

Press Release from Insurance Claims Africa (ICA)
15 July 2020

ICA hopes clarity from FSCA will encourage insurers to negotiate with tourism businesses

- *If settlement negotiations commence, ICA cautions insurers not to exploit vulnerable tourism businesses*
- *Ma-Afrika Hotels / ICA adds Jeremy Gauntlett QC SC to legal team in battle against insurance giants*

Johannesburg, 15 July 2020 -- Insurance Claims Africa (ICA) hopes that the clarity provided by the Financial Services Conduct Authority's (FSCA) on 9 July will provide the necessary motivation for insurers to honour their customers COVID-19 related Business Interruption claims.

In its statement, the FSCA instructed insurers to pay Business Interruption claims and warned it will take action against insurers who do not treat their customers fairly.

ICA has from the onset called for responsible settlement negotiations with insurers, saying that claimants, who are vulnerable small and medium sized businesses in the tourism and hospitality sector, would consider a fair offer which could include payment terms of 50% payment upfront, with the rest payable over time.

There is a strong indication that some insurers may be reconsidering their position in light of the FSCA instruction, and warming to settlement talks. ICA welcomes this, but warns that any settlement must be fair, and take into consideration the dire financial situation that these businesses are in.

Ryan Woolley, CEO of Insurance Claims Africa, a specialist public loss adjustment company representing over 500 businesses in the tourism and hospitality sector in their battle to get large insurers to pay out on COVID-19 Business Interruption insurance claims said: "Fairness and responsibility need to be the guiding principles that drive a settlement negotiation with insurers, they cannot be allowed to exploit the vulnerability of these fragile businesses, many of which are already on their knees."

"We should always remember that there is little incentive for insurers to resolve these claims swiftly. This is because in terms of insurance contracts, the claims are extinguished if the claimant's business ceases," says Woolley.

ICA has written to the Minister of Finance requesting his urgent intervention in the matter to facilitate potential settlement discussions.

Businesses in the tourism and hospitality sector have been the hardest hit by the pandemic. With domestic and international travel halted and the continued uncertainty around when the sector will be allowed to operate, many businesses have been forced to close, and to lay off employees.

Over 600 000 employees within the tourism value chain applied for the Unemployment Insurance Fund's Temporary Employee Relief Scheme (TERS) and this programme came to an end in

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June. The end of this programme means that employees will not receive any income from this month onwards.

Continued refusal by insurers to honour Business Interruption claims will further exacerbate this crisis, which will lead to mass business closures and job losses across the sector.

ICA has recently joined forces with hospitality group Ma-Afrika Hotels in their litigation against Santam, which is due to be heard in the Western Cape High Court, on 1 September. ICA / Ma-Afrika announced today that instructing attorneys Thomson Wilks and advocate Guy Elliott SC will be joined by attorney David Bayliss and advocates Sean Rosenberg SC, Mike van der Nest SC and Jeremy Gauntlett QC SC in this battle against the country's insurance giant.

In its [SENS](#) announcement of 7 July, 2020, Santam notified shareholders that its balance sheet is sufficiently robust to accommodate either interpretation of cover.

Ends

Fact Sheet as background information

- Business Interruption (BI) insurance exists to help companies survive following an unanticipated event.
- There are generally two types of BI insurance: a basic policy which requires physical damage to the business premises in order to trigger a claim, and a Tourism / Hospitality policy that contains a specific extension that includes interruption by infectious or contagious notifiable disease. All ICA's claimants have the latter version.
- Covid-19 qualifies as a declared notifiable disease, but local insurance companies are frustrating legitimate claims by businesses and refusing to honour these claims.
- Some local insurance companies are resisting claims because of the negative impact they say it will have on their profits. However, Santam, in its 07 July 2020 [SENS announcement](#), said its balance sheet is 'sufficiently robust to accommodate either interpretation of cover.
- While insurers have slightly different nuances to their BI policy wording, their responses have been virtually identical:

1. Insurers say that the policies were never meant to cover pandemics

Claimants' response:

- Insurance companies are in the business of risk assessment and employ some of the most qualified risk research teams in the world. They have known about other infectious diseases, such as SARS, MERS, Ebola, for many years, and therefore should have anticipated a pandemic. Indeed, it has been raised as a potential risk publicly for a number of years (*In 2015, Bill Gates warned of the likelihood of a global pandemic).
- Also, it is unconscionable of insurers to penalise their clients for their own poor underwriting skills.

2. Insurers say that the deep losses in these businesses are not from the pandemic, but because of Government's regulations iro the lockdown.

Claimants' response:

- This doesn't make any sense as the insurers chose to insure a notifiable disease which should have anticipated Government intervention and restrictions / quarantine.
- It is clear that without Covid-19, there would be no lockdown.

3. Insurers are frustrating the process by making it near impossible to claim

What insurers are doing:

- Many claims are being rejected before the formal claims process is even initiated.
- Insurers are also frustrating the process by asking claimants to identify the individuals infected by Covid-19 within a specific radius of their properties, which is, of course, impossible to do.
- Insurers have also now changed their policy wording, applicable from 01 June 2020, to exclude extensions for infectious diseases. This would arguably imply that the extensions were previously valid.

- The global call for solidarity requires companies, industries, governments, regulators and the public to act responsibly and to share the burden of the impact of the pandemic. This has been the call from President Ramaphosa from the outset of the pandemic.

Action by Insurance Claims Africa

- Insurance Claims Africa (ICA) is representing almost 500 claimants in this sector against a number of insurers.
- ICA has, from the outset, held the view that reaching a sensible compromise settlement for the affected businesses, who face the existential threat of imminent closure, is the best possible outcome. This will allow claimants to receive the payouts due to them quickly.
- ICA believes a lengthy court process will only benefit the insurance industry, will cause mass closures of tourism businesses and lead to thousands of job losses, all of which South Africa can ill afford.
- A settlement would have allowed these vulnerable businesses to survive, and importantly, to pay their staff and operating costs.
- Internationally, several global insurance companies are settling their customers' BI insurance claims on a compromise basis.

Tourism & Hospitality Sector faces an existential threat to survival

- The Tourism and Hospitality sector sustains over 740 000 direct and 1.5 million indirect jobs and contributes 8.7% to the GDP.
- It is also the lifeblood for many micro and small enterprises creating mass employment opportunities for men, women and youth across the country.
- Since early March 2020 when the Covid-19 outbreak first impacted bookings and then from 25 March when the national quarantine / lockdown was implemented, tourism and hospitality businesses of all sizes have suffered tremendous losses, many even being forced to close their doors permanently.
- Exacerbating the crisis, is the current prospect that the sector will only fully open in February 2021.
- The sector cannot afford not to be paid out these claims. They are not seeking to get rich from this process, but merely to pay their staff, and survive.



About ICA:

ICA is a specialist claims preparing company that has between three to four billion rands worth of claims under management at any one time. The company has dealt with most of the large complex claims in sub-equatorial Africa and the Indian Ocean island and have a long history of championing vulnerable claimants in critical circumstances. ICA defended home and business owners against insurers from the Cyclone Domoina floods in 1984 to the Knysna fires in 2017, the most severe wildfire in the country's history. It also acted for claimants in the Mozambique floods caused by Cyclone Idai in 2019.

Notes to editors:

Results of an April 2020 survey conducted by SA Tourism, the Tourism Business Council of South Africa (TBCSA) and the International Finance Corporation, on the impact of Covid-19 on the tourism sector:

https://www.tourism.gov.za/CurrentProjects/Tourism_Relief_Fund_for_SMMes/Documents/Tourism%20Industry%20Survey%20of%20South%20Africa%20-%20%20COVID-19.pdf

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