

Insurance Claims Africa



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Press release from Insurance Claims Africa (ICA)

ICA: Santam agrees to settle Covid-19 Business Interruption claims, but there's a catch

- *Santam's 3 months full and final settlement offer, when policyholders are covered for longer periods, is unconscionable*
- *Santam's Stalingrad strategy of deny, delay, defend continues - latest actions suggest that legal certainty is no longer the objective, but they are in fact trying to take advantage of vulnerable clients who are desperate for funding*

Johannesburg, 12 January 2021 -- Specialist public loss adjuster, Insurance Claims Africa, is unsurprised but disappointed by Santam's decision to limit its full and final settlement offers to 3 months, while there is an appeal pending at the SCA in respect of the indemnity period. ICA anticipates that insurers will be very aggressive on quantum in an attempt to limit what they owe claimants.

The indemnity period is the period of time for which policyholders can claim for losses.

After almost seven months of legal wrangling, constant delays and Santam's dogged refusal to pay its customers Business Interruption claims, Santam has conceded it is liable and that it will commence the process of assessing claims. However, Santam has said it will offer its Hospitality & Leisure customers a full and final settlement of only 3 months of losses, despite many policyholders having indemnity periods of 6 -, 12-, and 18-months in their contracts with the insurer.

Ryan Woolley, CEO of Insurance Claims Africa, says, "The problem for Santam is that they have a judgment against them in the Ma-Afrika matter, which orders the insurer to pay for the full indemnity period of 18 months. This should not be ignored. The only way for them to treat their customers fairly is to offer an interim payment of 3 months, and leave the balance to be dealt with after the SCA appeal.

"By offering 3 months in full and final settlement, and forcing their customers to sue them for the balance is grossly unfair and unconscionable. These actions suggest that it is no longer legal certainty that Santam seeks, but that it is in fact trying to take advantage of vulnerable clients who are desperate for funding.

Santam and other insurers have argued that it was the Government imposed lockdown, and not Covid-19, that caused the losses, however, the courts have found that the two events are linked: a lockdown would never have occurred without Covid-19. In November 2020, the Western Cape High Court ordered Santam to pay Ma-Afrika Hotels and Stellenbosch Kitchen for the full 18-month period of its contract, but Santam has now said it will concede liability and only appeal the question of the indemnity period at the Supreme Court of Appeal. It will argue for leave to appeal on 16 February 2021.

“While we are encouraged by Santam’s acknowledgement that legal certainty has been established, they continue to pick and choose what suits them in the court rulings. Santam’s Stalingrad strategy of delay, deny and defend has put its customers under excruciating financial stress. The real tragedy is that if these businesses are forced to shut down as a result of Santam’s non-payment, their claim against the insurer is extinguished. Offering a full and final 3-month settlement on a valid 18-month contract is unacceptable. Shareholders should be questioning who has given this strategy to Santam as it demonstrates a lack of respect for their customers, the South African judiciary, and the FSCA, and displays a level of arrogance that no matter how poorly you treat your customers they will remain loyal.”

Santam has said that each policyholder will need to take it to court individually to challenge the indemnity period beyond the 3 months it is willing to pay.

“This latest cynical and devastating move proves how disingenuous Santam is. Policyholders, who are already financially decimated, will now have to find the money to fight the insurer in court to enforce the indemnity periods contained in their contracts,” says Woolley.

Old Mutual, Bryte remain silent

“Business interruption insurance exists to help businesses survive following an unanticipated event. Thousands of businesses bought these policies, which included cover for infectious, contagious and notifiable diseases, but when the pandemic occurred, the insurance industry turned their back on their customers, claiming all manner of excuses to wriggle out of their obligations,” says Woolley.

Meanwhile, the tourism and hospitality sector, which employs 1.5 million people and contributes 8.6% to the South African economy, has all but collapsed as the country continues to buckle under the strain of COVID-19. Thousands of jobs have been lost, families destroyed and businesses have been forced to close their doors, a consequence that could have been avoided if insurers had met their legal obligations to their customers from the outset.

Woolley says that ICA will continue to fight for these businesses which are in a desperately vulnerable sector.

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