THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal

Date: 14 November 2025

Status: Immediate

The following summary is for the benefit of the media in the reporting of this case and does not form part of the judgments of the Supreme Court of Appeal.

AIG South Africa Limited and Others v Azrapart (Pty) Ltd and Another (898/2024) [2025] ZASCA 172 (14 November 2025)

Today the Supreme Court of Appeal (SCA) handed down judgment in an appeal against an order of the Gauteng Division of the High Court, Johannesburg (the high court). The appeal was dismissed with costs, including the costs of two counsel.

The respondents were co-owners of Fourways Mall (the mall), a shopping complex located in Fourways, North of Gauteng. They conducted the business of letting out store premises to tenants who traded from the mall. In July 2019, the respondents engaged Marsh (Pty) Ltd (Marsh), a local affiliate of an international firm of insurance brokers to secure insurance for the mall. The respondents needed an insurance policy that, inter alia, would provide cover against factors that would cause business interruption, from which losses would be incurred. The insurance contract thus included a clause for cover against Infectious and Contagious Disease (the ICD cover).

On 21 November 2022, the respondents instituted an action in the high court against the appellants (the insurers), claiming business interruption losses arising from restrictions imposed by the government that restricted the movement of citizens due to the outbreak of the 2020 COVID-19 pandemic. The restrictions affected the respondent's ability to trade, and in turn their ability to pay rental for the premises. As such they raised their claims under the ICD cover. The appellants denied liability and raised the defence of rectification of the insurance contract, contending that the contract should be read as excluding the ICD cover.

On 3 May 2024, the high court dismissed the appellants' plea of rectification and granted a declaratory order to the effect that, on a proper interpretation, the insurance contract includes the ICD cover. On 23 July 2024, on application by the appellants, the high court granted leave to appeal to this Court. On the eve of the hearing of the appeal, the first to fourth appellants concluded a settlement agreement with the respondents and withdrew their appeals. The appeal proceeded only with the fifth appellant against the respondents.

The issues in this appeal arise from a dispute over the terms of the insurance contract. The question before this Court concerned whether the contract of insurance stood to be rectified, as pleaded by the insurers. The source of the confusion was the use of two Quoting Slips (documents that include subjectivities, conditions, amendments or counter claims that are made during the negotiation for an insurance contract), which interchangeably included or excluded the ICD cover. This reality, which went undetected, is the factor on which the appellants hung their defence of rectification.

It was only two years later, after the respondent's claimed indemnity, that the first appellant, in its answering affidavit, raised the defence of rectification concerning the inclusion of the ICD cover in the policy wording of the insurance contract. Throughout the negotiation, none of the parties raised the issue concerning the inclusion or exclusion of the ICD cover. This is evidenced by the fact that none of the appellants ever highlighted in any Quotation Slip or raised any objection to the ICD cover in the emails. The fifth appellant's pleaded case for rectification relies on an alleged insurance contract concluded on or about 1 December 2019. The fifth appellant contended that these documents were contradictory and wholly irreconcilable with one another, as regards the ICD cover. Therefore, the clause on the ICD cover was included in the policy wording as a result of a bona fide mutual error in the drafting of the policy wording, and it should not have been included in the policy wording at all. The policy wording stands to be rectified accordingly.

The SCA found that the onus to prove rectification lies with the party seeking it. The facts and evidence relied on must, in this case, also be considered within the context of the POLDRA governing rules that applied during the negotiations. The SCA held that first appellant became aware of the intention to include the ICD cover in the request for quotation sent by Mr Stockton on 13 September 2019, when it was first invited to participate in the deal. By that date, the ICD cover was in the Quoting Slip and the fifth appellant never raised any issue concerning the inclusion of the ICD cover, nor did it object or proposed an amendment to the contrary.

The SCA held that the fifth appellant was the last party to sign the Placing Slip, a month after it was sent and so signing, it did not signify any changes. The SCA took the view that after having received a Placing Slip for a month, the fifth appellant's brokers should have checked the wording of the Placing Slip before they signed. The SCA held that apart from seeking to limit its cover liability to one million rand, there was no issue relating to the terms of insurance cover on ICD, that was raised by the fifth appellant, which would have affected the intention of the fifth appellant and the respondent to contract.

The SCA found that, having regard to the conspectus of the evidence and the factors in the matter, it is clear that the fifth appellant latched on to a defence which the first to fourth appellants have raised. It was the view of the SCA that the fifth appellant's communications did not yield any 'mistake' common to it and the respondents. It was concluded that the wording in the Placing Slip and the insurance contract did not present a mistake, which indicated that the parties were of the same intent. The SCA concluded that the appeal must therefore fail and that costs should follow the result.

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