



Court File No.:

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Electronically issued : 23-Jul-2020
Délivré par voie électronique : 23-Jul-2020
London

ROSHAN HOLDINGS INC.

Plaintiff

- and -

AVIVA INSURANCE COMPANY OF CANADA

Defendant

Proceeding under the *Class Proceedings Act, 1992*

STATEMENT OF CLAIM

TO THE DEFENDANT

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.

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 , 2020

Issued by _____
Local registrar

Address of 80 Dundas Street
court office London ON N6A 6A3

TO: **Aviva Insurance Company of Canada**
10 Aviva Way
Suite #100
Markham, ON L6G 0G1

CLAIM

1. The plaintiff claims on its own behalf and on behalf of the other members of the Class as described below:

- (a) an order pursuant to the provisions of the *Class Proceeding Act*, 1992 S.O. 1992, c. 6, certifying this action as a class proceeding and appointing the plaintiff as representative plaintiff of a class of persons (hereinafter the “Class”) described as follows:

“All persons, natural or corporate, who were insured by Aviva Insurance Company of Canada (“Aviva”) under a Commercial Insurance Policy issued by Aviva, pursuant to the *Hotel Program*, whose access to their businesses were prohibited, in whole or in part, as a result of a mandatory Closure Orders made by the Province of Ontario on March 23, 2020, and similar Closure Orders made in all provinces and territories in Canada, and were denied coverage for Business Income (Form H-001803-08)”

- (b) a declaration that the loss of business income caused by the mandatory Closure Orders (the “Closure Orders”) are covered under the Business Income (H-001803-08) and Hotel Program Business Interruption Endorsement (Form H2) issued by the Defendant to Class members;
- (c) payment to the plaintiff and Class members in accordance with the insurance policy issued by the defendant;
- (d) a declaration that the defendant breached its contract with the plaintiff and Class members in denying coverage;
- (e) damages for breach of contract in the amount of \$150,000,000, including loss of business income and accountants’ fees;

- (f) interest on the aforesaid sum in accordance with the provisions of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended, or at common law, on a compounded basis or otherwise;
- (g) the costs of this action on a full indemnity basis and, pursuant to s. 26(g) of the *Class Proceeding Act, 1992*, the costs associated with publication of any and all court-ordered notice to the Class and/or costs associated with the administration of any court approved plan of distribution redirecting amounts recovered in the action to Class members; and,
- (h) such further and other relief as the plaintiff may request and this Honourable Court may deem just and appropriate.

The Parties

2. Operating under Roshan Holdings Inc., the plaintiff owns and operates two hotels, a Home 2 by Hilton located at 8490 Parkhill Drive, Milton and a Hampton Inn located at 3900 Fisher Drive, Peterborough.

3. The defendant, Aviva Insurance Company of Canada (hereinafter “Aviva”), is a corporation having its headquarters in the province of Ontario and carrying on business throughout Canada as property and casualty insurers. At all material times, the plaintiff and Class members were insured pursuant to a valid policy of insurance issued by Aviva.

The Insurance Policy

4. Specifically, the plaintiff and Class members were at all material times insured pursuant to an insurance policy program underwritten by Aviva as the *Hotel Program* (the “Policy”). In particular, at all material times the plaintiff was insured pursuant to a valid policy of insurance bearing policy number Hotel053P/Hotel053U.

5. The Policy provides various coverages for losses suffered during the policy period. The Policy covers, among other things, property damage issues, general liability and business income losses.

6. The Policy contains a “Hotel Program Business Interruption Endorsement” (Form H2) which specifically modifies the extensions of coverage provided under Form H-001803.

7. The Restricted Access provision under the endorsement provides:

Coverage C of section I insures, subject to all its terms and provisions, for an amount not exceeding \$500,000 in any one policy year or any other amount shown on the “Declaration Page” for this extension, loss of business income sustained by the Insured, including the amount of any extra expenses necessarily incurred by the Insured to continue to resume operations as nearly normal as possible, while access to the “premises” is prohibited in whole or in part by order of civil authority or by advice of the Public Health Authority or similar authority, but only when such order or advice is given as a direct result of any or all of the following occurrences:

- ii. the outbreak of a notifiable contagious or infectious disease;

Loss of Business Income Coverage Triggered

8. On March 17, 2020, the province of Ontario declared a provincial state of emergency to help contain the spread of the COVID-19 outbreak. The province declared that the outbreak of COVID-19, a communicable disease, constituted a danger of major proportions that could result in serious harm to persons. Similar emergency declarations were made across Canada.

9. Diseases of public health significance and communicable diseases, including COVID-19, must be reported to government authorities.

10. Pursuant to the Closure Orders, the province of Ontario and other provinces and territories of Canada ordered the mandatory closure of all places of non-essential business and limited the operations of businesses deemed

essential to help protect the health and safety of the people of Canada in response to the COVID-19 outbreak.

11. The plaintiff and Class members' insured businesses were affected by the Closure Orders. Although the hotels were not completely closed, their operations were significantly restricted while access to their business was prohibited in whole or in part by the Closure Orders. The hotels could not offer food and beverage service, and all of the amenities including the pool and gym were mandated to close under the Closure Orders due to COVID-19. While the hotels had rooms that were available to be rented, the reality was no one was renting them. Access to and from hotels places of business was prohibited, in whole or in part, by Closure Orders as Canadians were told to stay home, and international borders were closed to tourists. Customers were restricted from attending the premises. As a result, the plaintiff and Class members sustained a loss of business income.

Denial of Coverage

12. Following the Closure Orders, the plaintiff presented a claim to Aviva for loss of business income insurance, in accordance with the Policy.

13. Aviva has denied coverage to the plaintiff, despite the fact that the plaintiff is covered for this type of loss. On May 22, 2020, Aviva sent a letter to the plaintiff setting out the basis of its denial of coverage. In a follow up letter on June 8, 2020, Aviva further outlined the basis of its denial of coverage. Aviva is interpreting the coverage to apply only to outbreaks that occurred "at or within the applicable area of the insured premises". Aviva further stated that "there is no coverage under the policy for business income losses resulting from the Closure Orders made in response to the current worldwide COVID-19 pandemic." Aviva sent similar letters to all Class members, relying upon the same reasons for its blanket denial of coverage.

14. The plaintiff and Class members have satisfied or substantially satisfied all conditions of the Policy and are entitled to coverage under the policy for their loss of business income sustained as a result of the Closure Orders.

15. Alternatively, the plaintiff and Class members are entitled to relief from forfeiture pursuant to the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended, should the plaintiff or any Class members be found to have had imperfect compliance with the conditions of the Policy.

Breach of Contract

16. The plaintiff pleads that the defendant is contractually obligated to compensate the plaintiff and Class members for any loss of business income referred to in the Policy, and that by failing to do so, the defendant has breached the contractual obligation owed to the plaintiff and Class members under the Policy.

17. The plaintiff and Class members paid premiums for loss of business income insurance in the expectation that the defendant would honour its contractual obligations in good faith. The Closure Orders made, due to the COVID-19 outbreak, resulted in the mandatory prohibition, in whole or in part, of access to their business premises. The plaintiff and Class members have suffered an ongoing loss of business income.

18. The defendant has failed to honour its contractual obligations and has failed to deliver the peace of mind that the plaintiff and Class members relied upon when they paid for insurance.

Damages

19. As a result of the breach of contract by the defendant, the plaintiff and Class members have suffered and will continue to suffer damages, including loss of business income and accountants' fees for producing particulars or details of their losses.

20. The plaintiff is entitled to claim damages on behalf of all Class members.

Certification

21. The plaintiff pleads that the within action meets the criteria for to certification as a class proceeding in accordance with s. 5 of the *Class Proceedings Act, 1992, supra*. Without limiting the generality of the foregoing:

- (a) the statement of claim herein discloses a cause of action;
- (b) there is an identifiable class or subclass of two or more persons that would be represented by the representative plaintiff;
- (c) the denial has been made on the basis of contractual interpretation, and not based on factors relating to the eligibility of any individual claimant;
- (d) the plaintiff and Class members were insured pursuant to an identical policy, with identical language;
- (e) the plaintiff and Class members had their business prohibited in whole or in part by the Closure Orders;
- (f) the claims of the Class members raise common issues of fact and/or law;
- (g) a class proceeding would be the preferable procedure for the resolution of the common issues; and
- (h) the plaintiff would fairly and adequately represent the interests of the class or subclass as representative plaintiff, does not have an interest in conflict with other Class members in respect of the common issues, and in due course will produce a plan for advancing the proceeding on behalf of the Class (including procedures for court ordered notice).

22. The plaintiff pleads that the within action meets all of the requirements of a class proceeding in accordance with *Class Proceeding Act, 1992, supra*.

July ____, 2020

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Lawyers for the **Plaintiff**

ROSHAN HOLDINGS INC.
Plaintiff and AVIVA INSURANCE COMPANY OF
CANADA
Defendant

Court File No.:

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at London

STATEMENT OF CLAIM

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