



7th July 2020

Update on Western Cape High Court Judgement from Dewald Cillie, Executive Head

As the first case relating to Business Interruption related to the tourism and hospitality industry to be heard in court in South Africa, many of you may be following the matter between Cape Town restaurant, Café Chameleon and Guardrisk Insurance Company.

The judgement, which was released yesterday (although it is dated earlier, 26 June), was heard on an urgent basis in accordance with the restaurant's application.

Likely to have far-reaching implications on similar Business Interruption disputes in South Africa's short-term insurance industry, the Western Cape High Court has ruled in favour of Café Chameleon, calling on Guardrisk to settle the restaurant's claim. With regard to the policy in question, the judgement has deliberated on the following:

Notifiable Disease Extension: Covid-19 falls substantially within the ambit of the Notifiable Disease Extension. The requirement to report the disease to a competent local authority is met by national legislation under the National Disaster Management Centre, in the absence of legislation enacted by any local authority.

Causal Link: There is a clear nexus between the Covid-19 outbreak and the regulatory regimes (i.e. the lockdown) that caused the interruption of the restaurant's business, therefore establishing factual causation.

Citing the Supreme Court of Appeal in a previous matter, the judgement emphasises that words in a document must not be considered in isolation, without regard to context.

It also states that each case must be decided on its own facts and the law, and that reference to the alleged condition, or insolvency, of the insurance industry in general, is not a defence for an insurer to be excused from honouring its contractual obligations.

We see this as a very positive development in what has become the story of our tourism industry's survival. And while it is almost certain that Guardrisk will appeal this judgement, it sends a strong message to all insurers.

Off the back of this High Court ruling, and with additional cases being heard in the UK this month and again in Cape Town in September, legal pressure is mounting against insurers. However, while we will be closely monitoring these proceedings, many of which are on an urgent basis, we fear they are not urgent enough. We know that all around us, tourism and hospitality businesses are calculating, not just the months and weeks that they can survive, but the days.

SATIB believes this recent judgement opens a window to further push our agenda with insurers – to propose a favourable settlement for those of you who are seeing your runway diminish with each day and to secure immediate relief for our clients who cannot wait for court rulings and appeals, urgent as they may be. As communicated to you last Friday, we need action now.

We will present you with the details of our proposal for immediate relief by next week, following our discussions with insurers.

Kind regards,

A handwritten signature in black ink that reads 'Dewald Cillie'.

SATIB Insurance Brokers, Executive Head – SATIB