

Amended on the 04th day of February, 2021
pursuant to Rule 26.02(a).

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

**ONTARIO
SUPERIOR COURT OF JUSTICE**

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*

FRESH AS 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: February , 2021

Issued by _____
Local registrar

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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” and “Class Members”) 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) which were insured by Aviva Insurance Company of Canada (“Aviva”) under a Commercial Insurance Policy issued by Aviva on behalf of The Royal Canadian Legion, pursuant to the *PIB Provincial Command Insurance Program (“Legion Program”)*, which included “Restricted Access” coverage and/or “Negative Publicity” coverage under Business Income Actual Loss Sustained Form (912000-01), and which sustained loss of business income:

- a) caused by the interruption of its business when ingress to or egress from its premises was restricted in whole or in part (“Restricted Access”) by the 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 in March or April 2020 (the “Closure Orders”), and/or
- b) caused by the interruption of its business when ingress to or egress from its premises was restricted in whole or in part by any subsequent order of civil authority, and/or
- c) as a direct result of the outbreak of COVID-19 within 25 kilometres of its premises.
- (b) a declaration that the loss of business income caused by:

- (i) Restricted Access due to the Closure Orders; and/or
- (ii) Restricted Access due to any subsequent order of civil authority;

is covered under the supplemental Restricted Access coverage in the Business Income Actual Loss Sustained Form (912000-01) issued by the Defendant to Class Members;

- (c) a declaration that the actual loss of business income sustained by the Plaintiff and Class Members as a direct result an outbreak of a contagious or infectious disease, being COVID-19, within 25 kilometres of their premises that is required by law to be reported to government authorities, are covered under the supplemental Negative Publicity coverage in the Business Income Actual Loss Sustained Form (912000-01) issued by the Defendant to Class Members;
- (d) payment to the Plaintiff and Class Members in accordance with the insurance policy issued by the Defendant;
- (e) a declaration that the Defendant breached their contract with the Plaintiff and Class Members in denying coverage;
- (f) a declaration that any applicable limitation periods, whether policy-based or statute-based, including under the *Insurance Act*, R.S.O. 1990, c. I.8 or similar provincial insurance legislation, are of no force or effect vis-à-vis the Plaintiff and Class Members, and/or are tolled pursuant to section 28 of the *Class Proceedings Act, 1992*;
- (g) damages for breach of contract for the failure to pay insurance proceeds under a Policy of insurance in the amount of \$40,000,000.00 including loss of business income and accountants' fees;

- (h) relief from forfeiture pursuant to the *Insurance Act*, R.S.O. 1990, c. I.8 or similar provincial insurance legislation and/or the *Courts of Justice Act*, R.S.O. 1990, c. C.43, and similar legislation as amended, and similar legislation as applicable outside Ontario, should the Plaintiff or Class Members be found to have had imperfect compliance with the terms of the Policy;
- (i) in the alternative, relief from forfeiture pursuant to the *Courts of Justice Act*, R.S.O. 1990, c. C.43, and similar legislation as amended, and similar legislation as applicable outside Ontario;
- (j) 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;
- (k) 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
- (l) 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, is a Local Branch of The Royal Canadian Legion (the "Legion"), a not for profit corporation, carrying on operations usual to a Local Branch of the 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* (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, supplemental Negative Publicity coverage, and Accountants’ Fees.

7. The supplemental Restricted Access coverage 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

8. The supplemental Negative Publicity coverage provides:
- a. This form is extended to insure the actual loss of "business income" sustained by the Insured as a direct result of any of the following occurrences:
 - ii. an outbreak of a contagious or infectious disease within 25 kilometres of the "premises" that is required by law to be reported to government authorities

Loss of Business Income / Accountants' Fees

9. The Plaintiff and Class Members understood the insurance they purchased from Aviva included multiple forms of loss of business income coverage triggered by an outbreak of a contagious or infectious disease. The Plaintiff and Class Members understood that coverage under the Policy would be triggered in one or more of the following circumstances:

- (a) Under the Restricted Access coverage, the actual loss of business income caused by the interruption of the business at the premises when ingress to or egress from the premises was restricted in whole or in part by order of civil authority, including the Closure Orders, resulting from an outbreak of a contagious or infectious disease, being COVID-19, that is required by law to be reported to government authorities; and/or
- (b) Under the Restricted Access coverage, the actual loss of business income caused by the interruption of the business at the premises when ingress to or egress from the premises was restricted in whole or in part by any subsequent order of civil authority, resulting from an outbreak of a contagious or infectious disease, being COVID-19, that is required by law to be reported to government authorities; and/or
- (c) Under the Negative Publicity coverage, the actual loss of business income sustained as a direct result of an outbreak of a contagious

or infectious disease, being COVID-19, within 25 kilometres of their premises that is required by law to be reported to government authorities.

10. Further, the Plaintiff and Class Members were insured for accountants' fees for producing particulars of details of their loss under the coverage.

11. 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 by Provinces and Territories across Canada.

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

13. On March 23, 2020, 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 (collectively, the "Closure Orders"). These Orders were subsequently extended.

14. As a result of the outbreak of COVID-19, many businesses, including but not limited to the Local Branches of the Royal Canadian Legion, were declared by provincial governments as non-essential and required to close or restrict ingress to or egress from their business.

15. The Plaintiff and Class Members' insured properties were impacted. As a result of the Closure Orders, ingress to or egress from the Plaintiff's and Class Members' premises was restricted in whole or in part. The Plaintiff and Class Members could not operate their food and beverage operations or any other aspect of their business. Patrons were restricted from attending the Plaintiff's

and Class Members' premises. As a result, the Plaintiff and Class Members sustained a loss of business income.

16. After the Closure Orders expired or were lifted, Canada experienced a second wave of the COVID-19 outbreak, and the Plaintiff and Class Members experienced additional loss of business income. The Plaintiff and Class Members have sustained a loss of business income as a direct result of an outbreak of a contagious or infectious disease, being COVID-19, within 25 kilometre of its premises that is required by law to be reported to government authorities.

17. Beginning in the Summer of 2020, subsequent orders were made by civil authorities across the country including provincial, territorial, and municipal governments and provincial and local public health authorities which restricted ingress to and egress from the Plaintiff' and Class Members' business premises in whole or in part. As a result of these subsequent orders of civil authority, the Plaintiff and Class Members sustained a loss of business income.

Denial of Coverage

18. The Plaintiff made an insurance claim to Aviva for business income insurance, in accordance with the Policy.

19. Aviva has denied coverage to the Plaintiff, despite the fact that the Plaintiff is covered for this type of loss. By letter dated May 25, 2020, Aviva outlined the reasoning behind their denial of coverage.

20. 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 actual losses of business income were sustained as a result of the Closure Orders, a subsequent order of civil authority, and/or an outbreak of COVID-19 within 25 kilometres of their premises.

Breach of Contract

21. 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.

22. The Plaintiff and Class Members paid premiums for loss of business income insurance including supplemental Restricted Access coverage and supplemental Negative Publicity coverage in the expectation that the Defendant would honour its contractual obligations in good faith. The Plaintiff and Class Members have sustained an ongoing loss of business income.

23. 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

24. 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.

25. The Plaintiff is entitled to claim damages on behalf of all Class Members.

Relief from Forfeiture

26. In light of Aviva's blanket denial of coverage, imperfect compliance or non-compliance by the Plaintiff or any of the Class Members with any post-loss requirements of the Policy, including but not limited to providing the Defendant with notice of the loss and/or submitting a proof of loss, was reasonable. Any lack of compliance concerned terms and conditions of the Policy that were not condition precedents to coverage, and did not materially prejudice the

Defendant. The Plaintiff and Class Members should be granted relief from forfeiture, if necessary.

Certification

27. 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*. 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 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 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).

28. The Plaintiff pleads that the within action meets all of the requirements of the *Class Proceeding Act, 1992*.

29. The Plaintiff pleads and rely upon the following statutes:

- (a) *Class Proceeding Act*, 1992, S.O. 1992, c. 6;
- (b) *Insurance Act*, R.S.O. 1990, c. I.8, and similar provincial legislation across Canada;
- (c) *Courts of Justice Act*, R.S.O. 1990, c. C.43.

30. The Plaintiff proposes that this action be tried in the City of London.

Februaury 2, 2021

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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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Proceeding commenced at London

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