

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

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IN THIS ISSUE:

- Launch of Ombudsman's Annual Report for 2013
- *Ombudsman's Advice: Case Studies*
 1. Material Non-Disclosure – Pending Criminal Charges
 2. Non-matching Materials
 3. Loss or Damage to Household Goods - Accidental Breakage
 4. Breach of Security Requirements
 5. Exclusions Pertaining to Subsidence
 6. Material Misrepresentation of the Risk at Inception
- Useful Consumer Tips
- What does OSTI do?
- Contact us

2014



OMBUDSMAN LAUNCHES HIS ANNUAL REPORT FOR 2013

LAUNCH OF OMBUDSMAN'S ANNUAL REPORT FOR 2013

On 15 May 2014 the Ombudsman, Mr. Dennis Jooste, launched his annual report for 2013 at a function held at the Johannesburg Country Club.

The function was attended by the insurance industry and media representatives. The theme of the Annual Report for 2013 was the celebration of 20 years of democracy in the Republic of South Africa.

The complete Annual Report is available on the Ombudsman's website at www.osti.co.za





**MATERIAL NON-DISCLOSURE – PENDING CRIMINAL CHARGES
(NEW NATIONAL ASSURANCE CO. LTD)**

Details of Complaint:

The complainant submitted a claim to the insurer for accidental damages to his motor vehicle in October 2013. The complainant's claim was rejected on the basis that he did not disclose several pending criminal charges against him which related to driving under the influence of alcohol. The insurer relied on the following clauses in the policy wording;

8. ACCURACY OF MATERIAL INFORMATION
If the Insured submits any false information or misrepresentation or non-disclosure of information concerning material aspects, this Policy, or the specific Section or Sub-section of the Policy pertaining to any such material aspects, will be declared null and void at New National's discretion.

"9.1. The Insured is obligated to notify New National immediately in writing within 30 days of any change in material risk. New National will confirm all changes in writing

4. TRAFFIC OFFENCES

The Insured must notify New National immediately of any endorsement, suspension, or cancellation of any driver's license issued to the Insured or any other person who uses the vehicle, or any charges or procedures related to reckless or negligent driving, or driving under the influence of alcohol, where the concentration of alcohol in the blood stream exceeds the statutory limit.

GENERAL:

New National WILL NOT BE LIABLE FOR:

"3.2.2 by any person under the influence of alcohol or drugs;".

9.3 If the Insured refrains from notifying New National of the above-mentioned change of risk, New National will be entitled to turn down any claim arising from such change of risk.

The complainant's policy inceptioned during June 2011. Assessment findings by the insurer revealed that the complainant had one pending criminal charge arising from events in December 2006 as at the date of inception. In November 2012 and October 2013, after the inception of cover, the complainant was again arrested and charged with driving under the influence of alcohol. These cases were also pending as at the date of the accident in October 2013.

Ombudsman's View:

The issue to be decided by the Ombudsman was whether a duty of disclosure had been created by the insurer. The policy wording is very clear on the insured's duty to disclose any adverse information that will affect the insurer's assessment of the risk and whether to accept him on cover. The policy wording further creates an on-going duty of disclosure in respect of a material change in risk during cover. In addition to this, there is a common law duty to disclose material facts which may affect the assessment of the risk under the policy at the time of its issue, renewal or variation thereof in terms of the Short Term Insurance Act 53 of 1998. In the circumstances, the insurer had been severely prejudiced by the complainant's non-disclosure of material facts. Had the complainant furnished the insurer with the correct details, the policy would not have been accepted. The insurer's decision to reject the claim was accordingly upheld by the Ombudsman.



**NON-MATCHING MATERIALS
(SANTAM)**

Details of Complaint:

The complainant submitted a claim to the insurance company for damage to the insured property caused by a burst geyser. The bursting of the geyser resulted in the laminated flooring in various rooms in the property being damaged.

During the validation of the claim it was established that certain parts of the laminated flooring in three bedrooms and a section of the passage was damaged to such an extent that it would have to be replaced. A quotation was obtained for the replacement of the flooring and the insurer was advised that the specific flooring was no longer available. The insurance company decided to settle the claim on a cash in lieu basis based on the replacement of only the damaged sections of the flooring for laminated flooring that closely matched that which was already installed in the insured premises. The client declined this offer as he felt that the value of his property would be reduced due to the fact that the flooring would not look the same and that by replacing only certain sections of the flooring, there would be a significant colour difference and he felt that he was not being fully indemnified.

The Ombudsman's View:

After careful consideration of the representations made by both parties, this office pointed out to the insurance company that their policy wording did not have an exclusion which stated that the insurer would not be liable for the increased costs of the repairs due to the non-matching of materials.

It was the view of the Ombudsman that the settlement proposal made to the complainant did not fully indemnify the complainant due to the fact that he would not be placed in the same position that he was before the loss. It was pointed out to the insurance company that many policies in the insurance industry contain a clause that specifically states that the insurance company would not be liable for such costs as mentioned above. The policy in question did not contain such an exclusion. Therefore the complainant should be indemnified for the replacement of all the floors in the property.

After due consideration, the insurer agreed to indemnify the complainant for the replacement of all the laminated flooring.



LOSS OR DAMAGE TO HOUSEHOLD GOODS – ACCIDENTAL BREAKAGE (AUTO & GENERAL)

Details of Complaint:

The complainant was watching television at home when the power supply suddenly cut out. As there was total darkness she attempted to fetch a torch and in doing so tripped over the dog and fell on an onyx coffee table. The table top sustained damage. The complainant submitted a claim to the insurer for the damage caused to the coffee table.

The Insurer's View:

The insurer declined liability stating that the policy only covered the accidental breakage of mirrors or glass. The insurer stated that as the coffee table was made out of stone and not glass, it was under no obligation to indemnify the complainant. The insurer relied on the following clause in the policy agreement:

We will indemnify you for:

Breakage of mirrors and glass

Breakage of mirrors and glass that are part of a stove, an oven or furniture, when broken by accident.

The Ombudsman's View:

Having considered the contents of the policy wording the insurer was referred to the Home Contents section of the policy wording which was in the complainant's possession. The wording states the following:

Home Contents

You will be indemnified for:

Loss of or damage to the household goods and personal possessions that you and your family members, who live with you, have inside your home or the outbuilding at the address on your schedule. This includes loss or damage caused by fire, lightning, explosion, malicious damage, impact with your home and outbuildings...

It was pointed out to the insurer that the clause upon which they relied to decline liability was not sustainable. Although this clause reflects the circumstances under which "accidental" damage would be covered as an insured peril, the clause in terms of the Home Contents section provided cover for "loss or damage to household goods". The word "includes" implied that apart from the perils mentioned, any loss or damage to a household item, however caused, is also covered.

The insurer contended that an updated policy wording, which did not contain the word "include", was in fact applicable. However the insurer could not confirm that this had been sent to the complainant. The insurer gave the complainant the benefit of the doubt and settled the claim in full.



BREACH OF SECURITY REQUIREMENTS (RENASA INSURANCE)

Details of Complaint:

The insured reported a claim for a stolen vehicle to his insurer and the claim was rejected on the ground that the insured had breached the security requirements of the policy in that the immobiliser that was fitted to the vehicle was not "Vesa or VSS approved".

The Insurer's View:

The insurer advised that the insured had bought the immobiliser over the counter. The unit purchased was Vesa approved, however, it had not been fitted by a Vesa approved fitment centre and as such was not compliant with the requirements of the insurance policy. The complainant argued that he had bought the unit from a Vesa approved agent but had it fitted by an approved fitment centre. He advised that the fitment centre had given him all the necessary documentation to prove that everything was in order. The insurer argued that the policy required the fitment of a Vesa approved immobiliser by a Vesa approved installer. They argued that the fitment centre would be certified by Vesa to follow specific criteria set down by Vesa regarding the fitment. However, the insurer conceded that the immobiliser which had been installed did comply with the policy conditions.

The Ombudsman's View:

On considering the matter, the Ombudsman looked at the specific clause relied on for the rejection of the insured's claim which read as follows:

"It is a condition of this policy that the above vehicle is fitted with a VESA level 4a, 4b or 4c immobilizer or factory fitted (VSS approved) immobilizer or an approved tracking device approved by the company"

On analysing the above clause, it was clear that the insured vehicle had to be "fitted" with a Vesa level 4 immobiliser. However, the clause did not require the fitment centre to be Vesa approved, as argued by the insurer. The Ombudsman was further of the view that, in any event, the insurer had failed to show any prejudice that they had suffered due to the fitment centre not being Vesa approved.

The Ombudsman overturned the insurer's decision to reject the insured's claim. The decision was accepted by the insurer and a full offer of settlement was made to the insured.



EXCLUSIONS PERTAINING TO SUBSIDENCE (SANTAM)

Details of Complaint:

The complainant submitted a claim against Santam for cracks which had developed in his holiday home. In his details of complaint, the insured advised that the property was fifteen years old and it was only after unusually heavy storms in the latter part of 2013 that he noticed cracks developing. The damage included cracks to some of the walls and the sagging of the floors.

The Insurer's View:

The insurer advised that upon registration of the claim, an engineer was appointed to assess the damage. The property was inspected by the engineer appointed by the insurer, who concluded that the fill beneath the floor had consolidated over a period of time, causing the floor and walls built on the floor to sag and crack. The engineer was of the view that the consolidation of the fill below the floor was due to either inadequate compaction or the use of inferior fill material. Further, the insurer advised that the damage did not arise as a result of a sudden, unforeseen insured event. Therefore the insurer rejected the claim on the basis that:

Exclusions

2. *Subsidence or Landslip or Heave*
2.2.3 *Caused or made worse by faulty design, inadequate compaction of infill, poor construction, or the removal or weakening of support to any building.*

The Complainant's View:

The Complainant produced a service provider's quotation detailing the work to be carried out to his premises. The complainant also stated that his property was one of twenty three properties purchased off-plan and constructed by the same builder. He also provided the contact details of the developer.

The Ombudsman's View:

The complainant was advised that the quotation provided by the service provider did not take the matter any further as the work quoted for was in fact remedial work and the insurer, in any event, could not be held liable for such remedial work. The insurer's liability is to place him back in the position that he was in prior to the loss. The complainant was once again advised to provide an engineer's report, if he was still disputing the insurer's rejection of the claim.

The complainant provided an engineer's report who concluded that:

The subsidence can be caused by poor initial compaction of the filling under surface beds, or as a result of consolidation settlement, which results from water being pushed up under the building due to hydraulic pressure which is caused during high rainfall periods.

The complainant was advised that the insurer's rejection of the claim was consistent with the policy wording and that both engineers' reports were in agreement with regard to the cause of the damage. Therefore, both reports substantiated the insurer's rejection of the claim and the insurer's rejection of the claim was accordingly upheld.



MATERIAL MISREPRESENTATION OF THE RISK AT INCEPTION (MIWAY)

Details of Complaint:

The complainant telephonically submitted a claim for the theft of her household contents. The claim was rejected due to material misrepresentation when the policy was applied for and the policy was declared void from inception.

The Insurer's View:

According to the insurer, the complainant was asked at sales stage whether she had any open field or parks surrounding her home and she said that she did not. During the validation of the claim the insurer discovered that there was an open field and a railway line adjacent to the

complainant's property. The insurer argued that a duty of disclosure was created and the complainant was required to provide correct information. The complainant provided incorrect information which was material to assessment of the risk.

The insurer argued further that had the complainant correctly disclosed the required information at the sales stage, the policy would have been underwritten on different terms. As such the information was material to the underwriting of the policy. The insurer argued that the complainant deliberately provided incorrect information.

The complainant argued that she did not understand the importance of the information.

OMBUDSMAN'S ADVICE: CASE STUDIES



MATERIAL MISREPRESENTATION OF THE RISK AT INCEPTION (MIWAY) CONTINUED...

The Ombudsman's View:

The Ombudsman was of the view that the insurer had clearly created the duty of disclosure and that it was the responsibility of the complainant to provide the insurer with correct information. This incorrect information was material to the loss as well as the underwriting of the policy. The Ombudsman could not fault the insurer's decision to reject liability.

USEFUL CONSUMER TIPS



Excess:

An excess is the first amount payable by you in the event of a loss and is the uninsured portion of your loss. When you submit a claim the excess is payable. Regardless of who caused the accident you are liable for the excess as your insurer does not use blame as a criteria in order to determine whether you need to pay an excess or not.

Buildings:

The assessor or surveyor appointed by your financier when you purchase the building is there to evaluate the value of the property to ensure that the building constitutes adequate security for the bond to be registered. The purpose of this valuation is not to evaluate the structural soundness of the building for purposes of insurance. It is up to the insured to insure the building for its current replacement cost.

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 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
For more information on our activities, please visit our website at www.osti.co.za.
We welcome any feedback or comments you may have.

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