

## Press release from Insurance Claims Africa (ICA)

### More broken promises: Santam & Guardrisk attempt to delay Café Chameleon SCA appeal hearing

- *Appeal due to be heard by the Supreme Court of Appeal on Monday, 23 November 2020*
- *A delay undermines insurers promise to expedite legal certainty, places vulnerable tourism businesses at further risk of collapse*
- *ICA, Ma-Afrika and Cafe Chameleon vehemently oppose delay*
- *No need for Santam to appeal Ma-Afrika, as Guardrisk SCA decision would set precedent for all insurers*

*Johannesburg, 20 November 2020* -- Insurance Claims Africa (ICA) strongly opposes Santam and Guardrisk's attempt to delay the Café Chameleon hearing in the Supreme Court of Appeal set down for Monday 23 November. ICA believes a delay in the hearing will further prejudice financially desperate tourism and hospitality businesses that urgently require legal certainty for their COVID-19 claims to be resolved.

On Thursday, 19 November, 2020, Santam, represented by Norton Rose Fulbright, and Guardrisk, represented by Clyde & Co, wrote to the Supreme Court of Appeal, asking for a postponement of the *Café Chameleon vs Guardrisk* appeal, set down for hearing on Monday 23 November 2020, saying the postponement would allow both the Café Chameleon, and Ma-Afrika appeals to be heard together. While ICA recognises Santam's efforts to expedite its own appeal, it only filed its application for leave to appeal on Friday, 20 November 2020, so attempting to combine the two cases at this late stage will lead to a postponement of the Café Chameleon case.

Ryan Woolley, CEO of ICA, says: "In fact there may be no need for a Santam appeal at all as the Guardrisk SCA decision would set precedent on its own. A hearing and judgement in the Guardrisk appeal, which those parties agreed should be dealt with on an expedited basis, will provide the much needed legal certainty and may, on Norton Rose Fulbright's own version, obviate the need for an appeal in the Santam application and many of the other pending applications and actions related to the Business Interruption insurance matter."

On Tuesday 17 November 2020, a full bench of the Western Cape High Court found in favour of Ma-Afrika Hotels in its case against Santam, stating that the insurer 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. It also ordered Santam to pay Ma-Afrika's legal costs.

Both Ma-Afrika Hotels and Café Chameleon have formally opposed the insurers' delay request.

“This is nothing more than a delay tactic that will further cripple tourism and hospitality businesses that are already hanging on by a thread. From the outset, the insurance companies promised they wanted legal certainty as quickly as possible, in fact Guardrisk agreed to the expedited appeal. Santam, who has always claimed it required legal certainty, has all of a sudden shifted the goal post to require an appeal court decision in its own matter. This constant shifting of the goal posts while claiming that they have their customers’ best interests at heart, is both unconscionable and unethical,” says Woolley.

“It is worth noting that a delay can only benefit insurers. Policyholders’ claims lapse if the claimant is no longer in business. The longer that these tourism and hospitality businesses have to go without policy payments, the more likely it is that they will be unable to survive or preserve the jobs they support. Insurers have been told to pay by the courts and urged to do so by the FSCA. Insurers are deliberately trying to kick the can down the road whilst they hope for a verdict in their favour at the FCA Supreme Court Appeal in the UK. This shows a certain level of contempt for South Africa, the FSCA and our legal system; do they not trust that the SCA will deliver a sound judgement? A delay will only do further damage to the trust that has already been eroded,” says Woolley.

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 lockdown was imposed, 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.

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