

IN THE OFFICE OF THE OMBUD FOR FINANCIAL SERVICES PROVIDERS

Case Number: FOC 05195/08-09/ GP 3

In the matter between:

AKOOB ISMAIL LAHER

Complainant

and

LIA Holdings (PTY) Ltd

(t/a) Laher Insurance Brokers

Respondent

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

The Parties:

- (1) The complainant is Mr. Akoob Ismail Laher, an adult male, residing at, No.7999 Hercules Street, Extension 9, Lenasia, Gauteng Province.

- (2) The respondent is LIA Holdings (PTY) Ltd (98/12008/07), trading as Laher Insurance Brokers, a company duly incorporated in terms of South African laws, with its principal place of business at, 16A – 11th Avenue, Houghton, Johannesburg, Gauteng Province. LIA Holdings (PTY) Ltd is a registered financial services provider as contemplated in the Financial Advisory and

Intermediary Services Act No. 37 of 2002 ('FAIS Act'), with licence no. 17268,
The respondent is represented by its Key Individual Mr. Ebrahim Ziyaad Laher.

The Background:

- (3) On 26 May 2008 the complainant completed a proposal for short term insurance cover with CIB Insurance Solutions (PTY) Ltd, 'CIB'. The respondent assisted complainant by rendering financial services in relation to the transaction. Complainant required cover for his house and contents and five motor vehicles of various makes and models. One of these vehicles was a Toyota Run X, 140i RT bearing registration PFP472GP, valued at R85 100, hereinafter referred to as 'complainant's vehicle'.
- (4) On 8th July 2008, complainant's vehicle was forcibly stolen from his son, Mr. Z. Laher. Complainant contacted the respondent to inform it of the claim, and duly submitted all the required documentation.
- (5) On 5th September 2008 the complainant was informed that his claim had been rejected as the vehicle had not been fitted with a tracking device and so did not comply with the minimum security requirements.

The relief sought:

- (6) The complainant requests that the respondent be held liable for the failed claim and the loss of R85 100. The basis for this relief appears from the complaint and determination.

The Complaint:

- (7) According to complainant he informed the respondent when he completed the proposal form that this vehicle was not fitted with a tracking device but with an immobiliser, alarm and gearlock. It is complainant's contention that respondent was negligent in not informing him about the insurer's requirement of a tracking device, alternatively, respondent was negligent in completing a proposal form in which it (respondent) incorrectly represented to the insurer that the vehicle was fitted with a tracking device. In so doing, respondent violated the general duty of providers set out in Part II, section 2 of the General Code of Conduct for Authorised Financial Services Providers and Representatives, ('the Code'). The provision states:

A provider must at all times render financial services honestly, fairly, with due skill, care and diligence, and in the interests of clients and the integrity of the financial services industry.

Respondent's Response:

(8) Respondent admits that it rendered financial service to complainant. It further states that the loss occurred while insurance cover was in place. For its case, respondent relies on the letter of rejection from CIB dated 5 September 2008. This letter advised complainant that his claim could not be honoured as the vehicle did not have a tracking device.

(9) In addition to the above, respondent stated:

- a) It requested a quotation from CIB. Such quotation included a tracker discount.
- b) On 28th May 2008 a signed proposal was sent to CIB on behalf of the complainant. The proposal was completed by an employee or agent of the respondent, Laurika Bond, (Bond).
- c) On 14th July 2008 Bond sent the motor section part of the proposal form, which was completed by the complainant to CIB.
- d) On 22nd July 2008 CIB informed respondent that the motor section part of the proposal form was illegible and requested that this be delivered to them in another form that was legible.
- e) Bond completed the required form and 'accidentally' recorded that a tracking device was installed in the complainant's vehicle.
- f) According to Bond CIB never told her that a tracker was required.

(10) Respondent further informed this Office that it was trying to resolve the matter with CIB failing which, it would settle the matter with complainant and then seek legal advice for a possible cause of action against CIB.

(11) On 6th October 2008, CIB once again wrote to complainant advising: -

'Prior to the inception of your policy a quotation was done on your insurance whereby it was quoted that a requirement was a tracking device be fitted to your vehicle in question. A discount was allowed in the premium for having this device fitted.

The quotation was accepted by your broker and the proposal form was submitted to ourselves was completed and signed by your broker who confirmed that there was a tracking device fitted to the Toyota Run – X Reg. No. PFP472GP.

We refer to the policy schedule which reflects that a tracking device was declared and warranted to be fitted. There has been no correspondence at any stage received by our offices from the time of inception of your policy till the date of loss of this claim advising ourselves that no tracking device had been fitted to your vehicle. Therefore we request you to please refer back to your broker who is in the possession of this documentation who will be able to assist with regards to your queries regarding this matter.....' **Extracted as is from the letter.**

The Issues:

(12) The following are issues to be decided:-

- a) Did the respondent carry out its mandate in respect of the complainant's insurance requirements?
- b) Was there negligence on the part of the respondent in advising its client and in completing the proposal on behalf of the complainant?
- c) Did the respondent's conduct cause damage to complainant?

Findings:

(13) The following is a chronological sequence of the material events from which findings are made:

- a) On the 26th May 2008 complainant completed a proposal form that was supplied by the respondent. In the proposal form, under 'motor vehicle proposal' complainant gave details of the security devices fitted in respect of all of the insured vehicles. He noted that no tracking device was fitted.
- b) Complainant was informed that the proposal was accepted and that the inception date would be the 1st June 2008.

- c) On the 8th July 2008 the vehicle was forcibly stolen and a claim was instituted.
- d) On 14th July 2008 respondent sent the motor section of the proposal to CIB. Why the proposal form was sent almost a month and a half after complainant completed proposal form and one week after the risk had materialised has not been explained by respondent.
- e) On 22nd July 2008, at the request of CIB, a new proposal form as was completed because the motor section was illegible. The latter proposal form was completed by Bond. From documentation obtained from the respondent however, it appears that Bond completed the proposal form which was dated 28th May 2008. Exactly why an identical form was completed and dated two days after the complainant's original proposal has not been explained.
- f) In the form completed by Bond, complainant's vehicle is described as 'vehicle 3'. The registration is incorrectly stated. The form clearly states that a tracking device was fitted to the vehicle. This is contrary to the express and written instructions of the complainant. Bond admits that she 'accidentally' indicated that a tracking device was fitted. Importantly, no explanation was furnished as to why this form was sent to CIB after the risk had materialised.
- g) On 5th September 2008 CIB rejected the claim. In their letter, CIB referred to a special 'condition' which entitled it to reject complainant's claim. The respondent however failed to communicate the insurer's requirements to the complainant. In fact, Bond's letter makes it abundantly clear that respondent failed to communicate complainant's

instructions to the insurer. On the 6th October 2008 CIB Insurance further explained in writing why they were entitled to reject the claim. Complainant never received a copy of this document.

- (14) Upon request, complainant was furnished with a schedule of insurance. An analysis of the schedule by this Office presented more surprises. According to the schedule only domestic insurance in respect of house and contents is insured in terms of policy number CIB/P40997. There is no mention of any motor vehicles being covered. This anomaly was never explained by the respondent. It is clear therefore that respondent failed to carry out its mandate and that as at 8th July 2008 no cover existed in respect of any of complainant's vehicles. It appears that the respondent attempted to back date cover only after the risk materialised. Not only is this negligence on the part of the respondent, it is highly irregular. It is a matter that should be investigated by the Regulator.
- (15) During the course of investigating this matter, this Office received a letter detailing the events leading to the rejection of complainant's claim. Bond was acting on behalf of the respondent. The document is undated and unsigned. The sequence of events described by Bond is a clear admission that the respondent was negligent. It does not assist the respondent to suggest that its conduct was 'accidental'.
- (16) On the respondents own version the following findings are valid:

- a) When completing the proposal form, complainant clearly pointed out that the vehicle was not fitted with a tracking device.
- b) Contrary to complainant's express instructions respondent informed the insurer that a tracking device was fitted.
- c) At no stage did the respondent inform the complainant about the requirement of a tracking device, instead respondent informed complainant that his vehicles were in fact covered comprehensively.

(17) It is equally clear that on respondents own version that it was negligent in its conduct in insuring complainant's vehicle. In fact there is cause to question whether respondent indeed insured complainant's vehicle as from 1st June 2008 and whether such a policy even existed. In this respect reference is made to correspondence between respondent and CIB dated from 7th July 2008 to 23rd July 2008. The only reasonable conclusion to be drawn from this correspondence is that on the 7th July 2008, no policy existed covering complainant's vehicle. This conduct remains unexplained.

(18) Any provision in a contract of insurance which might result in the exclusion of liability is a term that goes to the root of the contract and it is the kind of information which the financial service provider is expected to bring to client's immediate attention. Put simply, such provision is material and must be disclosed. Accordingly, respondent breached the Code. There is a further provision of the Code which respondent breached. In terms of section 7(1) (c) (vii), a financial services provider must provide concise details of any special

terms or conditions, exclusions of liability, waiting periods, loadings, penalties, excesses, restrictions or circumstances in which benefits will not be provided.

(19) The complaint is therefore upheld.

Quantum of Damage:

(20) The vehicle was valued at R85 100 on the policy schedule. To arrive at the appropriate quantum to be paid to complainant, reasonable and lawful adjustments as would have been made by the insurer had the policy existed must be made.

(21) From the CIB policy schedule provided, the following excesses were applicable to the motor section of the policy:

- a) Basic Excess – 5% of claim – Minimum R1750
- b) Theft Excess – 10% of claim 0 Minimum R1750 - this excess would have been excluded had a tracking device been installed.
- c) Additional Excesses – R1000 - Vehicle driven by person under 25 years of age
- d) Additional Excess – R300 – Vehicle driven by person whose drivers licence is less than 2 years old.

(22) The only excess applicable in this instance is the basic excess which when based on the insured value of R85 100 amounts to R4255. It is reasonable to

apply the basic excess as it is a common feature of most indemnity insurance contracts. By the same token, it would not be fair to apply the additional excess of 10% as this material term of the policy was not disclosed to complainant. The other excesses do not apply.

Order:

The following order is made: -

- i) The complaint is upheld.
- ii) The respondent is hereby ordered to compensate the complainant in the sum of R80 845;
- iii) Interest on the aforementioned amount shall accrue at a rate of 15.5% to be calculated from a date seven days after the date of this order to date of final payment.
- iv) The respondent is ordered to pay a case fee of R1000 to this Office.

DATED AT PRETORIA ON THIS THE 6th DAY of SEPTEMBER 2010

A handwritten signature in black ink, consisting of a large, circular loop at the top and a series of smaller, connected loops below it, all resting on a horizontal line.

NOLUNTU N BAM

OMBUD FOR FINANCIAL SERVICES PROVIDERS