C A N A D A

PROVINCE OF QUÉBEC
DISTRICT OF MONTREAL

No: 500-06-001091-202

S U P E R I O R C O U R T
(Class Actions)

9356-6677 Québec Inc.

Plaintiff (representative of the class)

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

ORIGINATING APPLICATION TO INSTITUTE A CLASS ACTION
(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, PLAINTIFF STATES:

1. The Applicant operated a restaurant named La Roulotte, in business for decades in the City of Sainte-Geneviève, when the COVID-19 global health pandemic arose in the month of March 2020. An extract of the CIDREQ is produced as **Exhibit P-1**.

2. 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, ***in bulk***, as **Exhibit P-2**.

3. The Plaintiff 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)**.

4. Pursuant to the Policy, the Insurers have agreed, severally and not jointly, each for its proportion shown in the Policy, to indemnify the plaintiff in accordance with the Terms and Conditions of the Policy, including all endorsements.

5. 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**").

6. 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.
>
> (…)

7. There is no exclusion clause in the Broad Form Perils, part of the Policy P-3, or anywhere else in the all-risk Policy, which could exclude as a covered risk the business interruption loss sustained by plaintiff 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 plaintiff and class members.

8. Furthermore, Section 9 of the Broad Form Perils specifically covers 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. Negative publicity coverage is also a distinct covered risk in Form 402014-02 of the Policy, providing plaintiff and all class members with coverage from the actual loss of business income sustained 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.

> ***14 Negative publicity coverage***
>
> ***This coverage is subject to time and distance limitations. This Form insures the actual loss of "business income" sustained as a direct result of the following occurrences:***
>
> (a) ***Poisoning of any person directly caused by the consumption of food or drink provided by the Insured ad the "premises";***
>
> (b) ***an outbreak of a contagious or infections disease within 1 kilometre of the "premises" that is required by law to be reported to government authorities;***
>
> ***…***
>
> ***This coverage is limited to the time period not exceeding four (4) consecutive weeks.***

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 plaintiff'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, 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**, ***in bulk***.

14. The Insurers informed several restaurants and bar owners that they would not provide indemnification for their business interruption losses, despite such losses being covered under the terms of the Policy.

15. As a direct result of Governmental Orders, Plaintiff's restaurant sustained financial losses.

16. The Plaintiff does not recall having filed a written claim for indemnity with the defendant insurers on or after March 23, 2020.

17. At all relevant times, insurers doing business in Quebec, including Aviva, had publicly denied that it owed any business interruption coverage to the plaintiff or other class members.

18. The plaintiff paid for business interruption insurance and loss of business income due to negative publicity coverage 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, at times, where possible, for take-out services), an unforeseen and unintentional occurrence has caused the interruption of the plaintiff'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 Insurers had a duty to recognize their liability under the Policy and those issued to class members and to so advise all insurance brokers who sold the policies containing the coverage in the province of Quebec.

21. The plaintiff had an insurable interest and has sustained an actual loss of business income while access to the premises was restricted, or because of negative publicity coverage—both of which are covered under the Policy. The Policy was in force, and although the plaintiff may not have submitted a written claim to the Defendants, it is entitled, to the fullest extent permitted, to benefit from the protection afforded by the Policy.

22. The business interruption losses and/or the negative publicity coverage losses sustained by the plaintiff and class members 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 plaintiff's insured premises and business activities did sustain a loss or damage and or there was restricted access within the meaning of the Policy.

23. The plaintiff is entitled to claim the benefit of coverage for business interruption under the Policy for itself and for the following group:

Class:

"All businesses engaged in the operation of a restaurant or a bar in the Province of Quebec, whether they acted through the intermediary of a corporate entity or under a sole proprietorship, who detained insurance coverage comprehending a wording corresponding to the wording of the form Business Income-Actual Loss Sustained (Broad Form Perils) bearing the number 402014-02 annexed to the present judgment, issued by any of the Defendants, and whose access to their premises was restricted in whole or in part by an order of the Government due to the COVID pandemic, or who sustained loss of business income as a result of an outbreak of COVID 19 within 1 kilometre of their premises, and who were denied coverage pursuant to a claim made to the Defendants".

"All businesses engaged in the operation of a restaurant or a bar in the Province of Quebec, whether they acted through the intermediary of a corporate entity or under a sole proprietorship, who detained insurance coverage comprehending a wording corresponding to the wording of the form Business Income-Actual Loss Sustained (Broad Form Perils) bearing the number 402014-02 annexed to the present judgment issued by any of the Defendants, and whose access to their premises was restricted in whole or in part by an order of the Government due to the COVID pandemic or who sustained loss of business income as a result of an outbreak of COVID 19 within 1 kilometre of their premises, and who have not filed a claim or give notice of their loss to the Defendants".

(hereinafter referred to as the "**Class**").

24. Plaintiff's policy with the subscribing insurance companies, namely Aviva Insurance Company of Canada, Everest Insurance Company of Canada, HDI Global Specialty SE, and Sovereign General Insurance Company, Exhibit P-3, was in good standing at the relevant time, as it always paid its premiums.

25. Pursuant to the Policy and in exchange for the premiums it received from the plaintiff, the Insurers agreed to confer on plaintiff and class members coverage for Business Interruption losses and Negative publicity losses caused by an insured peril.

26. Specifically, the peril is insured, namely for loss of business income, by the terms and conditions found in the Broad Form Perils endorsement/Business income 402014-02 Exhibit P-3.

27. Following the orders made by the Government, plaintiff was forced to close its restaurant as of March 23, 2020, due to COVID-19 pandemic.

28. There were reported cases of Covid virus affecting persons within a 1 km radius of the premises operated by plaintiff and access to the premises was entirely restricted and forbidden by governmental orders so that the business of the plaintiff was interrupted in March 2020, onward during various periods.

29. 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.

30. The Policy was drafted by the Insurers unilaterally and they offered it to plaintiff and to members of the class.

31. In addition, and without limitation, section 9(b)(ii) and section 14(b) of the Broad Form Perils provides for insurance coverage when access to the insured premises is restricted in whole or in part, or there is a loss of "business income" sustained as a direct result of a pandemic or when there is an outbreak of a contagious or infectious disease such as the Covid 19 coronavirus within one km of the premises (Exhibit P-3). Plaintiff's situation as from March 2020 meets all of these criteria.

32. The Insurers nonetheless refused and continue to this day to refuse to indemnify the plaintiff and all members of the class for their Business Interruption losses.

33. Plaintiff has suffered a quantifiable loss due to its business being closed as of March 23, 2020, and this loss is covered by the Policy P-3.

34. Plaintiff and all class members are entitled to demand compensation and coverage in an amount calculated in accordance with the Policy.

35. In these circumstances, plaintiff is justified in claiming and does hereby claim damages from the Insurers in an amount to be calculated using the formulas provided for in its insurance policy (P-3) as of March 23, 2020, and, subject to the terms of the Policy, for the entire duration that business activities were interrupted due to COVID-19 and the governmental orders.

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

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

38. The Defendants are breaching their contractual obligations owed to plaintiff and to all class members.

39. The loss of business income caused by the interruption of the business at plaintiff's premises and those of class members following an 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, the class members' premises, triggers coverage under the Restricted Access on the basis that:

   (a) 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;

(b) The Order (s) did restrict access to the premises of the Class Members;

(c) No exclusions apply;

(d) The Order (s) constitutes an order of a government authority.

40. The principal questions of fact and law to be treated collectively are the following:

(a) Does the wording of clause 9–Restricted Access find application and give rise to indemnification for loss of business income in the context of COVID-19 and more particularly in the context of the restricting orders issued by the Quebec Government?

(b) Does the wording of clause 14–Negative Publicity Coverage find application and give rise to indemnification for loss of business income in the context of COVID-19 and more particularly in the context of reported cases of Covid 19 virus affecting persons within a one-kilometer radius of the restaurants or bars?

(c) Is the Respondents' denial of coverage wrongful and does it constitute an abuse of right?

(d) Are the Class Members who have not filed a claim or notified the Respondents of their loss entitled to indemnification?

(e) 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?

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

GRANT the Class Action of the Representative Plaintiff and of the members of the Class against the Defendants.

DECLARE that the wording of clause 9-Restricted Access finds application and gives rise to indemnification for loss of business income in the context of COVID-19 and more particularly in the context of the restricting orders issued by the Quebec Government.

DECLARE that the wording of clause 14-Negative Publicity Coverage finds application and gives rise to indemnification for loss of business income in the context of COVID-19 and more particularly in the context of reported cases of Covid 19 virus affecting persons within a one-kilometre radius of the restaurants or bars.

DECLARE that the Defendants' denial of coverage is wrongful and constitutes an abuse of right.

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 and **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.

CONDEMN the Defendants to indemnify the Representative Plaintiff for the amount equal to its business interruption losses during COVID-19, calculated using the formulas as stipulated in the Policy Form 402014, the whole with interest and the additional indemnity provided by law.

CONDEMN the Defendants to pay damages to the Class Members for their abuse of right, the whole with interest and the additional indemnity, from the date of service of the Application for authorization.

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 wording and formulas as stipulated in the Policy Form 402014 or similarly worded policy that class members have with the defendant insurers, the whole with interest and the additional indemnity provided by law.

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 honourable court shall determine.

THE WHOLE with costs including publication fees.

Montreal, June 17, 2025

SPIEGEL RYAN s.e.n.c.r.l.

Spiegel Ryan LLP

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SUMMONS
(articles 145 and following C.C.P.)

Filing of a judicial application

TAKE NOTICE that the Plaintiff has filed this originating application in the office of the Superior court of Quebec in the judicial district of Montréal, division of class actions.

Exhibits supporting the application

In support of the originating application, the Plaintiff intends to use the following exhibits:

EXHIBIT P-1: Extract of the CIDREQ for the restaurant “La Roulotte”;

EXHIBIT P-2: ***In bulk***, extracts of the CIDREQ for the companies Aviva Insurance Company of Canada, Everest Insurance Company of Canada, Sovereign Insurance and HDI Global Specialty SE;

EXHIBIT P-3: Copy of the commercial insurance policy;

EXHIBIT P-4: ***In bulk***, copies of 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;

Defendant’s answer

You must answer the application in writing, personally or through a lawyer, at the courthouse of Montreal situated at 1 Notre-Dame Street, Montreal, Quebec, within 15 days of service of the application or, if you have no domicile, residence or establishment in Québec, within 30 days. The answer must be notified to the plaintiff’s lawyer or, if the plaintiff is not represented, to the plaintiff.

Failure to answer

If you fail to answer within the time limit of 15 or 30 days, as applicable, a default judgement may be rendered against you without further notice and you may, according to the circumstances, be required to pay the legal costs.

Content of the answer

In your answer, you must state your intention to:

- negotiate a settlement;
- propose mediation to resolve the dispute;
- defend the application and, in the cases required by the Code, cooperate with the plaintiff in preparing the case protocol that is to govern the conduct of the proceeding. The protocol must be filed with the court office in the district specified above within 45 days after service of the summons. However, in family matters **or** if you have no domicile, residence or establishment in Québec, within 3 months after service;
- propose a settlement conference.

The answer to the summons must include your contact information and, if you are represented by a lawyer, the lawyer's name and contact information.

Where to file the judicial application

Unless otherwise provided, the judicial application is heard in the judicial district where your domicile is located or, failing that, where your residence or the domicile you elected or the district designated by an agreement with the plaintiff.

If the application pertains to an employment contract, consumer contract or insurance contract, or to the exercise of a hypothecary right on an immovable serving as your main residence, and if you are the employee, consumer, insured person, beneficiary of the insurance contract or hypothecary debtor, you may ask for a referral to the district of your domicile or residence or the district where the immovable is situated or the loss occurred. The request must be filed with the special clerk of the district of territorial jurisdiction after it has been notified to the other parties and to the office of the court already seized of the originating application.

Transfer of application to Small Claims Division

If you qualify to act as a plaintiff under the rules governing the recovery of small claims, you may also contact the clerk of the court to request that the application be processed according to those rules. If you make this request, the plaintiff's legal costs will not exceed those prescribed for the recovery of small claims.

Convening a case management conference

Within 20 days after the case protocol mentioned above is filed, the court may call you to a case management conference to ensure the orderly progress of the proceeding. Failing this, the protocol is presumed to be accepted.

Application accompanied by a notice of presentation

If the application is an application in the course of a proceeding or an application under Book III, V, excluding applications pertaining to family matters mentioned in article 409, or VI of the Code, the establishment of a case protocol is not required. However, the application must be accompanied by a notice of presentation, not by a summons, stating the date and time it is to be presented.

Montreal, June 17, 2025

Spiegel Ryan LLP

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Maïna Boucher

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Cc:	Me Laurent Debrun; Alexandra Potvin
Objet:	NOTIFICATION / 9356-6677 Québec Inc. vs. Aviva Insurance Company of Canada and als. / ORIGINATING APPLICATION TO INSTITUTE A CLASS ACTION / 500-06-001091-202
Pièces jointes:	2025-06-17 - Originating application to Institute a Class Action.pdf

Maîtres,

To avoid service by bailiff, please confirm whether you will accept a copy of the originating application on behalf of your client as valid service.

BORDEREAU D'ENVOI PAR COURRIEL

No. : **500-06-001091-202**

9356-6677 QUÉBEC INC.

Plaintiff (representative of the class)

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

SENDERS

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	Me Vincent Rochette **Me Dominique Noel** **NORTON ROSE FULBRIGHT** 1 Place Ville Marie Suite 2500 Montréal (Québec) H3B 1R1 Vincent.rochette@nortonrosefullbright.com dominique.noel@nortonrosefulbright.com *Attorneys for the defendant:* *Everest insurance company of Canada*

TRANSMISSION

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Objet: TR: NOTIFICATION / 9356-6677 Québec Inc. vs. Aviva Insurance Company of Canada and als. / ORIGINATING APPLICATION TO INSTITUTE A CLASS ACTION / 500-06-001091-202

Voici les réponses 😊

Alexandra Potvin

Stagiaire en droit / Articling student

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Objet : RE: NOTIFICATION / 9356-6677 Québec Inc. vs. Aviva Insurance Company of Canada and als. / ORIGINATING APPLICATION TO INSTITUTE A CLASS ACTION / 500-06-001091-202

Même chose de notre côté.

Vincent Rochette
Associé
Partner

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Objet : RE: NOTIFICATION / 9356-6677 Québec Inc. vs. Aviva Insurance Company of Canada and als. / ORIGINATING APPLICATION TO INSTITUTE A CLASS ACTION / 500-06-001091-202

Bonjour Me Debrun

Je n'ai pas d'objection à accepter signification de votre procédure pour et au nom de mes clientes – par contre, ce sera sous réserve de notre analyse de la procédure afin de nous assurer de sa conformité au jugement d'autorisation émis par la Cour

Quant à un appel, je suggère plutôt demain - je suis disponible en matinée et après 15h

Merci

Stikeman Elliott

Suivez-nous
Follow us

Eric Azran

Partner/Associé

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Subject: RE: NOTIFICATION / 9356-6677 Québec Inc. vs. Aviva Insurance Company of Canada and als. / ORIGINATING APPLICATION TO INSTITUTE A CLASS ACTION / 500-06-001091-202

Je suis disponible demain matin entre 8H30 et 9H30, entre 14H00 et 14H45 ou après 16H30.

Me Laurent Debrun

Avocat / Lawyer

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No. : **500-06-001091-202**

9356-6677 QUÉBEC INC.

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SOVEREIGN INSURANCE (LA SOUVERAINE COMPAGNIE D'ASSURANCE GÉNÉRALE)
-and-
HDI GLOBAL SPECIALTY SE

Defendants

SENDERS

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TRANSMISSION

Place of transmission : Montréal
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De:	Maïna Boucher
Envoyé:	18 juin 2025 11:02
À:	RAC
Cc:	Me Laurent Debrun; Alexandra Potvin
Objet:	NOTIFICATION / 9356-6677 Québec Inc. vs. Aviva Insurance Company of Canada and als. / ORIGINATING APPLICATION TO INSTITUTE A CLASS ACTION / 500-06-001091-202
Pièces jointes:	2025-06-17 - Originating application to Institute a Class Action.pdf

BORDEREAU D'ENVOI PAR COURRIEL

No. : **500-06-001091-202**

9356-6677 QUÉBEC INC.

Plaintiff (representative of the class)

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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NO: 500-06-001091-202

SUPERIOR COURT
PROVINCE OF QUÉBEC
DISTRICT OF MONTREAL

9356-6677 QUÉBEC INC.

Plaintiff (representative of the class)

-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

ORIGINATING APPLICATION TO INSTITUTE A CLASS ACTION
(Art. 571 and following C.C.P.)

ORIGINAL

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