

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

CASE NO: **EC22/2016**

In the matter of:

THE REGISTRAR OF LONG-TERM INSURANCE

Applicant

and

LOMBARD LIFE LIMITED

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 Rule 16.1(c)(ii) and (iii) of the Policyholder Protection Rules (Long-Term Insurance), 2004 issued in terms of section 62 of the Long-term Insurance Act, 52 of 1998 and impose a penalty of R150 000 inclusive of costs.

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

Signed at **PRETORIA** on the15... day of **February 2017**.



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

**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: EC22/2016

In the matter of:

THE REGISTRAR OF LONG-TERM INSURANCE

Applicant

and

LOMBARD LIFE LIMITED

Respondent


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

1. Parties to the agreement

1.1. The Applicant is the Registrar of Long-term Insurance (the Registrar) herein represented by Jonathan Ian Dixon in his capacity as the Deputy Registrar of Long-term Insurance.

1.2. The Respondent is Lombard Life Limited (Lombard Life), a registered company with limited liability, duly registered and incorporated in accordance with the company laws of the Republic of South Africa bearing registration number 1996/014618/06, herein represented by Mr Schalk Malan in his capacity as the Public Officer, and who confirmed that he is duly authorised to enter into this agreement.

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1.3. The Respondent is a licensed insurer, with its registered office at 2 Carse O
Gowrie Road, Parktown, Johannesburg, Gauteng.

2. Whereas

2.1. The Registrar is of the opinion that the Respondent contravened Rule 16.1(c)(ii) and (iii) of the Policyholder Protection Rules (Long-term Insurance), 2004 published on 30 September 2004 in terms of section 62 of the Long-term Insurance Act, No 52 of 1998 (the LTI Act), that read as follows:

"If the insurer rejects or disputes the quantum of a claim, the notice referred to in paragraph (b) must inform the policyholder:

- (ii) that the policyholder may within a period of not less than 90 days after the date of receipt of the notice make representations to the relevant insurer in respect of the decision;*
- (iii) of the right to lodge a complaint under the Financial Services Ombud Schemes Act, 2004 (Act 37 of 2004) and the relevant provisions of the Act relating to the lodging of such a complaint, in plain understandable language";*

2.2. The Respondent wishes to enter into a settlement agreement with the Registrar as contemplated in section 6B(7)(a) of the Financial Institutions (Protection of Funds) Act, No 28 of 2001 (the FI Act).

3. Now therefore it is agreed as follows

3.1. During the period October 2014 to November 2015, the Respondent rejected insurance claims of policyholders in at least 114 instances.

3.2. In at least 86 of these instances the notice to the policyholders informing them of the rejection of the claim, did not comply with Rule 16.1(c)(ii) and (iii) referred to above. More specifically, in these 86 instances the notice did not inform the policyholders that:

3.2.1. he/she may within a period of not less than 90 days after the receipt of the notice make representations to Lombard Life in respect of the decision; and

3.2.2. the policyholder has the right to lodge a complaint under the Financial Services Ombud Scheme Act, 2004 (Act 37 of 2004) and the relevant provisions of the Act relating to the lodging of such a complaint.

4. The mitigating circumstances

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

4.1.1. The Respondent accepted responsibility for the contravention;

4.1.2. The Respondent co-operated fully with the office of the Registrar during the on-site visit, and during the enforcement action; and

4.1.3. The Respondent, upon being informed of the breach, took immediate steps to rectify the oversight. The Respondent corrected the contravention by updating its repudiation letters to policyholders to comply with Rule 16.1(c)(ii) and (iii).

5. The aggravating circumstances

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

5.1.1. The Respondent did not comply with Rule 16.1(c)(ii) and (iii) for a protracted period of 13 months;

5.1.2. The Respondent was found to have been non-compliant in 86 instances; and



5.1.3. The conduct of the Respondent failed to demonstrate sound insurance principles and practice in the interest of the policyholders;

6. The agreed penalty



6.1. In the light of the above, the parties have agreed that the Respondent will pay a penalty of R150 000 (one hundred and fifty thousand rand), inclusive of costs.

7. Other conditions

7.1. 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.

7.2. If the Respondent do not comply with the terms of this agreement and it is necessary for the Registrar and/or the Financial Services Board (FSB) to proceed with legal proceedings, the Respondent herewith consents to pay all legal costs to the Registrar and/or the FSB on the Attorney and Client scale in terms of the High Court Rules inclusive of collection commission and Value Added Tax.

7.3. No leniency or postponement given by the Registrar 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 Registrar 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.

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- 7.4. Any receipt of a payment by the Registrar and/or the FSB after the due date shall be without prejudice to any of the rights of the Registrar and/or the FSB.
- 7.5. This Agreement constitutes the whole agreement between the parties in respect of the offer to pay a penalty.
- 7.6. This agreement is in full and final settlement only in respect of the Respondent's liability for an administrative sanction to the Registrar arising from this contravention.
- 7.7. 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 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:

7.7.1. The Applicant

Financial Services Board
Block B, Riverwalk Office Park
41 Matroosberg Road
Ashlea Gardens ext. 6
Pretoria
0081

7.7.2. The Respondent:

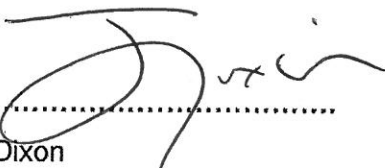
2 Carse O'Gowrie Road
Parktown
Johannesburg
2193

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Email address: kobusb@brightrock.co.za /
compliance@lombardlife.co.za

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

Signed at PRETORIA on 6 February 2017 on behalf of the FSB and the Registrar of Long-term Insurance.


.....
J I Dixon

Signed at Parktown on 16 January 2017 on behalf of the Respondent.


Schalk Malan