

IN THE OFFICE OF THE STATUTORY OMBUD FOR FINANCIAL SERVICES

PROVIDERS PRETORIA

Case Number: FSOS 06362/08-09/GP 3

In the matter between

INNOCENT SITHEMBELE MTHETHWA

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 I. S. Mthethwa, an adult male, residing at, 315 Walker Street, 202 Euclea Building, Muckleneuk, Pretoria, 0002, 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. THE COMPLAINT

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

3.1 The Complainant alleges that the Respondent failed to honour a claim arising out of an accident involving the complainant's motor vehicle, a 1998 Nissan Sentra 140 GXI A/C, bearing registration number and letters DNZ 175 NW.

3.2 On the 24th of August 2008, the Complainant entered into a Comprehensive short term insurance policy contract with the Respondent through Michelle Nel Brokers, the principal Intermediary and a licensed Financial Service Provider under license number 16900.

- 3.3 The Complainant was furnished with a policy number: MNEL 000956 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 24th of August 2008. As will appear in this determination, Michelle Nel's clients were part of the Fleetsure cell.
- 3.4 On the 7th of December 2008 The Complainant's vehicle was involved in an accident and he duly submitted his claim through Michelle Nel Brokers.
- 3.5 The assessment of the vehicle was conducted by a duly authorised assessor and the assessment determined that the vehicle was a write off.
- 3.6 On the 16th of January 2009, the Respondent accepted the claim and duly issued an Agreement of Loss to settle the Complainant's vehicle finance account amounting to R 34,000.00. This was duly signed by the Complainant and submitted through his broker. A copy of the agreement of loss is annexed marked "A"

- 3.7 To date almost two years later, the Respondent failed to honour the complainant`s claim.
- 3.8 The Complainant wants the Respondent to honour the claim by paying the settlement according to the policy agreement.
- 3.9 On the 25th of March 2009 Complainant referred his complaint to the FAIS Ombud for further investigation and necessary action.
- 3.10 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.

[4] THE REGISTRAR OF SHORT- TERM INSURANCE

I deem it necessary to refer this determination to the Registrar of Short- term Insurance, the motivation is as follows:

- 4.1 This office received many complaints against the respondent, the nature of which is the same in most cases, a schedule of complaints is annexed marked "B".
- 4.2 Many of these policyholders were left stranded without transport due to the respondent's failure to satisfy claims.
- 4.3 Other policyholders are unable to settle finance agreements with financial institutions due to the respondent's failure to pay; these policyholders have to bear interest charges. Some policyholders risk being blacklisted.
- 4.4 The Financial Services Board carried out an investigation of the whole transaction and came to the conclusion that the respondent as insurer was at risk in respect of these policies. The FSB recommended that the Registrar of Short-term Insurance instruct the respondent to settle these claims. An extract from the report is annexed marked "C".
- 4.5 Notwithstanding the findings and recommendations of the FSB, the respondent continues to refuse payment of the claims.
- 4.6 As will appear in this determination, I found no legal basis for the respondent to refuse payment.

This office is currently in the process of dealing with each of these complaints. An intervention by the registrar may well facilitate a quicker resolution in the interests of the policy holders and the integrity of the short-term insurance industry.

[5] JURISDICTION

- 5.1 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").
- 5.2 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.
- 5.3 The FAIS Ombud therefore deals with this complaint in terms of Section 14 of the FSOS Act.

[6] INVESTIGATION OF THE COMPLAINT

- 6.1 This Office gathered and compiled all the relevant information in relation to the complaint.
- 6.2 The complaint was assessed in terms of the Financial Advisory and Intermediary Services Act 37 of 2002 (the FAIS Act) read with Section 14 of the FSOS Act.

6.3 The Complainant provided this Office with a Policy schedule, certificate of insurance, Finance settlement quotation, agreement of loss and bank statements confirming payment of premiums by debit order to Fleetsure. A copy of the certificate of Insurance is annexed marked "D". Note that in this document the complainant is described as the insurer.

6.4 A letter was sent to the Respondent in terms of Rule (6) of the Rules on Proceedings, (The Rules) requesting the Respondent to respond to allegations raised by the Complainant, in particular Respondent's failure to settle the claim.

C. THE RESPONSE FROM RESPONDENT

[7] 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.

[8] 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. A copy of the response dated 17 February 2010 is annexed hereto marked "E".

The respondent's response can be summarised as follows:

- 8.1 The Complainant was at all times factually insured by Zurich Risk Financing SA Limited, previously known as SA Eagle Insurance Company ("Zurich").
- 8.2 The Respondent further contends that Ms Ilse Becker trading as Fleetsure Insurance had attempted to transfer her Fleetsure portfolio from Zurich to the Respondent.
- 8.3 The Respondent disputes the validity of the above mentioned transfer by Ms Ilse Becker.
- 8.4 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.
- 8.5 The Respondent further avers that the liability as insurer remained with Zurich and not with them.

- 8.6 According to the Respondent Fleetsure was not authorised to use it's logo on documentation and correspondence.
- 8.7 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.
- 8.8 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.
- 8.9 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.

[9] Non Payment

It is worth noting that the respondent did not reject the complainant's claim. Similarly the respondent did not reject any of the claims emanating from the Fleetsure cell. The respondent merely refused to pay on the basis that there was no binding contract of insurance between itself and policyholders.

[10] The issue

The issue to be resolved is whether or not there was a binding contract of insurance between the complainant and the respondent. If it is found that there was such an agreement between the parties, then the respondent was at risk and is liable to settle the complainant's claim in terms of the policy.

[11] Resolution

The parties were afforded an opportunity to resolve the matter as contemplated in Section 27 (3) of the FAIS Act. At the request of the respondent, a meeting was held with this Office and representatives of the

respondent. At that meeting the respondent was again urged to settle the claims. To date the parties were unable to settle the matter.

[12] Evidence

Based on the information received by this Office, and in particular on the facts that are not disputed by the respondent, a determination can be made without the need to hear oral evidence.

[13] Relevant History

In dealing with this complaint this Office had access to the report of the FSB. For purposes of this determination a brief history of the matter is set out. Note that the facts that follow are undisputed by the respondent.

13.1 Fleetsure (Pty) Ltd is a licensed financial services provider that provided short term insurance policies for members of the public. The business was brought in by a number of brokers associated with Fleetsure.

13.2 Fleetsure had signed an agreement with Zurich Insurance Company South Africa Ltd (Zurich) in terms of which, inter alia, Fleetsure placed short term insurance policies with Zurich as the insurer.

- 13.3 This relationship terminated on the 30th June 2008 when Zurich gave notice to Fleetsure that all the policies will be cancelled. Fleetsure had to notify its clients and had to find a different insurer.
- 13.4 On the 2nd April 2008 respondent acquired its licence to conduct business as an insurer.
- 13.5 In May of 2008 Fleetsure and the respondent were already discussing the possibility of conducting business.
- 13.6 On the on the 14th July 2008 Fleetsure and Respondent signed a shareholders' agreement, establishing a business relationship between the two entities. This agreement forms part of the arrangement involving a binder agreement that was entered into between the parties. Note that the shareholders' agreement deals with the question of solvency ratios, an important issue to insurers.

- 13.7 On the 15th July 2008 the parties signed a binder agreement, establishing the authority of Fleetsure to place short term cover with the respondent. This agreement was made effective retrospectively to the 1st June 2008. The reason for this was to accommodate new policyholders from 1st June 2008. This is an agreement as contemplated in Section 48 of Short-term Insurance Act No 53 of 1998.
- 13.8 In effect respondent entered into a cell captive arrangement with Fleetsure. The effective date was the 1st June 2008. From this date Fleetsure was able to place short term insurance with Respondent.
- 13.9 Fleetsure, according to a resolution of the board of directors of the respondent, was also authorised to use respondent's logo.
- 13.10 As at the 1st June 2008, Fleetsure took its clients from Zurich and placed their cover with respondent. Policy schedules were issued to Fleetsure's clients wherein the insurer was described as the respondent, "Orange Insurance".

- 13.11 Insurance premiums were collected by a company called Escape Premium Collection (Pty) Ltd (Escape). The latter paid the money to the respondent. The money was paid into an account held by the respondent at Investec Bank. Only the respondent had access to this bank account.
- 13.12 In addition Respondent began making payments in respect of claims made by policyholders. This, in respect of the policies that came from the Fleetsure cell.
- 13.13 In October 2008 the relationship between Fleetsure and Respondent soured. This was brought about by an unfavourable claims ratio in respect of the Fleetsure cell.
- 13.14 In November 2008 respondent resolved to cancel some policies emanating from five of Fleetsure's brokers. The cancellations would take effect as from the end of December 2008.

13.15 At this stage already policyholders began complaining that Respondent was taking too long to settle claims and in some cases had not made any payment.

13.16 At that same time respondent became involved in a dispute with Fleetsure, alleging that the binder and shareholder's agreements entered into with Fleetsure were not binding as certain conditions were not met. Details of this dispute are not relevant to this determination and are well documented in the FSB report.

13.17 At this stage respondent stopped paying claims that were made by policy holders.

13.18 As a result of complaints from the respondent itself as well as policyholders, the FSB began an inspection of the whole transaction between the affected parties, namely: complainant, Fleetsure and Zurich.

13.19 In its final report the FSB came to the conclusion that the respondent was at risk in respect of the Fleetsure cell and recommended that respondent settle all the claims.

13.20 It must be said that at all material times, policyholders were unaware of any dispute between Fleetsure and the Respondent. Nor can one attribute such knowledge to policy-holders. The existence of the dispute is irrelevant to the validity of their claims.

[14] Zurich's liability

In order to escape liability respondent suggested that Zurich was liable to settle these claims. This was based on the fact that when Zurich cancelled the policies in the Fleetsure cell it failed to strictly comply with provisions of the Short Term Insurance Act and the relevant procedural aspects of the Policy-Holder Protection Rules. There is no substance in this:-

14.1 Zurich in fact cancelled the policies and gave notice to Fleetsure with directions to give the statutory notice to all policyholders;

14.2 Fleetsure in fact gave notice to policy holders informing them that the new insurer was the respondent;

14.3 As at 30th June 2008, the Zurich policies were effectively cancelled;

- 14.4 As at 1st June 2008, a binder agreement was in place between Fleetsure and Respondent;
- 14.5 As from the 1st July 2008 Zurich no longer collected premiums from policy holders and all premiums were paid to respondent; who accepted the premiums
- 14.6 After the 1st June 2008, respondent began making payment of claims emanating from the Fleetsure cell business. In short, respondent was the insurer at risk as of the 1st of June 2008.
- 14.7 The fact that Zurich did not comply with the Act and rules in cancelling the policies does not mean that the policies were not cancelled. Nor does this render Zurich to be held liable for claims after the 30th June 2008. In any event, by the respondent's own conduct they treated the Zurich policies as if they were cancelled. Accordingly there can be no basis in law to find that Zurich is liable for claims after the 1st June 2008 or at least after the 30th June 2008.

[15] Respondent's conduct

For purposes of this determination, the respondent's own conduct is of importance:

- 15.1 An effective binder agreement was entered into between respondent and Fleetsure. If there was a rational or reasonable dispute between respondent and Fleetsure over the validity of the binder agreement then this dispute cannot render the policies invalid.
- 15.2 At any stage after the 1st June 2008 the respondent had the option of terminating the binder agreement or terminating policies from the Fleetsure cell. This they did not do. They now suggest that they did not know that Fleetsure was conducting the cell business and placing them at risk.
- 15.3 After the 1st June 2008, respondent began accepting premiums that were collected on its behalf by Escape. At no stage did respondent refuse the premiums nor did they deny receiving these premiums. Respondent even accounted for the premiums in its quarterly returns to the Registrar.
- 15.4 After the binder agreement was signed Fleetsure presented invoices to the respondent in respect of management and administrative fees. This was paid by the respondent.
- 15.5 Respondent received claims from policyholders, after the 1st June

2008, which they settled either directly or through Fleetsure and its brokers. It is not in dispute that respondent provided Fleetsure with funds to settle claims from policyholders.

15.6 Respondent authorised Fleetsure to use its logo on policy schedules and correspondence.

15.7 It was only on the 26th November 2008 that respondent resolved to cancel the policies and to give Fleetsure notice. The effective date for cancellation was the 31st December 2008. On the respondent's own conduct, this establishes the validity of the policies. One cannot resolve to cancel contracts that do not exist.

15.8 In a letter to Fleetsure's brokers dated 12th March 2009, respondent described itself as "a *primary risk carrier for this risk*". Note that this letter was written after the relationship between respondent and Fleetsure had soured.

[16] The Short Term Insurance Act (STIA)

Certain provisions of the STIA are relevant to this determination:

16.1 It is not in dispute that the Respondent and Fleetsure entered into a binder agreement as contemplated in Section 48(2) of the STIA.

- 16.2 In terms of Section 48 (2) (d) an intermediary is required, prior to entering into a short term policy on behalf of an insurer, disclose to the policy holder the name of the short term insurer and the fact that the intermediary is acting in terms of the binder agreement.
- 16.3 There is no evidence before this Office that Fleetsure and its brokers failed to do so. On the contrary the evidence supports the contention that they did comply with the provision of this subsection.
- 16.4 Of significance are the provisions of Section 48(4) of STIA: which states that notwithstanding the failure of an independent intermediary to act in accordance with the binder agreement in relation to that kind of short term policy, the short term insurer concerned shall be liable under a short term policy entered into or issued or purporting to have been entered into or issued on it`s behalf by such intermediary. This provision is clearly intended for the protection of policyholders and applies as between the complainant, Fleetsure and policy holders.
- 16.5 It is not in dispute that premiums were collected from the Fleetsure cell and paid to the Respondent. This could only have been done in terms of Section 45 of the STIA.

16.6 Section 54(4) of STIA provides that for the validity of the short term policy the payment of a premium to a person authorised as contemplated in Section 45 shall be deemed to be payment to the short term insurer under the short term policy.

[17] Reasonable findings

From the respondents own conduct the following conclusions can be dawn:

- 17.1 After the binder agreement with Fleetsure was concluded, the respondent expected to do business and to provide cover in respect of the Fleetsure cell and in respect of new policies placed with it by Fleetsure and the latter's brokers. The respondent then did in fact conduct such business.
- 17.2 Immediately after the 1st June 2008, respondent gave no indication to Fleetsure and to any policyholders that the binder agreement was of no force and effect.
- 17.3 The respondent by its own conduct held out to members of the public, and in particular to Fleetsure's clients, that it had accepted the Fleetsure cell and new business from Fleetsure.

- 17.4 The respondent held out to the policyholders that their policies were valid and that the respondent was at risk.
- 17.5 There are no probabilities that even remotely favour the respondent's allegation that it was not aware that Fleetsure was conducting business on it's behalf. The opposite is more probable, namely that they knew that Fleetsure was doing business.
- 17.6 At all material times, respondent knew that the Fleetsure cell captive arrangement was operational.
- 17.7 Even if arrangement with Zurich was terminated as at the 30th June 2008 and there was a legitimate dispute between respondent, Fleetsure and Zurich, it will be irrelevant to the validity of the contract of insurance between complainant and respondent. Equally it must be said that for purposes of this determination, there is no need to make any findings regarding the merits of any dispute between respondent and Fleetsure.
- 17.8 The Respondent conducted itself with callous disregard for the rights of policyholders. A year has gone since the FSB report was published and still the respondent refuses to pay policy-holders claims. The respondent's conduct undermines the integrity of the industry and support the recommended regulatory action suggested in the FSB report.

[18] Conclusion

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

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

[19] Quantum

- 19.1 In terms of the agreement of loss, the complainant agreed to accept the amount of R34, 000.00 in settlement of his claim.
- 19.2 Accordingly an order will be made that Respondent pay to complainant an amount of R34, 000.00
- 19.3 The loss agreement was signed on the 16 of January 2009. 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.

[20] 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 34, 000.00

 - 2.2 Interest on the amount of R34, 000.00 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 15th DAY OF SEPTEMBER 2010.



NOLUNTU N BAM

OMBUD FOR FINANCIAL SERVICES PROVIDERS



FROM : DIE FOURIES

PHONE NO. : 0361 310734

NOV. 23 2009 03:37PM PS

16/01 2009 09:51 FAX 0126549470

Att: DOMINI Q.16

00001/0001

012 6533-754



Claims Solutions

CLAIMS EVOLUTION



ORANGE Insurance Limited

Agreement of Loss Without Prejudice

| | | |
|------------|-------------|---------------|
| Insured: | IS Mthethwa | VAT No.: |
| Claim No.: | FLE1687 | Bank A/C No.: |

I/we the undersigned agree to accept payment of the following amount from @Claims Solutions acting on behalf of Insurance Company Limited (The Company) without admission of liability in respect of my/our claim numbered above for Motor Vehicle: 1998 Nissan Sentra 140 GXi - REG: DNZ 175 NW

| | |
|--|-------------|
| Agreed Amount: | R 40,000.00 |
| Loss Excess: (7.5% of claim minimum R3,000)(R3,000 under 25) | R 6,000.00 |
| SETTLEMENT AMOUNT: | R 35,000.00 |
| SHORTFALL: | R 10,000.00 |
| PAYABLE BY INSURANCE COMPANY: | R 34,000.00 |

It is further agreed between the parties that:

1. payment of the aforementioned sum will be in full and final settlement of all or any claims of whatsoever nature, present or in future, ascertained or unascertained which I/we, our successors in title, heirs, dependants, administrators, executors and/or assigns may now or at any time hereafter have against The Company, their servants, directors, members, agents or employees which in any way arises out of the losses which occurred on or about
Date: 07/12/2008 Cause: Motor Collision
2. The Company may irrevocably in rem suam in my/our name dispose of the salvage of the vehicle described above and retains the proceeds in reduction of the claim cost unless the salvage value is deducted from the agreed amount stated above.
3. If after payment of this claim the vehicle as detailed above is located, I/we shall render all assistance in the identification and physical recovery of such vehicle if called upon to do so by the Company provided that my/our reasonable expenses shall be reimbursed by the Company. Should I/we fail to render assistance when called upon to do so, I/we shall immediately become liable to repay to The Company all amounts paid in respect of this claim.
4. I duly warrant that I am authorized to sign this agreement of loss

Signed at LADYSMITH on 16/01/09

Signature Name [Signature]

Witness [Signature]

Reddy GGI (PTY) Ltd t/a
 Claims Solutions 2008/005502/07
 16 Marine Alberts Street, Brackley Industrial Estate, Alberton
 Tel: (011) 657-7500 • Fax: 011-657-9470 / 011-657-9472
 E-mail: info@claims-solutions.co.za / enquiries@claims-solutions.co.za
 FSP No. 12760

SCHEDULE OF CLAIMS – ORANGE INSURANCE

| | Case Identifier | Primary Complainant | Contract date | Policy Number | Date of the accident | Insurer | Settlement Amount |
|----|------------------------|---------------------|---------------------------------|-----------------|-----------------------------------|------------------|----------------------|
| 1 | FOC 4977/08-09/NW 3 | Mr Burger | 1 st of May 2007 | RS/Fleet/M00137 | August 2008 | Orange Insurance | R101, 300.00. |
| 2 | FSOS 06362/08-09/GP 3 | Mr I S Mthethwa | 24 August 2008 | MNEL 000956 | 7 December 2008 | Orange Insurance | R34, 000.00 |
| 3 | FSOS 06368/08-09/GP 3 | Mr M E Montjane | 1 October 2008 | MNEL 000940 | 25 December 2008 | Orange Insurance | R51,128.75 |
| 4 | FSOS 06492/08-09/KZN 3 | Ms T C Ntombela | 18 November 2008 | IBM100272 | 24 November 2008 | Orange Insurance | R72, 360.00 |
| 5 | FSOS 07082/08-09/GP 3 | Mr O N Nyakatha | 29 September 2008 | GIF002368 | 22 December 2008 | Orange Insurance | R92 701.57 |
| | FSOS 7168/08-09/GP 3 | Mr Makibi | 9 th of October 2008 | INBF 100919 | 27 th of December 2008 | Orange Insurance | R 69,055.26 |
| 6 | FAIS 00011/09-10/GP 3 | P N Magagula | 7 AUG 2008 | INBF100704 | 09 NOV 2008 | Orange Insurance | R132 890.00 |
| 7 | FSOS 00013/09-10/ GP 3 | R W Allerston | 07 August 2008 | INBF100703 | 16 Nov 2008 | Orange Insurance | R52 284.94 |
| 8 | FSOS 00014/09-10/GP 3 | Mr I Vyver | 24 August 2008 | MNEL 001151 | Oct 2008 | Orange Insurance | R14 153.30 |
| 9 | FSOS 00017/09-10/GP 3 | Mrs A S Myburgh | 1 June 2008 | ALL13967/1 | 16 June 2008 | Orange Insurance | R9 808.51 |
| 10 | FAIS 00018/09-10/GP 3 | Mr J P Papenfus | 1 September 2008 | UMA15776 | 3 October 2008 | Orange Insurance | R8 858.43 |
| 11 | FAIS 00019/09-10/GP 3 | Mr T E Motsokane | 1 August 2008 | ALL 13960 | 9 th of November 2008 | Orange Insurance | R14 756.30 |
| 12 | FSOS 00023/09-10/GP 3 | Mr R G Homan | 1 September 2008 | UMA 16013 | 25 of October 2008 | Orange Insurance | R12, 328.03 |
| 13 | FSOS 00033/09-10/GP 3 | Ms P Kambule | 5 ^h of May | INBF 100338 | 15 th of July | Orange | R R51, 190.82 |

SCHEDULE OF CLAIMS – ORANGE INSURANCE

| | | | | | | | |
|----|------------------------|----------------|-------------------|---------------|-------------------|------------------|---|
| | | | 2008 | | 2008 | Insurance | |
| 14 | FSOS 00069/09-10/ GP 3 | T H Hamnca | 22 OCT 2008 | INBF 100953 | 16 December 2008 | Orange Insurance | R12 958.75 |
| 15 | FSOS 0076/09-10/GP 3 | Dr M Muturiki | 3 January 2008 | SFI 13754 | 29 August 2008 | Orange Insurance | R56 795.00 |
| 16 | FAIS 00332/09-10/GP 3 | M Sekgapola | 11 Aug 2008 | INBF100720 | 16 Dec 2008 | Orange Insurance | R150 000.00 |
| 17 | FAIS 00076/09-10/ GP 3 | Mr Pieterse | 26 Sept 2008 | INBF100872 | 23 Oct 2008 | Orange Insurance | R215 300.00 |
| 18 | FAIS 00338/09-10/GP 3 | Mr B Gule | 01 August 2008 | ZUR002164GIFS | 03 Oct 2008 | Orange Insurance | R60 502.84 |
| 19 | FAIS 00478/09-10/LP 3 | M r J Mushonga | 22 Sept 2008 | INBF 100853 | 18 Dec 2008 | Orange Insurance | R39 560.00 |
| 20 | FSOS 00559/09-10/GP 3 | Mr M Matumba | 24 August 2008 | MNEL001138 | 21 Dec 2008 | Orange Insurance | R86 334.94 |
| 21 | FAIS 00561/09-10/ GP 3 | Mr R Ditsepu | 1 March 2008 | SAERF000196 | 10 Sept 2008 | Orange Insurance | R152 817.00 |
| 22 | FAIS 00638/09-10/ GP 3 | J Mlandini | 19 Sept 2008 | ZUR002350GIFS | 30 Nov 2008 | Orange Insurance | R81 347.00 |
| 23 | FSOS 00823/09-10/GP 3 | J Nhlapo | 23 July 2008 | AAIB000002 | 20 November 2008 | Orange Insurance | R48 150.40 |
| 24 | FAIS 00857/09-10/GP 3 | M A Tonetti | 16 May 2008 | INBF100377 | 26 September 2008 | Orange Insurance | R121 700.00 |
| 25 | FSOS 00964/09-10 NW 3 | P K Mahlangu | 25 July 2008 | ZUR002133GIFS | 27 December 2008 | Orange Insurance | R52 358.96- R3 926.92 (excess) |
| 26 | FSOS 01287/09-10/GP 3 | Ms T Rossouw | 24 August 2008 | MNEL000605 | 13 Nov 2008 | Orange Insurance | R67 802.50 |
| 27 | FAIS 01317/09-10/GP 3 | C L Moagi | 24 August 2008 | MNEL000826 | 04 November 2008 | Orange Insurance | R71 000.00 |
| 28 | FSOS 01625/09-1/GP 3 | M N Molosi | 18 September 2007 | MNEL000159 | 08 Nov 2008 | Orange Insurance | R152 548.30 |
| 29 | FSOS 02379/09-10/EC 3 | Z C Nyangule | 13 May 2008 | INBM100088 | 21 August 2008 | Orange Insurance | R126 985.92 |

SCHEDULE OF CLAIMS – ORANGE INSURANCE

| | | | | | | | |
|----|------------------------|--------------------|------------------|---------------|------------------|------------------|-------------------------------|
| 30 | FSOS 02993/09-10/NW 3 | S K Seepamore | 16 May 2008 | SFI17004 | 02 August 2008 | Orange Insurance | R40 607.50 |
| 31 | FSOS 03326/09-10/GP 3 | N Sannie | 10 April 2008 | SAERF000196 | 18 October 2008 | Orange Insurance | R66 600.00 |
| 32 | FSOS 03327/09-10/GP 3 | B T Heath | 24 October 2007 | ZUR001318GIFS | 5 November 2008 | Orange Insurance | R |
| 33 | FAIS 03638/09-10/GP 3 | M S E Maffini | 08 July 2008 | INBF100589 | 13 December 2008 | Orange Insurance | R16 200.00 |
| 34 | FSOS 03953/09-10/GP 3 | M W Mashita | 01 Sept 2008 | MNEL000631 | 26 November 2008 | Orange Insurance | R30 839.71 |
| 35 | FSOS 04480/09-10/GP 3 | B E Dipitse/Radebe | 06 June 2008 | ZUR001965GIFS | 27 October 2008 | Orange Insurance | R121 560.00 |
| 36 | FSOS 04576/09-10/GP 3 | C L Willemsse | 24 Sept 2008 | MNEL000981 | 28 December 2008 | Orange Insurance | R71 900.00 covered for |
| 37 | FAIS 04787/09-10/GP 3 | Mr B Slangwe | 29 October 2008 | INB3352/29 | 18 December 2008 | Orange Insurance | R61 750.00 |
| 38 | FSOS 05086/09-10/GP 3 | Mr M J Fourie | 3 October 2008 | GIF002405 | 12 December 2008 | Orange Insurance | R4 700.00 |
| 39 | FAIS 05209/09-10/EC 3 | Mr J Khoza | 1 September 2008 | MNEL000112 | 13 December 2008 | Orange Insurance | R133 581.28 |
| 40 | FSOS 05458/09-10/KZN 3 | Mr K Govender | 4 April 2008 | ZUR 1621GIFS | 24 December 2008 | Orange Insurance | WRITE OFF |
| 41 | FSOS 05981/09-10/EC 3 | Mr E R Mohoang | 23 August 2008 | SAERF000196 | 31 August 2008 | Orange Insurance | R78 000.00 |
| 42 | FSOS 05985/09-10/GP 3 | Mr A S Moosa | 1 June 2008 | ALL14004 | 4 November 2008 | Orange Insurance | R8 126.71 |
| 43 | FAIS 6194/09-10/GP 3 | Mr J R Modikwe | 24 August 2008 | MNEL000919 | 4 December 2008 | Orange Insurance | R41 578.46 |
| 44 | FAIS 07249/09-10/KZN 3 | M B Mtshali | 27 Feb 2008 | INBF100005 | 22 November 2008 | Orange Insurance | Write off |
| 45 | FSOS 00003/10-11/GP | Mr J G Van Zyl | 24 August 2008 | MNEL001096 | 15 October 2008 | Orange Insurance | R31 551.55 |
| 46 | FSOS 00034/10-11/GP 3 | Mr H G Fondse | 1 July 2008 | SFI16221 | 5 July 2008 | Orange Insurance | R42 596.41 |

SCHEDULE OF CLAIMS – ORANGE INSURANCE

| | | | | | | | |
|----|-----------------------|------------------|-------------------|---------------|------------------|------------------|--------------------|
| 47 | FAIS 00816/10-11/GP | Mr L T Phutiagae | 3 July 2008 | ZUR002070GIFS | 02 December 2008 | Orange Insurance | R28 935.58 |
| 48 | FSOS 00863/10-11/GP 3 | Mr G M Thobejane | 26 September 2008 | INBF100875 | 25 July 2008 | Orange Insurance | R123 813.00 |
| 49 | FAIS 02340/10-11/GP 3 | Mr M P Baloyi | 29 Feb 2008 | ZUR001344GIFS | 28 Sept 2008 | Orange Insurance | R94 350.00 |
| 50 | FSOS 03005/10-11/GP 3 | S C Kgaswane | 2 April 2008 | ZUR001600GIFS | 9 December 2008 | Orange Insurance | R57 492.34 |
| 51 | FAIS 01538/09-10/ | B V Pilane | 24 August 2008 | MINEL 000583 | 29 August 2008 | Orange Insurance | R43 230.00 |



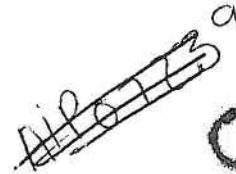
RECOMMENDATIONS

179 We recommend that:

- 179.1 The Registrar of STI instruct Orange to settle all the claims of the Fleetsure policyholders in respect of which premiums were received, including the cases where premiums were used to settle claims by Escape, Inbrocon, Fleetsure and in cases where premiums were paid in error to Zurich.
- 179.2 The Registrar of STI evaluate whether Orange is fit to be an insurer in light of their failure to pay claims as well as the fact that they misled the inspectors.
- 179.3 The Registrar of STI take regulatory action against Zurich for contravention of sections 48(1) and 48(2) of the STIA;
- 179.4 The Registrar of STI take regulatory action against Inbrocon for contravention of section 7 of the STIA;
- 178.5 The Registrar of STI take regulatory action against Zurich for contravention of the PPR;
- 179.6 The Registrar of STI take regulatory action against Fleetsure for contravention of section 48(1) of the STIA;
- 179.7 The Registrar of STI takes regulatory action against Escape for contravention of section 7 of the STIA by settling claims without authorisation;
- 179.8 The Registrar of FSPs evaluate whether Fleetsure is fit to be an



MICHELLE NEL MAKELAARS
BROKERS



ORANGE Insurance Limited

FSP 16900
30 Estcourt Drive
Wierda Park X2
0157

PO Box 11637
Wierda Park South
0057

Tel: (012) 653 1477
Tel: (0861) 113 454
Fax: (012) 653 3954

Certificate of Insurance: MNEL000956

In consideration of the payment of the premium Orange Insurance Limited (hereinafter referred to as the "Insurer") agrees to indemnify the Insured against the insured events as hereinafter provided occurring during the period of insurance but not exceeding the limits of indemnity as per the schedule of cover.

Inception Date of Cover 2008-08-24

The interest of ABSA is noted on this policy with reference TBA

Personal Details Of Insured

| | | | |
|--------------------------|-----------------------------------|------------------------------|---|
| Surname (Title): | Mthethwa (Mr) | First Names: | Innocent Sithembele |
| ID Number: | 8603055567088 | License First Issued: | 2005-08-18 |
| Telephone Number: | 0829380740 | Cellphone Number: | 079 5150986 |
| Fax Number: | 012 529 1425 | E-mail Address: | |
| Postal Address: | P.O Box 16231 Lytelton 0157 | Physical Address: | 315 Walker Street 202 Eucla Building Pretoria |

Policy Note

Portfolio transfer
Drivers Licence issued date 02 May 2006
Vesa level 3/4 immobiliser

Dealership Details

| | | | |
|--------------------------|-------------------------|--------------------|-------|
| Name: | PRO QUICK MOTORS/AMANDA | FSP Number: | 16900 |
| Telephone Number: | | Fax Number: | |
| Physical Address: | | | |

Nominated Drivers

| Full Name | ID Number | Age | License First Issued |
|------------------------------|---------------|-----|----------------------|
| Innocent Sithembele Mthethwa | 8603055567088 | 22 | 2005-08-18 |

27/2/09 - Client needed a Copy to forward to
his Attorney's

Vehicles

Nissan Sentra 140 GXI A/C (1998) - R 40,000.00

Category: Car
Use: Private
In Locked Garage Overnight: No
Behind Locked Gate Overnight: Yes
Tracking Device Installed: No

| | Once-Off Payment | Monthly Premium |
|---------------------------|------------------|-----------------|
| Motor Comprehensive Cover | | R 318.17 |
| Excess Buydown Cover | | R 0.00 |
| Car Hire | | R 50.00 |
| Roadside Assistance | | R 20.00 |
| Pro Rata Premium | R 100.17 | |
| Totals | R 100.17 | R 388.17 |

Policy Summary

Pro rata premium is calculated from the inception date on 2008-08-24 to the first debit order date on 2008-09-01.

| | Once-Off Payment | Monthly Premium |
|----------------------------------|------------------|-----------------|
| Nissan Sentra 140 GXI A/C (1998) | | |
| Inception Fee | R 100.17 | R 388.17 |
| Policy Fee | R 0.00 | |
| Administration Fee | | R 0.00 |
| | | R 70.00 |
| Totals | R 100.17 | R 458.17 |

Commission payable to intermediary at 12.5% (R 48.52) included in the monthly premium.

Pro rata commission payable to intermediary at 12.5% (R 12.52) included in the pro rata premium.

Signed at Pa on 1st day of September 08

By Insured:

Signed by:

ON BEHALF ON THE INSURER

All amounts include +4% VAT



ORANGE Insurance Limited

17 February 2010

Office of the Ombud for Financial Service Providers

East Wood Office Park
Lynwood Ridge
Pretoria
0001

Delivery by email: david@fiasombud.co.za

For the personal attention: Mashite Makgoo

Dear Makgoo,

COMPLAINTS: MR IS MTHETHWA / ORANGE INSURANCE LIMITED ("OIL"):
YOUR REF: SMM FSOS: 06362/08-09/GP 3

In the above regard we record having received from your offices, by hand and on 10 February 2010, copies of the documentation pertaining to the above claim as well as to the subsequent complaints. We confirm that we were advised simultaneously of our entitlement to present you with our defense to the complaints, subject to such presentation being made in writing, within the following seven days.

We refer to the telephonic discussions between our lawyer Mr. CF Van Der Westhuizen and your Mr. David Davidson on both Tuesday and Wednesday of this week and when reference was made to the *sub judice status quo* and which will be elucidated upon later in this letter. We also confirm that our legal representative telephonically explained the delay in furnishing your offices with these replies, earlier.

ORANGE Insurance Limited

Registration Number: 2003/031307/06

HEAD OFFICE South Africa - 22 Koelenhof Road Northcliff Ext 19 1709 - P.O.Box 809 Bergbron 1712

Phone: +27 (0)11 477 3409 - Fax: +27 (0)11 477 7700

Directors: Dr. C. Matsson (Chairman), Dr. WFS Ward (CEO), H. Odendaal, A. Beiling

A Member of the Orange Financial Holdings Group

We now proceed to present you with the following defense to the complaints:-

1. We confirm having perused and studied the related papers and due emphasis is required regarding the entire inability of OIL, to render any meaningful comment regarding the merits as such, pertaining to the above claim. This presents a most regrettable state of affairs and which will be more fully explained, in detail hereunder.
2. It is common cause that the complainant was at all related times factually insured by Zurich Risk Financing SA Limited, previously known as SA Eagle Insurance Company ("Zurich"). In support of this contention you are kindly referred to the related Certificate of Insurance, which your offices had made available on 10 February 2010.
3. A most contentious situation which at all times has direct bearing on the involvement of Zurich, ensued when the related broker a certain Ms Ilse Becker trading as Fleetsure Insurance had attempted to transfer her Fleetsure portfolio (undercover whereof the above complainant was likewise insured) from Zurich to OIL.
4. It is common cause that OIL has categorically disputed the validity of such transfer and in this regard we emphasize the following:
 - 4.1 In respect of the **intended transfer of the portfolio**, Becker and Zurich had clearly failed to have ensured full and comprehensive implementation of the stipulated statutory requirements, specifically provided for in sections 8.1; 36; 37; 38; 39 and 48.2 of the Act. It is by Oil deemed common cause that since these statutory requirements were not complied with and as it would appear factually ignored, the intended transfer of the Fleetsure book of business from Zurich to OIL, was rendered void ab origine and of no force and effect; and
 - 4.2 In respect of the alleged possible **alternative cancellation of the Zurich / Fleetsure portfolio**, and the subsequent transfer to OIL of the portfolio, by Becker OIL contends that Becker and Zurich had failed to ensure full and comprehensive implementation of the related requirements, stipulated in the Policyholder Protection Rules, more specifically by having failed to have ensured due notification of cancellation to each individual policyholder, accordingly. It is noted that such requirement in terms of the rules remains the exclusive responsibility of the insurer, in this instance Zurich and that consequently such purported cancellation, and concomitant transfer to OIL, is again also rendered entirely null and void; and

- 4.3 In respect of any ***continued status quo responsibility, exposure and liability***, Becker and Zurich by having in the premises caused the continuation of such status quo to remain with Zurich, as a direct consequence of having resultantly through their said failures prevented any accrual to OIL, of any concomitant responsibility, exposure and or liability.
5. OIL contends that the liabilities as insurer, consequently remained with Zurich, and therefore effectively render the interpretation by your offices in considering OIL to be the liable party / insurer as premature.
6. The offices of the Registrar of Short-Term Insurance, will confirm to your offices that the Registrar's ruling regarding the liable insurer remains pending and that the consequent impasse has not only become untenable on the one hand but certainly on the other hand inevitable, to the extent that even the Ombud would be compelled to stay the implementation of any punitive or any other form of measures, accordingly.
7. The concomitant irregularities performed by Becker in collusion with Zurich will compel OIL to protect its interests at all costs in any forum where it may be required to pursue these objectives.
8. In the premises it must be observed by your offices that OIL never had any form of contact with insureds, irrespective of whether it was directly or indirectly and neither any access to any records, which in spite of the most unacceptable nature thereof, remained with Fleetsure as the broker and was dealing with the claim, directly since the occurrence thereof. All related instructions to the assessors and the panel beaters were given without any authorization thereof by OIL. The imputation that OIL had given any such instructions is entirely unfounded and inappropriate.
9. We repeat that any related authorizations by Orange Insurance Limited, are entirely non-existent and that consequently Orange Insurance Limited has been effectively divested of any means to have appraised the merits of the claim and as already herein before contended, subsequently in no position to have rendered same.

10. For the sake of a comprehensive record we proceed to advise that the Agreement of Loss form, likewise made available by your offices on 10 February 2010 and reflecting @Claims Solutions, as the contracting party on behalf of OIL, has no legal binding consequences, since the corporate image of OIL as it appears thereon, was brought about unlawfully and therefore has no legal implications. @Claims Solutions is a corporate division of Fleetsure and certainly not capacitated to represent OIL in any form what-so-ever and capable only of committing Fleetsure and Zurich as the liable insurance company.
11. In conclusion we must finally emphasize that to date OIL has never issued any underwriting instructions and that Becker and Zurich had used existing Zurich policies, on the front pages whereof, similar as to what has already in paragraph 10 above been recorded, merely affixed the OIL logo in order to realize their joint strategy, namely in doing so to present OIL to innocent third parties / insureds as the purported insurer, at all times unbeknown to OIL and entirely unlawfully. We emphasize that by Becker and Zurich having even used the wrong corporate logo of OIL, certainly manifests their joint *mala fides* and sinister objectives.

We trust that the above will suffice and earnestly request that all further and / or intended proceedings by your offices, accordingly be stayed, at least until the Registrar had made the apposite ruling as referred to herein before.

Yours sincerely,

Dr. WFS Ward
CHIEF EXECUTIVE OFFICER