IN THE OFFICE OF THE OMBUD FOR FINANCIAL SERVICES PROVIDERS PRETORIA

Case Number: FOC4250/06-07/KZN (3)

In the matter between:-

MELISHREE MADURAY **Complainant**

and

ACTION PLAN MANAGEMENT **First Respondent**

RENASA INSURANCE COMPANY LTD **Second Respondent**

DETERMINATION IN TERMS OF SECTION 28(1) OF THE FINANCIAL ADVISORY AND INTERMEDIARY SERVICES ACT NO. 37 OF 2002 ('FAIS ACT')

PARTIES

[1] The Complainant is Ms Melishree Maduray, an adult female of 9, Ironhaven Place, Foresthaven, PHOENIX, 4068.

[2] The First Respondent is Action Plan Management CC ("APM"), a duly registered close corporation with Registration No. 96/08805/23 and its principal place of business at 53, 13th Avenue, EDENVALE, 1609 GAUTENG. It is a registered Financial Services Provider with Licence No. FSP 13134 issued in terms of the FAIS Act.

[3] The Second Respondent is Renasa Insurance Company Limited, a duly registered public company with its principal place of business at Renasa House, 170 Oxford Road, MELROSE, JOHANNESBURG, 2196 ("Renasa") and a registered Financial Services Provider with Licence No. FSP 15491 issued in terms of the FAIS Act.

The background

[4] The background to this determination is as follows hereunder.

4.1 Complainant caused her motor car to be insured for R146 400.00 by Renasa through APM as her broker. The short term insurance product is called Skysure and is underwritten by Renasa. Renasa outsourced the administration of the product to Unify. Cover commenced from 1st June 2006.

4.2 The policy contains a so-called "Good Citizen Warranty". Due to the unusual nature of the warranty it is worth stating it in full (with all the grammatical and spelling errors). It reads –

*"**MOTOR SECTION***

"GOOD CITIZEN WARRANTY

*"**Condition Precedent to Liability –** The insured hereby waives and holds the Company harmless for any loss, damage or liability if the vehicle is used other than in accordance with the laws, regulations, road and traffic ordinances and bylaws of South Africa, including but not limited to, the transgression of any speed limit, parking the vehicle illegally, disobeying and contravening of road and traffic ordinances, driving under the influence of alcohol, but for this warranty, instituted a claim against the Company, unless the motor vehicle is stolen. This warranty overrides any conflicting wording in the policy and any endorsements.*

"The Insured agrees and acknowledges that the Skytrax tracking system that uses both General Packet Radio Services ("GPRS") on the GSM cellular network, as well as Global Positioning Systems ("GPS") shall be the exclusive measurement by which the use of the Insured's vehicle shall be monitored in terms of this Policy.

"The Insured shall bear the onus to prove the inaccuracy of the Skytrax tracking system should the Insured dispute same."

4.3 On 31st July 2006 at about 7H45 complainant's car overturned while she was driving it when, according to her, she swerved to avoid an animal crossing the road. The vehicle was damaged beyond economical repair and she duly submitted a claim. The claim was repudiated because, according to the insurer, she had contravened the Good Citizen Warranty by driving above the speed limit. The tracking device installed in the vehicle apparently recorded the speed of the vehicle as 161 kilometres per hour at the time of the accident. However, the complainant states in the claim form that she was travelling between 110 and 120 kph. The contract for the tracking device[1] places the onus for proving that the tracking device was inaccurate on the insured. I will revert to this aspect, later on in this determination.

4.4 Complainant says she was unaware of the Good Citizen Warranty as she had neither been told about it by the broker nor had she received a copy of the Schedule of Cover or policy containing the terms and conditions of the warranty.

[1] The Telematrix Agreement marketed by Skysure.

The relief sought by Complainant

[5] Complainant seeks monetary compensation for her vehicle which was written-off as a result of the accident.

Investigation by this Office

[6] Complainant initially complained to the Ombudsman for Short Term Insurance (OSTI) by e-mail dated 25 October 2006 in which she states –

6.1 She was informed by her broker on 6 October 2006 about the repudiation of her claim by Renasa.

6.2 She investigated the reason why and was told that she had contravened the Good Citizen Warranty in the policy by driving at a speed higher than the maximum permitted on the relevant road.

6.3 She then "*went through the policy documents I had received from my broker on contracting with the insurance company and did not find any clause which negates them from liability for any reason* (my emphasis). *Further on the 19th of October 2006 I called the broker who arranged my insurance and he re-affirmed that I did not have any such clause in my contract."* In an e-mail dated 27 November 2006 to Zanobia Rassulmia at OSTI she explains which "policy documents" she was referring to. She says, "*I did not receive copies of my insurance policy from my broker. I was sent copies of my policy for the tracker system and my broker informed me that the document was sufficient*

fro (sic) my insurance....the institution receiving my premiums are Unify SA fro (sic) a Skysure insurance contract". It is common cause that the Good Citizen Warranty paragraph is to be found in the policy issued by Renasa.

6.4 On 24 October 2006 she was telephonically told by a manager of the second Respondent that the broker had informed them that she was aware of the terms and conditions of the policy.

6.5 Complainant provided this Office with a copy of the voice log she obtained from OSTI of a telephonic discussion between a Renasa employee (one Ryno) and Riaan Swanepoel of APM. Ryno tells the broker that he unsuccessfully tried to contact the complainant and wanted to know from him (the broker) whether complainant was aware –

6.5.1 of the driver behaviour policy *(sic)* ("weet sy dat dit 'n driver behaviour polis is?);

6.5.2 that she can be monitored; and

6.5.3 that she was signing a three year contract for the tracking device.

Swanepoel tells Ryno that complainant is indeed aware of them.

6.6 However, complainant denies that her broker told her "telephonically or otherwise" that there was any specific clause about good driver behaviour. He told her that the tracker was simply to track the whereabouts of the car. She thought she was insured "under any circumstances". She wanted the car repaired but was told that it was irreparable.

[7] The OSTI then investigated the complaint and this Office has been provided with, *inter alia,* copies of the exchange of correspondence between his office and Renasa. A senior person at Renasa, Mr Jon-Marc Loureiro took over the handling of the claim. He said he himself wanted to deal with the OSTI "(*i)n light of the delicacies of this matter...".*

[8] The tracker had recorded complainant's speed at the time of the accident to be 161 kilometres per hour in what complainant informs this Office is a 120 km per hour zone. Mr Loureiro was of the view that complainant was grossly negligent in driving at that speed.

[9] An Assistant Ombud at the OSTI, pointed out to him in a letter dated 22 November 2006 that it was the view of his office that –

> *"driving at an inappropriate or excessive speed would not by itself constitute a failure to take due care and precaution on the part of the Insured....that this would not constitute gross negligence by itself. We would further more refer you to the case of* Santam v CC Designing, *which has direct reference to the matter, and more especially the onus of proof that the Insurer would be required to satisfy. At best on the facts of the current complaint, it is our view that the conduct of the Insured would indicate negligence, however the purpose of the insurance contract is to provide cover for such negligent conduct.*
>
> *"In light of the unusual clauses/provisions in the policy, and the failure on the part of the Insurer to take measures to bring same to the attention of the*

Insured, kindly confirm whether Insurers are prepared to reconsider the matter."

[10] Mr Loureiro replied the next day by e-mail. While he conceded that "*typically an insurance policy insures a person against their own negligence – that is not the basis of an insurance policy. [The basis] is that parties must agree that the insured lays off the risk of a certain happening to the insurer who accepts the risk for an agreed premium."* He goes on to argue that limiting cover to specific types of risks while others are excluded is not "*contra bonos mores".*

[11] In an e-mail dated 9 November 2006 Mr Stephan de Wet of Unify Africa (Pty) Ltd reports to Mr Loureiro that he met the broker (no doubt a reference to Mr Riaan Swanepoel of APM) who told him that he had informed complainant of the driver behaviour policy and was prepared to testify to that effect. De Wet says Swanepoel also alleged that an e-mail was sent confirming the telephone conversation but that this e-mail cannot be found. De Wet further says that there was no voice logging in operation at APM at the time that this policy was placed on cover. As will be apparent below, this is contrary to what APM's legal representative told this Office in his representations on behalf of the first respondent.

[12] APM was asked by this Office to furnish a copy of any voice logs pertaining to the discussions between Mr Riaan Swanepoel and the complainant and if there were no voice logs then a copy of the record of it ought to have kept in accordance with the General Code of Conduct for Authorised Financial Services Providers and Representatives (the Code) framed under the FAIS Act.

[13] The broker's legal representatives responded in an e-mail dated 17 July 2007 that –

> *"a recording was made but during that particular period of time, the specific employee experienced problems with his computer and client could therefore not access the backup".*

[14] In an earlier letter dated 19 June 2007 the broker's legal representative tells this Office –

> *"The Broker was given a disk containing information regarding the product. The Broker was inter alia told that Renasa/Unify would run a call centre, which would log all calls between the Insurer and the clients. The broker was also informed that <u>the insurer</u> would inter alia explain the product to the client, more specifically the provisions of the policy relating to driver behaviour (my emphasis).*
>
> *" . . . (under) the heading "Sky-sure Call Centre Procedures", . . . the Broker was informed that the client would be told the following:*
>
> *"This special insurance product with very competitive prices are (sic) subject to the following:*
>
> *.....*
>
> *2. Driver behaviour control. (ex: over speeding, harsh breaking (sic) accident analysis or any conflicting statement or record-tracing in regard to the lodge (sic) claim can cause a repudiation."* (The printout

of the information on the disk is replete with numerous grammatical and spelling errors.)

[15] The further procedures set out in the disk are that the Broker will inform the insurer of a prospective client. The insurer will then contact the client who would be informed, inter alia, of '2' above.

[16] The client would then complete an Insurance Proposal Form, which would be faxed to the Broker, who in turn would fax it to the insurer.

[17] The client would enter into two agreements. One was the Insurance Agreement and the other the Telematrix Agreement (the latter for a period of three years) relating to the satellite-tracking device. Both agreements would be sent to the client by the insurer. The broker denies having received the schedule of insurance from the insurer and, it says, the insurer could not provide proof that it was in fact sent to it. The broker further says that it was given an undertaking that the insurer would provide the insured with a copy of the Schedule of Insurance.

[18] The OSTI eventually informed the complainant in a letter dated 2 March 2007 that –

> *"...it is the view of the Ombudsman that the decision of the Insurer to reject the claim, cannot be faulted".*

[19] The OSTI further informed the complainant that she appeared to have a potential complaint against the Intermediary and suggested that she contact this Office for assistance in that regard. This highlights once again what I have mentioned in the past: the frustrations faced by the average consumer when trying to obtain relief

due to the jurisdictional minefield of the various Ombud schemes. In my Annual Report for 2006 – 2007[2] I said, *inter alia* –

> *"Linked to consumer confusion caused by lack of awareness is the blurring of the lines that distinguish the areas of jurisdiction of the various Ombudsmen.*
>
> *". . .*
>
> *"Since the three Acts – FAIS Act, FSOS Act and the National Credit Act – are applicable to financial services in the widest sense, it becomes clear that all the Ombuds could conceivably enjoy jurisdiction in the same complaint involving the same Complainant."*

In the same report I further stated[3] –

> *"Until there is a common independent platform for the resolution of disputes, the public will continue to suffer confusion in what can only be described as a jurisdictional labyrinth or Ombud market place."*

It is clearly not in the interests of the consumer and the financial services industry to have a plethora of Ombuds as, in my view, it does not assist in sustaining the integrity of the industry.

[20] As will be apparent later on in this determination, I have had to exercise jurisdiction over Second Respondent in terms of the FAIS Act even though the OSTI apparently did so within the framework of his own terms of reference.

---

[2] The Office of the Ombud for Financial Services Providers – Annual Report 2006 – 2007: "Ensuring consumer confidence in the resolution of disputes in financial services" pp 37 – 41.

[3] "Integrated operational report" pp 6 – 8.

The Issues

[21] The following issues arise for determination:

21.1 Whether the broker through its employee (Riaan Swanepoel) informed the complainant of the Good Citizen clause or not - a factual dispute.

21.2 Whether the broker was under a duty to inform the insured of any material and unusual clauses in the policy of insurance; more particularly in this case about the Good Citizen Warranty in circumstances where the insurer undertook to do so through its call centre and whether he was also under a duty to send a copy of the policy of insurance to the insured.

21.3 Whether the insurer (second respondent) can be held liable for complainant's loss.

21.4 Whether this Office may exercise jurisdiction over the insurer, i.e. the second respondent.

21.5 The amount of complainant's loss.

Determination and reasons therefore

[22] I deal firstly with the factual dispute, that is, whether the broker, through its employee Riaan Swanepoel, informed the complainant of the Good Citizen Warranty

or not. According to the voice log of the conversation between Ryno and Swanepoel, the latter says he informed the complainant of the warranty.

[23] Swanepoel also told De Wet of Renasa that he informed complainant of the warranty but goes further and says an e-mail was sent to complainant confirming it. He could not produce the e-mail. De Wet says there was no voice-logging in operation at APM at the relevant time whereas APM's legal representative says the opposite; that a recording was made but due to computer problems the backup could not be accessed.

[24] This Office requested APM to provide copies of the record of advice, which it did not. It appears that no such record was kept and would therefore be a contravention of the Code. Section 3(2)(a) of the Code is important. It states –

> *"(a) A provider must have appropriate procedures and systems in place to –*
>
> > *"(i) record such verbal and written communications relating to a financial service rendered to a client as are contemplated in the Act, this Code or any other Code drafted in terms of section 15 of the Act;*
> >
> > *"(ii) . . .*
> >
> > *"(iii) keep such client records and documentation safe from destruction.*

It is apparent from the facts before me that the first Respondent did not comply with the section.

[25] I turn then to whether the broker was under a duty to inform the insured of any material and unusual clauses in the policy of insurance; more particularly about the Good Citizen Warranty in circumstances where the insurer undertook to do so and to also send a copy of the policy of insurance to the insured.

[26] The OSTI conveyed to the insurer that given the decision in "Constantia v Compusource" (see below) the insurer was *"required to take additional steps to bring to the attention of the Insured, any unusual clauses/provisions contained in an insurance contract."* Renasa's response in this regard was that the broker had brought the warranty to the attention of the complainant. That response does not avail the insurer for three reasons.

26.1 Firstly, given the facts of this case, the probabilities, in my view, favour the complainant's version that Swanepoel did not inform her of the warranty.

26.2 Secondly, the insurer had taken it upon itself to inform a prospective insured of the warranty. It failed to do so.

26.3 Finally, section 47 of the Short Term Insurance Act 53 of 1998 obliges a short-term insurer to provide the insured with a copy of the policy within thirty days after entering into the policy. The insurer had to provide a copy of the policy document to the insured. There is no proof that it did so. The Complainant says she did not receive it. In any

event, it is important to note that this obligation on the part of the insurer does not relieve it in the circumstances of this case to have made proper disclosures as required by the FAIS Act and the Code prior to entering into the contract of insurance given that it had already committed itself to do so.

[27] The reference by the OSTI to the *Constantia case*[4] was apposite. There the insured relied on the contention that they were unaware of an unusual clause in the insurance policy when they entered into the agreement and that both the insurer's representatives had failed in their legal duty to alert them to its existence. The Supreme Court of Appeal held, *inter alia,* that a reasonable person (in this case the insurer) would have foreseen that a prospective insured who failed to peruse the policy with care might well have missed the full implications of the clause. The Court held further, that the reasonable person would have enquired from the insured whether he appreciated the meaning of the clause and that their failure to adopt this approach had as a consequence that the insured could not be held bound by the provisions of a clause to which it did not and could not reasonably have been thought to agree.

[28] It is therefore unfortunate that the OSTI changed his stance and expressed the view that –

> *"...it is the view of the Ombudsman that the decision of the Insurer to reject the claim, cannot be faulted".*

[4] *Constantia Insurance Co Ltd v Compusource (Pty) Ltd 2005 (4) SA 345 (SCA).*

The question arises whether in so doing the OSTI had made a formal "ruling" on the matter as contended for by the respondent in an e-mail dated 11 March 2008 from Mr Loureiro to this Office. In my view, he did not. He merely expressed his "view". He did not give reasons why he changed his initial view. It would appear that he relied on the insurer's submission that the broker had informed the complainant of the warranty. The OSTI was of the view that there may be a potential complaint against the intermediary and accordingly forwarded the complaint to this Office. However, I am of the view, for the reasons stated above that the insurer is also at fault. I am therefore compelled to determine this matter in terms of the FAIS Act not only as far as the first respondent is concerned, but also the second respondent for the reason that the insurer undertook to render financial services to the complainant in this case but failed to do so.

[29] I must stress that the second respondent was not merely a product provider. It went beyond that on its own accord. It decided, as I said earlier, that it would render financial services in that it would advise a potential client, explain the product to him or her in order to enable her to make an informed choice. To this extent it conducted itself in the capacity of an intermediary and did not merely provide the financial product which some other intermediary sold to a client. To the extent that it committed itself to render services as an intermediary the second respondent falls squarely within the ambit of the FAIS Act.

[30] I turn then to the so-called Good Citizen Warranty[5]. A careful reading of the wording of the warranty shows that it is virtually impossible for an insured to at all times

[5] See par 4.2 above.

comply with all of its provisions, which are onerous in the extreme. The insurer is excluded from liability if "*the vehicle is used other than in accordance with the laws, regulations, road and traffic ordinances and bylaws (sic) of South Africa...."* I dare say that it would be virtually impossible to find a driver who has not at some or other time inadvertently, if not deliberately, contravened one or other road traffic law or regulation. One of the exclusions from liability is for "*illegal parking."* I am not sure what risk the insurer sought to minimise or eliminate by including the clause. One can envision numerous examples of illegal parking which would have no bearing on the risk assumed by the insurer. The insured may well be taking the risk of being fined, perhaps, but what risk does it pose for the insurer? Another clause for exclusion from liability is based on "harsh braking". There may be a perfectly valid reason for harsh braking. Again, many examples spring to mind. Indeed, by not braking "harshly" to avoid an accident may well increase the risk for the insurer! Given the wording of the warranty, an insured may be forgiven for thinking she may just as well park the car in her garage and not drive it at all for fear that she may unintentionally or for an otherwise valid reason unavoidably breach the warranty and find that she is not covered. This, to my mind, clearly negates the very purpose for which insurance cover is taken: to cover, *inter alia,* one's own negligence causing loss. The complainant, rather poignantly says "*I was of the understanding that I was insured under any circumstances...." Gordon & Getz*[6] state *"One of the objects of insurance being to protect the insured from loss due to his own or his servant's negligence, the insurer is liable in respect thereof even if such negligence constitutes a crime."* The OSTI, in my view, correctly summed this up in his initial attitude to the

[6] The South African Law of Insurance 4 ed (1993) at 183. (Footnotes omitted.)

complainant's claim, i.e., that exceeding the speed limit does not necessarily constitute negligence even though it may be a contravention of the law. The basis for rejecting the claim is based on the insured allegedly exceeding the speed limit, which would be a breach of the warranty. However, the complainant (in the claim form) says she was travelling between 110 and 120 kph. The contract for the tracking device[7] places the onus on the insured to prove that the device was inaccurate. I would venture to suggest that it would be virtually impossible for the insured to do so given that the tracking is done via satellite. In any event, I do not make any finding on the accuracy of the device. The basis for the Respondents' liability rests elsewhere, as is apparent from this determination.

[31] The crux of the matter is whether the Good Citizen Warranty, containing the onerous clauses that I have mentioned was brought to the attention of the Complainant. Another issue is whether these onerous clauses are acceptable in a new constitutional dispensation with its emphasis on human dignity, equality and freedom. I am highlighting what to my mind are unconscionable, oppressive or unreasonable clauses inserted in the warranty contained in the motor policy. In a Constitutional Court case[8] dealing with a time bar clause, Sachs J, (in a minority judgment) in the context of standard form contracts said**:**

> **"***A strong case can be made out for the proposition that clauses in a standard form contract that are unreasonable, oppressive or unconscionable are in*

[7] The Telematrix Agreement marketed by Skysure.

[8] *Barkhuizen v Napier 2007 (7) BCLR 691 (CC)* at 729 par [140] and [144]

general inconsistent with the values of an open and democratic society that promotes human dignity, equality and freedom.

"[144] ...Insurance for car users is not a luxury but part and parcel of every-day life, a virtual necessity for many vehicle owners. The insurance industry deals with members of the public who come off the streets and place their faith in the solvency, efficiency, probity and integrity of the insurers....Insurance thus has become a necessity for large sections of our society- it is not a personal indulgence. The insurance industry is highly organised and large insurance companies play a major role in public life. The public interest in ***promoting fair dealing in insurance contracts so as to protect relatively vulnerable individuals contracting with large, specialist business firms****, is accordingly strong (emphasis added)."*

[32] The learned Judge also refers to the South African Law Commission's proposals which led to the publication of the Consumer Protection Bill[9], which is presently before Parliament. I take comfort in the fact that Section 50(1) of the Bill provides that any provision in an agreement in writing that purports to limit in any way liability of the supplier is of no force and effect unless:

"(a) the fact, nature and effect of that provision is drawn to the attention of the consumer before the consumer enters into the agreement;

"(b) the provision is in plain language. . . ; and

[9] Government Gazette 28629 GN R489, 15 March 2006.

"(c) if the provision is in a written agreement, the consumer has signed or initialled that provision indicating acceptance of it."

The first two sub-clauses are already provided for in the FAIS Act[10] and sub-clause (c), if enacted into law will serve to bolster the first two as far as compliance with the FAIS Act is concerned. Given that there is often a dispute whether the insured was aware of clauses limiting or excluding liability it is to be hoped that the proposed legislative intervention will be passed into law soon.

[33] The warranty clause is repugnant even on the basis of principles of equity. It is manifestly unfair in that it is one-sided, practically impossible to comply with and places the onus to prove the inaccuracy of the tracking device (I should rather say 'monitoring' device, for that is what it really is) on the insured.

[34] I revert then to the basis for holding both respondents liable. First respondent, as complainant's broker, had a duty to draw her attention to material (in this case unusual and onerous) terms of the policy of insurance. Section 7(1) of the Code states that-

". . . a provider . . . must-

*"(a) provide a reasonable and appropriate general explanation of the nature and **material terms** of the relevant contract . . . to a client, and generally make full and frank disclosure of any information that would reasonably be expected to enable the client to make an informed decision;"*

[10] Sections 7(1)(a) and 3(1)(a)(ii) of the Code respectively.

"(b) . . .

"(c) in particular, at the earliest reasonable opportunity provide, where applicable, full and appropriate information of the following:

". . .

"(vii) concise details of ***any special terms or conditions, exclusions of liability . . .*** *or circumstances in which benefits will not be provided;"* (emphasis added).

From the information at my disposal it is quite clear that both respondents fell short of these requirements of the Code.

[35] I have already mentioned that the probabilities are that first respondent did not bring the warranty clause to the attention of the complainant. This duty is independent of the fact that in the instant case second respondent undertook to itself enter into negotiations with the insured about the proposed cover.

[36] The second respondent, having undertook to deal with the complainant directly and then, not having done so, sought to escape liability on the basis that it had been informed by Riaan Swanepoel of the first respondent that he had informed complainant of the offending clause. This does not address the fact that not only did it itself undertake to deal with the insured but it also cannot provide proof that it complied with section 47 of the Short Term Insurance Act.

[37] Given the facts of this case, I have no doubt that both the first and second respondent should be held jointly and severally liable for complainant's loss. Neither

of the Respondents made Complainant aware of the warranty and she was consequently not only unaware thereof but also denied the opportunity to make an informed choice.

Quantum of the loss

[38] The motor vehicle was a 2003 Audi A3 1.8T. Renasa was requested to inform this Office what it would have paid out if it had admitted the claim. In an e-mail dated 21 October 2008 Mr Stephan S de Wet replied that the vehicle was a write-off. It had been insured for R146 400.00. Its retail value at the time of the loss was R123 700.00, the trade value R106 500.00 and market value R115 100.00. The excess payable by the insured was 5 per cent of the claim value with a minimum of R2000.00 plus an additional R2000.00 if the accident occurred within 30 days of commencement of cover. The insurance cover incepted from 1 June 2006 while the accident occurred on 31 July 2006. The latter excess would therefore not be applicable. Mr De Wet concluded that the claim amount would accordingly have been R107 345.00. However, applying only the excess of 5 per cent of market value I arrive at R109 345.00.

[39] I accordingly determine complainant's loss to be R109 345.00. Interest must be added to this amount. The claim for compensation flows from the contract of insurance. It would be appropriate to determine interest from the day after the date of the collision. The rate of interest should be the rate applicable in a court of law where the contract itself is silent about it.

THE ORDER

I make the following order:

1. The Complainant's complaint is upheld.

2. First and Second respondents are ordered, jointly and severally, the one paying the other to be absolved, to pay Complainant R109 345.00 together with interest at 15.5 per cent per annum from 1 August 2006 (being the date immediately after the date of the accident) to date of payment.

3. The Respondents are ordered that each of them pay case fees of R1000.00 to this Office within 30 days of date of this order.

Dated at PRETORIA this 28th day of October 2008.

CHARLES PILLAI

OMBUD FOR FINANCIAL SERVICES PROVIDERS