

THE OMBUDSMAN'S BRIEFCASE

*Official Newsletter of the
Ombudsman for Short-Term
Insurance*



THE OMBUDSMAN
For Short-Term Insurance

Mission

To resolve short-term insurance complaints fairly, efficiently and impartially

Issue No. 3 of 2010

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INTRODUCING OSTI'S NEW BOARD MEMBERS AND NEWLY ELECTED CHAIRMAN AND DEPUTY CHAIRMAN

At the Ombudsman's Annual General Meeting held in May this year, new Board members were appointed, either representing the insurance sector or the interests of consumers. We are delighted to welcome our new Board members, and newly elected Chairman of the Board, Gail Walters and Deputy Chairman of the Board, Wendy Knowler. We wish them every success during their tenure.

GAIL WALTERS CHAIRMAN OF THE BOARD

An admitted attorney, holding BA Honours (in English Literature) and LLB degrees from Wits, Gail practised law for about nine years, specialising in insurance litigation and practice, before joining the Hollard group in July 1994 to start their legal department. She moved into the business in January 1998 and is currently Head Group Corporate Affairs and Sustainability. She is, in addition to Chairman of the OSTI Board, a member of its Exco and Remco committees, a member of the board of the Intermediaries Guarantee Facility Limited, Chairman of the SAIA Board Legislation & Regulation Committee, Nic Kohler's alternate on the SAIA board and a founder trustee of the FSB Consumer Education Foundation. She was also recently appointed to the board of Business & Arts SA. She represents the short-term industry on the FSB Task Team drafting the binder regulations under the Insurance Laws Amendment Act of 2008. She heads up the environmental sustainability pillar under Hollard's Charter – something she's really passionate about. In her spare time, she's an aspirant dancer (especially Argentine tango), artist and gardener and loves opera.



WENDY KNOWLER DEPUTY CHAIRMAN OF THE BOARD

Wendy obtained a National Diploma in Journalism from the then Technikon Natal in the mid-80s and has worked as a journalist for 25 years, starting out with the community newspapers group The Highway Mail, and then progressing to The Mercury, where she covered numerous beats, from education and courts, to local government, feature writing and medical. In 1995 she



*Brett Florens/
ECR*

was posted to London as Europe correspondent for The Mercury and several other morning newspaper titles in South Africa.

It was shortly after the birth of her daughter in 1998 that Wendy was asked by the Mercury's editor at the time to start writing a consumer column for the paper, as there was no such column in KZN at the time, and there was a strong demand for such a column in reader focus groups they'd conducted. And so began Wendy's first consumer column, Taking Issue, in October 1998. In 2002 she was asked to write a second weekly consumer column for the Mercury's sister paper, the Daily News.

She joined Fairlady magazine in 2004 but resigned as Consumer Editor in 2006 to return to her newspaper roots as Consumer Editor for the Independent Newspapers group. Since then, her Consumer Watch column has been published nationally.

Wendy works from home, reporting directly to The Star in Johannesburg, which syndicates her two Consumer Watch columns a week to The Cape Times, Pretoria News and Daily News.

She currently receives about 80 emails a day from her newspapers readers countrywide and scores more from ECR listeners, requesting her intervention or advice. A significant proportion of her inbox comprises complaints relating to short term insurance issues, mostly concerning repudiated motor vehicle claims, which frequently has her sourcing responses from the respective insurers.

She's won a number of awards for her work over the years, most recently two regional awards in the 2009 Vodacom Journalist of the Year awards, in the Finance and Columnist categories.

THAMI BOLANI

Thami is the Chairman of the National Consumer Forum (NCF), a body of volunteers dedicated to the protection and promotion of consumer rights and interests in our country. The NCF is an affiliate member of Consumers International, an international federation of 260 members in more than 130 countries. Since 2000, when Thami took over the leadership of the organization, the NCF has become a well respected champion of consumer rights and interests in South Africa.



INTRODUCING OSTI'S NEW BOARD MEMBERS AND NEWLY ELECTED CHAIRMAN AND DEPUTY CHAIRMAN

CONTINUED

Under his leadership, the NCF has initiated a number of projects that have significantly raised the profile of the NCF and consumer rights in our country. Thami is passionate about consumer education. He continues to work with radio stations to bring much needed information to consumers and small business people. Currently, he is working on a daily basis with IKWEKWEZI FM of the SABC and the UNITRA Community Radio Station at the Walter Sisulu University in Mthatha, Eastern Cape. These two stations provide the NCF with an opportunity to educate more than 1.5m people every week. He serves as a board member on the Council for Medical Schemes, Policy Board for Financial Services and Estate Agents Affairs Board. In 2003, he received the Department of Trade & Industry (DTI) Award for Consumer Champions (Individual category).

LEIGH BENNIE

Leigh hosts the popular 'A Word On' series every week night on Talk Radio 702 and 567 CapeTalk. She showcases a variety of issues ranging from financial products through to legal problems and car maintenance. As such, she addresses many issues pertaining to



the short term insurance industry and tries to provide continued education and information to the public to improve communication and the understanding of the industry. She also anchors the Saturday Breakfast program covering gardening, pet care and DIY. During the day, she studies at the Institute of Natural Health and is working towards a higher diploma in vibrational healing and therapeutic sports massage. Come the next World Cup, she secretly hopes her studies will enable her to get closer to the field to play a more direct role in the national team's care and wellbeing.

GARIKAI DOMBO

Garikai is the Managing Director of Alexander Forbes Insurance, a position he has held since 2002. He has a wealth of experience in the short-term insurance arena and holds a Masters in Business Administration (MBA) from the University of Natal as well as being a Fellow of the Insurance Institute of SA (FIISA) and Associate of the Insurance Institute of Hillcrest, London (ACII). Garikai serves on the Board of the South African Insurance Association (SAIA).



OMBUDSMAN'S ADVICE: CASE STUDIES



DISCLOSURES AND A THATCHED ROOF

The insured purchased a supermarket outside of Komatipoort in Mpumalanga. He telephoned his broker requesting a quotation to insure the business. A quotation was provided to the insured. The quotation was later accepted. Nine months later the supermarket was destroyed in a fire which had started on the adjoining premises, used as a hardware store. The fire gutted the entire complex. The insured filed a claim against the insurer.

The insurer appointed a loss adjuster to investigate the matter and during the course of the loss adjuster's investigations it emerged that the structure housing the supermarket had a thatched roof. The insurer subsequently rejected liability for the claim on the grounds that it was not



disclosed to it at the time of inception that the building had a thatched roof. The insurer state that had it been aware of this fact it would have declined the insured's proposal as it did not accept thatched risks in that province, which were considered to be of a very high risk nature. The insurer had quoted on the basis that the building was of standard construction.

The insured maintained that at no stage had he been asked whether the building had a thatched roof, either during the course of his telephonic discussions with the broker, or in the proposal form which he later completed. The insured stated that he was not aware of what information he was required to disclose to the insurer and had been unaware of the relevance of this issue.

The broker was requested to comment on the allegation

OMBUDSMAN'S ADVICE: CASE STUDIES



made by the insured. The broker confirmed to the Ombudsman that the insured had telephoned it in August 2008 and had advised that he was in the process of purchasing a supermarket and requested a quotation to insure the building and the contents. He was advised of the insurer's requirements over the telephone and a quotation was subsequently sent together with proposal forms. The broker stated that "there was never any mention that the premises had a thatched roof". It was also conceded that no questions had been asked of the insured concerning the construction of the building. The broker had simply assumed that the building did not have a thatched roof. However, the broker maintained that the insured, who had lived in Johannesburg and moved to the area where the supermarket was located in 2006, had purchased a house in that area and had requested cover on that property. When a quotation was furnished the insured queried the high premium and was advised that "because the property had a thatched roof the premium rate is loaded and this would apply to contents cover as well". The broker maintained that the insured was consequently aware of the fact that thatch risks carry a higher premium rate.

The insured responded to this allegation by drawing attention to the fact that 99% of the properties situated in the area where the supermarket was located are of thatched construction and the broker was aware of this. The insured had supplied the broker with all information requested but at no time had he been asked anything concerning its structure.

The Ombudsman, after reviewing the facts of the matter concluded that the fact that the building had a thatched roof was clearly a material fact in the insurer's assessment of the risk proposed for and that this fact should have been disclosed to the insurer. Based upon the information provided by the broker, the insured should have appreciated the significance of the method of construction of the roof but at the same time the broker should also have inquired of the insured whether the structure had a thatch roof. The insurer was entitled to assume, when the proposal was made to it, that the building was of standard construction and that there were no factors associated with the insured's proposal which presented an unusual risk.

The insurer also stated that due to the value of the sum insured requested, no survey of the property was requested or deemed necessary. The insurer also drew attention to the fact that after inception the sum insured had been increased but the new sum insured was still within limits where a survey was not considered necessary. At the time the sum insured was increased neither the insured nor the broker had disclosed to the insurer's underwriting manager that the building had a thatch roof.

The Ombudsman agreed with the Insurer's contentions and upheld the insurer's voidance of the policy from inception on the grounds of a material non-disclosure. However the Ombudsman referred the matter to the FAIS Ombud for consideration of the conduct of the broker as it appeared that there may well have been negligence on the part of the insured's broker.

PRIVATE AND BUSINESS USE

The insured was the owner of a Nissan Cabstar vehicle which was damaged beyond economical repair when the vehicle rolled during the course of the insured taking evasive action to avoid a collision. The insured filed a claim with his insurer, but liability was rejected on the grounds that the vehicle had been insured for private use but had been used by the insured for business use at the time of the accident.



In support of its contention the insurer stated that several invoices were found in the insured's vehicle indicating bulk purchases of food and that the loading bin of the vehicle was filled with newly purchased boxes of cornflakes which represented stock which the insured was delivering to his tuck shop which he operated at the given risk address. The insured operated three different businesses and it was alleged by the insurer that the vehicle was used to convey goods in connection with the businesses. The insurer also contended that the insured had covered a distance of some 2,600 kilometres per month from the time that he purchased the vehicle, which was indicative of the vehicle being used for business and not private purposes.

The insured responded to these allegations stating that the goods that were in the vehicle at the time were for his personal consumption and that he had a large family who resided with him. The insured further contended that he had a three ton truck and two bakkies which he used for business purposes and at the time that the accident happened he was travelling from his place of employment to his home.

The insurer maintained that had the vehicle been correctly insured the premium would have increased and in fact it only received 86% of the correct premium.

The Ombudsman after reviewing all the relevant facts and circumstances surrounding the loss concluded that on the probabilities, that the vehicle had been used by the insured in connection with his business and the use of the vehicle had not been confined solely to private use. However, the insurer would still have accepted the insured's proposal had the correct use of the vehicle been disclosed and the prejudice suffered by the insurer amounted to only 14% of the premium. If the insured had been guilty of a misrepresentation, this was not of such magnitude as would justify the cancellation of the policy ab initio and that it appeared that the insured had largely acted out of ignorance rather than any deliberate attempt to mislead. The insured had not fully appreciated the need to insure the vehicle for business purposes and it was true that he had other vehicles that he used exclusively in relation to his business ventures.

The Ombudsman felt that it would be fair and equitable to both parties if the insurer accepted the claim on a pro rata basis. This proposal was accepted by both the insured and the insurer with the result that the insurer accepted liability for 86% of the insured's claim.

INTRODUCING NEW MEMBERS OF THE TEAM

We are delighted to welcome back Edite Texeira-McKinson to OSTI. Edite rejoins OSTI as our General Manager, and we are pleased to introduce new staff members, Dharmita Jogee (Assistant Ombudsman), Adriaan Lombard (Assistant Ombudsman) and Lamiz Latha (Secretary to Assistant Ombudsman, Dharmita Jogee).

EDITE TEXEIRA MC-KINON **GENERAL MANAGER**

Edite hails from Kwazulu Natal and completed her BA LLB at the University of Natal. She was admitted as an attorney in 1993 and worked for several short-term insurers before joining the Ombudsman's Office in 2007 as an Assistant Ombudsman. Edite was promoted to Senior Assistant Ombudsman in 2008.

After a short spell at a short-term insurer Edite has returned to the Office of the Ombudsman as General Manager.



DHARMITA JOGEE **ASSISTANT OMBUDSMAN**

Dharmita obtained her LLB degree from Wits University in 2001 and went on to complete her articles with a small attorney's firm in Johannesburg. She was admitted as an attorney in 2004 and as a conveyancer in 2007.

Prior to joining the office of the Ombudsman for Short Term Insurance, she worked for a short term insurer where she started off as a recoveries consultant before moving on to the insurer's Ombudsman Department as an Ombudsman consultant. After over a year of being an Ombudsman consultant, she decided to go back to practice for a year and then returned to the same insurer as the Manager of both the Ombudsman and Litigation Departments.



Dharmita is passionate about insurance and her decision to join the office of the Ombudsman for Short Term Insurance in June 2010 was based on the fact that she will now have an opportunity to be able to use her experience in the industry to assist the layperson on the street with matters that may not have been decided on a fair and equitable basis.

ADRIAAN LOMBARD **ASSISTANT OMBUDSMAN**

Adriaan completed his Law degree at UP in 2003 and completed his Master's degree in Mercantile Law while working for an established underwriter in 2008. This experience has taught him a great deal about the risk factors involved in the insurance industry today.

Adriaan joined OSTI in July 2010 as an Assistant Ombudsman and welcomes the challenges that the position holds.



LAMIZ LATHA **SECRETARY TO ASSISTANT OMBUDSMAN,** **DHARMITA JOGEE**

Lamiz has 20 years corporate experience covering Executive PA, HR, retirement fund consulting and office management experience. She worked for an insurance brokerage for five years before joining OSTI as Secretary to Assistant Ombudsman, Dharmita Jogee.

Lamiz's personal motto in life is "It's not enough to have lived. You should be determined to live for something". "This is testimony of the work that the Ombudsman's Office does and how committed the staff are", says Lamiz.



Welcome to all the new team members! We wish you many happy years with OSTI.

NICE ONE! **SELINAH PHAKOE,** **OSTI CALL** **CENTRE** **SUPERVISOR**

Congratulations to Selinah Phakoe on her recent promotion to Call Centre Supervisor. Selinah has been with OSTI since 2001. We wish her every success in her new role!





Recent media releases distributed by OSTI include:

The Ombudsman for Short-Term Insurance is concerned by the number of complaints received from consumers relating to motor vehicle warranty contracts

The Ombudsman for Short-term Insurance is disturbed by the number of complaints received from consumers in relation to motor vehicle warranty contracts which are purchased from dealers at the time of purchase of the motor vehicle, or when a manufacturer's warranty on the vehicle is due to expire.

These products are marketed as being insurance policies administered by "insurance administrators" and have all the hallmarks of an insurance policy. Later on when a "claim" is rejected by the "insurance administrator" consumers may be advised, that if they are unhappy with the decision of the administrator, to seek assistance from the Ombudsman. However, when the Ombudsman receives a complaint and investigates the matter it frequently transpires that the product sold to the consumer was not an insurance policy underwritten by a registered insurer, but is in fact nothing more than a contractual arrangement concluded between the consumer and the dealer concerned. The consumer is thereafter left high and dry in relation to any recourse against the dealer as the dealer is not a registered insurer and consequently falls outside of the jurisdiction of the Ombudsman for Short-Term Insurance.

When such complaints are in turn referred to the Motor Industry Ombudsman that Ombudsman declines to intervene on the basis that he deals with complaints relating to motor vehicles and not financial services products.

The Ombudsman has referred the matter to the Financial Services Board, as the regulator, for consideration, but in the meantime consumers are urged to exercise great caution in the purchase of such products and in particular to enquire, at the time of purchase, whether the product offered is an underwritten insurance policy. If the product offered is nothing more than a contract with a dealer, consumers' attention is drawn to the fact that in the event of any dispute or complaint, they will be left with no recourse against the dealer other than through the legal process, which is extremely costly and time consuming to pursue. The dealer may also prove to be of dubious standing.

Consumers are encouraged to fully acquaint themselves with the nature of the benefits provided by such contracts and to carefully consider whether the product offered covers the consumers' needs. "Ask questions regarding the product and in particular whether it is underwritten by a registered insurer", says Brian Martin, the Ombudsman for

Short-Term Insurance. If a product is held out as being an insurance policy make sure that it is underwritten by a registered short-term insurer. Consumers can check if an insurance company is registered by contacting the Financial Services Board on 012 428-8000.

The Ombudsman for Short-Term Insurance advises travellers to carefully check what is on offer when taking out travel insurance

The Ombudsman for Short-Term Insurance says that many consumers complain to his office about the difficulties they experience with travel insurance. Many consumers, when travelling, rely upon "free travel insurance" which may be given as a benefit for the purchase of an airline ticket or through the cost of a travel package purchased on a credit card. The cover provided by such policies is usually extremely restrictive and limited and may prove to be of little practical benefit to a traveller.

Consumers are advised not to rely upon such products as providing them with adequate cover for travel purposes and to carefully check whether the cover provided by such products meets with their requirements or expectations prior to departure. Most travel policies work on an "insured perils" basis, meaning that liability will only exist where loss or damage arises from certain specified events or perils and even then, the insurer's liability may be severely restricted both in relation to the cause of the loss and the level of indemnification provided for. A basic travel insurance policy should provide for indemnification in relation to the cost of medical treatment, lost baggage, death or curtailment of travel arrangements but again this may be severely restricted. Consumers are advised to purchase additional cover wherever possible to provide the maximum protection and indemnification for unexpected expenses.

Particular attention should be given to the cover provided through delay or cancellation of flights, theft of documents or money or emergency evacuation.

"Consumers are encouraged to read through their policy documents prior to departure and to familiarise themselves with the cover given as well as the procedure for the making of a claim in the event of misfortune", says Brian Martin, the Ombudsman for Short-Term Insurance.



2010 SOCCER WORLD CUP FEVER GRIPS OSTI!

OSTI staffers embraced and participated wholeheartedly in the experiences that the 2010 Soccer World Cup had to offer! Ayoba!

2010 FINANCIAL OMBUDSMAN CONFERENCE - 28 - 30 SEPTEMBER 2010 CAPE TOWN, SOUTH AFRICA

The 2010 Conference of the International Network of Financial Services Ombudsman Schemes (INFO 2010) will be hosted at the Pavilion Conference Centre in the Victoria & Alfred Waterfront in Cape Town, South Africa from 28 - 30 September 2010. The local organisers aim to build on the immense success of the 2009 event that took place in Dublin, Ireland by offering delegates and their partners an unparalleled educational and cultural experience. OSTI will be represented by the Ombudsman, Brian Martin, General Manager, Edite Texeira-McKinion and Senior Assistant Ombudsman Wynand van Vuuren and Nosipho Mfeka.

The Ombudsman will chair one of the break-away sessions, together with Karen Stevens, the Insurance and Savings Ombudsman from New Zealand on the topic of insurance fraud.

More of the conference in the next issue of The Ombudsman's Briefcase.

OSTI ATTENDS PUBLIC PROTECTOR NATIONAL ROUNDTABLE PROGRAMME - 18 AUGUST 2010

OSTI, represented by Senior Assistant Ombudsman, Wynand van Vuuren, was invited to attend the Public Protector National Roundtable Programme in Pretoria on the 18th August 2010. The theme of the discussions focused around Ombudsman, making a difference in providing remedial action when the state fails its people: The UK Parliamentary and Health Services Ombudsman experience. Delegates received a presentation made by the United Kingdom's Parliamentary and Health Service Ombudsman, Ms. Ann Abraham, which focused on:

- concrete and wide range remedies available to the public when wronged by the government, e.g. insurance complaint; and
- How the British government responds to the PHSO.

LET'S HEAR IT FOR OSTI

What a few of our complainants have had to say about OSTI recently:

- I whole heartedly, truly and sincerely appreciate you for having considered my matter, my appeals/concerns, listened to my grief and for fighting my battles without being judgmental and showing the spirit of no partiality at all times. I am humbled by the office's behavior.
- Myself and my wife are indeed extremely grateful for your guys help in resolving my matter. We are very happy with the result. Well done!
- I wish to thank you for the excellent service you provide. Although my case seemed to take a long time, I found the process fair and favourable to all parties.
- Thank you for your speedy response. I am pleased with the service.
- Keep up the good work!
- Thank you very much for your intervention in this matter and thank you for reporting progress to me as and when you could. It certainly was handled professionally and the outcome desirable!

WHAT DOES THE OMBUDSMAN DO?

The Ombudsman for Short-Term Insurance resolves disputes between Insurers and consumers in an independent, impartial, cost-effective, efficient, informal and fair way.

The Ombudsman is appointed to serve the interests of the insuring public and the short-term Insurance Industry. The Ombudsman acts independently of the Insurance Industry in all complaints. All members of the South African Insurance Association conducting personal lines and commercial lines business have voluntarily agreed to accept the Ombudsman's formal recommendations.

If you want to lodge a complaint or require assistance please contact the Ombudsman's Office by calling 0860 726 890 or visiting our website at www.osti.co.za where application forms can be downloaded.

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For more information on our activities, please visit our website at www.osti.co.za.

We welcome any feedback or comments you may have.