

## Insurance Claims Africa



### **ICA welcomes FSCA BI insurance ruling - insurers cannot use the lockdown as an excuse to reject claims**

*Johannesburg, 9 July 2020* -- Insurance Claims Africa welcomes the Financial Services Conduct Authority's (FSCA) [announcement](#) this afternoon, in which it categorically stated that the National Lockdown cannot be used by any insurer as grounds to reject a client's claim.

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: "This is a massive step in the right direction, and we applaud the FSCA for its brave and clear guidance and proactive approach to this important matter."

Thus far, insurers have been rejecting Business Interruption claims, even though the claimants have extensions that cover infectious / contagious notifiable diseases, saying that these policies were never meant to cover pandemics and that the Government's lockdown, and not the COVID-19 pandemic, caused the significant losses faced by tourism and hospitality industry.

Woolley added: "FSCA's statement unequivocally rules out this interpretation of these policies. Nonetheless, we still invite the insurers to talk to us about a sensible compromise settlement."

In its statement, the FSCA said that it is 'concerned about the behaviour of some insurers, who are deliberately avoiding paying business interruption claims where no grounds exist to do so'. It also warned that it will take action against insurers who do not treat their customers fairly.

FSCA also pointed out that the Western Cape High Court judgment in the matter between *Cafe Chameleon CC v Guardrisk* is in line with FSCA's position on the matter. The Court rejected the insurers' argument that the losses suffered by the claimant was due to the lockdown, and not the Covid-19 pandemic.

"ICA believes that the insurers should not act contrary to their controlling authorities directives. To do so would increase the public's already poor impression of those insurers not paying these claims," concludes Woolley.

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 7 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 1 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 islands and have a long history of championing vulnerable claimants in critical circumstances. ICA defended home and business owners against insurers from the Cyclone Demoina floods in 1986 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.

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