



Court File No. VLC-S-S-209189

No.  
Vancouver Registry

*In the Supreme Court of British Columbia*

Between

Fritzworks Printing Services Inc.

Plaintiff

and

Aviva Insurance Company of Canada

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.
2. The Defendant provided an "all-risks" insurance policy to the Plaintiff and class members for loss of business income. The standard-form policy covers loss of income arising from an interruption or interference with the Plaintiff's and class members' businesses. The Defendant's policy further contained extensions for "Negative Publicity Coverage" and for "Restricted Access" that expressly insured for losses arising from an outbreak of a contagious or infectious disease as declared by government health authorities.
3. Such "all-risks" commercial contracts provide piece 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 Defendant's policies did not include any such exclusions. On the contrary, the policies specifically included coverage to the Plaintiff and class members for losses due to an outbreak of a contagious or infectious disease.
4. Such an outbreak occurred in early 2020: COVID-19 spread throughout the world, including Canada, causing a global pandemic.

5. 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”).
6. The Provincial Health Officer is a government authority and a civil authority within the meaning the Defendant’s policies.
7. The declaration of the Emergency Order by the Provincial Health Officer constitutes a declaration by a government authority and a civil authority of a “contagious or infectious disease” within the meaning of the Defendant’s insurance policies.
8. Specific outbreak locations for COVID-19 have been identified in the province by the Provincial Health Officer, and by regional health authorities, including at multiple locations within 25 km of the Plaintiff’s and class members’ business.
9. Pursuant to the 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.
10. The Plaintiff and class members were impacted by the Emergency Order, as continued operation of their businesses and their property could spread the virus. But, when the Plaintiff and class members shuttered their businesses, they did so with piece of mind – they had purchased an “all-risks” insurance policy, which did not exclude viruses or pandemics. Rather, the Defendant’s policies specifically insured them for disease outbreak that was impacting their businesses.
11. The Plaintiff sought the money it was owed under its insurance policy. In breach of contract, the Defendant denied its claim for recovery.
12. 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

13. The Plaintiff, Fritzworks Printing Services Inc., is a British Columbia corporation that operates a printing company located at 117-3989 Henning Drive, Burnaby, British Columbia, V5C 6P8. The Plaintiff's business is focused upon the film industry in British Columbia and it produces, among other things, high quality prints, signs, posters and laser engravings.

14. The Defendant, Aviva Insurance Company of Canada, is a company licensed under the *Insurance Act*, RSBC 2012, c. 1, to sell insurance in the province of British Columbia and elsewhere in Canada. It has offices throughout Canada, including a corporate office at Suite 1100, 1125 Howe Street, Vancouver, British Columbia, V6Z 2Y6.

15. 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 business interruption insurance with extensions for negative publicity coverage and/or restricted access.”

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

### The Insurance Policy

16. The Plaintiff bought a commercial insurance policy from the Defendant with policy number 81761761 with a period of coverage extending from February 9, 2020 to February 9, 2021 (the “Policy”). The policy covers the Plaintiff's location at 117-3989 Henning Drive, Burnaby, British Columbia, V5C 6P8. The Policy includes business interruption insurance with extensions for negative publicity and restricted access.

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

### Denial of Coverage

18. The Plaintiff contacted a representative of the Defendant by telephone in late March 2020 and notified it 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 representative denied the claim during that phone call.

19. The Plaintiff wrote to the Defendant on August 24, 2020, to again assert the claim and to confirm in writing any denial. The Defendant wrote back to the Plaintiff on August 25, 2020, confirming its denial of coverage.

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

21. 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.

22. 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

23. 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.

24. 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.

25. 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.

### The Terms of the Policy

26. The policy covers “all-risks” and includes extended coverage for business interruption. There are no relevant exclusions under the Policy for “viruses” or “pandemics”.

27. The Policy includes an extension for “Negative Publicity Coverage” as follows:

“2. Negative Publicity Coverage

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;”

28. The Policy also includes an extension for “Restricted Access” as follows:

“4. Restricted Access

a. This form includes 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;”

### Closure of the Plaintiff's Business

29. On March 16, 2020, Vancouver Coastal Health issued a notification about possible exposure of COVID-19 to the patrons of the Showcase Restaurant in Vancouver. The Showcase restaurant is 9.7 km away from the Plaintiff's business. Both the Vancouver Coastal Health and the Fraser Health Authority have publicly identified multiple outbreak locations of COVID-19 within 25 km of the Plaintiff's premises. These regional health authorities are government and civil health authorities within the meaning of the Policy.

30. The Emergency Order was issued on March 17, 2020, and the Plaintiff closed its business following the Order, and the business remained closed for several months thereafter.

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

32. Other class members have similarly suffered loss of business income due to the closure or restrictions their businesses as a result of declarations by public health authorities of the existence of a notifiable disease within 25 km of their premises.

### **Part 2: RELIEF SOUGHT**

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

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

35. General damages for breach of contract;

36. Punitive damages;

37. Pre and post judgment interest;

38. Costs of this proceeding; and

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

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

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

40. 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 indeed, are expressly included in the Policy under the extensions for negative publicity coverage and restricted access, as defined in the Policy. The losses are the exact type of losses covered within the meaning of the Policy.

41. The Plaintiff reasonably bargained for protection for losses due to infectious diseases and it is entitled to coverage for those losses under the Policy.

42. The confirmed presence of COVID-19 within 25 km of the Plaintiff's business is an insured peril. The government declared a province-wide outbreak with the Emergency Order on March 17, 2020. The Plaintiff's business was interfered with and closed as a result of the Emergency Order and occurrences of COVID-19 within 25 km of its business.

43. The Plaintiff and class members suffered interruption and interference to their businesses as a result of the confirmed presence of COVID-19 within 25 km of their businesses, the Emergency Order, and subsequent orders, wherein the government restricted the ability of businesses to remain open or carry out their normal operations.

44. The Plaintiff is entitled compensation under the Policy. 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.

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



46. 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.

47. Other infectious diseases such 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 pandemics, then it could have done so before issuing the Policy. The Defendant clearly turned its mind to the possibility of such an event as it included coverage for infectious diseases as determined by public health authorities. If the Defendant had wanted to exclude pandemics, it could have specified, for example, that its express coverage for infectious diseases within 25 km of the insured had some geographical outer-limit. Notably, the Policy does not say that the infectious disease coverage under the Policy applies to diseases found only within a 25 km limit, and nowhere outside of that boundary.

48. 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.

#### Punitive Damages

49. 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 were suffering extreme business income loss.

50. 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.

51. 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

52. 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

53. 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:

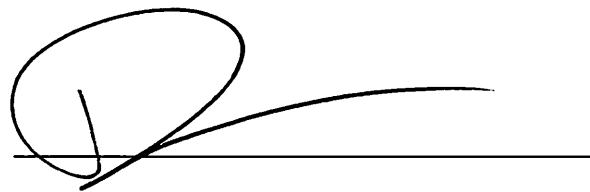
**Klein Lawyers LLP**  
1385 W 8th Ave #400  
Vancouver, BC V6H 3V9

Place of trial: Vancouver, BC

The address of the registry is:

800 Smithe Street  
Vancouver, BC  
V6Z 2E1

Date: August 26, 2020



Signature of lawyer for plaintiff  
**Douglas Lennox and Darren 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 abusive franchise employment clauses.

### **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:**

*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