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

Case Number: FSOS 07168/08-09/GP/ 3

In the matter between

L. MAKIBI **Complainant**

and

ORANGE INSURANCE LIMITED **Respondent**

DETERMINATION 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 L Makibi, an adult male, residing at, 1649 Lefatole Street Vosloorus Boksburg 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 Section14 (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 policy-holders 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 Sithembele Mthethwa. This determination was made under **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, a 2007 Mazda Drifter 2600 SLX LWB 4X4, bearing registration numbers and letters XSB 487 GP.

10.2 On the 9th of October 2008, the Complainant entered into a 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: INBF 100919 which was issued by the Respondent on the 9th of October 2008. As will appear in this determination, Inbrocon Brokers were part of the Fleetsure cell.

10.4 On the 27th of December 2008 the Complainant was involved in an accident and duly submitted his claim through Inbrocon Insurance Brokers CC.

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 27th of December 2008 the Complainant duly submitted his claim timeously through his Broker, Inbrocon Brokers.

10.7 The assessment of the vehicle was conducted by a duly authorised assessor and the finding was that the vehicle is repairable; subsequently it was assigned to panel beaters (Golden Panel Beaters).

10.8 On the 30th of January 2009, the Respondent issued an Agreement of Loss to settle the Complainants' cost of repair amounting to R 69,055.26. This was duly signed by the Complainant and submitted through his broker. A copy of the agreement of loss is annexed marked **"A"**

10.9 To date, the Respondent failed to honour the complainant`s claim.

10.10 The Complainant wants the Respondent to honour the claim by paying the cost of repair according to the policy agreement. Since the accident occurred the vehicle was repaired and waits collection upon payment of the cost of repair.

10.11 On the 10th of December 2009 Complainant referred his complaint to the FAIS Ombud for further investigation and necessary action.

10.12 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 damaged 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 the 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 agreement of loss, the complainant agreed to accept the amount of R69, 055.26 in settlement of his claim.

14.2 Accordingly an order will be made that Respondent pay to complainant an amount of R69, 055.26

14.3 On the 30th January 2009, , the Respondent accepted the claim and duly issued an Agreement of Loss to settle the Complainant's repair cost in an amount of R69,055.26.This was duly signed by the Complainant and submitted through his broker. A copy of the agreement of loss is annexed marked **"A"**

The complainant expected the amount to be paid by the end of February 2009, accordingly I intend to make an order that interest be paid on this amount from the 31st of March 2009 to date of payment.

I. ORDER

I make the following order:

1. The complaint is upheld.

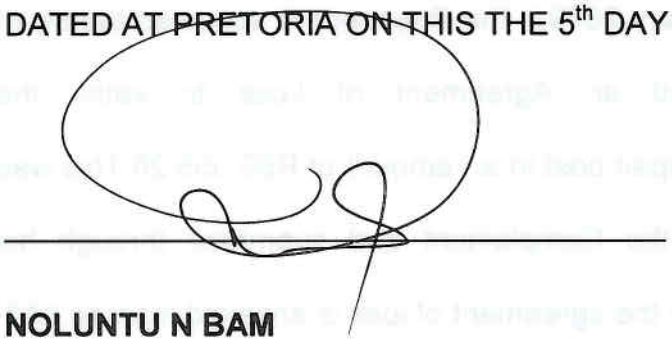
2. The respondent is ordered to pay to the complainant :

   2.1 The amount of R R69, 055.26

   2.2 Interest on the amount of R R69, 055.26, at the rate of 15, 5% per annum from the 31st of March 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 5th DAY OF OCTOBER 2010.



NOLUNTU N BAM

OMBUD FOR FINANCIAL SERVICES PROVIDERS

Inbrocon cc Mdanaagbegail@yah.oo.com
Registration No: 2007/056124/23
VAT No: 4900151695
Authorised financial services provider
FSP No.: 9842

INBROCON

FAX

To:	Cathy	From:	Lebo Managa
Panel Beater	Golden Panelbeaters	E-mail:	Fleetsure@inbrocon.co.za
Fax:	086 669 3519	Fax:	011 888-9178
Date:	Friday, 30 January 2009	Phone:	+27 011 888-9637
Your Quote:	No: 20582	Pages including this one:	1 of 1

Re: MAKIBI L – C/NO: INB3352/32
VEHICLE: 2007 MAZDA DRIFTER – REG: XSB 487 GP

We refer to your quotation and confirm that we authorise repairs on behalf of Fleetsure (Pty) Ltd for an amount of R 72,689.74 (VAT incl.) less the excess of R 3,634.48 (5% of claim min R 3,000) which is to be paid to you by the client. R88,079.76

Once the vehicle has been repaired to our client's satisfaction, please forward your account and a final costing sheet for the balance of R 69,055.26 directly to us together with your bank account details to enable us to process an E.F.T. We shall only pay for the work that was actually carried out on the vehicle, and not for items listed on your quote, so we reserve the right to audit your accounts as well as work in progress checking.

Please note that should there be any extras which were unseen at the time of preparing your quote, this must be reported to us immediately and the assessor will be responsible for authorising this and supply us with photographs. If this is not done we will not pay for any extras.

Fleetsure PTY Limited request that all replaced parts be available for assessment for the duration of 5 working days after the repairs. All replaced parts are considered the property of Fleetsure PTY Limited on behalf of Zurich Risk Financing SA Limited, and we hold the right to take possession of the replaced parts

ACCIDENT TOWED VEHICLES
Please note that Fleetsure (Pty) Ltd we only pay R1500.00 (vat incl) for Towing and Storage and the onus rests upon yourselves to recover uninsured fees as this forms part of our policy from 1 March 2006

Yours faithfully

Managa

L. Managa

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MacArthur Ave, Robindale
P O Box 5535, Cresta, 2118