

CANADA

PROVINCE OF QUÉBEC  
DISTRICT OF MONTREAL

No: 500-06-001091-202

**SUPERIOR COURT**  
(Class Actions)

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**9391-2186 QUÉBEC INC. DBA RESTAURANT L'ACADÉMIE CRESCENT, [...] represented in continuance of suit by GROUPE SERPONE INC., *es qualités* Trustee to the estate of 9391-2186 Quebec inc. following the assignment in bankruptcy made by 9391-2386 Quebec inc.**

Applicant

vs.

**AVIVA INSURANCE COMPANY OF CANADA**

-and-

**EVEREST INSURANCE COMPANY OF CANADA**

-and-

**SOVEREIGN INSURANCE (LA SOUVERAINE COMPAGNIE D'ASSURANCE GÉNÉRALE)**

-and-

**HDI GLOBAL SPECIALTY SE**

Defendants

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**MODIFIED APPLICATION FOR AUTHORIZATION TO INSTITUTE A CLASS ACTION AND TO OBTAIN THE STATUS OF REPRESENTATIVE PLAINTIFF**

(Art. 571 and following C.C.P.)

**TO ONE OF THE HONOURABLE JUDGES OF THE SUPERIOR COURT, SITTING IN AND FOR THE DISTRICT OF MONTREAL, YOUR APPLICANT STATES:**

1. The Applicant is a well-known restaurant carrying on business under the firm name and style Restaurant L'Académie Crescent with 10-25 employees, the whole as appears from an extract of the CIDREQ disclosed herewith as **Exhibit P-1**;



2. The Applicant also operates two other L'Académie restaurants in the greater Montreal area;
3. The Defendants, Aviva Insurance Company of Canada, Everest Insurance Company of Canada, Sovereign Insurance and HDI Global Specialty SE (hereinafter the "**Insurers**" or alternatively the "**Defendants**"), are insurance companies authorized to conduct business in the Province of Quebec, the whole as appears from the extracts of the CIDREQ disclosed herewith, *en liasse*, as **Exhibit P-2**.
4. The Applicant subscribed to an all-risk commercial insurance policy with the Insurers, as appears from the commercial insurance policy disclosed herewith as **Exhibit P-3 (Policy)**;
5. Pursuant to the Policy, the Insurers have agreed, severally and not jointly, each for its proportion shown in the Policy, to indemnify the Applicant in accordance with the Terms and Conditions of the Policy, including all endorsements.
6. The Policy contains business interruption insurance, as appears from the section "*Business Income-Actual Loss Sustained (Broad Form Perils)*" (Form 402014-02) (hereafter referred to as the "**Broad Form Perils**");
7. Notably, Broad Form Perils provides, inter alia, as follows:

#### **1 Indemnity Agreement**

In the event that the business shall be interrupted as a direct result of "damage", the Insurer shall pay to the Insured the actual loss of "business income" sustained during the "indemnity period" in consequence thereof, in accordance with the terms and conditions of this Form.

(...)

#### **3 Perils Insured**

The perils insured against are all risks except as otherwise excluded in this Form.

(...)

8. There is no exclusion clause in the Broad Form Perils, part of the Policy P-3, or anywhere else in the all-risk insurance policy (Exhibit P-3), which could exclude as a covered risk the business interruption loss sustained by Applicant and resulting from a pandemic or a health crisis causing the complete shut-down of all economic activities in the province of Québec, including those of the Applicant and class members.

9. Furthermore, Section 9 of the Broad Form Perils specifically covers for loss sustained while access to the premises is restricted because of an outbreak of a contagious or infectious disease;

## 9 Restricted Access

...This Form insures the actual loss of “business income” sustained while access to the “premises” is restricted in whole or in part by:

...

(b) order of civil authority resulting from any of the following occurrences, subject to the waiting period of 24 hours:

...

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

This coverage is limited to the time period not exceeding 4 consecutive weeks while access to the “premises” is restricted.

9.1 Negative publicity coverage is also a distinct covered risk in Form 402014, providing Applicant and all insureds with coverage from the actual loss of business income sustained during four consecutive weeks as a direct result of an outbreak of a contagious or infectious disease within 1 km of the premises to be reported to governmental authorities.

10. Beginning in March of 2020, there was a global health pandemic resulting from the novel coronavirus (“**COVID-19**”);
11. As a result of COVID-19, many retail businesses in the province of Québec, including but not limited to restaurants and bars, were declared non-essential services by the Québec government and had to close.
12. The Quebec government considered that restaurant and bars premises presented a substantial risk for patrons, staff and the public, since the virus may be present on the premises, or could be brought into the premises and easily spread among the various people who attend at the premises, either as patrons or staff.
13. The Applicant’s insured property and business were directly impacted by the crisis and ensuing governmental orders. On or around Monday, March 23, 2020, in accordance with the government’s order to combat COVID-19, the Applicant had to close its restaurant and remained closed until June 22, 2020 the whole as appears from the March 16, 2020 decree issued by the government of Québec and the Ministerial Order 2020-008 of the Minister of Health and Social Services dated March 22, 2020 and disclosed as **Exhibit P-4**, *en liasse*;

14. The Applicant communicated with the Insurers to make a claim under the Policy for business interruption insurance. A copy of the claim to the Insurers is communicated herewith as **Exhibit P-5**;
15. The Insurers have notified the Applicant that they would not indemnify the Applicant for its business interruption losses, despite the fact that the Applicant is covered for this type of loss under the Policy, the whole as appears from the July 30, 2020 letter of denial unilaterally issued by Insurers and disclosed as **Exhibit P-6**;
16. In particular, relying on the definition of “damage” at article 23(g) of the Policy, the Insurers allege that they are entitled to deny in its totality the Applicant’s insurance claim, Exhibit P-6);
17. Insurers take the position that:
  1. Your property insurance policy covers certain types of losses or direct material damages caused to the covered property, subject to certain exclusions.
  2. Your insurance policy contains a protection against loss of business revenues when losses are of a direct consequence of a material damage caused to the covered property, by the fulfillment of a covered peril.
  3. Your insurance policy also contains a protection extension covering expenses related to Restricted access by civil authorities, which applies under certain circumstances such as an order from a civil authority that prevents access to your insured property, but only when such order results from direct material damage to neighboring properties.

Since the Covid-19 virus does not constitute a loss or direct material damage to your property or neighboring properties, the protections outlined in Paragraphs 1, 2 and 3 above do not apply.

(Exhibit P-6).
18. The Applicant paid for business interruption insurance in the expectation that the Insurers would honor their contractual obligations in good faith if and when an unforeseen and unintentional occurrence were to take place resulting in an interruption of business causing business interruption losses. As a result of the COVID-19 crisis and the Quebec Government’s decision to order the closure of all hospitality services businesses, restaurants and bars (save and except, where possible, for take-out services), an unforeseen and unintentional occurrence has caused the interruption of the Applicant’s business, as well as that of all other Class members.

19. The Defendants' grounds to deny altogether any and all coverage under the Policy are fallacious, wrong, abusive and run contrary to the rules of contractual interpretation applying to an insurance contract in the province of Québec;
20. The Applicant has an insurable interest, it has sustained a loss covered under the Policy, the Policy is in force, the Applicant has made a claim with the Defendants in accordance with the terms of the Policy and Applicant is entitled to the fullest extent permitted to benefit promptly from the protection afforded by the Policy;
21. The business interruption losses sustained by the Applicant are an insured peril since a) it is covered and not excluded and b) Defendants' justification to avoid coverage is unfounded in fact and in law since Applicant's insured premises and business activities did sustain a loss or damage and or there was restricted access within the meaning of the Policy;
22. The Applicant is entitled to claim the benefit of coverage under the Policy [...] business interruption coverage terms and conditions and for Business Interruption Insurance for itself and for the following group:

**Class:**

All businesses and persons engaged in the operation of a hospitality services business, restaurant and or bar, in the province of Quebec, who purchased and held business interruption insurance, in force in 2020, from any one of the defendants or from several of them, acting together, either severally or jointly, and who were forced to close their business operations or limit their operations to take-out and delivery services as a result of COVID-19 and the ensuing governmental orders, who sustained a loss as a result thereof and who were denied coverage for business interruption insurance, in particular for negative publicity and or restricted access, by any of the Defendants and [...] any and all of those same persons who did not file a claim or report the loss or who have yet to file a claim for Business Interruption Insurance with any of the Defendants notably as a result of a pre-emptive blanket denial of coverage by insurers, including the defendants.

(hereinafter referred to as the "Class");

**I. CONDITIONS REQUIRED TO AUTHORIZE THIS CLASS ACTION AND TO APPOINT THE APPLICANT WITH STATUS OF REPRESENTATIVE PLAINTIFF (ARTICLE 575 C.C.P.):**

**A) THE FACTS ALLEGED APPEAR TO JUSTIFY THE CONCLUSIONS SOUGHT:  
*Applicant's direct cause of action against Insurers***

23. Applicant's Policy with Insurers, Exhibit P-3, is in good standing as it has always paid its premiums;

24. Pursuant to the Policy and in exchange for the premiums it received from the Applicant, Insurers agreed to confer on the Applicant coverage for Business Interruption losses caused by an insured peril;
25. Specifically, the Applicant is insured for loss of business income by the terms and conditions found in the Broad Form Perils endorsement/Business income 402014 (Exhibit P-3);
26. Following the orders made by the Government, the Applicant was forced to close its restaurant as of March 23, 2020 due to COVID-19 pandemic;
- 26.1 There were reported cases of Covid virus affecting persons within a 1 km radius of the premises operated by Applicant and access to the premises was entirely restricted and forbidden by governmental orders so that the business of the Applicant was interrupted in March 2020 onward.
27. Nowhere in the Policy do the Insurers expressly exclude business interruption losses resulting from a pandemic or from a global shutdown ordered by the Government;
28. In addition, and without limitation, section 9(b)(ii) and section 14 of the Broad Form Perils provides for insurance coverage when access to the insured premises is restricted in whole or in part due to a pandemic or when there is an outbreak of a contagious or infectious diseases such as the Covid 19 coronavirus within one km of the premises (Exhibit P-3). Applicant's situation as from March 2020 meets all of these criteria.
29. Insurers nonetheless refused to indemnify the Applicant for its Business Interruption losses;
30. Insurers' denial does not address the coverage provided in sections 9(b)(ii) and 14 of the Broad Form Perils;
31. The Applicant is aware that many other owners of restaurants holding a policy containing similar business interruption coverage and language, in particular negative publicity or restricted access, have been told by their insurer that coverage was denied (Exhibit P-6);
32. The Applicant alone has suffered a quantifiable loss due to its business being closed as of March 23, 2020, and this loss is covered by the Policy (Exhibit P-3);
33. The Applicant is entitled to demand compensation and coverage in an amount calculated in accordance with [...] the Policy;
34. [...]
35. As a result of the Quebec Government's decision to shut down the Applicant's restaurant until June 22, 2020, the Applicant has suffered a total business interruption, resulting in a very significant business interruption loss for the Applicant and for all other Class members; this loss is covered pursuant to the policy P-3.

36. In these circumstances, the Applicant is (and all other proposed class members are) justified in claiming and does hereby claim damages from Insurers in an amount to be calculated using the formulas provided for in its insurance policy (P-3) as of March 23, 2020 and for the entire duration that its business activities were interrupted due to COVID-19 and the governmental order (Exhibit P-4);

36.1 In addition, Applicant claims for itself and all class members damages for defendants' wrongful and abusive conduct whereby they denied together all coverage for negative publicity or restricted access in clear violation of the policy's terms and conditions and without any regard for the harm caused to Applicant and class members.

**B) THE CLAIMS OF THE MEMBERS OF THE CLASS RAISE IDENTICAL, SIMILAR OR RELATED ISSUES OF LAW OR FACT:**

37. The Defendants have failed to honor their contractual undertakings with respect to all class members similarly situated to the Applicant in an identical manner;

38. The Defendants are breaching their contractual obligations owed to Applicant and to all Class members;

39. The language of the Policy and of form 402014 or that of similarly drafted policies and forms containing business interruption coverage for negative publicity or restricted access issued by the insurers to class members, which was drafted by the Defendants, is either identical or very similar for every member of the Class with respect to Business Interruption Coverage;

40. The interpretation of coverage and any exclusion Insurers may purport to invoke is identical or very similar for every member of the Class and it must be decided in accordance with the Civil Code of Quebec.

41. The formula and procedure for calculating the insurance indemnity owed to every member of the Class is identical or very similar and may be dealt with once the Policy and the Business Interruption Coverage issues, in particular negative publicity or restricted access coverage, have been decided by this Honorable court;

42. The only individual question pertains to the business interruption loss actually sustained by the members of the Class [...], whether the peril which directly caused it is or is not covered under the Policy coverage for negative publicity or restricted access and whether the insured members of the class who did not file a formal claim are barred from doing so now.

**C) THE RECOURSES OF THE CLASS MEMBERS RAISE IDENTICAL, SIMILAR OR RELATED QUESTIONS OF FACT OR LAW, NAMELY:**

43. a) Must the defendant Insurers indemnify class members for Business Interruption Insurance due to COVID-19, in accordance with the terms and conditions of their insurance policies containing coverage for negative publicity and or restricted

access similar to or substantially similar to that found in Policy P-3 and Form 402014 interpreted in accordance with Québec law?

- b) Did the restrictions placed on Class Members as a result of the Quebec Government orders, preventing them from accessing and using their premises, cause a business income loss within the meaning of form 402014 in the Policy P-3 or of similarly drafted policies and forms issued to Class Members by any of the defendants providing for substantially similar coverage, in particular negative publicity or restricted access?
- c) Does loss of business income caused by the interruption of the business at the premises by order of civil authority issued in response to COVID-19, including the lockdown orders issued by the Government of Quebec starting in March 2020 and which restricted access to, in whole or in part, to a Class Member's premises trigger coverage under the Restricted Access on the basis that:
  - i) The Order (s) result (s) from an occurrence, namely an outbreak of a contagious or infectious disease within 1 km that is required by law to be reported to government authorities.
  - ii) The Order (s) did restrict access to the premises of the Class Members.
  - iii) The Order (s) constitutes an order of a government authority.
- d) Are the Class members entitled to claim damages for wrongful denial of policy coverage constitutive of an abuse of right, plus interest and the additional indemnity set out in the *Civil Code of Quebec* on these amounts, from the date of service of the Application for authorization?
- e) If Class Members have coverage, what is the period of coverage or periods of coverage under the Policy and form 402014 or of similarly drafted policies providing for substantially similar coverage, in particular negative publicity or restricted access, issued by any of the defendants as they pertain to business interruption coverage?
- f) Are insureds who have yet to file a claim with the defendants or one of them barred from forming part of the Class?
  - i) Did defendants lose the benefit of the right to invoke the absence of a notice as a result of their blanket bad faith denial of coverage?
  - ii) Does the Civil Code provide for the suspension of prescription in favour of all Class Members so that each of them may be deemed to have filed a claim with the defendants or may be given sufficient time after the authorization of this action to file a claim with the defendants?



**D) THE COMPOSITION OF THE CLASS**

44. The composition of the Class makes it difficult or impracticable to apply the rules for mandates to take part in judicial proceedings on behalf of others or for consolidation of proceedings;
45. The Applicant's Principal has been in the restaurant industry for decades, knows many other restaurant owners affected by the Insurers' apparent systematic denial of coverage and by the insurance industry in general and he is well aware of their catastrophic fate and dire economic difficulties. As such, there are likely hundreds or thousands of Class Members in the same situation as the Applicant in the province of Québec;
46. The names and addresses of all persons included in the Class are not known to the Applicant, however they are known to the Defendants;
47. Class members are very numerous and are dispersed across the Province of Quebec; As a result of privacy laws, Applicant has not been able to obtain information as to the identity of other potential members of the class who purchased similar insurance coverage from the defendants for the year 2020.
48. Class members form a specialized field of commercial activity and the interpretation of the Applicant's Policy, [...] or that of similarly drafted policies or forms pertaining to business interruption coverage, providing for substantially similar coverage, in particular negative publicity or restricted access, shall serve the interests of all other class members;
49. These facts demonstrate that it would be impractical, if not impossible, to contact each and every Class member to obtain mandates and to join them in one action;
50. In these circumstances, a class action is the only appropriate procedure for all of the members of the Class to effectively pursue their respective rights and have access to justice without overburdening the court system;

**E) THE CLASS MEMBER REQUESTING TO BE APPOINTED AS REPRESENTATIVE PLAINTIFF IS IN A POSITION TO PROPERLY REPRESENT THE CLASS MEMBERS.**

51. The Applicant in continuation of suit requests that it be appointed the status of representative plaintiff for the following main reasons:
  - a) The Applicant represented by the trustee is a member of the Class and has a personal interest in seeking the conclusions that it is seeking;
  - b) The Applicant's shareholder and President, Mr. George Cagianos, also holds a controlling interest (in his name and through a corporation) and is a director of two additional L'Académie restaurants in the Greater Montreal area, namely 9140-8385 Québec Inc. dba Restaurant L'Académie Anjou and 9218-2427 Québec Inc dba Restaurant L'Académie de l'Ouest (through shares in 9228-4611 Québec Inc.), the whole as appears from the extracts of the *Québec*

*Enterprise Register* for both corporations communicated herewith as **Exhibit P-7, en liasse**;

- c) The Applicant (and its President) are competent, in that it has the potential to be the mandatar of the claim if it had proceeded under article 91 of the *Code of Civil Procedure*;
- d) The Applicant's President is in contact with numerous restaurant and bar owners, and intends to apprise members of the Class of the progress of the present class action, acting together with its trustee.
- e) The Applicant cares about insurance coverage for his business and knows the importance of insurance coverage for his business but that of all restaurateurs and bar owners;
- f) The Applicant's interests are not opposed to those of other Class members;
- g) Despite the fact that Applicant was forced to file for bankruptcy on January 15, 2024, Mr. Caqanios intends to cooperate fully with the Trustee who is continuing the suit so as to allow the Trustee to recover the coverage indemnity and damages to make them available to Applicant's creditors while assisting the Class Members in advancing their common claims.

52. Additionally, the Applicant respectfully adds that:

- a) The Applicant has acted diligently with respect to this matter, as it has communicated with its insurance broker, submitted an insurance claim to Insurers, obtained a copy of its insurance policy, consulted the undersigned attorneys regarding its application and interpretation, and decided to institute a class action, instead of an individual action, in order to advance the rights of all members of the Class instead of only its own;
- b) Despite Applicant's bankruptcy, caused for the most part by the COVID crisis and its aftermath, its President has the time, energy, will and determination to assume all the responsibilities incumbent upon him in order to assist its Trustee to diligently carry out the action;
- c) It has cooperated and will continue to fully cooperate with the Trustee and its attorneys, who have experience in insurance law;
- d) Its President read this Modified Application prior to its court filing and reviewed the exhibits in support thereof and so has the Trustee.
- e) Its President and trustee understand the nature of the action;

- f) Its President is well aware of the dire financial difficulties of all restaurateurs and bar owners in the Province of Québec who may be the last to be authorized by the Government of Québec to reopen;
- g) The recovery of the insurance indemnity and of damages by the trustee, acting in the stead of 9391-2386 Quebec Inc., falls within the jurisdiction of the Superior Court, civil division.

**F) THE REPRESENTATIVE PLAINTIFF CONSIDERS THAT THIS MATTER IS OF THE UTMOST URGENCY AND THAT THE ONLY FUNDAMENTAL QUESTION FOR THIS HONORABLE COURT TO DECIDE IS OF A DECLARATORY NATURE.**

- 53. Applicant, like the vast majority of restaurateurs and bar owners, are hurting financially as a direct result of the COVID-19 pandemic and the country's complete shutdown;
- 54. Many restaurants and bars are running out of liquidity, may not even survive this financial crisis and looming recession and the baseless and highhanded denial of coverage by the Insurers, like other insurers, is causing extraordinary harm to the Applicant and Class members;
- 55. The relief sought by Applicant's Trustee and by the Class members will only or primarily necessitate that the terms of the Policy P-3 and of other policies issued by any of the defendants and containing similar or substantially similar language as it pertains to negative publicity or restricted access coverage from March 2020 onward be interpreted by this honorable court so as to determine whether Class members are or are not entitled to insurance coverage as a result of the COVID-19 pandemic for their ensuing business interruption losses.
- 56. This question can be decided first and without delay, leaving the calculation of the indemnity owed to each Class member to be decided separately, in accordance with the clear terms of the Policy;

**II. DAMAGES**

- 57. By refusing to indemnify the Applicant and other Class members for Business Interruption Insurance related to COVID-19, the Defendants are violating their contractual obligations towards them;
- 58. As set forth above, the Applicant has suffered damages which are continuously evolving as a result of the governmental decrees and measures regarding COVID-19. Given the uncertain duration of the COVID-19 pandemic, it is impossible for the Applicant to precisely quantify its damages at the present time and similarly it is impossible to estimate the damages for the totality of the class members;
- 59. In the alternative, the Applicant has clearly suffered damage as a result of four consecutive weeks of restricted access to its premises, namely from March 23, 2020 [...] onward, the whole resulting from the governmental decrees and measures regarding

COVID-19 for which it is entitled to compensation pursuant to sections 9 and of the Broad Form 402014.

60. In light of the foregoing, the Applicant is entitled to claim damages on behalf of all Class Members to be calculated in accordance with the formula set forth in the insurance policy or other Forms issued by defendants providing for similar or substantially similar coverage, in particular negative publicity or restricted access at the relevant time.

60.1 The policies and forms issued by defendants to Class members may provide coverage for one or more periods in 2020 during which the negative publicity or restricted access coverage applies.

### **III. NATURE OF THE ACTION AND CONCLUSIONS SOUGHT**

61. The action that the Applicant, through and with its Trustee, wishes to institute on behalf of the members of the Class is an action for declaratory relief and in damages;

62. The conclusions that the Trustee to the Applicant wishes to introduce by way of an originating application are:

**GRANT** the class action of the Representative Plaintiff and the members of the Class against the Defendants;

**DECLARE** that the business interruption losses caused by COVID-19 to Class members are covered under the Policy P-3, notably Form 402014 and any of the [...] policies or forms providing for similar or substantially similar coverage for negative publicity or restricted access, issued by any of the Defendants to Class Members;

**DECLARE** that Defendants' blanket denial of the claim made by Applicant and other Class members is wrongful and constitutes an abuse of right;

**CONDEMN** the Defendants to pay the Representative Plaintiff and to each of the Class Members an amount equal to their business interruption losses during COVID-19, beginning on March 23, 2020, calculated using the formula in the Policy, the whole with interest and the additional indemnity provided by law, as well as such other damages as this Honorable Court may award in connection with any finding of wrongful or abusive denial of insurance coverage by Defendants;

**ALLOW** all members of the class to be included in the claim, including those who had not filed an official claim by the time the Application for authorization was filed in court.

[...]

**ORDER** that the claims of individual Class members be the object of collective liquidation if the proof permits and alternately, by individual liquidation in accordance with the policy formula;

**CONDEMN** the Defendants to bear the costs of the present action including the cost of exhibits, notices, the cost of management of claims and the costs of experts, if any, including the costs of experts required to establish the amount of the collective\_or individual recovery orders;

**RENDER** any other order that this Honorable Court shall determine;

63. The interests of justice favor that this Application be granted in accordance with its conclusions;

**IV. JURISDICTION**

64. The Applicant and its trustee suggest that this class action be exercised before the Superior Court of Quebec, in the district of Montreal, because many Class members have businesses situated and insured in this district, and because the Defendants have a place of business in this district;

**FOR THESE REASONS, MAY IT PLEASE THIS HONOURABLE COURT TO:**

**AUTHORIZE** the institution of a class action in the form of an originating application in damages and for declaratory relief.

**APPOINT** the Applicant in continuation of suit with the status of Representative Plaintiff of the persons included in the Class herein described as:

**Class:**

All businesses and persons engaged in the operation of a hospitality services business, restaurant and or bar, in the province of Quebec, who purchased and held business interruption insurance such as the policy P-3 and form 402014, or similar or substantially similar insurance coverage, in force in 2020, from any one of the defendants or from several of them, acting together, either severally or jointly, and who were forced to close their business operations or limit their operations, in whole or in part, in the province of Quebec to take-out and delivery services as a result of COVID-19 and the ensuing governmental orders restricting access to the premises, in whole or in part, who sustained a loss of business income as a result thereof and who were denied coverage for business interruption insurance, in particular negative publicity or restricted access, by any of the Defendants and any and all of those same persons who did not file a claim or report the loss or who have yet to file a claim for Business Interruption Insurance with any of the Defendants as a result of a pre-emptive blanket denial of coverage by insurers, including the defendants.

**IDENTIFY** the principal questions of fact and law to be treated collectively as the following:

- a) Are the Insurers contractually obliged to indemnify Class members for Business Interruption losses due to COVID-19, in accordance with the Business Interruption Coverage contained in the terms and conditions of their insurance policy, such as P-3 and Form 402014 or in policies or Forms issued by any of the defendants and providing for similar or substantially similar coverage, in particular negative publicity or restricted access, interpreted in accordance with Quebec law?
- b) Are the Class members entitled to claim damages plus interest and the additional indemnity set out in the *Civil Code of Quebec* on these amounts, from the date of service of the Application for authorization?
- c) Was the refusal of Defendants to honor their obligations owed to Applicant and Class members under the insurance policy P-3 or pursuant to policies or Forms issued by any of the defendants and providing for similar or substantially similar coverage, in particular negative publicity or restricted access, wrongful and abusive, entitling Class members to seek damages on a class-wide basis against the defendants?
- d) Is giving notice to any of the defendants a prerequisite pursuant to the Civil Code of Quebec and or the policy terms and conditions to bringing an application against any of the defendants or being entitled to coverage under any of the policies and forms issued to Class Members which contain the disputed insurance coverage?
- e) What is or what are the periods of coverage to Class members for business income losses due to the distinct governmental orders issued in the year 2020 as a result of an infectious or contagious disease being reported within 1 km of the premises of each class member or such other distance provided for in the policies or forms?

**IDENTIFY** the conclusions sought by the class action to be instituted as being the following:

**GRANT** the class action of the Representative Plaintiff and the members of the Class against the Defendants;

**DECLARE** that the business interruption losses caused by COVID-19 and government orders to Class members are covered under the Broad Form 402014 [...] and Policy P-3 issued by Defendants to Class Members or pursuant to similar or substantially similar Forms issued to Class members and providing for business interruption coverage in the case of restricted access or negative publicity.

**DECLARE** that the filing of the Application for authorization to institute a class action constituted notice by the insureds who are Class members to each of the defendants pursuant to the policies and forms or at law.

**CONDEMN** the Defendants to pay the Representative Plaintiff and the Class Members an amount equal to their business interruption losses during COVID-19, beginning on March 23, 2020, calculated using the formulas in the Policy and [...] Form 402014 or similar or substantially similar policies and forms issued by any of the defendants, the whole with interest and the additional indemnity provided by law;

[...]

**ORDER** that the claims of individual Class members be the object of collective liquidation, if the proof permits or, alternately, by individual liquidation in accordance with the policy terms and conditions.

**CONDEMN** the Defendants to bear the costs of the present action including the cost of exhibits, notices, the cost of management of claims and the costs of experts, if any, including the costs of experts required under the policies or forms to establish the amount of the collective or individual recovery orders;

**RENDER** any other order that this honorable court shall determine;

**DECLARE** that all members of the Class that have not requested their exclusion, be bound by any judgment to be rendered on the class action to be instituted, in the manner provided for by law;

**FIX** the delay of exclusion at thirty (30) days from the date of the publication of the notice to the members, date upon which the members of the Class that have not exercised their means of exclusion will be bound by any judgment to be rendered herein

**ORDER** the publication of a notice to the members of the Class in accordance with article 579 C.C.P. within sixty (60) days from the judgment to be rendered herein in the "News" sections of the Saturday editions of La Presse+, Le Journal de Montréal and the Montreal Gazette;

**ORDER** the Defendants to send an Abbreviated Notice by e-mail to each Class member, to their last known e-mail address, with the subject line "Notice of a Class Action";

**ORDER** the Defendants to supply class counsel, within thirty (30) days of the judgment rendered herein, all lists in their possession or under their control permitting to identify Class members, including their names, addresses, phone numbers and email addresses as well as the name of all insurance brokers who marketed and sold for coverage during the year 2020 policies issued by any of the defendants and containing business interruption coverage similar or substantially similar to the one found in Policy P-3 and Form 402014;

**RENDER** any other order that this Honorable Court shall determine;

**THE WHOLE** with costs including publication fees.

Montréal, May 6, 2024

**SPIEGEL SOHMER INC.**



Per: **M. LAURENT DEBRUN**

**M. ANNA VILLANI**

Attorneys for Applicant in continuation of suit, Groupe Serpone inc., trustee to 9391-2386 Quebec inc.

1000-1255 Peel Street

Montreal, Quebec H3B 2T9

Direct Line: 514 875-3564

Fax: 514 875-8237

ldebrun@spiegelsohmer.com

avillani@spiegelsohmer.com

Our reference: 732268-1002



**NOTICE OF PRESENTATION**  
(articles 146 and 574 al. 2 N.C.P.C.)

**TO:** Me Eric Azran  
**STIKEMAN ELLIOTT, LLP**  
1155, boul. René-Lévesque O, #4100  
Montréal, QC H3B 3V2  
[EAzran@stikeman.com](mailto:EAzran@stikeman.com)

Attorneys for Defendants La  
Souveraine Compagnie d'Assurance  
Générale, HDI Global Specialty SE  
and Aviva Insurance Company of  
Canada

Me Vincent Rochette  
**NORTON ROSE FULBRIGHT**  
1, Place Ville-Marie Suite 2500  
Montréal, QC H3B 1R1  
[vincent.rochette@nortonrosefulbright.com](mailto:vincent.rochette@nortonrosefulbright.com)

Attorneys for Defendant Everest Insurance  
Company of Canada

**TAKE NOTICE** that Applicant's *Modified Application for Authorization to Institute a Class Action and to Appoint the Status of Representative Plaintiff* will be presented before the honorable Madam justice Dominique Poulin at the Montreal Courthouse, 1 Rue Notre-Dame East, Montréal, on **May 8, 2024, room 17.09.**

**GOVERN YOURSELVES ACCORDINGLY.**

Montréal, May 6, 2024

**SPIEGEL SOHMER INC.**

  
\_\_\_\_\_  
Per: Mtre Laurent Debrun  
Mtre Anna Villani  
Attorneys for Applicant in continuation of  
suit, Groupe Serpone inc., trustee to 9391-  
2386 Quebec inc.  
1000-1255 Peel Street  
Montreal, Quebec H3B 2T9  
Direct Line: 514 875-3564  
Fax: 514 875-8237  
[ldebrun@spiegelsohmer.com](mailto:ldebrun@spiegelsohmer.com)  
[avillani@spiegelsohmer.com](mailto:avillani@spiegelsohmer.com)  
Our reference: 732268-1002

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**From:** Veronica Torres-Hernandez  
**Sent:** May 6, 2024 11:03 AM  
**To:** vincent.rochette@nortonrosefulbright.com; EAzran@stikeman.com  
**Cc:** Me Laurent Debrun; Me Anna Villani  
**Subject:** NOTIFICATION: 500-06-001091-202 / GROUPE SERPONE INC., ès qualités de syndic à la faillite de 9391-2386 Quebec c. Aviva et al. / MODIFIED APPLICATION FOR AUTHORIZATION TO INSTITUTE A CLASS ACTION AND TO OBTAIN THE STATUS OF REPRESENTATIVE PLAINTIFF  
**Attachments:** 2024-05-06 Modified Application to authorize - L'Académie(17799353.1).pdf

C A N A D A

PROVINCE DE QUÉBEC  
DISTRICT DE Montréal

No : 500-06-001091-202

**COUR SUPÉRIEURE**  
(Chambre des actions collectives)

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**9391-2186 QUÉBEC INC. f.a.s.r.s.. RESTAURANT  
L'ACADÉMIE CRESCENT**

Demanderesse

-et-

**GROUPE SERPONE INC., ès qualités de syndic à  
la faillite de 9391-2386 Quebec inc.**

Demanderesse en reprise d'instance

c.

**AVIVA, COMPAGNIE D'ASSURANCE DU  
CANADA**

-et-

**LA COMPAGNIE D'ASSURANCE EVEREST DU  
CANADA**

-et-

**LA SOUVERAINE COMPAGNIE D'ASSURANCE  
GÉNÉRALE**

-et-

**HDI GLOBAL SPECIALTY SE**

Défenderesses

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**BORDEREAU DE TRANSMISSION POUR  
NOTIFICATION PAR COURRIEL**  
(Articles 133 et 134 C.p.c.)

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**EXPÉDITEUR :**

**SPIEGEL SOHMER INC.**

1255, rue Peel, bureau 1000  
Montréal (Québec) H3B 2T9  
Téléphone : (514) 875-2100  
Télécopieur : (514) 875-8237



SPIEGEL SOHMER

Me Laurent Debrun  
Notre dossier : 732268-01002

**NOTIFICATION EFFECTUÉE À :**

Me Eric Azran,  
[EAzran@stikeman.com](mailto:EAzran@stikeman.com)

Me Vincent Rochette,  
[vincent.rochette@nortonrosefulbright.com](mailto:vincent.rochette@nortonrosefulbright.com)

**NOM DES ÉTUDES:**

STIKEMAN ELLIOTT, LLP  
NORTON ROSE FULBRIGHT

**NATURE DU DOCUMENT NOTIFIÉ :**

**MODIFIED APPLICATION FOR AUTHORIZATION TO  
INSTITUTE A CLASS ACTION AND TO OBTAIN THE  
STATUS OF REPRESENTATIVE PLAINTIFF  
(Art. 571 and following C.C.P.)**

**NOMBRE DE PAGES DU DOCUMENT NOTIFIÉ :**

18

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**NO : 500-06-001091-202**

**COUR SUPÉRIEURE  
PROVINCE DE QUÉBEC  
DISTRICT DE MONTREAL**

**9391-2186 QUÉBEC INC. DBA RESTAURANT  
L'ACADÉMIE CRESCENT, [...] represented in  
continuance of suit by GROUPE SERPONE INC., es  
qualités Trustee to the estate of 9391-2186 Quebec inc.  
following the assignment in bankruptcy made by 9391-  
2386 Quebec inc.**

Demanderesse

-c.-

**AVIVA INSURANCE COMPANY OF CANADA et al.  
Défenderesses**

***MODIFIED APPLICATION FOR AUTHORIZATION  
TO INSTITUTE A CLASS ACTION AND TO  
OBTAIN THE STATUS OF REPRESENTATIVE  
PLAINTIFF (Art. 571 and following C.C.P.)***

**ORIGINAL**

**Mtre. Laurent Debrun**      **Notre ref.: 732268-01002**  
courriel: ldebrun@spiegelsohmer.com



**SPIEGEL SOHMER**

1000-1255 Peel Street  
Montréal, Québec H3B 2T9  
Direct Line: (514) 875-3465  
Fax: (514) 875-8237

**BS-0251**