

## THE OMBUDSMAN'S BRIEFCASE

Official Newsletter of The Ombudsman for Short-Term Insurance

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It's official! We are the Champions! The Ombudsman for Short-Term Insurance wins the Organisational Champion Award for 2007 from the DTI in recognition of its significant contributions to consumer issues

The Ombudsman for Short-Term Insurance was awarded the Organisational Champion Award for 2007 by the Department of Trade and Industry at a glittering awards ceremony held in Pretoria recently.

The Department of Trade and Industry (the DTI) annually hosts Consumer Champion Awards to recognise and reward individuals and organisations that advance the rights of consumers in South Africa. The Organisational Champion Award is awarded to a business association or committee that has made a significant and demonstrable contribution to raising public awareness about consumer issues or harmful business practices, consumer research and advocacy of consumer issues.



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“We are absolutely delighted and honoured to be the recipient of this prestigious award and would like to thank the Department of Trade and Industry for recognising our efforts in consumer issues. It is heartening to see that we have been able to assist many people of humble backgrounds in asserting their rights against a R45 billion per annum industry”, says Brian Martin, the Ombudsman for Short-Term Insurance.

**“Last year we successfully assisted approximately two thousand people in resolving disputed claims”**

Last year we successfully assisted approximately two thousand people in resolving disputed claims, saving them huge amounts in litigation costs and time. This is a remarkable achievement which can only be attributed to the commitment, dedication and hard work of our often overtaxed staff”, says Brian.



*Chairman, Isabel Jones with the DTI Organisational Champion Award for 2007*

## Insights from Brian Martin as he settles into his new role as Ombudsman for Short-Term Insurance



Brian Martin was appointed as the new Ombudsman for Short-Term Insurance in January 2007. With three months in the Office behind him, Brian shares some of his thoughts on the Office and the Insurance Industry with readers.

“Firstly our office has noticed a significant increase in the number of complaints received, compared to this time last year. The increase being up by 25 % as well as a 25 % increase in our current files i.e. matters not resolved yet. I am pleased to report that our Board



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approved funding for additional staff and we have appointed an additional Assistant Ombudsman who will join us with effect from May,” says Brian. This will go a long way to assist in alleviating our heavy workload.

## **CONSUMERS & THE INSURANCE INDUSTRY**

As the Insurance Industry is approaching a cycle of hardening rates they might adopt a more technical approach when handling claims, we will see an increase in repudiated claims, which will result in more complaints being received by our Office.

There is an increase in consumer awareness of Insurance and more and more people are buying Insurance products for the first time and often make inappropriate decisions without realising the implications of these decisions, which too gives rise to a greater incidence of claims.

With a tightening of the credit environment and the introduction of the National Credit Act we anticipate that many people will seek to curtail their expenses and may look at cheaper Insurance options as a way to make their budget more manageable. This may create instability.

## **CHANGES IN THE OFFERING**

**“I am concerned about the time period it takes to resolve matters, which is to the detriment of consumers.”**

“I am concerned about the time period it takes to resolve matters, which is to the detriment of consumers. I have identified certain Insurers who have delayed responding to complaints and I have now introduced a system whereby we place the Insurer on terms to respond to the complaint, failing which Rulings will be made on the basis of the information and facts available to us”, says Brian.

We have introduced a Rule of Practice to award interest on capital amounts where the Insurer has unreasonably delayed the finalisation of matters or payment.

## **GREATER EMPHASIS BEING PLACED ON CONSUMER EDUCATION**

Our Office is placing greater emphasis on consumer education and more resources are being directed towards this end, particularly at the emerging consumers. Our Office recently participated in a Consumer Faire in Durban where our promotional material was distributed. We have recently introduced



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a new publication aimed at consumers which has been translated in Zulu.  
(read more about the publication on Page 8)

## RELATIONSHIPS

Significant effort is being made for the Office to have closer relationships with the broking fraternity. "I recently had the pleasure of addressing members of the Independent Brokers Council at their Annual General Meeting and welcome similar invitations from such organisations". We promote closer relationships between our Office and Insurers and hold regular meetings to discuss general and specific issues.

### The Ombudsman for Short-Term Insurance launches its 2006 Annual Report



The Ombudsman for Short-Term Insurance launched its Annual Report for 2006 at a luncheon held in Johannesburg recently. Deputy Chairman, Gail Walters, welcomed guests and invited the outgoing Ombudsman, Helm van Zijl to speak to the report. Helm highlighted several issues, namely that the Office received more complaints than ever before and recovered the highest amount of money on behalf of consumers during 2006. An

increase of 24,8 % in formal complaints saw the Office dealing with 7,187 complaints arising out of rejected claims or other Insurance related complaints in 2006. At the same time the Office recovered more than R67 million on behalf of consumers, the highest amount ever recovered by the Office in any one year.

**“Despite the increase in work load the Office still maintained its excellent turnaround time to handle complaints, averaging 87 days. This can only be achieved through an excellent communication system, a competent staff and co-operation by the Insurance Industry”**



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“Despite the increase in work load the Office still maintained its excellent turnaround time to handle complaints, averaging 87 days. This can only be achieved through an excellent communication system, a competent staff and co-operation by the Insurance Industry”, says Helm van Zijl. Helm ended his tenure as Ombudsman for Short-Term Insurance in 2006.

The report highlighted the Ombudsman’s concern where underwriting managers who double-up to act as brokers as well. According to the Insurance Act, an underwriting manager should not deal with the public. “It is an unhealthy situation when you have a broker, underwriter and claims handler all in one person. When a claim arises this underwriting manager would reject the claim”, says Helm. As such it is not surprising that a number of complaints received by the Office arise from the rejection of a claim by such underwriting manager.

Once again, motor complaints dominated, with the highest number of complaints received by the Office (65 %) with commercial complaints being the lowest (3 %). The jurisdiction of the Office was expanded from May 2006 to include commercial disputes.

The Office was also granted recognition in terms of the Financial Services Ombud Schemes Act as a voluntary Ombudsman scheme during the period under review.

“2006 was a very busy year for the Ombudsman’s Office yet despite the increase in workload, the Office only appointed one additional Assistant Ombudsman, which shows that the Ombudsman and his team worked extremely efficiently at improving productivity. I congratulate the Ombudsman and his team in their sterling efforts to provide consumers with an effective and efficient dispute resolution mechanism”, says Isabel Jones, Chairman of the Board of the Ombudsman for Short-Term Insurance.

Copies of the Annual Report are available for downloading from the website, click on [www.osti.co.za](http://www.osti.co.za), publications. If you would like a copy posted to you, please email your request to [info@osti.co.za](mailto:info@osti.co.za)

## Consumer’s Corner: What is Insurance?

**The Ombudsman for Short-Term Insurance, Brian Martin, explains the origins of Insurance, what is Insurance and provides consumers with useful information to consider when taking out an Insurance policy.**



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## Origins of Insurance

The origins of Insurance can be traced back to 1347 where the earliest authenticated Insurance contract, namely a marine Insurance contract for a ship “The Santa Clara” in Genoa, was found. The policy was written in Italian and appeared in the form of a maritime loan to avoid church prohibition against usury. Interestingly, the earliest Insurers were merchants underwriting risks for fellow merchants, on a part-time basis.

## What is Insurance?

Essentially Insurance is a sharing of a risk of loss or damage. When you take out Insurance you are entering into a contract with another party that is subject to certain terms and conditions. You agree to share the risk of harm arising from uncertain events and to compensate for that loss.

## Different kinds of Insurance

There are different kinds of Insurance depending on what is being Insured. Insurance is divided into the first instance, long-term Insurance and short-term Insurance. Long-term Insurance is generally defined as being Insurance to cover a certain event that will happen at an uncertain time, for example, life Insurance. Remember the saying “death like taxes is inevitable”? The only uncertainty is when will it occur! Whereas short-term Insurance is different as it is the event that is uncertain and is covered over a shorter period, for example motor vehicle and house contents insurance. Generally in short-term Insurance, the period of Insurance is for a specified period of Insurance and is subject to renewal from time to time.

## Entering into a Contract or Agreement

When a policy is taken out, the Insurer (the Insurance company) is being asked to enter into a contract with the Insured (person wishing to take out Insurance) and it will want to know from the Insured all relevant information to enable them to decide whether or not to enter into an agreement with the Insured and if so on what terms. This implies two issues for the Insurer, namely:

- Risk (how likely is it that the event you will insure against will arise within the given period of Insurance on the policy) and
- Premium (what premium should be charged)
- Terms and Conditions

## What is premium?

Premium is loosely described as “the consideration (not the price) that the Insurer charges to assume the risk for what is covered in the policy”.



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## **Remember Insurance is not a standard product, each contract is unique**

It must be borne in mind that Insurance is not a standard product but an individual contract entered into with an Insurer and Insured. Whilst there may be common factors, each policy is unique and must be approached on the basis of its individual assessment.

## **What is risk and the factors that influence it?**

The risk is the event that is being Insured against and the likelihood of it arising, for example, insuring a car against theft. How likely is this going to happen? There are many factors to consider that will affect the risk, all of which are unique to the Insured. In the example of a car being Insured, factors that may be considered could include:

- What kind of car is it that you wish to insure?
- How much is it worth?
- What is the car's condition? Is it roadworthy?
- Where is the car kept, i.e. in a locked garage?
- Who is the driver of the car? Does he or she have a valid driver's licence? How old is the driver? For what purpose are they going to use the vehicle, will it be for private or business use? Has the driver ever been convicted of a criminal offence before or had an adverse claims record?
- What type of lifestyle does the Insured lead?

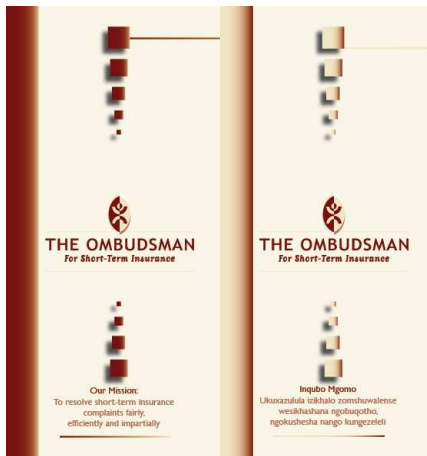
## **Honesty is the best policy**

In other words the Insurer needs to have a thorough understanding of the individual applying for Insurance. Similarly the Insured needs to provide the Insurer with sufficient information and to be completely honest when taking out an Insurance policy.

## **“The duty of disclosure falls squarely on the shoulders of the Insured. “**

The duty of disclosure falls squarely on the shoulders of the Insured. If any factors to the risk change, the Insurer needs to be advised of them immediately, for example, if you have moved house or the driver of the car has changed. Many complaints to the Ombudsman's Office emanate from non-disclosure where the Insured has not notified the Insurer of changes.

## New Consumer Publication now available!



The Ombudsman's Office has a new publication available for consumers in English and Zulu which provides useful information about its activities, how it can assist you and how long it will take to finalise your claim and much more. Copies are available for downloading from the website at [www.osti.co.za](http://www.osti.co.za), click on publications or call us on 011 726 8900 and we'll post one to you!

## OMBUDSMAN ADVICE



### FAILURE TO ACTIVATE ALARM SYSTEM

- The Insured's policy inceptioned on 10 July 2006 and five weeks later his property was burgled. The Insurer rejected the claim because there was an alarm warranty on the policy which required the alarm to be activated when the property was unoccupied, and the Insured had failed to comply with this requirement.
- The Ombudsman pointed out to the Insurer that the Insured had regularly set the alarm on each day that

the property was unoccupied but, on the particular day of the burglary, the Insured's housekeeper who works for him once a week failed to activate the alarm. The housekeeper had been found to be very trustworthy and security conscious and had been working for the Insured for the last four years. She had been shown how to activate the alarm but made a mistake. The Insurer then admitted the claim.

### INNOCENT ERROR IN RISK ADDRESS

- On 22 February 2005 the Insured telephoned his broker for a quotation to insure a motor car which he had purchased for his daughter. He was informed that the Insurer was not prepared to insure the motor vehicle on its own, but also required the Insured to take out minimum household



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Insurance to the value of R75 000. The Insured was asked where the vehicle would be kept and he gave an address in Edenvale. No mention was made of the risk address of the contents. Nine months later, i.e. on 11 November 2005, the Insured suffered a burglary at his residence in Benoni. The Insurer rejected the claim on the grounds that the policy had been issued that the household contents would be at the address in Edenvale.

■ The Ombudsman pointed out to the insurer that the Insured was, in fact, divorced and that his daughter stayed with his ex-wife in Edenvale while he lived in Benoni. The Ombudsman pointed out that as no mention was made of the contents being kept at a specific risk address at inception the position was not all that clear. The Insurer also confirmed that had the Benoni risk address been Insured in terms of the policy, it would have issued the policy on the same terms, conditions and premium which applied at the Edenvale address. The claim was settled.

### **FAILURE BY INSURED TO MAKE PROPER DISCLOSURE**

■ The Insured's bakkie was damaged in a collision. The policy had incepted five months earlier and was discounted with a seven year No Claim Bonus. While processing the claim, the Insurer established that the complainant had a break in his cover for a period of five months immediately prior to inception of the policy. The complainant had failed to mention this to the Insurer at the time of the inception of the policy when his No Claim Bonus was being determined. The complainant further did not disclose a previous accident, which had occurred three years prior to the inception of the policy.

■ The Ombudsman agreed with the Insurer that it was entitled to maintain its rejection of the claim.

### **INFLATION OF CLAIM IS FATAL**

■ At 09:30, three men persuaded the Insured's domestic worker that they had been sent to fix a problem with the Insured's swimming pool. She then allowed them to enter the property. The men had a look at the pool and then stated that it was an electrical problem and they needed to have a look at the main board inside the house. As the men went inside the house, they overpowered the domestic worker and tied her up. They pulled their vehicle into the garage, loaded whatever they wanted and left. They stole goods to value in excess of R100 000. The Insurer rejected the claim on the grounds that the Insured had committed fraud. The Insured had, *inter alia*, claimed for a Samsung Hi-Fi, value R1500, which had been stolen in a previous burglary during September 2004, and furthermore a Persian Rug was allegedly stolen when it was clearly seen on a photograph taken by the Insured after the loss.

■ In light of the two frauds which had been committed by the Insured, the Ombudsman agreed with the Insurer that it was entitled to maintain its rejection of the claim.

### **DANGER OF NOT DE-REGISTERING A VEHICLE WHICH IS DECLARED UNECONOMICAL TO REPAIR BY INSURER**

■ The Insured's BMW 316 was damaged beyond economical repair on 21 January 2005. He followed the instructions provided by his Insurer and handed all the relevant documentation as requested to the Insurer. His claim was duly processed and paid out. Four months later, i.e. in May 2005, he became concerned when he received speeding fines from the traffic department for the BMW. He informed the Insurer, which stated that inasmuch as his claim has been paid out it had nothing more to do with the Insurer and that he should deal with the assessor directly, but he received no response from the assessor. More than a year later, i.e. in February 2006, upon renewing his own vehicle licence for his Mitsubishi Colt, he received notification from the traffic department that there were outstanding licence fees for the BMW and until paid, his licence for the Mitsubishi Colt would not be issued. In order to ensure that his Mitsubishi Colt stayed licensed, he was compelled to pay the outstanding licence fee and fines for the BMW previously written off.

■ The Ombudsman called upon the Insurer to repay to the Insured the outstanding fines and licence fees and to arrange for the formal deregistration of the vehicle. The Insurer duly complied with this request.

### **CIRCUMSTANCES OF LOSS ARE OF CRITICAL IMPORTANCE**

■ On Monday evening, 6 February 2006, the Insured's vehicle was stolen. The Insurer rejected the claim on the grounds that the client's son had become the regular driver of the Insured vehicle which was not notified to it. The vehicle was stolen from a residential area where the son was visiting a friend.

■ The Ombudsman pointed out to the Insurer that the vehicle was stolen from a risk area which the regular driver may well have frequented. The identity of the driver was accordingly not material at the critical time of the loss. The Insurer conceded the claim but deducted 41% of the value of the vehicle, alleging that this was the prejudice suffered by virtue of the son being the more regular driver. The Ombudsman pointed out to the Insurer that it is the view of the Office that the Insured's claim should be admitted in full and this was conceded by the Insurer.

### **AGREEMENT OF LOSS**

■ An interesting case arose out of an Insured motorist having collided with a speed hump whilst driving his Audi A4 motor vehicle. Immediately after hitting the hump, which the Insured appears not to have seen, he stopped

to inspect the vehicle. Apart from some damage to the bumper he did not notice anything untoward and continued on his journey. However a few hundred metres further on, the oil level warning light came on. The Insured then drove the further 900 metres to his office where he parked the vehicle and contacted the agents. Upon inspection the sump was found to have been damaged. A new sump was fitted and the oil replenished. However when the engine was started the oil pressure warning light came on again and was accompanied by a loud crashing sound. The oil pump was replaced but to no avail. It was subsequently determined that there had been significant damage to the bearings in the engine and the entire sub-ensemble of the engine had to be replaced. It appeared that two cracks had opened up in the sump as a result of the impact which caused the engine oil to leak.

■ The Insured filed a claim with his Insurer who indicated willingness to accept liability for the damaged sump, but not for the damage to the engine, which represented a consequential loss, and that the Insured had failed to exercise due care and precaution. The Insurer contended that the vehicle should not have been driven after the impact as it was inevitable that damage would arise to the engine. The Insured disputed that the Insurer was only liable for the damage to the sump and contended that the Insurer was liable for the entire loss.

■ After receiving the Insurer's letter of repudiation for the damage to the engine, the Insured consulted an attorney in addition to filing a request for assistance with the Office of the Ombudsman. He was subsequently contacted by the attorney, who informed him that the Insurer had agreed to accept liability for the full loss and that he was required to sign an Agreement of Loss. The Agreement of Loss was emailed and that Insured was requested to print out the form and complete his bank account details. Once signed, the completed document was to be scanned and emailed back to the attorney for submission to the Insurer. The Insured was advised that payment would be made by way of EFT within 48 hours of receipt of the signed Agreement.

■ After nearly a month had passed without payment being received, the Insured became concerned and contacted the Insurer directly and required as to when payment would be made. From investigation, it appeared that the Insurer had not submitted an Agreement of Loss for the full damages, which amounted to approximately R50,000, but only for an amount of R2,487.46, representing the damage to the sump. The Insurer disputed that it had sent an Agreement of Loss for the amount appearing on the document and refused to pay in terms of the document. The Insurer contended that a fraud had been perpetrated, presumably by the attorney.

■ The Ombudsman requested the Insurer to reconsider the matter in light of the fact that there appeared to be no evidence indicating that the Insured was in any way connected with or was a party to the alleged fraud. The Insurer subsequently concurred with the view and elected to abandon the allegation of fraud as a defence, reverting back to the original defence of a lack of due care and precaution. It was pointed out that the Insured

was unaware of the fact that there had been damage to the sump and that oil had leaked out from the sump. It was only when the warning light came on that the Insured realised that the damage had been more extensive than originally thought. It was pointed out to the Insurer that the *onus* was on the Insurer to prove a lack of due care and precaution and that the *onus* which had to be discharged by the Insurer, was a high one. The Insurer was requested to reconsider the matter in light of the *onus* imposed upon an Insurer and the fact that the Insured was a lay person. The Insurer subsequently agreed to settle the claim in full.

■ After the alleged irregularities concerning the Agreement of Loss Form came to light, the Insured terminated the mandate with the attorney, appointing a new attorney and the matter was also referred to the Law Society for investigation.

## Insurable Interest Revisited by Paul van Onselen, Assistant Ombudsman



The issue of insurable interest has raised its “ugly head” again, with this office receiving an increasing number of complaints in which Insurers are rejecting claims due to the alleged lack of insurable interest.

The ombudsman’s office cannot arbitrarily accept a declinature on these grounds, due to the technical nature of the rejection reason. This article will endeavour to clarify the issue by providing interesting and pertinent legal commentary in the form of two cases on issues relating to insurable interest, as well as providing this office’s stance on the issue

It is a general requirement of the law of Insurance that the Insured have an insurable interest in the subject matter of the Insurance. The requirement is said to serve two main purposes: first, it discourages gaming and wagering in the form of Insurance and secondly it minimises the risk of destruction by the Insured of the subject matter of the Insurance.

In dealing with the matter of insurable interest, the courts pay attention to two questions, namely the purpose and function of a requirement of insurable interest, and whether the plaintiff in fact possesses an insurable interest.



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The court, in the matter of Phillips v General Accident Insurance Company (SA) Ltd 1983(4) SA 652W, took the view that insurable interest should not receive too much emphasis. The real question is whether a contract, having regard to all the surrounding circumstances and especially the intention of the parties, amounts to a betting or wagering agreement. If there is doubt, the benefit should be given to the Insured, since normally the Insurer will have accepted the premiums throughout the period of Insurance, and the defence of insurable interest really becomes a technical one.

The plaintiff in this case claimed, under a general domestic policy of Insurance, the value of a diamond ring and a golden crucifix which had been lost. The plaintiff and his wife were married out of community of property. The ring was bought by the plaintiff for his wife to wear; the crucifix she bought herself. The items were lost under strange circumstances, in that the plaintiff and his wife were tricked into parting with these items. The trickster, who posed as a palm reader, persuaded the couple to part with various items in order to have them “blessed at his church”. The wife handed over, *inter alia*, the engagement ring and crucifix. Needless to say, the jewellery disappeared - and so did the trickster.

In its defence to the claim, the Insurer denied liability on the grounds that the plaintiff did not have an insurable interest in the jewellery, and that the plaintiff failed to take reasonable precaution to guard against the loss as required by the policy.

The courts decision went in favour of the plaintiff on both issues. The findings were based on the fact that the Insurer undertakes to indemnify the Insured against consequences of an uncertain event. In other words, the Insurer agrees to compensate the Insured for a loss. It is the existence of such an indemnity clause, and not the existence of an insurable interest, which is of paramount importance for the purpose of classifying a contract of indemnity Insurance.

The conclusion of the court - that the plaintiff has an insurable interest in his wife’s jewellery - would appear to be based on moral and social, rather than legal, considerations. The court accepted that the plaintiff was not legally obliged to replace the ring. Nevertheless, he had an interest to see that the ring be replaced.

The finding had important implications for the law of Insurance. The approach adopted by the court suggests that the validity of the contract of Insurance does not depend on the existence of insurable interest, but rather the indemnity clause in terms of which the Insurer undertakes to indemnify the Insured only when it is shown that the Insured has suffered damage. It is the existence of such indemnity clause, and not the existence of an insurable interest, which is of paramount importance and therefore the question is

whether, and if so to what extent, the Insured has suffered a loss against which the Insurer undertook to indemnify him.

The matter of Foster v Mutual & Federal (Unreported, TPD, 10 November 1995, case no 3239/1995) dealt with an aspect of the requirement of an insurable interest of particular importance, namely the insurable interest in stolen property.

The Insured, Foster, bought a motor vehicle (1993 Mercedes Benz 220) for R 145 000 from a private individual by way of an investment. He had it Insured with Mutual & Federal through brokers. He supplied the brokers with details about the year, model, make and registration number of the vehicle, but was not asked to furnish the engine or chassis number.

Five months later the vehicle was stolen and the Insured claimed the sum of R 145 000 from the Insurer. The latter refused to pay as it appeared that the vehicle was stolen (engine and chassis numbers having been falsified and not agreeing with the manufacturers serial numbers) and the seller could not be located. The Insured did not dispute the facts.

The sole issue before the court was whether the Insured had an insurable interest in the vehicle when the contract was entered into and when the loss occurred.

The Court started off by noting that if the Insured can show that he stands to lose something of an appreciable value by the destruction of the thing Insured, then his interest will be an insurable one. Here the Insured bought a vehicle and paid money for it. It was for all intents and purposes his vehicle, as it was registered in his name and if anything happened to the vehicle that deprives him of his possession by theft, he would stand to lose the vehicle which was worth R 145 000, the amount he paid and in respect of which he was Insured and had paid premiums. His interest in it was clearly not without value. The fact that, in buying the vehicle in the way he did, the Insured had acted rather carelessly, gullibly and with what the Court termed “a lack of business acumen”, did not mean that he had not acted in good faith. He was not part of any scheme acquiring stolen vehicles, insuring them and endeavouring to claim from the Insurer knowing that he was not nor could be the owner.

In conclusion, the Court thought that the Insured had established on a balance of probabilities that he genuinely believed at the time he bought the vehicle that he would obtain ownership of it. It was also satisfied that at the time the vehicle was stolen, the Insured “had a demonstrable insurable interest in the vehicle”.

Therefore, the Insured was entitled to be paid “for the loss of his insurable interest” as agreed to by the parties at R 145 000, less the amount of the excess on his claim.

The view of this office is that a person has an insurable interest in property not only when he is the owner of the property but also, more generally, when he has some financial relationship with it. The problem arises from the Insurance of motor vehicles that are not owned by the Insured and where there is no direct financial loss to the Insured person. A number of complaints arise because of a lack of understanding and, for example, the Insured person sees no problem in insuring his son’s motor vehicle under his policy for convenience sake. Provided it is clear that there is no element of wager, and no other defence, for example misrepresentation or non-disclosure of material facts, the approach which will be adopted by this office is as follows:

1. If the details of the true owner are disclosed to the Insurer or its representatives, then the claim should be accepted without any reservations.
2. If the details of the true owner are not disclosed, then subject to certain facts, the Insurer will be approached to settle the claim (some of the facts are):
  - that no ulterior motive is evident in arrangement of the Insurance on this basis;
  - that the Insurer would have accepted the Insurance of the true owner on similar terms and conditions which do not differ to any degree to those arranged;
  - that the Insured person is prepared to sign over all the rights to the proceeds of the claim to the true owner;
  - that the Insured person suffers a financial loss if the vehicle is lost or damaged.

The foregoing is a generalised approach and should not be seen as the only way of dealing with this problem. Needless to say, should other circumstances prevail, a different approach may be adopted.

In establishing equity, we would look to establish whether the insurer has been prejudiced as well as whether the breach of the policy term or condition was material to the loss.

#### Our jurisdiction:

We confirm that in terms of our jurisdiction, we are entitled to make a ruling that is to be based on law and equity. At the risk of stating the obvious, a persistent and narrow view of insurable interest would be inconsistent with



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equity and any Insurer who relies on insurable interest as a reason to reject a claim, would in our view, rely on a technicality.

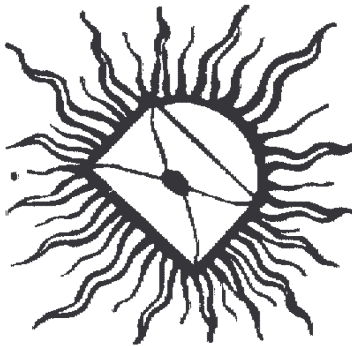
For more information, contact Paul van Onselen, Email: [paul@osti.co.za](mailto:paul@osti.co.za)

### 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 have a formal complaint or require assistance please contact the Ombudsman's Office by calling 0860 726-890 or visiting our website at [www.osti.co.za](http://www.osti.co.za), where application forms can be downloaded or completed on-line.



### CONTACT US:

If you would like to be added to our mailing list, please contact us on:

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For more information on our activities, please visit our website at [www.osti.co.za](http://www.osti.co.za)

We welcome any feedback or comments you may have.

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