



Court File No. **VLC-S-S-208574**

No.  
Vancouver Registry

*In the Supreme Court of British Columbia*

Between

Matrix Production Services Ltd.

Plaintiff

and

Economical Mutual Insurance Company

Defendant

Brought under the *Class Proceedings Act*, R.S.B.C. 1996, c. 50

### **NOTICE OF CIVIL CLAIM**

**This action has been started by the plaintiff for the relief set out in Part 2 below.**

If you intend to respond to this action, you or your lawyer must

- (a) file a response to civil claim in Form 2 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim on the plaintiff.

If you intend to make a counterclaim, you or your lawyer must

- (a) file a response to civil claim in Form 2 and a counterclaim in Form 3 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim and counterclaim on the plaintiff and on any new parties named in the counterclaim.

**JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the response to civil claim within the time for response to civil claim described below.**

#### **Time for response to civil claim**

A response to civil claim must be filed and served on the plaintiff,

- (a) if you reside anywhere in Canada, within 21 days after the date on which a copy of the filed notice of civil claim was served on you,

- (b) if you reside in the United States of America, within 35 days after the date on which a copy of the filed notice of civil claim was served on you,
- (c) if you reside elsewhere, within 49 days after the date on which a copy of the filed notice of civil claim was served on you, or
- (d) if the time for response to civil claim has been set by order of the court, within that time.

## **THE PLAINTIFF'S CLAIM**

### **Part 1: STATEMENT OF FACTS**

#### Overview

1. This proposed class action arises out of the Defendant's unlawful denial of insurance coverage for business income losses and related costs arising from COVID-19.
2. The Defendant provided an "all-risks" insurance policy to the Plaintiff and class members for loss of business income and associated extra expenses when there is an interruption in the insured's business. The standard form policy provides coverage for direct physical loss of, or damage to, the insured's property. The policy also provides coverage when access to the insured's premises has been prohibited by order of civil authority, and when there has been loss or damage to a contingent business that necessarily results in economic loss to the insured.
3. Such "all-risks" commercial contracts provide peace of mind to business owners, including the Plaintiff and class members, because insurers will cover business losses if the unforeseen occurs. These broad policies can only be narrowed by specific exclusions and conditions, such as a virus or pandemic exclusion. The policies at issue in this case did not include any such exclusions.
4. An unforeseen event occurred in early 2020: COVID-19 spread throughout the world, including Canada, causing a global pandemic.
5. On March 12, 2020, in an effort to limit the spread of COVID-19, the Provincial Health Officer and Minister of Health directed all event organizers to cancel any gatherings larger than 50 people, which included indoor and outdoor sporting events, meetings, conferences, or similar events. In a subsequent order issued March 16, 2020, the Provincial Health Officer prohibited gatherings of over 50 people.

6. On March 17, 2020, the Provincial Health Officer gave notice under s. 52(2) of the *Public Health Act*, SBC 2008, c 28 that there was an outbreak of COVID-19 in the province, and that this constituted a “regional event” as defined in s 51 of the *Public Health Act* (the “Emergency Order”). Similar orders were made by health officers in other Canadian provinces.

7. Pursuant to s. 54(1)(c) of the *Public Health Act*, SBC 2008, c 28, the Public Health Officer is permitted to issue orders regarding an emergency/regional event, both orally and in written form, to the same effect. Pursuant to this Emergency Order, and subsequent orders, both oral and written, issued by the Provincial Health Officer, many businesses in British Columbia, including the Plaintiff’s and class members’ businesses, were ordered closed.

8. The Provincial Health Officer is a Civil Authority within the meaning of the Defendant’s insurance policies. The Emergency Order shut down the business operations of the Plaintiff and class members. The Emergency Order also closed contingent businesses upon which the Plaintiff and class members necessarily relied for their continued operations.

9. The Plaintiff and class members were impacted by the Emergency Order, as they were prohibited from accessing their premises. But, when the Plaintiff and class members shuttered their businesses, they did so with peace of mind – they had purchased “all-risks” insurance coverage.

10. The Plaintiff sought the money it was owed under its insurance policy. In breach of contract, the Defendant denied its claim for recovery.

11. Through this suit, the Plaintiff and class members seek to hold the Defendant accountable for its unlawful conduct and to recover damages.

### The Parties and the Proposed Class

12. The Plaintiff, Matrix Production Services Ltd., is a British Columbia corporation that operates an film production equipment rental and sales, delivery, and janitorial business in Vancouver located at Unit 2, 525 Skeena Street N, Vancouver, British Columbia, V5K 3P5. Such rentals and services include location protection, signage, indoor and outdoor tents, heating and cooling, communication, barbeque catering, and janitorial services. Its business model is focused on providing a fully customizable, a la carte service for indoor and outdoor film productions.

13. The Defendant, Economical Mutual Insurance Company, is a company licensed under the *Insurance Act*, RSBC 2012, c.1 to sell insurance in the province of British Columbia. Its head office is located at 111 Westmount Road South, Waterloo, Ontario, N2J 4S4.

14. The Plaintiff brings this claim on behalf of a proposed class as follows:

“All persons in British Columbia who had insurance policies with the Defendant during the Class Period that included businesses interruption insurance”

The “Class Period” commences on March 17, 2020 and continues until a date to be fixed by the Court.

#### The Insurance Policy

15. The Plaintiff bought a commercial insurance policy from the Defendant with policy number “040226162 P” with a period of coverage extending from February 20, 2020 to February 20, 2021 (the “Policy”). The policy covers the Plaintiff’s location at Unit 2, 525 Skeena Street N, Vancouver, British Columbia, V5K 3P5. The Policy includes business interruption insurance.

16. The Plaintiff paid its premiums owed under the Policy regularly and as required.

#### Denial of Coverage

17. The Plaintiff notified a representative of the Defendant on or about March 26, 2020, by email, that its business had closed due to COVID-19, and that it wished to assert a claim for loss of business income under the Policy. The Defendant’s representative responded in an email dated March 27, 2020 denying the Plaintiff’s claim. No proof of claim form was sent to the Plaintiff.

18. The Defendant has issued blanket and reflexive denials to any class member asserting a claim for damage related to COVID-19.

19. The Plaintiff and class members have complied with all relevant statutory conditions of the Policy. In the alternative, if there has been imperfect compliance with those statutory conditions,

the Plaintiff and class members are relieved from such compliance pursuant to s. 13 of the *Insurance Act*, RSBC 2012, c.1.

20. The Defendant's blanket and reflexive denial of claims asserted by the insureds in respect of COVID-19 constitutes waiver by the Defendant of statutory conditions pursuant to s. 14(1)(b) of the *Insurance Act*, RSBC 2012, c.1.

#### COVID-19 in Canada

21. In December 2019, the coronavirus COVID-19 had become a public health concern in China. COVID-19 is a highly communicable disease characterized by delayed symptoms and is capable of transmission by asymptomatic carriers. However, because symptoms are delayed, and the virus is capable of being transmitted by asymptomatic carriers, it is nearly impossible to tell if an individual is infected with COVID-19 and capable of infecting others. Further, the virus may be present on physical premises and tangible property, as the virus is capable of living on surfaces for days while remaining communicable. It is nearly impossible to tell whether the virus is living on property, rendering common-area property unsafe and unusable. There is no vaccine for COVID-19.

22. In January 2020, the virus had spread to different countries including South Korea, the United States, and Canada. The first COVID-19 case identified in British Columbia was reported on January 28, 2020.

23. In order to prevent the spread of the virus, provincial governments across Canada began issuing both written and oral orders in March 2020 requiring many businesses to temporarily close or restrict their operations if they were unable to comply with social distancing measures.

#### The Terms of the Policy

24. The policy covers specified insured perils and includes extended coverage for business interruption. There are no relevant exclusions under the Policy for "viruses" or "pandemics".

25. The Policy states:

**“INSURING AGREEMENT**

This form insures against loss directly resulting from the necessary interruption of your business caused by direct physical loss of or damage to building(s), equipment, or stock but only if we have paid or agreed to pay for such direct physical loss or damage as a covered loss insured under this policy. For the purposes of this form only, if the loss or damage to the property is not paid for the sole reason that it falls below the property deductible amount, we will provide coverage and settle the business interruption loss as if we had agreed to pay for the direct physical loss or damage.”

26. Regarding business interruption, the Policy states:

**“GROUP TWO**

The extensions of coverage in this group insure against loss directly resulting from the necessary interruption of your business caused by direct physical loss of or damage to building(s), equipment, and stock regardless of whether we have paid or agreed to pay for such loss or damage as a covered loss insured under this policy. All the other terms, conditions, limitations, definitions and exclusions of this Form still apply.”

27. The Policy contains an extension for contingent business interruption, which states:

**“CONTINGENT BUSINESS INTERRUPTION**

Coverage under this extension applies in addition to the limit of insurance stated on the “Declarations Page”.

We will pay for “Loss of Business Income” you sustain during the “Indemnity Period” resulting from direct physical loss of or damage to building(s), equipment, or stock at the premises of a “Contributing Business”. This coverage applies only when the direct physical loss or damage to the building(s), equipment, or stock was caused by perils for which your building(s), equipment, or stock are insured under this policy.

Unless otherwise states on the “Declarations Page”, coverage under this extension is limited to:

- (a) \$25,000 for any one “Occurrence” at a “Contributing Business” located outside of Canada and the continental United States.
- (b) \$100,000 for any one “Occurrence” at a “Contributing Business” located within Canada and the continental United States.”

28. Beyond all this, the Policy contains a civil authority extension, which specifically includes an endorsement for business interruption resulting from order of civil authority:

“INTERRUPTION BY CIVIL AUTHORITY

Coverage under this extension does not increase the limit of insurance stated on the “Declarations Page”.

We will pay for “Loss of Business Income” for the period of time during which access to the “Premises” is prohibited by order of civil authority.

Unless otherwise stated on the “Declarations Page”, coverage under this extension begins the day following the issuance of the order prohibiting access and is limited to a period of two weeks.”

29. The business interruptions form contains a definitions section which defines “Contributing Business” and “Occurrence” as:

“SECTION D – DEFINITIONS

“Contributing Business” is an enterprise which you do not own, rent or control in whole or in part, and which:

- (a) provides products, materials or services to you or anyone else on your behalf; or
- (b) receives products, materials or services that you produce or sell.”

.....

“Occurrence” means a loss or series of losses arising directly or indirectly out of or caused by a single cause or event. All such covered loss or damage will be treated as a single “Occurrence”.”

30. “Physical loss” and “damage” are not defined in the Policy. Nevertheless, the Policy contains a definition section which defines “Property Damage” as:

“SECTION V – DEFINITIONS

27. “Property Damage” means:

- (a) Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or

(b) Loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of the “Occurrence” that caused it.”

31. Taken together, the Policy covers lost business income and related costs resulting from the necessary interruption of, or interference with, the business of the insured caused by the loss of use of tangible property, whether that property is physically injured or not. The Policy also extends coverage to orders made by a Civil Authority prohibiting access to the insured premises, and further provides coverage for business losses arising from loss or damage to a contingent business.

32. The Defendant’s policy wording regarding business interruption, property damage, and civil authority claims are materially the same for all class members.

#### Closure of the Plaintiff’s Business

33. On March 16, 2020, in an effort to limit the spread of COVID-19, the Provincial Health Officer issued an order prohibiting the gathering of 50 or more people. This was followed up with the Emergency Order, issued on March 17, 2020. The Plaintiff fully closed its business on March 26, 2020 in response to the Emergency Order and associated social distancing restrictions implemented thereafter. The Plaintiff suffered business loss as a result of this closure.

34. The Plaintiff’s business is structured to provide goods and services to the film industry. It is a film and production company. Its business model is focused on providing off-premises, customizable and a la carte equipment rental and support services for film productions and special events. Such rentals and services include location protection, signage, indoor and outdoor tents, heating and cooling, communication, barbeque catering, and janitorial services. Given the nature and scale of the Plaintiff’s business model, the logistics and personnel required for their equipment and service offerings, exclusive servicing of small-scale gatherings are not economically feasible.

35. The Plaintiff’s business is highly integrated with the film industry in this province. The closure of other film businesses in this province necessarily results in economic loss to the Plaintiff’s own business.

36. On May 22, 2020, the Provincial Health Officer issued a further order regarding gatherings of more than 50 people, with subsequent orders further modifying and clarifying these



requirements on July 27, 2020 and July 28, 2020. None of the orders permitted large scale gatherings of more than 50 people.

37. It took time for the Plaintiff and film industry to receive appropriate direction from Worksafe BC regarding resuming operations. Such guidelines for resuming operations were issued to the British Columbia film industry on June 5, 2020. Such guidelines included multiple levels of protocols, ranging from limiting the number of individuals on set, barrier installation, cleaning protocols, to use of personal protective equipment (the “Workplace Guidelines”). The use of personal protective equipment provided additional barriers due to lack of supply and governmental urgings to limit the purchase of such equipment to ensure adequate supply for health care workers.

38. In the wake of these further orders, the continued prohibition of events of more than 50 people, and the impact of the Workplace Guidelines, the Plaintiff has been unable to fully open and continues to suffer ongoing business losses.

39. Since the date of the first exposure notification, Emergency Order and subsequent orders, the Plaintiff has suffered loss of business income, profits and extra expenses. These losses are ongoing. The Plaintiff seeks recovery of all these losses in accordance with the terms of its policy with the Defendant.

40. Other class members have similarly suffered loss of revenue, profits and extra expense due to business closure and restrictions as a result of orders by Civil Authority, and the impact of such orders on contingent businesses.

## **Part 2: RELIEF SOUGHT**

41. An order certifying this action as a class proceeding;

42. A declaration that the Defendant has breached its contractual obligation to the Plaintiff and class members;

43. General damages for breach of contract;

44. Punitive damages;

45. Pre and post judgment interest;

46. Costs of this proceeding; and

47. Such further and other relief as this Honourable Court may deem just.

### **Part 3: LEGAL BASIS**

#### **Breach of the Contract**

48. On a plain meaning interpretation of the Policy, the business interruption losses sustained by the Plaintiff and class members are insured losses because they are not specifically excluded, and they constitute property damage as defined in the policies. The losses are the exact type of losses covered within the meaning of the Policy.

49. First, the Policy covers direct *loss* of the property, and it defines “property damage” to include “loss of use”. The Plaintiff and class members could not use their properties because of the order of the Civil Authority. Contingent businesses, as defined in the Policy, were similarly shut down. Such harms to the Plaintiff and class members’ business are captured by the Policy.

50. Second, the presence of the virus is an insured peril because it constitutes direct physical damage. The Plaintiff’s tangible property was damaged as a result of the presence of a deadly, communicable virus. The property was in an altered state. It was physically injured because the virus changed it in a harmful way. The property is damaged as it is unsafe to use.

51. Third, the risk of COVID-19 at the Plaintiff’s business, or at contingent businesses, is an insured peril because it presents a risk of direct physical damage rendering property unfit for use. Property and equipment cannot be used for their respective intended purposes without substantial risk. The property is unsafe to use.

52. The Policy covers interruption due to order of Civil Authority. The Plaintiff provides full equipment rental and support services for off-premises film productions. The Plaintiff’s integration with and reliance on the film industry as their primary source of business, rendered it particularly vulnerable to the orders prohibiting gatherings of 50 or more people and the Workplace Guidelines in place for resuming operations in the film industry, issued June 5, 2020. Prior to the communication of the Workplace Guidelines, the Plaintiff and the film industry were prohibited from resuming operations or accessing their premises for business or operational purposes. These

Guidelines affected the Plaintiff's business operations directly, and by virtue of their impact upon contingent businesses upon which the Plaintiff necessarily relies.

53. Overall, the business losses claimed by the Plaintiff are covered under the Policy and the Plaintiff is entitled to compensation.

54. The Plaintiff upheld its obligations under the Policy – it is in good standing, made payments on time, and made a claim with the Defendant in accordance with the terms of the Policy. The Plaintiff has paid many thousands of dollars in premiums to the Defendant over many years.

55. By denying claims properly owed to the Plaintiff and class members, the Defendant has breached its insurance contracts. The Defendant is failing to perform its contractual duty to compensate the Plaintiff and Class Members under the terms of the Policy. The Defendant has done this in a bad faith attempt to illegally retain as much profits as it can.

56. The Policy must be interpreted in accordance with the principles of *contra proferentum*. The Defendant drafted the Policy. If there are ambiguities in the Policy, then such ambiguities must be resolved in favour of the Plaintiff and class members.

57. Other infectious diseases such as the SARS pandemic in 2003 had previously caused harm and disruption to businesses in Canada. If the Defendant had wanted to exclude coverage for business interruption due to viruses or pandemics, then it could have done so before issuing the Policy. Indeed, the Policy was issued on February 20, 2020, at a time when COVID-19 already existed in the world. If the Defendant had wanted to exclude coverage for property damage or business interruption due to COVID-19, then it could have done so prior to issuing the Policy.

58. From the Plaintiff's perspective, plainly, it understood that it had coverage for the losses that it suffered. Indeed, the Plaintiff contacted its broker on March 26, 2020, shortly after the Emergency Order went into effect, to assert a claim.

59. The Defendant is in breach of its contractual undertakings in an identical manner against all class members. The business interruption portions of the Policy quoted above are identical, or materially similar, in all of the insurance policies with class members at issue in this action.

60. The Plaintiff and class members are entitled to declaratory relief confirming that they have coverage under the Policy based upon its wording.

61. The Plaintiff and class members are entitled to damages for breach of contract, and to recover the compensation owed to them under the Policy, in accordance with its terms, including recovery of monies for loss of business income.

#### Punitive Damages

62. The Defendant's misconduct, as described above, is oppressive and high-handed, and in direct violation of the *uberrimae fidei* with which insurance contracts must be approached. The Defendant's actions are part of a pattern of willful disregard for the insureds' rights. Many businesses will not survive the economic impacts of COVID-19 and the economic shutdown. The Defendant is taking advantage of the Plaintiff and class members when they are suffering extreme business income loss.

63. The Defendant owed a duty of utmost good faith to the Plaintiff and to class members. This included a duty to assist them with reasonable claims, and to properly investigate such claims. The Defendant has breached these obligations.

64. The Defendant's actions offend the moral standards of the community and warrant the condemnation of the Court such that an award of punitive damages should be made against them.

#### Suspension of Limitation Periods

65. The Plaintiff pleads on its behalf and the behalf of class members that limitation periods have been suspended in the province due to COVID-19 pursuant to Order of the Minister of Public Safety and the Solicitor General, Ministerial Order, dated March 26, 2020, made under the *Emergency Program Act*, R.S.B.C., c.111, s.10.

#### Jurisdiction

66. Pursuant to section 9 of the *Insurance Act*, RSBC 2012, c. 1, the insurance contracts at issue are deemed to have been made in British Columbia because the Plaintiff is domiciled in British Columbia and because the subject matter property is located in British Columbia.

Plaintiff's address for service:

**Klein Lawyers LLP**  
1385 W 8th Ave #400  
Vancouver, BC V6H 3V9

Place of trial: Vancouver, BC

The address of the registry is:

800 Smithe Street  
Vancouver, BC  
V6Z 2E1

Date: August 13, 2020

A handwritten signature in blue ink, appearing to read 'Douglas Lennox and Darren S. Sall', is written over a horizontal line.

Signature of lawyer for plaintiff

**Douglas Lennox and Darren S. Sall**

Counsel for the Plaintiff

**Klein Lawyers LLP**

## Appendix

*[The following information is provided for data collection purposes only and is of no legal effect.]*

### **Part 1: CONCISE SUMMARY OF NATURE OF CLAIM:**

This is a claim for damages arising out of the Defendant's alleged breach of its insurance contracts.

### **Part 2: THIS CLAIM ARISES FROM THE FOLLOWING:**

A personal injury arising out of:

- a motor vehicle accident
- medical malpractice
- another cause

A dispute concerning:

- contaminated sites
- construction defects
- real property (real estate)
- personal property
- the provision of goods or services or other general commercial matters
- investment losses
- the lending of money
- an employment relationship
- a will or other issues concerning the probate of an estate
- a matter not listed here

**Part 3: THIS CLAIM INVOLVES:**

- a class action
- maritime law
- aboriginal law
- constitutional law
- conflict of laws
- none of the above
- do not know

**Part 4: ENACTMENTS**

*Class Proceedings Act*, RSBC 1996, c. 50

*Court Order Interest Act*, RSBC 1996, c. 79

*Emergency Program Act*, RSBC 1996, c.111

*Public Health Act*, S.B.C. 2008, c.28

*Insurance Act*, RSBC 2012, c. 1