

COURT FILE NUMBER 2001-10774
COURT COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE CALGARY
PLAINTIFFS WATAGA PROPERTIES INC as REPRESENTATIVE PLAINTIFF
DEFENDANT Lloyd's Underwriters
DOCUMENT **STATEMENT OF CLAIM**

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A Class Proceeding pursuant to the Class Proceedings Act, S.A. 2003, C-16.5

NOTICE TO THE DEFENDANTS

You are being sued. You are a defendant.

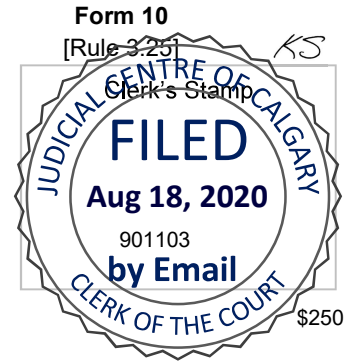
Go to the end of this document to see what you can do and when you must do it.

STATEMENT OF FACTS RELIED ON:

A. PARTIES

A. PLAINTIFF

1. The proposed Representative Plaintiff, Wataga Properties Inc. (the "Plaintiff") is a company which operates a vacation rental business based out of the City of Calgary, in the Province of Alberta. The Plaintiff was insured with Lloyd's Underwriters pursuant to a



commercial policy of insurance Policy No. RCON0818 (the “Policy”) that provides, *inter alia*, for the payment of compensation for loss of rental income.

B. DEFENDANT

2. The Defendant, Lloyd’s Underwriters, is duly registered under the *Business Corporations Act*, RSA 2000 c. B-9 and amendments hereto as an extra-provincial company pursuant to the laws of the Province of Alberta and has its attorney’s office at 4300-888 3 Street SW, Calgary, in the province of Alberta.
3. At all material times, the Defendant was an insurance company engaged in the business of insurance in the Province of Alberta and in Canada.

C. CLASS

4. The Plaintiff sues on its own behalf, and on behalf of all individuals and companies resident in Canada who were insured with the Defendant, pursuant to the Policy, or policies issued by the Defendant with identical or similar provisions for business interruption loss and/or loss of rental income, to be further defined in the Plaintiff’s application for class certification.

D. SERVICE EX JURIS

5. The Plaintiffs have sufficient facts and grounds to serve this Statement of Claim *ex juris* outside of Alberta on the Defendant, since there is a real and substantial connection between Alberta and the facts on which claims in the action are based as outlined in this pleading, including without limitation to the following grounds and facts:
 - a. The Defendant marketed and sold the Policy in Alberta;
 - b. The Plaintiff is resident of Alberta; and
 - c. The Plaintiff’s damages were sustained in Alberta.

II. FACTS AND BACKGROUND

A. THE POLICY

6. The Policy is an “all risks” commercial insurance policy provided to the Plaintiff and Class Members for, among other things, loss of rental income.
7. The Policy states the following with respect to perils insured against:

Perils You Are Insured Against

We insure the property described in this Section One against all risks of direct physical loss, destruction or damage, other than the risks listed below and those mentioned in the “General Exclusions applicable to the Property Insurance.”

We do not cover loss or damage:

a.

i) earthquake, tsunami;

ii) volcanic eruption, lava flow, volcanic ash, volcanic dust or shock waves emanating from the volcanic blast;

iii) land shock waves or tremors before, during or after an earthquake or a volcanic eruption;

iv) snowslide, landslide, mine subsidence, mudflow, earth sinking, rising, shifting or any other earth movement.

However, this exclusion does not apply to resulting physical loss or physical damage caused by fire, explosion, theft or glass breakage;

b. any criminal act or willful negligence by an insured, but this exclusion does not apply to any other insured who has not committed and is not involved in the criminal act or willful negligence;

c. Caused by wear and tear, deterioration, defect or mechanical breakdown, rust or corrosion, extremes of temperature, wet or dry rot or mould, smog and contamination;

d. Caused by smoke from industrial or agricultural operations;

e. Due to settling, expansion, contraction, moving, bulging, buckling or cracking of the building, however, we do cover resulting damage to building glass;

f. Caused by vermin, rodents or insects, however, we do cover resulting damage to building glass;

g. Caused by theft, or attempted theft, in or from your unit while it is under construction or of materials and supplies for use in the constructions until your unit is completed and ready to be occupied;

h. Caused by vandalism or malicious acts or glass breakage occurring while your unit is under construction or vacant, irrespective of any permission granted elsewhere in this insurance;

i. Caused by flood, surface water, spray, waves, tidal waves, waterborne objects or ice, all whether driven by wind or not, except loss or damage resulting:

a. from fire, explosion or theft;

b. from the escape of water from a public water main, swimming pool or equipment attached;

c. to personal property in transit.

j. Caused by continuous or repeated seepage of water or steam over a period of time from within a plumbing, heating or air conditioning system, sprinkler system, water bed, aquarium or household appliance;

k. Caused by seepage or leakage of water below the surface of the ground including through sidewalks, driveways, foundations, walls, basement or other floors or through doors, windows or any other openings, unless the loss or damage resulted from the escape of water from a public water main, swimming pool or equipment attached;

l. Caused by freezing, thawing, pressure or weight of water or ice, whether driven by wind or not, to fence, pavement, patio, swimming pool and equipment, water main, sewer, foundation, retaining wall, bulkhead, pier, wharf or dock;

m. Caused by discharge or overflow of water or steam from within a plumbing, heating, sprinkler or cooling system, an appliance which uses or holds water, swimming pools or equipment attached and public water mains carrying drinking water occurring while your unit is under construction or vacant even if permission for construction or vacancy has been given by us;

n. Caused by bursting, tearing apart, cracking, burning or bulging due to the pressure of, or the lack of water or steam, of a plumbing, heating, sprinkler or cooling system or an appliance for heating water occurring while your unit is under construction or vacant even if permission for construction or vacancy has been given by us;

o. Caused by freezing of a plumbing, heating, sprinkler or cooling system or an appliance which uses or holds water which is not within a building in which heat is maintained during the heating season

*p. Caused by freezing of a plumbing, heating, sprinkler or cooling system or an appliance which uses or holds water while your premises are **unoccupied** in excess of **seven consecutive days** (i.e. 168 hours) **unless:***

a. you have shut off the water supply and drained the system and appliances of water, or

b. you have maintained heat in your unit and have made arrangements to assure that heat is continued during any time the premises are unoccupied.

q. Caused by breakage of sporting equipment where the loss or damage is due to its use;

r. Due to marring, scratching and breakage of fragile articles such as: art glass windows, glassware, statuary, marble, bric-a-brac and porcelains, unless caused by fire, theft or attempted theft, earth movement, explosion, falling objects striking the exterior of a building, collapse of a building or part thereof, water, impact by aircraft or land vehicle, lightning, riot, smoke, vandalism or malicious acts, windstorm or hail, or by accident to land vehicle, watercraft or aircraft, or by rupture of a plumbing, heating or air conditioning system or household appliance.

Fragile articles do not include jewellery, watches, bronzes, cameras and photographic lenses.

s. To personal property undergoing any process or while being worked on, where the damage results from such

process or work, but resulting damage to other property insured is covered.

t. We do not cover cost of making good faulty design, material or workmanship.

8. The Policy states the following regarding general exclusions:

GENERAL EXCLUSIONS

The following exclusions apply to the whole of this policy including the optional additional coverages and endorsements.

1. We do not cover loss, damage, cost or expense directly or indirectly caused by, contributed to by, resulting from

or arising out of or in connection with the following, regardless of any other contributing or aggravating cause or

event that contributes concurrently or in any sequence to loss, damage, cost or expense:

- a. war, invasion, act of a foreign enemy, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection or military power;
- b. confiscation or nationalisation or requisition or destruction of or damage to property by or under the order of any government or public or local authority;
- c. the actual or alleged spill, discharge, emission, dispersal, seepage, leakage, migration, release or escape of pollutants, nor the cost or expense of any resulting clean-up.

Pollutants means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapour, soot, fumes, acids, alkalis, chemicals and waste.

The sudden and accidental discharge of fuel oil which is contained in a fixed fuel tank, apparatus or pipes used to heat the dwelling will not be considered a pollutant within this definition.

However, we do not cover:

- i) *loss, damage, cost, expense or liability arising from pollutants emanating from an underground fuel tank. Fuel tanks that are in the basement of the dwelling are deemed to be above ground;*
- ii) *loss, damage, cost, expense or liability resulting from gradual leakage or seepage of pollutants.*

2. We do not cover loss or damage caused deliberately by you or any permanent member of the residence premises.

3. We do not cover loss or damage that is not directly associated with the event that caused you to claim, unless expressly stated in this policy.

9. With respect to Rental Income (Broad Form) in particular, the Policy states:

WORDS AND PHRASES IN QUOTATION MARKS HAVE SPECIAL MEANING AS DEFINED IN CLAUSE 16

1. INDEMNITY AGREEMENT

The Insurer shall pay to the Insured the loss of "Rental Income" suffered during the "Indemnity Period" as a direct result of "Damage", in accordance with the terms and conditions of this Form.

2. LIMITS OF INSURANCE

The Insurer, regardless of the number of persons and interests insured under this Form, shall not be liable for more than the applicable amount of insurance specified on the "Declarations Page".

3. CO-INSURANCE

The Insurer shall not be liable for a greater proportion of any loss than the amount of insurance specified on the "Declarations Page" bears to 80% of the "Annual Rental Income".

4. PERILS INSURED

The perils insured against are all risks except as otherwise excluded in this Form.

10. The Policy states the following with respect to Exclusions to Rental Income Coverage:

5.A. EXCLUSIONS

The Insurer shall not be liable for loss of "Rental Income" resulting from loss of or damage to:

(a) sewers, drains or watermains located beyond the outside bearing walls or foundations of the property insured, outside communication towers, antennae (including satellite receivers) and equipment attached thereto, streetclocks, exterior signs, exterior glass or vitrolite and lettering or ornamentation thereon, but this exclusion does not apply to loss or damage caused directly by "Named Perils";

(b) property at locations which to the knowledge of the insured, are vacant, unoccupied or shut down for more than thirty (30) consecutive days;

(c) electrical devices, appliances or wiring caused by artificially generated electrical currents, including arcing, unless fire or explosion as described in Clause 16 (d) ensues and then only for such ensuing loss or damage;

(d) growing plants, trees, shrubs or flowers, all while in the open;

(e) animals, fish or birds, but this exclusion does not apply to loss or damage caused directly by "Named Perils" or from theft or attempt thereat;

(f) money, bullion, platinum and other precious metals and alloys, securities, stamps, tickets and tokens, evidence of debt or title;

(g) automobiles, watercraft, amphibious or air cushion vehicles, aircraft, spacecraft, trailers, motors and other accessories attached to or mounted on such property, but this exclusion shall not apply to watercraft, amphibious or air cushion vehicles held for sale, unlicensed automobiles or unlicensed trailers used in the business of the Insured when on the "Premises" of the Insured;

(h) furs, fur garments, jewels, jewellery, costume jewellery, watches, pearls, precious and semi-precious stones, and prerecorded video tapes but this exclusion does not apply to any loss or damage caused directly by "Named Perils";

(i) property insured under the terms of any Marine Insurance, and property while waterborne;

(j) property illegally acquired, kept, stored or transported; property seized or confiscated for breach of any law or by order of any public authority;

(k)

(i) any pressure vessel having normal internal working pressure greater than 103 kilopascals (15 pounds per square inch) above atmospheric pressure;

(ii) any boiler, including the piping and equipment connected thereto, which contains steam or water under steam pressure (except tanks having an internal diameter of 610 millimetres (24 inches) or less used for the storage of hot water for domestic use);

caused directly or indirectly by explosion, rupture, bursting, cracking, burning out or bulging of such property while connected ready for use, but this exclusion does not apply to:

(1) manually portable gas cylinders;

- (2) explosion of natural, coal or manufactured gas;
- (3) explosion of gas or unconsumed fuel within a furnace or within the gas passages therefrom to the atmosphere.

Additionally the Insurer shall not be liable for:

(l) any increase of loss directly or indirectly, proximately or remotely, resulting from, or contributed to by, the operation of any bylaw, ordinance or law regulating zoning or the demolition, repair or construction of buildings or structures, unless the liability is otherwise specifically assumed by endorsement hereon;

(m) any increase of loss caused by delays or loss of time due to the presence of strikers or other persons or to labour disturbances on or about the "Premises" interfering with the rebuilding, repairing, or replacing the property damaged or destroyed or the resumption or continuation of business or free access to or control of the "Premises" or due to the action of sympathetic strikers elsewhere;

(n) loss due to the suspension, lapse or cancellation of any lease or license, contract or order, which may affect, the Insured's income after the period following any loss during which indemnity is payable.

5.B. PERILS EXCLUDED

The Insurer shall not be liable for loss of "Rental Income" resulting from loss or damage caused directly or indirectly:

(a) by earthquake, except for ensuing loss or damage which results directly from fire, explosion, smoke or leakage from fire protective equipment, all as described in Clause 16 (d);

(b) by flood, including waves, tides, tidal waves, tsunamis, or the rising of, the breaking out or the overflow of, any body of water, whether natural or man-made, but this exclusion does not apply to ensuing loss or damage which results directly from fire, explosion, smoke, leakage from fire protective equipment, all as described in Clause 16 (d) or leakage from a watermain;

(c)

(i) by seepage, leakage or influx of water derived from natural sources through basement walls, doors, windows or other openings therein, foundations, basement floors, sidewalks, sidewalk lights, or by the backing up of sewers, sumps, septic tanks or drains, unless concurrently and directly caused by a peril not otherwise excluded in Clause 5.B. hereof;

(ii) by the entrance of rain, sleet or snow through doors, windows, skylights or other similar wall or roof openings unless through an aperture concurrently and directly caused by a peril not otherwise excluded in Clause 5.B. hereof;

(d) by centrifugal force, mechanical or electrical breakdown or derangement in or on the "Premises", unless fire ensues and then only for the loss or damage caused directly by such ensuing fire;

(e) by dampness or dryness of atmosphere, changes of temperature, freezing, heating, shrinkage, evaporation, loss of weight, leakage of contents, exposure to light,

contamination, pollution, change in colour or texture or finish, rust or corrosion, marring, scratching or crushing, but this exclusion does not apply to loss or damage caused directly by "Named Perils", rupture of pipes or breakage of apparatus not excluded under paragraph (k) of Clause 5.A. hereof or theft or attempt thereat.

Damage to pipes caused by freezing is insured provided such pipes are not excluded in paragraph (k) of Clause 5.A. hereof;

(f) by smoke from agricultural smudging or industrial operations;

(g) by rodents, insects or vermin, but this exclusion does not apply to loss or damage caused directly by a peril not otherwise excluded in Clause 5.B. hereof;

(h) by war, invasion, act of foreign enemy, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection or military power;

(i) caused by any nuclear incident (as defined in the Nuclear Liability Act or any other nuclear liability act, law or statute, or any

law amendatory thereof) or nuclear explosion, except for ensuing loss or damage which results directly from fire, lightning or explosion of natural, coal or manufactured gas;

(j) caused by contamination by radioactive material;

(k) by any dishonest or criminal act on the part of the Insured or any other party of interest, employees or agents of the Insured,

or any person to whom the property may be entrusted (bailees for hire excepted), but this exclusion does not apply to physical damage, caused directly by employees of the Insured, which results from a peril otherwise insured and not otherwise excluded under this Form;

(l) by snowslide, landslide, subsidence or other earth movement, except for ensuing loss or damage which results directly from fire, explosion, smoke or leakage from fire protective equipment, all as described in Clause 16 (d);

(m) by explosion (except with respect to explosion of natural, coal or manufactured gas), collapse, rupture, bursting, cracking, burning out or bulging of the following property owned, operated or controlled by the Insured, unless fire ensues and then only for the loss or damage caused directly by such ensuing fire:

(i) the portions containing steam or water under steam pressure of all boilers generating steam and piping or other equipment connected to said boilers and containing steam or water under steam pressure;

(ii) piping and apparatus or parts thereof normally containing steam or water under steam pressure from an external source and while under such pressure;

(iii) other vessels and apparatus and pipes connected therewith while under pressure, or while in use or in operation provided their maximum normal internal working pressure exceeds 103 kilopascals (15 pounds per square inch) above atmospheric pressure but this exclusion does not apply to loss or damage resulting from the explosion of manually portable gas cylinders or of tanks having an internal diameter of 610 millimetres (24 inches) or less used for the heating and storage of hot water for domestic use;

(iv) moving or rotating machinery or parts thereof;

(v) any vessels and apparatus and pipes connected therewith while undergoing pressure tests but this exclusion does not apply to other property insured hereunder that has been damaged by such explosion;

(vi) gas turbines;

(n) by settling, expansion, contraction, moving, shifting or cracking unless concurrently and directly caused by a peril not otherwise excluded in Clause 5.B. hereof;

Nor shall the Insurer be liable for loss of "Rental Income" resulting directly or indirectly from:

(o) wear and tear, gradual deterioration, latent defect, inherent vice, or the cost of making good faulty or improper material, faulty or improper workmanship, faulty or improper design, provided, however, to the extent otherwise insured and not otherwise excluded under this Form, loss of "Rental Income" resulting from resultant damage to the property is insured;

(p) mysterious disappearance or shortage disclosed on taking inventory;

(q) loss or damage sustained to contents while actually being worked upon and directly resulting therefrom or caused by any repairing, adjusting or servicing of contents, unless fire or explosion as described in Clause 16 (d) ensues and then only for loss of "Rental Income" resulting from such ensuing loss or damage;

(r) disturbance or erasure of electronic recordings by electric or magnetic injury except lightning.

11. The Policy contains the following clause regarding loss of rental income resulting from interruption by civil authority:

7. INTERRUPTION BY CIVIL AUTHORITY

This Form, subject to its terms and conditions, is extended to insure the loss of "Rental Income" suffered by the Insured during the period of time, not exceeding two weeks, 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 neighboring premises by a peril insured against under this Form

12. There is nothing in the Policy that excludes coverage for losses arising due to pandemic or virus outbreak.
13. At all material times, the Plaintiff and Class Members understood that the Policy would offer coverage if they lost rental income due to fortuitous or unforeseen events that were beyond their control but not excluded by the Policy.
14. The Policy was intended to provide "peace of mind" to property owners, including the Plaintiff, so that it was always within the reasonable contemplation of the Defendant that breach of the contract would likely cause financial and/or mental distress to the insured individuals and company owners.
15. It was an implied term of the Policy that the Defendant owed a duty to the Plaintiff and Class Members of good faith and fair dealing in the performance of their obligations pursuant to the Policy and in its administration of the Plaintiff's claim, including:
- (a) a duty to be fair, objective and even-handed in its investigation of the Plaintiff's claim;
 - (b) a duty to conduct an adequate and reasonable investigation of the Plaintiff's claim;

- (c) a duty to provide properly trained personnel to review and assess the Plaintiff's claim under the Policy;
- (d) a duty to establish proper guidelines and procedures for its employees to follow for the reasonable and objective assessment of the Plaintiff's claim;
- (e) a duty to respond to the Plaintiff's claim in a fair and objective manner rather than in a manner which assumed the Plaintiff was adverse in interest;
- (f) a duty to pay to the Plaintiff the amounts due and owing under the Policy in a timely manner;
- (g) a duty to provide the Plaintiff with all of the information and documents upon which the Defendants relied in support of its denial of the claim;
- (h) a duty to provide for procedural fairness in its appeal process; and
- (i) to be fair, objective and even-handed in its investigation and evaluation of the Plaintiff's claim.

B. LOSS OF RENTAL INCOME DUE TO COVID-19

16. The proposed Representative Plaintiff, Wataga Properties Inc. (hereinafter referred to as the "Plaintiff"), is a company with a head office located in the City of Calgary, in the Province of Alberta.
17. The Plaintiff operates a vacation rental business with five properties located in and around Canmore, Alberta.
18. An unforeseen event occurred in early 2020: the infectious agent SARS-Cov-2, which has caused outbreaks of a serious illness known as COVID-19 ("COVID-19") spread across the world, including in Canada, becoming a global pandemic.
19. On March 17, 2020, the Chief Medical Officer of Health for the Province of Alberta gave notice under section 52.1 of the *Public Health Act* that a public health emergency exists due to the presence of the pandemic COVID-19 in Alberta and declared a State of Emergency (the "Emergency Order"). Similar orders were made by health authorities in other provinces of Canada around the same time.
20. On March 20, 2020, the Federal Government closed the border to non-essential travel to try to combat the spread of COVID-19 (the "Border Closure").
21. In efforts to stop the spread of COVID-19, the Province of Alberta has put in place several travel restrictions, including:
 - (a) Travellers entering Alberta from outside of Canada must quarantine for 14 days;
 - (b) Passengers on flights with confirmed cases of COVID-10 are required to isolate for 14 days;
 - (c) Travel within Alberta is permitted with physical distancing and gathering restrictions; and

(d) Non-essential travel outside of the province is not recommended.

Similar restrictions were put in place by health authorities in the other provinces of Canada at around the same time and continue to be in place.

22. As a result of COVID-19 and the resulting orders many businesses and individuals in Alberta and Canada who relied on rental income, including the Plaintiff and Class Members, suffered cancellation of reservations and lost rental income as a result.
23. The Plaintiff has lost several reservations due to COVID-19, significantly reducing its rental income between March and May 2020. When the reservations were cancelled, the Plaintiff had peace of mind because the Policy is an all-risk policy which does not exclude coverage for virus or pandemic.
24. Upon the government easing some restrictions, the Plaintiff has been able to rent some of the properties but, as a result of COVID-19 and resulting orders, continues to suffer an ongoing loss of rental income.
25. As a result of COVID-19 and the resulting orders, the Plaintiff and class members have suffered a loss of rental income as provided for under the Policy.
26. COVID-19 and the resulting orders to close the border, restrict travel, and close businesses were fortuitous unforeseen circumstances, beyond the control of the Plaintiff and Class Members, and resulted in the Plaintiff and Class Members sustaining "Damage" as defined in the Policy.

C. DENIAL OF COVERAGE

27. The Plaintiff has demanded payment of the rental income coverage payable under the Policy, and the Defendant has refused and/or neglected to make payment.
28. To date, the Defendant wrongfully and in breach of the Policy refused and/or neglected to pay insurance benefits to the Plaintiff had had advised that they will not be making payments to the Plaintiff or the Class Members for loss of rental income or business interruption loss arising as a result of COVID-19.
29. On July 15, 2020, a representative of the Defendant wrote to the Plaintiff advising, *inter alia*, that "*the claim must arise out of an order of civil authority which prohibits access to the insured property due to direct physical loss or damage*". The letter further stated that the Policy was subject to a "Communicable Disease Endorsement". The Plaintiff has reviewed the Policy that was provided to him on or about September 19, 2019, and said Policy does not contain a "Communicable Disease Endorsement"

D. THE CLAIM

30. To date, and despite demand, the Defendant has wrongly denied the Plaintiff and Class members entitlement to proceeds of the Policy without any reasonable justification under the Policy.
31. Further, or in the alternative, the Defendant has acted in bad faith, or with a lack of good faith.
32. The particulars of bad faith of the Defendant includes:
 - (a) breaching the *Insurance Act*, RSA 2000 c I-3, and amendments thereto;
 - (b) refusing to pay benefits;
 - (c) failing to properly investigate the Plaintiff's and Class Members' circumstances;
 - (d) providing correspondence to the Plaintiff advising of a "communicable disease" exclusion which did not form a part of the Plaintiff's policy at the material time.
33. The Defendant knew, or ought to have known, of the loss of rental income and entitlement of the Plaintiff and Class Members to the said benefits but refused to honour their obligation and duty to make payment pursuant to the *Insurance Act*, *supra*, and regulations made thereto.
34. The Defendant failed to pay benefits contractually owing to the Plaintiff and Class Members pursuant to the Policy.
35. The Policy must be interpreted in accordance with the principles of *contra proferentum*. The Defendant drafted the Policy. Any ambiguities in the Policy, if there are any, must be resolved in favour of the Plaintiff.
36. Further, or in the alternative, if the exclusions are applicable to rental income coverage in the Policy, such exclusions are unjust and/or unreasonable and are not binding upon the Plaintiff and Class Members pursuant to section 545 of the *Insurance Act*, *supra*, and amendments thereto.
37. The Defendant's handling of the claims and failure to pay benefits constitutes a breach of its duty of good faith and fair dealing.
38. Further, and in the alternative, the Plaintiff waives any tort pleaded above, and pleads that it and the Class Members are entitled to claim and recover based on equitable and restitutionary principles.
39. The Plaintiff proposes that this action be tried in the City of Calgary in the Province of Alberta.

IV. DAMAGES

40. COVID-19 and the resulting orders to close the border, restrict travel, and close businesses were fortuitous unforeseen circumstances, beyond the control of the Plaintiff and Class Members, and resulted in the Plaintiff and Class Members sustaining "Damage" as defined in the Policy.
41. As a result of the Defendant's breach of contract and/or acts and omissions, the Plaintiff and the Class Members have suffered a loss of insurance benefits payable by the Defendant as contemplated by the Policy and have not been compensated for this loss.
42. The Plaintiff's claim for punitive damages as against the Insurer is based upon the allegations of bad faith as set out herein, and is further based on the insurer's conduct in denying the Plaintiff and Class Members benefits to which they are and were entitled when it knew or ought to have known that such denial of benefits would create hardship for the Plaintiff and Class Members.
43. Further, the Plaintiff and Class Members say that the Defendant's failure, refusal, or neglect to pay benefits occurred as a result of deliberate or reckless corporate strategy to deny the Plaintiff's and Class Members' claims improperly and the particulars of the conduct which the Plaintiff says should result in an award of punitive damages are set out in paragraph 41.

V. REMEDY SOUGHT

44. As against the Defendant, the Plaintiff and Class Members claim the following awards, on the bases specified or such other bases, in such amounts, to be allocated amongst the Class Members, as this Honourable Court may deem fit, namely:
 - (a) An Order for certification pursuant to the *Class Proceedings Act*, SA 2003, c-16.5 and appointment of the Plaintiff as the Representative Plaintiff;
 - (b) An order appointing Wataga Properties Inc. as the representative Plaintiff for the Class Members;
 - (c) A declaration that the denial of the Plaintiff's and Class Members' loss of rental income entitlement was contrary to the terms of the Policy;
 - (d) An order that the Defendant pay the Plaintiff and Class Members the full amount of loss of rental income compensation available under the Policy;
 - (e) Judgment for damages as outlined under the above heading "Damages", including general and special damages, in an amount to be proven at trial but estimated to be not less than \$180,000,000;

- (f) Judgement for punitive damages in an amount to be proven at the trial of action as counsel may advise and this Honourable Court may accept;
- (g) Interest on the amount of the Judgment pursuant to the terms of the *Judgment Interest Act*, R.S.A. 2000, c. J-1, and the regulations thereunder and the amendments thereto;
- (h) Any applicable Goods and Services Tax pursuant to the terms of the *Excise Tax Act*, S.C. 1985, c. E-14, Part IX, the regulations thereunder and the amendments thereto, including a gross-up sufficient to satisfy any Goods and Service Tax levy (G.S.T.), which the Plaintiff and Class Members may be obliged to pay on any amounts awarded;
- (i) An Order for distribution amongst the Plaintiff and Class Members of the aggregate assessment of monetary relief as this Honourable Court deems appropriate;
- (j) Costs of this action on a solicitor/client basis or on such other basis as this Honourable Court may see fit; and
- (k) Such further and other relief as this Honourable Court may allow or counsel may advise.

NOTICE TO THE DEFENDANTS

You only have a short time to do something to defend yourself against this claim:

20 days if you are served in Alberta

1 month if you are served outside Alberta but in Canada

2 months if you are served outside Canada

You can respond by filing a statement of defence or a demand for notice in the office of the clerk of the Court of Queen's Bench at Calgary, Alberta, AND serving your statement of defence or a demand for notice on the plaintiff's(s') address for service.

WARNING If you do not file and serve a statement of defence or a demand of notice within your time period, you risk losing the lawsuit automatically. If you do not file, or do not serve, or are late in doing either of those things, a court may give a judgement to the plaintiff(s) against you.