidence to substantiate that the driver had been over the legal limit, the insurer could not reject the claim.

It was pointed out to the insured that there were two separate and distinct bases for rejecting the claim, namely, driving while under the influence of alcohol and driving while the blood alcohol content exceeded the legal limit.

The dismissal of the criminal case related only to the latter reason and not to "driving while under the influence of alcohol".



The Ombudsman also pointed out to the complainant that the insured driver had admitted to having consumed alcohol prior to the accident and that the manner in which the accident had occurred would be sufficient to lead to the conclusion that the driver had, on a balance of probabilities, been driving while under the influence of alcohol. For the benefit of the insured the distinction between criminal law, on the one hand, and civil matters, on the other, was drawn, especially with regards to the test that is applied in making a finding in a civil, as distinct from a criminal case.

It was accordingly the Ombudsman's finding that the insurer's stance on the claim was correct and that the insurer could not be compelled to settle the claim under such circumstances.



## **PREMATURE DECISION TO WRITE-OFF VEHICLE WESTERN NATIONAL**

In a previous edition of the Briefcase we discussed a case study relating to the Treating Customers Fairly (TCF) Initiative in which we hopefully demonstrated how to ensure that insurers treat their customers fairly. We also indicated some of the shortcomings evident in processing claims, which resulted in poor claim outcomes. As it will be noted, it appears that treating customers fairly remains a challenge to some insurers.

### **The Facts:**

The insured had registered a claim for damage to his motor vehicle. After validating and accepting the claim, the insurer decided to write the vehicle off as a total loss. The insurer had accordingly made an offer of settlement in the net





## **PREMATURE DECISION TO WRITE-OFF VEHICLE WESTERN NATIONAL (CONTINUED)**

amount of R54 000. The retail value of the vehicle had been R94 000. There were multiple cumulative excesses applicable to the claim, which resulted in the large difference between the net settlement amount and the retail value. With this realization, the insured decided to withdraw the claim. While processing the claim, the insurer had removed the vehicle from a storage facility where the insured had towed it to in Kwa-Zulu Natal (KZN) and had taken it to their salvage disposal facility in Gauteng, incurring costs in the process.

### **The Dispute:**

When the insured indicated his intention to withdraw the claim, the insurer had then required him to pay for all the costs incurred by them, including the transfer of the vehicle wreck to Gauteng. This is when the complaint was lodged with the Ombudsman's office.

It was the complainant's contention that the R12 000 which the insurer had required him to pay as part of the withdrawal of the claim, was unfair under the circumstances.

The insurer had insisted that the costs had been incurred by them as a result of the insured having initiated the claim process, and that as these costs would not have otherwise been incurred, the insured had to carry them. The insurer also argued that it had been at the instruction of the insured that the costs had been incurred. It was further the insurer's contention that the costs were not covered in terms of the policy, and they could therefore not be expected to carry the costs.



### **The Ombudsman's View:**

It was pointed out to the insurer that the costs had mainly been incurred at the instance of the insurer and for the insurer's own benefit in validating the claim in the ordinary course of business. The rest of the costs had been incurred as part of the insurer's administrative process in disposing of the salvage, with the exception of the towing fees for the first tow to where the vehicle had initially been stored. The salvage costs which included the second tow from KZN to Gauteng, had been incurred by the insurer prior to the settlement of the claim, while they would only have been entitled to dispose of the salvage after claim settlement.

As the insured had not even been aware of the removal of the vehicle from KZN to Gauteng, the insurer's contention that the costs had been incurred at the insured's instruction was not borne out by the facts.

The Ombudsman accordingly required the insurer to allow the insured to withdraw the claim without being required to pay any of the costs which the insurer had required the insured pay.

The Ombudsman found that the insurer had decided to incur costs which were incurred prematurely by them and then incorrectly and unfairly required the insured to carry the costs.



## **CONSUMER TIPS FOR THE FESTIVE SEASON**

1. As we wish you a safe festive season on the roads, you must remember that it is important to comply with the terms and conditions of your policy in order to be entitled to the benefits afforded by the policy. For example, you cannot drive your vehicle or let your vehicle be driven by someone who is under the influence of alcohol or drugs.
2. While it is the festive season it also means that it is the rainy season. It is important to remember that building insurance policies do not cover damage arising from wear and tear or a lack of maintenance. Ensure that you regularly inspect the waterproofing and sealant on the roof in order to avoid disappointment in the event of a claim.



## **BEST WISHES FOR THE FESTIVE SEASON!**



The office of the Ombudsman for Short-Term Insurance wishes all a safe and restful year-end holiday. It has been a busy year with many challenges. We thank you for the hard work and commitment in assisting with resolving complaints as quickly as possible.

We trust that everyone will return safely, well rested and ready for what the new year may hold.

Regards

The Staff at the Ombudsman for Short-Term Insurance



# NEW APPOINTMENTS AT THE OFFICE

**Janine Jacobs**  
*Revolving Secretary*



Janine has previously worked for a firm of attorneys and a recruitment agency as secretary and typist.

## LET'S HEAR IT FOR OSTI



*What a few of our complainants have had to say about OSTI recently:*

Thank you VERY much for your expert assistance. We are most grateful and appreciative of all the trouble you took in resolving the case.

.....

Thank you for your help and yes the matter has been resolved in a professional and satisfactory manner.

.....

I want to thank you for excellent assistance and the manner in which you resolved this matter. We have been struggling for so long to get our refund. We are a non-profitable church and this was a lot of money "out of pocket".

.....

Thank you very much for the quick and satisfactory response. I truly appreciate it.



### WHAT DOES THE OMBUDSMAN DO?

The Ombudsman for Short-Term Insurance resolves disputes between Insurers and consumers in an independent, impartial, cost-effective, efficient, informal and fair way.

The Ombudsman is appointed to serve the interests of the insuring public and the short-term insurance industry. The Ombudsman acts independently of the insurance industry in all complaints. All members of the South African Insurance Association conducting personal lines and commercial lines business have voluntarily agreed to accept the Ombudsman's formal recommendations.

If you want to lodge a complaint or require assistance please contact the Ombudsman's Office by calling 0860 726 890 or visiting our website at [www.osti.co.za](http://www.osti.co.za) where application forms can be downloaded.

### CONTACT US

If you would like to be added to our mailing list, please contact us on:  
Tel: 011 726-8900 Fax: 011 726-5501 or email: [info@osti.co.za](mailto:info@osti.co.za)  
For more information on our activities, please visit our website at [www.osti.co.za](http://www.osti.co.za).  
We welcome any feedback or comments you may have.

Our new address:  
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32 Princess of Wales Terrace  
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