

C A N A D A

SUPERIOR COURT
(Class Action)

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

N^o:

500-06-001057-203

CENTRE DE SANTÉ DENTAIRE GENDRON DELISLES INC. a company incorporated under the laws of the Province of Québec, headquartered at 4870 Boulevard des Forges, Trois-Rivières (Québec), G8Y 1W9

Applicant

-vs-

LA PERSONNELLE ASSURANCES GÉNÉRALES INC., a company incorporated pursuant to the laws of Canada, headquartered at 6300 Guillaume-Couture Boulevard, Lévis (Québec), G6V 6P9

and

GROUPE PROMUTUEL FÉDÉRATION DE SOCIÉTÉS MUTUELLES D'ASSURANCE GÉNÉRALE a company incorporated pursuant to the laws of Canada, situated at 2000 boulevard Lebourgneuf, bureau 400, Québec (Québec), G2K 0B6

and

ROYAL & SUN ALLIANCE DU CANADA, SOCIÉTÉ D'ASSURANCES a company incorporated pursuant to the laws of Canada, situated at 800-18 St. York, Toronto (Ontario), M5J 2T8

and

ECONOMICAL, COMPAGNIE MUTUELLE D'ASSURANCE a company incorporated pursuant to the laws of Canada, headquartered at 111 Westmount Road S., PO BOX 2000, Waterloo (Ontario), N2J 4S4

and

LA CAPITALE ASSURANCES GÉNÉRALES INC. a company incorporated pursuant to the laws of

Canada, headquartered at 625 Jacques-Parizeau St.,
Québec (Québec), G1R 2G5

and

**DESJARDINS GROUPE D'ASSURANCES
GÉNÉRALES INC.** a company incorporated
pursuant to the laws of Canada, headquartered at
6300 BOUL. Guillaume-Couture, Lévis (Québec),
G6V 6P9

Defendants

**APPLICATION FOR AUTHORIZATION TO INSTITUTE A CLASS ACTION AND TO
APPOINT A REPRESENTATIVE PLAINTIFF
(Art. 574 C.C.P. and following)**

**TO ONE OF THE HONOURABLE JUSTICES OF THE SUPERIOR COURT OF
QUEBEC, SITTING IN AND FOR THE DISTRICT OF MONTREAL, THE APPLICANT
STATES THE FOLLOWING:**

GENERAL PRESENTATION

1. The Applicant wishes to institute a class action on behalf of all dentists (whether practicing individually or through a professional corporation) and dental offices in the Province of Québec who, as of March 16, 2020, were subject to a contract of insurance with one or more of the Defendants that included “business interruption” or “operating loss” coverage (the “Class” or “Class Members”);

The Defendants

2. The Defendant La Personnelle Assurances Générales (“Personnelle”) is a corporation organized under the laws of Canada with its headquarters in Lévis, Québec as it appears on the extract from the *Registraire des entreprises* communicated herewith as **Exhibit P-1**;

3. The Defendant Groupe Promutuel Fédération des Sociétés Mutuelles d'Assurances Générales ("**Promutuel**") is a corporation organized under the laws of Canada with its headquarters in Québec, Québec as it appears on the extract from the *Registraire des entreprises* communicated herewith as **Exhibit P-2**;
4. The Defendant Royal & Sun Alliance du Canada, Société d'Assurances ("**RSA**") is a corporation organized under the laws of Canada with its headquarters in Toronto, Ontario as it appears on the extract from the *Registraire des entreprises* communicated herewith as **Exhibit P-3**;
5. The Defendant Economical, Compagnie Mutuelle d'Assurance ("**Economical**") is a corporation organized under the laws of Canada with its headquarters in Waterloo, Ontario as it appears on the extract from the *Registraire des entreprises* communicated herewith as **Exhibit P-4**;
6. The Defendant La Capitale Assurances Générales ("**La Capitale**") is a corporation organized under the laws of Canada with its headquarters in Québec City, Québec as it appears on the extract from the *Registraire des entreprises* communicated herewith as **Exhibit P-5**;
7. The Defendant Desjardins Groupe d'Assurances Générales ("**Desjardins Assurances**") is a corporation organized under the laws of Canada with its headquarters in Québec City, Québec as it appears on the extract from the *Registraire des entreprises* communicated herewith as **Exhibit P-6**;
8. The Defendants are each authorized to engage in and carry on the business of insurance in Québec and Canada to indemnify other persons against loss or liability in respect of risks or perils to which the object of the insurance may be exposed, or to pay a sum of money or other thing of value upon the happening of certain events. The Defendants are authorized insurers who undertake or effect, or agree, or offer for valuable consideration to undertake or effect, contracts of insurance through a variety of different insurance products, including commercial insurance and business interruption policies ("**Business of Insurance**");

9. The Defendants are each independent entities, but in respect of the claims asserted in this proceeding, have acted collectively and in concert;

General Facts

Business Interruption due to COVID-19

10. Business Interruption Insurance, also known as, *inter alia*, Operating Loss Coverage, hereinafter “**BII**”, permits a business or business owner to collect, from the insurer, income that the business would have expected to generate were it not for the intervention of an unexpected event (“**BI Coverage**”);
11. On about December 31, 2019, the World Health Organization (“**WHO**”) was alerted to several cases of pneumonia in Wuhan, China. On about January 7, 2020 China confirmed the cases were attributed to COVID-19;
12. On about January 15, 2020 the Public Health Agency of Canada activated the Emergency Operation Centre to support Canada’s response to COVID-19. On January 25, 2020, Canada confirmed its first case of COVID-19 infection;
13. On about January 26, 2020, Canada’s Chief Public Health Officer (“**CPHO**”) stated that the risk of future infection of COVID-19 is low, and that public health protocols were working. On January 30, 2020 the WHO declared the outbreak of COVID-19 a public health event of international concern. On January 31, 2020, Canada’s Minister of Health, Patty Hajdu, stated that Canada is not ready to declare a national emergency over the coronavirus outbreak and that current evidence did not justify such a declaration. On about January 31, 2020, Prime Minister Justin Trudeau held that Canadians remain at low risk of contracting COVID-19;
14. On about March 6, 2020, the CPHO stated that most COVID-19 cases in Canada have been mild, and that Canada is well-equipped to deal with the outbreak. On about March 11, 2020 the WHO published the WHO Director-General’s opening remarks at the media briefing on COVID-19. Such publication *inter alia* stated, “We have therefore made the assessment that COVID-19 can be characterized as a pandemic ... We have never before seen a pandemic sparked by a coronavirus. This is the first pandemic caused by a coronavirus.”;

15. On March 11, 2020, Canada's Minister of Health, Patty Hajdu, officially stated that declaration of a global COVID-19 pandemic does not change Canada's approach to fighting the virus;
16. On March 13, 2020, the Canadian Minister of Finance, Governor of the Bank of Canada, and the Canadian Superintendent of Financial Institutions outlined a coordinated package of measures to support the functioning of markets, the resilience of our financial sector, and continued access to financing for Canadian businesses;
17. On March 16, 2020, dentists across Québec were advised by the *Ordre* to only accept and participate in emergency procedures;
18. On March 18, 2020 the Canadian government and its partners announced further measures to support businesses. These actions are part of Canada's whole-of-government response to COVID-19, and the significant stimulus program developed to stabilize Canada's economy, support businesses and to protect Canadians;
19. On March 24, 2020, the Government of Québec ordered that all non-essential businesses be shut, and that dentists engage *at most* only in emergency procedures;
20. At all material times the notion of a "pandemic" constituted a public health issue. At all material times issues of public health resorted within the exclusive authority of the federal government of Canada;
21. At no material time has the Government of Canada declared a national emergency pursuant to *Emergencies Act*, RSC 1985, c 22 (4th Supp);
22. At no material time has the Government of Canada declared the outbreak of COVID-19 a pandemic;
23. Canada has been a member or associate member of the WHO since about August 29, 1946. Canada become a party to the Constitution of the World Health Organization ("WHO Constitution") or was admitted to associate membership on such date;

24. At no material time:

- a) did the WHO have binding authority over the Government of Canada;
- b) did the WHO's declaration of COVID-19 constitute a declaration with binding power over Canada;
- c) did the WHO's authority over Canada extended, pursuant to WHO Constitution, Article 23, go beyond making recommendations;
- d) was the WHO's declaration of COVID-19, and any recommendation pursuant to such declaration, similarly declared by Canada as a pandemic;

25. Pursuant to Canada's federal authority over public health, the *Quarantine Act*, SC 2005, c 20, s 2 defines "communicable disease" as a human disease that is caused by an infectious agent or a biological toxin and poses a risk of significant harm to public health, or a disease listed in the schedule, and includes an infectious agent that causes a communicable disease;

26. As of yet, the Minister of Health has neither established quarantine stations pursuant to the *Quarantine Act*, s 6 nor designated quarantine facilities pursuant to the *Quarantine Act*, s 7. Any orders issued by Canada with regards to isolation or self-isolation do not fall within the ambit of said sections;

27. Insofar as Canada recognizes a risk, reporting to quarantine officers currently occur pursuant to the *Quarantine Act*, s 25(1). Pursuant to said section, such measures does not pose an immediate risk of significant harm to public health;

28. At no material time did COVID-19 constitute a "pandemic" that could or should exclude liability of the Defendants for the Claims;

29. Due to COVID-19, provinces and municipalities in Canada have ordered mandatory business closures or imposed operating restrictions that effectively closed or significantly limited the operating potential of Class Members and their businesses. These limitations (on dentists including the Applicant) became apparent on March 16, 2020 and acute on March 24, 2020 with the closure orders;

30. However, Business Interruptions and damage flowing from the Business Interruptions accrued to the Class even prior to the enactment, and even without the enactment, of forced closure orders. For example:

- a) in many jurisdictions gatherings of 10 or more (or fewer) people were restricted, making operation of many businesses, including dentists with waiting rooms, practically impossible, or at a minimum significantly reduced, and will for the foreseeable future significantly reduce, the number of appointments that could be scheduled;
- b) many Class Members closed or significantly reduced the operation of their business, exercising reasonable restraint and caution to protect the health and safety of their staff and customers and minimize exposure to potential third-party liability claims;

31. In the context of this claim, the relevant “**Business Interruptions**” are those occasioned as a direct or indirect result of the COVID-19 pandemic, and include:

- a) Loss of revenue occasioned by a decrease or elimination of customers by virtue of social distancing advisories issued by public health authorities;
- b) Loss of revenue occasioned by federal, provincial, and municipal orders restricting the operation of or entirely closing businesses;
- c) Loss of revenue occasioned by federal, provincial, and municipal orders effectively rendering business premises that provide public-facing services unhabitable by the public;
- d) Loss of revenue occasioned by federal, provincial, and municipal orders that limit the size of gatherings at business premises, or completely deny public attendance at a business premise;
- e) Loss of revenue occasioned by federal, provincial, municipal, or public health authority orders or advisories requiring changes to the provision of business services (the “**Business Service Changes**”) that cannot be made by a business for reasons that include:
 - (i) the business or business premises do not allow for the Business Service Changes;
 - (ii) the unavailability of other business services or third parties to effect requisite Business Service Changes;

- (iii) the costs of other business services or third parties to effect requisite Business Service Changes;
 - (iv) the inability to attain requisite insurance coverage for the Business Service Changes;
 - (v) the inability of other business services or third parties who would assist in effecting Business Service Changes in attaining requisite insurance coverage;
 - (vi) the unavailability or unreasonable cost of attaining requisite insurance coverage for the Business Service Changes; and
 - (vii) the property damage or additional property damage that would result by effecting particular Business Service Changes;
- f) Loss of revenue occasioned by the presence of COVID-19 at the business premises;
 - g) Loss of revenue occasioned by the release or discharge of COVID-19 at the business premises;
 - h) Loss of revenue occasioned by the contamination of COVID-19 at the business premises;
 - i) Loss of revenue occasioned by the continuous contamination of COVID-19 at the business premises;
 - j) Loss of revenue occasioned by physical damage to the premises occasioned by the presence, release, discharge, or contamination of COVID-19 at the business premises;
 - k) Loss of revenue occasioned by the presence, release, discharge, or contamination of COVID-19 at the business premises and the resultant physical damage to said business premises; or
 - l) Loss of revenue occasioned by the costs of addressing physical damage to business premises due to the presence, release, discharge, or contamination of COVID-19 at the business premises which includes:
 - (i) costs to dissipate, remove, or address COVID-19 contamination to make the business premises safe for occupancy, or to allow for the continuation of business operations in the context of federal, provincial, municipal, or public health authority orders or advisories;
 - (ii) costs due to requisite Business Service Changes in the context of COVID-19 contamination at the business premises and pursuant to federal, provincial, municipal, or public health authority orders or advisories; or

- (iii) costs of the incapacitation of the business services due to COVID-19 contamination at the business premises;

32. “COVID-19 Contaminations” of business premises includes:

- a) its current or previous occupation by the general public since at least no later than March 16, 2020, the date the *Ordre des dentistes du Québec* recommended that only emergency procedures be conducted, because Class Members should reasonably have believed their business premises had been contaminated with Covid-19;
- b) any COVID-19 related federal, provincial, municipal, or public health authority orders or advisories, or information provided with respect to said orders or advisories that, affects the function of the business premises;
- c) any COVID-19 related federal, provincial, municipal, or public health authority orders or advisories, or information provided with respect to said orders or advisories that, require Business Service Changes for the continuation of business services at the subject business premises;
- d) any incapacitation of a business to operate at the business premises due to any COVID-19 related federal, provincial, municipal, or public health authority orders or advisories, or information provided with respect to said orders or advisories;

33. Business Interruptions experienced by the Class include COVID-19 Contaminations;

34. Damages from COVID-19 Contaminations includes physical loss of, or damage to, business premises, such as:

- a) temporary and non-structural damage, including the rendering of physical property unsafe;
- b) damages to, or the loss of function of services required for continued business operations at the business premises due to federal, provincial, municipal, or public health authority orders or advisories, or information provided with respect to said orders or advisories;
- c) damages from COVID-19 related federal, provincial, municipal, or public health authority orders or advisories, or information provided with respect to said orders or advisories that, require the use of special equipment for visitation to, or occupancy of the business premises;

- d) damages from COVID-19 related federal, provincial, municipal, or public health authority orders or advisories, or information provided with respect to said orders or advisories that, limit human occupancy of the business premises; or
- e) damages from COVID-19 related federal, provincial, municipal, or public health authority orders or advisories, or information provided with respect to said orders or advisories that, deem business premises unfit for continued or future use or unfit for human occupancy;

The Products: Contracts of Insurance

- 35. The Class Members entered into respective contracts of insurance with the Defendants, pursuant to which the Defendants, as the respective insurers, agreed with Class Members, as the respective insured, in consideration of a payment or series of payments ("**Premium**"), to pay to Class Members sums of money conditionally on the happening of uncertain events which as contemplated will or may cause loss or expense to Class Members;
- 36. Such insurance agreements, hereinafter referred to as "**Products**", were at all material times valid and enforceable;
- 37. The Defendants derived revenues from the collection of Premiums from Class Members;
- 38. At all material times the intention of the Class Members and Defendants was for the Products to constitute mechanisms for spreading risk of loss, and to spread risk for Class Members who, as policyholders, pay Premiums for coverage;
- 39. The Products, while not identical in the pertinent terms regarding BIA, have in common that:
 - a) The Defendants promise to pay Class Members if Class Members suffer losses insured by the Product to an amount not greater than the value of the loss;
 - b) The Defendants have a right of subrogation against a party at fault upon indemnification under the Products;
 - c) The Defendants have a right of contribution from other insurers which might have provided insurance for the loss;
 - d) Class Members have insurable interests in the subject matter of the Products;

- e) A mutual obligation to act in utmost good faith exists between the Class Members and Defendants, and such relationship was not a regular commercial one, in that:
- (i) The Defendants must deal with Class Members openly, honestly, and without unreasonable delay;
 - (ii) The duty applies both to the manner in which the Defendants investigate and assess Claims and to the decision of whether or not to pay Claims;
 - (iii) When deciding whether to refuse payment, Defendants must assess the Claim's merits in a balanced and reasonable manner, and not deny coverage or delay payment in order to take advantage of the Class Members' economic vulnerability or gain bargaining leverage in negotiating a settlement;
 - (iv) The Defendants' decisions to refuse payment should be based on a reasonable interpretation of the common but not necessarily identical obligations under the Products;

40. At all material times Class Members complied with the terms and conditions applicable to the Products;

41. At all material times, the Products allowed the Class to make claims pursuant to Business Interruptions;

Conduct of the Defendants

42. At all material times the Defendants represented to Class Members that:

- a) they would perform pursuant to the Products; and
 - b) they would indemnify Class Members but for frustration;
- (the “**Representations**”);

43. The Defendants owed a duty of care to the Class to provide accurate information about the Products;

44. The Representations were systemically by the Defendants and commonly by the Defendants, false, misleading, and deceptive;

45. The Defendants either knew the Representations were false, misleading and deceptive or were reckless as to whether or not they were true, misleading, or deceptive;
46. In the alternative, if any of the Defendants did not directly make the Representations, they are jointly and severally liable for damage caused by the Representations made by their agents;
47. The Defendants were aware, or ought to have been aware, that they were engaging in the Business of Insurance and non-excluded coverage, without frustration, justified indemnification pursuant to the Products;
48. The Defendants acted in concert, by agreement or common design, to decline coverage of Business Interruptions caused by COVID-19 Contaminations. The Defendants' acts were directed towards Class Members; the Defendants knew or should have known that injury to Class Members was likely to occur from these acts; and the Defendant's conduct in furtherance of their actions caused harm to the Class, including the loss of monies used to pay for the Products, which were reliable, government regulated and secure insurance products and which were excessively priced;
49. The Defendants' agents, directors, employees, and officers authorized, ordered, and executed these overt acts while engaged in the ordinary control, direction, management, and transaction of their businesses;
50. The specifics of the Representations may be judged collectively. The specifics of the Representations need not be considered individually or in relation to individual Class Members all of whom must be taken to have intended that the Products provide BII;
51. At all material times:
 - a) Class Members were entitled to recover their losses under the Products from the Defendants (by way of their “**Claims**”);
 - b) Class Members were able to prove that they had insurable interests of the nature protected by the BI Coverage under the BII relating to Business Interruptions as defined *supra*;

- c) Products constituted valid and existing contracts of insurance;
 - d) The losses incurred were covered by an insured peril;
 - e) The Claims were not forfeited on grounds of public policy; and;
 - f) Class Members submitted, or will submit, proper proofs of claim, or alternatively, the Court should waive that requirement where the Defendants in common have made clear that they will categorically reject BI Coverage claims pursuant to the in force BII agreements, and many Class Members will not have submitted proof of loss claims having been deluded by the Defendants into believing that such a claim would be categorically denied and requiring, for the purpose of this litigation, a prior proof of loss claim would be permitting the Defendants' wrongdoing to deprive Class Members of merited recovery;
52. At all material times, the risk of business losses incurred due to the Business Interruptions was an insured risk in that:
- a) Such risk was fundamental to the Products;
 - b) It was hazard or danger, or an exposure to mischance or peril;
 - c) It was a future event, certain, or uncertain, which occasioned loss;
 - d) It was a fortuitous, random event in that it was not certain to happen, and was not inherent in the nature of the subject matter of the Products; or if it is deliberately engineered by the insured;
 - e) It encompasses the exact thing which was insured and the contingency against which the exact thing is insured;
53. The refusal of coverage payments by the Defendants due to Business Interruptions shall herein be referred to as the **Refusal or Refusals**;
54. At no material time did the Business Interruptions constitute or cause the frustration of the Products, in that:

- a) The Business Interruptions did not so significantly change the nature of the Class Members' and Defendants' rights or obligations from what they could reasonably have contemplated when executing the Products, that it would be unjust to hold the Defendants to their literal stipulations in the current circumstances;
 - b) The Business Interruptions do not constitute a radical transformation in the circumstances governing performance under the Products so as to release the Defendants from their obligations as a matter of law;
 - c) Performance by the Defendants would not be unreasonably harsh or onerous for them;
 - d) At no material time did the Class Members conduct themselves as if the Products had been terminated by the Business Interruptions;
 - e) The Business Interruptions, as supervening events, were at all material times an inherent risk in the type of contract in question;
55. By failing to provide BI Coverage for Business Interruptions caused by COVID-19 Contaminations, the Defendants are breaching their promise to pay Class Members if Class Members suffer losses insured by the Product to an amount not greater than the value of the loss;
56. Such breaches by the Defendants were unilateral and without justification. They constitute fundamental breach, alternatively substantial breach, alternatively repudiation, alternatively anticipatory breach of the Products in that:
- a) They go to the root of the contract agreements between the Defendants and Class Members;
 - b) They are more than breaking terms of the contract agreements: The Defendants have failed to satisfy material purposes for which the Products were designed;
 - c) They constitute actions by the Defendants not to perform pursuant to the Products at all;
 - d) They deprive Class Members of substantially the whole benefit which it was the intention of the Defendants and the Class that the Class should obtain from the Products;
 - e) They are major and total;

- f) They comprise a failure by the Defendants to perform their prime obligations pursuant to the Products;
- g) The ratio of the Defendants' obligations that are pursuant to said breaches not performed is equal to the obligations to the Class as a whole;
- h) They are detrimental to the Class Members as innocent parties;
- i) The consequences of the breaches are serious, and they constitute the termination of the Defendants' performance to the Class in total;
- j) The Defendants, through words and conduct, unjustifiably exhibited a clear and unmistakable intention to no longer be bound by their contractual undertakings;
- k) The intention of the Defendants that is clear, causes Class Members to reasonably apprehend that it is indicative of an intention by the Defendants not to abide by the Products at all;

57. Moreover, the Representations were made and conducted for the express purpose of promoting the business interests and profits of the Defendants, and the marketing of the Products;

58. In making or, alternatively, permitting the Representations, the Defendants were in breach of the *Competition Act*, R.S.C. 1985, c. C-34 s 52(1) and s 54;

59. The Defendants, with regards to the Representations and Refusals, engaged in activities prohibited under the *Competition Act*, s 45, prohibiting agreements between competitors to fix, maintain, increase or control the prices of the Products to unreasonably enhance the price of the Products, or to engage in activities prohibited under Competition Act, s 45;

60. The Defendants breached the Competition Act, s 45, rendering them liable for damages and costs of investigation under the Competition Act, s 36 for acts described herein;

61. Pursuant to the Competition Act, s 36, Class Members are entitled to recover their full costs of investigation and substantial indemnity costs paid in accordance with the *Competition Act*;

62. Class Members are also entitled to recover, as damages or costs, in accordance with the *Competition Act*, the costs of administering the plan to distribute the recovery in this action and the costs to determine the damages of each Class member;
63. Class Members reasonably acted in reliance on the Representations by purchasing the Products and the reliance was detrimental to Class Members;
64. At all material times, the Products allowed the Class to make claims pursuant to Business Interruptions;

FACTS GIVING RISE TO AN INDIVIDUAL ACTION BY THE APPLICANT

65. The Applicant is a professional corporation established under the laws of the Province of Quebec through which Dr. Mario Gendron and his associate practice their profession as dentist, as shown in the extract from the *Registraire des entreprises* communicated herewith as **Exhibit P-7**;
66. The Applicant purchased a Product from Promutuel, as shown in policy #E3802128801-016 communicated herewith as **Exhibit P-8** (the “Policy”);
67. Per riders 4355-02, the Policy purchased by the Applicant included Operating Loss coverage;
68. Promutel refused the reclamation by letter received on March 23rd, communicated herewith as **Exhibit P-9**;
69. The dental office environment is particularly hazardous and at risk of being subject to widespread and uncontrollable COVID-19 Contaminations:
- a) dentists and other dental staff are, by the nature of their work, in very close proximity to patients, and are directly exposed to respirated air from each of the patients;
 - b) the nature of the activities (including spraying of water and air into the mouths of patients) cause the aerosolization of saliva and other mouth contaminants, which will spread throughout the office;

- c) the risk of aerosolization and the attendant spread of disease is well-documented in the medical and dental literature;
- d) these risks are not controllable, and it is not possible for the Applicant to significantly mitigate its damages. Without limiting the generality of the foregoing, dental offices including that of the Applicant are not equipped with negative pressure rooms to contain or control the spread of such aerosolized contaminants;

70. The Applicant, as a result of its significantly reduced operations, has suffered and will continue to suffer significant losses in income and income-earning potential, which losses ought to be covered by the Applicant's Policy;
71. Promutel, in common with the other Defendants, has refused to provide coverage for the COVID-19 Interruptions suffered by the Applicant, notwithstanding that such coverage is a part of the Policy;

FACTS GIVING RISE TO AN INDIVIDUAL ACTION BY EACH OF THE MEMBERS OF THE CLASS

72. Each Member of the Class purchased an insurance policy from one or more of the Defendants that included BI Coverage;
73. The BII policies purchased by each member of the Class are substantively the same as those of the Applicant, as the pertinent terms of the Applicant's Policy are equivalent to the material terms in each BII policy;
74. Each Member of the Class suffered damages directly flowing from the COVID-19 Interruptions, which damages ought to have been mitigated by the Products purchased through the Defendants;
75. All of these damages to the Class Members are a direct and proximate result of the Defendants' conduct;

CONDITIONS REQUIRED TO INSTITUTE A CLASS ACTION

76. The composition of the Class makes the application of Article 91 or 143 C.C.P. impractical or impossible for the reasons detailed below:

- a) The number of potential Class Members is so numerous that joinder of all Members is impracticable. While the exact number of Class Members is unknown to the Applicant at the present time and can only be ascertained from sales records maintained by the Defendants, it is estimated that there are more than 5,000 dentists in Québec, and most if not all of those dentists will have BI Coverage on terms similar to that of the Applicant's Policy;
- b) Based on the number of potential Class Members, it is impossible for the Applicant to identify all potential Class Members and obtain a mandate from each of them;
- c) The Applicant does not possess the names and addresses of potential Class Members, although for the purposes of notification of authorization, the *Ordre* could be asked to provide such a list or to distribute to members the notification;
- d) In addition, given the costs and risks inherent in an action before the Courts, and the uncertainty of the business environment that has given rise to this claim, many members of the Class will hesitate to institute an individual action against the Defendants;
- e) Even if the Class Members themselves could afford such individual litigation, the Court system could not as it would be overloaded;
- f) Furthermore, individual litigation of the factual and legal issues raised by the conduct of the Defendants would increase delay and expense to all parties and to the judicial system;
- g) Moreover, a multitude of actions instituted in different judicial districts risks having contradictory judgments on questions of fact and law that are similar or related to all Class Members;

77. The recourses of the Class Members raise identical, similar, or related questions of fact or law, namely:

- a) Does COVID-19 contamination, or the inherent risk of COVID-19 contamination, constitute a physical harm or damage to property?
- b) Did the March 16, 2020 recommendation from the *Ordre* that dentists cease practice except for emergency procedures on account of COVID-19 trigger the business interruption provision of the Policy issued to the Applicant and other Class Members, such that the Defendants are liable to provide BI Coverage in accordance with the applicable Policies?
- c) Did the March 24, 2020 closure of non-essential businesses and the consequential limitation that dentists cease practice except for emergency procedures on account of COVID-19 trigger the business interruption provision of the Policy issued to the Applicant and other Class Members, such that the Defendants are liable to provide BI Coverage in accordance with the applicable Policies?
- d) Did the Defendants act in concert or engage in anti-competitive behaviour contrary to the *Competition Act* through the coordination of their response to Claims made for Business Interruptions occasioned by COVID-19 Contaminations and, if so, are they liable to the Class for damages and costs pursuant to the *Competition Act*?

78. The questions of fact and law particular to each member consist of:

- a) The amount of damages suffered;
- b) The amount of damages that each Class Member can claim from the Respondents;

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

NATURE OF THE ACTION AND CONCLUSIONS SOUGHT

80. The action that the Applicant wishes to institute for the benefit of the members of the Class is an action in damages for breach of contract, negligence, and for breaches of the *Competition Act*;

81. The conclusions that the Applicant wishes to introduce by way of an application to institute proceedings are:

GRANT the Applicant's action against the Defendants;

AUTHORIZE the Applicant to commence this action as a class action;

CONDEMN the Defendants to pay an amount in compensatory damages to every Class Member, in an amount to be determined by the Court through individual assessments, plus interest as well the additional indemnity;

GRANT the class action of the Applicant on behalf of all the Class Members;

ORDER the treatment of individual claims of each Class Member in accordance with Articles 599 to 601 C.C.P.;

THE WHOLE with interest and additional indemnity provided for in the *Civil Code of Québec* and with full costs and expenses including experts' fees and publication fees to advise members;

82. Applicant suggests that this class action be exercised before the Superior Court in the District of Montreal for the following reasons:

- a) Many Class Members are domiciled in the District of Montreal;
- b) One or more of the Defendants have a business establishment in the District of Montreal;

- c) The Applicant's counsel is domiciled in the District of Montreal;

83. The Applicant, who is requesting to obtain the status of representative, will fairly and adequately protect and represent the interest of the Members of the Class, since Applicant:

- a) is a member of the Class, having acquired BI Coverage through Promutuel;
- b) suffered damages from Business Interruptions;
- c) understands the nature of the action and has the capacity and interest to fairly and adequately protect and represent the interests of the Members of the Class;
- d) is available to dedicate the time necessary for the present action before the Courts of Quebec and to collaborate with Class attorneys in this regard;
- e) is ready and available to manage and direct the present action in the interest of the Class Members that the Applicant wishes to represent, and is determined to lead the present file until a final resolution of the matter, the whole for the benefit of the Class;
- f) does not have interests that are antagonistic to those of other members of the Class;
- g) has given the mandate to the undersigned attorneys to obtain all relevant information to the present action and intend to keep informed of all developments;
- h) is, with the assistance of the undersigned attorneys, ready and available to dedicate the time necessary for this action and to collaborate with other Members of the Class and to keep them informed;
- i) The present application is well-founded in fact and in law;

FOR THESE REASONS, MAY IT PLEASE THE COURT:

GRANT the present Application;

APPOINT the Applicant as the representative plaintiff on behalf of “all dentists (whether practicing individually or through a professional corporation) and dental offices in the Province of Québec who, as of March 16, 2020, were subject to a contract of insurance with one or more of the Defendants that included “business interruption” or “operating loss” coverage”;

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

- a) Does COVID-19 contamination, or the inherent risk of COVID-19 contamination, constitute a physical harm or damage to property?
- b) Did the March 16, 2020 recommendation from the *Ordre* that dentists cease practice except for emergency procedures on account of COVID-19 trigger the business interruption provision of the Policy issued to the Applicant and other Class Members, such that the Defendants are liable to provide BI Coverage in accordance with the applicable Policies?
- c) Did the March 24, 2020 closure of non-essential businesses and the consequential limitation that dentists cease practice except for emergency procedures on account of COVID-19 trigger the business interruption provision of the Policy issued to the Applicant and other Class Members, such that the Defendants are liable to provide BI Coverage in accordance with the applicable Policies?
- d) Did the Defendants act in concert or engage in anti-competitive behaviour contrary to the *Competition Act* through the coordination of their response to Claims made for Business Interruptions occasioned by COVID-19 Contaminations and, if so, are they liable to the Class for damages and costs pursuant to the *Competition Act*?

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

GRANT the Applicant’s action against the Defendants;

AUTHORIZE the Applicant to commence this action as a class action;

CONDEMN the Defendants to pay an amount in compensatory damages to every Class Member, in an amount to be determined by the Court through individual assessments, plus interest as well the additional indemnity;

GRANT the class action of the Applicant on behalf of all the Class Members;

ORDER the treatment of individual claims of each Class Member in accordance with Articles 599 to 601 C.C.P.;

THE WHOLE with interest and additional indemnity provided for in the *Civil Code of Québec* and with full costs and expenses including experts' fees and publication fees to advise members;


DECLARE that all Members of the Class that have not requested their exclusion from the Class in the prescribed delay to be bound by any judgment to be rendered on the class action to be instituted;

FIX the delay of exclusion at 30 days from the date of the publication of the notice to the Members;

ORDER the publication of a notice (the content and distribution of which is to be determined after authorization has been ordered and all applicable appeal periods have expired) to the Members of the Class in accordance with Article 579 C.C.P.;

THE WHOLE with costs to follow.

MONTREAL, April 6th, 2020


MERCHANT LAW GROUP LLP
Attorneys for the Petitioner

SUMMONS

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

Filing of a Judicial Application

Take notice that the Applicant has filed this Application to Authorize the Bringing of a Class Action and to Ascribe the Status of Representative in the office of the Superior Court of Quebec in the judicial district of Montreal.

Defendants' Answer

You must answer the application in writing, personally or through a lawyer, at the courthouse of Montreal situated at 1 Rue Notre-Dame Street Est, Montréal, Québec, 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 Applicant.

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 to Authorize the Bringing of a Class Action and to Ascribe the Status of Representative, the Applicant intends to use the following exhibits:

Exhibit P-1: Extract from the *Registraire des entreprises* – La Personnelle

Exhibit P-2: Extract from the *Registraire des entreprises* – Promutuel

Exhibit P-3: Extract from the *Registraire des entreprises* – Royal & Sun Alliance du Canada, Société d'Assurances

Exhibit P-4 : Extract from the *Registraire des entreprises*- Economical

Exhibit P-5 : Extract from the *Registraire des entreprises*- La Capitale

Exhibit P-6 : Extract from the *Registraire des entreprises*- Desjardins Assurance

Exhibit P-7: Extract from the *Registraire des entreprises* – Centre de Santé Dentaire Gendron Delisle Inc.

Exhibit P-8: Promutuel Policy No. E3802128801-016

Exhibit P-6: Promutuel refusal letter

These Exhibits are available upon 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, April 6th, 2020

Merchant Law Group

Merchant Law Group LLP

10 rue Notre Dame Est, suite 200

Montréal (Québec) H2Y 1B7

Phone : 514-842-7776

Fax : 514-842-6687

Notifications : elowe@merchantlaw.com

Attorneys for the Applicant

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

TO: LA PERSONNELLE ASSURANCES GÉNÉRALES INC
6300 Guillaume-Couture Boulevard, Lévis. Québec G6V 6P9

**GROUPE PROMUTUEL FÉDÉRATION DE SOCIÉTÉS MUTUELLES D'ASSURANCE
GÉNÉRALE**
2000, boulevard Lebourgneuf, bureau 400 Québec (Québec) G2K 0B6

ROYAL & SUN ALLIANCE DU CANADA, SOCIÉTÉ D'ASSURANCES
800-18 ST York Toronto Ontario M5J2T8 Canada

ECONOMICAL, COMPAGNIE MUTUELLE D'ASSURANCE
111, Westmount Road S. PO BOX 2000
Waterloo (Ontario) N2J4S4

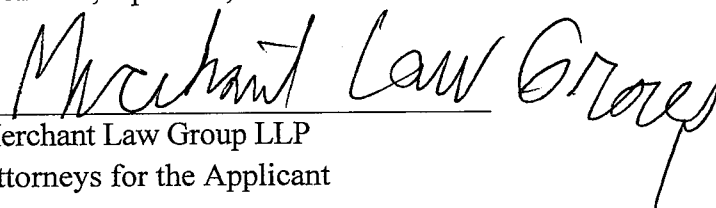
LA CAPITALE ASSURANCES GÉNÉRALES INC.
625, Jacques-Parizeau St Québec (Québec) G1R2G5

DESJARDINS GROUPE D'ASSURANCES GÉNÉRALES INC.
6300 BOUL. Guillaume-Couture Lévis Québec G6V6P9 Canada

TAKE NOTICE that the present APPLICATION FOR AUTHORIZATION TO INSTITUTE A CLASS ACTION AND TO APPOINT A REPRESENTATIVE PLAINTIFF will be presented before one of the Honourable Judges of the Superior Court of Québec, at the Montreal courthouse, located at 1, rue Notre-Dame Est, in the city and District of Montréal, on the date set by the coordinator of the class actions chamber.

PLEASE ACT ACCORDINGLY.

Montreal, April 6th, 2020.



Merchant Law Group LLP
Attorneys for the Applicant

N^o.: 500-06-001057-203

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COUR SUPÉRIEURE

DISTRICT DE MONTRÉAL

**CENTRE DE SANTÉ DENTAIRE GENDRON
DELISLES INC.**

Requérante

-C.-

**LA PERSONNELLE ASSURANCES GÉNÉRALES
INC. et al.**

Intimés

**APPLICATION FOR AUTHORIZATION TO
INSTITUTE A CLASS ACTION AND TO
APPOINT A REPRESENTATIVE
PLAINTIFF**

06 AVR. 2011

Cour

ORIGINAL

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Action

collective

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reçu 15h44

me Erik

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