

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

CASE NO: EC 24/2017

In the matter of:

THE REGISTRAR OF SHORT-TERM INSURANCE

First Applicant

FINANCIAL SERVICES BOARD

Second Applicant

and

NEW NATIONAL ASSURANCE COMPANY LIMITED

Respondent

ORDER

WITH DUE CONSIDERATION to the settlement agreement attached marked annexure "A", I hereby determine, in terms of section 6B(7)(b) of the Financial Institutions (Protection of Funds) Act, No 28 of 2001, that the Respondent contravened Rule 7.4(a) of the Policyholder Protection Rules (Short-term Insurance), 2004 issued under the Short-term Insurance Act, No.53 of 1998.

I hereby impose a penalty of R100 000, inclusive of costs, to be paid within 7 days from the date of this order.

The remaining terms and conditions of the settlement agreement are incorporated and made an order of the Enforcement Committee.



Signed at **DURBAN** on the 24TH day of March 2017

A handwritten signature in black ink, consisting of a large, stylized initial 'E' followed by a cursive name, all enclosed within a hand-drawn oval.

EBI MOOLLA
Deputy Chairperson of the Enforcement Committee

"Answer A"

**IN THE PROCEEDINGS BEFORE THE ENFORCEMENT COMMITTEE
ESTABLISHED IN TERMS OF SECTION 10 (3) OF THE FINANCIAL SERVICES
BOARD ACT, NO. 97 OF 1990**

CASE NO: EC 24/2017

In the matter of:

THE REGISTRAR OF SHORT-TERM INSURANCE

First Applicant

FINANCIAL SERVICES BOARD

Second Applicant

and

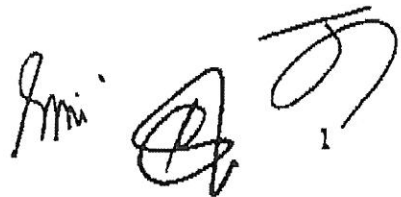
NEW NATIONAL ASSURANCE COMPANY LIMITED

Respondent

**SETTLEMENT AGREEMENT IN TERMS OF SECTION 6B (7)(a) OF THE FINANCIAL
INSTITUTIONS (PROTECTION OF FUNDS) ACT, NO 28 OF 2001**

PARTIES TO THE AGREEMENT

1. The First Applicant is the Registrar of Short-term Insurance.
2. The Second Applicant is the Financial Services Board (FSB), a juristic person established in terms of section 2 of the Financial Services Board Act, No. 97 of 1990. The functions of the FSB are *inter alia* to supervise and enforce compliance with the laws relating to financial institutions and in particular the conduct of short-term insurance business.

Imi


3. The First and Second Applicants are represented by Mr Jonathan Ian Dixon in his capacity as the Deputy Registrar of Short-term Insurance and as the Deputy Executive Officer for Insurance.

and

4. The Respondent is New National Assurance Company Limited, a public company registered and incorporated in accordance with the company laws of the Republic of South Africa bearing the registration number 1971/010190/06. The Respondent's registered office is situated at Fifth Floor, Field House, 25 Field Street, Durban. The Respondent is herein represented by Mr Goonaseelan Jaganathan Pillay, the Public Officer of the Respondent, who warrants that he is duly authorised by the Respondent to enter into and sign this agreement on its behalf.

WHEREAS

5. The First Applicant is of the opinion that the Respondent contravened Rule 7.4(a) of the Policyholder Protection Rules (Short-term Insurance), 2004 issued under the Short-term Insurance Act, No.53 of 1998 (hereafter referred to as the PPR Rules).
6. The Respondent wishes to enter into a settlement agreement with the First Applicant as contemplated in section 6B(7)(a) of the Financial Institutions (Protection of Funds) Act, No 28 of 2001 ("the FI Act").

NOW THEREFORE IT IS AGREED AS FOLLOWS

7. The Respondent was at all relevant times registered as a short-term insurance company in terms of the Short-term Insurance Act No. 53 of 1998. It was authorised to conduct short-term insurance business.
8. The Respondent failed to accept within a reasonable period a claim submitted by its policyholder Mr T.T. Selahle on 16 May 2012 in contravention of Rule 7.4(a) of the PPR rules.

Handwritten signatures and initials, including a large signature and a smaller one with the number 2 next to it.

9. The mitigating circumstances

9.1. It is also agreed that the following mitigating factors are relevant to the matter:

9.1.1. The Respondent accepted responsibility for the contravention.

9.1.2. The Respondent co-operated with the Applicants with regard to the enforcement action.

9.1.3. The Respondent eventually settled the claim.

10. The aggravating circumstances

10.1. It is also agreed that the following aggravating factors are relevant to the matter:

10.1.1. The conduct of the Respondent failed to demonstrate sound insurance principles and practice in the interests of the policyholder.

10.1.2. The lengthy period taken to settle the claim resulted in the policyholder not being treated fairly.

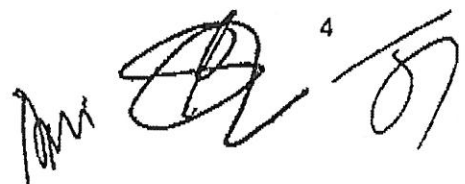
Penalty

11. In light of the above, the parties have agreed that the Respondent will pay a penalty of R100 000 (One Hundred Thousand Rand) inclusive of costs, to be paid within 7 days from the date on which this settlement agreement is made an order of the Enforcement Committee.

Ami *AV* ³ *BT*

12. Other conditions

- 12.1. 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. If the Enforcement Committee declines to make this agreement an order, then in such event this agreement will be null and void.
- 12.2. If the Respondent does not comply with the terms of this agreement and it is necessary for the Applicants to institute legal proceedings, the Respondent herewith consents to pay all legal costs to the Applicants on the Attorney and Client scale in terms of the High Court Rules inclusive of collection commission and Value Added Tax.
- 12.3. No leniency or postponement given by the Applicants to the Respondent 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. Any leniency or postponement granted by the Applicants or any amendment to this agreement shall not be a novation of the cause of action in terms whereof the Respondent was found to have contravened the Act.
- 12.4. Any receipt of a payment by the Second Applicant after the due date shall be without prejudice to any of the rights of the Applicants.
- 12.5. This agreement constitutes the whole agreement between the parties in respect of the offer to pay a penalty.
- 12.6. This agreement is in full and final settlement only in respect of the Respondent's liability for an administrative sanction to the Applicants arising from this contravention.
- 12.7. The parties choose as their *domicillum citandi et executandi* their respective address set out below for all purposes arising out of or in connection with

 4

this agreement at which addresses all 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:

12.7.1. First and Second Applicants
Financial Services Board:
Block B, Riverwalk Office Park
41 Matroosberg Road
Ashlea Gardens ext. 6
Pretoria
0081

12.7.2 The Respondent:
5th Floor
Field House
25 Field Street
Durban
Email address:gpillay@nnac.co.za

13. The parties humbly request that the Honorable Chairperson makes the settlement agreement an order of the Enforcement Committee, as envisaged in section 6B (7)(b) of the FI Act.

Signed at PRETORIA on 23rd March 2017 on behalf of the Applicants.

.....
Mr J Dixon

Signed at *Durban* on 14th March 2017 on behalf of the Respondent.

.....
Mr G.J. Pillay