

C A N A D A

PROVINCE OF QUÉBEC  
DISTRICT OF MONTRÉAL  
No : 500-06-001091-202

SUPERIOR COURT  
(Class Action)

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9391-2186 QUÉBEC INC. DBA  
RESTAURANT L'ACADÉMIE CRESCENT

Applicant/Respondent

-vs.-

AVIVA INSURANCE COMPANY OF  
CANADA et al.

Defendants/Petitioners

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<p style="text-align: center;"><b>APPLICATION BY THE DEFENDANTS TO STAY THE MOTION FOR AUTHORIZATION TO INSTITUTE CLASS PROCEEDINGS (ARTICLE 49 C.C.P.)</b></p>
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TO ONE OF THE HONOURABLE JUSTICES OF THE QUEBEC SUPERIOR COURT,  
SITTING IN AND FOR THE DISTRICT OF MONTREAL, THE RESPONDENTS  
RESPECTFULLY SUBMIT THE FOLLOWING:

**I. THE APPLICATION**

1. On or about August 28, 2020, the Applicant 9391-2186 Québec Inc. (“**Académie**”) filed an Application for authorization to institute a class action and to obtain the status of representative plaintiff (the “**Application**”) against the four (4) defendants;
2. As indicated at paragraphs 4 and 5 of the Application, Académie subscribed to an all-risk commercial insurance policy with the four defendants (the “**Policy**”), who each have accepted to cover a specific proportion of the risks, as appears from Exhibit P-3;
3. As appears from paragraph 22 of the Application, Académie is asking leave from this Court to represent the following group:

***Class:***

*All businesses engaged in the operation of a restaurant and or bar, in the province of Quebec, who were forced to close 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 the Defendants or who have yet to file a claim for Business Interruption Insurance with the Defendants as a result of a pre-emptive blanket denial of coverage by insurers, including the defendants.*

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

4. As appears from the above, members of the Class are those engaged in the operation of a restaurant and/or bar in the province of Quebec, who were denied coverage for business interruption claims, which result from COVID-19 and ensuing governmental orders;
5. The following paragraphs of the Application (among others) show that the claims covered by the Application are indeed business interruption losses resulting from COVID-19 and ensuing government orders:

*27. Nowhere in the Policy do the Insurers expressly exclude business interruption losses resulting from a pandemic or from a global shutdown ordered by the Government;*

*29. Insurers nonetheless refused to indemnify the Applicant for Business Interruption losses;*

*35. As a result of the Quebec Government's decision to shut down the Applicant's restaurant until June 22, 2020, the Applicant has suffered a total business interruption, resulting in a very significant business interruption loss for the Applicant and for all other Class members;*

*42. 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 Policy;*

*43. a) Must Insurers indemnify class members for Business Interruption Insurance due to COVID-19, in accordance with the terms and conditions of their insurance policy interpreted in accordance with Quebec 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?*

*57 By refusing to indemnify the Applicant and other Class members for Business Interruption Insurance related to COVID-19, the Defendants are violating their contractual obligations towards them; [our emphasis]*

6. Moreover, at paragraph 62 of the Application, the conclusions sought by Académie and the members of the Class against the Defendants relate to business interruption losses caused by COVID-19;

## **II. STAYING THE APPLICATION**

7. The Defendants respectfully submit that in light of other proceedings filed in Quebec and elsewhere in Canada, encompassing the same class members for the same claims, this Court should stay the Application;

### **(a) 9311408 Canada Inc. (DBA Buzzfit Gym)**

8. On or about April 17, 2020, an application for authorization to institute a class action and to appoint a representative plaintiff was filed by 9311408 Canada Inc. before the Superior Court of Quebec, against the defendant Aviva (amongst numerous others), as appears from **Exhibit R-1** (the “**Buzzfit Application**”);
9. The class targeted by the Buzzfit Application appears at page 27 of Exhibit R-1 and encompasses every business in the Province of Quebec (except dentists and dental offices) “*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”*”;
10. Clearly, the members of the Class are subsumed within the Buzzfit Application, which was filed approximately four (4) months before that of Académie, and any insurance policy jointly issued by the named defendants in the Application or issued separately by the Defendant Aviva that provides for “business

interruption” or “operating loss” coverage is necessarily engaged by the Buzzfit Application;

**(b) JKT Holdings Ltd.**

11. On or about April 20, 2020, a statement of claim brought under the *Class Actions Act* was filed by JKT Holdings Ltd. before the Court of Queen’s Bench for Saskatchewan, as appears from **Exhibit R-2** (the “**JKT Holdings Statement of Claim**”);
12. Among numerous others, the JKT Holdings Statement of Claim targets the Defendants Aviva and Everest and encompasses a class composed of “*all residents of Canada who have claims against the Defendants regarding the Business of Insurance for business interruption insurance claims*”, which were “*occasioned as a direct or indirect result of the COVID-19 pandemic*” (see par. 18, 20 and 36 of Exhibit R-2);
13. Clearly, members of the Class are subsumed within the JKT Holdings Statement of Claim, which was filed approximately four (4) months before that of Académie, and any insurance policy jointly issued by the named defendants in the Application or issued separately by the Defendants Aviva or Everest that provides for “business interruption” or “operating loss” coverage is necessarily engaged by the JKT Holdings Statement of Claim;

**(c) Nordik Windows Inc.**

14. On or about July 3, 2020, a statement of claim was issued by Nordik Windows Inc. before the Ontario Superior Court of Justice pursuant to the *Class Proceedings Act*, 1992, against Aviva, as appears from **Exhibit R-3** (the “**Nordik Windows Statement of Claim**”);
15. The Nordik Windows Statement of Claim targets all persons or corporations carrying on business in Canada who suffered a loss of business income as a result of the outbreak of COVID-19, including interruptions caused by orders of

civil authorities in the provinces and territories of Canada arising out of the outbreak (see par. 4 of Exhibit R-3);

16. Moreover, at par. 7 of Exhibit R-3, we see that the issue of restricted access in the specific context of a contagious or infectious disease is specifically raised (see also par. 18 and 19);
17. Clearly, members of the Class are subsumed within the Nordik Windows Statement of Claim, which was filed approximately two (2) months before that of Académie, and any insurance policy jointly issued by the named defendants in the Application or issued separately by the Defendant Aviva that provides for “business interruption” or “operating loss” coverage is necessarily engaged by the Nordik Windows Statement of Claim;

**(d) Workman Optometry Professional Corporation & als**

18. On or about July 6, 2020, a statement of claim was issued before the Ontario Superior Court of Justice pursuant to the *Class Proceedings Act*, 1992, by Workman Optometry Professional Corporation & als, as appears from **Exhibit R-4** (the “**Workman Optometry Statement of Claim**”);
19. Among numerous others, the Workman Optometry Statement of Claim targets the Defendant Aviva on behalf of all natural and legal persons in Canada that (i) contracted a business interruption insurance with one of the Defendants; and (ii) suffered a partial or full restriction of access to and/or use of business property at the insured premises, due to the actual or suspected infection or presence of COVID-19 at the insured premises, or due to an order of a civil authority requiring partial or full restriction of regular access to and/or use of business property at the insured premises, due to COVID-19 (see par. 1 b));
20. As appears from par. 8 and ff. of Exhibit R-4, at issue in the Workman Optometry Application is also business interruption insurance;

21. Moreover, at par. 120 and ff. of the Workman Optometry Statement of Claim, the issue of business interruption coverage specifically related to a “*pandemic*” or “*infectious disease*” is raised;
22. Clearly, members of the Class are subsumed within the Workman Optometry Statement of Claim, which was filed approximately two (2) months before that of Académie, and any insurance policy jointly issued by the named defendants in the Application or issued separately by the Defendant Aviva that provides for “business interruption” or “operating loss” coverage is necessarily engaged by the Workman Optometry Statement of Claim;

**(e) *Real Food for Real Kids Inc.***

23. On or about July 7, 2020, a Statement of Claim was issued before the Ontario Superior Court of Justice pursuant to the *Class Proceedings Act*, 1992, by Real Food for Real Kids Inc. against the Defendant Aviva, as appears from **Exhibit R-5** (the “**Real Food Statement of Claim**”);
24. The Real Food Statement of Claim targets all natural or corporate persons who were insured with Aviva by virtue of a policy that includes coverage for losses of business income, including more specifically what is referred to as the “*Contagious Disease Coverage*”, as appears from par. 4 and 8 of Exhibit R-5 (see also par. 27);
25. Clearly, members of the Class are subsumed within the Real Food Statement of Claim, which was filed approximately two (2) months before that of Académie, and any insurance policy jointly issued by the named defendants in the Application or issued separately by Aviva that provides for “business interruption” or “operating loss” coverage is necessarily engaged by the Real Food Statement of Claim;

**(f) Shi Studio**

26. On or about August 13, 2020, a Notice of Civil Claim pursuant to the *Class Proceedings Act* was issued before the Supreme Court of British Columbia by Shi Studio, as appears from **Exhibit R-6** (the “**Shi Studio Notice of Claim**”);
27. Among numerous others, the Shi Studio Notice of Claim targets the Defendants Aviva and Everest and encompasses the same class as that targeted by the Workman Optometry Statement of Claim, Exhibit R-4;
28. Clearly, members of the Class are subsumed within the Shi Studio Notice of Claim, which was filed approximately two (2) weeks before that of Académie, and any insurance policy jointly issued by the named defendants in the Application or issued separately by the Defendants Aviva or Everest that provides for “business interruption” or “operating loss” coverage is necessarily engaged by the Shi Studio Notice of Claim;

**(g) Carriage Motions**

29. On or about September 18, 2020, counsel in the Nordik Windows Statement of Claim matter filed a carriage motion before the Ontario Superior Court of Justice (the “**Ontario Carriage Motion**”), essentially asking the Court to stay certain overlapping proposed class proceedings (see par. (c) of the Ontario Carriage Motion), as appears from **Exhibit R-7**;
30. On or about October 28, 2020, a carriage motion was filed in the Shi Studio Statement of Claim (the “**BC Carriage Motion**”), requesting the creation of an “Omnibus Class” (defined at par. 3 of the BC Carriage Motion) and a stay of multiple proposed class proceedings, as appears from **Exhibit R-8**;
31. The Omnibus Class would consist of all entities in Canada whose businesses were partly or fully interrupted due to COVID-19;
32. To the knowledge of the petitioning Defendants, there has been no judgment yet rendered on the Ontario and BC Carriage Motions;

33. Regardless of whether or not they are granted, these Carriage Motions have no direct bearing on the arguments made herein by the petitioning Defendants, namely the existence of other class proceedings encompassing the same members of the Class and for the same issues that are raised therein;
34. As established above, the members of the Class are faced with competing multi-territorial class action claims, all founded upon the adjudication of the same issues raised in the Application;
35. The existence of parallel class actions filed before the Application, targeting the same class members for the same issues, justifies staying the Application, to avoid a multiplicity of competing claims, an economy of time and judicial resources, respecting the principles of proportionality and, most importantly, avoiding the risk of contradictory judgments;
36. The proper administration of justice warrants that the Application be stayed;

**WHEREFORE MAY IT PLEASE THE COURT TO:**

**ORDER** that the present proceedings (500-06-001091-202) be stayed for a period of six (6) months from the date of the present judgment.

**ORDER** the parties to provide the Court, no later than June 30<sup>th</sup>, 2021, and after each 90-day period thereafter, with an update on the status of the class proceedings in the following matters:

- *9311408 Canada Inc. v. Aviva Insurance Company of Canada et al.* (500-06-001063-201);
- *JKT Holdings Ltd. v. Aviva Canada Inc. et al.* (QBG 795/20);
- *Nordik Windows Inc. v. Aviva Insurance Company of Canada* (CV-20-00643386-00CP);



- *Workman Optometry Professional Corporation et al. v. Aviva Insurance Company of Canada et al.*. (CV-20-00643488-00CP);
- *Real Food for Real Kids Inc. v. Aviva Insurance Company of Canada* (CV-20-00643588-00CP); and
- *0476321 B.C. Ltd. and Cory Judge doing business as Shi Studio v. Aviva Canada et al.* (NEW-S-S- 230035).

(collectively referred to as the “**Parallel Class Actions**”).

**AUTHORIZE** the parties to seek the variance or the extension of the present stay order on the basis of any relevant circumstance in any of the Parallel Class Actions.

**THE WHOLE without costs**, except in case of contestation.

Montreal, December 18, 2020

*Stikeman Elliott LLP*

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Québec, December 18, 2020

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**SUPERIOR COURT  
(Class Action)**

**N° 500-06-001091-202**

**CANADA  
PROVINCE OF QUÉBEC  
DISTRICT OF MONTRÉAL**

**9391-2186 QUEBEC INC. DBA RESTAURANT  
L'ACADÉMIE CRESCENT**

**Applicant-RESPONDENT**

-C.-

**AVIVA INSURANCE COMPANY OF CANADA et  
al.**

**Defendants-PETITIONERS**

**BS0350**

**Our file: 102027-1598**

**APPLICATION BY THE DEFENDANTS TO STAY  
THE MOTION FOR AUTHORIZATION TO  
INSTITUTE CLASS PROCEEDINGS  
(ARTICLE 49 C.C.P.)**

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