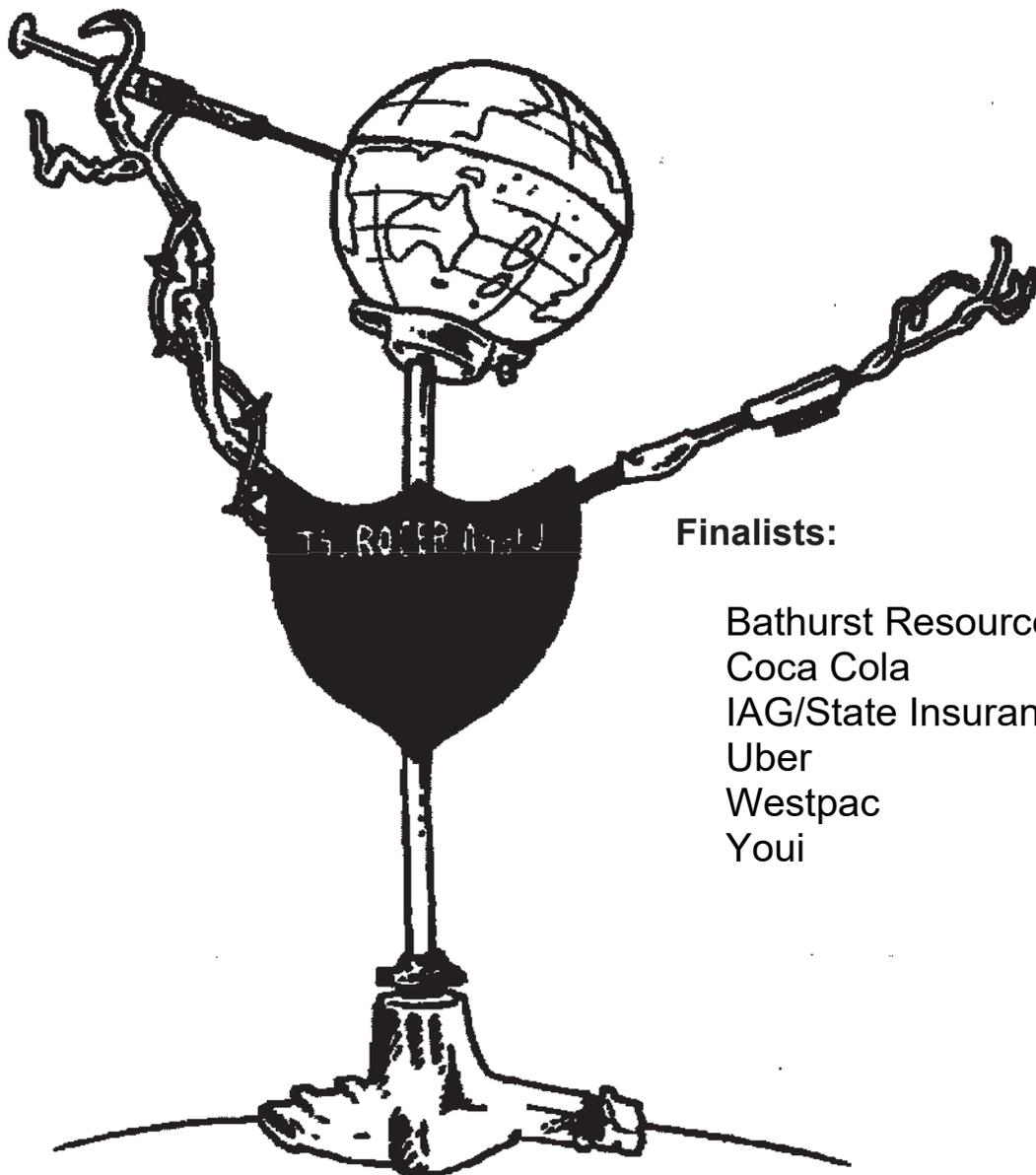


The Roger Award 2016



Finalists:

Bathurst Resources
Coca Cola
IAG/State Insurance
Uber
Westpac
Youi

For The Worst Transnational Corporation Operating In
Aotearoa/New Zealand in 2016

The Roger Award

For The Worst Transnational Corporation
Operating in Aotearoa/NewZealand

Judges' Report

Winner
Youi

Second
IAG/State Insurance

Third
Uber

Judges

David Small, Sue Bradford,
Dean Parker, Teresa O'Connor, Deborah Russell

2016 ROGER AWARD

Chief Judge's Statement from Sue Bradford

The six finalists were:

- **Bathurst Resources**
- **Coca Cola**
- **IAG/State Insurance**
- **Uber**
- **Westpac**
- **Youi**

There were two nominations for the **Accomplice Award** section - **Talley's**, in partnership with **Bathurst Resources**; and the **Government**, specifically for its cheerleading role in championing the Trans Pacific Partnership Agreement (TPPA).

The **criteria** for judging are by assessing the transnational (a corporation which is 25% or more foreign-owned) that has the most negative impact in each or all of the following categories: **people** - unemployment, impact on tangata whenua, impact on women, impact on children, abuse of workers/conditions, health and safety of workers and the public; **environment** - environmental damage, abuse of animals; **political interference** - interference in democratic processes, running an ideological crusade; and **economic dominance** - monopoly, profiteering, tax dodging, cultural imperialism.

The five judges were: **David Small**, a lawyer and Associate Dean in Education at the University of Canterbury; **Dean Parker**, Auckland writer and former Writers' Guild delegate to the Council of Trade Unions; **Sue Bradford**, community activist with Auckland Action Against Poverty and Economic and Social Research Aotearoa (ESRA); **Deborah Russell**, feminist, social and political commentator and tax expert, Tertiary Education Union member, and candidate for the Labour Party in 2014; and **Teresa O'Connor**, Co-Editor of *Kai Tiaki Nursing New Zealand*, the national nursing magazine; a celebrant; and a founding member of Voice Nelson, a social justice activist group in Nelson, primarily concerned with housing, employment and health.

Winner: Youi
Runner Up: IAG/State Insurance
Close Third: Uber

In regards to the **Accomplice Award**, there was insufficient support for either nominee to come through as a winner.

The decision on a 2016 winner was difficult, with the two insurance companies in a head to head battle for the Award.

However, new entrant **Youi** made it to the top with its gratuitous abuse of legal niceties, customers and potential customers and its own workers.

I'll now present observations made by judges about each of the three companies, offer feedback on those who weren't placed and about the **Accomplice** category, before finishing with some general comments.

Youi: Winner

Deborah Russell: What makes Youi the leader of the pack is the way that it set up conditions that pressured its employees to behave in ways that deceived and defrauded customers. It's clear that the individual employees engaged in behaviours that bullied and deceived, but it's also clear that it was the working and remuneration conditions that pressured them into engaging in this behaviour.

David Small: Their approach to hounding people into signing policies, or taking money from people who have not signed is unlawful, unethical, highly disturbing and traumatising. It becomes a huge, time-consuming and complex

task for people to try and extricate themselves from the clutches of Youi without losing money to them. If Youi are this bad at creating policies, I shudder to think what they would be like if one were in the unfortunate position of having a claim against them.

Teresa O'Connor: The Insurance Council of New Zealand's imposition of its maximum fine of \$100,000 on Youi is proof positive that this transnational corporation is indeed a rogue among rogues.

Dean Parker: Youi - outright criminals!

Runner Up: IAG/State Insurance

David Small: 2015's winner has been every bit as bad in 2016. There is something particularly disturbing about an insurance company acting like this. They behave in a relentlessly inhuman way with people who it had promised it would help out in times of trouble. Their bullying, stalling, litigious and unlawful practices are an absolute outrage.

Sue Bradford: I would have liked to have seen IAG/State win the Roger Award again in 2016 because of their implacable refusal to act with honour and responsibility towards those who had every reason to trust them and who now have their post-earthquake trauma multiplied for years on end by IAG/State's commitment to maximising returns. I consider the behaviour of IAG/State particularly reprehensible given its boastful place as "market leader in general insurance" in New Zealand, including through well-known brands State, AMI and NZI.

Deborah Russell: Perennial Roger Award finalist IAG perhaps deserves the Award again, for reasons of sheer persistence alone.

Close Third: Uber

Deborah Russell: Uber prides itself on operating as a new type of business, based on the sharing economy and using the disruptive power of the Internet. But on a closer look, it turns out that its business approach is actually very old fashioned: exploit workers, undersell to customers and avoid taxes. It merely dresses up these old practices in fancy new clothes. On top of this Uber has refused to comply with public transport regulations designed to ensure people using public transport are safe, and uses a method of collecting sales revenue which ensures it pays only a very small amount of tax in New Zealand.

Sue Bradford: Uber is one of the biggest new faces of exploitation in the global economy and, unfortunately, they've reached New Zealand. Those who start driving for Uber in the hope of scraping a good living often find themselves receiving below minimum wages and in a highly precarious situation in regards to health and safety and the law. At first, many people rejoiced in Uber as a cheap alternative to taxis but what this company is in fact doing is undermining the already precarious taxi industry itself, putting many livelihoods at risk while treating its own drivers as sources of maximal profit with minimum protection. Some erstwhile customers are now seeking more ethical alternatives, a move I can only endorse.

Teresa O'Connor: Uber's tactics are contemptible and its approach to its drivers is also reprehensible. "Disruptive" tactics too often mean no respect for any regulations, be they health and safety or consumers' and employees' rights.

Comments On The Three Other Finalists

Westpac

One judge, Teresa O'Connor, felt that Westpac should be the 2016 winner, saying: "Its decision to close 19 branches, many of them rural, and some of them the only bank in town, after faux consultation, illustrates the contempt for the communities it purportedly serves and its absolute commitment to profit above any other considerations. Its dominance in the NZ banking landscape, due to its earlier takeovers, should carry with it some responsibilities to those communities. Sadly, that is not the case". No other judges supported Westpac as the 2016 winner.

Coca Cola Amatil

Dean Parker noted that Coca Cola is "insanely damaging" to peoples' health. Teresa O'Connor said: "With its slick global marketing campaign Coca Cola Amatil is able to appear a good corporate citizen – there's that oxymoron again – while taking no responsibility for the ill health effects of its beverages, particularly on some of the country's most vulnerable citizens".

Sue Bradford's counter view was that sugary drinks are predominantly a public health issue which demands an urgent and substantial Government response; and that if we were going to give out awards on this basis at least one other major corporate, Frucor, should be included – not to mention all purveyors of such beverages.

Bathurst Resources

Teresa O'Connor commented on Bathurst's "idiocy in pursuing open cast coalmining in the face of an ever-warming planet, its damage to the environment and its choice of Talley's as a business partner in this venture" and placed the company in her top three for the Award, as did Dean Parker who said: "Anything in combination with Talley's is lethal".

While there was wide acknowledgement of the severe impact of continued coal mining on the environment, and in particular its contribution to accelerating climate change, there was not strong support for Bathurst as a winner when put up against other contenders.

Accomplice Award

Two organisations were nominated for the 2016 Accomplice Award: Talley's for its joint venture with Bathurst Resources in the takeover of some of Solid Energy's insolvent coal mines; and the Government for its role in pushing for the Trans Pacific Partnership Agreement (TPPA) more strongly than any of the other 11 countries who signed up to it.

While both these nominations were certainly worth considering there was no overall sentiment in favour of making the Award to either.

In relation to Talley's, Teresa O'Connor put it nicely when she said that: "It's a shame we can't issue an award to Talley's independently of their association with a transnational company". She and some others felt that the fact of Talley's association with Bathurst in the dying coalmining industry was not enough to make them an Accomplice on this basis alone.

Only one judge supported giving the Government the Accomplice award over its championing of the TPPA. Comments from others centred on the fact that it is highly unlikely the TPPA will become a reality in the foreseeable future, and that it could undermine the Award's usefulness in future if it was awarded to the Government on this basis in the current circumstances.

General Comments

The contenders for the 2016 Roger Award demonstrate very clearly the two very different types of exploitative corporates which now exist in Aotearoa New Zealand and around the world.

Youi and Uber are very similar. They don't care about breaking the law. They just carry on abusing legal niceties and workers because they have had so much money poured into them. They are part of the new face of global capitalism taken to state-of-the-art levels of local illegality.

Uber is bent on destroying an entire industry and the livelihoods supported by it. There seems to be a mentality that if a company develops a bright new cutting edge app, everything else is forgiven – the exploitation of workers, defying health and safety standards, placing your company outside the law and wiping out the jobs of others.

Youi likewise seems unrepentant despite court cases and fines for its outrageous rip off of customers and potential customers. For sheer cheekiness and disregard for the law Uber and Youi are up there.

On the other side lurk the traditional exploitative corporates like IAG, Westpac and Bathurst. These are not the straight-out fraudsters, but are of course still major contenders for the Roger. Bathurst, for example, is a traditional company carrying out its time-honoured environmentally exploitative work of coal mining. IAG remains a serious challenger for the Award because of its persistence in carrying on regardless with its refusal to pay out insurance in Christchurch. Westpac has sunk to new depths of social irresponsibility in closing so many local branches despite the economic heft it wields.

We need to keep our eyes on both kinds of transnational corporate, the old-style exploiters and the new app and fraud driven rip offs who now roam the global stage.

But I think it's also worth quietly remembering in our own lives the power of economic choice. We do have some choices about which companies we use, or recommend friends and family to use. We don't have to support Uber or Youi - or State, AMI or NZI insurance.

Before I finish I'd like to thank my fellow judges for the work they've put into this over the summer break, never an easy time for this exercise. Without your contribution, the Roger Award would not be possible. I'd also like to thank the CAFCA researchers for your hard, rarely acknowledged but much appreciated work in the background.

Finally, congratulations to Murray Horton and CAFCA, for keeping this tradition of the Roger Award alive and well. We need the light it shines on corporate malfeasance more than ever in these dangerous times.

Judges' Report

Financial Analysis: Youi

For the third year running, the Roger Award goes to a transnational corporation in the FIRE (finance, insurance and real estate) sector¹. "The FIRE economy", Jane Kelsey explains in a recent book², "is a metaphor for the fundamental shift in global capitalism since the 1970s. Finance has replaced industry as the driver of wealth accumulation in affluent countries. Neoliberal ideology, rules and institutions acted first as the midwife and then as the guardian of this new economic order". The unsavoury tactics and business practices pioneered on Wall Street and documented in films such as *Inside Job* and *The Big Short* have been combined with a market fundamentalist ideology that continually deters governments such as New Zealand's from regulating or prosecuting the business executives responsible for those practices.

"One Of The Most Despicable And Shameful Companies"

In 2015, insurance company IAG/State won the Roger for its use of "delay-deny-defend" tactics as it weaseled out of full and prompt settlement of the Canterbury earthquake claims of its small policyholders³. This year, newcomer Youi Insurance (Youi) storms into the lead with its guilty plea to a proven record of outright theft and fraud at the expense of its customers. Investigative journalist Diana Clement, who broke the story, says "I have been a journalist for over 30 years and this is one of the most despicable and shameful companies I have ever come across. I am still completely gobsmacked on a daily basis at how they treat New Zealanders."⁴ Needless to say, although the company was successfully prosecuted and fined a token sum last year, not one of the managers and executives responsible has been prosecuted, the company continues to operate in New Zealand under its Reserve Bank licence, Youi remains a full member of the New Zealand Insurance Council, *Hansard* records no mention of the scandal in Parliament, television continues to carry the company's deceptive advertising, and the Chief Executive Officer on whose watch it all happened has been promoted.

The parent corporation is the South African firm OUTsurance, a subsidiary of the merchant bank Rand Merchant Investment Holdings⁵. Youi was established in Australia in 2008 to challenge and take insurance market share away from the larger established insurers⁶. In 2013, Youi Australia established a subsidiary in New Zealand, Youi NZ Pty Ltd⁷. Its first step was to open a large call centre in Auckland in August 2013, employing 280 local staff to service its Australian business⁸, and subsidised by a WINZ Flexi-Wage grant of \$48,000 in 2013/14⁹, \$21,000 in 2014/15, and \$39,000 in 2015/16¹⁰.

Incentivises Staff To Falsify And Defraud

As a company PR release later explained, "Youi has call centres in New Zealand, South Africa and Australia so that when a client calls, Youi has a staff member to answer the call as part of their working day with no late night shifts impacting staff."¹¹ An important implication of this arrangement, the significance of which will become apparent, is that New Zealanders sucked into Youi's call-centre web are often speaking with staff located in Australia or South Africa rather than New Zealand, but all working within a common corporate culture that incentivises staff to falsify information and defraud customers.

On 28 July 2014 the Reserve Bank of New Zealand granted Youi a licence to carry on insurance business in New Zealand¹² and three days later Youi officially entered the market for home, contents and car insurance¹³.

The New Zealand insurance market that Youi entered in 2014 was "one of the most highly concentrated in the world"¹⁴ following the Commerce Commission's approval for the IAG takeover of Lumley Insurance¹⁵. The dominant incumbent players IAG and Suncorp were enjoying rising profits on the back of a falling claims/premiums ratio¹⁶ (helped along by their slow settlement of earthquake claims and steep premium hikes in the name of "earthquake risk"). Customer dissatisfaction with the existing insurers (in particular IAG, for reasons laid out in last year's Roger Award report¹⁷) was high and rising. Youi's PR pitch of lower premiums and more personalised service for customers, promoted through a major TV advertising campaign¹⁸ (fronted, appropriately enough, by an actor whose public face recognition stemmed from his role as a member of a criminal gang in the TV drama *Westside*) was targeted to capture a significant slice of the market. Youi's slogan "We get you"¹⁹ picked up on the message of the ads, which "feature a man talking about how Youi gets to know its customers better by asking more questions"²⁰. The company promised "tailored insurance products at competitive prices"²¹. In the words of Youi CEO Danie Matthee, "We're all about tailored products, priced very competitively and accurately, because we don't make assumptions about what our clients need - we ask relevant questions to really understand our clients better so that we can offer a competitive price. We then support this with a great product and awesome service delivered by our amazing people."²²

Anyone familiar with insurance industry practices will recognise the focus on intensive scrutiny of individual customer details as a device first to screen out unwanted risks (the practice of “cherry-picking”)²³ and second to place on record plenty of the sort of detailed information that can be used to reject claims at a later date. As one of Diana Clement’s informants told her, “as soon as I saw Youi’s ads about ‘asking questions’ I thought - this company is looking to gain sufficient information that they’ll be able to find loopholes in the event of a claim.” Another said “It’s the most common way for an insurer to reject a claim, and the more questions asked, the more chance that you will either answer one incorrectly, or will fail to disclose changes.” Combine this with the well-documented prevalence of data manipulation and falsification by Youi staff in the process of issuing policies, and the customer is left with a toxic mix.

No Written Record; Unauthorised Deductions

A feature of the company’s business model was (and still is) that “it won’t have any retail branch network but is call-centre-based”. All its business is conducted via its website and call centre²⁴. Youi’s standard practice is to do all its interactions with customers verbally, over the phone. The website functions only as an entry point where customers come to seek a quote. As soon as an online enquiry is received, a Youi staff member calls the potential customer back and initiates a hard-sell pitch, in a conversation the only record of which is Youi’s own recording of a verbal interchange. If anything in the conversation is interpreted by the Youi representative as the customer’s consent to purchasing a policy, then a policy is issued and a premium charged. If the customer then attempts to cancel the policy in writing by email, Youi’s policy is not to process the cancellation²⁵ but instead to contact the customer by phone, opening the way for another round of hard-selling.

A central part of the sales pitch has involved the Youi staff member insisting on being given the customer’s bank account or credit card details as a condition of providing a quote. This has enabled unauthorised deductions to be taken from the customer’s account without their knowledge.

The reliance on verbal communication with no written record until after a policy has been issued opens the way for malpractice, and over Youi’s first two years in New Zealand customer complaints poured in, not isolated cases but in their hundreds²⁶. There were several common threads:

Policies were issued to which customers had not given their consent

Credit card and bank details were demanded as a condition of providing a quote; then these details were used to deduct payments from customer accounts without their authorisation

Policy details were falsified by practices such as Youi staff mis-stating the colour of a car, or the structural details of a house, in order to reduce the premium while simultaneously rendering the policy void in the event of a claim

Attempts by customers to cancel unwanted policies or to recover stolen money were blocked by entrenched institutional arrangements

Youi policies did not match up to the usual terms and conditions of insurance in New Zealand

Eight months after Youi opened for business in New Zealand, investigative journalist Diana Clement published an article in the *New Zealand Herald*²⁷ describing how she herself had been scammed by having unauthorised deductions made from her Visa card:

“The sales adviser told me that I had to give him my credit card number, otherwise the system couldn’t generate the quote.... I handed over my credit card number with the assurance that I wouldn’t be charged if I ‘cancelled’. After getting the quote, I emailed my cancellation and got confirmation back that he would ‘action’ the cancellation. Lo and behold, a couple of weeks later, my Visa card was debited \$592.67 without my permission”.

“The member of staff I complained to tried to claim disingenuously that the email I sent (and that was acknowledged by YOUI staff) wasn’t sufficient to cancel. Apparently, because I hadn’t replied to texts from the company I had tacitly given permission for my Visa card to be debited, even though I had cancelled by email”.

“I took a screenshot of these texts, which said: ‘We have been trying to contact you regarding your recent enquiry, please call YOUI’. The 07 number provided in the text was answered by a woman in the Bay of Plenty who had never heard of YOUI. I’ve been told since by the company’s head of PR that it was in fact an Australian number. How on Earth was I supposed to guess that when it started with a New Zealand area code? And why are customers expected to call Australia to cancel policies issued when they asked for a quote?”

Caught Red-Handed In Full-Scale Criminal Scam

Following publication of Clement’s article, even the generally-supine Commerce Commission lumbered into action and began an inquiry into Youi’s sales tactics. The inquiry rolled on, unannounced and completely out of public view, for a full year until the Commission announced its completion, revealing that it had followed up 28 individual complaints

received since September 2014 in relation to “claims Youi was requesting credit card details from individuals who were seeking quotes, and initiating allegedly unauthorised direct debits from those credit cards”²⁸. In August 2016 the Commission finally laid charges in the Auckland District Court, to which Youi promptly pleaded guilty. The charges, in summary, were that Youi²⁹

made false or misleading representations on its website regarding consumers' ability to obtain a quote online

made false or misleading statements during telephone sales calls with consumers, including telling them bank or credit card details were required to generate a policy quote

asserted a right to payment for unsolicited insurance policies by sending letters demanding payment and/or debiting consumers' bank or credit card accounts without their express permission or knowledge

sent invoices to consumers in relation to unsolicited insurance policies that did not specify that the consumer was under no obligation to pay for the policies.

The Insurance Council is effectively the PR agent for the insurance industry. Its chief executive Tim Grafton is routinely wheeled out to rebut criticisms of company practices, but the fact that Youi had been caught red-handed in a full scale criminal scam meant that for once the usual blanket defence had to be dropped in favour of damage limitation. In March 2016, when it was clear the Commerce Commission had the evidence, the Council issued Youi with a “please explain” notice³⁰. Once charges had been laid and Youi had pleaded guilty, the Council imposed a \$100,000 fine, ostentatiously described as the “maximum possible”. That fine was for “breaching the [Insurance Council’s] rule which specifically requires ICNZ members to conduct their business in accordance with the Fair Insurance Code and in a legal, honourable and proper manner”³¹.

Minimal Penalty, Fine Effectively Refunded

Youi ostentatiously “cooperated” with the Commerce Commission and reached a pre-trial deal with the Commission³² to pay a fine of not more than \$350,000³³ (far below the Fair Trading Act maximum of \$9 million³⁴). In the eventual December 2016 court judgment the figure was reduced to \$320,000. The Court’s reasoning, in accepting this minimal penalty privately agreed between Youi and the Commission³⁵, ran as follows. Although Youi had pleaded guilty to fifteen “representative” charges, the case was treated as a “totality” with just one penalty imposed. So fourteen of the charges were convicted and discharged without penalty³⁶. The judge then started with a range of \$650,000-750,000 for the single fine and discounted this by 25% to reflect Youi’s guilty plea and by another 15% as a reward for “remorse, cooperation and remedial steps”. He then deducted the \$100,000 fine charged by the Insurance Council (see below), on the basis that “the disciplinary body got in first” – effectively a refund to Youi of the fine it had already paid to the Insurance Council. This left a range of \$290,000-350,000 the mid-point of which was the final fine of \$320,000.³⁷

Having had the case handed to him only one day before the hearing “for some reason which I have still not got to the bottom of”³⁸, the judge instantly accepted the claim by Youi’s management that none of them were individually to blame, which conveniently avoided the possibility that any executive of the company might find themselves in breach of the Reserve Bank’s “fit and proper person” requirements under section 36 of the Insurance (Prudential Supervision) Act 2010³⁹.

The judge did note in passing that “it is the public who are directly affected and there may be ... an argument for emotional harm payments in addition to reparation which in this case preceded the hearing today”⁴⁰. Watch this space – but don’t hold your breath.

Meantime, the industry spin machine had long ago leapt into action. After briefly considering whether to expel Youi, the Insurance Council in October had allowed it to remain a member “due to its unreserved apology to affected customers, its action in reviewing and changing its systems, monitoring to prevent a recurrence, and its previous good behaviour” plus its cooperation with the Commerce Commission.⁴¹ The practices complained of dated from when Youi was first granted its insurance licence in New Zealand, thus raising the question of what the Insurance Council considered to be Youi’s “previous good behaviour.” The Insurance Council fine had come with a warning that “any future misconduct risks membership termination”⁴², and Youi had naturally hastened to give assurances that “it has speedily implemented all required changes to business practices to strengthen its compliance and to address these issues that were not part of its standard operating procedures”⁴³.

Fraud And Theft Continue

This brings to the fore the issue of what exactly are Youi’s “standard operating procedures” - which presumably remain untouched by the much-hyped “required changes” - and hence the open question of whether the same and/or other misconduct continues. While the company’s spokespersons have blamed all proven misbehaviour on rogue individual employees, and have strongly denied that the company has built its sales tactics on the intent to defraud customers, an ongoing and growing flood of complaints from customers and whistleblowing by former Youi employees has made it crystal clear that in fact the commissions-based incentive culture within the company is deliberately

structured to induce employees to defraud customers, and that this does not seem to have fundamentally changed. Following Diana Clement's March 2015 article that lifted the lid on Youi's sales tactics, she has produced a series of increasingly detailed and explicit stories, posted on the Interest.co.nz website, in which the company's practices are laid bare⁴⁴. Similar stories by other journalists have confirmed and expanded Clement's findings⁴⁵. A six-month investigation by Fairfax in Australia found that the same fraudulent sales practices have been occurring there⁴⁶, where they are now reportedly the subject of an investigation by the Australian Securities and Investment Commission (though no mention of this is to be found on the ASIC website).

The bottom line appears to be that Youi is simply thumbing its nose at ineffectual regulators in all three countries in which it operates, and may well be continuing to drive its front-line staff to commit fraud and theft on a regular basis, while hiding behind a screen of PR statements denying all company responsibility for "errors" or individual misconduct.

Meantime Youi's CEO in New Zealand since 2014, Danie Matthee⁴⁷, has just been appointed CEO of Outsurance in South Africa⁴⁸, effectively promoting him out of New Zealand to another arm of the transnational operation.

To put the \$420,000⁴⁹ total fines so far paid by Youi into perspective, it is worth reviewing the company's financial statements⁵⁰. In the year to June 2016 Youi collected premiums totalling \$26.2 million, paid out claims worth \$19.4 million, and spent \$12.9 million on "acquisition costs" which appear to be mainly advertising spend. Its fines amount to 1.6% of premium income, 3.3% of its advertising budget, and 0.8% of total expenses. If one considers that the fines relate to conduct spread over the two financial years 2014/15 and 2015/16, the ratios go down to 1.3% of premium income, 1.8% of the advertising budget, and 0.6% of total expenses. There can hardly be any serious suggestion that this level of financial penalty amounts to an effective disincentive against fraud and theft, which may well have netted Youi more than the amount of the fine.

PwC's audit report on the 2015/16 Youi financial statements includes the usual pro-forma words "The procedures selected [to obtain audit evidence] depend on the auditors' judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error", but those financial statements suggest current policy holders and prospective policy holders should be cautious. While Youi's hard-selling practices have been the main focus of complaints against the company, and the scope for rejecting policy claims has been noted above, there is also the question of Youi's ability to pay claims under some circumstances even if it acknowledges liability.

Everything Depends On Reinsurance

The financial statements show that Youi reinsures almost all of its insurance, paying out to unnamed others approximately 80% of the insurance levies charged to clients in reinsurance premiums⁵¹. In other words, Youi's business model involves reinsuring almost everything. While Youi acknowledges that any claims liabilities to policy holders do remain with Youi, payment of those claims will depend on the terms and conditions of those reinsurance policies, and on Youi's ability to collect reinsurance reimbursements from the reinsurers.

On the surface, it might seem that Youi's compliance with the Reserve Bank's minimum solvency standards for insurers reduces the risk of non-payment due to insufficiency. Youi says its "strategy is to maintain a solvency coverage of at least 150%" of the minimum solvency capital standard and highlights the fact that its capital coverage is 629%!⁵² This sounds fine until you realise that the Reserve Bank's solvency standards do not seem to contemplate a business model like Youi's that relies almost totally on reinsurers. While the standards do take reinsurance into consideration as a factor, they accept the reinsurers' credit ratings⁵³. Youi reports that its policy requires its reinsurers to hold a minimum credit rating (A-)⁵⁴.

The 2007/08 credit crisis exposed conflicts of interest and raised significant questions about credit rating agencies' practices. That crisis demonstrated the folly of reliance on credit ratings alone. Credit rating agencies effectively functioned as accomplices in the complex financial products and practices that were at the heart of that disaster. Reinsurance arrangements have become increasingly complex. Youi's reliance on such extensive reinsurance arrangements, and the lack of information about them, presents additional risks for policy holders.

A New Low

Down the track, in other words, not only may Youi policy-holders find that they have been sold sub-standard policies in terms of what risks are covered⁵⁵. They may also encounter even worse claims-handling practices than those of Youi's competitors IAG and Suncorp, due partly to outright rejection on the basis of inaccuracies in data entry by Youi staff, and partly to the opacity of reinsurance arrangements which makes it difficult to know how well those arrangements would cope with, for example, the concentrated claims that would follow a natural disaster.

While ideally, a new entrant into insurance should have been welcome as a means of keeping the others honest, this one looks to have introduced a new low in an already disreputable industry.

ENDNOTES

- 1 In the Standard Industrial Classification (SIC) developed in 1937 by the US Census Bureau and widely used by statistical agencies worldwide.
- 2 Jane Kelsey, *The FIRE economy: New Zealand's reckoning*, Wellington: Bridget Williams Books, 2015, p.9.
- 3 The *Judges' Report* is at <http://canterbury.cyberplace.co.nz/community/CAFCA/pdf/roger-award-2015-judges-report.pdf>.
- 4 Her interview in October 2016 with the *New Zealand Herald* is at http://www.nzherald.co.nz/world/news/video.cfm?c_id=1503076&gal_cid=1503076&gallery_id=165986.
- 5 RMI Holdings has its investment in Youi held through its subsidiary OUTsurance International. <http://www.interest.co.nz/insurance/78495/youi-insurance-reports-148m-loss-during-first-year-operating-nz-tracks-line-parent>.
- 6 Bond, David, and Anna Wright, "Insurance outlook: in an era of increasing competition technology will make the difference", *The Conversation*, 15/3/16, <http://theconversation.com/insurance-outlook-in-an-era-of-increasing-competition-technology-will-make-the-difference-54896>.
- 7 The Companies Office website shows the incorporation date as 6 June 2013.
- 8 *National Business Review*, 25/10/13, p.9; "New player Youi Insurance to shake up NZ", *BusinessDesk*, 31/7/14; "South African insurers eyes NZ market", *Sunday Star Times*, 11/5/14; *New Zealand Herald*, 31/7/14, p.B002.
- 9 *Youi NZ Pty Ltd Financial Statements for the period ended 30 June 2014*, p.18 Note 7. Relative to "employee benefits" of \$7.842 million, the grant represented less than a 1% subsidy.
- 10 *Youi NZ Pty Ltd Financial Statements for the period ended 30 June 2016*, p.25-26 Note 7. In June 2016 it was reported that Youi was no longer receiving any WINZ subsidy: <https://www.nbr.co.nz/article/under-fire-insurer-youi-no-longer-getting-winz-wage-subsidy-b-189975>.
- 11 "New player Youi Insurance to shake up NZ", *BusinessDesk*, 31/7/14.
- 12 RBNZ "Register of licensed insurers in New Zealand" <http://www.rbnz.govt.nz/regulation-and-supervision/insurers/licensing/register>.
- 13 Rob Stock, "South African insurer opens doors", *Press*, 2/8/14
- 14 Rob Stock, "Concentrated sectors likely to see more insurers join market" *Sunday Star Times*, 22/6/14.
- 15 The Commission's May 2014 decision is at <http://www.comcom.govt.nz/dmsdocument/11954>.
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- 18 "Youi splashes on ad spend in first year", *National Business Review*, 25/7/15, p.24.
- 19 "by the short and curlies" as one comment on Diana Clement's reporting put it - <http://www.interest.co.nz/insurance/80690/major-investigation-diana-clement-talks-youi-customers-ex-employees-about-insurer>.
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- 21 Richard Meadows, "South African insurer Youi to enter NZ market", *Dominion Post*, 16/7/14, p.5.
- 22 "New player Youi Insurance to shake up NZ", *BusinessDesk*, 31/7/14.
- 23 Youi has made the news with several refusals to insure properties that it has alleged were flood or earthquake prone. See, for example, the numerous examples in "Insurer's flood-risk claim baffles Feilding homeowner", *Stuff*, 28/5/15; and several cases in the *Interest.co* story dated 22/3/16 and titled "In a major investigation Diana Clement talks to Youi customers & ex-employees about the insurer and uncovers startling allegations of serious misconduct", <http://www.interest.co.nz/insurance/80690/major-investigation-diana-clement-talks-youi-customers-ex-employees-about-insurer>.
- 24 *New Zealand Herald*, 31/7/15, p.B002; Rob Stock "Fresh ideas all par for the course for insurer Youi", *Timaru Herald* 2/8/14, p.8.
- 25 "In a major investigation Diana Clement talks to Youi customers & ex-employees about the insurer and uncovers startling allegations of serious misconduct", *Interest.co.nz* story posted 22/3/16, <http://www.interest.co.nz/insurance/80690/major-investigation-diana-clement-talks-youi-customers-ex-employees-about-insurer>, quotes Youi spokesperson Trevor Devitt as confirming that email cancellations are not accepted.
- 26 <http://www.interest.co.nz/insurance/80690/major-investigation-diana-clement-talks-youi-customers-ex-employees-about-insurer> states that "Interest.co.nz has been tracking postings about Youi on Facebook, Trade Me Community forums, Productreview.com.au, other review sites, and Youi's own website. We've seen hundreds of complaints about the practices outlined in this article".
- 27 Diana Clement, "Insurance company sales tactics shocking", *New Zealand Herald*, 7/3/16, http://www.nzherald.co.nz/personal-finance/news/article.cfm?c_id=12&objectid=11413084.
- 28 Rob Stock, "Watchdog completes Youi probe", *Dominion Post*, 24/3/16, p.8.
- 29 "Commission files charges against Youi Insurance", *BusinessDesk*, 11/8/16.
- 30 Rob Stock, "Youi gets a 'please explain'", *Dominion Post*, 26/3/16, p.13.
- 31 Insurance Council of New Zealand, "Insurance Council of NZ disciplines Youi", 4/10/16, <http://www.icnz.org.nz/insurance-council-of-nz-disciplines-youi/>
- 32 See the District Court judgment in *Commerce Commission v Youi Insurance Group Ltd* [2016]NZDC 25857 <http://www.comcom.govt.nz/dmsdocument/15225>, paragraphs 7-10.

33 Youi's provision for a \$350,000 "penalty" appeared in Youi Pty Ltd, *Financial statements for the year ended 30*
June 2016 page 31 note 31. The provision was picked up by Paul McBeth, "Youi books \$350k fine for shonky
34 tactics", *Hawkes Bay Today*, 29/10/16, p.A19.

35 The Fair Trading Act 1986 s.40(1)(b) provides for a fine of not more than \$600,000 for each offence by a body
corporate. Youi was convicted on 15 separate charges, carrying a potential total penalty of \$9 million.
Commerce Commission v Youi Insurance Group Ltd [2016]NZDC 25857
36 <http://www.comcom.govt.nz/dmsdocument/15225>, paragraph 25. The judge laid heavy stress on precedents for
the Court not overruling plea bargains of this sort.
Commerce Commission v Youi Insurance Group Ltd [2016]NZDC 25857
37 <http://www.comcom.govt.nz/dmsdocument/15225>, paragraph 29.

Jenee Tibshraeny, "Insurer Youi cops \$320,000 fine for widespread Fair Trading Act breaches; Side-steps fine
of up to \$9 million", posted 15/12/16, at [http://www.interest.co.nz/insurance/85252/insurer-youi-cops-320000-](http://www.interest.co.nz/insurance/85252/insurer-youi-cops-320000-fine-widespread-fair-trading-act-breaches-side-steps-9)
38 [fine-widespread-fair-trading-act-breaches-side-steps-9](http://www.interest.co.nz/insurance/85252/insurer-youi-cops-320000-fine-widespread-fair-trading-act-breaches-side-steps-9).

Commerce Commission v Youi Insurance Group Ltd [2016]NZDC 25857
39 <http://www.comcom.govt.nz/dmsdocument/15225>, paragraph 4.

See Reserve Bank of New Zealand, *Fit and proper standard: licensed insurers*, [http://www.rbnz.govt.nz/-](http://www.rbnz.govt.nz/-/media/ReserveBank/Files/regulation-and-supervision/insurers/regulation/4434500.pdf?la=en)
40 [/media/ReserveBank/Files/regulation-and-supervision/insurers/regulation/4434500.pdf?la=en](http://www.rbnz.govt.nz/-/media/ReserveBank/Files/regulation-and-supervision/insurers/regulation/4434500.pdf?la=en), section II.1(iii).
(By fully cooperating with the Commerce Commission inquiry, Youi management had already protected
themselves against any possible sanction under section II.1(vii)).
Commerce Commission v Youi Insurance Group Ltd [2016]NZDC 25857
41 <http://www.comcom.govt.nz/dmsdocument/15225>, paragraph 11.

Rob Stock, "Youi cops \$100k fine", *Dominion Post*, 5/10/16, p.11.
42 Insurance Council of New Zealand, "Insurance Council of NZ disciplines Youi", 4/10/16,
<http://www.icnz.org.nz/insurance-council-of-nz-disciplines-youi/>
43 "Youi and Commerce Commission charges" *BusinessDesk*, 12/8/16.

44 These articles can be found at [http://www.interest.co.nz/insurance/80690/major-investigation-diana-clement-](http://www.interest.co.nz/insurance/80690/major-investigation-diana-clement-talks-youi-customers-ex-employees-about-insurer)
[talks-youi-customers-ex-employees-about-insurer](http://www.interest.co.nz/insurance/80690/major-investigation-diana-clement-talks-youi-customers-ex-employees-about-insurer) (posted 22/3/16);
[http://www.interest.co.nz/insurance/80813/youi-firing-line-current-and-former-employees-detail-explosive-](http://www.interest.co.nz/insurance/80813/youi-firing-line-current-and-former-employees-detail-explosive-claims-about-culture)
45 [claims-about-culture](http://www.interest.co.nz/insurance/80813/youi-firing-line-current-and-former-employees-detail-explosive-claims-about-culture) (posted 1/4/16); and [http://www.interest.co.nz/insurance/85291/freelance-journalist-diana-](http://www.interest.co.nz/insurance/85291/freelance-journalist-diana-clement-welcomes-outcome-commerce-commissions-probe-youi)
[clement-welcomes-outcome-commerce-commissions-probe-youi](http://www.interest.co.nz/insurance/85291/freelance-journalist-diana-clement-welcomes-outcome-commerce-commissions-probe-youi) (posted 20/12/16). There is also an interview
with Clement in October 2016 at
http://www.nzherald.co.nz/world/news/video.cfm?c_id=1503076&gal_cid=1503076&gallery_id=165986.

46 See, e.g, Catherine Harris, "Youi's practices condemned", *Taranaki Daily News*, 14/4/16, p.8.

Liam Mannix, "Does Youi owe you? Insurer accused of billing without consent", *Sydney Morning Herald*,
28/8/16, [http://www.smh.com.au/business/banking-and-finance/does-youi-owe-you-insurer-accused-of-billing-](http://www.smh.com.au/business/banking-and-finance/does-youi-owe-you-insurer-accused-of-billing-without-consent-20160818-gqvrm)
47 [without-consent-20160818-gqvrm](http://www.smh.com.au/business/banking-and-finance/does-youi-owe-you-insurer-accused-of-billing-without-consent-20160818-gqvrm).

48 Full name Daniel Hermanus Matthee.

Jenee Tibshraeny, "Youi's boss to take up new role as CEO of OUTsurance - a South African insurer with the
same parent as Youi", posted 24/2/17, at [http://www.interest.co.nz/insurance/86181/youis-boss-take-new-role-](http://www.interest.co.nz/insurance/86181/youis-boss-take-new-role-ceo-outsurance-south-african-insurer-same-parent-youi)
49 [ceo-outsurance-south-african-insurer-same-parent-youi](http://www.interest.co.nz/insurance/86181/youis-boss-take-new-role-ceo-outsurance-south-african-insurer-same-parent-youi).

50 \$320,000 District Court fine plus \$100,000 Insurance Council fine.

51 Available at <https://www.companiesoffice.govt.nz/companies/app/ui/pages/companies/4476298/documents>

52 See *Youi NZ Pty Ltd Financial Statements for the period ended 30 June 2016* p.4.

53 See *Youi NZ Pty Ltd Financial Statements for the period ended 30 June 2016* p.34 under heading of *Capital management*.

54 See Reserve Bank of New Zealand, "Solvency standard for non-life insurance business", 2014, pp. 29-31,
[http://www.rbnz.govt.nz/-/media/ReserveBank/Files/regulation-and-](http://www.rbnz.govt.nz/-/media/ReserveBank/Files/regulation-and-supervision/insurers/regulation/5969218.pdf?la=en)
55 [supervision/insurers/regulation/5969218.pdf?la=en](http://www.rbnz.govt.nz/-/media/ReserveBank/Files/regulation-and-supervision/insurers/regulation/5969218.pdf?la=en)

56 See *Youi NZ Pty Ltd Financial Statements for the period ended 30 June 2016* p.20, under heading of *Reinsurance Credit exposure*.

57 See specifics in "In a major investigation Diana Clement talks to Youi customers & ex-employees about the
insurer and uncovers startling allegations of serious misconduct", posted 22/3/16, at
[http://www.interest.co.nz/insurance/80690/major-investigation-diana-clement-talks-youi-customers-ex-](http://www.interest.co.nz/insurance/80690/major-investigation-diana-clement-talks-youi-customers-ex-employees-about-insurer)
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the culture and conduct of the insurer" posted 1/4/16, at [http://www.interest.co.nz/insurance/80813/youi-firing-](http://www.interest.co.nz/insurance/80813/youi-firing-line-current-and-former-employees-detail-explosive-claims-about-culture)
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60 [commissions-probe-youi](http://www.interest.co.nz/insurance/85291/freelance-journalist-diana-clement-welcomes-outcome-commerce-commissions-probe-youi).

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