



FAQs – Denturists Class Action against Aviva

What is this case all about?

Lerners LLP has filed a proposed class action against Aviva Insurance Company of Canada on behalf of Ontario denturists whose insurance coverage for loss of business income relating to COVID-19 has been denied by Aviva.

This action applies to Denturists Association of Ontario (DAO) members who were insured under the commercial insurance policy issued by Aviva on behalf of the DAO (pursuant to the *Denturists and Hearing Aid Specialists Program*, bearing Policy # 81278157). The action alleges that Aviva is in breach of contract when it denied loss of business income coverage to denturists after they were ordered by the provincial government to close their non-essential businesses due to the outbreak of COVID-19. The proposed action claims for payment of loss of business income damages to those denturists with the Aviva policy.

What is a class action?

A class action is a type of legal proceeding. It is designed to let groups of people, each of whom might only have modest claims, to collectively pursue compensation. Litigation today is very expensive. Without the ability to pursue smaller claims collectively, individuals may not have access to justice. Class actions are also designed to discourage harmful practices and behaviours, including the wrongful denial of insurance coverage, where the costs of litigation may otherwise make pursuit of remedies for these wrongful acts “cost” prohibitive.

Are we a member of the class?

The proposed definition of the class is:

“All persons, natural or corporate, carrying on operations usual to a denturist who were insured by Aviva Insurance Company of Canada (“Aviva”) under a Commercial Insurance Policy issued by Aviva on behalf of the Denturist Association of Ontario, pursuant to the Denturists and Hearing Aid Specialists Program, bearing Policy # 81278157, whose businesses were restricted as a result of a mandatory Closure Order made by the Province of Ontario on March 23, 2020, and were denied coverage for Business Income-Actual Loss Sustained (Form 402014-02)”

If this definition is approved by the Court, you will be a member of the class if you are a denturist who was insured with the commercial policy issued by Aviva pursuant to the *Denturists and Hearing Aid Specialists Program*, which was procured through NFP Canada Corp., insurance broker (formerly McLean Hallmark Insurance Group Limited).

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How do we get involved in this class action?

In Ontario, the law permits one or more individuals to start a class action and to act as a representative plaintiff on behalf of the class. In this case, the proposed representative plaintiff is Matt McCallum, dentist in London, Ontario. However, the action must first be certified by a court to ensure that it meets certain criteria. The next step in the litigation is to seek certification of the class action before a judge in Ontario's Superior Court of Justice. If the proposed class action is certified, this proceeding will move forward as a class action.

Following Certification, the Court will order that all members of the class receive notice of the class proceeding (Notice of Certification). Notice of Certification will be provided to you, class members, to provide you with the opportunity to decide if you want to have your rights determined in the class action. If you do, you do not need to do anything to formally "join" the class action. So long as you fall within the class, you are automatically included in the class action as a class member, unless you opt out.

If you are uncertain as to whether you are a part of the class action, feel free to contact us at the contact information provided below.

It is very important that you notify Aviva that you have suffered a loss of business income relating to COVID-19 and ask for confirmation of coverage. This will likely trigger a denial letter from Aviva. If you have not done so already, please take immediate steps to notify Aviva or contact your insurance broker, NFP Canada Corp (formerly McLean Hallmark Insurance Group Limited).

What does it mean to be a class member?

Being a class member allows you to have your claims asserted in the class action as opposed to having to bring a separate legal proceeding. Those who do not wish to be part of the class action can opt out and thereafter take no part in the proceeding. Those who choose to opt out will not benefit from any monies received in the event of a settlement or a finding of liability by the Court. Alternatively, those who do not opt out will be legally bound by the outcome of this action.

As a class member, you are not responsible for any cost awards that might be made by the Court during the common issues phase of this action. Similarly, as a class member, you are not exposed to any liability.

If you wish to have your claim advanced through the class proceedings, you do not need to quantify the amount of your claim at this time. The value of your claim will be determined later in the class proceeding and we will be able to assist you with that process.

How many people are in the class?

You are not alone. There are approximately 250 denturists across Ontario who are putative class members. The COVID-19 outbreak has affected each denturist differently and all of them will be entitled to advance their own claim for compensation.

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How long will this take?

It is hard to predict with certainty as there are many factors that may shorten or lengthen the time it takes for a case to be finally determined. It is our intention to proceed with the action as expeditiously as reasonably possible. We will seek early certification of the action and a determination of the common issues.

How much will this cost us?

As a class member, it does not cost you anything to have your rights determined as part of the common issues.

Class counsel and the representative plaintiff have entered into a contingency fee agreement. This means that class counsel will only be paid for their work if the class action is successful. It is important to emphasize that any fees charged by class counsel must first be approved by the Court.

What about any costs to file our individual claim?

If we are successful on the common issues, the Court will be asked to determine the process to assess individual damages. Most class actions like these have a simple mechanism for individual assessments. We do not anticipate the costs to be significant. The exact process will be determined by the Court if the class action is successful and a better understanding of the process will be made available at that time. When it is time for you to file your specific claim, we will contact you to provide you with additional information and to assist you in pursuing your claim if you requested.

What records should we preserve?

You should keep all documents you have relating to your claim. These documents include communications with Aviva and your insurance broker, NFP Canada Corp. (formerly McLean Hallmark Insurance Group Limited). You should maintain all financial and business records related to your operations until you receive further information from class counsel.

Who can we contact if we have more questions?

Please do not hesitate to contact us if you have any questions or consult with your own legal counsel. We strongly recommended that you provide us with contact information, and that it is kept up to date, so that we are able to contact you when necessary.

Please check the websites for this class action from time to time for any information updates:

<https://www.lerners.ca/cases/denturists-class-action/>

If you are a denturist with an insurance policy issued by Aviva and was denied loss of business income coverage, please contact [Alfonso Campos Reales](mailto:Alfonso_Campos_Reales@lerners.ca) at acamposreales@lerners.ca or 519.640.6362.