REPUBLIC OF NAMIBIA

HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

JUDGMENT

Case no: HC-MD-CIV-ACT-CON-2021/03278

In the matter between:

RED TRADING RESTAURANT **PLAINTIFF**

and

MOMENTUM INSURANCE LIMITED **DEFENDANT**

Neutral citation: *Red Trading Restaurant v Momentum Insurance Limited* (HC-MD-CIV-ACT-CON-2021/03278) [2023] NAHCMD NC 35 (6 February 2023)

Coram: Schimming-Chase J
Heard: 3 November 2022
Delivered: 6 February 2023

Flynote: Pleadings – Exception - Exception - disclosing no cause of action - Pleading only excipiable if no possible evidence led on pleadings could disclose a cause of action.

Insurance - Interpretation of insurance agreement - Validity of business interruption clause - modern contextual and business-like interpretation of the

business interruption clause - the insured peril is not the disease itself, but the illness sustained as a result of the occurrence of the disease - Exception dismissed.

Summary: On 1 April 2020, the plaintiff and defendant concluded an insurance agreement with additional business interruption cover related to the interference with the plaintiff's business as a result of the occurrence of a 'notifiable disease'. 'Notifiable disease' was defined in the insurance agreement to mean '... illness sustained by any person resulting from human infectious or human contagious disease, an outbreak of which the competent authority has stipulated shall be notified to them...' The Covid-19 virus fell within the definition resulting from a human infection or human contagious disease. A competent local authority (as contemplated in the definition of a notifiable disease) stipulated that this disease be notified. This was undertaken through a number of Proclamations and Regulations published as from 28 March 2020, when a state of emergency was declared on 18 March 2020, and resulted in a lockdown of the Khomas region and a restriction of movement of persons inside the Khomas region. The plaintiff claimed from the defendant certain amounts for business interruption as a result of occurrences of Covid-19 with a 50 km radius of its premises for the period commencing 1 April 2020. The defendant repudiated the plaintiff's claim resulting in the plaintiff instituting action for recovery of the amounts claimed under the insurance agreement for a specific period.

The defendant excepted to the plaintiff's claim on the grounds that the insurance agreement was invalid and could not be concluded, because the formation of an insurance contract depends on the happening of a specified uncertain event, and at the time of conclusion of the agreement, the event was already certain, namely Covid-19 had occurred and a notification had taken place before the conclusion of the insurance agreement. The plaintiff pleaded that on a modern contextual and business-like interpretation of the applicable term in the insurance contract, emphasis had to be placed on each occurrence of the disease, which was the risk and insurable interest in question and therefore the agreement was valid.

Held, on a modern contextual and business-like interpretation of the relevant

clause(s) in the insurance agreement, the outbreak of the disease itself was not the insured peril. The occurrence of each illness suatained (which was uncertain and the risk insured against) was the applicable insurable interest. Exception dismissed.

ORDER

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1. The exception is dismissed with costs, such costs to include the costs of one instructing and two instructed counsel.

2. The matter is postponed to 6 March 2023 for a case planning conference.

3. The parties are directed to file a joint case plan on or before 1 March 2023.

JUDGMENT

SCHIMMING-CHASE J:

[1] The plaintiff conducts business in the tourism and leisure industry as an inn-keeper, hotelier, and restaurateur. The plaintiff carries on business as Hillside Executive Accommodation – a luxury accommodation inn, Windhoek Luxury Suites – a luxury accommodation inn, and Stellenbosch Wine Bar – a restaurant, wine bar, deli, and tasting room, all located in Windhoek.

[2] The defendant is Momentum Short Term Insurance (Pty) Limited, a duly registered short-term insurer.

[3] The exception raised in this action concerns the interpretation of certain provisions of a business interruption clause contained in an insurance agreement concluded between the parties, in terms of which the defendant indemnified the

plaintiff for business interruption loss suffered by any of the plaintiff's three businesses arising from a defined event.

[4] For the purposes of determining the exception, the facts alleged in the plaintiff's particulars of claim are deemed correct. [1]

[5] On 1 April 2020 and/or 5 May 2020 at Windhoek, the parties concluded partly oral partly written insurance agreement(s) for *inter alia* any business interruption. On 19 May 2020, the parties varied the insurance agreements to amend the policy schedules by reducing the insurance period for business interruption and the business interruption limit of indemnity.

[6] In terms of the business interruption section (of these agreements), a defined event included loss resulting in interruption or interference with the business due to a 'notifiable disease' occurring within 50km of the insured premises.

[7] A 'notifiable disease' was defined to mean:

'illness sustained by any person resulting from any human infectious or human contagious disease, an outbreak of which the competent local authority has stipulated shall be notified to them but excluding human immune virus (HIV), acquired immune deficiency syndrome (AIDS) or an AIDS related condition'.

[8] It is the case of the plaintiff that Covid-19 constitutes an illness resulting from a human infectious or human contagious disease in accordance with the insurance agreement. The plaintiff further contended that the disease occurred within a radius of 50 km of the plaintiff's premises on various dates and occasions, during the period of April 2020 to August 2021.

[9] Attached to the particulars of claim was a document titled 'Various

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[1] *Van Straten v Namibia Financial Institutions Supervisory Authority* 2016 (3) NR 747 (SC) at par [18].

Occurrences of Covid-19 cases in Windhoek'. The first occurrence of Covid-19 according to that document, was on 1 April 2020,[2] on which date, two cases were reported.

[10] The particulars of claim further state that on *inter alia* 28 March 2020 and 17 April 2020, a competent authority stipulated that it be notified of the occurrence of Covid-19, in consequence of one or more of these events. The Government of Namibia in this regard, imposed various restrictions which affected businesses, and Proclamation 9 of 28 March 2020 was published in respect of the Khomas Region in which the insured premises fall. As a result, the plaintiff's three businesses suffered a loss of business or income or estimated loss of business or income as contemplated in the business interruption section of the policy.

[11] The plaintiff seeks an order *inter alia* declaring the defendant liable to indemnify and compensate the plaintiff for any and all business interruption losses as a consequence of the Covid-19 occurrence(s) in Windhoek, during the period of insurance.

[12] The defendant's exception strikes at the validity of the business interruption section clause on which the plaintiff's case is premised. It is the case of the defendant that in a contract of insurance, it is an underlying supposition that the insurance cover is for a specified uncertain future event occurring, and that the future uncertain event would not have already occurred on the date of concluding the contract.

[13] In support of this contention, the defendant relies on the dates of the Governmental response(s) to Covid-19. On 18 March 2020, the State President declared a State of Emergency as a result of the outbreak of Covid-19, and on 28 March 2020, declared that Chapter 3 of the Public and Environmental Health Act, 1 of 2015 ("the Public Environmental Health Act"), be brought into operation, and that Covid-19 be deemed to be a formidable epidemic disease. Section 23 of the

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[2] For purposes of the particulars of claim, by end July 2020, the confirmed Covid-19 cases had risen to 2129 cases.

Public Environmental Health Act provides for notification of suspected cases of formidable epidemic diseases and places an obligation on a number of individuals and officials to report the suspected occurrence of a formable epidemic disease to the relevant authorities.

[14] The thrust of the defendant's exception is that on the plaintiff's own version, the uncertain future event allegedly insured against (Covid-19) had already occurred at the time the insurance contracts were concluded, and as a result, there is no contractual liability on the defendant to indemnify the plaintiff for alleged losses suffered as a result of the occurrence of Covid-19, because a party cannot be insured for a peril that had already manifested when it is a basic principle of an insurance contract that an uncertain event is to be insured.

[15] I summarise below the arguments presented on behalf of the parties in the exception.

[16] Mr Tötemeyer SC appearing for the excipient, submitted that the exception is premised on the principle pronounced in *Kent v South African National Life Assurance Company,* [3] namely that:

'Any contract of insurance postulates that a sum of money will be paid by the insurer to the insured upon the happening of a specified uncertain event. The possibility of the happening of that event is the risk. If the happening of the event is a certainty, there is not a possibility but a certainty of harm and therefore there is no risk. There is the underlying supposition that the risk described in the contract exists and that the harm occasioned by the happening of the uncertain event has not occurred. If the happening of the event occurs before the conclusion of the contract, then there can be no contractual liability because the underlying supposition has failed.'

[17] The essence of Mr Tötemeyer's argument relates to the date on which the contract of insurance was concluded. He submitted that the essence of an insurance agreement is that the event insured against must be uncertain – in the

[3] *Kent v South African National Life Assurance Company* 1997 (2) SA 808 (D) at 813E-G.

sense it had not yet occurred - at the time that the insurance contract was concluded. If the uncertain event occurred prior to the conclusion of the contract, there can be no liability under the law of insurance against the insurer. Effectively, the provision for the indemnity in respect of business interruption is to the effect that, should any of the specified uncertain events occur, payment for a claim in terms of that event is made, or liability accepted – these include, but are not limited to fire and theft. (Emphasis added).

[18] The plaintiff's claim is premised on a notifiable disease occurring within a radius of 50km of the premises. It was argued that the specified uncertain insured event under this extension is related to the actual occurrence of a notifiable disease, followed by the requisite notification.

[19] According to the defendant, the allegation by the plaintiff that the first occurrences of Covid-19 within a radius of 50km of the insured premises were reported on 1 and 5 April 2020 is not correct, and upon proper consideration, these dates were not the dates of occurrences of Covid-19 but the dates of reporting of the occurrences of Covid-19, and that the first occurrences of the virus had already manifested by or prior to 18 March 2020. The defendant relied on the declaration and enforcement of a lockdown in the Khomas Region on 28 March 2020, 'in consequence of one or more of these occurrences.

[20] Reliance was placed on Proclamation 7 of 18 March 2020, when the State President declared a State of Emergency and a lockdown of the Khomas Region was imposed. Proclamation 9 of 2020 (28 March 2020) further directed that Chapter 3 of the Public and Environmental Health Act be brought into operation and that Covid-19 be deemed to be a formidable epidemic disease. Section 23 of the Public and Environmental Health Act provides for notification of suspected cases of formidable epidemic diseases and places an obligation on a number of individuals and officials to report the suspected occurrence of a formidable epidemic disease. Notification of the occurrence of Covid-19 was thus required, according to the defendant, as from 28 March 2020. Covid-19 therefore became a "notifiable disease" as from 28 March 2020 (and, as shown, occurred within a 50km radius of the insured premises).

[21] It was submitted that the above Governmental responses were as a consequence of one or more of the occurrences of Covid-19 within the relevant 50km radius of the insured premises. As such, a notifiable disease had already occurred and manifested at the time the restrictions were imposed. The occurrence of the Covid-19 disease and pandemic was the essential risk (i.e. the uncertain event) insured against and on which the plaintiff's entire claim is based. Therefore, according to the defendant, it could under no construction of the plaintiff's particulars of claim be accepted that a cause of action had been properly pleaded, allowing the court to dismiss the exception of the defendant, alternatively set aside the particulars of claim.

[22] Mr Marais SC appearing on behalf of the plaintiff took no issue with the principles relating to the formation of the contract. In fact he expressly agreed with those principles. The plaintiff's issue lay with the defendant's interpretation of the provision of the clause in question.

[23] According to Mr Marais, the interpretation of the cause in question requires that each reported case constitutes an 'occurrence' and an addition or extension to the usual business interruption clause. As such, and at the time the contract was concluded, Covid-19 had occurred but infections had not. Thus, cases reported after 1 April 2020 or 5 May 2020 had not yet occurred.

[24] Further, it was argued that the outbreak of the pandemic is in and of itself not the peril, instead, the notifiable disease manifesting per reported case was the peril insured against, and in the event that each of these reported cases caused or contributed to the business interruption, each such case would give rise to a claim under the insurance contracts. After all, the material term of each agreement as pleaded was that the defendant indemnified the plaintiff in respect of each business, against loss suffered or arising from a defined event occurring during the periods of insurance.

[25] In amplification of the argument, it was submitted that upon a cursory reading of the Public and Environmental Health Act, Part 3 pertains to the

'Notification, Prevention and Control of Diseases'. In particular, s 7 – 'Notification and reporting of notifiable infectious diseases' - places an obligation on any health practitioner, a principal or head of a learning institution, head of a family or a household, employer, owner or occupier of land or premises, traditional leader, chief or headmen - to report to a local authority the particulars of the patient and his or her symptoms, the occurrence of a case of illness or death coming to his or her notice and suspected to be due to a notifiable infectious disease, or with a history of or presenting symptoms or appearances which might reasonably give grounds for the suspicion.

[26] Therefore, on a modern, contextual and business-like interpretation of the insurance agreement, an insured peril, could as it were, occur and reoccur, and on each occasion give rise to a claim. Reliance was placed on the oft quoted Supreme Court decision in *Total Namibia v OBM Engineering and Petroleum Distributors*[4] where the approach to interpretation of text, including contracts, was formulated to include in the interpretation process, reading the particular provision(s) in light of the document as a whole and the circumstances attendant on its coming into existence. Consideration must ultimately be given to the context in which the provision appears, the apparent purpose to which it is directed and the material known to those responsible for its production. A sensible meaning is to be preferred to one that leads to insensible or unbusinesslike results.[5]

[27] Mr Marais submitted that it could not be disputed that peril in terms of insurance can reoccur. Reliance in this regard was further placed on the House of Lords decision in *The Financial Conduct Authority v Arch Insurance (UK) and Others.*[6]

[28] In this matter, the House of Lords rendered a judgment dealing specifically with insurance claims resulting from business interruption as a result of the

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[4] *Total Namibia v OBM Engineering and Petroleum Distributors* 2015 (3) NR 733.

[5] At par [18], approved the decision of *Natal Joint Municipal Pension Fund v Endumai Municipality* 2012 (4) SA 593 (SCA) at par [18].

[6] *The Financial Conduct Authority v Arch Insurance (UK) Ltd and Others* [2021] UKSC 1.

national lockdown, which insurance companies had declined to pay on the grounds that the policies did not cover certain effects of the pandemic. In an extensive judgment, the House of Lords clarified whether there was cover in principle for Covid-19 related losses under a variety of different standard insurance policy wordings. One of the standard insurance policy wordings is almost identical to the insurance clauses contained in the agreement concluded between the plaintiff and defendant.

[29] The House of Lords accepted that the cover provided by a section like the one under consideration contains a series of extensions which provide cover for business interruption that is not consequent on physical damage to property.[7] The policy wording in question spoke of indemnification in respect of interruption or interference following any occurrence of a notifiable disease (where the notifiable disease was similarly defined).

[30] In describing the peril, the House of Lords made it clear that the policy actually says and recognises that what is covered is not a notifiable disease as such but an "occurrence" of a notifiable disease. Mr Marais SC emphasised that this is an important distinction which supports the interpretation relied upon for the plaintiff.

[31] In dealing with the word occurrence, the House of Lords perceived no difference in meaning between the terms 'occurrence' and 'event'. [8] It was held that the term 'occurrence', where it appeared in the disease clause in the policy wording, referred to something happening at a particular time and that it was implicit in the definition that an 'occurrence' is something that happens on a particular date 'and not something capable of extending over more than one date. Therefore it held that

'A disease that spreads is not something that occurs at a particular time and place and in a particular way; it occurs at a multiplicity of different times and places and may

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[7] *The Financial Conduct Authority v Arch Insurance (UK) Ltd and Others* supra at par [50].

[8] Ibid at par [67].

occur in different ways involving differing symptoms of greater or less severity. Nor for that matter could an 'outbreak' of disease be regarded as one occurrence, unless the individual cases of disease described as an 'outbreak' have a sufficient degree of unity in relation to time, locality and cause'.[9]

[32] In the result, the court favoured an interpretation calling for regard to be had of each case of illness sustained by an individual as a separate occurrence.[10]

[33] Against this background, the House of Lords made the following remarks about the nature of the peril: It treats the insured peril simply as Covid 19, wherever and whenever the disease occurs .... [11]

'... the policy actually says and recognises that what is covered is not a notifiable disease as such but an "occurrence" of a notifiable disease. [12]

It is implicit in this definition that an "occurrence" is something that happens on a particular date and not something capable of extending over more than one date. [13]

And further

'Once again, the question is one of interpretation. We have concluded earlier that the word "occurrence", as it is used in the disease clauses, bears its ordinary meaning of something which happens at a particular time, at a particular place and in a particular way; that each individual case of disease is properly regarded as a separate insured occurrence ....'[14]

[34] A similar approach was adopted closer to home in *Ma-Afrika Hotels (Pty)*

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[9] *The Financial Conduct Authority v Arch Insurance (UK) Ltd and Others* supra at par [69].

[10] Ibid at [68] and [69].

[11] Ibid supra at par [64].

[12] Par [65].

[13] Par [68].

[14] Par [199].

Ltd v Santam Limited. [15]

[35] On authority of the above decision, Mr Marais submitted that the interpretation which makes best sense of the clause is to regard each case of illness sustained by an individual as a separate occurrence. Thus, for purposes of indemnification of the plaintiff's claim as pleaded, it became necessary to couple the outbreak of the Covid-19 pandemic as the causal nexus giving rise to the declaration of a State of Emergency; prompting the governmental response by regulations governing social and human interaction.

[36] I now consider the arguments presented.

[37] For purposes of determination of the matter, I shortly reiterate the principles relative to exceptions, which are governed by rule 57(1) of the High Court Rules, and which have been sufficiently restated in the jurisprudence of the court, and more so with authority in *Van Straten v Namibia Financial Institutions Supervisory Authority,*[16] where the Supreme Court held that it is incumbent upon an excipient to persuade this court that upon every interpretation, which the pleading can reasonably bear, no cause of action is disclosed. Only if no possible evidence led on the pleadings can disclose a cause of action, will the particulars of claim be found to be excipiable.

[38] A State of Emergency was declared by Proclamation 7 of 2020 on 18 March 2020, following the outbreak of Covid-19.[17] The content of the proclamation provides useful guidance in the determination of the issue, in that under the hand of the State President, the preamble reads:

> 'Under Article 26(1) of the Namibian Constitution, read together with section 30(3) of the Disaster Risk Management Act, 2012 (Act No. 10 of 2012), I declare that,

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[15] *Ma-Afrika Hotels (Pty) Ltd v Santam Limited* 2020 JDR 2375 (WCC) at par 40.

[16] *Van Straten v Namibia Financial Institutions Supervisory Authority* 2016 (3) NR 747 (SC) at par [18].

[17] *Uukwangali Traditional Authority v Minister of Urban and Rural Development* (SA 9-2019) [2020] NASC (6 November 2020) para 5.

with effect from 17 March 2020, a State of Emergency exists in the whole of Namibia on account of the outbreak of the Coronavirus disease (COVID -19).'

[39] Further, in Proclamation 9 of 2020, the State President gazetted the first set of regulations as the Governmental response to Covid-19. The preamble of the proclamation reads:

'Under the powers vested in me by Sub-Article (5) of Article 26 of the Namibian Constitution, I, subsequent to having declared by Proclamation No. 7 of 18 March of 2020 that a State of Emergency exists in the whole of Namibia following a worldwide outbreak of the disease known as Coronavirus Disease 2019 (Covid-19), make the regulations set out in the Schedule. Given under my Hand and the Seal of the Republic of Namibia at Windhoek, this 28th day of March, Two Thousand and Twenty.'

[40] In terms of Proclamation 9 of 2020

(a) a lockdown of the Khomas Region was imposed from 14h00 on Saturday 28 March 2020 until 17 April 2020;[18]

(b) public gathering were limited to 10 persons for the period of the lockdown; [19]

(c) travelling to the Khomas region was limited and restricted for the period of lockdown;[20]

(d) entry into Namibia by tourists was refused under section 10 of the Immigration Control Act for the period of the lockdown;[21]

(e) the movement of persons inside the Khomas Region was generally restricted by confining people to their place of residence (subject to certain

[18] Regulation 3.

[19] Regulation 5.

[20] Regulation 6.

[21] Regulation 6.

exceptions) for the period of the lockdown;[22]

(f) the sale of alcohol was prohibited during the period of lockdown;[23]

(g) Restaurants, cafes and coffeeshops were limited to providing takeaway only.[24]

[41] Part 15 of these regulations provide as follows:

'(1) The provisions of Part 3 of the Public and Environmental Health Act, 2015 (Act No. 1 of 2015) are deemed to be incorporated into these regulations.

(2) Despite the provisions of section 22(2) of the Public and Environmental Health Act, 2015 (Act No. 1 of 2015) the disease caused by the virus known as Covid-19 is deemed to be a formidable epidemic disease and it is deemed that the threatened outbreak of the said disease necessitates the measures referred to in section 29(1) of that Act.'

[42] Further Proclamations and Regulations extended the countrywide lockdown and imposed additional restrictions, which were later relaxed.[25]

[43] Academics and lawyers alike have long endured the struggle of defining a contract of insurance. The learned author DM Davis; *Gordon & Getz, The South African Law of Insurance,*[26] defined insurance as being about the transfer and distribution of risk, and proposed a definition as a contract of the utmost good faith between an insurer (or assurer) and an insured (assured) whereby the insurer undertakes in return for the payment of a price or premium, to render to the insured a sum of money or its equivalent on the happening of a specified uncertain

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[22] Regulation 9.

[23] Regulation 11.

[24] Regulation 12.

[25] The relevant Proclamations and Regulations are helpfully available on the Namibia Superior Courts Website.

[26] D M Davis *Gordon & Getz, The South African Law of Insurance* 4th Ed Juts & Co at p79.

event in which the insured has some interest.[27]

[44] Thus, the fundamentals of an insurance contract requires the obligation of the insurer to be dependent on the occurrence of an uncertain or unplanned event, and that if the happening of the event became a certainty prior to conclusion of the contract, there is not a possibility but a certainty of harm and there is accordingly no risk to insure, as it were. Insurance contracts are in essence risk based, after all, that is the essential nature of the insurance business. It is on the assessment of the risk that the terms of a particular insurance agreement are crafted, and the resultant premiums determined.

[45] By 18 March 2020, the State President had declared a State of Emergency following the outbreak of the Covid-19 pandemic. By 28 March 2020, the Governmental response to the outbreak placed an obligation on certain heads of institutions (and in this specific case the plaintiff), to report the outbreak of any notifiable diseases.

[46] The clause itself states that a 'notifiable disease' is an illness sustained by any person resulting from a human infectious or human contagious disease. There are some aspects to consider in interpretation of the clause as a whole, starting with the word 'occurrence' which is defined[28] as

'...the fact or frequency of something happening'.

[47] Thus the clause clearly speaks to an 'illness sustained' as a result of the outbreak and not the outbreak itself. Thus the occurrence of the illness, is to my mind, the insured peril or insurable interest. The outbreak may well have manifested, coupled with the relevant notification requirements, but it remained uncertain as to when, if , and how many occurrences of Covid-19 would still take place. In other words, the number of persons that would become infected with Covid-19, remained at all times, and still remains uncertain. This is also evidenced

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[27] Ibid p79.

[28] Oxford Advanced Dictionary of English

by the publishing of further Proclamations and Regulations after 17 April 2020, which was the date on which the lockdown was to end, as contained in Proclamation 9 of 28 March 2020.

[48] Therefore and in my view, a modern, contextual and business-like interpretation of the insurance agreement and the word 'occurrence', makes it apparent that the uncertain and insured peril cannot be the outbreak, or notification related to the Covid-19 disease, but to the actual occurrence of the disease. These are separate, isolated and uncertain events. The possibility of infection with the virus is the uncertain event. That is the risk insured against. Not the outbreak of the virus itself. The argument of the defendant suggests that no one in the country could insure against the possibility of someone becoming infected by the disease after 18 March 2020. This is not in line with the approach to interpretation, and certainly does not come across as business-like, for purposes of insurance business. The defendant's argument accordingly falls to be rejected.

[49] I am in respectful agreement with the persuasive decision of the House of Lords in *Financial Conduct Authority* that all the individual cases of Covid-19 which had occurred by the date of any Government measure were equally proximate cases of that measure, and the public response thereto, and that it is sufficient for a policyholder to show at the time of any relevant Government measure that there was at least one case of Covid-19 within the geographical area covered by the clause.

[50] I am accordingly persuaded by the arguments on behalf of the plaintiff that on the modern interpretation every occurrence within the locality is a separate peril insured against, and that the insurance contract is valid. In this regard, I am mindful that the House of Lords was not called upon to decide whether the insurance agreements in question were valid, on the grounds that the insured peril had already manifested by the time the insurance agreement was concluded, as submitted by Mr Tötemeyer, but on interpretation of the insurance contract, this argument does not hold sway with the court.

[51] Therefore the exception must fail.

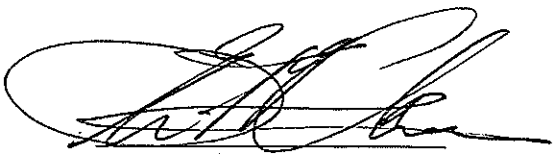
[52] As regards the question of costs, both parties are in agreement that costs in the exception should not be capped in terms of rule 32(11). Both parties litigate on par with eminent counsel, and the question for determination at this stage was important and definitive of the matter.

[53] In light of the foregoing, the following order is made:

1. The exception is dismissed with costs, such costs to include the costs of one instructing and two instructed counsel.

2. The matter is postponed to 6 March 2023 for a case planning conference.

3. The parties are directed to file a joint case plan on or before 1 March 2023.



E M SCHIMMING-CHASE
Judge

APPEARANCES

PLAINTIFF:	J Marais SC assisted by JP Jones Instructed by Dr Weder, Kauta & Hoveka, Windhoek
EXCIPIENT:	R Tötemeyer assisted by P Barnard Instructed by Cronjé Inc, Windhoek