

The Court in the Constantia Insurance case finds the unilateral cancellation of policies by an insurer unlawful and of no force and effect

During 2010 and 2018, respectively, Constantia Insurance Company Ltd sold two short term insurance products in an open market through various marketing platforms, including physical pamphlets and telephonically.

In 2017, the Short Term Insurance Act, 53 of 1998 (STIA) and the Long Term Insurance Act 52 of 1998 (LTIA) were repealed and replaced with the Insurance Act, 18 of 2017 ("IA"). The IA required every insurer to elect whether to operate a life insurance business (long term insurance) or a non-life insurance business (short term insurance).

As a result, the IA contained transitional provisions which allowed insurers to convert their licenses obtained in terms of STIA or LTIA to whichever type of insurance they wanted to continue selling under the IA. The transition provisions included a lengthy process, whereby an insurer could transfer its non-life insurance business to another company if it elected to continue with life insurance business (and vice versa).

Constantia chose to conduct a non-life insurance business (short term insurance), and it considered transferring the policies to a company in the same group of companies. The companies concluded that the transfer would not be feasible, as it would require an increase in premiums for the take-over to be affordable. As such, Constantia decided to cancel the policies. It communicated the cancellation by only sending SMS notifications to the policyholders and indicating that an expert would provide an explanation and alternatives in due course.

When most policyholders received the notification, they lodged complaints with the Financial Sector Conduct Authority (FSCA). The FSCA dismissed the complaints. The policyholders were unsatisfied with the outcome and approached

the Court to nullify the cancellation and declare the policies active.

The questions the Court had to answer were the following:

1. Whether the cancellation clause was part of the policy and if it so;
2. Whether Constantia was entitled to cancel the policies without providing reasons.

The Court declared the cancellation of the policies unlawful and of no force and effect. It also ordered Constantia to notify all relevant policyholders of the Court's order and where to make payment of premiums or lodge claims.

In conclusion, the judgment sends a strong message to insurers that fairness and public policy are important factors considered by courts when dealing with insurers, and insurers should trade with caution.

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