

**IN THE OFFICE OF THE STATUTORY OMBUD FOR FINANCIAL SERVICES
PROVIDERS PRETORIA**

Case Number: FSOS 02362/09-10/GP/ 3

In the matter between

MADIMETJA JOHN LEDWABA

Complainant

and

ORANGE INSURANCE LIMITED

Respondent

**DETERMINATIONS IN TERMS OF SECTION 14(3) OF THE FINANCIAL
SERVICES OMBUD SCHEMES ACT NO. 37 OF 2004 (“the FSOS Act”) READ
WITH SECTION 28(1) OF THE FINANCIAL ADVISORY AND INTERMEDIARY
SERVICES ACT 37 OF 2002 (“the FAIS Act”).**

A. THE PARTIES

[1] Complainant is Mr Madimetja John Ledwaba an adult male, residing at 4941 Coatfish Street Midrand 1682, Gauteng.

[2] The Respondent is Orange Insurance Limited, a registered insurer and financial institution duly incorporated according to the company laws of the Republic of South Africa (registration number 2003/031 307/06) with its registered offices at 22 Koelenhof Road, Northcliff Ext, 19, 1709

B. INTRODUCTION

[3] This is a determination pursuant to a complaint against the Respondent insurance company. The determination is made in terms of Section 14 (3) of the FSOS Act read with Section 28(1) of the FAIS Act. The Respondent insurance company entered into an agreement with a licensed financial service provider known as Fleetsure (Pty) Ltd . The Respondent had entered into a binder agreement with Fleetsure in terms of which Fleetsure was authorised to conduct the business of short term insurance for and on behalf of the Respondent. Pursuant to this agreement and for the period 1st of June 2008 to 31st December 2008 Respondent provided short term cover for a number of Fleetsure`s clients.

[4] A dispute arose between Respondent and Fleetsure and as a result Respondent refused to pay claims emanating from the short term policies placed by Fleetsure. The Complainant in this case is one of many policyholders who were not paid after claims were made in terms of their policies with the Respondent.

[5] Many policyholders filed a complaint with this office after the Respondent refused to pay. The Respondent was requested to provide a written response to these complaints. For each of these complaints the Respondent relied on exactly the same response in the form of a letter dated 17th February 2010.

[6] On the 15th of September 2010, this office made a determination in respect of another of these policyholders namely: Mr Innocent Sithembela Mthethwa. This determination was made under case number **Case Number: FSOS 06362/08-09/GP 3** and comprehensively dealt with the merits of the dispute between the respondent and Fleetsure (the Mthethwa determination)

C. JURISDICTION

[7] The Respondent is not a member of a recognised scheme as contemplated in Section 10 & 11 of the Financial Service Ombud Schemes Act 37 of 2004 ("the FSOS Act").

[8] Accordingly and in terms of Section 13 of the FSOS Act, the FAIS Ombud, in its capacity as Statutory Ombud assumes jurisdiction over the Respondent in respect of this complaint.

[9] The FAIS Ombud therefore deals with this complaint in terms of Section 14 of the FSOS Act.

D. THE COMPLAINT

[10] According to the Complainant, the following are the material aspects of his complaint:

10.1 The Complainant alleges that the Respondent failed to honour a claim arising out of an accident involving the complainant's motor vehicle, an Opel Corsa 1.4 Essentia bearing registration number and letters ECI 681 GP.

10.2 On the 27th of October 2008, the Complainant entered into a Comprehensive short term insurance policy contract with the Respondent through Inbrocon Insurance Brokers, the principal Intermediary and a licensed Financial Service Provider under license number 9842.

10.3 The Complainant was furnished with a policy number: INBF100975 which was issued by the Respondent together with a schedule to the contract of insurance. The effective date for the complainant's cover was the 27th of October 2008. As will appear in this determination, Inbrocon insurance Brokers clients were part of the Fleetsure cell.

10.4 On the 9th of November 2008 The Complainant's vehicle was involved in an accident and he duly submitted his claim through Inbrocon Insurance Brokers.

10.5 An assessment of the vehicle was conducted by a duly authorised assessor and the Complainant was authorised to have the vehicle repaired.

10.6 On the 18th of November 2008, the Respondent accepted the claim as it appears on the documents provided to this office. Attached hereto is a copy of a letter, "Authorised Repairs", marked "A". The claim was accepted and duly authorised Bodytechnique Panelbeater to repair the vehicle. Cost of repairs amounts to R77.240, 96. According to complainant, the vehicle has been duly repaired and awaits collection.

10.7 To date, the Respondent failed to honour the complainant's claim.

10.8 The Complainant wants the Respondent to honour the claim by paying the cost of repairs according to the policy agreement. Since the accident occurred, complainant was left stranded without means of transport.

10.9 On the 25th of June 2009 Complainant referred his complaint to the FAIS Ombud for further investigation and necessary action.

10.10 It is not in dispute that the complainant entered into a contract of insurance in terms of which he comprehensively insured his motor vehicle. The schedule to the policy that was issued to the complainant records the respondent as the insurer. Nor is it in dispute that after the complainant purchased the policy the insured vehicle was involved in an accident. The respondent does not dispute that it then received a claim from the complainant policyholder.

E. THE RESPONSE FROM RESPONDENT

[11] As the complaint could not be resolved between the parties, it proceeded to investigation at which point the Respondent was requested to submit a reply to the allegations, taking into account the requirements of the FAIS Act.

[12] The respondent chose not to deal with this claim specifically but decided to treat this claim together with other similar claims, all of which represent policies issued through Fleetsure, with reference to a letter dated 17 February 2010.

The respondent's response can be summarised as follows:

- 12.1 The Complainant was at all times factually insured by Zurich Risk Financing SA Limited, previously known as SA Eagle Insurance Company ("Zurich").
- 12.2 The Respondent further contends that Ms Ilse Becker trading as Fleetsure Insurance had attempted to transfer her Fleetsure portfolio from Zurich to the Respondent.
- 12.3 The Respondent disputes the validity of the above mentioned transfer by Ms Ilse Becker.

12.4 The Respondent further contends that Ms Becker and Zurich failed to comply with statutory requirements prescribed for intended transfer of the Fleetsure Book of Business from Zurich to the Respondent, and as such concludes that the intended transfer was void and of no force and effect.

12.5 The Respondent further avers that liability as insurer remained with Zurich and not with them.

12.6 According to the Respondent Fleetsure was not authorised to use it's logo on documentation and correspondence.

12.7 This Office, according to the Respondent, cannot deal with the complaints as the question of its liability is subject to an inspection by the Financial Services Board (FSB). The Respondent claimed that the whole matter was *sub-judice* and that any action on the part of this Office will be premature. The Respondent requested that this Office stay proceedings pending the outcome of the FSB inspection.

12.8 The reason for non-payment is attributed to a dispute between respondent, Fleetsure and Zurich. This dispute was the subject of

an investigation by the Financial Services Board. The respondent insisted on not dealing with this complaint as an individual complaint and stated that the matter was *sub judice* in the hands of the FSB.

- 12.9 The respondent states that there was no valid contract of insurance as between itself and the complainant. According to the respondent the complainant was a client of Fleetsure and/or one of the latter's brokers. The Respondent submits that it was not at risk as Fleetsure was not authorised to issue policies on its behalf and that it was in any event not aware of the fact that Fleetsure was conducting business on its behalf.

The defences raised by the Respondent will be dealt with in this determination.

F. FINDINGS

For reasons stated in Mthethwa's case, I find that the Respondent was at risk and is liable to pay the Complainant in terms of the contract of insurance

G. CONCLUSION

On the undisputed facts before this Office the following conclusions are made:

- 13.1 The respondent as an insurer was at risk in terms of the policy purchased by the complainant.
- 13.2 Complainant's policy was effected during the period 1st June 2008 and 31st December 2008.
- 13.3 The respondent has provided no legitimate basis in law to avoid paying the complainant's claim.
- 13.4 The complaint is upheld and the respondent is ordered to pay the Complainant's claim.

H. QUANTUM

- 14.1 In terms of the assessment of loss, the complainant agreed to accept the amount of R77.240, 96 in settlement of his claim.
- 14.2 Accordingly an order will be made that Respondent pay to complainant an amount of R77.240, 96.
- 14.3 The authorisation of repairs letter was signed on the 18th of November 2008. The complainant expected the amount to be paid by the end of January 2009, accordingly I intend to make an order that interest be paid on this amount from the 1st February 2009 to date of payment.

I. ORDER

I make the following order:

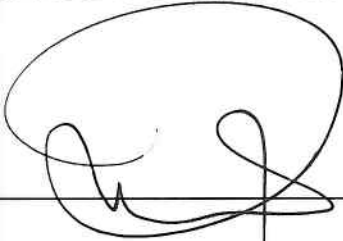
1. The complaint is upheld.

2. The respondent is ordered to pay to the complainant :
 - 2.1 The amount of R77.240, 96.

 - 2.2 Interest on the amount of R77.240, 96 at the rate of 15, 5% per annum from the 1st of February 2009 to date of payment.

3. Respondent is ordered to pay the case fee of R1000, 00 to this office within thirty (30) days of date of this determination.

DATED AT PRETORIA ON THIS THE 30th DAY OF NOVEMBER 2010.



NOLUNTU N BAM

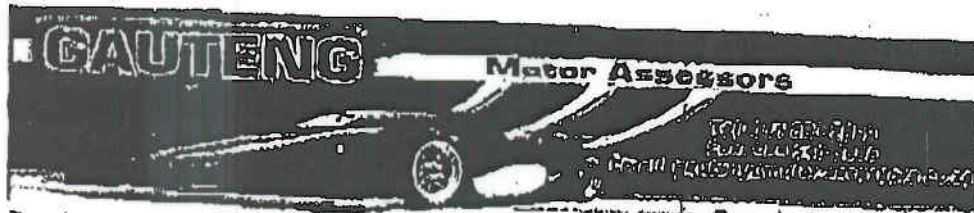
OMBUD FOR FINANCIAL SERVICES PROVIDERS

8. JUN. 2009 16:05 FURY RIVONIA

085 540 3686

NO. 9247 P. 10/21007
To: 021 8655850 No. 4231 P. 63-4

"A"



Report Date: 18/11/2008

Repair Cost Advice

TO: BODYTECHNIQUE PANELBEAT

Vehicle Details Opel Corsa 1.4

Registration ECI 8818W

Odometer 1236

Colour Grey

Year 2008

Date Insured 10/11/08

Our Ref No 551

Insured LEDWABA

3rd Party

Policy No INB4108976

Claim No IND333216

Principal INBROCON C/O FLEETSURE

Principal Address P.O.Box 5816

Meyersdal

Clerk Lebo Mhango (P)

Principal's VAT # 4840246864

Broker FURY GROUP

Authorised Repairs

Cost Details:		V.A.T	0,000.00
Quote No	2180	Agreed Total	81,308.36
Original Quote	80,805.60	Excess 5 % Of Claim	3,000.00
Agreed Amount	71,321.30		0,000.00
Leas Contribution	0.00		
Repair Net Costs	71,321.30	Nett Cost of Repair	77,240.87

It is understood and agreed between the above principal and the above repairer that the cost of repair to the above vehicle has been duly assessed by the principal's representative at the figure shown opposite the Repair Net Costs and the repairs will be carried out or not out in the above assessed quote.

It is further agreed between the principal and the repairer that the figure shown opposite Nett Cost of Repairs will constitute the total amount for which the principal shall be liable. Should the repairs involve any further costs by the repairer, the principal shall not under any circumstances be liable unless written authority has first been obtained. In the event of the repairs being executed in an unsatisfactory manner, the above principal reserves to itself the right to employ another repairer for the purpose of having the repairs properly completed. The first repairer shall be liable for the additional costs.

Accident Towed Vehicle fee's are as per prior agreement with above-mentioned Principal and any additional fee's are to be recovered by yourselves from the relevant party as the terms part of the Principal's policy. The Principal reserves the right to appoint a representative to audit your accounts as well as work in progress checking with regards to above repair.

The Principal requests that all parts be made available for assessment for the duration of five (5) working days after the repairs have been concluded. All salvaged parts are the property of the above-mentioned Principal.

Once the vehicle has been repaired to the client's satisfaction, the final invoice and all invoices related to the repair must be sent to Gauteng Motor Assessors (Fax: 0865585000) for authentication and to inform the Principal that the repair has been concluded. Please advise above-mentioned Principal of your banking details in order for the Principal to effect an E.F.T. payment to yourselves. All relevant documentation relating to this repair must be posted to the above Principal's address.

Please note that should the Principal settle your account within 30 days of receipt of your original invoice, the Principal will expect a 3% discount as per your agreement and acceptance of repairing this vehicle.

Please sign and send back to GMA Assessors (086 540 3686)

Jelo

Principal's representative sign

GAUTENG MOTOR ASS
TEL: 011 683 2894
086 290 1120
FAX: 086 540 3686

FAXED
18/11/08

2nd
Repairer Sign

Time: 10:35 AM
DAY: 25/11/08
LEFT A MESSAGE
Time: 11:09
DAY: 25/11/08

Space Thanks GMA

