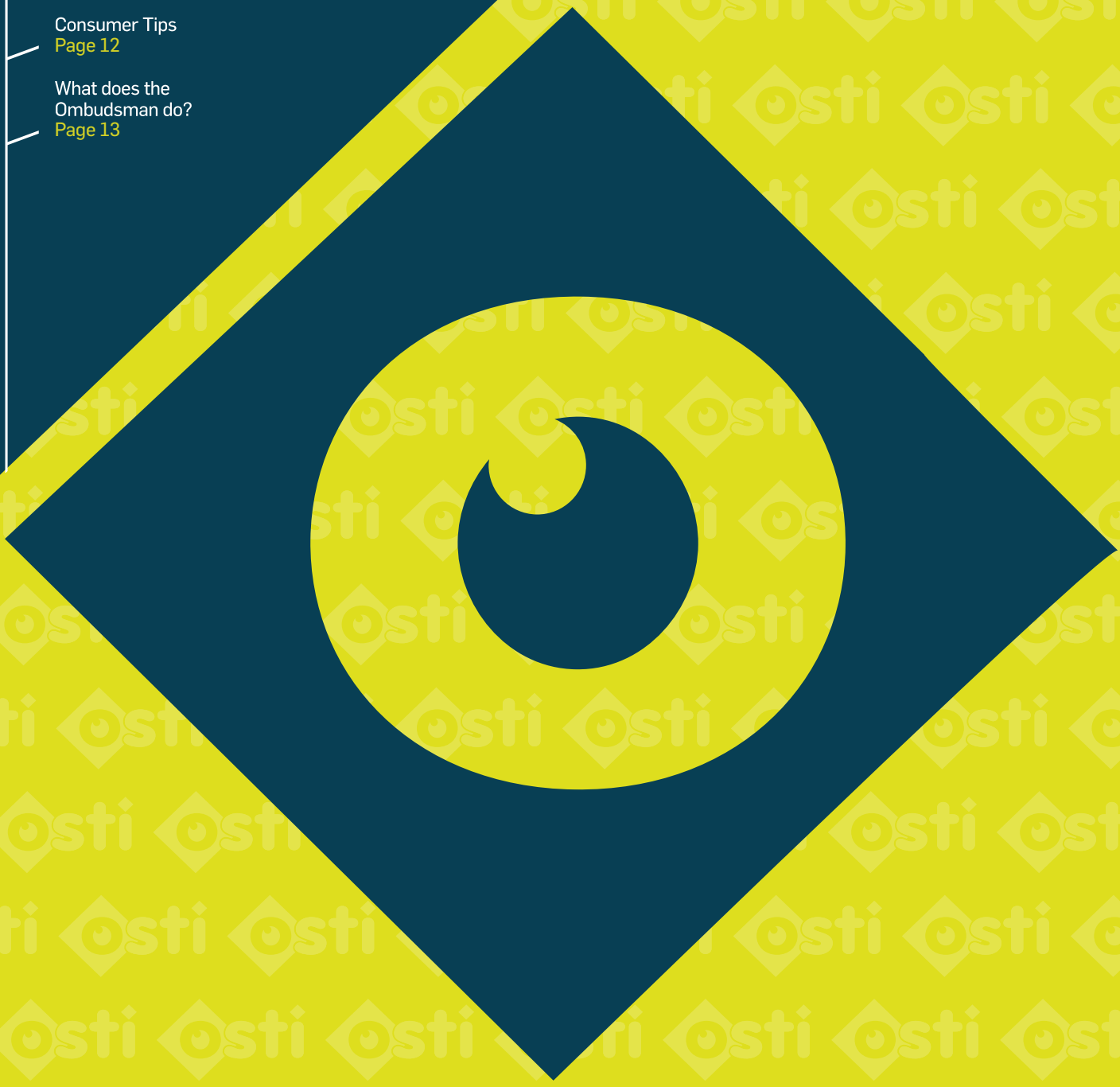
THE OMBUDSMAN'S BRIEFCASE

Issue No.2 of 2019

ombudsman for short-term insurance

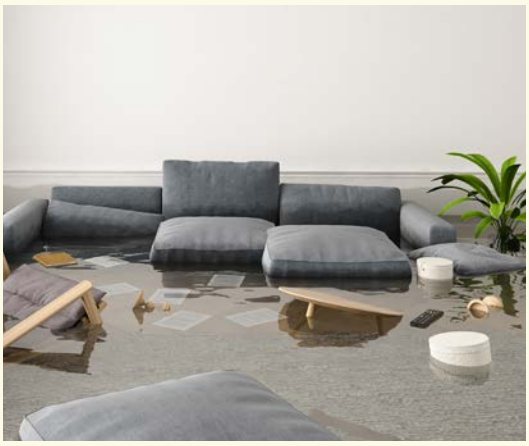


FROM THE EDITOR'S DESK

The storms experienced in the recent months in KwaZulu Natal and Cape Town have brought the effects of natural disasters very much to the centre of our focus.

It is important to note that most insurance policies are peril based policies. This means that a policy will cover only certain listed perils or insured events. In order to enjoy cover, the insured must demonstrate that the loss was insured by one of the listed perils noted on the policy, such as storm, flood or fire.

Insureds are urged to read through their policy documents to ensure that they are aware of the insured perils covered by their policies and the circumstances where cover is excluded, for example, where the damage has resulted from a lack of maintenance, wear and tear or gradual deterioration. Please see our Consumer Tips section on page 12.



NEWS AND EVENTS

INTERNSHIP PROGRAMME – APPOINTMENT OF ADMINISTRATIVE INTERNS

On 8 April 2019 OSTI appointed Comfort Sebalane, Mbali Mdakane and Daphney Mokoka as administrative interns. The administrative interns are graduates in various fields ranging from accounting, public management and governance and public administration. They are employed in the Complaints Registration Department and are responsible for registering complainants and assisting walk- in consumers who want to lodge complaints.

NEW APPOINTMENT – ASSISTANT OMBUDSMAN

On 2 May 2019, OSTI appointed Latoya Masango as an Assistant Ombudsman. Latoya has been in the insurance industry for 7 years, most recently having worked in the legal department of an insurer focusing on dispute resolution. Latoya has a passion for the insurance industry having gained various skills over the years such as claims handling, customer service and dispute resolution. Latoya also holds several insurance related qualifications and is currently completing an LLB degree. In her spare time she enjoys reading, spending quality time with loved ones, singing and travelling.

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ANNUAL REPORT LAUNCH

The Ombudsman launched her 2018 Annual Report at a function held in Johannesburg on 21 May 2019. The Annual report launch was attended by the media, insurers and other stakeholders. Senior Assistant Ombudsman, Ayanda Mazwi presented the statistical analysis of formal complaints received by OSTI. The following were the highlights of the statistical data for 2018:

- OSTI received 9 779 formal complaints and 4 026 preliminary complaints.
- OSTI recovered R87 250 982 for consumers
- 9 474 formal complaints were closed.
- Complaints were resolved within an average turnaround time of 104 days.

Senior Assistant Ombudsman, Ayanda Mazwi

As at 31 December 2018, the highest categories of complaints dealt with were:

Motor vehicle insurance at 48% of the total number of finalized complaints.

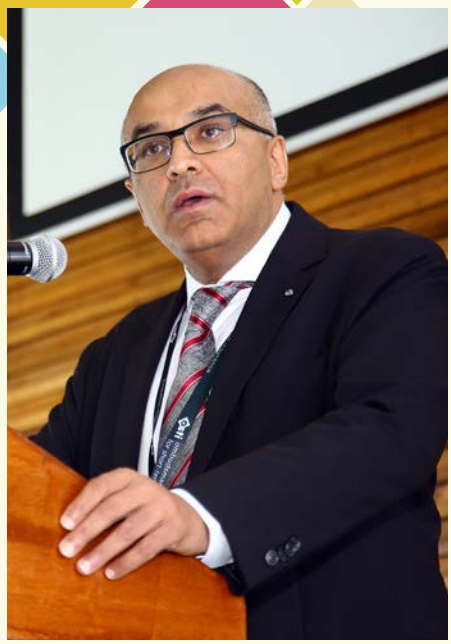
Followed by homeowners insurance at 21%.

Complaints relating to commercial insurance increased from 8% in 2017 to 9% in 2018.

Household content insurance complaints decreased from 6% in 2017 to 5% in 2018.

EXCERPTS FROM THE 2018 ANNUAL REPORT

Below are some of the exerpts from the 2018 Annual Report. For a full copy of the Annual Report please follow the link: https:/www.osti.co.za/media/1300/osti annual-report final.pdf



Haroon Y Laher,
Chairman of the Board

The Chairman of the Board, Haroon Laher stated:

"OSTI's role is not to resolve complaints in the quickest time period. Neither is its role, year-to-year, to improve the overturn rate. The role of OSTI, like any other independent Ombudsman operating within a framework of statutory regulation, is to implement justice and fairness in a process directed towards a resolution. The key responsibility of OSTI is to maintain a balance between the powers and duties of the insurer, on the one hand, and the consumer's rights and obligations on the other. In an environment where the financial sector lives under persistent mistrust, those involved can only be held to account by an independent institution like OSTI."

"The Twin Peaks model of financial regulation in South Africa gave rise to a discussion on how the ombud system can be made better. The future is upon us. It hopes to see a single Insurance Ombudsman Scheme. This will give rise to one combined entry and exit point for all insurance complaints. The existing schemes, OSTI and OLTI, will remain in existence and, importantly, continue to operate separately within their defined objectives. There will be no cross-subsidisation or cross-population between OSTI and OLTI. The governance of the single Insurance Ombudsman Scheme will be undertaken by a single board with representation from both OSTI and OLTI. The future is exciting..."

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In her address at the Annual Report Launch the Ombudsman stated:

"Merger with Long-Term Insurance Ombudsman

At the start of 2018, and in anticipation of the new regulatory and legislative framework within which all financial sector ombud schemes will soon be expected to operate, OSTI initiated an in-principle agreement with the Long-Term Insurance Ombudsman to amalgamate the two schemes into a single Insurance Ombudsman Scheme. This proposal has been endorsed by OSTI's board and by its stakeholders and it is anticipated that the new single scheme will begin receiving complaints in the latter part of 2019."

"New complaints handling process

In a continued effort to improve its service offering OSTI spent a considerable portion of its focus during 2018 designing a new complaints handling process. Many aspects of the new process were piloted during 2018 in order to ensure that its implementation with effect from 1 January 2019 was met with as little disruption to the organization as possible. Key aspects of this new process include a better complaints capturing system to ensure that OSTI is able to provide timeous assistance to all complaints falling within the ambit of its jurisdiction, a transfer process which allows insurers an opportunity to resolve complaints internally before intervention by OSTI if they have not yet had the opportunity to do so, an efficient and effective fast-track process to resolve complaints capable of swift determination, greater focus on conciliated and mediated outcomes and finally, a revised escalation process."

"Customer experience department

In an effort to improve the overall customer experience, reduce the number of internal complaints and escalations and acquire a better understanding of OSTI's strengths and weaknesses, a dedicated customer experience department was established in 2018. Naturally it will take some time before the learnings from this department filter down through the organization and the required changes to operations are implemented. However, in the short time since its establishment, this department has already provided OSTI's management with much needed insight into many of the day-to-day concerns arising from customers who make use of OSTI's services.

Senior Assistant Ombudsman Ayanda Mazwi is to be commended for the excellent work that she has done in establishing this department."

Deanne Wood, Ombudsman for Short Term Insurance

The Deputy Ombudsman, stated:

"In last year's Annual Report, the Ombudsman, Deanne Wood, touched on the anticipated evolution of financial ombud schemes under the then newly enacted Financial Sector Regulations Act 2017 ("FSRA")."

"Chapter 14 of the Act, headed "OMBUDS", is still to come into effect, a government notice having been sent out on 18 March 2019 deferring its implementation date to 1 September 2019.

Under this chapter, an Ombud Council will be established with the objective to "assist in ensuring that financial customers have access to, and are able to use, affordable, effective, independent and fair alternative dispute resolution processes for complaints about financial institutions in relation to financial products, financial services, and services provided by market infrastructures" (Section 176). By the inclusion of the word "services" we envisage that we will be required to expand our jurisdiction to deal with purely service related complaints. Currently OSTI does not deal with service issues unless the service has a direct financial impact on the complainant. This change will have the effect of enlarging our jurisdictional coverage."

"The Board of the Ombud Council will have a duty to keep the Minister of Finance informed of "trends in the nature of complaints and issues raised in complaints that ombud schemes are dealing with, and how those types of issues and complaints are being dealt with" and "the conduct of financial institutions that is giving rise to complaints to ombud schemes" (Sections 184(d) (ii) and (iii)). We will therefore be required to report to the Ombud Council not only on the trends emerging from lodged complaints but also on how these complaints were resolved. This may require further IT enhancements to our current systems to enable us to harvest more data."

"Against the backdrop of changes in the policy environment and the call by National Treasury for self-determined rationalization of ports of entry for consumers into these schemes, OSTI initiated an in-principle agreement with the Office of the Long- Term Insurance Ombudsman ("OLTI") to amalgamate the two schemes into a single insurance ombud scheme."

"The process of amalgamating with OLTI is still in an exploratory stage with key decisions to be taken during the course of 2019. The build-up to these decisions being taken presents the ideal opportunity to explore the rationale behind this decision and to ask the important questions about the necessity for this change – after all, if it ain't broke, why fix it?"

Edite Teixeira-Mckinon, Deputy Ombudsman

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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.

RETAIL VALUE – DEFINED IN THE POLICY

DISCOVERY INSURE LIMITED

Mr N submitted a claim to the insurer in respect of the theft of his vehicle, which occurred on 4 October 2018. The insurer authorised the claim.

Mr N's complaint is with regards to the settlement amount. The insurer offered to settle the claim in the amount of R17 000.00. This amount was based on the vehicle's retail value at the time of the loss according to TransUnion. Mr N did not dispute the vehicle value set out by TransUnion. He disagreed with the insurer's settlement offer on the basis that the insurer did not inform him that the value would be determined in this way.

The policy incepted on 4 October 2018 and the insured vehicle, a 1994 Toyota Conquest 1300, was insured for retail value. The insurer's Plan Schedule (schedule) was sent to Mr N. According to the cover letter accompanying the schedule, the policy document gave the insured details of what he was covered for, the premium breakdown and confirmation of his personal underwriting details. The cover letter also informed Mr N to download the Insurer Plan Guide (guide) for a 'comprehensive guide' of the benefits provided.

Mr N argued that the schedule did not define the term ''retail value'', and therefore, its ordinary meaning should apply. Mr N submitted that the average policyholder understood retail value to mean the average of retail prices actually charged in the open market and not the value listed by TransUnion. He stated that the average advertised price, in terms of an Automart mobile app, for five 1994 Toyota Conquests was R46,580. In the Western Cape, three older model Toyota Conquests were advertised for an average of R36,165. On this basis Mr N made a counter-offer in the amount of R35,000 to the insurer. The insurer did not accept the counter-offer and maintained its original offer.

In its response to the complaint, the insurer pointed out that the term ''retail value'' was in fact defined in the guide. The following is transcribed;

"Retail Value

For vehicles, retail value is the value that the vehicle can generally be bought for, from a recognised member of the motor vehicle trade industry. This value is obtained from the Auto Dealer's Guide published by TransUnion Auto Information Solutions (PTY) Limited, or any similar publication approved by us and adjusted for mileage and condition..."

The guide goes on to state the following-

"7.7 How much are you covered for after the loss or damage to your vehicle

You may choose to insure your vehicle for:

- *Market value; or*
- *Retail value; or*
- *Retail booster*

You may change this at any time. If your vehicle does not have a readily available retail or market value, you may insure your vehicle on a nominated value basis.

7.7.1 How do we calculate the retail, Retail value booster, market or nominated value of your vehicle and specified extras when you claim?

We use an independent trade authority in the motor vehicle industry to determine the retail or market value of your vehicle and any extras you have specified.

Where there is no retail or market value readily available, or

Where the retail or market value available is older than six months, we will:

– Determine the value by taking the average retail value, or market value (whichever one you have chosen), including the specified extras, given by three independent motor industry sources of our choice.

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7.7.2 Retail and market value

If your vehicle is:

Repairable – we will pay the cost of the repairs to your vehicle.

Written off, including stolen or hijacked:

– We will pay the replacement value of a new vehicle of similar make and model at the date of loss if your vehicle is less than 12 months old from first registration.

– We will pay the market or retail value at the date of loss, depending on the cover option that you have chosen if your vehicle is older than 12 months."

Mr N asserted that the insurer should not be entitled to rely on the above provisions, and consequently the values in the guide, because it had failed to draw his attention to the material fact that the retail value referred to in the schedule had a 'restricted meaning' set out in the guide. He stated that the title plan guide does not suggest that the document is more than a guide, or that it forms part of the contract of insurance. OSTI did not agree. The cover letter accompanying the schedule distinguished it from the plan guide and clearly indicated that the guide was a comprehensive guide in respect of the insurer's plans, benefits and rules. Mr N was directed to read both documents.

The following is transcribed.

"Read about your plan and benefits

- *Your* ***Discovery Insure plan schedule*** *attached gives you details on what you're covered for and your premium breakdown so you can be certain about how much you pay and your cover. Please read your plan schedule carefully – particularly your personal, driver and cover details, and let us know if any information needs to be updated.*

- *For a comprehensive guide on the Discovery Insure plans, benefits and rules you can download the* ***Discovery Insure plan guide*** *which you can find on www.discovery.co.za."*

In addition to the above, under the schedule, the insurer indicated that the guide would form part of the contract of insurance. The following is transcribed.

"Please note that this document must be read in conjunction with the Insure Plan Guide which contains the full terms and conditions of your insurance contract."

In Mr N's view the above statement was insufficient disclosure of a material fact because it was stated in ordinary text on the last sentence of page 4 of 17 pages in the documents provided to him. Again, OSTI did not agree. The statement was made on the first page of the schedule (after the cover letter) under the very clear heading "DISCLOSURE OF RELEVENT FACTS". It was not buried within unrelated text. Mr N submitted further that the insurer must consider how consumers actually behave in practice, including the fact that most consumers do not read standard written contracts thoroughly before accepting cover. As such, the terms must be brought to the insured's attention at sales stage and given appropriate prominence.

OSTI will always hold the insurer accountable where it falls short of its obligations in drafting its policy documents or at sales stage. OSTI also appreciates the challenges faced by consumers and is well placed to determine what is fair in relation to the circumstances of each particular case. With that said, considering that the policy explicitly set out how it will calculate the retail value, OSTI cannot overlook these terms simply because Mr N did not read policy documents which were made available to him before the cover incepted. Mr N was required to read the policy documents as they contain important information applicable to the contract of insurance.

Mr N's further argument was that the insurer did not prominently draw his attention to a significant limitation as defined under Rules 11.1(d), 11.4.2(g) and 11.5.1(d) of the Policyholder Protection Rules, asserting that the insurer's definition of "retail value" is restrictive. The relevant Rules are transcribed;

"11.1 Significant exclusion or limitation" means an exclusion or limitation in a policy that may affect the decision of the average targeted policyholder to enter into the policy and includes-

(d) any limit on the amount or amounts of cover.

11.4.2 An insurer must provide a policyholder with the following information-

(g) Concise details of any significant exclusions or limitations, which information must be provided prominently as contemplated in rule 10.15.

11.5.1 Disclosure after inception of policy.

An insurer must at the earliest reasonable opportunity after the inception of the policy, but no later than 30 days after such inception, provide the policyholder with all information referred to in rule 11.4 in writing, to the extent that any such information has not already been provided in writing by the insurer under rule 11.4, as well as the following information-

(d) Comprehensive details of all exclusions or limitations, including prominent disclosure as contemplated in rule 10.15 of any significant exclusions or limitations."

The definition of retail value in the guide was suitably set out under the heading "Important definitions" on page 5, and OSTI was satisfied that the sub-heading was given appropriate prominence in the text.

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The policy document (under section 7.7.1 transcribed above) goes on to detail how the insurer calculates the retail value. These policy documents were given to Mr N before the cover incepted.

Purely for the sake of completeness, we must also note that this policy was undertaken by an independent financial advisor/broker representing Mr N. If Mr N wished to contest the advice given by this broker at sales stage, he would have to approach the FAIS Ombudsman. This office does not enjoy jurisdiction on matters relating to the conduct of an independent broker or intermediary. We confirm that OSTI was satisfied that the insurer had fulfilled its obligations.

The insurer's decision under the circumstances of this case was standard in the insurance industry and was in line with the underlying purpose of short-term insurance, being to indemnify the insured. The price of a vehicle on a dealer's floor is adjusted to make a business profit. If the insurer were required to settle the claim on this price, Mr N would be unjustifiably enriched. The retail value as it is defined and calculated herein effectively indemnifies Mr N, placing him in the same financial position that he was in prior to the incident.

In its submission to our office, the insurer pointed further to the provisions under Rule 11.3.1(e) of the Policyholder Protection Rules, which state the following:

"11.3 General disclosure requirements
Language and format

11.3.1 Any communication by an insurer to a policyholder in relation to a policy must –

(a) be in plain language;

(b) not be misleading;

(c) be provided using an appropriate medium, taking into account the complexity of the information being provided;

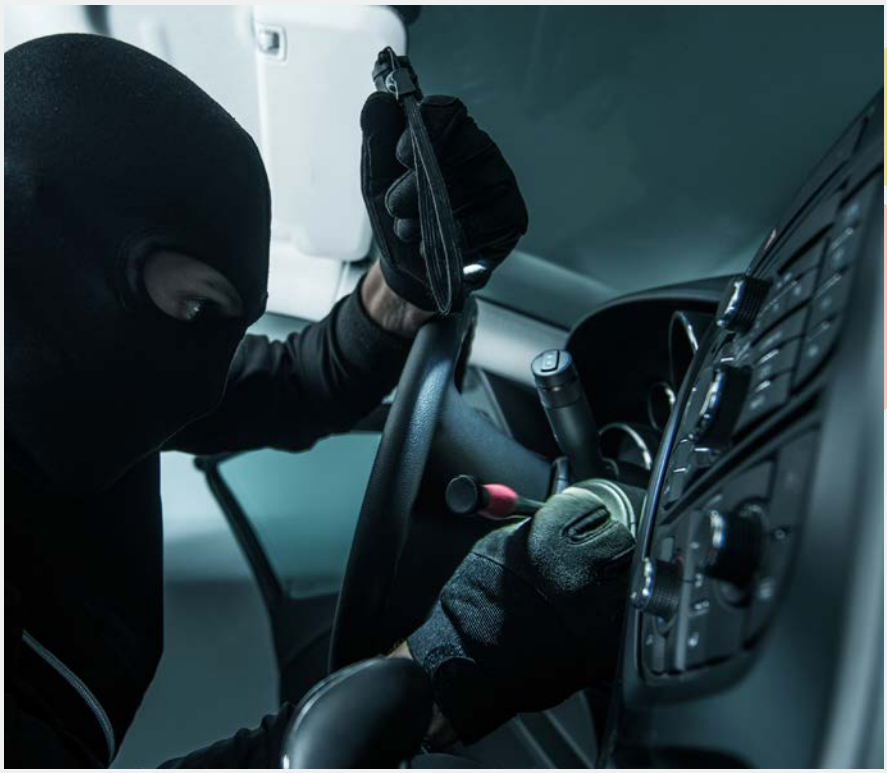
(d) where applicable, be in clear and readable print size, spacing and format; and

(e) in respect of any amount, sum, premium, value, charge, fee, remuneration or monetary obligation mentioned or referred to therein, be stated in actual monetary terms, provided that where any such amount, sum, premium, value, charge, fee, remuneration or monetary obligation is not reasonably pre-determinable, its basis of calculation must be clearly and appropriately described."
(own emphasis)

The insurer submitted that the vehicle's retail value is not reasonably pre-determinable as it is a variable amount which fluctuates on a monthly basis. It is also influenced by several other factors such as mileage and the vehicle's general condition. According to the insurer, the basis of calculating the retail value was therefore set out in the guide, and in compliance with the Policyholder Rules.

Mr N asserted that if the insurer wanted to rely on the value according to Transunion, then it should make a note in the schedule indicating the vehicle's value at the time of inception, subject to changes according to Transunion at the time of the loss. OSTI agreed that this would be a practical inclusion, however, the matter did not turn on this omission. The insurer sufficiently explained its terms in the policy documents provided. The policy of insurance must be interpreted by endeavouring to ascertain the intention of the parties as expressed from the language used in the contract, which, if clear, must be given effect to.

OSTI's view was that the insurer was justified in its reliance of the definition of retail value set out in the guide and accordingly the values set out in the Transunion guide. As such, the insurer's settlement offer was upheld.



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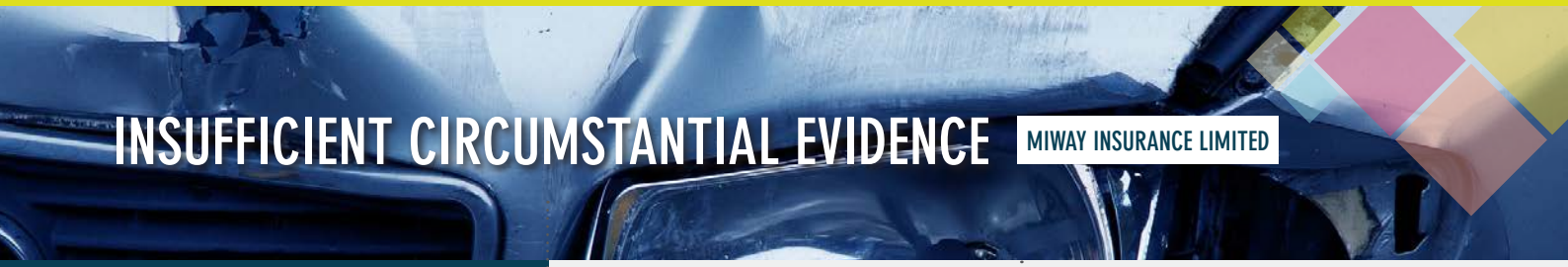

INSUFFICIENT CIRCUMSTANTIAL EVIDENCE

MIWAY INSURANCE LIMITED

Ms M submitted a claim to the insurer in respect of a vehicle accident whilst the vehicle was driven by a family member (incident driver).

The insurer rejected the claim on the grounds that the damage to the vehicle occurred when a member of Ms M's household, who has authorised access to the vehicle, used the vehicle without her consent and failed to adhere to the policy by driving whilst under the influence of alcohol and failed to comply with the insurer's reasonable request.

The insurer subsequently indicated that it would not pursue the rejection of "non-compliance with a reasonable request for information".

In support of the rejection of the claim for driving under the influence of alcohol, the insurer made reference to evidence from a security guard, tow operator, two passengers as well as video footage.

The following evidence relied on by the insurer to reject the claim, was considered by OSTI:

Security guard:

The insurer provided a transcript of its recorded conversation with the security guard. From the transcript provided the only evidence that the insurer could possibly seek to rely on was the security guard's statement that "he spoke like he is drunk that is what I noticed." No clarity was obtained from the security guard regarding what he meant by this statement. The security guard advised that he was too far away from the driver to advise if the driver smelt of alcohol.

Towing operator:

The insurer provided a transcript of the call with the towing operator. The evidence did not indicate that the incident driver was under the influence of alcohol. When the towing operator was asked whether the incident driver smelt of alcohol, he said "no I would be lying."

From the evidence of the towing operator it was established that the police were present at the scene but did not conduct any test for alcohol on the incident driver.

Passenger 1:

The insurer provided a transcript of the recording with passenger 1, who was in the insured vehicle at the time of the accident. The witness advised that he did not know what the incident driver had been drinking. When asked whether they had all been drinking, the witness advised "we were drinking I do not know about him, as he was not at the same table as us." When asked about how the incident driver was driving, the witness advised that he was not driving too fast and lost control when overtaking another vehicle.

Passenger 2:

Passenger 2 was also in the insured vehicle at the time of the accident. This witness advised that they found the incident driver at a pub. The witness did not know what the incident driver had been drinking. The witness advised that the incident driver sipped on passengers 2's drink. The witness advised that the incident driver was tipsy. He stated that he was not saying that the incident driver was drunk but that he was tipsy. The witness advised that he himself was drunk when compared to the others.

Video footage

The insurer provided video footage, which it advised was that of the incident driver arriving at Ms M's residence after the accident. The insurer submitted that in the video footage the incident driver was clearly unsteady on his feet and his eyes were blood shot. The insurer stated that this corroborated the security guard's version that the incident driver spoke "like he was drunk".

OSTI watched the video footage and disagreed with the insurer's observations. One could not establish from the video footage whether the incident driver's eyes were blood shot or not. In addition, the footage of the incident driver was footage provided after the accident. On the insurer's own version, the insured vehicle had overturned in the accident. The incident driver's gait, which the insurer sought to rely on, could on the probabilities have been as a result of the accident. The footage in itself did not indicate on a balance of probabilities that the incident driver was under the influence of alcohol at the time of the accident.

The insurer had further submitted in its response to this office that the passengers were not independent witnesses as they would have an interest in the outcome of the claim.

As Ms M's claim against the insurer is a civil claim, the onus on the insurer is to demonstrate on a balance of probabilities that the incident driver drove the vehicle whilst under the influence of alcohol and that this affected him to such an extent that it impaired his ability to drive or control the vehicle.

OSTI advised the insurer that it had provided insufficient evidence to overcome the required burden of proof. Accordingly the insurer had not discharged the onus of proving on a balance of probabilities that the policy exclusion relied on applied to reject the claim.

OSTI recommended that the insurer settle the claim. The insurer agreed to comply with OSTI's recommendation and settled the claim.

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MISREPRESENTATION/ NON-DISCLOSURE GUARDRISK INSURANCE CO LTD

Mr T submitted a claim to the insurer in respect of the theft of his motorcycle, which occurred on 11 August 2018, whilst it was parked outside his cousin's home.

The insurer rejected the claim on grounds that Mr T had failed to take steps to prevent the loss and failed to disclose a change in risk address.

The insurer submitted that on 11 August 2018 at 17h00 Mr T parked his motorcycle outside his cousin's premises next to the gate on the pavement. Mr T went out and returned at 23h30 and found that the motorcycle had been stolen. The insurer advised that Mr T had parked the motorcycle at his cousin's premises for the past 2 months and had failed to notify the insurer of the change in risk address.

The insurer advised that the motorcycle was visible to any person passing by the home making it easy for any suspect to plan and carry out its theft. The insurer stated that Mr T did not secure the motorcycle with a chain or affix it to an object.

Mr T disputed the rejection of the claim and submitted that his motorcycle had been parked at various locations such as malls and restaurants without it being chained or secured to any object. He further advised that the motorcycle had been kept at his cousin's premises whilst undergoing repairs. The motorcycle had been parked outside the premises on the day it was stolen as the repairs had been completed. On Mr T's version there had been no change in risk address.

The insurer submitted that in terms of the policy Mr T should have taken all reasonable steps and precautions to prevent the loss. The insurer submitted further that Mr T should have realized that there was a possibility that his motorcycle could be stolen and that he should have taken the necessary steps to prevent it from being stolen.

This office requested the insurer to address us on the materiality of the alleged change of risk address to the loss. The insurer was requested to advise as to how it would have underwritten the risk if it had been advised that Mr T would be keeping the motorcycle at his cousin's premises for two months whilst undergoing repairs.

The insurer submitted that, although there was a change in address, this would not have affected the overnight parking as the policy stated 'Locked garage or behind locked gates'. Mr T had kept the motorcycle behind locked gates whilst it was at his cousin's premises.

The insurer had thus not proven that the change in risk address was material to the loss and the insurer had not demonstrated any prejudice suffered as a result of the alleged change in risk address.

Accordingly the insurer had not proven that it was entitled to reject the claim on the grounds of a change in risk address.

The test for a successful defence when relying on a lack of due care clause is found in the case of **Santam Bpk vs CC Design BK (1998) 4 All SA 70 (C).** The court in the aforementioned case provided that insurer had to prove on a balance of probabilities the following requirements in order to succeed with a defence of this nature:

1) that the insured was reckless
2) the insured knew that the steps taken were inadequate.
3) What the insured actually foresaw as opposed to what he should have foreseen.
4) The insured knowingly courted the action and consequence/s.

The insurer in this matter had failed to produce any evidence to the effect that it could reasonably be inferred that the actions of Mr T were reckless. Nowhere in the evidence did it indicate that Mr T acted recklessly by parking the motorcycle outside his cousin's home. It could also not be reasonably inferred from the circumstances that Mr T knowingly "courted danger".

The insurer had stated in its rejection letter that Mr T had not secured the motorcycle with a chain or to a fixed object whilst leaving the motorcycle outside the premises. The insurer had not proven that it was a requirement of the policy that, when leaving the motorcycle unattended, Mr T had to have secured it with a chain or to a fixed object.

OSTI therefore disagreed with the insurer's decision to reject the claim on a lack of due care.

As the insurer failed on both rejection reasons it was OSTI's view that the claim be settled. The insurer agreed to comply with OSTI's recommendation and the claim was settled.

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WEAR AND TEAR IS NOT COVERED

COMPASS INSURANCE CO LTD

Ms M submitted a claim to the insurer for water damage to the cupboards, a wall, tiles and an electrical plug.

According to Ms M she discovered, at 05h30, that the unit above hers had suffered a burst pipe which led to her own unit becoming flooded and to the resultant damage. The repairs were only done to the pipe at approximately 11h30 the same morning.

The policy was taken out by the body corporate and provided cover for the various units forming part of the sectional title development as well as the common areas.

The insurer declined liability for the claim on the grounds that the pipe had burst as a result of wear and tear. The policy did not cover damage caused by wear and tear, gradual deterioration and gradually operating causes. The policy also did not provide cover for resultant damage.

The insurer relied on a report by an assessor to decline liability for the burst pipe.

The insurer further declined the claim for the resultant water damage to a wall, tiles and kitchen cupboards on the basis that the policy excluded such damage.

With regards to the cupboard kick plates and tiles, the assessor's finding was that the damage had occurred over a period of time. Various tiles were found to make a hollow sound, to have signs of impact damage and some had completely dislodged. According to the assessor the hollow sound and the dislodged tiles indicated that the tiles had not been installed correctly. One of the tiles even showed that the tile adhesive had been incorrectly applied.

Supporting photographs were provided reflecting the nature and cause of the damage.

Ms M had also provided her own photographs. These photographs showed different shades of colour on some of the tiles, suggesting discolouration as Ms M had argued. Other photographs depicted a flooded floor. According to Ms M, the tiles were exposed to water for such a long period of time that they had absorbed some of the water and this led to the damage.

In response the insurer argued that exposure to water over approximately seven hours could not have resulted in the damage in question. The insurer had pointed out that when the loss was assessed, a few weeks later, there was no sign of the tiles being discoloured. In any event, it argued, even if the tiles had absorbed water, this would not have resulted in the damage assessed. The nature of the damage found at the time of assessment was clearly not consistent with water damage. Instead it was due to the incorrect application of tile adhesive and incorrect installation of the tiles, according to the insurer. Some of the tiles had also been broken over a period of time and as a result of poor bonding. The nature of the damage also suggested impact as a cause.

It was the insurer's submission that, if the tiles had been properly installed, exposure to water would not have resulted in damage. Tiles are meant to be able to withstand exposure to water. Also, had water been the cause of the damage, the damage would have been consistent throughout the

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.

floor area, instead of only sections of the area being affected.

In deciding the matter OSTI also considered another quotation which stated that damage had been caused when accessing and repairing the burst pipe.

An additional quotation received by a service provider appointed by the insured stated that *"damage was caused by a burst pipe in the kitchen and flooded the complete unit. Tiles are discolouring where the water was lying and cracking."* It was not clear whether the above was an observation made by the contractors themselves or was merely what they had been advised of. It was probably not the contractors' own assessment, as the burst pipe was not even in the same unit but the unit above.

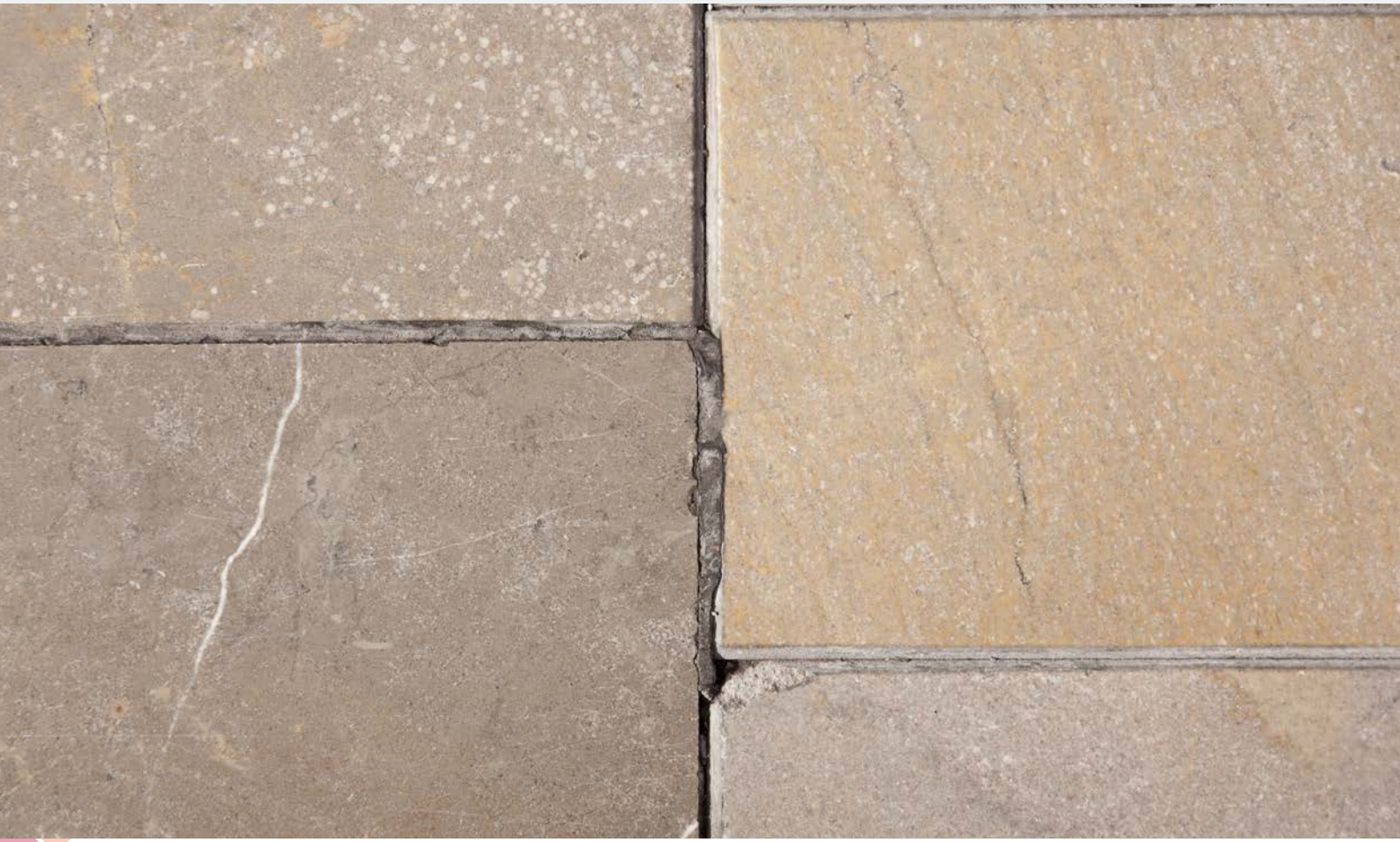
In addition, it was noted that these contractors did not explain how and why they reached the conclusion they did.

Accordingly, the report by the assessor was more compelling as it explained why the damage was attributed to causes other than insured perils.

Ms M argued that the delay by the insurer in assessing the damage also contributed to the loss and to the fact that the assessor could not then establish the discolouration of the tiles. We noted in this regard that while the tiles may have been temporarily discoloured as alleged by Ms M, discolouration was not an insured peril and was not necessarily damage. In the same way that a wet tile is not necessarily a damaged tile, Ms M would still have needed to prove that the tiles were in fact water damaged. The only visible damage to the tiles was not consistent with water damage. Ultimately the evidence submitted by the insurer in support of its stance was the more compelling evidence.

With regard to the damage to the electrical plug, Ms M was given the benefit of the doubt by the insurer. The contractor found, when inspecting the plug, that the damage was not inconsistent with exposure to water. This part of the loss however fell within the applicable excess of R3 000. The cost of repair to the plug was found to be R1 500.

OSTI was therefore unable to assist Ms M and the dispute was resolved in favour of the insurer.



OSTI CARES

In the spirit of Human Rights Day, OSTI visited the Princess Alice Adoption Home, a place of safety for abandoned and orphaned babies, to hand over its contribution of, amongst others, nappies and formula.

Jo-Anne Schermeier, the Manager of Princess Alice Adoption Home, said: "*The amazing donation came to us at the most critical time, and especially the milk formula for our babies, as we are battling to get stock from our suppliers and this then results in us having to purchase at full retail price, which is not in our budget.*"

During the Annual Report Launch, OSTI utilised sustainable table centre pieces with the aim of donating them to a worthy cause. The beautiful fruit centre pieces were dismantled after the launch and donated to the Princess Alice Adoption Home, where they were utilised as snacks for the children.

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CONSUMER TIPS

1. Thinking of renovating your home? Poor design and faulty workmanship on your house may result in damage not being covered by your insurance policy.

2. The dry winter months are the best time to carry out roof maintenance. Homeowners/buildings insurance policies do not cover maintenance related issues. Regular maintenance helps prevent resultant internal damage.

3. Buildings insurance policies do not cover damage arising from wear and tear, including wear and tear to your roof. Regularly inspect your waterproofing and sealant to avoid damage to your roof and contents.

4. Don't assume that all wall cracks are as a result of an insured peril. Buildings insurance policies do not generally cover damage arising from a gradually operating cause, such as the settlement of foundations. Get an expert opinion and take the necessary precautions to avoid a costly repair.

5. Inspect and maintain the tiling in all areas of your home. Tiles do not just become loose, even if exposed to water. Poor tiling installation is generally excluded from building insurance policies.

6. Insure the things you love. Everything in your home costs money to replace. Don't let disaster leave you empty handed. Make sure that you have the correct cover in place.

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WHAT DOES THE OMBUDSMAN DO?

How we can assist you if you have a complaint against your short-term insurer

MISSION

To resolve short-term insurance complaints fairly, efficiently and impartially.

ABOUT US

We resolve disputes between consumers and short-term insurers:

- as transparently as possible, taking into account our obligations of confidentiality and privacy;
- with minimum formality and technicality;
- in a cooperative, efficient and fair manner.

We are wholly independent and do not answer to insurers, consumer bodies or the Regulator.

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.

You can now also lodge a complaint online, please visit our website and click on "Lodge a Complaint" and follow the easy prompts

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 follow the prompts.

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Address:
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