



THE OMBUDSMAN'S BRIEF CASE.

 THE OMBUDSMAN'S BRIEF CASE

(Newsletter of the Ombudsman for Short-Term Insurance)

Å (011) 726-8900

Jan/Feb/Mar 2003 – Issue no. 01/03

[A Beginner's Guide to the Ombudsman](#)


[Whats Buzzing in the Office?](#)


[The FAIS Act and the FAIS Ombud](#)

[Ombudsman's Advice](#)

[Ombudsman Rulings](#)

[Contact Details](#)

 Rounded Rectangle: The Ombudsman's Briefcase now available via e-mail
Kindly be advised that should you wish to receive this newsletter via e-mail,
please contact the Ombudsman's Office on telephone (011) 726-8900, Fax (011)
726-5501 or e-mail. info@osti.co.za

 Bevel: COPYRIGHT WARNING NOTICE Copyright subsists in this
Newsletter. No part of the Newsletter may be reproduced, transmitted or
downloaded in any form or by any means, without the permission of The
Ombudsman for Short-Term Insurance.

A Beginner's Guide to the Ombudsman

The Ombudsman is a Swedish term (gender neutral) referring to a person(s) whose function it is to resolve disputes between parties in an independent, impartial and cost-effective manner.

What are the powers of the Short-Term Insurance Ombudsman?

At the outset it should be pointed out that the Short-Term Ombudsman is a voluntary Ombudsman as opposed to a statutory Ombudsman. In the Financial Industry there are three voluntary Ombudsmen, i.e. the Short-Term Ombudsman, the Long-Term Ombudsman, and the Banking Adjudicator. The Pension Funds Adjudicator is a statutory Ombudsman.

The practical effect of the Short-Term Ombudsman being a voluntary Ombudsman is that all the Short-Term Insurers that underwrite personal lines Insurance have contractually committed themselves to be bound by the formal rulings of the Ombudsman. Although the Ombudsman generally tries to persuade the Insurer to admit a claim, it can in a given case, give a formal ruling and the Insurer will then be bound to give effect thereto. The interesting result of the Insurers all agreeing to be bound by the formal rulings of the Ombudsman, is that there is no right of appeal against the decision of the Ombudsman, but if the Ombudsman rules against a complainant, he still has the right to pursue his action in a Court of Law.

The Ombudsman is limited to deal with Personal Lines claims only, i.e. where the Insured is an individual. In other words, a Pty. Limited or a CC is excluded from the Ombudsman's jurisdiction. Furthermore, the maximum amount on which the Ombudsman can adjudicate is R500.000, but this amount can by mutual agreement be increased.

How does the Ombudsman deal with complaints?

Firstly, the complainant is required to complete an Application form. On request this will be sent to the complainant . There are however certain pre-conditions being for example :

- a) The complaint must relate to a rejected claim or partly admitted claim , or premium dispute.
- b) It is not in the hands of an Attorney for any purpose other than the drafting of the Application form and is not subject to litigation.

Once we receive the completed complaint form, we submit that to the Insurer, who in turn has to respond. In a number of cases the very fact that we have forwarded to the Insurer a copy of the complaint, results in an admission of the claim by the Insurer. If however the Insurer furnishes detailed reasons for its repudiation or part admission, my office will then call for comment by the complainant. Ultimately, based on the experience of myself and my fellow professionals, we will then either request the Insurance Company to admit the claim, or advise the complainant that the Insurers is fully within its rights to deny the claim. The main thing to remember is that even if we rule against the complainant, the complainant still has the right to pursue his action either in the Small Claims Court, which now has a jurisdiction of R3,000, or in any other Court of Law.

For more information contact Mr Naresh Tulsie
info@insuranceombudsman.co.za / info@osti.co.za

Whats Buzzing in the Office?

& For more information contact Mr Naresh Tulsie

y info@insuranceombudsman.co.za / info@osti.co.za

The FAIS Act and The FAIS Ombud

What is the effect of the F.A.I.S. Act and the F.S.O.S. Bill?

The FAIS Act was enacted on 15 November 2002 and the new so-called 'subordinate legislation' has been published by the Financial Services Board for comment.

It is stating the obvious that self-regulation is better than imposed regulation. The Short-Term Insurers (as well as the Long-Term Insurers and Banking Industry) got their act together by creating voluntary Ombudsmen. In the Industry the Brokers/Intermediaries play a major role and in a multitude of cases the Brokers are more often than not the only contact between the Insured and the Insurer. There is a clear need for the regulation of this very important portion of the Insurance Industry and for this purpose the F.A.I.S. Ombud has been created.

In terms of the Financial Services Ombud Schemes Bill, formal recognition can be granted to the voluntary Ombudsman Schemes. At the moment there is debate with the Financial Services Board to provide absolute clarity that the present jurisdiction of the existing voluntary Ombudsman's Schemes not be restricted in any way. More specifically, there are Insurers who interface directly with the public and it has accordingly been proposed to the Financial Services Board that in such a case, those Intermediaries should fall under the discipline of the voluntary Ombudsmen. The critical test ought to be where legal liability lies. In other words, if the Intermediary is an employee of the Insurer, then obviously legal liability rests with the Insurer.

It is hoped that with negotiation with the Financial Services Board, absolute clarity will be obtained that the statutory Ombud will limit himself to dealing with Intermediaries as well as other complaints which fall outside the jurisdiction of the voluntary Ombudsman's Schemes.

The Industry and this office waits with bated breath for the appointment of the Ombud and its office, and to determine the effect that it has / will have on the Insurance industry as a whole.

Ombudsman's Advice

- **Don't look for the cheapest option.** Bear in mind that the more expensive cover might probably give you a better form of insurance. Usually the lower the premium the stricter the Policy conditions and the more likely you are to run the risk of your claim being repudiated.
- **Read your Policy.** Bear in mind that although the Policy conditions may be seemingly lenient when you take out the Policy, subsequent notifications may be published by the Insurer, which impose stricter and stricter conditions.

If the premium gets high, look at other options. For example, in motor car insurance, if your car is fairly old, look at Third Party, Fire and Theft cover, which is much cheaper than full Comprehensive Insurance cover.

After a claim re-read your Policy and follow the conditions carefully. E.g. report the claim to the Policy within x number of days and submit written claim form to Insurer within x (usually thirty) days.

& For more information contact Mr Naresh Tulsie

y info@insuranceombudsman.co.za / info@osti.co.za

Various Rulings

Formal Ruling No. 1

(Ombudsman's Reference D14/97)

Comprehensive motor vehicle insurance – Repudiation by insurer of claim on basis that insured's negligent driving which resulted in damage to the insured vehicle, constituted a breach of a term requiring the insured to exercise reasonable precautions to maintain the safety of the vehicle

The insured tried to negotiate a freeway offramp at too high a speed in wet weather conditions and this resulted in damage to his insured vehicle. The insurer repudiated the insured's claim, alleging that by driving negligently, the insured was in breach of a clause in the policy which provided that '[t]he Insured and/or any person enjoying cover under any section of the policy must exercise all reasonable precaution to maintain the safety of the property and to prevent loss, damage and accident'.

In debate the Ombudsman referred to the South African cases of *Nathan NO v Accident Guarantee Corporation Limited* (1959 (1) SA 65 (N)) and *Paterson v Aegis Insurance Company Limited* (1989 (3) SA 478 ©) and to the statement contained in *Gordon & Getz on the South African Law of Insurance* 4 ed (1993) at 183 that 'one of the objects of insurance [is] to protect the insured from loss due to his own or his servants negligence...even if such negligence constitutes a crime'. Reference was also made to the comments of Lord Denning in *Marles v Philip Trant & Sons Ltd (No 2)* [1953] 1 All ER 651 (CA)).

The Ombudsman made a formal recommendation that since the interpretation of the clause in the way suggested by the insurer frustrates one of the major purposes of the insurance cover, it was not applicable in the circumstances of this case.

COMMENTS :

Whilst the insurance contract does certainly afford cover for the insured for loss due to his own or his servant's negligence, this must be distinguished from circumstances where the claim is rejected as a result of the insured having been convicted of reckless and negligent driving, or circumstances where the claim is rejected as a result of for example the insured vehicle's tyre / s being in an unroadworthy condition and the condition of the tyres playing a material part in the causing of the collision.

These are specific exclusions in the policy wording requiring different consideration on the merits of each individual matter. Furthermore it must be borne in mind that when the Ombudsman does consider a ruling, the following will be taken into account:

- a. prevailing case authorities, legislation and legal principles;
- b. the Policy Holder Protection Rules;
- c. fairness and equity;
- d. proper insurance practice;
- e. the facts of each individual matter.

Formal Ruling No. 2

(Ombudsman's Reference T41/97)

Comprehensive motor-vehicle insurance – Avoidance of contract for breach – No prejudice to insurer from breach – Waiver by Insurer of right to avoid contract

By virtue of a clause obliging the insured, within fourteen days of inception of the policy, to furnish the insurer with a certificate to the effect that the insured vehicle in question was equipped with an approved immobiliser, the insurer could avoid theft cover on the policy in question. The insured had the vehicle equipped with the required immobiliser, obtained the required immobiliser certificate from the dealer and arranged for it to be sent to the insurer. The Insurer allegedly did not receive the certificate within the required time but continued to accept premiums in terms of the policy from the date when the certificate should have been supplied.

Subsequently, when the insured vehicle was stolen, the insurer refused to accept the insured's claim and avoided the policy on the ground that the immobiliser certificate had not been furnished with the required period, although it was in fact furnished when the insured submitted his claim and although it was not in dispute that the vehicle was equipped with the immobiliser at the time of the theft.

The Ombudsman made a formal recommendation that the claim should be met because there was no prejudice to the insurer whatsoever, and in addition to that because the insurer had waived its rights to rely on a technicality of this nature by continuing to accept monthly premiums and not advising the insured that the certificate had not been received within the required period.

COMMENTS :

It is common practice for most Insurers to require of new client's that certificates proving the vehicle's compliance with security requirements be furnished within a specified period .

However very little or no steps appear to be taken to draw the Insured's attention to the consequences of his failure to comply within the stipulated period . Furthermore upon expiration of the stipulated period , and the insured having not complied , very few Insurers/Intermediaries appear to notify the Insured of the non-compliance and the effect that it has on his/her policy . In most complaints of this nature the premiums continue to be deducted , or remain unaltered .

Formal Ruling No. 3

(Ombudsman's Reference E13/98)

Travel insurance – Emergency dental treatment during travel – Repudiation by insurer on the ground that the teeth were not 'sound natural teeth', the teeth treated having been previously filled

The insured claimed under a travel insurance policy for emergency medical and related expenses which included 'the reasonable cost of medical emergency dental treatment to sound natural teeth' and also other treatment given and authorised by a member of the medical profession.

During the trip, the insured required emergency dental treatment to her teeth but the insurer repudiated the claim on the ground that the teeth were not sound or natural because they had had previous fillings. The insurer relied on the definition of the words 'sound' and 'natural' in the Chambers Dictionary, quoting 'sound' as meaning 'safe, whole, uninjured, unimpaired, in good condition, healthy, wholesome and natural, and pertaining to, produced by, or according to nature, finished by, or based on nature..., not the work of man..., not interfered with by man'.

The Ombudsman expressed the view that a tooth, which had been filled and thereby restored into proper and healthy condition, fell within the definition of 'sound' and quoted by Chambers Dictionary. In regard to 'natural' he referred to the new Oxford Dictionary for the view that one of principal meanings of 'natural' is the opposite of 'artificial', and that a natural tooth which had been repaired and restored to sound condition, even by the hand of man, did not lose its natural character. After debate, the insurer accepted the Ombudsman's recommendation.

COMMENTS :

Insurers often advise in these sort of circumstances that this was not the risk / property intended to be insured / underwritten . If this is the case the policy wording should spell out sufficiently clearly as to exactly what is covered , and what is excluded . Any doubt in interpreting the policy terms and provisions , has to be interpreted in favour of the insured in accordance with the *contra proferentem* rule .

& For more information contact Mr Naresh Tulsie

y info@insuranceombudsman.co.za / info@osti.co.za

Contact Details

Tel. 0861 726 890

(011) 726-8900

Fax. (011) 726-5501

P O Box 32334

Website: www.osti.co.za

Braamfontein

E-mail: info@osti.co.za

2017

[Home](#) | [History](#) | [What we do](#) | [Staff](#) | [Submit a Dispute](#) | [Annual Report](#) | [Common Problems](#) |

[How to Complain](#) | [Contact Us](#) | [Members](#) | [Code of Practice](#) | [News](#) | [Links](#) | [FAQ'S](#)