

Business interruption ruling rankles

Santam seeks urgent meeting with FSCA

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SANTAM has requested an urgent meeting with the Financial Sector Conduct Authority (FSCA) after the authority rowed back on its business interruption (BI) claims position by recognising Covid-19 to be the primary cause of commercial losses.

The FSCA has instructed short-term insurers to pay claims and said it was concerned about the behaviour of insurers that were deliberately avoiding settlement.

It said the lockdown could not be used to reject claims, as the repudiations went against the principles of treating customers fairly and broke down confidence and trust in the insurance sector.

The FSCA said it would take action against insurers that treated their customers unfairly.

Citing an earlier communication last month, the FSCA said although it could not find evidence the lockdown could be a trigger for a valid BI insurance claim, policyholders were able to claim if they could show they had satisfied the requirements of their specific policies, "whether it was before, during or after the national lockdown".

It also addressed the judgment in the matter between Café Chameleon and Guardrisk, saying it was in line with its guidance to the industry.

"Based on this judgment, and in an attempt to avoid protracted litigation on further aspects of BI insurance cover such as quantum, the FSCA is engaging with the insurance industry in the interests of all affected policyholders," it said.

Last month, Judge André le Grange held there was a factual link between the virus and the loss, saying insurers cannot reject claims by arguing lockdown caused the interruption.

On Friday, Santam, the country's largest short-term insurer, issued a communiqué to intermediaries on the FSCA's response and its stance on the judgment.

Santam has become the public face of the BI battle as hospitality and tourism clients have expressed outrage over its refusal to pay claims.

They argue a notifiable disease, such as Covid-19, is the trigger for a claim, as per their policy wordings. Santam and most other insurers have dug in their heels, blaming lockdown for the losses, not the virus. All insurers – including

OUTsurance, which was hailed for reserving R220 million for its claims – have since endorsed their policies to exclude Covid-19.

Santam has cited its answering affidavit in the Ma-Afrika, Stellenbosch Kitchen matter, which is due to be heard in the Western Cape High Court on September 1, to insist that its policies were written to cover local events and blamed the lockdown for business losses.

It denied the *Guardrisk v Cafe Chameleon* ruling was precedent-setting.

"Not all policy wordings are the same, which influences precedence. Judge Le Grange noted in his judgment that each case must be 'decided upon its facts and the law' and his ruling does not open 'the floodgates of liability'," Andrew Coutts, Santam's head of intermediated distribution, wrote.

"It is our contention that a national lockdown would not be implemented for an outbreak within a specific area and that by application of the trends clause, irrespective of an incidence of disease around a specific premise, all revenue would be impacted. As a result, claims resulting from an interruption due to the national lockdown are not covered."

Coutts said Santam had a strong claims-paying track record, and its capital "comfortably" exceeded the minimum regulated solvency requirements.

"Santam is capable of paying all claims that fall within its policy wordings. However, we cannot, nor could any individual corporate or industry, stand good for the economic losses caused by a national lockdown."

"As an insurer, our responsibility is to indemnify our clients only against insured losses and not broader economic losses resulting from the national lockdown."

He said Santam had requested an urgent meeting with the FSCA to discuss its "latest view".



HOSPITALITY and tourism clients argue that a notifiable disease such as Covid-19 is the trigger for a business interruption insurance claim to be paid. | ARMAND HOUGH African News Agency (ANA)

