

**FSCA PRESS RELEASE**

**19 November 2020**

**CONTINGENT BUSINESS INTERRUPTION INSURANCE COVER**

Following receipt of the decision by the Western Cape High Court in the matter between *Ma-Afrika Hotels (Pty) Ltd & Another v Santam Limited*, the Financial Sector Conduct Authority (FSCA) confirms and reiterates its views on Contingent Business Interruption (CBI) Cover.

The court found that Covid-19 and the Government's response to it are an inseparable part of the same insured peril. In this regard, the FSCA has continuously reminded the non-life insurance industry that "Covid-19 entered the country and spread already prior to the declaration of the national lockdown". It is on this basis that the FSCA expressed the view that the national lockdown could not be used as a ground to reject a valid CBI claim.

The FSCA has also taken note of the finding of the court on the burden of proof. The court seems to have accepted that the applicants suffered patrimonial loss when customers cancelled reservations in the applicants' establishments after cases of Covid-19 were reported in their areas. This accords with the FSCA's view previously expressed that "if a policyholder can prove that it suffered a loss as a result of the disease which spread into the area, for example, less bookings, cancellations of bookings and so forth, that may amount to a valid claim".

While the FSCA respects the non-life insurance industry's right to appeal and notes that there is a pending appeal in the *Café Chameleon CC v Guardrisk Insurance Company Ltd* matter, the FSCA urges the non-life insurance industry, in the interest of policyholders, to consider paying CBI claims based on the legal certainty that has been provided by the courts thus far, including the full bench of the Western Cape High Court.

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**ENDS**

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