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. 1 of 2014

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MATERIAL DISPUTE OF FACT: THE OMBUDSMAN CANNOT MAKE A RULING (BUDGET INSURANCE)

Details of Complaint:

The complainant submitted a claim to the insurer after a motor vehicle accident on 10 November 2013. The complainant submitted that he was driving the vehicle and had two passengers in the vehicle at the time; the complainant's son and his friend. According to the complainant, his son was sitting on the front passenger seat and his friend was in the back seat. The complainant stated that he lost control of the vehicle, veered off the road and ultimately collided into a tree two kilometres from his residence. Traffic police officials and paramedics attended at the scene of the accident. The complainant's son and his friend were treated by the paramedics and later taken to hospital by ambulance for their injuries.

An assessor was appointed by the insurer to validate the claim. The damages to the vehicle were assessed and a report compiled. The vehicle had extensive damages to the driver's side. The windscreen and driver's side window had also shattered. The traffic officer who attended the scene of the accident was interviewed. He submitted that the complainant could not have been the incident driver. According to the traffic officer, when he arrived at the scene, there were only two vehicle occupants, the complainant's son and his friend. They were both covered with glass from the shattered windscreen and were treated for injuries. The traffic officer submitted that the complainant only arrived at the scene after the accident and reported that he was the incident driver. However, when asked to describe how the collision took place, he was not able to provide a clear description. It was also noted that the incident description recorded on the accident report differed in some respects to what was subsequently reported to the insurer. The traffic officer also stated that he noticed that the complainant had no injuries and was not covered in glass from the shattered windscreen. This was very peculiar, considering that the damages to the vehicle were extensive on the driver's side. Since the windscreen and driver's side window had shattered, it followed that the complainant should have had some glass on his clothing after the collision. The injuries sustained by the complainant's son and his friend were however consistent with how the accident had occurred.

Insurer's View:

The insurer considered the complainant's claim based on the findings of the assessor and declined liability. The insurer argued that, while it was unable to verify the correct version of events, evidence indicated that the complainant did not furnish true and complete information regarding who was the incident driver. The assessor established that the complainant's son, who may have been driving the vehicle, was only in possession of a learner's licence and his friend did not have a licence. In his further response to this office, the complainant vehemently maintained that he was the incident driver and submitted that the traffic officer was mistaken.

Ombudsman's View:

After reviewing all of the evidence, the Ombudsman took the decision that this was not a matter wherein a ruling could be made. During the investigation of the claim, certain inconsistencies emerged and resulted in the claim having been rejected. The fact that the allegations were made and persisted upon by both parties made it challenging for the Ombudsman to reconcile the facts surrounding the claim. The evidence cast doubt on the versions to such a degree that we could not come to any conclusion on the matter. This being so, our Terms of Reference require us to close our file and take no further action.

In these cases, a court of law is the only proper forum to decide on the facts, as evidence can be evaluated after the examination and cross-examination of witnesses and experts. The Ombudsman recommended that the complainant consult with an attorney and instruct him to proceed with legal action against the insurer (if he is so advised), should he wish to pursue the matter further.

INSTRUCTIONS TO CANCEL INSURANCE (OUTSURANCE INSURANCE CO. LTD)

Details of Complaint:

The insurer received a broker's written appointment and instruction for the cancellation of the client's policy on 24 October 2012 with effect from 1 November 2012. The insurer did not cancel the policy but continued to debit the premium and only cancelled the policy on the 27th May 2013, after telephonically confirming cancellation directly with the complainant. The insurer declined to refund the premiums which were paid after the first instruction given by the broker on behalf of the complainant.

The broker argued that the broker's appointment was a legal document which gave him the right to act on behalf of the client for his insurance matters and that due to the insurer not cancelling the policy, the insured had dual cover for a period.

The Insurer's View:

The insurer argued that they do not act on the instructions of a broker as they are a direct marketer. They further submitted that they deal directly with their clients and that this is their business model. They attempted to contact the complainant and he was unavailable at the time of the call and they subsequently sent sms's requesting the complainant to contact them.

Due to the unavailability of the complainant to confirm cancellation, they did not cancel the policy and continued debiting the premium every month. Therefore, according to the insurer, the complainant was aware that the policy was still active. The insurer requested proof of insurance to

INSTRUCTIONS TO CANCEL INSURANCE (OUTSURANCE INSURANCE CO. LTD) CONTINUED...

effect a dual insurance refund for the period alleged by the complainant.

The Ombudsman's View:

The Ombudsman's view was that the complainant had a clear intention to cancel the policy by appointing and instructing the broker to cancel this policy with the insurer and again by confirming same on 27 May 2013. Therefore the proposition to only partially refund premiums on a dual insurance basis was not fair. The insurer was further requested to provide the cancellation clause that specifically stated that a request for a cancellation should come directly from the insured and nobody else.

The insurer did not provide such policy wording but instead agreed to refund all of the premiums that were deducted for the period 24 October 2012 to 27 May 2013.

CELLPHONE CONTRACTS TO COMPLY WITH PPR (VODACOM INSURANCE (PTY) LTD)

Details of Complaint:

The complainant had two cell phone handsets which were used interchangeably with the same SIM card. One of the handsets was stolen from his gym bag and the complainant lodged a claim with his insurer. The claim was declined on the basis that the insured SIM card was not in the insured phone at the time that it was stolen. It was pointed out to the complainant that cover was excluded if the SIM card noted on the policy was not in the insured phone at the time of loss. The complainant submitted that he was never made aware of that particularly limiting clause in the contract of insurance. However, the insurer was adamant that the policy wording was handed to the complainant at sales stage.

The Ombudsman's View:

It often happens that individuals purchasing insurance policies are not aware of the nature of the policy or the extent of indemnification at the time that the policy is purchased. In order to ensure that there is clarity regarding the agreement entered into between the insurer and the insured, section 4.3(i) of The Policyholder Protection Rules (hereinafter referred to as "PPR") was enacted. This section requires from a direct marketer of an insurance policy that concise details of any limiting clauses be disclosed to the insured in a language and manner appropriate to the individual to ensure that there is an understanding prior to the inception of the policy so that an informed decision may be made by the policyholder regarding the purchase of the policy.
As evidence of compliance with PPR, the insurer produced a signed insurance proposal. It was however the view of the Ombudsman that the conditions printed in fine print on the back of the policy, (which is simply handed to an insured for signature at sales stage), was not evidence that the limiting clause, which is the subject of the complaint, had been highlighted to the complainant at sales stage. It was also the view of the Ombudsman that such a unique and extremely limiting clause of a policy would require the insurer to show that the condition or term was explained at sales stage as it went to the core of what the complainant understood he was purchasing. It was suggested that where such a unique clause exists, the clause should be clearly printed on the policy proposal with a field for acknowledging that the specific condition was explained and not just that the insured was informed that there are terms and conditions which must be taken note of after the inception of the policy.

The insurer responded to this by submitting that the complainant also had a duty to ensure that he availed himself of the terms and conditions of the policy before simply signing the document.

It was pointed out to the insurer that PPR places a duty on the insurer in that the insurer is in a much better position to ensure that there is clarity at sales stage than the complainant in any event. The fine print on the back of a page is often missed, considered unimportant and impractical to read while concluding a face to face transaction.

The insurer was accordingly requested to settle the claim, which they agreed to do.

MATERIAL MISREPRESENTATION: REGULAR DRIVER DETAILS (OUTSURANCE INSURANCE CO. LTD)

Details of Complaint:

The complainant submitted a claim to the insurer for accidental damages to her motor vehicle. Her son was the incident driver. During the underwriting of the policy, she noted herself as the regular driver and the risk was underwritten on that basis. The complainant noted the vehicle's day time parking address as that of her place of employment, and the vehicle's night time parking as that of her residence.

The complainant's claim was rejected on the ground that the complainant had misrepresented the regular driver details during underwriting. An assessor was appointed by the insurer to assist with the validation of the claim. This process entailed confirming information provided during underwriting and at claims stage. The claim was discussed with the complainant's son. During this conversation, the complainant's son stated that he drove the insured vehicle more often than his

MATERIAL MISREPRESENTATION: REGULAR DRIVER DETAILS (OUTSURANCE INSURANCE CO. LTD) CONTINUED...

mother, making him the regular driver.

The assessor investigated the matter further by visiting the son's place of residence which was not the same as the complainant's. He interviewed a number of witnesses. Two security guards stationed at the entrance of the complex confirmed that they know the complainant's son and had witnessed him driving the insured vehicle on a daily basis. It was also confirmed that he parked the vehicle inside the complex. They also mentioned that the complainant's son had previously driven a different vehicle, until he bought the insured vehicle. The security guards also stated that they knew the complainant as she visited her son regularly. They submitted that they had never seen her driving the insured vehicle. A neighbour was also interviewed and confirmed that the complainant's son drove the vehicle every day and parked it inside the complex right next to his vehicle. Petrol attendants at the filling station near the son's residence were also interviewed. They confirmed knowing the insured vehicle and its driver and contended that the complainant's son was the only person they had seen driving the vehicle.

A security guard at the son's employment in Johannesburg CBD confirmed that he drove the insured vehicle to work daily. The lady responsible for the paid parking confirmed that the complainant's son had a parking space allocated to him by his employer where the insured vehicle was kept during the day.

The assessor investigated the matter further by visiting the complainant's place of residence. He interviewed two security guards who confirmed that they had seen the vehicle at the complex at which time it was being driven by the complainant's son and never by the complainant. The security guards further advised that this vehicle was not parked at the complex. The security guards stated that they had opened the gate for the complainant's son every morning and afternoon as he travellled with his mother to work.

The assessor also visited the dealership where the insured vehicle was purchased. The sales agent was interviewed and confirmed that the vehicle was sold to the complainant's son. Vehicle finance was arranged in the name of the complainant's son and he was the registered owner of the vehicle. The sales agent also stated that the complainant's son traded in his old vehicle. He took possession of the vehicle alone and was photographed.

Another short-term insurer was contacted by the assessor regarding the son's previous insurance history. The assessor was informed that the complainant's son had contacted their offices and requested a quote for the same vehicle to be placed on cover, prior to the inception of this policy. During underwriting he noted himself to be the regular driver. This quote was however not taken up by the complainant's son.

The complainant denied this evidence. Although admitting that the vehicle is registered in her son's name, she stated that he had purchased the vehicle for her to use and that she was the regular driver. She submitted a number of affidavits signed by her work colleagues stating that she was the regular driver of the insured vehicle. She argued that her son was still in shock when he submitted the claim and this would explain why he had stated that he was the regular driver.

The Ombudsman's View:

The Ombudsman reviewed all of the evidence, including the recorded conversations between the assessor and the witnesses referred to above, as well as the affidavits provided by the complainant. The decision of the Ombudsman was that the insurer had submitted sufficient evidence which, on a balance of probabilities, indicated that the complainant's son was in fact the regular driver of the insured vehicle. In the Ombudsman's view, the insurer provided the best evidence as its witnesses were independent and clear in their submissions. While the validity of the complainant's affidavits could not be tested by this office, some irregularities were noted.

It had been established that the complainant's son had been the regular driver of the insured vehicle from the inception of the policy. It was found that during underwriting, the complainant intentionally provided the insurer with incorrect details of the regular driver, despite having been advised of the relevance and importance of this information. In the circumstances the insurer had been severely prejudiced by the misrepresentation. Had the complainant furnished the insurer with the correct details, the policy would have been concluded on materially different terms.

The Insurer's rejection of the claim was accordingly upheld.

DUE CARE AND REMOTE JAMMING (HOLLARD INSURANCE (PTY) LTD)

Details of Complaint:

The complainant had two laptops insured under an All Risks Policy. The laptops were placed in the boot of his vehicle which was allegedly locked before leaving the vehicle unattended.

When returning to the vehicle it was noted that the laptops were stolen from the boot of the vehicle and a claim was lodged with his insurer. The insurer repudiated the claim on the ground that it was a condition of cover that there must be visible, forced entry into the vehicle that was left unattended and from which insured items were stolen. The complainant alleged that remote control jamming was used to open the vehicle in order to remove the laptops.

The complainant acknowledged the clause in the insurance policy but contended that the policy did not specifically exclude cover if access was gained to an unattended vehicle by remote control jamming.

The Ombudsman's View:

The principle of freedom of contract between contracting

DUE CARE AND REMOTE JAMMING (HOLLARD INSURANCE (PTY) LTD) CONTINUED...

parties was explained to the complainant and that this allowed the insurer to exclude risks in the policy wording which it considered too high to insure.

It was further explained to the complainant that it was necessary for each policyholder to take the necessary due care and precaution to avoid a loss from incurring. Although the complainant alleged that remote control jamming was utilised to gain access to the vehicle, there was no evidence that this in fact occurred. The complainant could similarly have simply left the vehicle unlocked. In recognition of the fact that leaving the vehicle unlocked would in most circumstances be considered simply negligent, the insurer inserted the policy condition that theft from an unattended vehicle must be accompanied by forceful and visible entry. This effectively excluded claims where vehicles were simply left unlocked. It is unlikely that remote control jamming would be considered forceful and visible entry but it was not necessary to decide this point in the case under consideration.

In any event, in the present case, there was no conclusive evidence of remote control jamming and therefore the claim did not comply with the condition for cover. The insurer's rejection of the claim was accordingly upheld.

USEFUL CONSUMER TIPS

Contents Cover:

1. If your policy requires security gates and burglar bars on all opening doors and windows, ensure that you have complied as non-compliance entitles your insurer to reject the entire claim.

Motor:

2. Ensure that your tracking device, if it is a requirement on your policy, is in proper working order at all times.

LET'S HEAR IT FOR OSTI

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

"Thank you so much for the great service!

.....

Once again, I express my utmost thanks and appreciation for your competency.

.....

You have dealt with my request very efficiently, in a timely and professional manner: the claim was finalised within one week."

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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