



Court File No.:

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Electronically issued : 06-Jul-2020
Délivré par voie électronique
Toronto

**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*

NOTICE OF ACTION

TO THE DEFENDANTS:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the *Rules of Civil Procedure*, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service, in this court office, **WITHIN TWENTY DAYS** after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the *Rules of Civil Procedure*. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

IF YOU PAY THE PLAINTIFF'S CLAIM, and \$5000.00 for costs, within the time for serving and filing your statement of defence, you may move to have this proceeding dismissed by the court. If you believe the amount claimed for costs is excessive, you may pay the plaintiff's claim and \$400.00 for costs and have the costs assessed by the court.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date: July 6, 2020

Issued by _____
Local registrar

Address of court office 393 University Ave.
Toronto, ON M5G 1E6

TO: AVIVA INSURANCE COMPANY OF CANADA
10 Aviva Way, Suite 100
Markham, ON L6G 0G1

AND TO: AVIVA GENERAL INSURANCE COMPANY
10 Aviva Way, Suite 100
Markham, ON L6G 0G1

AND TO: AVIVA CANADA INC.
10 Aviva Way, Suite 100
Markham, ON L6G 0G1

AND TO: CO-OPERATORS GENERAL INSURANCE COMPANY
130 Macdonell Street
Guelph, ON N1H 6P8

AND TO: CONTINENTAL CASUALTY COMPANY

151 Franklin St N,
Chicago, Illinois 60606

AND TO: DESJARDINS GENERAL INSURANCE GROUP INC.

6300 Boulevard Guillaume-Couture
Levis, QC G6V 6P9

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: GORE MUTUAL INSURANCE COMPANY FOUNDATION

252 Dundas Street North
Cambridge, ON N1R 5T3

AND TO: GORE MUTUAL INSURANCE COMPANY

252 Dundas Street North
Cambridge, ON N1R 5T3

AND TO: INTACT INSURANCE COMPANY

700 University Ave., Suite 1500A
Toronto, ON M5G 0A1

AND TO: INTACT FOUNDATION

700 University Ave., Suite 1500A
Toronto, ON M5G 0A1

AND TO: LLOYD'S CANADA INC.

1155 Rue Metcalfe Suite 2200
Montreal, QC H3B 2V6

**AND TO: MARC LIPMAN AS ATTORNEY-IN-FACT IN CANADA FOR
LLOYD'S UNDERWRITERS**

1155 Rue Metcalfe Suite 2200
Montreal, QC H3B 2V6

AND TO: LLOYD'S UNDERWRITERS

1155 Rue Metcalfe Suite 2200
Montreal, QC H3B 2V6

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, SK S4P 0J9

AND TO: TD GENERAL INSURANCE COMPANY
2161 Yonge Street, 4th Floor
Toronto, ON M4S 3A6

AND TO: TRAVELERS INSURANCE COMPANY OF CANADA
20 Queen Street West, Suite 300
Toronto, ON M5H 3R3

AND TO: THE 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 Notice of Action, 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, or policy provisions thereof, that provide that the insured can collect from the insurer amounts for losses associated with any kind of interruption of or interference with business operations, for any reason;
- (b) **"Class"** or **"Class Members"** means all persons and corporations in Canada, except for Excluded Persons, who contracted with a Defendant for any kind of Business Interruption Insurance (as defined above), and who suffered losses as a consequence of COVID-19, or decisions regarding COVID-19;
- (c) **"FSCO"** means the Financial Services Commission of Ontario;
- (d) **"Defendants"** means each and all of the named Defendants;
- (e) **"Excluded Persons"** means:
 - (i) the Defendants and their officers and directors;
 - (ii) the heirs, successors and assigns of the persons described in subparagraph (i); and
 - (iii) persons and corporations whose insurance policy explicitly excludes coverage for losses resulting from "pandemics" or "epidemics".
- (f) **"Pandemic"** or **"COVID-19"** means the pandemic associated with severe acute respiratory syndrome coronavirus 2 (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 each of the Defendants breached the terms of the contract set out in the Class' Business Interruption Insurance policies;
- (c) a declaration that each of the Defendants breached their common law duty of care to the Class in regards to providing Business Interruption Insurance products;
- (d) a declaration that each of the Defendants is liable to the Plaintiffs and Class for conspiring or colluding to deny the Class' coverage in all situations related to the Pandemic;
- (e) a declaration that each of the Defendants acted in bad faith in not fulfilling Business Interruption Insurance during the Pandemic;
- (f) a declaration that the Defendants are liable to the Plaintiffs and Class Members for damages caused by the Defendants' breaches of contract, breaches of the common law duty of care, conspiracy and collusions, and acting in bad faith towards the Plaintiffs and Class;
- (g) aggregate damages in an amount to be determined for the Defendants' breaches of contract, breaches of the common law duty of care, conspiracy and collusions, and acting in bad faith towards the Plaintiffs and Class;
- (h) 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;
- (i) 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;
- (j) an order for restitution flowing from the Defendants' unjust enrichment;

- (k) other general damages in an amount to be fixed by this Honourable Court;
- (l) special damages in an amount to be fixed by this Honourable Court;
- (m) a reference to decide any issues not decided at the trial of the common issues;
- (n) prejudgment and post-judgment interest pursuant to the *Courts of Justice Act*, R.S.O. 1990, c. C.43 (the "*CJA*");
- (o) costs of this action pursuant to the *Class Proceedings Act, 1992*, S.O. 1992, c. 6 (the "*CPA*"), 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,
- (p) such further and other relief as to this Honourable Court seems just.

OVERVIEW

3. Due to the outbreak and spread of COVID-19 in Canada, and the resulting orders, notices and directives particularized below, the Plaintiffs and Class members were forced to close or significantly reduce the operations of their businesses. They suffered and continue to suffer severe economic losses. The Plaintiffs and Class members purchased and maintained insurance coverage for these types of events and the resulting losses suffered. Each of the Defendants has refused to honour their agreements with Class Members and have refused to cover such business losses. In many circumstances, the Defendants have refused to cover such losses before they have even been formally claimed, frustrating any attempt to permit claims under the contracts.

4. Each of the Defendants' conduct in refusing to honour their insurance agreements with the Class Members represents an industry-wide, collective and common wrong. Their conduct undermines the very purpose of this form of insurance coverage, which is to protect business owners when circumstances beyond their control close or disrupt their businesses. Each of the Defendants collected massive sums in the form of insurance

premiums over periods of years or decades, only to reject coverage when Canadian businesses needed it most.

THE PARTIES

5. The Plaintiffs, Workman Optometry Professional Corporation and 1298928 Ontario Ltd. (collectively the "**Workman Plaintiffs**"), are corporations, registered pursuant to the laws of Ontario. They are owned and operated by Dr. Darryl Workman.

6. The Workman Plaintiffs contracted with Royal & Sun Alliance for insurance that included Business Interruption Insurance. The Workman Plaintiffs have been continuously paying insurance premiums since that date, without fail. The Forms and/or policies outlining the Workman Plaintiffs' Business Interruption Insurance coverage specifically state:

Loss, as covered by the "Business Income Form" insured by this policy, and resulting from interruption of the business in consequence of direct physical loss of, destruction or damage to property, by a peril insured, at any "contingent premises" shall be deemed to be loss resulting from destruction or damage by a peril insured at the "premises".

Any Business Interruption and/or Extra Expense coverage forming a part of this Form is extended to cover loss of the kinds described herein, during the period of time not exceeding two (2) weeks from the date when, as a direct result of an "accident" either at a "location" or at an adjacent location, access to the "location" described in any such coverage is prohibited by order of civil authority.

7. The Workman Plaintiffs submitted a claim to Royal & Sun Alliance for Business Interruption Insurance coverage. Their claim was denied before the insurer provided or examined a Proof of Loss form.

8. The Plaintiff, The Suit Shop Co. Ltd. ("**Suit Supply**"), is a corporation, registered pursuant to the laws of Ontario. It is owned and operated by Lazaros Dimitriou.

9. Suit Supply contracted with Travelers Insurance Company of Canada for insurance that included Business Interruption Insurance. Suit Supply has been continuously paying insurance premiums since that date, without fail. The Forms and/or

policies outlining the Suit Supply's Business Interruption Insurance coverage specifically states:

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."

"Indemnity Period" means the period beginning with the occurrence of the "Damage" and ending not later than 12 consecutive calendar months (or such other period if so specified in the "Declarations" as the maximum indemnity period) thereafter during which the results of the "Business" shall be affected in consequence of the "Damage".
[...]

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.

10. Suit Supply submitted a claim to Travelers Insurance Company of Canada for Business Interruption Insurance coverage. Its claim was denied before the insurer provided or examined a Proof of Loss form.

11. 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. They are each owned and/or operated by Jose Miguel Aguila. They each contracted with Wynward Insurance Group for insurance that included Business Interruption Insurance. The Booster Juice Plaintiffs have been continuously paying insurance premiums since that date, without fail. The Forms and/or policies outlining the Booster Juice Plaintiffs' Business Interruption Insurance coverage specifically state:

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.

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 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.

12. The Booster Juice Plaintiffs submitted claims to Wynward Insurance Group for Business Interruption Insurance coverage. Their claims were denied before the insurer provided or examined a Proof of Loss form.

13. The Plaintiff, Scotian Isle Baked Goods Inc. ("**Scotian Isle**"), is a corporation registered pursuant to the laws of Ontario. It is owned and operated by Joseph MacDonald. Scotian Isle contracted with Federated Insurance for insurance that included Business Interruption Insurance. Scotian Isle has been continuously paying insurance premiums since that date, without fail. The Forms and/or policies outlining this Business Interruption Insurance coverage specifically state:

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"; or [...] at other property located within 1 kilometre of your "scheduled risk location", 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.

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.

14. Scotian Isle submitted a claim to Federated Insurance for Business Interruption Insurance coverage. Its claim was denied before the insurer provided or examined a Proof of Loss form.

15. The Plaintiff, In Harmony Dance Studios Ltd ("**In Harmony**"), is a corporation registered pursuant to the laws of Ontario. It is owned and operated by Leah Anna Sanguinetti. It contracted with Novex Insurance Company for insurance that included Business Interruption Insurance. The policy was underwritten by Intact Insurance Company and/or Intact Insurance Foundation. In Harmony has been continuously paying insurance premiums since that date, without fail. The Forms and/or policies outlining this Business Interruption Insurance coverage specifically state:

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 neighbouring premises by a peril insured against under this policy.

16. In Harmony submitted a claim to Novex Insurance Company for Business Interruption Insurance coverage. Its claim was denied before the insurer provided or examined a Proof of Loss form.

17. The Plaintiff, Rana Taji Optometry Professional Corporation ("**Rana Taji**") is a corporation registered pursuant to the laws of Ontario. It is owned and operated by Dr. Rana Taji. It contracted with Continental Casualty Company for insurance that included Business Interruption Insurance. Rana Taji has been continuously paying insurance premiums since that date, without fail. The Forms and/or policies outlining these Business Interruption Insurance coverage specifically state:

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, unless a limitation is specific in another Coverage Section of the Policy.

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 restrictions 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'.

18. Rana Taji submitted a claim to Continental Casualty for Business Interruption Insurance coverage. Its claim was denied before the insurer provided or examined a Proof of Loss form.

19. The Plaintiffs' policies are all "all risks" policies. That is, they explicitly state that the insured is covered for "all risks" of physical 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".

20. The Defendant, Aviva Insurance Company of Canada ("Aviva") (also known as Aviva Compagnie D'Assurance du Canada), is a corporation registered pursuant to the laws of Canada, with a registered office in Markham, Ontario. It is licensed by the FSCO to provide accident & sickness, aircraft, automobile, boiler & machinery, fidelity, hail, legal expense, liability, property, surety and marine insurance in Canada. It provides Business Interruption Insurance to Class Members through its insurance contracts.

21. The Defendant, Aviva General Insurance Company, is a corporation registered pursuant to the laws of Canada, with a registered office in Markham, Ontario. It is licensed by the FSCO to provide automobile, liability, property, accident & sickness, and credit insurance. It provides Business Interruption Insurance to Class Members through its insurance contracts.

22. The Defendant, Aviva Canada Inc., is a corporation registered pursuant to the laws of Ontario, with a registered office in Markham, Ontario. It is the entity responsible for administering Aviva General Insurance Company and Aviva Insurance Company of Canada in Ontario.

23. 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 provides Business Interruption Insurance to Class Members through its insurance contracts.

24. 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 provides Business Interruption Insurance to Class Members through its insurance contracts.

25. The Defendant, Desjardins General Insurance Services Inc. (also known as Desjardins, services d'assurances générales, inc. and Desjardins Assurances Générales Inc.) ("Desjardins"), is a corporation incorporated pursuant to the laws of Canada, with a registered office in Lévis, Québec. The Autorité des Marchés Financiers (Québec) has granted it the right to practice automobile, fidelity, fire, property, liability, title, and boiler & machinery insurance. It provides Business Interruption Insurance to Class Members through its insurance contracts.

26. The Defendant, Economical Mutual Insurance Company, 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 provides Business Interruption Insurance to Class Members through its property insurance contracts.

27. 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 provides Business Interruption Insurance to Class Members through its property insurance contracts.

28. The Defendant, Gore Mutual Insurance Company Foundation, is a corporation registered pursuant to the laws of Canada with a registered office 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 provides Business Interruption Insurance to the Plaintiff and Class Members through its property insurance contracts.

29. 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 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 provides Business Interruption Insurance to the Plaintiff and Class Members through its property insurance contracts.

30. 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 provides Business Interruption Insurance to Class Members with its property insurance contracts.

31. The Defendant, Intact Foundation, is a non-for-profit corporation registered pursuant to the laws of Canada, with a registered office in 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 provides Business Interruption Insurance to the Plaintiff and Class Members through its property insurance contracts.

32. The Defendant, Lloyd's Canada Inc. ("Lloyd's"), is a corporation registered pursuant to the laws of Canada, with a registered office in Montreal, Québec. It is licensed by FSCO to provide accident & sickness, aircraft, automobile, boiler & machinery, credit, fidelity, hail, legal expense, liability, property, marine, surety, and title insurance. It provides Business Interruption Insurance to Class Members with its property insurance contracts.

33. The Defendant, Marc Lipman as Attorney-in-Fact in Canada for Lloyd's Underwriters, is an individual who is resident in Canada, who is designated and nominated by Lloyd's Underwriters to represent it in Canada. To fulfill this role, Mr. Lipman maintains a business office in Montreal, Québec.

34. The Defendant, Lloyd's Underwriters, is an insurance syndicate registered pursuant to the laws of Canada, with a registered office in Montreal, Québec. It is licensed by FSCO to provide accident & sickness, aircraft, automobile, boiler & machinery, credit, fidelity, hail, legal expense, liability, property, marine, surety, and

title insurance. It provides Business Interruption Insurance to Class Members with its property insurance contracts.

35. 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 provides Business Interruption Insurance to Class Members with its property insurance contracts.

36. 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 provides 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.

37. 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 provides Business Interruption Insurance to Class Members with its property insurance contracts.

38. 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 provides Business Interruption Insurance to Class Members with its property insurance contracts.

39. The Defendant, TD General Insurance Company ("TD General"), is a corporation registered pursuant to the laws of Canada, with a registered office in Toronto, Ontario. It

is licensed by FSCO to provide automobile, liability, and property insurance. It provides Business Interruption Insurance to Class Members with its property insurance contracts.

40. The Defendant, Travelers Insurance Company of Canada ("Travelers"), 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, title, credit, aircraft, marine, automobile, accident & sickness insurance. It provides Business Interruption Insurance to Class Members with its property insurance contracts.

41. 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 provides Business Interruption Insurance to Class Members with its property insurance contracts.

42. 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 provides Business Interruption Insurance to Class Members with its property insurance contracts.

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

BREACH OF CONTRACT

44. Each of the Defendants contracted with the Plaintiffs and Class Members to provide amounts compensating for the Plaintiffs and Class Members' losses suffered as a result of some kind of business interference or interruption. Every Plaintiff and Class Member had a contract with one or more of the Defendants for Business Interruption

Insurance. 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.

45. All the Class Member policies have terms requiring the Defendants to cover losses associated with some kind of business interference or interruption. The policies outlining the Class' Business Interruption Insurance are substantially similar and give rise to the same interpretation issues.

46. The Plaintiffs' policies are all "all risks" policies. That is, they explicitly state that the insured is covered for "all risks" of physical 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".

47. The Defendants breached the terms of their contracts with the Plaintiffs and Class in similar ways, including: denying interruption by civil authority order, denying interruption indemnity, or denying pandemic coverage. Each is particularized below.

Breach in Denying Interruption by Civil Authority Coverage

48. Class Member policies have similar terms requiring the Defendants to cover losses flowing from business interruption related to a "civil authority" order. The policy language identifying these terms includes, but is not limited to the following:

Co-Operators Interruption by Civil Authority Policy

This Form is extended to include the actual loss as 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.

Desjardins Interruption by Civil Authority Policy

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.

Economical Mutual Interruption by Civil Authority Policy

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.

Federated Interruption by Civil Authority Policy

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.

Gore Mutual Interruption by Civil Authority Policy

This extension 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.

Intact Interruption by Civil Authority Policy

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 neighbouring premises by a peril insured against under this policy.

Royal & Sun Interruption by Civil Authority Policy

Any Business Interruption and/or Extra Expense coverage forming a part of this Form is extended to cover loss of the kinds described herein, during the period of time not exceeding two (2) weeks from the date when, as a direct result of an "accident" either at a "location" or at an adjacent location, access to the "location" described in any such coverage is prohibited by order of civil authority.

Travelers Interruption by Civil Authority Policy

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 Interruption by Civil Authority Policy

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 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.

Breach in Denying Interruption Indemnity Coverage

49. Class Members have similar terms requiring the insurer to cover losses as "indemnity" following business interruption, such as, but not limited to, the following:

Co-operators Interruption Indemnity Policy

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 Indemnity Policy

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, unless a limitation is specific in another Coverage Section of the Policy.

Federated Insurance Interruption Indemnity Policy

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"; or [...] at other property located within 1 kilometre of your "scheduled risk location", 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 Mutual Interruption Indemnity Policy

This extension shall provide up to \$25,000 for loss resulting from interruption of or interference with the business in consequence of damage to property in neighbouring premises to the insured that shall prevent or hinder the use thereof or access thereto, whether the premises or property of the insured therein shall be damaged or not, shall be deemed to be a loss resulting from damage to property used by the insured at the premises.

Intact Interruption Indemnity Policy

This Form insures against loss directly resulting from necessary interruption of the Insured' 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 Interruption Indemnity Policy

Loss, as covered by the "Business Income Form" insured by this policy, and resulting from interruption of the business in consequence of direct physical loss of, destruction or damage to property, by a peril insured, at any "contingent premises" shall be deemed to be loss resulting from destruction or damage by a peril insured at the "premises".

Travelers Interruption Indemnity Policy

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."

"Indemnity Period" means the period beginning with the occurrence of the "Damage" and ending not later than 12 consecutive calendar months (or such other period if so specified in the "Declarations" as the maximum indemnity period) thereafter during which the results of the "Business" shall be affected in consequence of the "Damage".

Wynward Interruption Indemnity Policy

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.

Breach in Denying Pandemic Coverage

50. Certain Class Members have similar terms of 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 Policy

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.

Continental Casualty Policy Civil Authority Extension

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 restrictions 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'.

Federated Insurance Policy

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.

Exclusions Do Not Prevent Coverage in this Circumstance

51. The Exclusions listed in the Plaintiffs and Class Members' policies are similar or virtually identical. None of them specifically exclude contamination or risk of contamination by pandemics. None of the Class members' policy language specifically excludes circumstances such as COVID-19 or its resulting orders, notices, advisories, directives and guidelines.

NEGLIGENCE

52. At all material times, the Defendants each had a special contractual relationship of proximity with the Plaintiffs and Class. The Defendants were suppliers of the Business Interruption Insurance product and the Plaintiffs and Class were consumers.

53. At all material times, the Defendants owed a duty of care to the Plaintiffs and Class Members. The Defendants were each required to act according to the standard of a reasonable and prudent insurer.

54. The Defendants are all jointly and severally liable to the Class in tort for negligence.

55. At all material times, the Defendants knew or ought to have known that failing in their duty of care to the Plaintiffs and Class, for example in representing the Business Interruption Insurance product or in not providing the intended coverage for it to the Plaintiffs or Class Members, would result in foreseeable losses to the Plaintiffs and Class.

56. The Defendants caused losses to the Plaintiffs and Class Members by failing to perform their duty of care with respect to Business Interruption Insurance, for example in representing the Business Interruption Insurance product or in not providing the intended coverage to the Plaintiffs or Class Members.

57. At no material time were the Plaintiffs' or Class Members' losses so remote so as to exclude this claim for negligence.

CONSPIRACY

Civil Conspiracy

58. The Defendants entered into an agreement, directly, indirectly, or tacitly, to deny Business Interruption Insurance related to COVID-19.

59. Without properly assessing each claim, as is required by their contracts with Class Members and the insurance legislation in each province, the Defendants unilaterally denied Business Interruption Insurance claims that should have been honoured under their contracts.

Breach of the Competition Act

60. The Defendants, at all material times, owed statutory duties to the Plaintiffs under the *Competition Act*, R.S.C. 1985, c. C-34 (the “*Competition Act*”). The Defendants were prohibited as competitors from entering into agreements to fix, maintain, control, prevent, lessen or eliminate the production or supply of a product.

61. The Defendants entered into an agreement or colluded, directly, indirectly, or tacitly, to deny Business Interruption Insurance related to COVID-19, as a product on the property insurance market.

62. By conspiring to deny Business Interruption Insurance, directly, indirectly, or tacitly, the Defendants breached the *Competition Act*, R.S.C. 1985, c. C-34.

BREACH OF THE DUTY OF GOOD FAITH

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

64. In denying the Plaintiffs' claims without considering a fulsome description and proof of loss, the Defendants acted in bad faith.

65. In unilaterally deciding not to fulfil their Business Interruption Insurance contracts, each and all of the Defendants acted in bad faith in relation to their contracts with the Class Members.

66. In not furnishing appropriate proof of loss forms and not thoroughly assessing proof of loss forms received, the Defendants acted in bad faith in relation to their contracts with the Class Members.

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

STATUTORY BREACH

68. 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, as 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.

69. The Defendants' servants, employees and agents either did not furnish proof of loss forms, or provided them after a denial of coverage, or provided them but did not

allow them to be submitted and adequately reviewed. In doing so, they breached their statutory duties.

70. The Defendants' servants, employees and agents denied claims before furnishing, accepting and reviewing proof of loss forms. In doing so, they breached their statutory duties.

UNJUST ENRICHMENT AND WAIVER OF TORT

71. Further, and in the alternative, the Plaintiffs waive any tort pleaded above, and pleads that they and the Class are entitled to claim and recover based on equitable and restitutionary principles.

72. 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.

73. Class Members have suffered a corresponding deprivation by paying premiums and other charges to the Defendants for the Business Interruption Insurance products, and not receiving the intended product when they made a claim.

74. There is no juristic reason for the enrichment of the Defendants due to the deceptive and unlawful nature of the Defendants' conduct.

STATUTES RELIED UPON

75. The Plaintiffs plead and rely upon, amongst others:

- (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) the *Competition Act*, R.S.C. 1985, c. C-34, as amended;
- (d) *An Act respecting certain measures in response to COVID-19*, S.C. 2020, c. 5;
- (e) *Emergency Management and Civil Protection Act*, R.S.O. 1990, c. E.9;
- (f) the *Insurance Act*, R.S.O. 1990, c. I.8, as amended;

- (g) the *Insurance Act*, R.S.B.C. 2012, c. 1, as amended;
- (h) the *Insurance Act*, R.S.A. 2000, c.I-3, as amended;
- (i) *The Insurance Act*, S.S. 2015, c. I-9.11, as amended;
- (j) *The Insurance Act*, C.C.S.M. c. 140, as amended;
- (k) *Insurers Act*, C.Q.L.R. c A-32.1, as amended;
- (l) *Insurance Act*, R.S.N.B. 1973, c. I-12, as amended;
- (m) *Insurance Act*, R.S.N.S. 1989, c. 231, as amended;
- (n) *Insurance Act*, R.S.P.E.I. 1988, c. I-4, as amended;
- (o) *Insurance Act*, R.S.Y. 2002, c. 119, as amended;
- (p) *Insurance Act*, R.S.N.W.T. 1988, c. I-4, as amended; and
- (q) *Insurance Act*, R.S.N.W.T. (Nu) 1988, c. I-4, as amended.

July 6, 2020

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Court File No.:

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at TORONTO

Proceeding Under the *Class Proceedings Act, 1992*

NOTICE OF ACTION

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