

**IN THE ENFORCEMENT COMMITTEE ESTABLISHED IN TERMS OF
SECTION 10(3), READ WITH 10A OF THE FINANCIAL SERVICES
BOARD ACT, 97 OF 1990**

CASE NO: **11/2013**

In the matter of:

**THE REGISTRAR OF SHORT-TERM
INSURANCE**

The Applicant

and

SANTAM LIMITED

The Respondent

ORDER

WITH DUE CONSIDERATION to the settlement agreement (attached marked annexure "A") in terms of section 6B(7)(a) of the Financial Institutions (Protection of Funds) Act, No 28 of 2001, I hereby determine that the Respondent contravened:

1. Directive 156.A.i. (ST) read with Section 4(2) of the Short Term Insurance Act, No 53 of 1998 ("STIA");
2. Section 45 of the STIA read with Regulations 4.1(1) and 4.1.(2) for the period November 2008 until 31 March 2013;
3. Paragraph 5 of Part II of Schedule 2 of the STIA (for the period December 2008 to 27 February 2010);
4. Paragraph 4.1 of Board Notice 27 of 2010 (BN) under the STIA (for the period 28 February 2010 to 31 December 2011);

5. Paragraph 4.1 of BN 169 of 2011 under the STIA (for the period 1 January 2012 to 2 October 2012)

I hereby impose a penalty of R200 000. The remaining terms and conditions of the settlement agreement are incorporated and made an order of the Enforcement Committee.

Signed at **PRETORIA** on the¹..... day of **JULY 2013**.



.....
C F Eloff
Chairperson of the Enforcement Committee

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**SETTLEMENT AGREEMENT IN TERMS OF SECTION 6B (7) (a)
OF THE FINANCIAL INSTITUTIONS (PROTECTION OF
FUNDS) ACT, 28 OF 2001**

1. The parties

- 1.1. The parties to the agreement are the Registrar of Short-term Insurance ("the Registrar") herein represented by Jonathan Dixon; and
- 1.2. Santam Limited ("Santam") a duly registered public company as contemplated in the Companies Act 71 of 2008, (registration number 1918/001680/06), and a registered insurer in terms of Section 7(1) of the Short-Term Insurance Act, No 53 of 1998 ("STIA").
- 1.3. Santam is herein represented by Hendrik David Nel ("Nel") the chief financial officer and director of Santam and who warrants that he is authorised by the Respondent to conclude this agreement.



2. The contraventions

2.1. It is agreed between the parties that Santam contravened the following:

2.1.1. Directive 156.A.i (ST) read with Section 4(2) of the STIA.

2.1.1.1. Santam failed to comply with the instructions contained in the directive in that it failed to provide the Registrar with an action plan to rectify the non-compliance with Section 45, within 15 days from the date of informing the Registrar.

2.1.1.2. Section 4(2) of the STIA read as follows:

"The Registrar may by notice direct a short-term insurer to furnish the Registrar, within a specified period, with specified information or documents required by the Registrar for purposes of this Act."

2.1.2. Section 45 of Short-Term Insurance Act, no 53 of 1998 ("the Act"), that reads as follows:

"No independent intermediary shall receive, hold or in any manner deal with premiums payable under a short-term policy entered into or to be entered into with a short-term insurer, other than a short-term reinsurance policy, and no such short-term insurer shall permit such independent intermediary to so receive, hold or in any manner deal with such premiums-

- (a) Unless authorized to do so by the short-term insurer concerned as prescribed by regulation; and*
- (b) Otherwise than in accordance with the regulations."*

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2.2. During the period November 2008 until 31 March 2013 Santam authorised a small number of collecting agencies to collect premiums for short-term personal lines on its behalf.

2.3. Whilst it so authorised the agencies, Santam contravened:

2.3.1. Regulation 4.1(1) in that it failed to authorise the collecting agencies in writing to receive, hold or in any manner deal with premiums on its behalf;

2.3.2. Regulation 4.1(2) in that it failed to obtain securities from the collecting agencies in accordance with Regulation 4.1.(2);

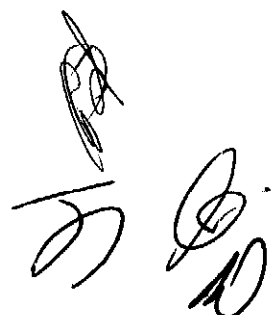
2.4 Santam utilised a method to calculate its unearned premium provision ("UPP") for its crop insurance class which is not in accordance with the prescribed method in the STIA and without the approval of the Registrar and therefor contravened:

2.4.1 Paragraph 5 of Part II of Schedule 2 of the STIA (for the period December 2008 to 27 February 2010);

2.4.2 Paragraph 4.1 of Board Notice 27 of 2010 (BN) under the STIA (for the period 28 February 2010 to 31 December 2011);

2.4.3 Paragraph 4.1 of BN 169 of 2011 under the STIA (for the period 1 January 2012 to 2 October 2012)

3 The mitigating circumstances

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3.4 It is also been agreed that the following mitigating factors are relevant to the matter:

3.4.1 Contraventions 45 and 4(2) of the STIA:

3.4.1.1 Santam rectified this contravention by concluding agreements with the collecting agencies in accordance with the regulations;

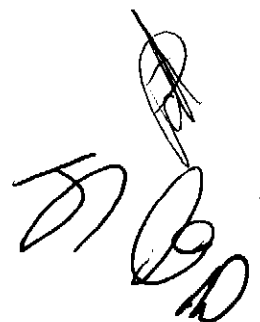
3.4.1.2 No loss was suffered by policy holders as a result of the contravention;

3.4.1.3 Santam fully cooperated with the Registrar during the enforcement process;

3.4.2 Contravention relating to the calculation of the crop insurance class UPP:

3.4.2.1 The contravention had no positive effect on the financial position of Santam or the insurance industry as the impact of the methodology followed by Santam to calculate the crop UPP reserve did not result in its UPP being less than it would have been had the prescribed calculation method been applied;

3.4.2.2 The impact of the methodology followed by Santam to calculate the crop UPP reserve is not expected to have an impact on the solvency position of Santam;

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3.4.2.3 Santam's 2012 application to utilise a different method to calculate its unearned crop UPP has been approved by the Registrar.

4 The agreed penalty

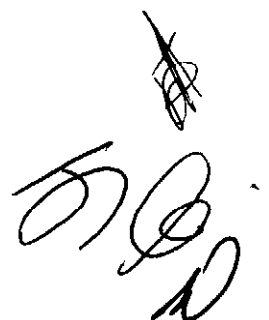
4.4 In the light of the above, and in terms of section 6B (7) (a) of the Financial Institutions (Protection of Funds) Act, No 28 of 2001, the parties have agreed that Santam will pay a penalty of R200 000 in settlement of the matter.

4.5 The parties humbly request that the Honorable Chairperson makes the settlement an order, as envisaged in section 6B (7) (b) of the Financial Institutions (Protection of Funds) Act.

5 Other conditions

5.4 This agreement is subject to approval by the Enforcement Committee and the parties specifically record that they are aware of the possibility that the Enforcement Committee may not accept the terms of this agreement.

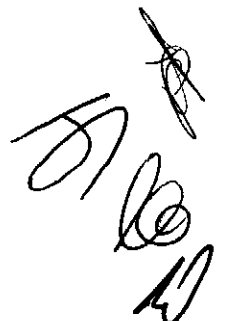
5.5 If Santam does not comply with the terms of this agreement and it is necessary for the FSB to proceed with legal proceedings, Santam herewith consents to pay all legal costs to the FSB on the Attorney and Client scale in terms of the High Court Rules inclusive of collection commission and Value Added Tax.

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- 5.6 No leniency or postponement given by the FSB to Santam or any amendment to the terms and conditions of this agreement will be binding unless such postponement, leniency or amendment is reduced to writing and signed by the parties.
- 5.7 Any receipt of a payment by the FSB after the due date shall be without prejudice to any of the rights of the FSB.
- 5.8 This Agreement shall not be a novation of the cause of action in terms whereof Santam was found to have contravened the Act.
- 5.9 This agreement constitutes the whole agreement between the parties in respect of the contraventions referred to in 2 above and the penalty.
- 5.10 The parties choose as their *domicilium citandi et executandi* their respective address set out below for all purposes arising out of or in connection with this agreement at which addresses all the processes and notices arising out of or in connection with this agreement, its breach or termination may validly be served upon or delivered to the parties. However the notice contemplated in terms of section 6E of the FI Act may be delivered by electronic email. For the purpose of this agreement the parties' respective addresses shall be:

5.10.1 Financial Services Board:

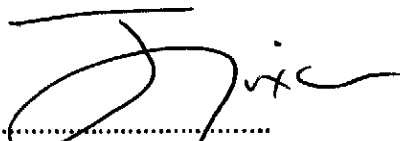
Johannes.vandeventer@fsb.co.za

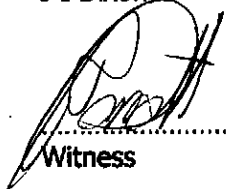
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5.10.2 Respondent:


Hennie.Nel@santam.co.za

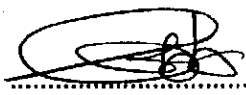
Signed at Pretoria on 01 July 2013 on behalf of the Registrar.


.....
J I Dixon


.....
Witness

Signed at Tyger Valley on 27 June 2013 on behalf of Santam Limited.


.....
H D Nel


.....
Witness