

No: 500-06-0010068-200

9369-1426 QUÉBEC INC. DBA RESTAURANT BÂTON ROUGE, a legal person having a principal establishment at 7422 d'Argenton Avenue, City and District of Montréal, Province of Québec, H1K 3K4

Applicant

vs.

ALLIANZ GLOBAL RISKS US INSURANCE COMPANY, legal person having a principal establishment at 2810-1155 René-Levesque Blvd. West, Montreal, Quebec, H3B 2L2 and a *Fondé de pouvoir* in the person of **Fasken Martineau DuMoulin LLP**, 3500-800 du Square Victoria Street, Montréal, Québec, H4Z 1E9

Defendant

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

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

1. The Applicant is a well-known Laval restaurant carrying on business under the firm name and style Restaurant Bâton Rouge Steakhouse & Bar at Carrefour Laval with over 60 employees, the whole as appears from an extract of the CIDREQ disclosed herewith as **Exhibit P-1**;
2. Some of the Applicant's shareholders are also shareholders or co-shareholders, directly or through their holding corporation, of three (3) other companies operating identical businesses to that of the Applicant Bâton Rouge franchised restaurant, namely:
 - 1) 9059-5307 Québec Inc. (Bâton Rouge Steakhouse & Bar-Anjou) with over 50 employees;

- 2) 9348-7809 Québec Inc. (Bâton Rouge Steakhouse & Bar-De La Montagne Montréal) with over 55 employees;
- 3) 9358-3102 Québec Inc. (Bâton Rouge Steakhouse & Bar-Greenfield Park) with over 40 employees)
3. The Defendant, Allianz Global Risks US Insurance Company (hereinafter "**Allianz**"), is an insurance company conducting business in the Province of Québec, the whole as appears from an extract of the CIDREQ disclosed herewith as **Exhibit P-2**;
4. The Applicant, through its franchisor MTY Food Group Inc., subscribed as a named insured franchisee to an all-risk commercial insurance policy with the Defendant Allianz for its Laval restaurant and through the other legal persons named above, for the other three (3) Bâton Rouge Steakhouse & Bar restaurants, as appears from the commercial insurance policy and individual Certificates of insurance disclosed herewith as **Exhibit P-3 (Policy)**;
5. The Policy contains business interruption insurance, as appears from Section B of the Policy: Business Interruption, Blue Eagle Commercial Package;
6. Notably, Section B provides as follows:

"1. Business Interruption Specific Conditions

Indemnity Agreement

We shall indemnify you for consequential loss as provided under this Policy Section;

a) In the event that the Business shall be interrupted as a direct result of a Damage covered under Section A: Property of this Policy, we shall pay you the loss of your Business Income suffered during the Indemnity Period in consequence thereof, in accordance with the terms and conditions of this Policy Section.(...)

(...)

17.c) Interruption by Civil Authority

This Section, subject to its terms and conditions is extended to insure the loss of Business Income, loss of Rental Income or Additional Increase in Cost of Working, as applicable, suffered by you during the period of time, not exceeding one month while access to the Premises is prohibited by order of civil authority, but only when such order is given as a direct result of damage to neighbouring premises by a peril insured against under this Policy.

(...)

17e) Ingress-Egress

We will pay you for the actual loss of Business Income you sustain and necessary Extra Expense, due to the necessary interruption of your business due to prevention of ingress to or egress from the Premises, whether or not the Premises is damaged or not, caused by or resulting from direct physical loss of or damage to property caused by a peril insured, provided we will not provide coverage under this extension for more than the number of consecutive days indicated on the Policy Declarations and subject to the Sublimit shown therein.

7. There is no exclusion clause in Section B, part of the Policy Exhibit P-3, or anywhere else in the all-risk insurance Policy Exhibit P-3, which could exclude as a covered loss the business interruption loss sustained by Applicant and resulting from a pandemic or a health crisis causing the complete shut-down of all economic activities in the province of Québec, including those of the Applicant and class members;
8. Beginning in March of 2020, there was a global health pandemic resulting from the novel coronavirus (“**COVID-19**”);
9. 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;
10. The Québec government considered that restaurant and bar premises presented a substantial risk for patrons, staff, visitors 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;
11. The Applicant’s insured property was directly impacted by the crisis and ensuing governmental orders. On or around Monday, March 16, 2020, in accordance with the government’s order to combat COVID-19, the Applicant had to close all of its restaurant which has remained closed to this day, save and except for take-out and delivery services since May 1st, 2020 with the exception of Baton Rouge De La Montagne Montreal who is still closed and has no delivery and take-out, the whole as appears from the March 16, 2020 decree issued by the government of Québec and disclosed as **Exhibit P-4**;
12. The Applicant communicated with Allianz on May 5, 2020, via Marsh Canada Limited, the broker, to make a claim under the Policy for business interruption insurance. However, Allianz has refused to entertain any claim and advised Applicant that it would not indemnify the Applicant for its business interruption losses, despite the fact that the Applicant is covered for this type of loss under the Policy, the whole as appears from the May 5, 2020 Notices of claim and May 12, 2020 letters of denial issued by Allianz and disclosed as **Exhibit P-5**;

13. In the letter of denial P-5, Allianz outlines the grounds for denying the claim:

"I am the adjuster appointed by Allianz to respond to the notice of loss, dated May 5, 2020, submitted under the above-mentioned insurance policy (the "**Policy**") resulting from the COVID 19 pandemic (the "**Notice of Loss**" or "**Notice**").

(...)

Unfortunately, I must respectfully advise that the Policy does not cover the loss described in your Notice for the reason set out below.

(...)

COVERAGE ANALYSIS AND POSITION

The Policy is a commercial package and multiline contract with different coverage sections, including Section A: Property (pages 26 and following) and Section B: Business Interruption (pages 51 and following).

The different coverage sections of the Policy use defined terms, which are indicated in quotation marks. As indicated at page 1 of the Policy:

Words and phrases in quotation marks have special meaning and may be defined in GENERAL DEFINITIONS or in the SPECIAL DEFINITIONS portion of each coverage section of this Policy.

Section A: Property and Section B: Business Interruption both use the defined term "damage". The term is defined on page 46 for Section A: Property and on page 58 of Section B: Business Interruption:

*"Damage" means the **direct physical loss of or damage to covered property** at the "premises" from a Peril Insured.*

The Indemnity Agreement in Section A: Property reads as follows, in relevant part (at page 26):

*In the event that any of the property insured be lost or damages by Perils Insured in this Policy Section, we will indemnify you against **direct physical loss or "damage" to covered tangible property...***

Clause 9 of Section A: Property defines the Perils Insured (at page 28):

*This section, except as herein excluded, insures against all risks of **direct physical loss of or "damage" to tangible property insured.***

Accordingly, there is no coverage under Section A: Property of the Policy unless there has been “*direct physical loss of or “damage” to tangible property insured*”.

The indemnity Agreement in Section B: Business Interruption is limited to “Business” that is interrupted as a direct result of “Damage” covered under Section A: Property (at page 51):

a. *Business Income*

In the event that the “Business” shall be interrupted as a direct result of a “Damage” covered under Section A: PROPERTY of this Policy, we shall pay you the loss of your “Business Income” suffered during the “Indemnity Period” in consequence thereof...

b. *Rental Income*

We shall pay you the loss of “Rental Income” suffered during the “Indemnity Period” as a direct result of “Damage” covered under Section A: PROPERTY of this Policy...

c. *Extra Expense*

In the event that the “Business” shall be interrupted as a direct result of “Damage” we shall pay you the necessary “Extra Expense” ...

Clause 6 sets out that the Perils Insured under Section B: Business Interruption are the same as those insured under Section A: Property (at page 53):

This section follows the perils insured against as under Section A: Property.

That is, Section B: Business Interruption only responds when a loss is direct result of “*direct physical loss of or “damage” to tangible property insured*”.

The facts reported in your Notice of Loss do not indicate that there was any “*direct physical loss of or “damage” to tangible property insured*”. Specifically, the fact that your ability to carry on your business may unfortunately have been affected or impeded by orders , advisories or other information emanating from different levels of government with respect to the COVID-19 pandemic does not constitute “*direct physical loss of or “damage” to tangible property insured*”.

The loss described in your Notice therefore does not fall within either Section A: Property or Section B: Business Interruption.

EXCLUSIONS

Further, even there were otherwise coverage, which is not the case based on the information you have provided in your Notice of Loss, certain exclusions would apply to negate coverage.

Section A: Property, Property Specific Exclusions, Perils Excluded 11. reads in parts as follows (at pages 30-31):

This Section does not insure against loss or “damage” caused directly or indirectly:

(...)

e. by dampness or dryness of atmosphere, changes or temperature, contamination, freezing, heating, shrinkage, evaporation, loss of weight, leakage, of contents, exposure to light, change in colour or texture or finish, rust or corrosion, marring, scatching or crushing...

(...)

*h. (by) **Delay or loss of market, or loss of use or occupancy;***

These exclusions also apply to Section B: Business Interruption, as this Section “follows the perils insured against as under Section A: Property”.

Section B: Business Interruption, Business Interruption Specific Conditions, Perils Excluded, 8. e. reads as follows (at page 53):

*We shall not be liable for loss of “Business Income”, loss of “Rental Income” or for “Extra Expense”, as applicable, **following the clauses listed under Item 11. PERILS EXCLUDED of Section A, PROPERTY – PROPERTY SPECIFIC EXCLUSIONS**, notwithstanding any coverage extension provided under Section A, PROPERTY, PROPERTY SPECIFIC EXTENSIONS.*

Additionally, we shall not be liable for:

(...)

e. loss of business income due to the shutdown, closure or interruption of business from any and all events or perils where there is no physical loss or “damage” to the “premises”.

It is clear from this exclusion that the Policy does not respond where there has been a loss of business income for any reason whatsoever if there has not also been physical loss or “damage” to the “premises”, which is not the case here.

Allianz therefore reserves its right to rely on the exclusions as a further bar to coverage under the Policy.

BUSINESS INTERRUPTION SPECIFIC EXTENSIONS

We note there are extensions of coverage under Section B: Business Interruption, Specific Extensions, 17. c. Interruption by Civil Authority and 17. e. Ingress/Egress (page 57 of the Policy).

Extension 17. c. Interruption by Civil Authority reads as follows:

*This sections, subject to its terms and conditions, is extended to insure the loss of “Business Income, loss of “Rental Income” or Additional Increase in Cost of Working”, as applicable, suffered by you during the period of time, not exceeding one “month”, while access to the “Premises” is prohibited by order of civil authority, **but only when such order is given as a direct result of damage to neighbouring premises by a peril insured against under this Policy.***

As indicated in the bolded portion, in order for there to be coverage under the Interruption by Civil Authority Extension, the order of civil authority *must* have been given as a direct result of damage to neighbouring premises by a peril insured against under the Policy. In the case the orders, advisories or other information emanating from different levels of government with respect to the COVID-19 pandemic had nothing to do with damage to neighbouring premises by an insured peril, so that the condition of coverage under the Extension is not met.

Extension 17. e. Ingress/Egress reads as follows:

*We will pay for the actual loss of “Business Income” you sustain and necessary “Extra Expense”, due to the necessary interruption of your business due to prevention of ingress to or egress from the “Premises”, whether or not the “premises” is damaged or not , **caused by or resulting from direct physical loss of or “damage” to property caused by a peril insured**, provided we will not provide coverage under this extension for more than number of consecutive days indicted on the “Policy Declarations” and subject to the Sublimit shown therein.*

As indicated in the bolded portion, in order for there to be coverage under the Ingress/Egress Extension, the prevention of ingress to or egress from the “Premises” has to result from direct physical loss of or “damage” to property caused by an insured peril. As mentioned above, there is no such direct physical loss or damage described in your Notice of loss, so that the Extension cannot apply.

(Exhibit P-5);

14. The Applicant paid for business interruption insurance in the expectation that the Defendant would honor its 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 Québec Government’s decision to order the closure of all restaurants and bars (save and except, where possible, for take-out services), an unforeseen and unintentional occurrence has caused the interruption of the Applicant’s business, as well as that of all other Class members;
15. The Defendant’s grounds to deny altogether 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;
16. The Applicant has an insurable interest, it has sustained a loss covered under the Policy, the Policy is in force, the Applicant has made a claim with the Defendant in accordance with the terms of the Policy and Applicant is entitled to the fullest extent permitted to benefit promptly from the protection afforded by the Policy;
17. The business interruption losses sustained by the Applicant are an insured peril since a) it is not excluded and b) Defendant’s alleged legal justification to avoid coverage is unfounded in fact and in law since Applicant’s insured business premises and activities did sustain a loss or damage within the meaning of the Policy, properly interpreted under Québec civil law;
18. The Applicant is entitled to claim the benefit of coverage under the Policy for Business Interruption Insurance for itself and for the following group:

Class:

All businesses engaged in the operation of a restaurant or bar in the province of Quebec who were forced to suspend their business operations or limit their operations to take-out and delivery services as a result of COVID-19 and ensuing governmental order, who sustained a loss as a result and who were denied coverage for Business Interruption Insurance by Allianz Global Risks US Insurance Company or who have yet to file a claim for Business Interruption Insurance as a result of a pre-emptive blanket denial of coverage by Allianz Global Risks US Insurance Company.

(hereinafter referred to as the “**Class**”);

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

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

19. Applicant’s Policy with Allianz, Exhibit P-3, is in good standing as it has always paid its premiums;
20. Pursuant to the Policy and in exchange for the premiums it received from the Applicant, Allianz agreed to confer on the Applicant coverage for Business Interruption losses caused by an insured peril;
21. Specifically, the Applicant is insured for business interruption coverage (Exhibit P-3);
22. Following the orders made by the Government, the Applicant was forced to close its restaurant on March 16, 2020 due to COVID-19 pandemic;
23. Nowhere in the Policy does Allianz expressly exclude business interruption losses resulting from a pandemic or from a global shutdown ordered by the Government;
24. Allianz nonetheless refused to indemnify the Applicant for Business Interruption losses;
25. The Applicant is aware that many other owners of restaurants holding a policy containing similar business interruption coverage and language have been told by their respective insurer that coverage was denied;
26. To date, the Applicant alone has suffered a quantifiable loss of in excess of \$739,314.71 due to its business being closed since March 16, 2020 and this loss is covered by the Business Interruption Insurance of the Policy (Exhibit P-3);
27. The MTY policy P-3 has, as named insured, many other restaurants and bars in a similar situation to that of the Applicant;
28. As a result of the Québec Government’s decision to shut down the Applicant’s restaurant, the Applicant has suffered and will continue to suffer for at least several more weeks a total business interruption, which will result in a very significant business interruption loss for the Applicant and for all other Class members;
29. In these circumstances, the Applicant is (and all other proposed class members are) justified in claiming and does hereby claim damages from Allianz an amount to be calculated using the formula provided for in its insurance policy (Exhibit P-3) as of March 16, 2020 and for the entire insured duration that its business activities will be interrupted due to COVID-19 and the governmental order (Exhibit P-4);

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

30. The Defendant has failed to honor its contractual undertakings with respect to all class members similarly situated to the Applicant in an identical manner;
31. The Defendant is breaching its contractual obligations owed to Applicant and to all Class members;
32. The language of the Policy, which was drafted by the Defendant, is either identical or very similar for every member of the Class with respect to Business Interruption Coverage;
33. The interpretation of coverage and any exclusion Allianz may purport to invoke is identical or very similar for every member of the Class;
34. The formula and procedure for calculating the insurance indemnity owed to every member of the Class is identical or very similar and may be dealt with once the Policy and the Business Interruption Coverage issue has been decided by this Honorable court;
35. The only individual question pertains to the business interruption loss actually sustained by the members of the Class and whether the peril which directly caused it is or is not covered under the Business Interruption Coverage Form of the Policy;

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

36.
 - a) Must Allianz indemnify class members for Business Interruption Insurance due to COVID-19, in accordance with the terms and conditions of its insurance policy interpreted in accordance with Québec law?
 - b) Are the Class members entitled to claim from Allianz 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?

D) THE COMPOSITION OF THE CLASS

37. 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;
38. The Applicant's Principal has been in the restaurant industry for decades, knows many other restaurant owners affected by the insurers' apparent systematic denial of coverage by the insurance industry in general and he is well aware of their catastrophic fate and dire economic difficulties. As such, there are likely hundreds or thousands of Class Members in the same situation as the Applicant in the Province of Québec;

39. The names and addresses of all persons included in the Class are not known to the Applicant, however they are known to the Defendant;
40. Class members are very numerous and are dispersed across the Province of Québec;
41. Class members form a specialized field of commercial activity and the interpretation of the Applicant's Policy, in particular Section B, shall serve the interests of all other class members;
42. 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;
43. In these circumstances, a class action is the only appropriate procedure for all of the members of the Class to effectively pursue their respective rights and have access to justice without overburdening the court system;

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

44. 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 is seeking;
 - b) The Applicant (and its President) are competent, in that it has the potential to be the mandatary of the claim if it had proceeded under article 91 of the *Code of Civil Procedure*;
 - c) The Applicant's President is in contact with numerous restaurant and bar owners, and intends to apprise members of the Class of the progress of the present class action;
 - d) The Applicant cares about insurance coverage for his business and knows the importance of insurance coverage for his business but that of all restaurateurs and bar owners;
 - e) The Applicant's interests are not opposed to those of other Class members;
45. 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 Allianz Global Risks US Insurance Company, obtained a copy of its insurance policy, consulted the undersigned attorneys regarding its application and interpretation,

and decided to institute a class action, instead of an individual action, in order to advance the rights of all members of the Class instead of only its own;

- b) 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 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;
- f) Its President is well aware of the dire financial difficulties of all restaurateurs and bar owners in the Province of Québec who may be the last to be authorized by the Government of Québec to reopen;

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

- 46. Applicant, like the vast majority of restaurateurs and bar owners, is hurting financially as a direct result of the COVID-19 pandemic and the country's complete shutdown;
- 47. Many restaurants and bars are running out of liquidity, may not even survive this financial crisis and looming recession and the baseless and highhanded denial of coverage by the defendant insurer, like all other insurers, is causing extraordinary harm to the Applicant and Class members;
- 48. The relief sought by Applicant and by the Class members will only or primarily necessitate that the terms of the Policy be interpreted by this honorable court so as to determine whether Class members are or are not entitled to insurance coverage as a result of the COVID-19 pandemic;
- 49. This question can be decided first and without delay, leaving the calculation of the indemnity owed to each Class member to be decided separately, in accordance with the clear terms of the Policy;

II. DAMAGES

- 50. 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;

51. As set forth in paragraph 28 above, the Applicant's damages amount to in excess of \$739,314.71 at present and they will increase with the continued shutdown. Given the uncertain duration of the COVID-19 pandemic, it is impossible for the Applicant to precisely quantify its damages at the present time and similarly it is possible to estimate the damages for the totality of the class members;
52. 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;

III. NATURE OF THE ACTION AND CONCLUSIONS SOUGHT

53. The action that the Applicant wishes to institute on behalf of the members of the Class is an action in damages;
54. 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 Policy and the terms of Business Interruption Insurance issued by Defendant to Class Members;

DECLARE that Defendant's denial of the claim made by Plaintiff is wrongful and constitutes an abuse of right;

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 the Policy, said amount estimated to be as of this moment \$739,314.71 for the Representative Plaintiff, the whole with interest and the additional indemnity provided by law as well as such other damages as this Honorable Court may award in connection with any finding of wrongful or abusive denial of insurance coverage by Defendant;

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

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 Honorable Court shall determine;

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

IV. JURISDICTION

56. The Applicant suggests that this class action be exercised before the Superior Court of Québec, in the district of Montreal, because many Class members have businesses situated and insured in this district, and because the Defendant, while it does not have its head office in Québec, has a place of business in the district of Montréal and a *fondé de pouvoir*;

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 with the status of Representative Plaintiff of the persons included in the Class herein described as:

Class:

All businesses engaged in the operation of a restaurant or bar in the province of Quebec who were forced to close their business operations or substantially reduce their operations solely for take-out and or delivery services as a result of COVID-19 and the ensuing governmental order, who sustained a loss as a result and who were denied coverage for Business Interruption Insurance by Allianz Global Risks US Insurance Company or who have not yet filed a claim for Business Interruption Insurance as a result of a pre-emptive blanket denial of coverage by Defendant.

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

- a) Is Allianz contractually obliged to indemnify Class members for Business Interruption losses due to COVID-19, in accordance with the terms and conditions of its insurance policy interpreted in accordance with Québec law?
- b) Are the Class members entitled to claim damages plus interest and the additional indemnity set out in the *Civil Code of Quebec* on these amounts, from the date of service of the Application for authorization?
- c) Was the refusal of Defendant to honor its obligations under the insurance policy wrongful and abusive?

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 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 the Policy, said amount presently estimated to be in excess of \$739,314.71 for the Representative Plaintiff, the whole with interest and the additional indemnity provided by law;

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

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 honorable court shall determine;

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

THE WHOLE with costs including publication fees.

Montréal, May 14, 2020

SPIEGEL SOHMER INC.



Per: **MTRE. LAURENT DEBRUN**
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Our reference: 723910-01018

NO : 500-06-

**SUPERIOR COURT
PROVINCE OF QUÉBEC
DISTRICT OF MONTREAL**

9369-1426 QUÉBEC INC. DBA RESTAURANT BÂTON ROUGE, a legal person having a principal establishment at 7422 d'Argenton Avenue, City and District of Montréal, Province of Québec, H1K 3K4

Applicant

-vs-

ALLIANZ GLOBAL RISKS US INSURANCE COMPANY, legal person having a principal establishment at 2810-1155 René-Levesque Blvd. West, Montreal, Quebec, H3B 2L2 and a *Fondé de pouvoir* in the person of **Fasken Martineau DuMoulin LLP**, 3500-800 du Square Victoria Street, Montréal, Québec, H4Z 1E9

Defendant

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

ORIGINAL

Mtre. Laurent Debrun

Our file: 723910-1018



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