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SUPERIOR COURT OF JUSTICE

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COUR SUPÉRIEURE DE JUSTICE **ONTARIO**
SUPERIOR COURT OF JUSTICE

Court File No.: CV-20-00001041-00CP

B E T W E E N :

THE ROYAL CANADIAN LEGION, VICTORY BRANCH # 317

Plaintiff

- and -

AVIVA INSURANCE COMPANY OF CANADA

Defendant

Proceeding under the *Class Proceedings Act, 1992*

AMENDED 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: ~~June~~ June 22, 2020
~~June-August~~, 2020

Issued by "Electronically signed"
Local registrar

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

TO: **Stikeman Elliott LLP**
5300 Commerce Court West
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Lawyers for the Defendant

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 plaintiffs as representative plaintiff of a class of persons (hereinafter the “Class”) described as follows:

“All persons natural, or corporate, carrying on operations as branches of The Royal Canadian Legion and other veterans, service, and legacy organizations operating in a similar manner to Legion Branches across Canada (except British Columbia) who were insured by Aviva Insurance Company of Canada (“Aviva”) under a Commercial Insurance Policy issued by Aviva on behalf of The Royal Canadian Legions, pursuant to the PIB Provincial Command Insurance Program, whose businesses were restricted as a result of a mandatory Closure Order 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-Actual Loss Sustained (Form 912000-01)”

- (b) a declaration that the loss of business income caused by the mandatory Closure Orders (the “Closure Orders”) are covered under the Business Income Actual Loss Insurance (Form 912000-01) 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 defendants breached their contract with the plaintiff and Class members in denying coverage;
- (e) damages for breach of contract for the failure to pay insurance proceeds under a Policy of insurance in the amount of

\$20,000,000.00 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. The plaintiff, The Royal Canadian Legion, Victory Branch # 317 (hereinafter referred to as "the plaintiff"), is a Local Branch of The Royal Canadian Legion, a not for profit corporation, carrying on operations usual to a Legion at the insured premises located at 311 Oakland Avenue, in London, Ontario.

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 held an insurance policy through Aviva.

The Insurance Policy

4. Specifically, the plaintiff and Class members were insured under an insurance policy program underwritten by Aviva as *the PIB Provincial Command*

Insurance Program (hereinafter referred to as the “Policy”). At all material times, the plaintiff and Class members were insured and were entitled to make a claim under the policy.

5. In particular, at all material times, the plaintiff was insured pursuant to a valid policy of insurance, bearing policy number 81699054, with the named insured identified as The Royal Canadian Legion Branch No. 317 and The Ladies Auxiliary.

6. The Policy provides various coverages for losses suffered during the policy period. The Policy covers, among other things, property damage issues, general liability and certain business income losses. The Policy expressly provides for loss of business income coverage, including supplemental Restricted Access coverage and accountants fees.

7. The Restricted Access provision provides:

a. This form insures the actual loss of “*business income*” sustained by the Insured caused by the interruption of the “*business*” at the *premises* when ingress to or egress from the “premises” is restricted in whole or in part:

(ii)(a) by order of civil authority resulting from any of the following occurrences:

(2) an outbreak of a contagious or infectious disease that is required by law to be reported to government authorities.

Loss of Business Income / Accountants’ Fees

8. The plaintiff and Class members understood the insurance they purchased from Aviva included a form of loss of business income coverage triggered by an outbreak of a contagious or infectious disease. The plaintiffs and Class members were insured for losses incurred for a maximum period of 30 days while access to their premise was restricted, due to a forced shut down of their operations, caused by the Closure Orders. Further, the plaintiff and Class

members were insured for accountants' fees for producing particulars of details of their loss under the coverage.

9. 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.

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

11. On March 23, 2020, pursuant to the Closure Order, the province of Ontario ordered the mandatory closure of all places of non-essential business as of March 24, 2020 to help protect the health and safety of the people of Ontario in response to the COVID-19 outbreak. Similar Closure Orders were made in every Province and Territory in the country.

12. As a result of these Closure Orders, all Class members were ordered to close their places of business. These Orders were subsequently extended.

13. As a result of the outbreak of COVID-19, many businesses, including but not limited to the Royal Canadian Legion, were declared by the government as non-essential and had to close or restrict their business.

14. The plaintiff and Class members' insured properties were affected. In accordance with the Closure Orders made due to the COVID-19 outbreak, the plaintiff and Class members closed the doors to their places of business. Access to and from the Legions and Class members operating similar organizations was completely restricted by the government ordered shutdown. The Legions and Class members operating similar organizations could not operate their food and beverage operations or any other aspect of their business. Patrons were restricted from attending the premises. As a result, the plaintiff and Class members sustained a loss of business income.

Denial of Coverage

15. The mandatory shutdowns which occurred in every province and territory, have extended beyond the maximum 30 day coverage period. The plaintiff subsequently made an insurance claim to Aviva for business income insurance, in accordance with the Policy.

16. Aviva has denied coverage to the plaintiff, despite the fact that the plaintiff is covered for this type of loss. On May 8, 2020, in an email, Aviva outlined the reasoning behind their denial of coverage. Aviva is interpreting the coverage as not applying to an outbreak that is a pandemic.

17. The denial has been made on the basis of contractual interpretation, and not based on factors relating to the eligibility of any individual claimant. The plaintiff and Class members were insured pursuant to an identical policy, with identical language. The plaintiff and Class members were ordered to shut down due to the outbreak of COVID-19, as they are not considered essential services. The plaintiff and Class members' businesses have been closed for more than the 30 day coverage period afforded under the policy.

Breach of Contract

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

19. The plaintiff and Class members paid premiums for loss of business income insurance including Supplemental Restricted Access coverage 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 restriction of access to their business premises. The plaintiff and Class members have suffered an ongoing loss of business income.

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

Damages

21. As a result of the breach of contract by the defendants, 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.

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

Certification

23. The plaintiff pleads that the within action meets the criteria for 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 plaintiffs;
- (c) the claims of the Class members raise common issues of fact and/or law;
- (d) a class proceeding would be the preferable procedure for the resolution of the common issues as it is superior to all reasonably available means of determining the entitlement of the class members to relief and the questions of fact or law common to the class members predominate over any questions affecting only individual class members; and

- (e) the plaintiff would fairly and adequately represent the interests of the class or subclass as representative plaintiffs, 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).

24. The plaintiff pleads that the within action meets all of the requirements of the *Class Proceeding Act, 1992, supra*.

25. The plaintiff proposes that this action be tried in the City of London.

June 22 August ●, 2020

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THE ROYAL CANADIAN LEGION,
VICTORY BRANCH # 317
Plaintiff

and

AVIVA INSURANCE COMPANY OF
CANADA
Defendant

Court File No.: CV-20-00001041-00CP

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SUPERIOR COURT OF JUSTICE**

Proceeding commenced at London

AMENDED STATEMENT OF CLAIM

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