

# Insurance Claims Africa



**17 NOVEMBER 2020**

**Press release from Insurance Claims Africa (ICA) and Ma-Afrika Hotels**

**Ma-Afrika vs Santam: ICA welcomes court victory for tourism and hospitality businesses**

- ***Santam ordered to pay Ma-Afrika claims in full (18 months) + costs***

*Johannesburg, 17 November 2020* -- Insurance Claims Africa (ICA) welcomes the Western Cape High Court's judgment in favour of Ma-Afrika Hotels and Stellenbosch Kitchen against Santam, it is a resounding victory for all tourism and hospitality businesses. ICA is calling for the immediate resolution and payment of all valid Business Interruption claims by insurance companies.

ICA joined forces with hospitality group Ma-Afrika Hotels in its litigation against their insurer Santam, who has refused to settle their valid Business Interruption claims, even though they included cover for infectious or notifiable diseases.

Judgment by Honourable Judge Cloete, Judge Matame and Deputy Judge President was handed down in the Western Cape High Court on Tuesday afternoon. The court found in favour of Ma-Afrika, stating that Santam was liable to pay the full Business Interruption losses including the impact of the government's response to Covid-19 (i.e. lockdown losses). The judgement ordered the insurer to pay Ma-Afrika for the impact over the entire policy period of 18 months, without limitations. The court also ordered that Santam pay Ma-Afrika's legal costs.

André Pieterse, Chairman & CEO of the Ma-Afrika Hotel Group, the successful applicants in the case against Santam, says, "We are grateful for the court's decision in our favour. We are thankful to our legal team, led by Adv Jeremy Gauntlett QC SC, and the support from Ryan Woolley and the clients represented by ICA. This outcome will greatly assist in allowing ourselves and others in the Tourism and Hospitality sector to weather the ongoing Covid-19 storm. We are also grateful to Santam for the interim relief payments received in August 2020, which allowed us to retain our entire staff complement of 210 loyal people with more than 1000 direct dependents. We are hopeful that this decision by the court will terminate the litigation, thereby bringing an end to the insecurity and suffering of many."

Ryan Woolley, CEO of ICA, the public loss adjustment company that is representing over 750 businesses in the tourism and hospitality sector in their battle to get large insurers to pay out on these claims, says: "Santam has consistently said that it requires legal certainty in

order to honour their customers claims, and most other insurers have followed suit. In our view, today's judgment from a full Western Cape High Court bench, provides the legal certainty required to finalise all claims relating to Business Interruption caused by the pandemic. The seismic impact of COVID-19, coupled with insurers' unwillingness to honour their obligations to their customers, has deepened these businesses' losses, with some unable to ever recover. We believe it is now time for the insurance sector to step up and display the ethical leadership that has been missing from their response to this crisis thus far."

There have been a number of legal and regulatory actions in the last few months that have, in ICA's view, provided additional certainty that insurers are liable for Business Interruption cover, where it includes insurance against infectious and notifiable diseases. In July, the Financial Services Regulatory Authority (FSCA) instructed the Insurers to pay claims; also in July, the Western Cape High Court, in the matter of Cafe Chameleon v Guardrisk, rejected the insurers' argument that the losses suffered by the claimant was due to the lockdown. Guardrisk's appeal of this matter will be heard in the Supreme Court of Appeal (SCA), on Monday, 23 November. ICA has partnered with Cafe Chameleon in this matter.

-Woolley says, "The MA- Afrika judgement has arrived in time to provide the SCA with further guidance from respected Cape High Court Judges. This is a matter of national importance and the judgement reiterates the need to protect the consumer from Insurers trying to change the terms of the contract post loss."

"The real question is, are the insurers, which include Old Mutual, Guardrisk, Santam, Bryte, Hollard, F&I, Chubb, TRA, Lombard, AIG and Monitor, truly looking for certainty or simply a way out of their obligations towards their customers?"

"We all know that this was a test case, not just for Santam but for all insurers refusing to pay these claims. By settling valid claims expeditiously, they have the opportunity to contribute to the survival of businesses in this critical sector, and to the preservation of thousands of jobs. Failure to do so will ensure they are remembered in history as companies that contributed directly to the demise of thousands of businesses and jobs during the country's worst economic and social crisis."

"On behalf of all the tourism and hospitality sector, who have been so hard hit, we would like to thank Ma-Afrika, and our legal team, for their courage, resilience and conviction."

ICA and Ma-Afrika Hotel's legal team is led by advocates Jeremy Gauntlett QC SC, Mike van der Nest SC, Sean Rosenberg SC, Guy Elliott SC, and Porchia Long and Jason Mitchell. They are instructed by attorneys Anel Bestbier of Thomson Wilks, and David Bayliss.

The Tourism and Hospitality sector sustains over 740 000 direct and 1.5 million indirect jobs, and contributes 8,6% to the South African economy. It is also the lifeblood for many micro and small enterprises creating mass employment opportunities for men, women and youth across the country. Since March 2020 when the Covid-19 outbreak occurred and subsequently the national quarantine / lockdown, tourism and hospitality businesses of all sizes have suffered tremendous losses and many have been forced to close their doors, putting thousands of jobs at risk.

**Ends**