

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE) FRIDAY THE 20th
)
JUSTICE BELOBABA) DAY OF AUGUST 2021

B E T W E E N:

WORKMAN OPTOMETRY PROFESSIONAL CORPORATION, 1298928 ONTARIO LTD.,
THE SUIT SHOP CO. LTD., 2328867 ONTARIO INC (o/a BOOSTER JUICE 369, BOOSTER
JUICE 388, BOOSTER JUICE 375, AND BOOSTER JUICE 452), 2635774 ONTARIO INC
(o/a BOOSTER JUICE 275), 2660364 ONTARIO INC (o/a BOOSTER JUICE 200), IN
HARMONY DANCE STUDIO LTD, RANA TAJI OPTOMETRY PROFESSIONAL
CORPORATION

Plaintiffs

- and -

AVIVA INSURANCE COMPANY OF CANADA, AVIVA GENERAL INSURANCE
COMPANY, AVIVA CANADA INC., CO-OPERATORS GENERAL INSURANCE COMPANY,
CONTINENTAL CASUALTY COMPANY, DESJARDINS GENERAL INSURANCE
SERVICES INC., ECONOMICAL MUTUAL INSURANCE COMPANY, FEDERATED
INSURANCE COMPANY OF CANADA, GORE MUTUAL INSURANCE COMPANY
FOUNDATION, GORE MUTUAL INSURANCE COMPANY, INTACT INSURANCE
COMPANY, INTACT FOUNDATION, LLOYD’S CANADA INC., MARC LIPMAN AS
ATTORNEY-IN-FACT IN CANADA FOR LLOYD'S UNDERWRITERS, LLOYD'S
UNDERWRITERS, NORTHBRIDGE GENERAL INSURANCE CORPORATION, NOVEX
INSURANCE COMPANY, ROYAL & SUN ALLIANCE INSURANCE COMPANY OF
CANADA, SGI CANADA INSURANCE SERVICES LTD., TD GENERAL INSURANCE
COMPANY, TRAVELERS INSURANCE COMPANY OF CANADA, THE WAWANESA
MUTUAL INSURANCE COMPANY, and WYNWARD INSURANCE GROUP

Defendants

Proceeding under the *Class Proceedings Act, 1992*

**ORDER
(Certification)**

THIS MOTION, made by the plaintiffs for certification of this action as a class proceeding pursuant to the *Class Proceedings Act*, 1992, S.O. 1992, c. 6, was read this day at Toronto, Ontario.

ON READING the Motion Record and Supplementary Motion Record of the plaintiffs, on being advised of the consent of all remaining defendants in this action (while acknowledging that three proposed defendants, Certain underwriters at Lloyd's subscribing to policy no. LNP2210, Certain underwriters at Lloyd's subscribing to policy no. SR040046, and Certain underwriters at Lloyd's subscribing to policy no. GASS1300 (collectively, the "**Lloyd's Parties**"), whom this Court has granted leave to the Plaintiffs to add as defendants in this action, have not consented),

AND UPON BEING ADVISED that the parties other than the Lloyd's Parties consent to certification of the Common Issues (as defined below) and the Class (as defined below) for the purpose of adjudicating the merits of the Common Issues in an efficient, effective and proportionate manner by way of a trial,

AND UPON BEING FURTHER ADVISED that the parties other than the Lloyd's Parties intend to seek early appointment of a Trial Judge and an order from the Trial Judge (once assigned) to have the Common Issues tried together with overlapping issues in certain other proceedings,

1. THIS COURT ORDERS that the Amended Statement of Claim filed on August 27, 2020, be and is hereby amended in the form attached hereto as Schedule "A" (the "**Fresh as Amended Statement of Claim**").

2. THIS COURT ORDERS that the within action will continue with the following title of proceedings:

WORKMAN OPTOMETRY PROFESSIONAL CORPORATION, 1298928 ONTARIO LTD., THE SUIT SHOP CO. LTD., 2328867 ONTARIO INC. (o/a BOOSTER JUICE 369, BOOSTER JUICE 388, BOOSTER JUICE 375, AND BOOSTER JUICE 452), 2635774 ONTARIO INC. (o/a BOOSTER JUICE 275), 2660364 ONTARIO INC. (o/a BOOSTER JUICE 200), IN HARMONY DANCE & WELLNESS LTD., DR. RANA TAJI OPTOMETRY PROFESSIONAL CORPORATION, and SCOTIAN ISLE BAKED GOODS INC.

Plaintiffs

- and -

CERTAS HOME AND AUTO INSURANCE COMPANY, CO-OPERATORS GENERAL INSURANCE COMPANY, CONTINENTAL CASUALTY COMPANY, ECONOMICAL MUTUAL INSURANCE COMPANY, FEDERATED INSURANCE COMPANY OF CANADA, GORE MUTUAL INSURANCE COMPANY, INTACT INSURANCE COMPANY, CERTAIN UNDERWRITERS AT LLOYD'S SUBSCRIBING TO POLICY NO. LNP2210, CERTAIN UNDERWRITERS AT LLOYD'S SUBSCRIBING TO POLICY NO. SR040046, CERTAIN UNDERWRITERS AT LLOYD'S SUBSCRIBING TO POLICY NO. GASS1300, NORTHBRIDGE GENERAL INSURANCE CORPORATION, NOVEX INSURANCE COMPANY, ROYAL & SUN ALLIANCE INSURANCE COMPANY OF CANADA, SGI CANADA INSURANCE SERVICES LTD., THE DOMINION OF CANADA GENERAL INSURANCE COMPANY, THE WAWANESA MUTUAL INSURANCE COMPANY, and WYNWARD INSURANCE GROUP

Defendants

3. THIS COURT ORDERS that capitalized terms used in this Order and not otherwise defined herein have the meaning ascribed to them in the Fresh as Amended Statement of Claim.

4. THIS COURT ORDERS that this action is hereby certified as a class proceeding as against all defendants excluding the Lloyd's Parties, specifically Co-operators General Insurance Company, Wynward Holdings Ltd. doing business as Wynward Insurance Group, Continental Casualty Company, Certas Home & Auto Insurance Company, Economical Mutual Insurance Company, Federated Insurance Company of Canada, Northbridge General Insurance Corporation, The Wawanesa Mutual Insurance Company, Gore Mutual Insurance Company, Intact Insurance

Company, Novex Insurance Company, The Dominion Company of Canada, SGI Canada Insurance Services Ltd., and Royal & Sun Alliance Insurance Company of Canada (collectively, excluding the Lloyd's Parties, the "**Defendants**").

5. THIS COURT ORDERS that the "Class" is defined as all natural and legal persons in Canada, except for those in the province of Québec, that:

- (i) contracted with a Defendant for Business Interruption Insurance;
- (ii) on or before August 31, 2021, made a claim under their Business Interruption Insurance policy for losses due to:
 - (A) the actual or suspected infection of staff, agents, customers or other persons with the SARS CoV-2 virus or its variants at the insured premises or within such proximity as may be specified in the insured's Business Interruption Insurance policy;
 - (B) the actual or suspected presence of the SARS CoV-2 virus or its variants on the insured premises; or
 - (C) the order of a civil authority regarding the SARS CoV-2 virus or its variants; and
- (iii) were denied insurance coverage for those losses by any of the Defendants.

6. THIS COURT ORDERS that Workman Optometry Professional Corporation, 1298928 Ontario Ltd., The Suit Shop Co. Ltd., 2328867 Ontario Inc. (o/a Booster Juice 369, Booster Juice 388, Booster Juice 375, and Booster Juice 452), 2635774 Ontario Inc. (o/a Booster Juice 275), 2660364 Ontario Inc. (o/a Booster Juice 200), In Harmony Dance & Wellness Ltd., Dr. Rana Taji Optometry Professional Corporation and Scotian Isle Baked Goods Inc. are appointed as the representative plaintiffs of the Class.

7. THIS COURT ORDERS that Koskie Minsky LLP and Merchant Law Group LLP are appointed as counsel for the Class.

8. THIS COURT DECLARES that the cause of action certified is breach of contract.

9. THIS COURT DECLARES that the certified Common Issues are:

- (i) Can the presence of the SARS CoV-2 virus or its variants cause physical loss or damage to property within the meaning of the business interruption provisions of each Defendant's property insurance wordings?
- (ii) Can an order of a civil authority in respect of business activities that was made due to the SARS CoV-2 virus or its variants cause physical loss or damage to property within the meaning of the business interruption provisions of each Defendant's property insurance wordings?
- (iii) If the answer to either of the first two questions is “yes”, are there any exclusions in any of the Defendants' property insurance wordings that would result in coverage for such loss or damage being excluded?

with “physical loss or damage to property” including “physical loss” or “physical damage” or “direct physical loss” or “direct physical damage”, or similar wording as may be used in the business interruption provisions of each Defendants' property insurance wordings.

(collectively, the "**Common Issues**")

10. THIS COURT ORDERS that the form of notice of this certification order, the manner of giving notice, and all other related matters, including opt-out procedures, shall be determined by further order of the Court.

11. THIS COURT ORDERS that this order is made without prejudice to the plaintiffs' rights to move for certification of some or all of the remaining common issues identified in the plaintiffs' Certification Motion Record dated April 23, 2021 (the "**Remaining Common Issues**")

following the conclusion of the trial of the Common Issues certified herein, including after all appeals from the decision of the Trial Judge in respect of the Common Issues have been finally determined. For greater clarity, the plaintiffs shall not be entitled to move for certification at any time of any of the Remaining Common Issues relating to claims for predominant purpose conspiracy, unlawful means conspiracy, negligence and/or claims for breach of the *Competition Act*.

12. THIS COURT ORDERS that this order and any reasons given by the Court in connection with this order are without prejudice to the Defendants' defences and rights to raise any arguments on any motion contemplated in paragraph 11 above, including to seek directions, challenge the pleadings, move for decertification, and oppose certification of the Remaining Common Issues on any basis.

13. THIS COURT ORDERS that each party shall bear its own costs of the within motion for certification.

Belobaba J.

Justice Edward Belobaba

Notwithstanding Rule 59.05, this Judgment [Order] is effective and binding from the date it is made and is enforceable without any need for entry and filing. Any party to this Judgment [Order] may submit a formal Judgment [Order] for original signing, entry and filing when the Court returns to regular operations.

SCHEDULE "A"

Court File No.: CV-20-00643488-00CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N :

**WORKMAN OPTOMETRY PROFESSIONAL CORPORATION, 1298928
ONTARIO LTD., THE SUIT SHOP CO. LTD., 2328867 ONTARIO INC. (o/a
BOOSTER JUICE 369, BOOSTER JUICE 388, BOOSTER JUICE 375, AND
BOOSTER JUICE 452), 2635774 ONTARIO INC. (o/a BOOSTER JUICE 275),
2660364 ONTARIO INC. (o/a BOOSTER JUICE 200), IN HARMONY DANCE &
WELLNESS LTD., DR. RANA TAJI OPTOMETRY PROFESSIONAL
CORPORATION, and SCOTIAN ISLE BAKED GOODS INC.**

Plaintiffs

- and -

**CERTAS HOME AND AUTO INSURANCE COMPANY, CO-OPERATORS
GENERAL INSURANCE COMPANY, CONTINENTAL CASUALTY
COMPANY, ECONOMICAL MUTUAL INSURANCE COMPANY,
FEDERATED INSURANCE COMPANY OF CANADA, GORE MUTUAL
INSURANCE COMPANY, INTACT INSURANCE COMPANY, CERTAIN
UNDERWRITERS AT LLOYD'S SUBSCRIBING TO POLICY NO. LNP2210,
CERTAIN UNDERWRITERS AT LLOYD'S SUBSCRIBING TO POLICY NO.
SR040046, CERTAIN UNDERWRITERS AT LLOYD'S SUBSCRIBING TO
POLICY NO. GASS1300, NORTHBRIDGE GENERAL INSURANCE
CORPORATION, NOVEX INSURANCE COMPANY, ROYAL & SUN
ALLIANCE INSURANCE COMPANY OF CANADA, SGI CANADA
INSURANCE SERVICES LTD., THE DOMINION OF CANADA GENERAL
INSURANCE COMPANY, THE WAWANESA MUTUAL INSURANCE
COMPANY, and WYNWARD INSURANCE GROUP**

Defendants

Proceeding under the Class Proceedings Act, 1992

FRESH AS AMENDED STATEMENT OF CLAIM

Notice of action issued on July 6, 2020

- TO: CERTAS HOME AND AUTO INSURANCE COMPANY**
6300 Boulevard Guillaume-Couture
Levis, Quebec, G6V 6P9
- AND TO: CO-OPERATORS GENERAL INSURANCE COMPANY**
130 Macdonell Street
Guelph, Ontario N1H 6P8
- AND TO: CONTINENTAL CASUALTY COMPANY**
151 Franklin St N,
Chicago, Illinois, 60606
- AND TO: THE DOMINION OF CANADA GENERAL INSURANCE COMPANY**
165 University Avenue
Toronto, ON M5H 3B7
- AND TO: GORE MUTUAL INSURANCE COMPANY**
252 Dundas Street North
Cambridge, ON N1R 5T3
- AND TO: ECONOMICAL MUTUAL INSURANCE COMPANY**
111 Westmount Road South
P.O. Box 2000
Waterloo, ON N2J 4S4
- AND TO: FEDERATED INSURANCE COMPANY OF CANADA**
105 Adelaide Street West
Toronto, ON M5H 1P9
- AND TO: INTACT INSURANCE COMPANY**
700 University Ave., Suite 1500A
Toronto, ON M5G 0A1
- AND TO: CERTAIN UNDERWRITERS AT LLOYD'S SUBSCRIBING TO
POLICY NO. LNP2210**
22 Adelaide Street West, Suite 3400
Toronto, ON M5H 4E3
- AND TO: CERTAIN UNDERWRITERS AT LLOYD'S SUBSCRIBING TO
POLICY NO. SR040046**
22 Adelaide Street West, Suite 3400
Toronto, ON M5H 4E3
- AND TO: CERTAIN UNDERWRITERS AT LLOYD'S SUBSCRIBING TO
POLICY NO. GASS1300**
22 Adelaide Street West, Suite 3400
Toronto, ON M5H 4E3

AND TO: NORTHBRIDGE GENERAL INSURANCE CORPORATION
105 Adelaide Street West, 7th Floor
Toronto, ON M5H 1P9

AND TO: NOVEX INSURANCE COMPANY
700 University Ave, Unit 1500A
Toronto, ON M5G 0A1

AND TO: ROYAL & SUN ALLIANCE INSURANCE COMPANY OF CANADA
18 York Street, Suite 800
Toronto, ON M5J 2T8

AND TO: SGI CANADA INSURANCE SERVICES LTD.
2260 11th Avenue, Suite 1506
Regina, Saskatchewan S4P 0J9

AND TO: WAWANESA MUTUAL INSURANCE COMPANY
4110 Yonge Street
North York, ON M2P 2B7

AND TO: WYNWARD INSURANCE GROUP
6th Floor, 1919 Saskatchewan Drive,
Regina, SK S4P 4H2

CLAIM

1. In this Statement of Claim, in addition to the terms that are defined elsewhere herein, the following terms have the following meanings:

- (a) "**Business Interruption Insurance**" means an insurance contract that provides coverage to an insured for lost revenues, rents, profits and/or expenses incurred due to certain risks/perils that interrupt the insured's regular business, over a defined period;
- (b) "**Class**" or "**Class Members**" means all natural and legal persons in Canada, except for those in the province of Québec, that:
 - (i) contracted with a Defendant for Business Interruption Insurance;
 - (ii) on or before August 31, 2021, made a claim under their Business Interruption Insurance policy for losses due to:
 - (A) the actual or suspected infection of staff, agents, customers or other persons with the SARS CoV-2 virus or its variants at the insured premises or within such proximity as may be specified in the insured's Business Interruption Insurance policy;
 - (B) the actual or suspected presence of the SARS CoV-2 virus or its variants on the insured premises; or
 - (C) the order of a civil authority regarding the SARS CoV-2 virus or its variants; and
 - (iii) were denied insurance coverage for those losses by any of the Defendants.
- (c) "**COVID-19**" is the disease caused by the SARS-CoV-2 virus;
- (d) "**FSCO**" means the Financial Services Commission of Ontario;
- (e) "**Defendants**" means each and all of the named Defendants;
- (f) "**Pandemic**" means the international pandemic of COVID-19;

- (g) **"SARS-CoV-2"** is the virus that causes COVID-19, and includes any variants of SARS-CoV-2.

RELIEF SOUGHT

- 2. The Plaintiffs, on their own behalf and on behalf of all Class Members, seek:
 - (a) an order certifying this action as a class proceeding and appointing the Plaintiffs as the representative plaintiffs;
 - (b) a declaration that loss of business income caused by the closure of an insured's premises because of the actual or suspected presence of COVID-19 on such or neighbouring premises, or because of an order of civil authority related to COVID-19, is a loss that is covered under the Business Interruption Insurance policies;
 - (c) a declaration that each of the Defendants breached the terms of the contract set out in the Class' Business Interruption Insurance policies;
 - (d) a declaration that each of the Defendants acted in bad faith in not fulfilling Business Interruption Insurance during the Pandemic;
 - (e) a declaration that the Defendants are liable to the Plaintiffs and Class Members for damages, including general and special damages;
 - (f) aggregate damages in an amount to be determined by this Honourable Court;
 - (g) punitive and/or aggravated damages in the amount of \$100,000,000.00 or in such other amount as this Honourable Court may deem just;
 - (h) a declaration that each of the Defendants were unjustly enriched in selling Business Interruption Insurance and not honouring the terms of their policies in regards to this product;
 - (i) an order for restitution flowing from the Defendants' unjust enrichment;

- (j) to the extent necessary, a declaration that relief from forfeiture, pursuant to s. 129 of the *Insurance Act*, R.S.O. 1990, c. I.8 and/or section 98 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43 (the "*CJA*") and similar legislation as applicable outside Ontario, is equitable and just in the circumstances;
- (k) a reference to decide any issues not decided at the trial of the common issues;
- (l) prejudgment and post-judgment interest pursuant to the *CJA*;
- (m) costs of this action pursuant to the *Class Proceedings Act, 1992*, S.O. 1992, c. 6 (the "*CPA*"), or, alternatively, on a full or substantial indemnity basis, plus the cost of administration and notice pursuant to s. 26(9) of the *CPA* plus applicable taxes; and
- (n) such further and other relief as to this Honourable Court seems just.

OVERVIEW

3. In March and April of 2020, COVID-19 spread rapidly throughout Canada and posed a grievous threat to public health. Small business owners across the country shut down, or restricted their operations, in order to help "flatten the curve" and prevent a public health catastrophe as had befallen other parts of the world.

4. The Plaintiffs and Class Members endured significant losses as a result of the interruptions. Where they have made claims on the Defendants for support under their Business Interruption Insurance policies, they have been surprised and dismayed to see their claims uniformly denied.

5. The Defendants' conduct in refusing to honour their insurance agreements with Class Members represents a common wrong. The agreements have the same or similar wording in their key terms. The Defendants have adopted and asserted a unified interpretation that supports their denial of claims, at the expense of Class Members.

6. The facts of widespread and simultaneous business interruptions across the country have a common cause – the Pandemic and resulting civil authority orders closing non-essential businesses. The Defendants' blanket refusals to honour the Business Interruption Insurance agreements and deal with Class Members' claims in good faith have caused losses to all class members.

7. The Defendants collected millions in premiums from Class Members over periods of years or decades, only to deny them coverage when they needed it most.

BUSINESS INTERRUPTION INSURANCE

8. The purpose of Business Interruption Insurance is to provide coverage for business owners from certain circumstances beyond their control that partially or fully interrupt regular business operations and the use or function of business property at the insured premises, causing reduced revenue, profits and/or increased expenses over a prescribed period.

9. A common feature of Business Interruption Insurance policies is the requirement of damage or loss to property on the insured's premises. Many Business Interruption Insurance policies include coverage for the order of a civil authority that restricts or prohibits access to the insured's premises. Some Business Interruption Insurance policies extend coverage for interruption that occurs as a result of an outbreak of infectious disease in the vicinity of the insured's premises.

10. The Plaintiffs' policies particularized below are "all risks" Business Interruption Insurance policies. An all risks policy covers the insured for all perils/risks that cause loss unless the peril/risk is specifically excluded.

11. The categories of exclusion are the same or very similar across all Business Interruption Insurance policies.

IMPACT OF COVID-19 ON CLASS MEMBERS

12. The first presumptive case of "COVID-19", the infectious disease caused by SARS-CoV-2, was reported in Ontario on or around January 15, 2020.

13. Beginning in March, 2020, cases of COVID-19 across Canada began to rise. Governments, businesses and the general public came to understand that the SARS-CoV-2 was spreading exponentially and threatened to overwhelm the healthcare system causing massive loss of life, unless drastic measures were taken to stop its spread.

14. These measures included the necessary temporary closure of business premises frequented by one or more persons who had contracted, or who were suspected of contracting, COVID-19. Any property frequented by a person infected with SARS-CoV-2, or where the surfaces of buildings, equipment, contents or stock were suspected of contamination with SARS-CoV-2, posed an immediate risk to public health. The businesses operating on such premises could not reasonably continue normal business operations, even if legally permitted to do so. Businesses that were effectively forced to interrupt their operations in such circumstances experienced damage to, or loss of, their tangible property, including impairment of function or loss of use. With business premises inaccessible and business property thereon unusable, the owners of such businesses suffered significant losses.

15. The measures also included orders by civil authorities in March and April 2020 to restrict or close the operations of various "non-essential" businesses. By virtue of these orders some businesses were completely prohibited from having anyone access their premises in order to conduct business, e.g. barbershops and nail salons, bars and concert venues. Others were restricted in the use they could make of their business property for regular operations, e.g. restaurants that could provide take-out operations only, retail stores that could provide curbside pick-up service only. The civil authority orders that caused these business interruptions are further particularized below.

16. The underlying premise for all such civil authority orders was that SARS-CoV-2 could be circulating between people in any space where they gather, particularly the enclosed spaces where in-person business is conducted. As of March and April 2020, SARS-CoV-2 was known to be highly infectious and to spread exponentially unless public health measures were taken to "flatten the curve". However, decision-makers also understood that they lacked current, comprehensive and reliable information on the

prevalence of the virus at any given location. This was because of problems with testing for COVID-19 within the population (including lack of testing infrastructure, lack of test supplies, lack of trained and available staff, administrative backlogs, and reporting lags) and the reality that some people would appear healthy but would actually be asymptomatic carriers of the virus, among other factors.

17. Based on what was known in March and April of 2020, civil authorities had to assume that SARS-CoV-2 was or could be present and transmissible in persons frequenting virtually any property where business was conducted, or on the surfaces of tangible property at those locations. Ontario's Chief Medical Officer of Health encapsulated the situation when he issued a directive pursuant to s. 77.7 of the *Health Protection and Promotion Act*, R.S.O. 1990, c. H.7, on March 12, 2020, wherein he recited the known facts about SARS-CoV-2 and COVID-19 and concluded that "I AM THEREFORE OF THE OPINION that there exists or may exist an immediate risk to the health of persons anywhere in Ontario from COVID-19". In other words, every place of business had to be treated as a site where the SARS-CoV-2 was or would be spreading.

18. The unavoidable imperative for civil authorities was to prohibit the access to all business premises, and the use of business property thereon for the conduct of regular in-person business, for any business not deemed "essential". The businesses that were required to completely close or partially restrict regular business operations by virtue of such civil authority orders, which were premised on the apprehended potential for COVID-19 spread at every place of business, experienced damage to, or loss of, their tangible property, including impairment of function or loss of use. With business premises inaccessible and business property thereon unusable, the owners of such businesses suffered significant losses.

Civil Authority Orders

19. In March and April of 2020, civil authorities, including the Government of Canada, provincial governments, municipal governments and other persons or bodies exercising public authority, made a number of orders, notices and directives that prohibited, partially or fully, access to business premises and the use of business property thereon, causing

significant losses to the businesses affected. Some businesses remain under partial or full restrictions to this day.

Government of Canada

20. On March 14, 2020, the Government of Canada issued a travel health notice advising all persons returning to Canada from international travel to self-quarantine for 14 days upon arrival.

21. The Government of Canada made the 14-day self-isolation period mandatory as of 11:59 pm on March 25, 2020, by order-in-council and on recommendation of the Federal Minister of Health pursuant to the *Quarantine Act*, S.C. 2005, c. 20.

22. The orders to quarantine prohibited any subject person, including business owners or staff, from accessing their business' premises. The effect of these orders was that all businesses still legally able to operate, but that relied on the physical presence of a person subject to quarantine in order to operate, were interrupted for weeks and suffered corresponding losses.

Government of Ontario

23. On March 17, 2020, the Government of Ontario declared a provincial state of emergency by virtue of Ontario Regulation 50/20: DECLARATION OF EMERGENCY, pursuant to section 7.0.1 of the *Emergency Management and Civil Protection Act*, R.S.O. 1990, c. E.9.

24. On March 18, 2020, Ontario made Ontario Regulation 51/20: ORDER UNDER SUBSECTION 7.0.2 (4) OF THE ACT - CLOSURE OF ESTABLISHMENTS. This order required the full closure until March 31, 2020 of all: facilities providing indoor recreational programs; public libraries; private schools as defined in the Education Act; licensed child care centres; bars and restaurants, except to the extent that such facilities provide takeout food and delivery; theatres including those offering live performances of music, dance, and other art forms, as well as cinemas that show movies; and concert venues. The order was continued several times thereafter.

25. The effect of this order was that prescribed businesses were partially or fully prohibited from using their property for regular business operations during the prescribed period. Each of the plaintiffs in this action had their business activities directly and necessarily restricted by these orders. All such businesses suffered losses due to the interruption of their normal operations.

26. On March 23, 2020, the Government of Ontario broadened the scope of mandatory business closures, announcing that all "non-essential" businesses in Ontario would be required to close operations as of March 24, 2020 at 11:59 PM, for a period of 14 days. The effect of this order was that all businesses, other than those found on the list of "essential" services, were prohibited from using their property for regular business operations during the prescribed period. This order was continued several times thereafter and categories of businesses were added or dropped from the list of "essential" services that could legally operate.

Government of British Columbia

27. On March 16, 2020, British Columbia health officer Bonnie Henry announced an ORDER OF THE PROVINCIAL HEALTH OFFICER prohibiting public gatherings of 50 or more people. The effect of this order was that businesses with operations dependent on public gatherings of that size were partially or fully closed and suffered corresponding losses during the prescribed period and as renewed thereafter.

28. On March 17, 2020, British Columbia declared a provincial state of emergency under the *Emergency Program Act*, R.S.B.C. 1996, c. 11, and named COVID-19 as a "regional event" under the *Public Health Act*, S.B.C. 2008, c. 28.

29. On March 20, 2020, and March 21, 2020, British Columbia issued two more ORDERS OF THE PROVINCIAL HEALTH OFFICER under the *Public Health Act*, S.B.C. 2008, c. 28. The first ordered owners and operators of premises where food and drink is served, and retail liquor stores, that they may only provide take-out or delivery services. These civil authority orders prohibited access to the subject premises, and significantly reduced operations for all British Columbia businesses still open. The effect

of these orders was that businesses operating in "public spaces" were partially or fully interrupted for the prescribed time and as renewed thereafter, and suffered corresponding losses. All British Columbia Class Members had their business activities directly and necessarily restricted by these orders. All such businesses suffered losses due to the interruption of their normal operations.

30. On March 26, 2020, the British Columbia provincial government issued Ministerial Order 84/2020, allowing local authorities to make any emergency measures necessary, under approval of the minister. These allowed further civil authority orders restricting the use of or prohibiting access to Class Member businesses in British Columbia. The effect of these municipal orders further reduced the operation of businesses still operating in British Columbia municipalities, and those businesses suffered corresponding losses.

Government of Alberta

31. On March 17, 2020, the government of Alberta signed Order 02-2020 under the *Public Health Act*, R.S.A. 200, c. P-37, which prohibited attendance at public recreational facilities, private entertainment facilities, bars and nightclubs, and gatherings of more than 50 people. On March 27, 2020, this Order was replaced with another, prohibiting gatherings of more than 15 people and instituted new restrictions for close-contact businesses, dine-in restaurants and retail services.

32. These were civil authority orders. Their effect was to prohibit access to the prescribed businesses, and significantly reduce operations for all Alberta businesses still open. The effect of these orders was that these types of businesses were partially or fully interrupted, and suffered corresponding losses. All Alberta Class Members had their business activities directly and necessarily restricted by these orders. All such businesses suffered losses due to the interruption of their normal operations.

Government of Saskatchewan

33. The government of Saskatchewan also declared a state of emergency on March 18, 2020, pursuant to s. 17 of *The Emergency Planning Act*, S.S. 1989-90, c. E-8.1, requiring

all venues to limit capacity to 50 people or 50% of regular capacity. It also mandated social distancing measures in retail centres. On March 20, 2020 Premier Scott Moe issued a PUBLIC HEALTH ORDER under *The Public Health Act, 1994*, S.S. 1994, c. P-37.1 prohibiting public gatherings of more than 25, and the closure of all nightclubs, bars, lounges and similar facilities. On March 23, 2020, another PUBLIC HEALTH ORDER closed: recreational and entertainment facilities including fitness centers, casinos, bingo halls, arenas, curling rinks, swimming pools, galleries, theatres, museums and similar facilities. These were civil authority orders that prohibited access to the named businesses, and significantly reduced operations for all Saskatchewan businesses still open.

34. These orders partially or fully prohibited access to the prescribed businesses. The effect of these orders was that these types of businesses were partially or fully interrupted, and suffered corresponding losses. All Saskatchewan Class Members had their business activities directly and necessarily restricted by these orders. All such businesses suffered losses due to the interruption of their normal operations.

Government of Nova Scotia

35. On March 22, 2020, the government of Nova Scotia declared a state of emergency under the authority of the *Health Protection Act*, S.N.S. 2004, c. 4. Immediately after this declaration, the government mandated the closure of many public-facing businesses and all businesses in retail sales are required to stop admitting patrons, and prohibited social gatherings of more than 5 people.

36. These orders partially or fully prohibited access to the prescribed businesses. The effect of these orders was that these types of businesses were partially or fully interrupted, and suffered corresponding losses. All Nova Scotian Class Members had their business activities directly and necessarily restricted by these orders. All such businesses suffered losses due to the interruption of their normal operations.

Government of New Brunswick

37. New Brunswick also declared a state of emergency on March 19, 2020, under the *Emergency Measures Act*, R.S.N.B. 2011, c. 147. With this declaration, the government

mandated the closure of many public-facing businesses and all businesses in retail sales are required to stop admitting patrons. All school playgrounds and playgrounds associated with public housing facilities were mandated to close. Businesses that are allowed to be open must limit the number of customers to maintain physical distancing and must check that customers entering are not among those required to be in self-isolation.

38. These orders partially or fully prohibited access to the prescribed businesses. The effect of these orders was that these types of businesses were partially or fully interrupted, and suffered corresponding losses. All New Brunswick Class Members had their business activities directly and necessarily restricted by these orders. All such businesses suffered losses due to the interruption of their normal operations.

Government of Manitoba

39. On March 20, 2020 Manitoba also declared its state of emergency under the *Emergency Measures Act*, C.C.S.M. c. E80. This prohibited gatherings of more than 50 people. On March 27, 2020, it limited gatherings to no more than 10 people. On April 1, 2020 it revised the order to state restaurants may only serve food for delivery and takeout, and all businesses not in the schedule of critical services must close until April 14, 2020. These were civil authority orders that prohibited access to the named businesses, and significantly reduced operations for all Manitoba businesses still open. The effect of these orders was that all non-critical businesses were partially or fully interrupted, and suffered corresponding losses.

40. The effect of this order was that prescribed businesses were partially or fully prohibited from using their property for regular business operations during the prescribed period. All Manitoba Class Members in this action had their business activities directly and necessarily restricted by these orders. All such businesses suffered losses due to the interruption of their normal operations.

Municipal government and other civil authority orders

41. In addition to the above, many municipalities and other civil authorities across Canada issued orders interrupting businesses or prohibiting access to their premises.

42. In the City of Toronto, for instance, Mayor John Tory declared a state of emergency on March 23, 2020. He issued Emergency Order No. 1 on April 1, 2020, which modified Chapter 608 of the City of Toronto Municipal Code to require social distancing of 2 metres between individuals from different households. This was a civil authority order that required all open Toronto businesses that could not facilitate a 2 metre distance between their normal amount of customers to place further restrictions on their normal business operations, in addition to those already imposed by the provincial civil authority orders described above. The effect of this order was to further prohibit the affected businesses from using their property for regular business operations during the prescribed period. All Toronto Class Members in this action had their business activities directly and necessarily restricted by such orders. All such businesses suffered losses due to the interruption of their normal operations.

43. There were also several other civil authority orders issued by professional bodies and targeted at specific industries. For example, on March 16, 2020, the College of Optometrists of Ontario issued a notice to the optometry profession entitled "Urgent Care Only – Change to Optometry Care during COVID-19". The College advised that all optometry offices should provide urgent care only until March 29, 2020. The notice explained it was aimed at reducing community spread and supporting government calls for social distancing. On March 19, 2020, Ontario's Chief Medical Officer of Health issued a "Directive to Health Care Providers" requiring all non-essential and elective services to be ceased or reduced to minimal levels, subject to certain exceptions, until further notice. It also urged employers to ensure 2 metres of social distance within essential businesses. This directive remained in force, in that fashion, for over two months until it was replaced by a revised version on May 26, 2020.

44. These were civil authority orders that prohibited access to the named businesses. The effect of these orders was that all named businesses were partially or fully interrupted, and suffered corresponding losses.

45. The Plaintiffs, Workman Optometry Professional Corporation, 1298928 Ontario Ltd., and Rana Taji Optometry Professional Corporation had their business operations

directly and necessarily interrupted by the orders of the College and the Chief Medical Officer of Health.

46. Similar orders, notices and directives were made across Canada. All such orders prohibited, partially or fully, access to business premises and the use of business property thereon, causing significant losses to the businesses affected.

THE PARTIES

The Plaintiffs

47. The Plaintiff, Scotian Isle Baked Goods Inc. ("**Scotian Isle**"), is a corporation registered pursuant to the laws of Ontario. Scotian Isle is a family-run bakery and café that has served customers in London, ON for over 30 years. It is owned and operated by Joseph MacDonald.

48. Scotian Isle contracted with Federated Insurance for business insurance. This policy included Business Interruption Insurance, which featured coverage for lost business income and/or extra expenses over a prescribed period. The policy was in force during the Class Period. Scotian Isle paid all premiums under the policy, without fail.

49. Scotian Isle was forced to interrupt regular business operations at its insured premises on or around March 16, 2020, due to the effect of applicable civil authority orders and concerns about the spread of SARS-CoV-2. Its normal business operations were partially or fully interrupted for weeks.

50. On or around March 18, 2020, Scotian Isle contacted Federated Insurance and submitted a claim under its Business Interruption Insurance coverage. Federated Insurance responded by letter dated May 20, 2020, denying the claim on grounds that the requisite loss or damage to insured property had not been satisfied.

51. Federated Insurance provided Scotian Isle with a proof of loss form but did not in any way suggest that a different decision might be made if Scotian Isle completed the form. Federated Insurance also noted that a limitation period applied if Scotian Isle wished to bring a legal action challenging the denial of claim.

52. The Plaintiff, In Harmony Dance & Wellness Ltd. ("**In Harmony**"), is a corporation registered pursuant to the laws of Ontario. In Harmony runs dance and wellness classes at its studio in Newmarket ON, encouraging healthy self-esteem and physical well-being, for children and adults. It is owned and operated by Leah Anna Sanguinetti.

53. In Harmony contracted with Novex Insurance Company for business insurance. The policy was underwritten by Intact. This policy included Business Interruption Insurance, which featured coverage for lost business income over a prescribed period. The policy was in force during the Class Period. In Harmony paid all premiums under the policy, without fail.

54. In Harmony was forced to interrupt regular business operations at its insured premises on or around March 14, 2020, due to concerns about the spread of SARS-CoV-2 and the effect of applicable civil authority orders. Its normal business operations were partially or fully interrupted for weeks.

55. On or around March 15, 2020, In Harmony contacted Novex and submitted a claim under its Business Interruption Insurance coverage. Novex Insurance Company responded by letter dated June 3, 2020, denying the claim on grounds that the requisite loss or damage to insured property had not been satisfied.

56. Novex Insurance Company provided In Harmony with a proof of loss form but did not in any way suggest that a different decision might be made if In Harmony completed the form. Novex Insurance Company also noted that a limitation period applied if In Harmony wished to bring a legal action challenging the denial of claim.

57. The Plaintiff, The Suit Shop Co. Ltd. ("**The Suit Shop**"), is a corporation, registered pursuant to the laws of Ontario. The Suit Shop is a local menswear retailer of in Windsor, ON. It is owned and operated by Lazaros Dimitriou.

58. The Suit Shop contracted with The Dominion of Canada General Insurance Company for business insurance. This policy included Business Interruption Insurance, which featured coverage for lost business income and extra expenses over a prescribed

period. The policy was in force during the Class Period. The Suit Shop paid all premiums under the policy, without fail.

59. The Suit Shop was forced to interrupt regular business operations at its insured premises on or around March 14, 2020 due to concerns about the spread of SARS-CoV-2 and the effect of applicable civil authority orders. Its normal business operations were partially or fully interrupted for weeks.

60. On April 22, 2020, The Suit Shop contacted The Dominion of Canada General Insurance Company and submitted a claim under its Business Interruption Insurance coverage. An agent of The Dominion of Canada General Insurance Company denied the claim over telephone and via letter of the same date, on grounds that the requisite loss or damage to insured property had not been satisfied.

61. The Dominion of Canada General Insurance Company did not in any way suggest that a different decision might be made if The Suit Shop completed a proof of loss form.

62. Workman Optometry Professional Corporation and 1298928 Ontario Ltd. (collectively the "**Workman Optometry**") are professional corporations, registered pursuant to the laws of Ontario. They are owned and operated by Dr. Darryl Workman. Dr. Workman has been providing eye health services to the community of Port Perry, ON for decades.

63. Workman Optometry contracted with Royal & Sun Alliance for business insurance through a policy provided to members of the Ontario Association of Optometrists. This policy included Business Interruption Insurance, which featured coverage for lost profits and/or extra expenses over a prescribed period. The policy was in force during the Class Period. Workman Optometry paid all premiums under the policy, without fail.

64. Dr. Workman had been abroad in early March and, consequently, he began a 14-day period of self-quarantine upon his return on March 16, 2020. He was effectively prohibited from accessing the Workman Optometry's insured premises due to quarantine.

65. Dr. Workman was forced to interrupt regular business operations for which he was responsible at Workman Optometry's insured premises on or around March 16, 2020, and to completely close the insured premises on March 20, 2020, due to concerns about the spread of SARS-CoV-2 and the effect of applicable civil authority orders. Normal business operations were partially or fully interrupted for weeks.

66. On or around March 23, 2020, Workman Optometry contacted Royal & Sun Alliance and submitted a claim under its Business Interruption Insurance coverage. Royal & Sun Alliance responded by letter dated April 22, 2020, denying the claim on grounds that the requisite loss or damage to insured property had not been satisfied.

67. Royal & Sun Alliance provided Workman Optometry with a proof of loss form but did not in any way suggest that a different decision might be made if Workman Optometry completed the form. Royal & Sun Alliance also noted that a limitation period applied if Workman Optometry wished to bring a legal action challenging the denial of claim.

68. The Plaintiff, Dr. Rana Taji Optometry Professional Corporation ("**Taji Optometry**"), is a corporation registered pursuant to the laws of Ontario. Taji Optometry is owned and operated by Dr. Rana Taji. Dr. Taji has been providing eye health care, with a particular emphasis on ocular disease management and treatment in Toronto, ON since 2010.

69. Taji Optometry contracted with Continental Casualty Company for business insurance. This policy included Business Interruption Insurance, which featured coverage for lost business income and/or extra expenses over a prescribed period. The policy was in force during the Class Period. Taji Optometry paid all premiums under the policy, without fail.

70. Taji Optometry was forced to interrupt regular business operations at its insured premises on or around March 17, 2020, due to concerns about the spread of SARS-CoV-2 and the effect of applicable civil authority orders. Its normal business operations were partially or fully interrupted for weeks.

71. Shortly after March 17, 2020, Taji Optometry contacted Continental Casualty Company and submitted a claim under its Business Interruption Insurance coverage. Continental Casualty Company responded by letter dated May 4, 2020, denying the claim on grounds that the requisite loss or damage to insured property had not been satisfied.

72. Continental Casualty Company did not in any way suggest that a different decision might be made if Taji Optometry completed and submitted a proof of loss form.

73. The Plaintiffs, 2328867 Ontario Inc. (o/a Booster Juice 369, Booster Juice 388, Booster Juice 375, Booster Juice 452) and 2635774 Ontario Inc. (o/a Booster Juice 275), and 2660364 Ontario Inc. (o/a Booster Juice 200) (collectively the "**Booster Juice Plaintiffs**") are corporations registered pursuant to the laws of Ontario. The Booster Juice Plaintiffs operate beverage stores, including within enclosed public spaces like shopping malls. They are each owned and operated by Jose Miguel Aguila.

74. The Booster Juice Plaintiffs contracted with Wynward Insurance Group for business insurance. This policy included Business Interruption Insurance, which featured coverage for lost business income over a prescribed period. The policy was in force during the Class Period. The Booster Juice Plaintiffs paid all premiums under the policy, without fail.

75. The Booster Juice Plaintiffs were forced to interrupt regular business operations at each of their insured premises on or around March 17, 2020, due to concerns about the spread of SARS-CoV-2 and the effect of applicable civil authority orders. Their normal business operations were partially or fully interrupted for weeks.

76. Within March 2020, the Booster Juice Plaintiffs contacted Wynward and submitted a claim under their Business Interruption Insurance coverage. Wynward Insurance Group responded denying the claim on grounds that the requisite physical loss or damage to insured property had not been satisfied.

77. Wynward Insurance Group did not provide the Booster Juice Plaintiffs with a proof of loss form and/or did not in any way suggest that a different decision might be made if The Booster Juice Plaintiffs completed the form.

The Defendants

78. The Defendant, Certas Home & Auto Insurance Company ("**Certas**"), is a corporation incorporated pursuant to the laws of Canada, with a registered office in Levis, Quebec. It is licensed by the FSCO to provide automobile, liability, property, surety, fidelity, boiler & machinery, accident & sickness and marine insurance. It provided Business Interruption Insurance under the branding of "Desjardins Insurance" to Class Members through its insurance contracts.

79. The Defendant, Co-Operators General Insurance Company ("**Co-operators**"), is a corporation incorporated pursuant to the laws of Canada, with a registered office in Guelph, Ontario. It is licensed by the FSCO to provide accident & sickness, aircraft, automobile, boiler & machinery, credit, fidelity, hail, legal expense, liability, marine, property, and surety insurance. It provided Business Interruption Insurance to Class Members through its insurance contracts.

80. The Defendant, Continental Casualty Company ("**Continental Casualty**"), is a corporation registered pursuant to the laws of Illinois, with a registered office in Chicago, Illinois. It is licensed by the FSCO to provide property, accident & sickness, aircraft, automobile, boiler and machinery, credit, fidelity, hail, legal expense, liability, marine, and surety insurance. It provided Business Interruption Insurance to Class Members through its insurance contracts.

81. The Defendant, Economical Mutual Insurance Company ("**Economical**"), is a corporation registered pursuant to the laws of Canada, with a registered office in Waterloo, Ontario. It provides Business Interruption Insurance to Class Members with its property insurance policies. It is licensed by the FSCO to provide automobile, boiler & machinery, fidelity, liability, property, surety, accident & sickness, and marine insurance. It provided Business Interruption Insurance to Class Members through its property insurance contracts.

82. The Defendant, Federated Insurance Company of Canada ("**Federated**"), is a corporation registered pursuant to the laws of Canada, with a registered office in

Winnipeg, Manitoba. It is licensed by the FSCO to provide automobile, boiler & machinery, fidelity, liability, property and surety insurance. It provided Business Interruption Insurance to Class Members through its property insurance contracts.

83. The Defendant, Gore Mutual Insurance Company ("**Gore**"), is a non-for-profit corporation registered pursuant to the laws of Canada, with a registered office in in Cambridge, Ontario. It is licensed by the Financial Services Commission of Ontario to provide accident & sickness, automobile, boiler & machinery, marine, fidelity, liability, property and surety insurance. It provided Business Interruption Insurance to the Plaintiff and Class Members through its property insurance contracts.

84. The Defendant, Intact Insurance Company ("**Intact**"), is a corporation registered pursuant to the laws of Canada, with its registered office in Toronto, Ontario. It is licensed by the FSCO to provide accident & sickness, aircraft, automobile, boiler & machinery, fidelity, hail, liability, property, surety, legal expense, marine, and credit insurance. It provided Business Interruption Insurance to Class Members with its property insurance contracts.

85. The Defendant, Northbridge General Insurance Corporation ("**Northbridge**"), is a corporation company registered pursuant to the laws of Canada, with a registered office in Toronto, Ontario. It is licensed by FSCO to provide accident & sickness, aircraft, automobile, boiler & machinery, credit, fidelity, hail, liability, property, surety, marine, and credit protection insurance. It provided Business Interruption Insurance to Class Members with its property insurance contracts.

86. The Defendant, Novex Insurance Company ("**Novex**"), is a corporation registered pursuant to the laws of Canada. It is licensed by FSCO to provide property, accident & sickness, automobile, boiler & machinery, credit, fidelity, legal expense, liability, and surety insurance. It provided Business Interruption Insurance to Class Members with its property insurance contracts. Its insurance contracts are in some or all cases underwritten by Intact Financial Corporation.

87. The Defendant, Royal & Sun Alliance Insurance Company of Canada ("**Royal & Sun**"), is a corporation registered pursuant to the laws of Canada, with a registered office in Toronto, Ontario. It is licensed by the FSCO to provide accident & sickness, aircraft, automobile, boiler & machinery, fidelity, hail, liability, marine, property, surety, and legal expense insurance. It provided Business Interruption Insurance to Class Members with its property insurance contracts.

88. The Defendant, SGI Canada Insurance Services Ltd. ("**SGI**"), is a corporation registered pursuant to the laws of Saskatchewan with a registered office in Regina, Saskatchewan. It is licensed by FSCO to provide liability, property, fidelity, surety, and automobile insurance. It provided Business Interruption Insurance to Class Members with its property insurance contracts.

89. The Defendant, The Dominion of Canada General Insurance Company ("**Dominion**"), is a company registered pursuant to the laws of Canada with a registered office in Toronto, Ontario. It is licensed by FSCO to provide boiler & machinery, fidelity, property, surety, liability and automobile insurance. It provided Business Interruption Insurance to Class Members with its property insurance contracts.

90. The Defendant, The Wawanesa Mutual Insurance Company ("**Wawanesa**"), is a corporation registered pursuant to the laws of Canada, with a registered office in Winnipeg, Manitoba. It is licensed by FSCO to provide automobile, boiler & machinery, fidelity, hail, liability, marine, property, surety, accident & sickness insurance. It provided Business Interruption Insurance to Class Members with its property insurance contracts.

91. The Defendant, Wynward Insurance Group ("**Wynward**"), is a company registered pursuant to the laws of Canada with a registered office in Winnipeg, Manitoba. It is licensed by FSCO to provide property, surety, automobile, boiler and machinery, fidelity and liability insurance. It provided Business Interruption Insurance to Class Members with its property insurance contracts.

92. All the Defendants are authorized to engage in and carry on the business of insurance in Ontario and other Canadian provinces, and are subject to applicable insurance

legislation while operating. All the Defendants are authorized to enter into contracts to pay a sum of money or other thing for loss, or indemnify against loss, under a variety of insurance policies, including Business Interruption Insurance policies.

Insurer Response

93. The Defendants have uniformly denied that the Plaintiffs and any Class Members' claims engage coverage under the respective Business Interruption Insurance policies. The Defendants also assert, in the alternative, that exclusions common to many policies would apply to negate any Class Members' claims if they are covered, including the common exclusions between policies for "hazardous substances", "delay", and/or chemical "contamination".

94. The Defendants have adopted, and continue to assert, a common interpretation of Business Interruption Insurance policies that entirely favours their own interests, to the prejudice of Class Members. This includes asserting the grounds for denial that any Class Members' claims do not contain requisite "damage" or "loss" to property.

95. The Defendants and the insurance industry generally have adopted a common front against paying out Business Interruption Insurance claims, and have made this known publicly, so as to deter claims.

96. For example, on or around March 24, 2020, Colin Simpson, the CEO of the Insurance Brokers Association of Ontario, stated publicly that "business clients" should not "flood insurance companies with claims" under Business Interruption Insurance claims. He further stated that "there has been and continues to be significant discussion in the marketplace regarding the issue of business interruption insurance", including clarifications regarding policy wordings.

97. Insurers have uniformly denied any claims for business interruption insurance citing similar reasoning or the exact same grounds in their denial letters.

BREACH OF CONTRACT

98. The Defendants contracted with the Plaintiffs and the Class Members to provide coverage for losses suffered as a result of business interruptions. Each and every Plaintiff and Class Member had a contract with one of the Defendants. Each and every Plaintiff and Class Member had an insurable interest in the losses they suffered. The Plaintiffs and Class Members were and are able to prove their losses suffered. At all material times, the Plaintiffs and Class Members adhered to and complied with their obligations pursuant to their contracts, including but not limited to paying premiums on time and in the amounts required by their individual contracts.

99. The key terms of the Class Members' Business Interruption Insurance policies that govern coverage are substantially similar and give rise to the same interpretative issues.

100. The Plaintiffs' policies are all "all risks" policies. That is, they explicitly state that the insured is covered for "all risks" of loss unless the peril/risk is specifically excluded. There is no specific exclusion in any of the Plaintiffs' or Class' policies for "pandemics" or "epidemics".

101. The Defendants breached the terms of their contracts with the Plaintiffs and Class in at least three ways: denying interruption "indemnity" coverage, denying interruption by "civil authority" order coverage, and denying "pandemic or infectious disease" coverage, despite the contractual terms for such coverages having been satisfied. Each is particularized below.

Breach in Denying Interruption Indemnity Coverage

102. Class Members' Business Interruption Insurance policies have similar general indemnity agreement terms requiring the insurer to indemnify or pay out an insured following a business interruption, such as, but not limited to, the following:

Certis, "Extended Business and Rental Income Insurance Actual Loss Sustained – Broad Form" "913 237"

1. Indemnity Agreement

Subject to the terms of the Commercial Property Insurance – Broad Form and the terms below, in the event that the business of the Insured is interrupted as a result of a direct physical loss or damage from an insured peril, the Insurer shall pay to the Insured the

actual loss of "business income" and "rental income" sustained during the "indemnity period" in consequence thereof.

Co-operators, "Actual Loss of Income Form"

1. Indemnity Agreement

The Insurer agrees to indemnify the Insured against loss directly resulting from necessary interruption of business, caused by destruction or damage by the Insured Perils to Insured Property at the "Premises", subject to the provisions, limitations, exclusions, conditions and other terms of this Policy including this Form.

Co-operators, "Profits Form"

1. Indemnity Agreement

The Insurer agrees to indemnify the Insured against loss directly resulting from necessary interruption of business, caused by destruction or damage by the Insured Perils to Insured Property at the "Premises", up to the Limit of Insurance specified in the "Certificate of Insurance" for this form and subject to the provisions, limitations, exclusions, conditions and other terms of this Policy including this Form.

Continental Casualty Interruption, "Commercial Business Income Coverage" "CBI 01-001"

Business Income

We will pay for the actual loss, up to the applicable Limit of Insurance shown on the Declarations page, of Business Income and Extra Expense you sustain during the period of restoration due to the necessary suspension of your operations at your premises described on the Commercial Business Income Declarations page. The suspension must be caused by direct physical loss of or damage to the following property. Such loss or damage must be caused by a Covered Cause of Loss and must otherwise be covered under the Commercial Property Coverage Form:

a. Property at your premises described on the Commercial Business Income Declarations Page.

[...]

Ingress / Egress

We will also pay for the actual loss of Business Income you sustain and necessary Extra Expense caused when ingress or egress to the premises described on the Commercial Business Income Declarations Page is physically prevented due to direct loss of or damage to property, other than at the premises described on the Commercial Business Income Declarations Page, caused by or resulting from any Covered Cause of Loss and otherwise covered under the Commercial Business Income Declarations Page.

Continental Casualty Interruption, "Business Income and Extra Expense"

Business Income

The Insurer will pay for the actual loss, up to the applicable Limit of Insurance shown in the Declarations, of Business Income and Extra Expense sustained by the Insured during the BI Period of Restoration due to the necessary Suspension of the Insured's Operations at the Premises described in the Declarations, including interdependency amongst Premises described in the Declarations, unless a limitation is specified in another Coverage Section of the Policy. The Suspension must be caused by a Covered Causes of Loss sustained to following property:

1. Property at the Premises.

[...]

Ingress / Egress

The Insurer will pay for the actual loss of Business Income sustained by the Insured and necessary Extra Expense caused when ingress or egress to the Premises is physically prevented due to Loss to property, other than at the Premises, caused by or resulting from any Covered Cause of Loss and otherwise covered under the Declarations

Economical, "Business Interruption – Actual Loss Sustained Form 6561"

INSURING AGREEMENT

This form insures against loss directly resulting from the necessary interruption of your business caused by direct physical loss of or damage to building(s), equipment, or stock but only if we have paid or agreed to pay for such direct physical loss or damage as a covered loss insured under this policy. For the purposes of this form only, if the loss of or damage to the property is not paid for the sole reason that it falls below the property deductible amount, we will provide coverage and settle the business interruption loss as if we had agreed to pay for the direct physical loss or damage.

Economical, "Business Interruption – Profits Form 4055"

INSURING AGREEMENT

This form insures against loss directly resulting from the necessary interruption of your business caused by direct physical loss of or damage to building(s), equipment, or stock but only if we have paid or agreed to pay for such direct physical loss or damage as a covered loss insured under this policy. For the purposes of this form only, if the loss of or damage to the property is not paid for the sole reason that it falls below the property deductible amount, we will provide coverage and settle the business interruption loss as if we had agreed to pay for the direct physical loss or damage.

Federated, "Business Interruption Form (#CP0009E02)"

We will pay for your loss of "business income", your incurred necessary "extra expense", or loss of "rental value" sustained during the Period of Indemnity due to the total or partial suspension of your "normal business operations" directly resulting from and necessitated by "covered direct physical loss" subject to the provisions and limitations set forth in this

Form as applicable to the coverage specified on the "schedule". The "covered direct physical loss" must occur at a "scheduled risk location" that has a limit specified on the "schedule", except for property in transit, we will pay for your loss as provided for under Section 2. LIMIT OF LIABILITY.

Gore, "Profits Form (12 Month Indemnity Period)" "G00009"

INDEMNITY AGREEMENT

This Form insures against loss directly resulting from necessary interruption of business caused by direct physical loss or direct physical damage by the insured perils, to "building(s)", "equipment" or "stock" as stated on the "Declarations".

Gore, "Profits Form, Actual Loss Sustained Endorsement (12 Month Indemnity Period)" "G00039"

INDEMNITY AGREEMENT

This Form insures against loss directly resulting from necessary interruption of business caused by direct physical loss or direct physical damage by the insured perils, to "building(s)", "equipment" or "stock" as stated on the "Declarations".

Gore, "Business Income (Extended) Broad Form" "G00111"

1. INDEMNITY AGREEMENT

In the event that the "business" shall be interrupted as a direct result of "damage", the insurer shall pay to the insured the loss of "business income" suffered during the "indemnity period" in consequence thereof, in accordance with the terms and conditions of this form.

Intact, "Profits – Actual Loss Sustained" "BI14"

1. INDEMNITY AGREEMENT

This Form insures against loss directly resulting from necessary interruption of the Insured's business caused by direct physical loss or direct physical damage by the perils insured against, to building(s), equipment or stock on the "premises" specified in the Declaration Page(s), occurring during the term of the policy.

Intact, "Profits – Actual Loss Sustained" "BI16"

1. INDEMNITY AGREEMENT

This Form insures against loss directly resulting from necessary interruption of the Insured's business caused by direct physical loss or direct physical damage by the insured perils, to building(s), equipment or stock on the "premises" specified in the Declaration Page(s), occurring during the term of the policy.

Lloyd's, "Business Interruption Insurance Profits Actual Loss Sustained Form" "BS30020b"

1. Insuring Agreement

This form insures against loss directly resulting from the necessary interruption of business caused by the destruction or damage by the perils insured against, occurring during the term of this policy, to building(s), structure(s), machinery, equipment or stock on the premises described in the Declarations.

Lloyd's, "GARGS 11 – Business Interruption – Extensions of Coverage"

1. Indemnity Agreement

This Form insures up to the amount stated in the Extensions of Business Interruption Coverage, for your loss of business income including your incurred necessary “extra expense” during the Period of Indemnity resulting from “Covered Direct Physical Loss” subject to the provisions and limitations of this Part. The “Covered Direct Physical Loss” must occur on the Insured premise(s) that are showing a limit on the Schedule for GARGS11 – Business Income.

Lloyd's, "Profits" "BA11"

1. INDEMNITY AGREEMENT

This Form insures against loss directly resulting from necessary interruption of business caused by destruction or damage by the perils insured against, to buildings, structures, machinery, equipment or stock in the premises described on the "Declarations Page".

Northbridge, "Business Income" "Form # CP0009E02"

We will pay for your loss of “business income”, your incurred necessary “extra expense”, or loss of “rental value” sustained during the Period of Indemnity due to the total or partial suspension of your “normal business operations” directly resulting from and necessitated by “covered direct physical loss” subject to the provisions and limitations set forth in this Form as applicable to the coverage specified on the “schedule”. The “covered direct physical loss” must occur at a “scheduled risk location” that has a limit specified on the “schedule”, except for property in transit, we will pay for your loss as provided for under Section 2. LIMIT OF LIABILITY.

Novex, "Profits – Actual Loss Sustained" "BI14N"

1. INDEMNITY AGREEMENT

This Form insures against loss directly resulting from necessary interruption of the Insured’s business caused by direct physical loss or direct physical damage by the perils insured against, to building(s), equipment or stock on the “premises” specified in the Declaration Page(s), occurring during the term of the policy.

Royal & Sun, "Gross Earnings Mercantile Form (Broad Form)" "B0026"

1. Insuring Agreement

This Form insures up to the amount shown on the "Coverage Summary", against loss directly resulting from necessary interruption of business caused by all risks of direct physical loss, destruction or damage, except as hereinafter excluded, to "building(s)", "equipment", or "stock" on the "premises" shown on the "Coverage Summary".

SGI, "Loss of Income Insurance – Actual Loss Sustained" "Rider "B" 120"

1. This Rider Covers:

The actual business loss sustained by the Insured and the expenses necessarily incurred by the Insured to resume "normal" business operations resulting from the interruption of business or the untenability of the described "premises" when:

(a) the building(s), structure(s), machinery, equipment or stock are damaged or destroyed as a direct result of a peril insured against, except as hereinafter excluded; [...]

Dominion, "E-CLIPS Business Income Form" "652500"

1. INDEMNITY AGREEMENT

In the event that the "Business" shall be interrupted as a direct result of "Damage", the Insurer shall pay to the Insured the loss of "Business Income" suffered during the "Indemnity Period" in consequence thereof, in accordance with the terms and conditions of this Form.

Wawanesa, "Office Select Protect Plus" "Loss of Income"

Extra Expense

We will pay the actual and necessary Extra Expense you incur during the "Period of Restoration" that you would not have incurred if there had been no direct physical loss or damage to property at the described premises, including business contents in the open (or in a vehicle) within 100 meters (328 feet), caused by or resulting from any Covered Cause of Loss.

Wyward, "Extended Business Income" "11565"

1. Indemnity Agreement

In the event that the "business" shall be interrupted as a direct result of "damage", the Insurer shall pay to the Insured the loss of "business income" suffered during the "indemnity period" in consequence thereof, in accordance with the terms and conditions of this Form.

103. The Defendants have denied Class Members' claims despite the contractual terms for indemnity or pay out having been satisfied.

Breach in Denying Interruption by Civil Authority Coverage

104. Class Members' Business Interruption Insurance policies have similar terms requiring the insurer to indemnify or pay out an insured following a business interruption due to the order of a civil authority, such as, but not limited to, the following:

Certas, "Extended Business and Rental Income Insurance Actual Loss Sustained – Broad Form" "913 237"

Interruption by Civil Authority

Coverage is extended to the actual loss of "business income" or of "rental income" sustained by the Insured during the period of time, not exceeding four (4) consecutive weeks, due to an interruption of the Insured's activities while access to the "premises" is prohibited by order of civil authority, but only when such order is given as a direct result of damage to neighbouring premises by an insured peril.

Certas, "Extra Expense Insurance" "913 207"

Interruption by Civil Authority

Coverage is extended, without increasing the amount of insurance, to "extra expense" incurred by the Insured during the period of time, not exceeding four (4) consecutive weeks, due to an interruption of the Insured's activities while access to the "premises" or the "project site" or the "installation site" is prohibited by order of civil authority, but only when such order is given as a direct result of damage to neighbouring premises by an insured peril.

Co-Operators, "Actual Loss of Income Form"

7. Extensions [...]

b. The Insurer shall be liable for actual loss of income insured during the period of time, not exceeding 30 days, while access to the "Premises" is prohibited by order of civil authority but only when such order is given as a direct result of damage to neighbouring "Premises" by an Insured Peril.

Co-Operators, "Profits Form"

7. Extensions [...]

b. The Insurer shall be liable for actual loss sustained insured during the period of time, not exceeding 30 days, while access to the "Premises" is prohibited by order of civil authority but only when such order is given as a direct result of damage to neighbouring "Premises" by an Insured Peril.

Continental Casualty, "Commercial Business Income Coverage" "CBI 01-001"

Civil Authority

We will pay for the actual loss of Business Income you sustain and necessary Extra Expense, caused by action of civil authority that prohibits access to the premises described on the Commercial Business Income Declarations Page, due to direct physical loss of or damage to property, other than at the described premises, caused by or resulting from any Covered Cause of Loss and otherwise covered under the Commercial Property Coverage Form.

Continental Casualty, "Business Income and Extra Expense"

Civil Authority

The Insurer will pay for the actual loss of Business Income sustained by the Insured and necessary Extra Expense, caused by action of civil authority, including outbreak, pollution and health authority access restriction that prohibits access to the Premises, due to Loss to property other than at the Premises, caused by or resulting from any Covered Cause of Loss and otherwise covered under Property Coverage Section – ‘Property Covered’.

Economical, "Business Interruption – Actual Loss Sustained Form 6561"

The extensions of coverage in this group insure against loss directly resulting from the necessary interruption of your business caused by direct physical loss of or damage to building(s), equipment, and stock regardless of whether we have paid or agreed to pay for such loss or damage as a covered loss insured under this policy. [...]

INTERRUPTION BY CIVIL AUTHORITY

We will pay for “Loss of Business Income” for the period of time during which access to the “Premises” is prohibited by order of civil authority.

Economical, "Business Interruption – Profits Form 4055"

The extensions of coverage in this group insure against loss directly resulting from the necessary interruption of your business caused by direct physical loss of or damage to building(s), equipment, and stock regardless of whether we have paid or agreed to pay for such loss or damage as a covered loss insured under this policy. [...]

INTERRUPTION BY CIVIL AUTHORITY

We will pay for “Loss of Business Income” for the period of time during which access to the “Premises” is prohibited by order of civil authority.

Economical, "Extra Expense (100%) Form 6562"

4. INTERRUPTION BY CIVIL AUTHORITY

This Form is extended to include the actual loss as insured hereunder during the period of time, not exceeding two weeks, while access to the described premises is prohibited by

order of civil authority, but only when such order is given as a direct result of damage to neighbouring premises by a peril insured against.

Federated, "Coverage Extensions Endorsement for Business Interruption" "Form # CP0010E02"

Enhanced Ingress, Egress and Civil Authority

If access to your "scheduled risk location" is denied, prevented or interfered with:

(1) due to damage to other property nearby caused directly by an "insured peril"; [...] we agree to extend the insurance provided by the Business Interruption Form to indemnify you for your:

- (a) loss of "business income";
- (b) incurred necessary "extra expense"; or
- (c) loss of "rental value";

for the period of such access denial, prevention or interference.

Gore, "Profits Form (12 Month Indemnity Period)" "G00009"

The Insurer shall be liable for actual loss sustained as insured under this Form during the period of time, not exceeding two weeks, while access to the described premises is prohibited by order of civil authority but only when such order is given as a direct result of damage to neighbouring premises by an insured peril.

Gore, "Profits Form, Actual Loss Sustained Endorsement (12 Month Indemnity Period)" "G00039"

NEIGHBOURING PREMISES

This extension shall provide up to \$25,000 for resulting damage of the actual loss as insured hereunder during the period of time, not exceeding two (2) weeks, while access to the "premises" described in the "Declarations" is prohibited by order of civil authority, but only when such order is given as a direct result of direct physical loss or direct physical damage to neighbouring premises by a peril insured against under this policy.

Intact, "Profits – Actual Loss Sustained" "BI14"

5. INTERRUPTION BY CIVIL AUTHORITY

This Form is extended to include the actual loss as insured hereunder during the period of time, not exceeding two weeks, while access to the "premises" described in the Declaration Page(s) is prohibited by order of civil authority, but only when such order is given as a direct result of direct physical loss or direct physical damage to neighboring premises by a peril insured against under this policy.

Intact, "Profits – Actual Loss Sustained" "BI16"

Interruption by Civil Authority – The actual loss as insured hereunder during the period of time, not exceeding two weeks, while access to the “premises” described in the Declaration Page(s) is prohibited by order of civil authority, but only when such order is given as a direct result of direct physical loss or direct physical damage to neighbouring premises by a peril insured against under this policy.

Intact, "Commercial Building and Contents Broad Form" "BF02"

INTERRUPTION BY CIVIL AUTHORITY:

This clause 10 shall not apply if coverage for loss arising out of interruption by civil authority is specifically insured under a separate form of business interruption insurance, whether attached to this Policy or not. This Form is extended to include the actual loss as covered under this clause 10 during the period of time, not exceeding 30 days, while access to the described “Premises” is prohibited by order of civil authority, but only when such order is given as a direct result of damage, to neighbouring premises, by a peril that would have been insured against under this Form had the loss occurred on “Premises”.

Lloyd's, "Business Interruption Insurance Profits Actual Loss Sustained Form" "BS30020b"

Interruption by Civil Authority: This form is extended to indemnify the Insured for the actual loss sustained as insured hereunder during the period of time, not exceeding (3) three consecutive weeks, while access to the described premises or adjacent premises is prohibited by order of civil authority due to a fortuitous and unforeseen event.

Lloyd's, "Extra Expense Form" "BS30004"

This Form is extended to include the actual loss as insured hereunder during the period of time, not exceeding two weeks, while access to the described premises is prohibited by order of civil authority, but only when such order is given as a direct result of damage to neighbouring premises by a peril insured against.

Lloyd's, "Profits" "BA11"

6. Provisions [...]

(d) The Insurer shall be liable for actual loss sustained as insured hereunder, during the period of time, not exceeding two weeks, while access to the described premises is prohibited by order of civil authority, but only when such order is given as a direct result of damage to neighbouring premises by a peril insured against.

Northbridge, "Coverage Extensions Endorsement for Business Interruption" "Form # CP0010E02"

Enhanced Ingress, Egress and Civil Authority

If access to your “scheduled risk location” is denied, prevented or interfered with:

(1) due to damage to other property nearby caused directly by an “insured peril”; [...] we agree to extend the insurance provided by the Business Interruption Form to indemnify you for your:

- (a) loss of “business income”;
- (b) incurred necessary “extra expense”; or
- (c) loss of “rental value”;

for the period of such access denial, prevention or interference.

Novex, "Profits – Actual Loss Sustained" "BI14N"

5. INTERRUPTION BY CIVIL AUTHORITY

This Form is extended to include the actual loss as insured hereunder during the period of time, not exceeding two weeks, while access to the “premises” described in the Declaration Page(s) is prohibited by order of civil authority, but only when such order is given as a direct result of direct physical loss or direct physical damage to neighboring premises by a peril insured against under this policy.

Novex, "Business Interruption Extension 2.0" "EP31N"

5. Interruption by Civil Authority

This Form is extended to cover loss of business income during the period of time, not exceeding 30 days, while access to the premises is prohibited by order of civil authority, but only when such order is given as a direct result of direct physical loss of or damage to neighbouring premises by an insured peril.

Royal & Sun, "Extra Expense (Broad Form)" with designation "B0112"

This Form is extended to include the actual loss as insured hereunder during the period of time, not exceeding two (2) weeks, while access to the described “premises” is prohibited by order of civil authority, but only when such order is given as a direct result of damage to neighboring premises by a peril insured against.

SGL, "Gross Earnings Mercantile Form (Broad Form)"

1. This Rider Covers:

The actual business loss sustained by the Insured and the expenses necessarily incurred by the Insured to resume “normal” business operations resulting from the interruption of business or the untenability of the described “premises” when:...

- (b) for a period of time, not exceeding thirty (30) days, access to the described “premises” is prohibited by order of civil authority, but only when such order is given, as direct result of damage to neighbouring premises by a peril insured against, except as hereinafter excluded.

Dominion, "E-CLIPS Business Income Form" "652500"

This Form, subject to its terms and conditions, is extended to insure the loss of "Business Income" suffered by the Insured during the period of time, not exceeding two weeks, while access to the "Premises" is prohibited by order of civil authority, but only when such order is given as a direct result of damage to neighbouring premises by a peril insured against under Form 652000.

Wynward, "Extended Business Income" "11565"

Extensions of Coverage: Interruption by Civil Authority

This Form, subject to its terms and conditions, is extended to insure the loss of "business income" suffered by the Insured during the period of time, not exceeding four weeks, while access to the "premises" is prohibited by order of civil authority, but only when such order is given as a direct result of damage to neighbouring premises by a peril insured against under this Form.

105. The Defendants have denied Class Members' claims despite the contractual terms for civil authority coverage having been satisfied.

Breach in Denying Pandemic or Infectious Disease Coverage

106. Certain Class Members have similar terms of Business Interruption Insurance coverage specifically requiring the insurer to cover losses resulting from a "pandemic" or "infectious disease", such as, but not limited to, the following:

Co-operators, "Pandemic Outbreak Loss of Income Extension Endorsement"

Insuring Agreements

The insurance provided by this policy is extended to cover the loss of income suffered by the insured during the period of time while access to the "Premises" described in the "Certificate of Insurance" is under "Suspension" by direct order of a "Public Health Official", but only when such order is given as a direct result of a "Pandemic Outbreak" that is directly originating at or emanating from your "Premises" as described in the "Certificate of Insurance".

Definitions

- a. "Pandemic Outbreak" means an outbreak of disease due to a transmissible virus directly through human contact resulting in serious illness that becomes prevalent over the human population within Canada or the United States of America.
- b. "Suspension" means the cessation of your business activities at the described "Premises" by a "Public Health Official".
- c. "Public Health Official" means a person working under the direction and with the authority of a government health organization and includes other governmental authority, political office or official or public safety or law enforcement personnel.

d. "Annual Aggregate" means the maximum liability of the Insurer under this policy for all losses in each policy period

Co-operators, "Infectious Disease and Food Poisoning Endorsement"

1. Indemnity Agreement

The Loss of Income insurance provided by this Policy is extended to indemnify loss or damage resulting in the complete or partial interruption of the business operations of the Insured at the "Premises" specified in the "Certificate of Insurance" as a result of:

a. A notifiable contagious or infectious human disease, as declared by a "Public Health Official" that must be reported and which occurs on the "Premises" or within a radius of 25 kilometres of the "Premises" specified in the "Certificate of Insurance"

[...]

The liability of the Insurer for this extension of coverage shall not exceed the Limit of Insurance specified in the "Certificate of Insurance" for this Form.

The length of time for which indemnity is payable shall be the period beginning with the occurrence of the loss or damage as defined herein, ending not later than 6 months following the date of such loss or damage.

[...]

3. Definitions

[...]

b. "Public Health Official" means a person working under the direction and with the authority of a government health organization and includes other governmental authority, political office or official or public safety or law enforcement personnel.

Economical, Business Interruption Insurance – Negative Publicity Coverage
"1653"

A. INDEMNITY AGREEMENT

This form insures the reduction in "Business Earnings" sustained by the Insured and the expenses necessarily incurred to resume "Normal Business Operations" resulting from interruption of or interference with the business carried on by the Insured at the "Insured Premises" as a direct result of:

(I) a "notifiable" infectious or contagious disease manifested by any person employed by the Insured;

(II) a "notifiable" infectious or contagious disease manifested by any person employed by the manufacturer of a product similar to the Insured's product; [...]

[...]

Coverage under this form shall only be triggered and afforded after 48 hours from an occurrence of any of the following events arising directly from an incident as described in Section I A. (I), (II), (III), (IV), (V), or (VI):

[...]

(II) A "Public Health Authority" ordered closing of the whole or part of the Insured Premises.

Federated, "Coverage Extensions Endorsement for Business Interruption" "Form # CP0010E02"

Negative Publicity

(i) Indemnity Agreement

We agree to extend the insurance provided by the Business Interruption Form to indemnify you for your loss of "business income", incurred necessary "extra expense" or loss of "rental value" you sustain resulting from interruption of or interference to your business operations at your "scheduled risk location" as a result of:

(1) A "noticeable" infectious or contagious disease manifested by:

(a) any of your employees; or

(b) any person employed by the manufacturer of a product similar to your product;

[...]

(ii) Exclusions:

We will not indemnify you for any loss or expense resulting from, caused by or contributed to by, arising or resulting, directly or indirectly, in whole or in part, from:

(1) a "pandemic outbreak" declared by Civil Authority or "public health authority";[...]

(3) any increased costs incurred to comply with the enforcement of any by-law, regulation, ordinance, building and construction code, law or order, including but not limited to any cost or expense arising out of the repair or upgrading or retrofitting of equipment or defective sanitation; or

(4) any loss, cost or expense arising out of testing for, monitoring of, clean up, removal, containment or treatment of a "noticeable" infectious or contagious disease, including but not limited to viral or bacterial infections, poisoning caused by the consumption of food or beverage, an infestation of animals, including but not limited to insects, birds or rodents or defective sanitation.

[...]

(iv) Definitions:

Solely with respect to coverage provided by this Coverage Extension, the following definitions are added:

- (1) "Noticeable" means an infectious or contagious disease requiring notification of "public health authority".
- (2) "Pandemic outbreak" means an outbreak of disease due to an infectious disease resulting in serious illness that becomes prevalent over the human population throughout the region, as declared by Civil Authority or "public health authority".
- (3) "Public health authority" means: a governmental authority having jurisdiction over your business operations relating to creating and administering standards for the public's health and hygiene protection.

[...]

Outbreak Extra Expense

(i) Indemnity Agreement

We agree to extend the insurance provided by the Business Interruption Form to indemnify you for your incurred necessary "extra expense" resulting from interruption of or interference to your business operations as a result of a "pandemic outbreak" declared by Civil Authority or "public health authority" during the policy period.

(ii) Exclusions

We will not indemnify you for any loss or expense resulting from, caused by or contributed to by, arising or resulting,

directly or indirectly, in whole or in part, from:

- (1) any infectious or contagious disease which has not been declared a "pandemic outbreak" by Civil Authority or "public health authority";

[...]

- (3) any increased costs incurred to comply with the enforcement of any by-law, regulation, ordinance, building and construction code, law or order, including but not limited to any cost or expense arising out of the repair or upgrading or retrofitting of equipment or defective sanitation; or

- (4) any loss, cost or expense arising out of testing for, monitoring of, clean up, removal, containment or treatment of a "noticeable" infectious or contagious disease, including but not limited to viral or bacterial infections, poisoning caused by the consumption of food or beverage, an infestation of animals, including but not limited to insects, birds or rodents or defective sanitation.

[...]

(iv) Definitions:

Solely with respect to coverage provided by this Coverage Extension, the following definitions are added:

(1) "Noticeable" means an infectious or contagious disease requiring notification of "public health authority".

(2) "Pandemic outbreak" means an outbreak of disease due to an infectious disease resulting in serious illness that becomes prevalent over the human population throughout the region, as declared by Civil Authority or "public health authority".

(3) "Public health authority" means: a governmental authority having jurisdiction over your business operations relating to creating and administering standards for the public's health and hygiene protection.

Lloyds, "Food Borne Illness (Loss of Income)" "RB1"

The endorsement extends the insurance provided by this Policy as follows:

This policy insures, up to a limit of \$25,000, loss as insured under Form BA11, Business Interruption – Profits, resulting from interruption or interference with the business carried on by the Insured at the premises as a direct result of:

a) infectious or contagious disease manifested by any person while at the premises or an outbreak of a notifiable human infectious or contagious disease within 20 kilometres of the premises;

[...]

The insurance provided by this endorsement is subject to the following special condition and to all the conditions of this policy, except as specifically modified herein.

Special Condition

This endorsement does not insure loss resulting from loss or damage directly or indirectly occasioned by or happening through or in consequence of:

1. war, invasion, act of foreign enemy hostilities, (whether war be declared or not), civil war, rebellion, revolution, insurrection or military power;
2. pollution:

This form does not insure against:

a) loss or damage caused directly or indirectly by any actual or alleged spill, discharge, emission, dispersal, seepage, leakage, migration, release or escape of "pollutants", nor the cost or expense of any resulting "clean up", but this exclusion does not apply:

i. if the spill, discharge, emission, dispersal, seepage, leakage, migration, release or escape of "pollutants" is the direct result of a peril not otherwise excluded under this form;

ii. to loss or damage caused directly by a peril not otherwise excluded under this form:

b) cost or expense for any testing, monitoring, evaluating or assessing of an actual, alleged, potential or threatened spill, discharge, emission, dispersal, seepage, leakage, migration, release or escape of "pollutants".

3. any nuclear incident as defined in the Nuclear Liability Act, nuclear explosion or contamination by radioactive material.

4. Contamination unless it is discovered during the policy period and is the direct cause of a food borne illness covered under this form.

Definitions

Public Health Authority: means a governmental authority having jurisdiction over your operations relating to creating and administering standards for the public's health and hygiene protection.

All other terms and conditions remain unchanged.

Northbridge, "Coverage Extensions Endorsement for Business Interruption" "Form # CP0010E02"

Negative Publicity

(i) Indemnity Agreement

We agree to extend the insurance provided by the Business Interruption Form to indemnify you for your loss of "business income", incurred necessary "extra expense" or loss of "rental value" you sustain resulting from interruption of or interference to your business operations at your "scheduled risk location" as a result of:

(1) A "noticeable" infectious or contagious disease manifested by:

(a) any of your employees; or

(b) any person employed by the manufacturer of a product similar to your product;

[...]

(ii) Exclusions:

We will not indemnify you for any loss or expense resulting from, caused by or contributed to by, arising or resulting, directly or indirectly, in whole or in part, from:

(1) a "pandemic outbreak" declared by Civil Authority or "public health authority";[...]

(3) any increased costs incurred to comply with the enforcement of any by-law, regulation, ordinance, building and construction code, law or order, including but not limited to any cost or expense arising out of the repair or upgrading or retrofitting of equipment or defective sanitation; or

(4) any loss, cost or expense arising out of testing for, monitoring of, clean up, removal, containment or treatment of a "noticeable" infectious or contagious disease, including but not limited to viral or bacterial infections, poisoning caused by the consumption of food or beverage, an infestation of animals, including but not limited to insects, birds or rodents or defective sanitation.

[...]

(iv) Definitions:

Solely with respect to coverage provided by this Coverage Extension, the following definitions are added:

(1) "Noticeable" means an infectious or contagious disease requiring notification of

“public health authority”.

(2) “Pandemic outbreak” means an outbreak of disease due to an infectious disease resulting in serious illness that becomes prevalent over the human population throughout the region, as declared by Civil Authority or “public health authority”.

(3) “Public health authority” means: a governmental authority having jurisdiction over your business operations relating to creating and administering standards for the public’s health and hygiene protection.

[...]

Outbreak Extra Expense

(i) Indemnity Agreement

We agree to extend the insurance provided by the Business Interruption Form to indemnify you for your incurred necessary “extra expense” resulting from interruption of or interference to your business operations as a result of a “pandemic outbreak” declared by Civil Authority or “public health authority” during the policy period.

(ii) Exclusions

We will not indemnify you for any loss or expense resulting from, caused by or contributed to by, arising or resulting,

directly or indirectly, in whole or in part, from:

(1) any infectious or contagious disease which has not been declared a “pandemic outbreak” by Civil Authority or “public health authority”;

[...]

(3) any increased costs incurred to comply with the enforcement of any by-law, regulation, ordinance, building and construction code, law or order, including but not limited to any cost or expense arising out of the repair or upgrading or retrofitting of equipment or defective sanitation; or

(4) any loss, cost or expense arising out of testing for, monitoring of, clean up, removal, containment or treatment of a “noticeable” infectious or contagious disease, including but not limited to viral or bacterial infections, poisoning caused by the consumption of food or beverage, an infestation of animals, including but not limited to insects, birds or rodents or defective sanitation.

[...]

(iv) Definitions:

Solely with respect to coverage provided by this Coverage Extension, the following definitions are added:

(1) "Noticeable" means an infectious or contagious disease requiring notification of "public health authority".

(2) "Pandemic outbreak" means an outbreak of disease due to an infectious disease resulting in serious illness that becomes prevalent over the human population throughout the region, as declared by Civil Authority or "public health authority".

(3) "Public health authority" means: a governmental authority having jurisdiction over your business operations relating to creating and administering standards for the public's health and hygiene protection.

Gore, "Commercial Business Extension Plus" "G00190"

INFECTIOUS DISEASE

This extension shall provide coverage subject to its terms and conditions, to indemnify loss as insured under this Policy, resulting from interruption of or interference with the business of the Insured at the location described on the "Declarations" in consequence of an outbreak or occurrence or a notifiable human contagious or infectious disease within a radius of 50 kilometers of the location described on the "Declarations", and confirmed as such by the Public Health Authority.

[...]

Definitions

[...]

"Notifiable" means an infectious or contagious disease requiring notification of a public health authority.

[...]

"Public Health Authority" means a government authority having jurisdiction over the Insured's business operations relating to creating and administering standards for the public health and hygiene protection.

Royal & Sun, "Negative Publicity Extension" "E0305"

1. Insuring Agreement

This insurance is extended to include the loss of "Business Income" resulting from a necessary interruption of business during the "indemnity period" following;

1) an order to close by a "Public Health Authority" or;

[...]

as a direct result of:

(i) a "notifiable" infectious or contagious disease manifested by any person employed by the Insured;

[...]

3. Additional Definitions

For the purposes of this extension:

[...]

b) "Business Income" means "Gross Rentals", "Gross Profit", "Gross Rent and Rental Value", "Gross Earnings", "Earnings", as described in the Form(s) to which this extension is attached.

[...]

d) "Notifiable" means an infectious or contagious disease requiring notification to a "Public Health Authority".

[...]

f) "Public Health Authority" means a governmental authority having jurisdiction over the insured's business operations relating to creating and administering standards for the public's health and hygiene protection.

Royal & Sun, "Outbreak Extra Expense Extension"

1. Insuring Agreement

This Extension insures, up to the amount shown on the "Coverage Summary", the Insured's interest in the necessary "additional expense" incurred by the Insured in order to continue as nearly as practicable the "normal" conduct of the Insured's business following an order of closure of the Insured's "business premises" by a public health or any other statutory authority as a direct result of an outbreak of a "notifiable" human communicable disease at the "business premises", for not exceeding the "period of suspension".

[...]

3. Additional Definitions

[...]

(c) "Business premises" means only that part of the location shown on the "Coverage Summary" that you exclusively own, rent or occupy where you regularly conduct your business.

(d) "Notifiable" means required by law to be reported to public health authorities.

Wynward, "Extended Business Income" "11565"

Negative Publicity Coverage

This Form, subject to its terms and conditions, is extended to insure for not more than \$25,000 in any one policy year, loss of "business income" sustained by the Insured

including the expenses necessarily incurred to resume “normal” business operations, as a direct result of:

(i) an outbreak of contagious or infectious disease at the "premises" or within a radius of one (1) km thereof which requires notification of a public health authority

107. The Defendants have denied any Class Members' claims despite the contractual terms for pandemic coverage having been satisfied.

Exclusions Do Not Prevent Coverage in this Circumstance

108. The Exclusions listed in the Plaintiffs and Class Members' policies are similar or virtually identical. None of them specifically exclude the circumstances of SARS-CoV-2 spreading onto business premises and throughout the community at large, or the orders of civil authorities to address and arrest that spread.

Nature of the Contracts

109. The contagious and pervasive spread of COVID-19 throughout Canada caused loss or damage to Class Members' insured property. The ensuing orders, notices and directives of civil authorities requiring business closures, or imposing restrictions, were a direct result of the Pandemic and that damage.

110. Each of the Defendants' Business Interruption Insurance contracts provided coverage for losses relating to business interruption, including but not limited to lost revenues, rents, profits and/or expenses incurred, up to specified amounts.

111. The Defendants are insurers with a duty of good faith to Class Members, each of whom paid for and relied upon their assurance of their contracts with Defendants. The Defendants' Business Interruption Insurance coverage was intended to be interpreted broadly and any exclusions interpreted narrowly.

112. The losses grounding each and any Class Member's claim were fortuitous losses. They were losses occurring by accident or chance, not by any person's intention.

113. Each and all of the Defendants denied the Plaintiffs and any Class Members' claims without properly considering the claims, including the factual context.

114. At no time did the Defendants stipulate the impossibility of performing their contract, or "force majeure", as a reason for denying or discouraging the claims.

115. The Defendants are liable to the Plaintiffs and Class for damages for breach of contract. The damages include the amounts owed to Class Members under their Business Interruption Insurance policies, including lost revenues, profits and/or expenses.

BREACH OF THE DUTY OF GOOD FAITH

116. The Defendants had a duty to act in good faith and deal honestly in their contracts with the Plaintiffs and Class Members.

117. In denying the Plaintiffs' claims without considering the full factual context of the Pandemic and/or a proof of loss, the Defendants acted in bad faith.

118. In deciding to uniformly breach their Business Interruption Insurance contracts, each and all of the Defendants acted in bad faith in relation to their contracts with the Class Members.

119. In discouraging or downplaying the submission of proof of loss forms, not furnishing proof of loss forms, and/or not thoroughly assessing proof of loss forms received, the Defendants acted in bad faith in relation to their contracts with the Class Members.

120. In acting in bad faith, the Defendants' are liable for damages and further aggravating damages for their breaches of contract.

STATUTORY BREACH

121. The Defendants owed duties to the Plaintiffs and Class under the *Insurance Act*, R.S.O. 1990, c. I.8, as amended, and all other provincial insurance legislation relied on indicated below. The Defendants owed a duty to furnish proof of loss forms to the Plaintiffs and Class and properly accept and review those forms when assessing the claim.

122. The Defendants discouraged or downplayed the submission of proof of loss forms, did not furnish proof of loss forms, and/or provided them but did not accept receipt or adequately review the forms.

123. The Defendants' servants, employees and agents denied claims before furnishing proof of loss forms.

124. For example, in one denial letter from an agent of Economical, it was stated:

Even though there is no coverage for your claim, we are required by law to enclose a blank Proof of Loss form...

125. In another example, in one email from an agent of Federated, it was stated:

In accordance with the *Insurance Act*, I have attached a blank proof of loss form. This form is for your records only and does not require your attention at this time. [emphasis original]

126. When proofs of loss were submitted, they were not properly reviewed and considered in good faith, with a view to compensating proper claims.

UNJUST ENRICHMENT

127. The Defendants have each been unjustly enriched by their receipt of premiums, revenues, and other charges attributable to the sale of the insurance products to the Class.

128. Class Members have suffered a corresponding deprivation by paying premiums, and other charges to the Defendants for the Products.

129. There is no juristic reason for the enrichment because the Defendants breached their contracts and engaged in other deceptive and unlawful conduct aimed at the Class.

DAMAGES

130. Because of the spread of SARS-CoV-2 onto their business premises and within their communities, and the related civil authority orders, the Plaintiffs and Class Members were forced to significantly reduce their operations or close their businesses entirely for periods of weeks and months.

131. The Plaintiffs and Class Members' losses include, but are not limited to:

- (a) loss of premiums paid for the Business Interruption Insurance;
- (b) loss of profits,
- (c) loss of revenues,
- (d) loss of rents,
- (e) extra expenses incurred,
- (f) loss of property,
- (g) loss of customer base, and
- (h) loss or termination of employees.

132. The Defendants were contractually bound to cover some or all of the Plaintiffs' and Class Members' losses resulting from these reductions, as set out in the contracts.

133. The Defendants are liable to pay the Plaintiffs and Class Members damages for breach of contract, and further damages given the Defendants' bad faith conduct, statutory breaches, and unjust enrichment.

134. The Defendants are also liable to pay the Plaintiffs and Class Members punitive and exemplary damages for their breach of the duty of good faith and honest dealing in contractual relations.

RELIEF FROM FORFEITURE

135. In the circumstances of any claim denials by all of the Defendants in this action, it would be inequitable to hold Class Members to strict compliance with the proof of loss conditions in their contracts with the Defendants or under applicable insurance legislation. In all letters and communications with Class Members, each of the Defendants insinuated that the Business Interruption Insurance claim would be denied regardless of whether Class Members submitted proof of loss forms. The Defendants and their agents discouraged or downplayed the submission of proof of loss forms for Class Members' Business Interruption Insurance claims.

136. In these circumstances, the Plaintiffs and any Class Members that made claims acted reasonably in not submitting a proof of loss. Where proofs of loss were not submitted, or were submitted outside the time period stipulated, compliance was imperfect but did not constitute a breach of contract or a waiver of rights. There is no disparity between the value of the claim and the damage caused by lack of compliance. None of the Plaintiffs or Class Members are guilty of any fraud or wilful misconduct with respect to their Business Interruption Insurance claims. The Defendant insurers will not be seriously prejudiced by the imperfect compliance with any proof of loss submission condition in their contracts with Class Members.

REAL AND SUBSTANTIAL CONNECTION TO ONTARIO

137. The Plaintiffs plead that this action has a real and substantial connection with Ontario because, *inter alia*:

- (a) the Plaintiffs are registered to conduct business pursuant to the laws of Ontario;
- (b) the Plaintiffs operate their businesses in Ontario;
- (c) the Plaintiffs' owners, employees, servants and agents reside in Ontario;
- (d) the Defendants conduct business in Ontario;
- (e) the Defendants have corporate offices in Ontario;
- (f) contracts relating to the subject matter of this action were made in Ontario;
- (g) the causes of action arose in Ontario; and,
- (h) a significant number of the Class Members reside in Ontario.

STATUTES RELIED UPON

138. The Plaintiffs plead and rely upon:

- (a) the *Class Proceedings Act, 1992*, S.O. 1992, c. 6, as amended;
- (b) the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;

- (c) *An Act respecting certain measures in response to COVID-19*, S.C. 2020, c. 5;
- (d) *Emergency Management and Civil Protection Act*, R.S.O. 1990, c. E.9;
- (e) the *Insurance Act*, R.S.O. 1990, c. I.8, as amended;
- (f) the *Insurance Act*, R.S.B.C. 2012, c. 1, as amended;
- (g) the *Insurance Act*, R.S.A. 2000, c.I-3, as amended;
- (h) *The Insurance Act*, S.S. 2015, c. I-9.11, as amended;
- (i) *The Insurance Act*, C.C.S.M. c. 140, as amended;
- (j) *Insurers Act*, C.Q.L.R. c A-32.1, as amended;
- (k) *Insurance Act*, R.S.N.B. 1973, c. I-12, as amended;
- (l) *Insurance Act*, R.S.N.S. 1989, c. 231, as amended;
- (m) *Insurance Act*, R.S.P.E.I. 1988, c. I-4, as amended;
- (n) *Insurance Act*, R.S.Y. 2002, c. 119, as amended;
- (o) *Insurance Act*, R.S.N.W.T. 1988, c. I-4, as amended; and
- (p) *Insurance Act*, R.S.N.W.T. (Nu) 1988, c. I-4, as amended.

July 30, 2021

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Defendants

Court File No.: CV-20-00643488-00CP

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at TORONTO

Proceeding Under the *Class Proceedings Act, 1992*

FRESH AS AMENDED STATEMENT OF CLAIM

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-and-
Plaintiffs

AVIVA INSURANCE COMPANY OF CANADA et al.

Defendants

Court File No. CV-20-643488-CP

**ONTARIO
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ORDER

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