

CANADA

PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL

SUPERIOR COURT  
(Class Actions)

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NO: 500-06-001054-200

**CENTRE DENTAIRE BOULEVARD GALERIES D'ANJOU INC.** legal person having its establishment at 7450 Des Galeries-d'Anjou Boulevard, Suite 250, in the District of Montreal, Province of Quebec, H1M 3M3

Applicant

-vs-

**L'UNIQUE ASSURANCES GÉNÉRALES INC.**, legal person having a principal establishment at 425 De Maisonneuve Boulevard West, Suite 750, in the City and District of Montreal, Province of Quebec, H3A 3G5

Defendant

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

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**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 dental clinic with 20 to 25 employees, the whole as appears from an extract of the CIDREQ disclosed herewith as **Exhibit P-1**;
2. The Defendant, L'Unique Assurances Générales Inc. (hereinafter "**L'Unique**"), is an insurance company, the whole as appears from an extract of the CIDREQ disclosed herewith as **Exhibit P-2**;
3. The Applicant has an insurance policy with the Defendant L'Unique, as appears from its "L'Unique Office Package" insurance policy disclosed herewith as **Exhibit P-3**;
4. The L'Unique insurance policy (Exhibit P-3) expressly provides Business Interruption Insurance, as appears from the "Declarations" page (page 1 of 110) which refers to "Business Interruption Insurance – Operating Losses – Actual losses sustained, Form E2000.01", and as appears from Form E2000.01 itself entitled "Operating Losses Insurance – Actual Loss Sustained" (pages 42-43 of 110);

5. Notably, Form E2000.01 provides as follows:

**“1. NATURE AND SCOPE OF COVERAGE**

This insurance covers the loss of business income actually sustained and directly resulting from the necessary reduction or interruption of the Insured’s activities caused by an insured peril that has affected the insured property described in the **Declarations.**”;

6. There is no exclusion clause in Form E2000.01, or anywhere else in the insurance policy (Exhibit P-3), which excludes business interruption loss resulting from a pandemic, a virus, or a health crisis;
7. Beginning in March of 2020, there was a global health pandemic resulting from the novel coronavirus (“**COVID-19**”);
8. As a result of COVID-19, many businesses, including but not limited to dental clinics, were declared by the government as non-essential and had to close, reduce or interrupt their business. In conjunction with the Minister of Health and Social Services and the public health authorities, the Order of Dentists ordered its members, including the Applicant, to postpone all appointments, save for certain emergencies;
9. The premises of dental clinics are deemed dangerous for patients, dentists and staff, since the virus may easily spread among the various people who are in the premises and using the same furniture, equipment, waiting rooms and procedure rooms, and since particles of blood and saliva are routinely generated during dental procedures and spread through the air via the use of aerosols;
10. The Applicant’s insured property was affected. On or around Monday, March 16, 2020, in accordance with the government’s orders due to COVID-19, the Applicant closed its dental clinic indefinitely (save for emergency procedures);
11. The Applicant subsequently made an insurance claim to L’Unique for business interruption insurance, as appears from its insurance claim disclosed herewith as **Exhibit P-4**. However, L’Unique has refused to indemnify the Applicant for its business interruption claim, despite the fact that the Applicant is covered for this type of loss;
12. On March 17, 2020, the President of the *Association des Chirurgiens Dentistes du Québec* sent an email to its members which included the following (**Exhibit P-5**):

« Nous sommes bien au fait que les assureurs Intact et **L’Unique**, qui offrent la couverture commerciale à plusieurs dentistes de l’Association, considèrent que leur police d’assurance n’inclut pas les risques associés à une pandémie. **N’étant pas d’accord avec cette interprétation**, nous allons

donc retenir les services d'une firme d'avocats spécialisée en assurance pour en faire l'analyse, établir l'étendue de la couverture d'assurance offerte aux dentistes et défendre vos droits. » [Emphasis added.]

13. The Applicant and all class members paid for business interruption insurance in the expectation that the Defendant would honour its contractual obligations in good faith if and when an unforeseen and unintentional occurrence were to take place resulting in an interruption of business. As a result of the COVID-19 crisis and the Quebec government's decision to shut down dental practices (save for emergency procedures), an unforeseen and unintentional occurrence has indeed taken place that necessarily results in the interruption of the Applicant's business, as well as that of all other Class members. The Defendant has failed to honour its contractual obligations and has failed to deliver the peace of mind upon which all insureds rely when they pay for insurance;
14. The Applicant is entitled to claim Business Interruption Insurance and therefore wishes to institute a class action on behalf of the following group:

**Class:**

All businesses engaged in the practice of dentistry or a sub-specialty of dentistry in the province of Quebec who were forced to reduce or interrupt their businesses as a result of COVID-19 and were denied coverage for Business Interruption Insurance by L'Unique Assurances Générales Inc.

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

**I. CONDITIONS REQUIRED TO AUTHORIZE THIS CLASS ACTION AND TO APPOINT THE 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 L'Unique***

15. Applicant's insurance policy with L'Unique, Exhibit P-3, is in good standing as it has always paid its premiums;
16. Pursuant to the insurance contract and in exchange for the premiums it received from the Applicant, L'Unique undertook to cover the Applicant for Business Interruption Insurance, in the event that a risk covered by the insurance policy occurs;
17. Specifically, the Applicant is insured for "Operating losses – Actual losses sustained" under Form no. E2000.01 (Exhibit P-3, at p. 1-PDF and p. 42-PDF);

18. Following orders made by the government, the Applicant closed its dental clinic (save for emergency procedures) on March 16, 2020 due to COVID-19;
19. Nowhere in its insurance policy does L'Unique expressly exclude business interruption loss resulting from a pandemic, virus or health crisis;
20. L'Unique nonetheless refused to indemnify the Applicant for Business Interruption Insurance;
21. The email sent by the President of the *Association des Chirurgiens Dentistes du Québec* to its members on March 17, 2020 (Exhibit P-3) confirms that L'Unique's refusal was systematic, thus affecting all members of the Class. This systematic refusal of coverage is completely unjustified;
22. To date (March 16-30, 2020), the Applicant has suffered a quantifiable loss of approximately \$165,000,00 due to its business being closed and this loss is covered by the Business Interruption Insurance Form no. E2000.01 of its insurance policy (Exhibit P-3);
23. As a result of the Quebec government's decision to shut down the Applicant's practice (save for urgent procedures which represent less than 1% of monthly revenues), the Applicant will either not see any patients, or see only a greatly reduced number of patients, as it is only performing emergency procedures. It is expected that this business interruption will continue at least until May 1<sup>st</sup> 2020, which will result in a very significant business interruption loss for the Applicant (whose monthly revenues are \$330,000.00), and for other Class members;
24. In these circumstances, the Applicant is justified in claiming and does hereby claim damages from L'Unique in an amount to be calculated using the formulas provided for in its insurance policy (see Exhibit P-3, p. 42-PDF) as of March 16, 2020 and for the entire duration that its business will be reduced or interrupted due to COVID-19, up to a maximum of twelve (12) months (see Exhibit P-3, p. 43-PDF);

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

25. The Defendant has failed to honour its contractual undertakings with respect to all class members similarly situated to the Applicant in an identical manner;
26. The language of the policy, which was drafted by the Defendant, is identical for every member of the Class;
27. The interpretation of coverage and any exclusion L'Unique may purport to invoke is identical for every member of the Class;
28. The formula for calculating the insurance indemnity owed to every member of the Class is identical;

29. The only individual question pertains to the business interruption loss actually sustained by the members of the Class;
30. **The recourses of the Class members raise identical, similar or related questions of fact or law, namely:**
- a) Must L'Unique indemnify class members for Business Interruption Insurance due to COVID-19, in accordance with the terms and conditions of its insurance policy?
  - 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) THE COMPOSITION OF THE CLASS**

31. 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;
32. The Applicant's President is a member of a Facebook group with more than 4,000 dentists, many of which are complaining about the Defendant's refusal to indemnify them for business interruption. As such, there are likely hundreds or thousands of Class Members in the same situation as the Applicant;
33. The Applicant is aware of other dental clinics who made claims with L'Unique for business interruption losses in recent days and whose claims were refused;
34. The names and addresses of all persons included in the Class are not known to the Applicant, however they are in the possession of the Defendant;
35. Class members are very numerous and are dispersed across the Province of Quebec;
36. 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;
37. 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;

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

38. The Applicant requests that it be appointed the status of representative plaintiff for the following main reasons:

- a) The Applicant is a member of the Class and has a personal interest in seeking the conclusions that it proposes herein;
- b) The Applicant (and its President) are competent, in that it has the potential to be the mandatory of the action if it had proceeded under article 91 of the *Code of Civil Procedure*;
- c) The Applicant's President is in contact with numerous members of the Class, and intends to apprise members of the Class of the progress of the present class action;
- d) The Applicant's interests are not antagonistic to those of other Class members;

39. 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 L'Unique, obtained a copy of its insurance policy, consulted the undersigned attorneys regarding its application, 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) Its President has the time, energy, will and determination to assume all the responsibilities incumbent upon him in order to diligently carry out the action;
- c) It has cooperated and will continue to fully cooperate with its attorneys, who have experience in class actions and in insurance law;
- d) Its President read this Application prior to its court filing and reviewed the exhibits in support thereof;
- e) Its President understands the nature of the action;

## **II. DAMAGES**

- 40. By refusing to indemnify the Applicant and other Class members for Business Interruption Insurance related to COVID-19, the Defendant is violating its contractual obligations towards them;
- 41. As set forth in paragraphs 22 to 24 above, the Applicant's damages on their own amount to approximately \$165,000 at present, and will likely amount to several hundred thousand dollars after 12 months. Given the uncertain duration of the COVID-19 pandemic, it is impossible for the Applicant to precisely quantify its damages at the present time;

42. In light of the foregoing, the Applicant is entitled to claim damages on behalf of all Class Members in accordance with the formula set forth in the insurance policy due to business interruption caused by COVID-19.

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

43. The action that the Applicant wishes to institute on behalf of the members of the Class is an action in damages;

44. The conclusions that 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 Defendant;

**DECLARE** that the business interruption losses caused by COVID-19 are covered under the Business Interruption Insurance (Form E2000.01) issued by Defendant to Class Members;

**CONDEMN** the Defendant to pay the Representative Plaintiff and the Class Members an amount equal to their business interruption losses during COVID-19, beginning on March 16, 2020, calculated using the formulas in Form E2000.01, said amount presently estimated to be \$165,000 for the Representative Plaintiff, the whole with interest and the additional indemnity provided by law;

**ORDER** the Defendant to deposit in the office of this Court the totality of the sums which forms part of any collective recovery, with interest and costs;

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

**CONDEMN** the Defendant 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 recovery orders;

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

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

#### IV. JURISDICTION

46. The Applicant suggests that this class action be exercised before the Superior Court of Quebec, in the district of Montreal, because the Applicant's business is situated and insured in this district, and because many other Class members have businesses situated and insured in this district, and because the Defendant has 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;

**APPOINT** the Applicant the status of representative plaintiff of the persons included in the Class herein described as:

**Class:**

All businesses engaged in the practice of dentistry or a sub-specialty of dentistry in the province of Quebec who were forced to reduce or interrupt their businesses as a result of COVID-19 and were denied coverage for Business Interruption Insurance by L'Unique Assurances Générales Inc.

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

- a) Must L'Unique indemnify class members for Business Interruption Insurance due to COVID-19 in accordance with the terms and conditions of its insurance policy?
- 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?

**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 Defendant;

**DECLARE** that the business interruption losses caused by COVID-19 are covered under the Business Interruption Insurance (Form E2000.01) issued by Defendant to Class Members;



**CONDEMN** the Defendant to pay the Representative Plaintiff and the Class Members an amount equal to their business interruption losses during COVID-19, beginning on March 16, 2020, calculated using the formulas in Form E2000.01, said amount presently estimated to be \$165,000 for the Representative Plaintiff, the whole with interest and the additional indemnity provided by law;

**ORDER** the Defendant to deposit in the office of this Court the totality of the sums which forms part of any collective recovery, with interest and costs;

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

**CONDEMN** the Defendant 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 recovery orders;

**RENDER** any other order that this Honourable 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 the 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 Defendant 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 Defendant and their representatives 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;

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

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

Montreal, March 31, 2020

*(sgd.) Kugler Kandestin LLP*

TRUE COPY

*Kugler Kandestin LLP*

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**KUGLER KANDESTIN LLP**

Counsel for Applicant

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**SUMMONS**  
(Articles 145 and following C.C.P)

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**Filing of a judicial application**

Take notice that the Applicant has filed this Application for Authorization to Institute a Class Action and to Appoint the Status of Representative Plaintiff in the office of the **Superior Court** in the judicial district of **Montreal**.

**Defendant's answer**

You must answer the application in writing, personally or through a lawyer, at the courthouse of Montreal situated at 1 Rue Notre-Dame E, Montréal, Quebec, H2Y 1B6, 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 Applicant's lawyer or, if the Applicant is not represented, to the Applicant.

**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 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 Applicant 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 or, 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.

**Change of judicial district**

You may ask the court to refer the originating Application to the district of your domicile or residence, or of your elected domicile 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.

### **Calling to 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.

### **Exhibits supporting the application**

In support of the Application for Authorization to Institute a Class Action and to Appoint the Status of Representative Plaintiff, the Applicant intends to use the following exhibits:

- Exhibit P-1:** Extract of the CIDREQ for Centre Dentaire Boulevard Galeries d'Anjou Inc.;
- Exhibit P-2:** Extract of the CIDREQ for L'Unique Assurances Générales Inc.;
- Exhibit P-3:** Copy of the L'Unique insurance policy;
- Exhibit P-4:** Copy of Centre Dentaire Boulevard Galeries d'Anjou Inc.'s insurance claim;
- Exhibit P-5:** Copy of the email from the President of the *Association des Chirugiens Dentistes du Québec* on March 17, 2020;

These exhibits are available on request.

**Notice of presentation of an application**

If the application is an application in the course of a proceeding or an application under Book III, V, excepting an application in 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 stating the date and time it is to be presented.

Montreal, March 31, 2020

*(sgd.) Kugler Kandestin LLP*

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*Kugler Kandestin LLP*

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**KUGLER KANDESTIN LLP**

Counsel for Applicant

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

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**TO: L'UNIQUE ASSURANCES GÉNÉRALES INC.**  
425 De Maisonneuve Boulevard West, Suite 750  
Montreal, Quebec, H3A 3G5

**Defendant**

**TAKE NOTICE** that Applicant's *Application for Authorization to Institute a Class Action and to Appoint the Status of Representative Plaintiff* will be presented before the Superior Court at **1 Rue Notre-Dame E, Montréal, Quebec, H2Y 1B6**, on the date set by the coordinator of the Class Action chamber.

**GOVERN YOURSELVES ACCORDINGLY.**

Montreal, March 31, 2020

*(sgd.) Kugler Kandestin LLP*

TRUE COPY

*Kugler Kandestin LLP*

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**KUGLER KANDESTIN LLP**  
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**SUPERIOR COURT  
(Class Action)  
DISTRICT OF MONTREAL  
PROVINCE OF QUEBEC**

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**CENTRE DENTAIRE BOULEVARD GALERIES  
D'ANJOU INC.**

Applicant

-vs.-

**L'UNIQUE ASSURANCES GÉNÉRALES INC.**

Defendant

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**APPLICATION TO AUTHORIZE THE BRINGING  
OF A CLASS ACTION AND TO APPOINT THE  
STATUS OF REPRESENTATIVE PLAINTIFF  
(Articles 571 and following C.C.P.)**

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**COURT COPY**

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