

# CONTINGENT BUSINESS INTERRUPTION

## CBI EXPLAINER SERIES

# WHAT WAS THE COURT'S FINDING?

---

On 17 November 2020 the Western Cape High Court handed down judgment in the matter between Santam and Ma-Afrika Hotels (Pty) Limited and The Stellenbosch Kitchen (Pty) Limited (for convenience referred to as "Ma-Afrika" – the applicants).

In both a main and a separate concurring judgment the Court upheld the Ma-Afrika applications; and

- granted orders declaring that Santam "is liable to indemnify the ... applicant in terms of the Business Interruption section of [the] policy ... for such loss that the first applicant is able to prove to have suffered as a result of loss of revenue occasioned by the occurrence of a notifiable disease in the form of Covid-19 occurring within a radius of 40 kilometres of the insured premises on or about 11 March 2020;" and
- found that under the policies the applicable indemnity period was 18 months.

### **The Court made findings to the effect that:**

- There is cover for business interruption loss caused not only directly by Covid-19 itself (both within the area and more widely) but also generally by the national lockdown and related restrictions imposed by Government in response to the pandemic.
- It is necessary for that cover that there was an occurrence of Covid-19 within 40km of the insured premises, but insureds do NOT have to prove that the local occurrence caused their business interruption.
- The policies will not respond if there was no local occurrence at all.
- The Trends Clause is not applicable because the insured peril includes the initial lockdown.
- The indemnity period applicable to the infectious disease cover will be 18 months and not the more limited three months applicable to other listed extensions.

The judgment does not address the question as to how the policies might respond if there was a local occurrence only after the national lockdown had been imposed; but the approach they have taken would suggest there would then be cover from the date of the local occurrence.

The judgment will be regarded as binding or at least highly persuasive at High Court level across the country regarding this specific form of policy wording, and persuasive in regard to similar policy wordings, unless set aside on appeal.

