

## **CONTINGENT BUSINESS INTERRUPTION INSURANCE COVER**

The legal certainty that the non-life insurance industry has been waiting for from the South African courts in respect of Contingent Business Interruption (CBI) cover has now been provided by the Supreme Court of Appeal (SCA) in the matter between *Guardrisk Insurance Company Limited v Café Chameleon CC*.

The SCA considered the clause before it and found that its purpose is to provide cover for business interruption due to occurrences of a notifiable disease within 50 km radius of the premises.

The SCA found that the insured peril includes both the occurrence of the notifiable disease within the radius and the government's response to it. This finding is similar (if not the same) to the one by the Western Cape High Court in the recent matter between *Ma-Afrika Hotels and Another v Santam Limited*, where the court found that Covid-19 and the government's response to it are an inseparable part of the same insured peril.

Although the SCA remarked that its finding rendered superfluous the question of whether the presence of Covid-19 in Cape Town and the government's response was the cause of the business interruption, the SCA nevertheless dealt with the issue of causation for the sake of fullness. In this regard, the SCA indicated that the local outbreak of Covid-19 in Cape Town and the government's response, was the real or proximate cause of the business interruption.

Finally, the SCA endorsed much of the reasoning of the Western Cape High Court in two matters which were recently decided in this last-mentioned court. The FSCA believes that the SCA has now provided legal certainty on these matters.

In light of the SCA judgment, the FSCA now expects the non-life insurance industry to honour its CBI cover obligations and to make payment of valid CBI claims without delay. Discussions between the non-life insurance industry and reinsurers should be expedited to ensure that policyholders who have already suffered huge financial losses since March 2020, do not continue to suffer these losses, as the legal certainty which the non-life insurance industry required has now been provided by the SCA.

For more information about this press release, please contact Mr MakgOMPI Raphasha at [MakgOMPI.Raphasha@fsc.co.za](mailto:MakgOMPI.Raphasha@fsc.co.za)

**ENDS**

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