



MEDIA RELEASE – OCTOBER 2017

Unroadworthy vehicles on South African roads

In the last few years we have seen an increase in headline news reporting road fatalities as a direct result of the unroadworthy condition of vehicles.

Aside from the life-saving public policy considerations involved in maintaining the roadworthiness of a vehicle, there are important potential financial reasons to do so too. Most motor vehicle insurance policies contain clauses stating that in order for the insured to enjoy cover in the event of an incident an insured vehicle must be maintained in a roadworthy condition and the insured must exercise due care in order to prevent loss or damage.

What constitutes the roadworthiness of a vehicle is prescribed by legislation – in particular the National Road Traffic Act 93 of 1996 and its accompanying regulations. These enactments contain a list of items on a vehicle that have to be maintained in a specified manner in order to meet certain minimum standards of roadworthiness. The main parts of a vehicle that tend to be neglected, as seen in the complaints submitted to our office, are the tyres and braking systems.

Tyres and brake systems that do not meet the minimum requirements of roadworthiness will almost always result in an insurer repudiating a claim. While the insured may be able in certain circumstances to argue that the condition of the vehicle was not material to the loss suffered, when the un-roadworthy condition of the tyres and/or brakes can be shown to have caused or contributed to the accident, the insured will have no defence to the insurer's rejection.

Furthermore, should an insured fall foul of this policy requirement and the condition of the vehicle was material to the loss, the insurer will generally be entitled to repudiate not only the insured's claim for the damage to or loss of the vehicle, but also any third party's claim. This may result in the insured being out of pocket for a substantial amount of money as the following example illustrates:

David insured his vehicle for R300,000. The vehicle was financed and David paid his bank instalments of R7,000 per month. David failed to ensure that his vehicle's tyres were kept in a roadworthy condition. During a rainstorm he lost control of his vehicle and collided with an oncoming third party vehicle. The third party vehicle was a truck which, at the time of the accident, had a market value of R700,000 and was carrying a load worth R1,000,000. Both David's vehicle, as well as the truck and the accompanying load, were determined to be a total loss, i.e. damaged beyond economical repair.

David submitted a claim to his insurer who determined that his vehicle's tyres did not meet the minimum legal requirements for tread depth. The insurer repudiated the claim on the basis that the unroadworthiness of the tyres, on a balance of probabilities, caused the accident. Our office upheld the insurer's rejection of the claim.

David was liable for the full amount of the loss to the value of R2,000,000. If he could not pay the bank the outstanding finance amount, he would have had to continue paying the R7,000 instalment

per month to the bank for the remaining finance period for a vehicle he could not use. He was also liable to pay the third party's claim.

It is clear from the above example that the cost of such a claim could far exceed the cost of ensuring that a vehicle's tyres are in a roadworthy condition.

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About the Office of The Ombudsman for Short-Term Insurance

The office of the Ombudsman for Short-Term Insurance is an independent organisation appointed to serve the interests of the insuring public and the short-term insurance industry. By applying the law and principles of fairness and equity, it resolves disputes between short-term insurance companies and their clients.

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