

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE) THURSDAY THE 21ST
)
JUSTICE BELOBABA) DAY OF APRIL 2022

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*

**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 of the plaintiffs, with the action having been previously certified against all remaining defendants, and on being advised of the consent of the defendants Certain Underwriters at Lloyd's Subscribing to Policy No. LNP2210 and Certain Underwriters at Lloyd's Subscribing to Policy No. GASS1300 (collectively, "**Certain Underwriters**"), both in respect of Property Insurance containing Business Interruption Coverage (hereinafter "Business Interruption Insurance"),

AND UPON BEING ADVISED that the plaintiffs and Certain Underwriters 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 plaintiffs and Certain Underwriters at Lloyd's subscribing to policy no. SR040046 consent to the dismissal of the action as against Certain Underwriters at Lloyd's Subscribing to Policy No. SR040046 on a without costs basis,

1. THIS COURT ORDERS that this action is dismissed as against Certain Underwriters at Lloyd's Subscribing to Policy No. SR040046, on a without costs basis, with prejudice in relation to any potential claims that could have been asserted on or before August 31, 2021.

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. 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 this action is hereby certified as a class proceeding as against Certain Underwriters in respect of Policy No. LNP2210 and Policy No. GASS1300.

4. 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 Certain Underwriters 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 Certain Underwriters in respect of any of the Forms No. PAP1 (Adapted from IBC 4037), BA11, RB1, MFI-CEE, GARGS8, GARGS9, GACGS10, GARGS11, GACGS12, GARGS15, GAAGS17, and GACGS18, as contained in Policy No. LNP2210 and Policy No. GASS1300 (collectively, the "**Policy**").

5. 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.

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

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

8. 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 the Policy?

- (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 the Policy?
- (iii) If the answer to either of the first two questions is “yes”, are there any exclusions in the Policy 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 the Policy.

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

9. 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.

10. 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*.

11. THIS COURT ORDERS that this order and any reasons given by the Court in connection with this order are without prejudice to Certain Underwriters' defences and rights to raise any arguments on any motion contemplated in paragraph 9 above, including to seek

directions, challenge the pleadings, move for decertification, and oppose certification of the Remaining Common Issues on any basis.

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

Signed: *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.

Workman Optometry et. al. and Certas et. al.
Plaintiffs Defendants

Court File No. (Commercial List): CV-22-00676162-00CL
Court File No. CV-18-58951800 CP

ONTARIO
SUPERIOR COURT OF JUSTICE
Proceeding commenced at TORONTO
Proceeding Under the *Class Proceedings Act, 1992*

ORDER

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