



THE OMBUDSMAN'S



# BRIEFCASE

Newsletter of The Ombudsman for Short-Term Insurance

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## FROM THE EDITOR'S DESK



OSTI wishes everyone a safe,  
healthy and happy festive season.



We have come to the end of another year and we would like to thank you all for the hard work in and commitment to resolving short term insurance complaints as quickly as possible. We wish you all a safe, healthy and restful year end.

Looking forward to connecting with you in 2017.

# 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.

## THEFT OF MOTOR VEHICLE – FAILURE TO REPORT TO POLICE WITHIN 24 HOURS

ABSA

Mr R claimed for the theft of his vehicle but his claim was repudiated by his insurer.



At the time of the incident, Mr R's son J, was using the vehicle. He was with two friends, Z and X at a nightclub venue. He gave the keys of the vehicle to Z who was the designated driver for the evening. When J came out of the venue he could not find the vehicle or his friend Z. This was at around 05h00. J then decided to walk with X to Z's house to see if he had returned home. Z was not there. Later that day while on their way from the police station, Mr R. and J passed Z on the road. When

questioned about the vehicle, Z said that it had been confiscated by the Flying Squad as the police had detected that the vehicle was a "duplicate" vehicle.

Mr R. went to various police stations and pounds in an effort to locate the vehicle. In spite of Mr R's efforts, none of the police stations visited were prepared to open a case of theft.

Two days after the vehicle went missing, Mr R. contacted the insurer and advised a consultant that he had spent the last 3 days at various police stations trying to find his vehicle and attempting to report the incident. He advised the consultant that the police did not want to assist him and that he did not know what else to do. He then asked the consultant for assistance and advice.

The consultant advised: "all right, let's register the claim on your insurance then the process will continue and we will await the case number from the police". Mr R. was not advised that he was already out of time for reporting the incident to the police and that this would prejudice his claim and the insurer's recovery efforts. The

consultant captured the claim and wished Mr R. luck in obtaining a case number.

*Two days later, Mr R. obtained an OB case number and eventually succeeded in obtaining a theft case number from the police station three (3) days after that.*

In the insurer's formal response to the office of the Ombudsman, the insurer advised that "the insured reported the vehicle as missing eight (8) days after the incident... The insured is required in terms of the policy wording to report any event involving theft, to the police within 24 hours of occurrence thereof".

*The insurer stated further that Mr R's failure to report the incident to the police within the stipulated period was prejudicial to the insurer in that it decreased the chances of recovery of the vehicle.*

# ADVICE FROM THE OMBUDSMAN: CASE STUDIES

The insurer referred to comments from the South African Insurance Crime Bureau regarding the recovery rate. In justifying its rejection of the claim, the insurer relied on the following portion of the policy:

*"You must take care of the insured item*

- You must take all reasonable care to prevent or minimize loss or damage. If an insured event happens, you must take preventative steps to minimize any extra loss or damage from occurring.*

*If a claimable event happens, you must:*

- Inform the police within 24 hours of any event involving theft or loss of property or accident and take all reasonable steps to find out who the guilty party is and to recover the property".*

On a proper assessment of the facts it was clear that the insured did "inform the police within 24 hours" of the "event involving theft or loss of his vehicle". Mr R and J went to the police on the very same day that the vehicle went missing/was stolen and tried not only to report the incident to the police but also to find the vehicle.

In applying the law to the facts, the Ombudsman's view was that,

before an insurer can decline liability on the ground that Mr R. failed to take all reasonable care to prevent or minimise loss or damage, it must establish that Mr R. acted recklessly.

Accordingly, in order to fall foul of the duty to take reasonable care on the insured item, Mr R. must have recognised that a danger existed and not cared whether or not it was averted.

The insurer was referred to the case of Santam Ltd vs CC Design CC 1999 (4) SA 199 (C) where the court held that to escape liability on this ground the insurer must show that the insured acted recklessly. The Ombudsman noted that the insurer's policy wording does not require that the insured, in the event of a theft, obtain an official case number from the police but merely that the insured "inform the police within 24 hours". This was done by Mr R.

The Ombudsman was of the view that the insurer had not submitted any evidence to refute the version of the events by Mr R. and J. As such, Mr R.'s version constituted the best evidence on which to rely.

*The Ombudsman found that Mr R. had therefore shown on a balance of probabilities*

*that he had acted reasonably, had not been reckless and that he did inform the police within 24 hours of the vehicle having gone missing or being stolen.*

The Ombudsman was of the view that Mr R. did in fact take the necessary precautions to prevent or minimise the loss. The insurer was therefore asked to settle the claim which they agreed to do.

## GRADUAL OPERATING CAUSES

### ABSA

Mrs D. submitted a claim to her insurer for cracks which began appearing as well as for delamination of the stone-clad skin on the walls of her house.



# ADVICE FROM THE OMBUDSMAN: CASE STUDIES

Upon receipt of the claim, the insurer appointed an independent loss adjustor. The loss adjustor reported that the stone-clad walls had been exposed to water over a period of time. The water penetrated the space between the stone wall and the brick layer, resulting in the delamination of the brick layer.

*The loss adjustor further reported that there was clear evidence that there were previous repairs to the cladding. In conclusion he reported that the damage had occurred over a period of time and was not caused by a single insured event as listed in the policy wording.*

The loss adjustor appointed an engineer for a second opinion. The engineer stated that the stone cladding had weathered due to defective construction and that an insufficient amount of cement was used in the water mix when the cladding was applied. The engineer further stated that there was a retaining wall on the property which was in the process of collapsing due to defective construction. The wall had not been designed to retain soil. In

addition to this, plant and tree roots were putting added pressure on the wall. It was the engineer's opinion that the damage was not caused by an insured event.

Based on the reports of the loss adjustor and engineer, the insurer rejected the claim.

In an effort to refute these findings, Mrs D. obtained the services of an additional engineer. Mrs D's engineer was of the opinion that the outer skin of the wall, being the stone cladding, had started to come loose and allowed water to seep between the brick wall and the stone cladding. He reported that it appeared that the bond was not adequate, resulting in the single wall acting alone as load bearing. He further stated that it was not standard for a single wall to be a load bearing wall.

*Mrs D. was given an opportunity by the office of the Ombudsman to obtain a more detailed report from her engineer with a thorough and specific opinion as to the cause and extent of the damage. Mrs D. did not provide the report.*

In the Ombudsman's view, the evidence showed that, on a balance of probabilities, the damage was not caused by an insured event listed in the policy, a fact confirmed by both the insurer's and the insured's appointed engineers and loss adjustor. Consequently, the Ombudsman upheld the insurer's rejection.

## MISREPRESENTATION OF PREVIOUS INSURANCE HISTORY

### MIWAY

The insurer repudiated a claim by Mr. B for damage to his vehicle following an accident which occurred on 18 January 2016. The insurer voided the policy from the inception date, being 3 November 2015, on the basis of misrepresentation, misdescription or non-disclosure.



# ADVICE FROM THE OMBUDSMAN: CASE STUDIES

The insurers letter of repudiation/voidance stated that:

"during underwriting of the Policy at sales stage, you were requested to disclose your previous vehicle insurance history. You answered that you had six years previous vehicle insurance. During the validation of the claim it came to our attention that you only had 3 months' previous vehicle insurance with (another insurer)\* (*our words*).

This information is relevant to both the evaluation and acceptance of the Policy. Our rights have been prejudiced by not being supplied with the correct information when the underwriting was done.

We have no alternative but to void the Policy from inception date, being 3 November 2015. All premiums received less any costs incurred by MiWay will be refunded.

Please note that we are unable to consider any claims for losses suffered in this period and that the reason for voiding the Policy may not necessarily be exhaustive."

During the sales conversation, which took place on 27 October 2015, the sales consultant asked Mr. B "if you add all the years of

*having insurance on your personal property together, how many years would that be? Meaning Sir, if you count all the years of having insurance from your first vehicle until now, how many years would that be of having insurance, Sir?"*

Mr. B responded by saying "Ah, no man, it's just, that my first car was in 2009, so it's like six years."

The conversation continued as follows:

*Agent: Okay, you've had insurance for 6 years?*

*Mr B: Yeah, but uh, that one I sold it. The first one no longer exists and then the current one (inaudible).*

*Agent: Yeah, actually what I want is that, if you add all the years with different insurance companies that you had?*

*Mr B: All right.*

*Agent: If you count all those years that you've had insurance together, how many years would that be?*

*Mr B: Yeah, 6.*

*Agent: 6 years."*

The policy documents were then sent to Mr. B on 2 November 2015.

*During the validation of the claim the insurer established that Mr. B was only insured for approximately three*

*months with another insurer.*

When asked to provide proof of his six years' previous insurance, Mr. B initially responded by saying that he did not understand the question that was asked at sales stage and that he did not have motor insurance for six years. In a second telephone conversation between the insurer and Mr.B, he stated that he did not remember telling the insurer that he had six years of insurance. He said, during this conversation, that he had a vehicle but that the insurance was under his mother's name. He said that he paid for insurance but that the insurance was not in his name.

In a third conversation between the insurer and Mr.B, he stated that the sales consultant pushed him into saying that he had insurance for six years and that he was asked about all his personal property. He then says that he did have insurance since 2009 for a loan which he took out in 2009.

*Mr. B produced a bank statement from the bank which he took the loan from setting out the details of a personal loan taken out in his name and on*

# ADVICE FROM THE OMBUDSMAN: CASE STUDIES

*which he paid a “CPP” premium of R66.00 per month. This premium had been paid for six years and it was this insurance which, according to Mr. B, he referred during the sales conversation to when asked whether he had insurance on his personal property.*

In a conversation between the insurer and the said bank, the bank explained that Mr. B had a personal loan and that he had to have insurance cover for the loan in the event of retrenchment, death, disability, the company being liquidated or the consumer having a dreaded disease. The bank’s consultant confirmed that this insurance cover did not cover a personal asset/property but was in respect of a personal loan.

The insurer was of the view that Mr. B did not misunderstand the question or interpret it to mean insurance on a loan but that Mr. B deliberately provided an inflated number of years of insurance in order to receive the benefit of a cheaper premium. The insurer said that, had Mr. B disclosed the three months of insurance with the other insurer, the premium would have increased from R886.32 to R1, 066.11. The insurer had therefore suffered a

premium prejudice of 16.86%. In light of this misrepresentation, misdescription or non-disclosure, the insurer decided to void the policy from inception.

It was put to the insurer by this office that the insurer did not specifically ask Mr. B about his previous short-term insurance or motor vehicle insurance history.

The sales consultant started by asking how many years altogether Mr. B had insurance “on your personal property... from your first vehicle until now ...”.

“... from your first vehicle until now” does not qualify the type of personal property that the insurer is asking about but rather qualifies the time period “if you count all the years of having insurance ...”

The consultant then asked “if you add all the years with different insurance companies that you had” and “if you count all those years that you have had insurance together, how many years would that be?” These questions again did not refer to short-term insurance or motor vehicle insurance.

*As the questions pertaining to short-term motor vehicle insurance were not asked by the insurer, this office*

*was of the view that the insurer could not rely on the exclusion pertaining to material misrepresentation or non-disclosure to void the policy.*

This office was of the further view that whatever confusion or misunderstanding there may have been on the part of Mr. B, was attributable to the wording of the questions put to him at sales stage by the insurer. Therefore, on a balance of probabilities, the insurer had not established that Mr. B misrepresented his vehicle insurance history.

The insurer was therefore requested to settle the claim in full, which the insurer agreed to do.



# CONSUMER TIPS

With the holiday season upon us ensure that your assets are properly protected and that your house is secure.

Going on a road trip? Make sure that your car is in roadworthy condition and that the tyres are in good condition.

The rainy season is upon us. Avoid skidding on wet roads. Check the grip on your tyres.

Keep your insurers number and the insurer's roadside assistance number on your phone in the event of an accident.

Don't get caught in the hail this summer. If the sky looks black and dangerous, park your car undercover and wait it out #beresponsible.



# 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.

JT014 PAPIKA GRAPHICS / 0860 727 7452

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For the latest and most up to date news, follow us on [@Ombud4ShortTerm](https://twitter.com/Ombud4ShortTerm)

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