

# 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. 2 of 2012

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# 2012



## ANNUAL REPORT LAUNCH

The Ombudsman for Short-Term Insurance launched its Annual Report for 2011 on 9 May 2012. [Click here to access the annual report.](#)

The winner of the Isabel Jones Ukusizana Award was announced, as well as the two runners up.



Winner: Standard Insurance



First runner up: Miway Insurance



Second runner up: Relyant Insurance

## Subsidence and Excavations

The insured reported the claim telephonically in June 2008. Due to construction work being carried out near her property, her house had developed cracks and the sewer line had blocked. The insurer rejected the claim for the reason that no insured event had occurred and the file was closed.

In October 2008 when the insured contacted the insurer again and advised that her house had cracks, the insurer decided to re-open the claim and appointed a loss adjuster to assess the damages to the insured's property. The loss adjuster found that during early 2008 excavations had started on a large property behind the insured's residence. The aforesaid property belonged to a hotel which had been purchased by a property developer. The developer proceeded to excavate the basement area. Throughout the excavation period, as well as during the building period, the insured and other residents of the same street suffered ongoing damage to their properties.

The cracks to the house continued to widen and by June 2008 heavy rains allowed water to ingress through the cracks into the dwelling. The insured advised the loss adjuster that on 3 June 2008 at approximately 11h05 she felt the reverberations of at least ten big explosions coming from the building site. The insured's problems continued which included the collapse of the sewerage line running from her property resulting in the sewerage overflowing.

The loss adjuster confirmed that the cracks in and about the dwelling would have to be cleaned and repaired and the dwelling would have to be redecorated both internally and externally. The loss adjuster acknowledged that the insured had suffered a loss resulting in considerable damage to the property but he was of the opinion that the policy would not respond as no insured peril had operated.

The loss adjuster was of the opinion that the cause and the resultant damage would be more specifically insured under the developer's contract work policy. The insurer stood by their decision to reject the claim on the basis that no insured peril had operated to cause the damage as reported and the onus rested

on the insured to provide documentary proof to the contrary.

The insured approached the office of the Ombudsman for assistance and stated that her claim was based on subsidence, due to the excavations taking place behind her property which caused damage to her property and sewer line.



The insurer admitted that the damage had been caused by subsidence which is an insured event but that the damage was caused by one of the exclusions applicable to the subsidence cover, namely excavations.

The Ombudsman pointed out to the insurer that the insured had brought her claim within the ambit of the policy and that since the insurer was relying on an exclusion in rejecting the insured's claim, the insurer would need to prove that the damages had been caused by an excluded event. The Ombudsman also pointed out to the insurer that this was a matter of a technical nature and recommended that the insurer appoint a structural/independent engineer. The insurer agreed to appoint the engineer.

The engineer identified the main cause of the damage to be the adjacent construction which had affected the foundation soil beneath the insured's property resulting in deformation and cracks in her property. The engineer suggested a meeting be held between the insured, the property developer, their contractor, the consulting engineer, geotechnical engineer and the insurer, (represented by the engineer). The meeting was held and the matter was discussed fully and adequately. The engineer then furnished his interim report and a quotation for the repair costs was received from the developers.

The engineer submitted his final report and his findings were that the exclusion related to excavations within the insured's property and not to excavations outside the insured's property and therefore some compensation in this regard should be considered.

The insurer offered a settlement in respect of the damage to the building caused by the excavations. The insured accepted the insurer's offer.

## Grey Import - Vehicle

The insured placed a grey import Lexus LS400 on risk with the insurer.

After the insured had suffered what appeared to be a minor loss, the insurer had declared the vehicle a write off. As a result of the large cost of repairs flowing from the status of the vehicle being a grey import, the insurer sought to reject the claim. The rejection was based on the fact that the insured had not disclosed to the insurer that the vehicle was a grey import. The insurer argued that they would not have accepted the risk had this fact been disclosed. The bulk of the cost of repairs related to the importation of spare parts.

The Ombudsman's office recommended that the insurer settle the claim on the basis of the actual costs of the spare parts and using the normal applicable labour rates.

The office also requested the insured to see if she could not obtain a quotation for the cost of repairs or to otherwise quantify the loss.

The insured obtained a quotation for R62,000 on the basis of which the insurer wrote off the vehicle making deductions for the salvage which the insured kept.

## Defective Workmanship on Building

The complaint related to a loss wherein built-in cupboards were damaged as a result of repeated rain and storms. The insurer inspected the building and found that the roof was not properly sealed and further that water had overflowed a self-made gutter resulting in the damage or loss. The insurer further established, through independent contractors, that the main roof had reached the end of its lifespan with wires already protruding.

The insurer rejected the claim on the basis that the loss was a result of poor workmanship which was excluded in terms of the policy.

The insured argued that the bank had inspected the house and intimated that it was in order by issuing a mortgage bond on it. According to the insured the bank and the insurer were one and the same institution, hence the argument that the insurer was liable.

The insured further argued that the bank's inspectors had misled them by negligently failing to point out the latent defects. Had the defects been pointed out, the insured argued, they would not have purchased the property as they did not have the finances to carry out any repairs and had not expected



to do this on their new home.

The insurer made an offer to settle the resultant damages to the cupboards. The insured did not accept the offer and wanted the claim settled in full, for the roof as well.

The Ombudsman's office pointed out to the insured that it was not the responsibility of the bank or the insurer to advise the insured on the quality of the workmanship on the building and, further, that their inspection of the house was an assessment to determine whether or not there was sufficient security in the property to support the home loan. It was the insured's responsibility to do their own inspection of the property to assess its condition and quality before purchasing the property.

In the circumstances, the Ombudsman's office was of the view that the insurer could not be faulted on their proposed settlement. It was recommended to the insured that the offer be accepted, alternatively that the matter could not be taken any further.

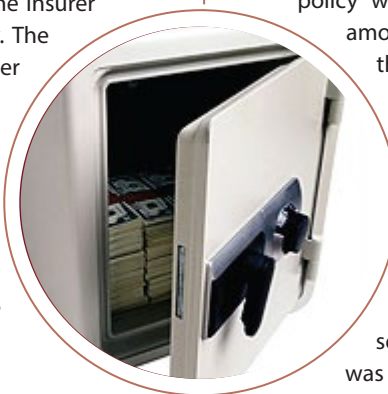
The insured then accepted the offer.

## Theft from a Safe

The complainant submitted a claim against the insurer for cash stolen out of the safe during a burglary. The safe was opened by the use of an angle grinder and the cash was stolen.

During the assessment of the claim, the safe was assessed in order to determine the SABS categorisation criteria of the safe. In terms of the policy wording the insurer's liability was limited depending on the categorisation of the safe.

Upon inspecting the safe the assessor found that the safe in question did not display any marks or indication of any categorisation. The assessor found that the safe door had been opened by means of an angle grinder. The safe door measured 10mm and had one lock and these specifications were compared to the SABS categories and it was found that the safe did not comply with any of the SABS categories as set out in the



policy wording. The insurer settled the claim in the amount of R2,500.00, being the insurer's liability in the event that the safe had no SABS grading.

The complainant disputed the settlement of the claim on the basis that the assessor's evidence could not be relied on as the assessor was not an expert. The complainant was advised that the assessor's evidence could be relied on in substantiation of the insurer's settlement of the claim. Further, the complainant was advised that if they were disputing the safe's specifications, then the office of the Ombudsman required the manufacturer's specifications of the safe in order to confirm the safe's categorisation, as per the SABS categories.

As no further response was received from the complainant, the insurer's settlement of the claim was upheld.



**Ayanda Mazwi** Assistant Ombudsman

Ayanda studied at Rhodes University and at The University of South Africa where she obtained her Bachelor of Arts and LLB degrees. She is an admitted attorney and practiced for two years before starting a career in the insurance industry in 2008. Ayanda worked in the legal departments of two of South Africa's major insurance companies and is passionate about the insurance industry.

Ayanda says "I consider the office of the Ombudsman for Short-Term Insurance as an important player in the industry and I am happy that my passion for the insurance industry together with my legal background and experience will contribute positively to the interests of both the insurer and the insured."

Ayanda is family oriented and spends most of her spare time with her daughter.

## LET'S HEAR IT FOR OSTI

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

May I express my heartfelt thanks to you for the highly professional and proficient manner in which you attended to my issue. Such is your influence that major companies take immediate steps to address complaints to the satisfaction of the complainants. I've been most impressed with the service I've received from your staff. You have my vote after the Public Prosecutor!.

It is my pleasure to take this opportunity to thank you and your tireless team in assuring that my request is attended to timorously and effectively. Thanks a lot and appreciation to your team also.

Thank you for the professional service received. Without your help we cannot win. God bless you. I rate this service 10 out of 10. Thank you.

I would sincerely like to thank you the Ombudsman for your assistance in this matter. Without your intervention, I would have been helpless and you really did provide invaluable assistance.



### 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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