

CANADA

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

SUPERIOR COURT
(Class Actions)

NO: 500-06-001070-206

9281-2536 QUEBEC INC. DBA 21ST CENTURY FOODS, a legal person having a principal establishment at 4971 Levy St., City and District of Montreal, Province of Quebec, H4R 2N9

Applicant

-VS-

INTACT INSURANCE COMPANY, a legal person having its elected domicile at 2020, Robert-Bourassa Blvd., suite 600, City of District of Montréal, Province of Québec, H3A 2A5

Defendant

**APPLICATION FOR AUTHORIZATION TO INSTITUTE A CLASS ACTION AND TO
OBTAIN THE STATUS OF REPRESENTATIVE PLAINTIFF**
(Articles 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 Montreal caterer and operator of 7 cafeterias carrying on business under the firm name and style 21st Century Foods, with over 45 employees, the whole as appears from an extract of the CIDREQ disclosed herewith as **Exhibit P-1**;
2. The Defendant, Intact Insurance Company (hereinafter "**Intact**"), is an insurance company created pursuant to the Insurance Companies Act, S.C., 1991, Ch. 47, authorized to conduct business in the Province of Quebec, the whole as appears from an extract of the CIDREQ disclosed herewith as **Exhibit P-2**;
3. The Applicant subscribed to an all-risk commercial insurance policy with the Defendant Intact, as appears from the commercial insurance policy disclosed herewith as **Exhibit P-3 (Policy)**;
4. The Policy contains business interruption insurance, as appears from the Form "*Business Interruption Insurance*" (Form 238.0e);

5. Notably, Form 238.0e provides as follows:

1. Indemnity Agreement

This Form insures against loss directly resulting from necessary interruption of the Insured's business caused by direct physical loss or direct physical damage by the perils insured against, to building(s), equipment or stock on the premises, occurring during the term of the policy.

(...)

5. This form is extended to include the actual loss as insured hereunder during the period of time, not exceeding 30 days, while access to the Premises is prohibited by order of civil authority, but only when such order is given as a direct result of direct physical loss or direct physical damage to neighboring premises by a peril insured against under this policy.

5. There is no exclusion clause In Form 238.0e, part of the Policy 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;
6. Beginning in March of 2020, there was a global health pandemic resulting from the novel coronavirus ("**COVID-19**");
7. As a result of COVID-19, many retail businesses in the province of Québec, including but not limited to restaurants, bars and catering services, were declared non-essential services by the Québec government and had to close;
8. The Québec government considered that restaurants, bars and catering services presented a substantial risk for patrons, staff and the public, since the virus may be present on the premises, or could be brought into the premises and easily spread among the various people who attend at the premises, either as patrons, visitors or staff;
9. The Applicant's insured property under the Policy, including catering and cafeterias, were 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 its cafeterias and catering services or substantially limit its operations, save and except for one cafeteria which remained open, servicing 100 essential employees instead of 600 employees, the whole as appears from the March 16, 2020 decree issued by the government of Québec and disclosed as **Exhibit P-4**;
10. The Applicant, on April 14, 2020, notified his broker HED Courtier en assurance Inc. that it intended to file a notice of claim with Intact under the Policy, for business interruption insurance. However, before Applicant could even file his claim, Intact wrote to Applicant's President advising her that it refused to entertain any claim and 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 April 14, 2020 letter of denial unilaterally issued by Intact and disclosed as **Exhibit P-5**;

11. Intact alleges that it is entitled to deny in its totality the Applicant's insurance claim as this situation and losses are not covered by the Policy, (Exhibit P-5);
12. Intact takes the position in the letter P-5 that:

(...)

In order to trigger the application of your Business Interruption coverage, you must have sustained direct physical loss or damage to insured property because of a covered peril. The business interruption loss that you are suffering, because of the total or partial closure of your business, as a result of a recommendation or order from the civil authorities, does not constitute a loss within the meaning of the contract since it is not caused by physical damage to insured property as a result of a covered loss.

2. EXCLUDED PERILS

This Form does not insure against increased costs, and loss or damage caused directly or indirectly:

2.5. Atmospheric, Temperature Change, Service Interruption or other Damage

2.5.5. by contamination

2.7. Delay

by delay, loss of market, or loss of use or occupancy;

Consequently, we cannot pay any indemnities with respect to this claim.

13. Executives from Intact have recently declared publicly that Intact did not consider having coverage obligations pursuant to the Policy Terms and Conditions:

Fewer than 1% of the commercial property policies that Intact Financial Corp. writes should incur business interruption claims from the coronavirus pandemic, company officials suggested Wednesday. But the insurer has set aside more than \$80 million to account for possible commercial claims specifically due to COVID-19.

"We do have specialized programs where pandemic business interruption coverage is extended," said Darren Godfrey, senior vice president of commercial lines for Intact, during a conference call. The company's executives were discussing the Toronto-based firm's financial results for the three months ending Mar. 30.

But the specialized programs only apply to about 0.5% of Intact's commercial property customers, CEO Charles Brindamour noted. For the other 99.5% of intact commercial property clients, business interruption coverage would not kick in unless there is physical damage to the property by an insured peril, noted Godfrey.

"Beyond this first line of defence, we have exclusions in our policy language that make it very clear that the inability to use or access a property – even in times such as this, in a lock-down – does not qualify for coverage," Godfrey said, commenting specifically on the standard policy for Canadian clients.

"There are other elements of exclusion which I won't get into," Brindamour said when asked by an analyst about Intact's exposure to business interruption claims. "We think that it's extremely

remote that we need to invoke the second and third layer of defence. If we have to, in an extreme scenario, there are other solid arguments to defend that position as well.” (our underline)

the whole as appears from the web article published by CanadianUnderwriter.Ca, copy of which is disclosed as **Exhibit P-6**;

14. The Applicant paid for business interruption insurance in the expectation that Intact 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 severe business interruption losses. As a result of the COVID-19 crisis and the Quebec Government’s decision to order the closure of all (save and except, where possible, for take-out or delivery 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;
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, including cafeterias, food take-out and catering services, in the province of Quebec, who were forced to close their business operations or substantially limit their operations to take-out or delivery services (when feasible) 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 Intact or who have yet to file a claim for Business Interruption Insurance as a result of a pre-emptive blanket denial of coverage by Intact.

(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 Intact

19. Applicant’s Policy with Intact, 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, Intact agreed to confer on the Applicant coverage for Business Interruption losses caused by an insured peril not specifically excluded;
21. Specifically, the Applicant is insured for Business Interruption Insurance under the Policy and, in particular, Form 238.0e (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 Intact expressly exclude business interruption losses resulting from a pandemic or from a global shutdown ordered by the Government;
24. Intact nonetheless refused to indemnify the Applicant for Business Interruption losses;
25. The Applicant is aware that many other owners of take-out and catering services 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 \$270,000.00 due to its business being closed since March 16, 2020 and this loss is covered by the Business Interruption Insurance and the Policy (Exhibit P-3);
27. As a result of the Quebec Government's decision to shut down the Applicant's cafeterias and catering business, 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;
28. In these circumstances, the Applicant is (and all other proposed class members are) justified in claiming and does hereby claim damages from Intact in an amount to be calculated using the formulas provided for in its insurance policy (P-3) as of March 16, 2020 and for the entire 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:

29. The Defendant has failed to honor its contractual undertakings with respect to all class members similarly situated to the Applicant in an identical manner;
30. The Defendant is breaching its contractual obligations owed to Applicant and to all Class members;
31. 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;
32. The interpretation of coverage and any exclusion Intact may purport to invoke is identical or very similar for every member of the Class;
33. 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;

34. 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:

35. Is Intact contractually obliged to indemnify class members for Business Interruption losses incurred due to the COVID-19 pandemic, in accordance with the terms and conditions of its insurance policy interpreted in accordance with Québec law?

36. Are the Class members entitled to claim damages plus interest and the additional indemnity set out in the *Civil Code of Québec* 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 Form 238.0e, 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 operators including cafeterias and caterers, and he 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 cafeterias, take-out and catering services;
- 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 Intact, 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 take-out and catering services 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 restaurants, bars, take-out and catering services owners, are hurting financially as a direct result of the COVID-19 pandemic and the country's complete shutdown;

47. Many take-out and catering services are running out of liquidity, may not even survive this financial crisis and looming recession and the baseless and highhanded denial of insurance coverage by the defendant insurer, like most 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 26 above, the Applicant's damages amount to in excess of \$270,000.00 and they will increase with the continued shutdown and restrictions. 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, in particular, by the terms of Business Interruption Insurance (Form 238.0e) 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 and Form, 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;

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

IV. JURISDICTION

55. The Applicant suggests that this class action be exercised before the Superior Court of Quebec, in the district of Montreal, because many Class members have businesses situated and insured in this district, and because the Defendant has its elected domicile 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 with the status of Representative Plaintiff of the persons included in the Class herein described as:

Class:

All businesses engaged in the operation of restaurants, bars, including cafeterias, food take-out and catering services, in the province of Quebec, who were forced to close their business operations or substantially reduce their operations to take-out or delivery services, when feasible, 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 Intact or who have not yet filed a claim for Business Interruption Insurance with Intact as a result of a pre-emptive blanket denial of coverage by Intact.

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

- a) Is Intact 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 (Form 238.0e or any similar form) 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 and in Form 238.0e, said amount presently estimated to be in excess of \$270,000.00 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.

Montreal, May 14, 2020

SPIEGEL SOHMER INC.



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NO : 500-06-

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

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Defendant

**APPLICATION FOR AUTHORIZATION TO INSTITUTE
A CLASS ACTION AND TO OBTAIN THE STATUS
OF REPRESENTATIVE PLAINTIFF,
SUMMONS, NOTICE OF PRESENTATION
AND EXHIBITS P-1 TO P-6**
(Articles 571 and following C.C.P.)

ORIGINAL

Mtre. Laurent Debrun

Our file: 723910-1018



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