

The Ombudsman for Short-term Insurance and the FAIS Ombud

Loss of income, cost carried by the game farmer

The short-term insurance industry in South Africa has not kept up with the development of game farming and the specific needs to support the financial risk transfer. This constitutes a major shortfall in the *value* of the mechanisms available to the consumer.

Background

Before the introduction of FAIS (Financial Advisory and Intermediary Services Act, 2002 [Act No 37 of 2002]), clients who received poor advice and services from insurance agents / brokers could only try to resolve their issues by going to court. In some instances there may have been relief through the Short-term Insurance Ombud scheme (Financial Services Ombud Schemes Act). Many people never went to court because they did not have the money to do so, or just simply because they did not want to go through the ordeal of a court hearing. A gap existed for a more expeditious and cost-effective way of resolving consumer complaints.

The introduction of FAIS was supposed to change the financial services scene and the consumers were to enjoy protection in their dealings with financial services providers. FAIS became effective on 30 September 2004.

The main purpose of the FAIS Act (summary)

- 1 • The protection of consumers in the financial services environment.
- 2 • To ensure that consumers are provided with adequate information about the financial product they use and about the people and institution who sell these products, so that they can make informed decisions.
- 3 • The regulation of the rendering of certain financial advisory and intermediary selling activities and to establish a properly regulated financial services profession.

The FAIS Act alone cannot guarantee consumers protection, so the Ombud for Financial Services Providers ('FAIS Ombud') plays an integral role in providing consumer protection by acting as a 'defender of the people'. The FAIS Ombud deals with consumer complaints against financial services providers (FSPs) and provides an efficient and affordable dispute resolution mechanism. The Ombudsman services are free and accessible to all consumers. The office of the FAIS Ombud is created by statutory mandate, acts completely independently and deals with all disputes fairly and impartially. The FAIS Ombud's role is to resolve disputes between the FSPs and their clients in a procedurally fair, informal, economical and expeditious manner. The FAIS Ombud performs its functions 'without fear, favour or prejudice'. The Ombudsman can dismiss the complaint or uphold it wholly or partially. The FAIS Ombud

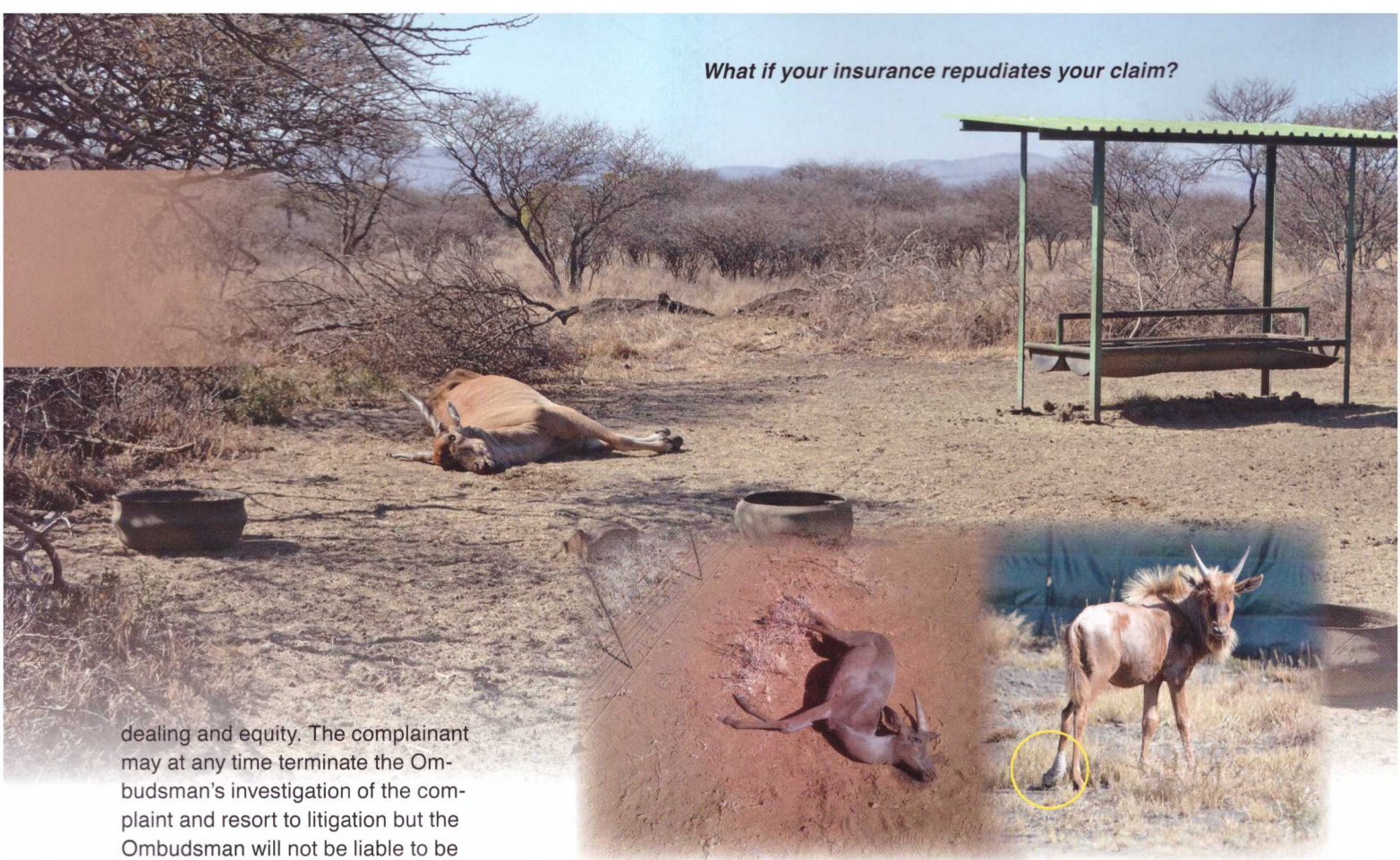
determination has the effect of a civil judgement of a court, but is limited to claims not exceeding R800 000.

Ombudsman for Short-term Insurance

The office of the Ombudsman for Short-term Insurance was established in August 1989 and provides consumers with a 'no-risk' mechanism to resolve disputes with insurers. The Ombudsman's task is to act as a 'mediator' or informal arbitrator and he / she does not represent either of the parties to the dispute. The service is free to the insured consumers and an informal and speedy dispute resolution process for claims, but the Ombudsman's office does not give legal advice. The Ombudsman's decisions are binding on the insurance company but not on the consumer.

The Ombudsman resolves disputes using the criteria of the law and proper insurance practice, which includes fair

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dealing and equity. The complainant may at any time terminate the Ombudsman's investigation of the complaint and resort to litigation but the Ombudsman will not be liable to be subpoenaed to give evidence on the subject of a complaint in any proceedings. The time-barring clause protects the complainants against the operation of time-barring clauses in policies during the period that the matter is in the office of the Ombud but the time-barring will commence (30) thirty days after the closure of their file.

Both mechanisms available to the game farmer, although at no cost, do have serious shortfalls and it is imperative that the game farmer selects his / her broker (representative) with care and due diligence.

Risk transfer is an everyday business transaction for the game farmer but currently he / she can only insure the asset (animal) for mortality, *excluding consequential loss*. Loss of income with specific reference to the 'loss of offspring', which poses a financial risk to the game farmer, is an insurable risk and no cover is currently available on the South African market. The game farmer carries the economic burden and therefore becomes his own insurer for these losses. The frequency (how often) and severity (how much in financial terms) are the financial risk factors that impact di-

rectly on the game farmer's finances, risk protection and risk management plans.

Wildlife insurers are well aware of this economic burden, but the onus is on the insured to appoint a broker (representative) with industry knowledge that is fully qualified to handle this type of insurance class. It is best practice for the game owner to insist that the broker (representative) provides a specialist biologic-academic risk evaluation of his business before engaging in any form of business deal. Game farming has specific needs, therefore be wise and select the right broker (representative) for your portfolio and claims handling.

If a loss occurs and the claim cannot be settled or the insured is still unhappy with the insurer's decision, the claim can be referred to the office of the Ombudsman for Short-term Insurance to resolve the dispute with the insurer. The monetary limit for a claim is R800 000, but the insurer may agree that this limitation can be exceeded. Commercial lines (game insurance) application limits are currently noted as annual turnover for the business not exceeding R25 million and the amount in dispute is not to exceed R2 million in total.

There are specific steps to follow, but a speedy dispute resolution process is not always possible and due to the nature of game farming, a loss of income is inevitable. The Ombud will only make a ruling once all the material facts are agreed upon or the facts have been established to the Ombudsman's satisfaction on a balance of probabilities.

These steps take time – 'time' the contributing factor to loss of income due to breeding seasons and the roll-over to more than one season before the claim is settled.

It is important to mention that the policy wordings now stipulate that the insurer has the right to pay agreed value or the fair market value, whichever is the lesser amount, or they can replace the asset (insured animal). The implication of this indemnity clause leads to more claims that need to be referred for mediation, and the 'time factor' increases the financial loss for the game farmer.

The following is an example of a recent complaint referred to the Ombud and the 'time issue' that became a financial loss to the insured

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due to loss of income (offspring). **The insurer tendered a lesser amount to settle the claim and the insured disputed the amount with expert reports to support the request for the full sum insured less the excess.**

However, the insurer then responded with a letter repudiating the claim in total. The complaint was filed with the office of the Ombud, following the steps as described:

- The acknowledgment of receipt of the complaint was issued but this document stated very clearly that due to the volume of complaints it may take **two months** after the date of the letter to receive further attention from the office of the Ombud.
- This letter also stated the insurance company concerned would be afforded a period of **14 days** to resolve the matter directly but this did not happen.
- **Six months** have passed since the complaint was lodged with the Ombud, excluding the two months prior to the complaint spent to negotiate the claim with the insurer.
- The subject of insurance was a breeding bull, thus to date the client has suffered a further financial loss over and above the asset value due

to loss of offspring, which resulted in a consequential loss.

Now the game farmer has more than one issue to deal with. The 'time' already spent to negotiate with the insurer, the delay at the office of the Ombud and the risk that the Ombud could determine that it is more appropriate that the complaint be dealt with by a court of law. There is no speedy resolution process for the game farmer, only the prospect of an even bigger financial loss.

Example of a recent complaint referred to the FAIS Ombudsman and the 'time issue' that became a financial loss to the insured due to loss of income (offspring): A complaint was filed with the office of the Ombud, following all the steps as stipulated against a broker (representative) who violated the consumer's rights by sharing the contents of the insured's claim with another game farmer (third party), also a chairperson of a chamber and a close friend of the broker (representative), but on top of that a seller of game to the insured pertaining to other transactions.

The broker (representative) placed the business without doing a needs analysis or a record of advice and did not inform the insured of the terms



The sable carcass was found only eight months after the claim was reported. Thanks to an expert biologist evaluation, the claim was eventually paid out.

Photos: D Fursenberg

High-value animals are captured and handled. What value will you receive if a loss occurs and what about the loss of potential offspring for the following 2–3 seasons? Is your value argument pre-secured on paper?

and conditions in time. A policy was issued and the premium paid, but the policy did not respond to the claim.

The result was that the insurer repudiated the claim and the broker (representative) did not have the industry knowledge to assist his client with the claim. The process to negotiate the claim with the insurer took more than **six months**, additional costs were incurred by the insured to prove his claim, and because it was a breeding animal, there was loss of income (offspring).

The complaint took **16 months** to be referred to a court of law by the FAIS Ombud. The excuses from the Ombudsman's office varied from a) the case manager's husband was in a car accident and nobody else could handle the complaint; b) they were understaffed; and c) the case was very complex.

Hopefully, the insurance industry will up their game and provide products that will suit the current need for risk transfer and train brokers (representatives) to sell these products. 🐘

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