

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

Case Number: FSOS 00019/09-10/GP 3

In the matter between

T.E. MOTSOANE

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 T.E. Motsoane, an adult male, residing at M822 Manyatseng Ladybrand 9745.

[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 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 1997 BMW 318 IS, bearing registration letters and numbers CVP 422 FS.

10.2 On the 1st of June 2008, the Complainant entered into a Comprehensive short term insurance policy contract with the Respondent through Big Brother Insurance Brokers CC/ Inbrocon, the principal Intermediary and a licensed Financial Service Provider under license number 9842.

10.3 The Complainant was furnished with a policy number: ALL13960 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 1st of June 2008. As will appear in this determination, Inbrocon 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 Big Brother Insurance Brokers/ Inbrocon.

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 26th of November 2008, the Respondent accepted the claim and duly authorised Thompsons Auto Body to repair the Complainant's vehicle amounting to R11, 756 30. This was duly signed by the Complainant and submitted through his broker.

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 repair according to the policy agreement. Since

the accident occurred complainant was left stranded without means of transport.

10.9 On the 19th February 2010 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 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 R R11, 756.30 in settlement of his claim.

14.2 Accordingly an order will be made that Respondent pay to complainant an amount of R R11, 756.30

14.3 Authorisation of repairs was duly signed by the Complainant on the 26th of November 2009. The complainant expected the amount to be paid by the end of December 2009, accordingly I intend to make an order that interest be paid on this amount from the 1st of January 2010 to date of payment.

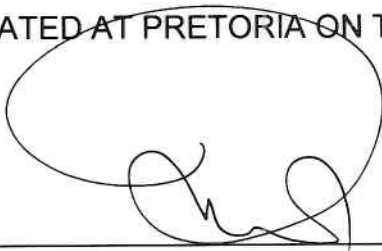
I. ORDER

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 R11, 756.30
- 2.2 Interest on the amount of R R11, 756.30 at the rate of 15, 5% per annum from the 1st of January 2010 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 13th DAY OF OCTOBER 2010.



NOLUNTU N BAM

OMBUD FOR FINANCIAL SERVICES PROVIDERS

Claims

From: Gauteng Motor Assessors [gauteng@motor-assessors.co.za]
Sent: Monday, December 08, 2008 8:01 AM
To: cindy@inbrocon.co.za
Cc: Claims
Subject: MOTSOANE - ALL13960 - UPDATE
Importance: High

Good Morning All,

Please see below.

Gauteng Motor Assessors

Tel: 011 683 2899

Cell: 084 290 1120

Fax: 086 540 3686

Email: Gauteng@motor-assessors.co.za

www.Motor-Assessors.co.za

From: Johan S @ J Small Assessors [mailto:johanadmin@jsmallassess.co.za]
Sent: 05 December 2008 12:37 PM
To: gauteng@motor-assessors.co.za
Subject: RE: OUTSOURCED ASSESSMENT- MOTSOANE
Importance: High

Hi Jacqui,

We have authorized Human Auto – the local Ford dealer in Bloemfontein – to commence with temporary repairs to determine if this vehicle sustained engine damage.

They are currently busy working on this vehicle and expect feedback from them soonest.

We will keep you in the loop as this progresses.

Kind Regards,

Johan Small

J. Small Motor Assessors

Tel: (051) 447 8951

Fax: (051) 447 7297

Fax: (086) 531 5747

4 Villa Westdene, 34 Reid Street, Westdene

P O Box 94, Bloemfontein, 9300

E-mail: JohanAdmin@JsmallAssess.co.za

Our website: www.jsmallassess.co.za

Member of the I.M.A: www.imaassessors.co.za

"It is a SMALL word that makes a BIG difference"

QUOTATION / KWOTASIE

Thomson's Auto Body Repairs
 N° 21 King Street
 Ladybrand 0519242095

DATE DATUM 25/11/08

QUOTATION NO. / KWOTASIE NR.
(228) BMW 1997
318i E36

N T.E. Motsoane

DRESS
 RES

REF. VERWYS CUP 422 FS

TELEPHONE TELEFOON 0836898123

QUOTATION BY KWOTASIE DEUR Desmond

THANK YOU FOR YOUR ENQUIRY. WE TAKE PLEASURE IN QUOTING AS FOLLOWS.
 DANKIE VIR U NAVRAAG. DIT IS 'N GENOEE OM AS VOLG TE KWOTEER:

UNIT OEFVEELHEID	DESCRIPTION BESKRYWING	UNIT PRICE EENHEIDSPRYS	AMOUNT BEDRAG
	Repairs Continue		
	R/R Door		520 00
	R/R fender		520 00
	S + fitt		1100 00
	TJ cost		180 00
	Cons		220 00
	Paint		
	Bonnet		1100 00
	Boot lid		920 00
	Dome		1100 00

QUOTATION/KWOTASIE 14 756 30

VAT/BTW Not Registered

TOTAL/TOTAAL 14 756 30



MOUNT IN WORDS
 EDRAG IN WOORDE

Fourteen thousand seven hundred
and fifty six rand. Thirty cents.

CONDITIONS
 VOORWAARDES

THIS QUOTATION IS VALID FOR
 HIERDIE KWOTASIE IS GELDIG VIR

14

DAYS
 DAE

ACCEPTED BY
 AANVAAR DEUR

T.E. Motsoane

NAME
 NAAM

THORISED REPRESENTATIVE
 MAGTIGE VERTEENWOORDIGE

Thomson

DATE DATUM 26/11/08

11 756.30

