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

**Case Number: FSOS 00816/10-11/GP/ 3**

**In the matter between**

**THEO PHUTIEAGAE** **Complainant**

**and**

**ORANGE INSURANCE LIMITED** **Respondent**

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**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").**

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## A. THE PARTIES

[1] Complainant is Mr Theo Phutieagae an adult male, residing at no. 4 Porges Street Randfontein 1759, 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 Ford Focus 1.6 SI, bearing registration number and letters XLG 477 GP.

10.2 On the 3rd of July 2008, the Complainant entered into a Comprehensive short term insurance policy contract with the Respondent through Guardian Independent Finance Services CC Brokers, the principal Intermediary and a licensed Financial Service Provider under license number 21485.

10.3 The Complainant was furnished with a policy number: ZUR002070GIFS 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 3rd of July 2008. As will appear in this determination, Guardian Independent Finance Services CC clients were part of the Fleetsure cell.

10.4 On the 2nd of August 2008 The Complainant`s vehicle was involved in an accident and he duly submitted his claim through Guardian Finance 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 13th of August 2008, the Respondent accepted the claim and referred the complainant to the Panel beaters (Randfontein Panel Beaters). Complainant's repair cost amounts to R28, 935.58.

10.7 To date, the Respondent failed to honour the complainant`s claim. In the interim the panel beater has instituted action against the complainant.

10.8 The Complainant wants the Respondent to honour the claim by paying the cost of repair according to the policy agreement.

10.9 On the 13th of May 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 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 R27,638.86 in settlement of his claim.

14.2 Accordingly an order will be made that Respondent pay to complainant an amount of R27,638.86.

14.3 The loss agreement was signed on the 13 of August 2008. The complainant expected the amount to be paid by the end of August 2008, accordingly I intend to make an order that interest be paid on this amount from the 1st September 2008 to date of payment.

## I. ORDER

I make the following order:

1. The complaint is upheld.

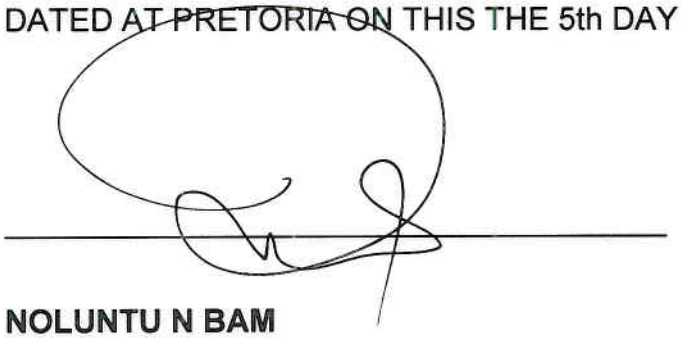
2. The respondent is ordered to pay to the complainant :

2.1 The amount of R27, 638.86

2.2 Interest on the amount of R27, 638.86 at the rate of 15, 5% per annum from the 1st of September 2008 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**

# Randfontein Panelbeaters CC

Fedler Street PO Box 838
Randfontein 1760

Tel : 011-693 5267/8/9
Fax : 011-692 3504

All Work Guaranteed for Five Years

Vat No: 4300106830 CK No: 952168523

BAMBRA
Advanced Repair Technology
Major Structural Repairer

## ESTIMATE/QUOTATION NO 26271

**Date of Quote 11.08.2008**

| | |
|---|---|
| Make | Ford Focus |
| Client | Theo |
| Street | |
| Town | |
| Area Code | |
| TelNo | |
| CellNo | 0849478320 |
| Quotation by | Jan N |
| Reg No | TFW904GP |
| Insurance Co | |
| Claim No | Zurich |
| Bettement R | |
| Excess R | |
| Approved | No |
| Model | 2006 |
| Odometer | |
| Color | |

| No | Article/Decription Agreed | Parts | Labour | Strip&Ass | Paint Lab | Paint Mat | Outwork | Total |
|---|---|---|---|---|---|---|---|---|
| 1 | Supply Front Bumper | 1253.00 | 195.00 | 146.25 | 860.00 | | | 2454.25 |
| 2 | Supply Front Bumper Spoiler | 741.00 | 97.50 | 48.75 | 740.00 | | | 1627.25 |
| 3 | Supply Front No Plate | 120.00 | 60.00 | | | | | 180.00 |
| 4 | Rear Bumper | 1940.75 | 195.00 | 146.25 | 860.00 | | | 3142.00 |
| 5 | Rear Bumper Centre Brkt. | 330.27 | 97.50 | | | | | 427.77 |
| 6 | Rear Bumper Spoiler | 668.00 | 97.50 | | 740.00 | | | 1505.50 |
| 7 | Rear Bumper Bead | 495.75 | 97.50 | | | | | 593.25 |
| 8 | Supply Right Rear Bumper Slide | 174.46 | 48.75 | | | | | 223.21 |
| 9 | Supply Left Rear Bumper Slide | 173.06 | 48.75 | | | | | 221.81 |
| 10 | Supply Tailgate | 3595.00 | 292.50 | 390.00 | 1050.00 | | | 5327.50 |
| 11 | Supply Tailgate Badge (Focus) | 211.16 | 48.75 | | | | | 259.91 |
| 12 | Supply Rear Valance | 565.00 | 1140.00 | | 960.00 | | | 2665.00 |
| 13 | Supply Rear Valance Inner Trim | 949.16 | 195.00 | | | | | 1144.16 |
| 14 | Supply Spare Wheel Cover | 476.00 | 97.50 | | | | | 573.50 |
| 15 | Supply Sound Pad | 85.00 | 48.75 | | | | | 133.75 |
| 16 | Supply Rear Screen Repair Kit | 280.00 | | | | | | 280.00 |
| 17 | Supply General Clips | 180.00 | | | | | | 180.00 |
| 18 | R& R Rear Screen | | | | | | 480.00 | 480.00 |
| 19 | R&R L/R Q-glass | | | | | | 320.00 | 320.00 |
| 20 | R&R R/R Q-glass | | | | | | 320.00 | 320.00 |
| 21 | Post Repair Check | | | | | | 475.00 | 475.00 |
| 22 | Repair Boot Floor | | 1520.00 | | 860.00 | | | 2380.00 |
| 23 | Set Vehicle On Jig | | 380.00 | | | | | 380.00 |
| 24 | Pulling Time | | 475.00 | | | | | 475.00 |
| 25 | Blending | | | | 860.00 | | | 860.00 |
| 26 | Sealer | | | | 160.00 | | | 160.00 |
| 27 | Rust Prooving | | | | 120.00 | | | 120.00 |
| 28 | Remove And Refit Parts | | 570.00 | | | | | 570.00 |
| 29 | Sundries | 160.00 | | | | | | 160.00 |
| 30 | | | | | | | | |
| Totals | | 12397.61 | 5705.00 | 731.25 | 7210.00 | | 1595.00 | 27638.86 |

PROOF OF EXCESS PAID

No. V14 7/10/2023

RECEIVED from Phutieqae L T

the sum of Three Zero Zero Zero Rand 00/100 — 3000.00

for TFW 904 CP

36271.