

Insurer liable to pay claim on equitable grounds

 By Jean-Paul Rudd

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The Ombudsman for Short Term insurance has ruled that an adventure resort's insurer is liable to indemnify it against a claim brought by one of its patrons.



Image source: Paulo Freitas from [Pexels](#)

On 19 January 2019, a patron sustained severe burns when hot oil from one of the resort's quad bikes spilled onto the patron's legs. The patron immediately demanded a refund of the price which she had paid for the use of the quad bike. Subsequently, and without any prior demand, the patron instituted legal action against the resort for the damages she sustained from the burns.

The resort's insurer refused to indemnify it against the action, indicating that the resort had breached a term of its insurance policy by failing to report the incident to the insurer when the claimed occurred. The resort in turn denied the breach, averring that the policy was ambiguous and that its duty to report the claim only arose when the summons was served on it. The resort also contended that the insurer had not been prejudiced by its alleged failure to report the incident when it had occurred.

The Ombud actively steered away from ruling outright on which party's interpretation of the policy was correct. Instead, the Ombud assumed that the resort had indeed breached the policy and in so doing, considered what, if any, prejudice the insurer suffered.

Clause 7.2 of the Ombud's Terms of Reference provides that rulings shall not only be based on the law but that equity should also be considered. The equity jurisdiction the Ombud enjoys is integral to its recognition as a voluntary financial services Ombudsman Scheme under the Financial Services Ombud Schemes Act, 37 of 2004.

The Ombud found that the insurer's alleged prejudice was not only immaterial but it had "a decidedly hollow ring to it and appeared to pay only lip service to the true spirit of treating customers fairly and equitably". Consequently, the Ombud directed the insurer to indemnify the resort in terms of the public liability section of the policy as if the resort had duly complied with the policy.

The insurer accepted the Ombud's ruling, electing not to take it on appeal, despite initially intimating its intention to do so.

ABOUT JEAN-PAUL RUDD

Jean-Paul Rudd is a partner in Adams and Adams' personal injury and insurance departments. He specialises in civil litigation with special emphasis on personal injury related matters, which includes Road Accident Fund, medical negligence, slip and fall and wrongful arrest claims, professional indemnity matters, and insurance related matters.

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