

SUPERIOR COURT

(Class Actions Division)

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

No.: 500-06-001063-201

DATE: May 7, 2024

BY THE HONOURABLE DOMINIQUE POULIN, J.S.C.

9311408 CANADA INC.

and

GESTION RIC'ART LTÉE

and

JOENETTE INC.

Applicants

v.

AVIVA INSURANCE COMPANY OF CANADA

et

AVIVA GENERAL INSURANCE COMPANY

et

CO-OPERATORS GENERAL INSURANCE COMPANY

et

FEDERATED INSURANCE COMPANY OF CANADA

et

LLOYD'S UNDERWRITERS

et

MARC LIPMAN as « attorney-in fact » in CANADA for LLOYD'S UNDERWRITERS

et

NORTHBRIDGE GENERAL INSURANCE CORPORATION

et

THE WAWANESA MUTUAL INSURANCE COMPANY

et

WYNWARD INSURANCE GROUP

Defendants

JUDGMENT AUTHORIZING DISCONTINUANCE OF APPLICATION FOR
AUTHORIZATION OF CLASS ACTION
(ART. 585 C.C.P.)

OVERVIEW

[1] The Applicants are seeking an Order from the Court for leave for discontinuance of their Second amended Application for authorization to institute a class action and to appoint a representative plaintiff, filed on October 20, 2020;

[2] This litigation relates to the coverage afforded by Business Interruption insurance in the context of the Covid 19 pandemic for all type of businesses (except dentists and dental offices);

[3] Other similar requests for authorization to institute class actions were instituted on behalf of dentists and dental offices, which were dismissed by this Court on August 18, 2021, in *Centre de santé dentaire Gendron Delisle inc. c. La Personnelle, assurances générales inc and al.*¹, and *9306-6876 Québec inc. c. Intact compagnie d'assurance*² (the “**Dental claims**”)

[4] In those matters, the Court analyzed the Commercial insurance policy issued to the plaintiffs and concluded that the facts as alleged in regard to the governmental orders to close businesses due to the Pandemic of Covid-19 did not trigger the coverage afforded for business interruption, due to the absence of physical damage to the insured property;

[5] On May 16, 2023, this Court authorized a partial discontinuance against the following Defendants: (16) entities of Promutuel, Economical Compagnie Mutuelle D'assurance, Desjardins Groupe D'assurances Généralesinc, La Personnelle, Assurances Générales Inc. and La Personnelle, Compagnie D'assurance, as Notices of discontinuance were signed between the Representative plaintiff and these Defendants, as it appears from the Court file;

[6] On February 1st, 2024, this Court authorized the Defendants Wawanessa, Federated Northbridge and Lloyd's Underwriters to adduce evidence, as it appears from the Court file;

¹ *Centre de santé dentaire Gendron Delisle inc. c. La Personnelle, assurances générales inc and al.*, 2021 QCCS 3463; confirmed by 2021 QCCA 1758 on November 26, 2021.

² *9306-6876 Québec inc. c. Intact compagnie d'assurance*, 2021 QCCS 3462; confirmed by 2021 QCCA 1758 on November 26, 2021.

[7] Upon analysis of this new evidence, of further consideration and in light of the judgments in the Dental claims, the Applicants wish to discontinue their Application against the Defendants;

[8] **WHEREAS** the Court finds that the discontinuance does not cause any prejudice to the putative members of the proposed class action and that it is in the proper administration of justice that it be granted;

[9] **WHEREAS** the proposed class action has not been authorized, and no notice has been given to the proposed class;

[10] **WHEREAS** the Defendants consent to the discontinuance without costs ;

[11] **WHEREAS** the Applicants are well founded to seek the discontinuance of the present Action;

FOR THESE REASONS, THE COURT:

[12] **GRANTS** the Application for Leave for Discontinuance of the application to institute a Class action;

[13] **AUTHORIZES** the Applicants to discontinue the *Second amended Application for authorization to institute a class action and to appoint a representative plaintiff*;

[14] **ORDERS** the notification of a notice by way of direct mail and or emails to the putative Class Members who communicated with the Class solicitors or the applicants to manifest their interest in the proposed Class Action, in order to inform them of the discontinuance and of the fact that the limitation period as regards their putative right of action begins to run again from the date of the said notice;

[15] **THE WHOLE** without legal costs.



DOMINIQUE POULIN, J.S.C.