

# Insurance Claims Africa



ICA: Hollard Namibia's resistance to paying Covid-19 claims puts vulnerable San community and tourism sector in peril

1. Today ICA hosted a webinar on this topic – here is the link to recording: <https://www.dropbox.com/s/9h182d6taode9lw/ICA%20Webinar%20-%2017Mar21.mp4?dl=0>
2. You will also find below the press release, an **ICA Fact Sheet** on COVID-19 Business Interruption Insurance Claims

*Johannesburg, 17 March 2021* -- Specialist public loss adjuster, Insurance Claims Africa (ICA) has turned its attention to Namibia, where Hollard Namibia is refusing to settle Business Interruption claims, placing the San community, the tourism sector and conservation efforts in acute distress.

Tourism is a priority sector for the Namibian economy. Prior to COVID-19, it was one of the most successful and fast-growing sectors of the economy, accounting for a direct 15% contribution to GDP, or an indirect 40% contribution when taking into account related sectors that service the industry. It is also a major employer, employing around 120 000 people, a vast number of whom are from rural and vulnerable communities.

The sector is facing an imminent sustainability crisis as Hollard Namibia continues to reject claims related to the Covid-19 pandemic, even though these policies include cover for infectious, contagious and notifiable diseases.

At a webinar on Wednesday, ICA said that it appears that Hollard Namibia is an outlier, with most other insurers now recognising the validity of these claims following legal precedent set by courts in South Africa and the UK. This includes Hollard South Africa which is currently settling claims in line with the judgements.

ICA is the public loss adjustment firm representing over 900 claimants in Namibia and South Africa against large insurance companies in respect of business interruption insurance claims stemming from the COVID-19 pandemic.

Hollard Namibia's policy wording is identical to those in South Africa, where Insurers, including Hollard South Africa has already begun settling claims based on the understanding that legal precedent has confirmed the insurer's liability.

Hollard Namibia is arguing that claimants are not cooperating, or providing the necessary documentation required. The opposite is in fact true. After many months of providing all

required information to Hollard in Namibia, ICA believes claimants have gone beyond what is required of a normal insurance claim. It is Hollard Namibia who continues to be aggressive and obstructionist in its dealings with claimants continuing to deny liability.

Ryan Woolley, CEO of ICA says: “Hollard Namibia seems to be adopting a Stalingrad strategy of delay, deny and defend. The simple fact is that extensive international legal precedent has been set that claimants who bought business interruption insurance that includes cover for infectious, contagious and notifiable diseases should receive the payouts they deserve. It is unreasonable and disingenuous to think that the circumstances of Hollard Namibia’s policies with their customers are materially different from COVID-19 BI claims in South Africa, the UK and the rest of the world. They should be accepting liability and moving forward to resolve quantum in a fair and transparent manner.”

Two Hollard Namibia claimants, participated in the webinar.

**The Naankuse Group** (<https://www.naankusecollection.com/>)

One of Hollard Namibia’s BI policyholders is The Naankuse Group. Naankuse is a conservation charity dedicated to preserving the landscape, cultures and wildlife of Namibia. Besides operating lodges and conservation efforts in Namibia, it has, for more than 17 years, supported the poor, marginalised San community of Epukiro by providing healthcare, education, environmental and tourism projects. It also runs an Ancient Skills Academy, run by San people from The Nyae Nyae conservancy, who ensure that these skills are preserved and passed onto future generations. It employs 220 people from marginalised communities, distributes over 2 tons of food per week, operates a school for 54 learners, and provides medical care to over 4500 patients per year, of which 40% are children.

Dr Rudie van Vuuren, the CEO of Naankuse, says, “Tourism is our prime source of funding for all our operations, and obviously, due to COVID-19, that has completely dried up. In addition, we are now faced with crippling legal costs as we try to hold Hollard Namibia to our contract. With no external source of income or relief from our insurer, we have already had to let 40 employees go. We took out BI insurance specifically to prevent a sustainability crisis should something go wrong. We have been loyal customers for over 16 years, paying our insurance premiums on time every month. It is extremely disappointing that Hollard Namibia are placing a most vulnerable community, as well as the future of tourism, conservation and the passing on of ancient skills at risk through their refusal to honour our claims.”

Cindy Xushe Ao, from the San community in Tsumkwe, leads conservation horse trails at Naankuse. Her job at Naankuse has been life changing, not only for her personal development, but for her whole family, whom she supports on her salary. “I am very worried about the future. This job means everything. Without it, my family and the community will struggle to survive.”

Debe //Ao, who runs the Ancient Skills Group at Naankuse, and is part of the anti-poaching unit, is equally concerned. “This job has allowed us to share the San people’s soul with the world. If Naankuse has to close, I worry these ancient skills will not be passed on to the next

generation, and poaching will grow. Where will this leave our ability to conserve and protect our wildlife?”

**Gondwana Group (<https://gondwana-collection.com>)**

Another Hollard Namibia customer represented by ICA is the Gondwana Group, the largest private sector employer in Namibia, operating more than 20 lodges and camps, car rental and safari excursions. Over 90% of Gondwana’s guests are foreign. The company, in operation for 25 years, employs 1100 people, mostly from rural communities. Eight of its lodges are on community owned land, providing the only economic activity in those areas. Most people in the communities in which it operates are dependent on a single salary for their livelihoods.

Gondwana will face Hollard Namibia in court on Friday, 19 March 2021, where it will face an application brought by Hollard that the Gondwana application is not urgent. Gondwana hopes the court will find in its favour and compel the insurer to honour its BI insurance claim, as courts in both South Africa and abroad have done. Gondwana specifically took out BI insurance to insure it for catastrophic risks, as it had been affected by both the Ebola outbreak in West Africa and the Icelandic ash cloud caused during the eruption of Eyjafjallajökull volcano in April 2010.

Gys Joubert, CEO of Gondwana, says, “Hollard has been particularly aggressive and obstructive where it concerns our claim. A year after the first Covid-19 case in Namibia, and despite providing the insurer with all the information that they need, Hollard continues to ignore the numerous court judgments in South Africa and the UK, and are using every tactic to delay and frustrate the process. Most concerning has been its latest move to use Gondwana’s confidential client data to survey our clients despite our express instruction not to do so. It shows complete contempt for confidentiality and a disregard for information shared in good faith. Indeed, it is a breach of the principal of trust upon which the entire insurance industry is founded.”

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**Insurance Claims Africa (ICA)**

**FACT SHEET: TOURISM BUSINESS INTERRUPTION INSURANCE CLAIMS**

Insurance Claims Africa (ICA), a specialist public loss adjustment firm which has over 30 years experience in acting for vulnerable claimants facing extraordinarily difficult circumstances, is acting on behalf of more than 900 claimants in the tourism and hospitality sector, against insurers.

All these claimants have valid Business Interruption insurance policies, which includes cover for infectious or notifiable diseases, such as COVID-19.

These claimants, in choosing an insurer and a policy, did so with the understanding and trust that their chosen insurer would be there for them when disaster struck. It is, after all what they paid for and what they deserve. ICA has been fighting to ensure claimants see justice and receive the financial support that is due to them so that they can continue to be part of

the vital tourism sector, to contribute towards the economy, and to support and sustain jobs and communities.

Since March 2020, the majority of insurance companies, not only in Namibia, but also South Africa and the rest of the world, refused to recognise the validity of these claims, arguing that government imposed lockdowns were the cause of the business interruption, and not the pandemic. They said they required legal certainty before recognising the validity of the claims.

After ten months of litigation in South Africa, while tourism and hospitality businesses struggled to stay open and preserve thousands of jobs, 8 High Court judges and 5 Supreme Court judges ruled against the insurers in favour of these businesses in this most vulnerable sector. South Africa's insurance industry regulator, the Financial Conduct Authority (FCA) agreed that these claims are valid and is urging insurers to settle the claims expeditiously.

Similarly, in a test case brought by the UK's Financial Conduct Authority (FCA), the UK High Court found that COVID-19 Business Interruption claims are valid.

Most insurers have now conceded that legal certainty has been established, and the claims settlement process is proceeding. However, insurers are fighting hard to limit quantum and the indemnity period for which they are liable.

This includes Santam which despite the legal certainty, continues to appeal its case in respect of the indemnity period in the contract. The South African Supreme Court of Appeal will hear Santam's appeal of the Western Cape High Court judgment which upheld all COVID-19 business interruption insurance claims by Ma-Afrika Hotels and Stellenbosch Kitchen. While Santam has conceded that the policies are valid, they are continuing the fight in respect of the amount owed to claimants, specifically the indemnity period. Even though policies like the Ma-Afrika Hotels include cover for 18 months of losses, Santam is fighting to reduce these terms to 3 months losses. This will have a significant impact on jobs, on these businesses ability to survive and ultimately, on the entire South African economy.

The clear outlier of all the insurers is Hollard Namibia, which is refusing to recognise the validity of any COVID-19 BI claims, despite the approach taken by its holding company, Hollard International which has recognised the validity of the claims and its responsibility towards its customers. The wholly-owned Namibian subsidiary is not only refusing to recognise the BI claims of its tourism and hospitality policyholders, but is aggressively fighting their claims.

## Background

- 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.
- While insurers have slightly different nuances to their BI policy wording, their response to claimants and the public have been virtually identical.

### **Tourism & Hospitality Sector faces an existential threat to survival**

- Tourism is a critical sector in the Namibian economy contributing 15% to the country's GDP. If one takes into consideration the impact on related sectors, its contribution is closer to 40%. It is a major employer, supports rural and indigenous communities and consequently, any negative impact on the sector has a significant impact on the economy, jobs and communities.
- It is also the lifeblood for many micro and small enterprises creating mass employment opportunities for men, women and youth across the country.
- In 2019, Namibia had a record 1.596 million tourist arrivals, up from the previous record 1.557 million arrivals in 2018. Prior to the effects of the pandemic becoming known, this number was forecast to rise to 1.650 million in 2020. These numbers are more than double the amount of tourists Namibia was able to attract in the early 2000s. Tourism has subsequently become a key source of employment with nearly 50,000 jobs directly linked to the industry and many more indirectly via upstream and downstream activities.
- During 2020 Q2 and Q3, statistics showed a year-on-year drop of over 80% in hotel and other short-stay occupancy rates in Namibia.
- Whereas many other sectors were able to reopen and start their recovery process after initial lockdown restrictions were lifted, tourism has remained heavily constrained due to limitations on international travel in key markets.
- Since early March 2020 when the Covid-19 outbreak first impacted bookings across the world, and then from 25 March when the South African national quarantine / lockdown was implemented, and 28 March when Namibia imposed a lockdown, tourism and hospitality businesses of all sizes have suffered tremendous losses, many even being forced to close their doors permanently.
- The sector cannot afford not to be paid out in full. These businesses are not seeking to get rich from this process, but merely to pay their staff, and survive.

**About Insurance Claims Africa:**

- ICA is a specialist public loss adjustment firm that has dealt with most of the large complex claims in sub-equatorial Africa and the Indian Ocean islands.
- Over the last 30 years, ICA has acted for vulnerable claimants in critical circumstances.
- ICA defended home and business owners against insurers in the Cyclone Domoina floods in 1984 and 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.
- ICA acts exclusively on behalf of the claimant, assisting them in a time of crisis to prepare, motivate, quantify and negotiate settlement of their insurance claim.

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