

# Tourist Guides of the 21st Century

## INSURANCE 101



# THE PRINCIPLE OF RISK

*“Risk is universal, present in all things, all lives, inherent in being. The concept of a person free from risk is as theoretical as the concept of perfection” (Jawaharlal Nehru - 1889-1964).*

Given that risk is inherent in being, the question is not so much about how to avoid risk as it is about how to minimise the consequences of risk occurrence, from both a financial and reputation point of view.

## **Consider these three basic theoretical principles:**

- Whenever an event results in the loss of tourist lives (especially international tourists), the global media are almost certain to report it, forcing the local tourism industry to be embroiled in acts of crisis management.
- Perceptions about a particular tourism related crisis tend to be almost as devastating as the crisis itself.
- The farther away one is from a crisis location, the worse the crisis will appear to be and the longer the crisis will remain in the collective travel subconscious.



# THE PRINCIPLE OF LIABILITY

The concept of a legal duty is a device that law courts in South Africa use to determine whether or not it is reasonable to impose liability. A tour operator has a duty to conform to reasonable standards of care. The test of ascertaining the existence of a duty of care in any particular case is the 'foresight of a reasonable person'. This means that one owes a duty of care to persons to whom harm may be reasonably foreseeable.

In this regard the following questions must be asked:

- Would a reasonable person, in the position of the defendant, have foreseen the possibility of his or her conduct injuring another; and
- Would a reasonable person have taken steps to guard against this danger?
- If so, did the defendant take the steps in question? If not, the defendant would probably be considered negligent. In the tourism industry, most claims that give rise to liability are personal injury claims. It is also possible for a liability to arise under circumstances where no first aid is available or no proper evacuation plan is in existence.



**NB:** Guides can be held liable for not having taken appropriate steps to assist a tourist in distress i.e. not rendering first aid whilst being qualified to do so.





# THE SIZE OF PERSONAL INJURY CLAIMS

A personal injury claim can range from between ZAR5 000 for a minor whiplash injury to several million for one that results in a victim becoming a quadriplegic. Bearing in mind that the tourism industry attracts high net worth individuals, personal injury claims have the potential to be substantial. It is not uncommon for an injury claim to far exceed the operator's insurance cover limits, which can ultimately lead to the relevant employee of the tour operator being declared insolvent and his or her employer (the tour operator company) being liquidated.

**Case Study:** While on a game drive at a private nature reserve in Namibia, the driver lost control of the vehicle, which subsequently rolled. One passenger sustained life-changing injuries while two of the other passengers were seriously injured. These three guests sued the driver and the safari lodge as the owner of the vehicle. The guest with life-changing injuries was awarded a settlement of NAD80 million and the two other guests were awarded NAD2.9 million and ZAR3.5 million respectively. Legal fees incurred in defending the case amounted to NAD10 million, with a combined claim value of NAD96.4 million.



**NB:** When hiring your services to a tour operator or DMC make sure that their public liability policy extends to cover subcontractors and that you have a contract or letter of appointment in place.



