

C A N A D A

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

SUPERIOR COURT
(Class Actions)

No: 500-06-001054-200

CENTRE DENTAIRE BOULEVARD GALERIES D'ANJOU INC., legal person having its establishment at 7450 Des Galeries-d'Anjou Boulevard, Suite 250, in the District of Montreal, Province of Quebec, H1M 3M3

Plaintiff

-vs-

L'UNIQUE ASSURANCES GÉNÉRALES INC., legal person having a principal establishment at 425 De Maisonneuve Boulevard West, Suite 750, in the City and District of Montreal, Province of Quebec, H3A 3G5

Defendant

ORIGINATING APPLICATION OF A CLASS ACTION LAWSUIT

PLAINTIFF RESPECTFULLY DECLARES THE FOLLOWING:

INTRODUCTION

1. Beginning in March of 2020, there was a global health pandemic resulting from COVID-19.
2. As a result of COVID-19, many businesses, including but not limited to dental clinics, were declared by the government as non-essential and had to close, reduce or interrupt their business. In conjunction with the Minister of Health and Social Services and the public health authorities, the Order of Dentists ordered its members, including the Plaintiff, to postpone all appointments, save for certain emergencies.
3. Premises of dental clinics were deemed dangerous for patients, dentists and staff, since the virus may easily spread among the various people who are in the premises and using the same furniture, equipment, waiting rooms and procedure rooms, and since particles of blood and saliva are routinely generated during dental procedures and spread through the air via the use of aerosols.

4. On or around Monday, March 16, 2020, in accordance with the government's orders due to COVID-19, the Plaintiff and all members of the Class closed their dental clinics indefinitely (save for emergency procedures) (the "**Shutdown**").
5. At the time of the Shutdown, the Plaintiff and all members of the Class were insured for business interruption losses by the Defendant, L'Unique Assurances Générales Inc. (hereinafter "**L'Unique**").
6. At all relevant times, L'Unique has publicly denied that it owes business interruption coverage to the Plaintiff or to any other member of the Class in relation to the Shutdown.
7. Accordingly, the Plaintiff hereby claims business interruption insurance indemnities and damages from L'Unique on behalf of all businesses engaged in the practice of dentistry or a sub-specialty of dentistry in the province of Quebec, each of which was forced to reduce or interrupt its business as a result of the Shutdown arising from COVID-19 (hereinafter, the "**Class**").

L'UNIQUE'S BUSINESS INTERRUPTION INSURANCE COVERAGE

8. L'Unique issued an insurance policy (the "**Policy**") to the Plaintiff, a copy of which is produced herewith as **Exhibit P-1**, as well as to all members of the Class.
9. L'Unique's Policy provides various types of distinct insurance coverage, including business interruption coverage.
10. Form E2000.01 of the Policy sets forth the business interruption coverage as follows (pages 42-43 of Exhibit P-1):

"1. NATURE AND SCOPE OF COVERAGE

This insurance covers the loss of business income actually sustained and directly resulting from the necessary reduction or interruption of the Insured's activities caused by an insured peril that has affected the insured property described in the **Declarations**."

(hereinafter, the "**Business Interruption Coverage**").

11. As appears from the Policy, L'Unique does not describe any property in the Declarations, and simply indicates: "Insured's business: Clinique dentaire".
12. As the L'Unique Policy is an all risk or all peril policy, in order for Business Interruption Coverage to be triggered, L'Unique's insureds must demonstrate that they:
 - a. Sustained a loss of business income;
 - b. Directly resulting from the necessary reduction or interruption of their activities;

- c. Caused by an *insured peril* (i.e. any peril not expressly excluded for Business Interruption Coverage);
 - d. That has affected the “insured property described in the Declarations” (i.e. that has affected undefined property, as opposed to requiring direct physical damage or destruction of physical property on premises).
13. L’Unique unilaterally drafted the Business Interruption Coverage, and offered it to the Plaintiff and the members of the Class.
 14. The language chosen by L’Unique for its Business Interruption Coverage is far broader than other coverages in the Policy, such as the Policy’s “Equipment Breakdown” Coverage (Form M5000.05, pages 94-105 of Exhibit P-1) which requires “direct physical loss or damage to insured equipment” in order to trigger such coverage.
 15. Furthermore, the language chosen by L’Unique for its Business Interruption Coverage is far broader than the business interruption insurance coverage offered by virtually all of L’Unique’s competitors in the insurance industry.
 16. In particular, the business interruption coverage offered by insurer La Capitale, which is affiliated with L’Unique as appears from an excerpt from L’Unique’s website produced herewith as **Exhibit P-2**, contains the following language:

1. INDEMNITY AGREEMENT

In the event that the “business” shall be interrupted as a direct result of “damage”, the Insurer shall pay to the Insured the actual loss of “business income” suffered during the “indemnity period” in consequence thereof, in accordance with the terms and conditions of this Form.

2. PROPERTY DAMAGE PROVISION

It is a condition precedent to any payment under this policy that at the time of the happening of the “damage” there shall be in force insurance covering the interest of the Insured in the property at the “premises” against such “damage” and that payment shall have been made or liability admitted therefor under such insurance. However, this Clause shall not apply where no payment is made or liability admitted under such insurance solely owing to the application of a deductible.

9. DEFINITIONS

Whenever used in this Form:

[...]

c) “**Damage**” means the direct physical loss of or damage to property at the “premises” from an insured peril.

the whole as appears from copies of the La Capitale policies bearing numbers 6051 and 6061, produced herewith as **Exhibit P-3 en liasse**;

17. Whereas La Capitale makes business interruption coverage conditional upon direct physical loss of or damage to property at an insured's premises, L'Unique's Policy does not; rather, the L'Unique Policy offers its insureds Business Interruption Coverage so long as the insured property "described in the Declarations" was *affected* by an insured peril, which was the case for the Plaintiff and all Class members.

ACTUAL LOSSES SUSTAINED BY PLAINTIFF AND MEMBERS OF THE CLASS

18. The Plaintiff and all Class members paid premiums to L'Unique in the expectation that L'Unique would honour its contractual obligations in good faith if and when an unforeseen and unintentional occurrence were to take place resulting in an interruption of business.
19. Following the Shutdown triggered by COVID-19, the Plaintiff made an insurance claim to L'Unique for Business Interruption Coverage, as appears from its insurance claim produced herewith as **Exhibit P-4**.
20. L'Unique has refused to indemnify the Plaintiff for its Business Interruption Coverage claim, and has publicly stated, including throughout these proceedings, that none of the Class members is entitled to Business Interruption Coverage in relation to the Shutdown.
21. The premise of L'Unique's denial of coverage is that members of the Class may only be indemnified if they are able to show that there was direct physical damage to or destruction of their property on the premises where their clinics are located. In other words, L'Unique has denied coverage on the basis of language contained in the policy of La Capitale, notwithstanding that the wording unilaterally drafted by L'Unique for its Policy is different.
22. Not surprisingly, on March 17, 2020, the President of the *Association des Chirurgiens Dentistes du Québec* sent an email, a copy of which is produced herewith as **Exhibit P-5**, stating that it disagreed with L'Unique's interpretation of its Policy.
23. On or about September 10, 2020, the Ordre des Dentistes du Québec in collaboration with Government authorities issued a document entitled, "COVID-19 Procédures buccodentaires en situation de pandémie – Sommaire des directives intérimaires (phase 4)", a copy of which is produced herewith as **Exhibit P-6**. As appears more fully from said document, modifications to dental clinics were required in order for procedures to resume on or about June 1, 2020.
24. During the 11-week period from March 16, 2020, until May 31, 2020, the Plaintiff's dental clinic only performed emergency procedures and thus sustained a

significant actual loss of business income. According to the formula set forth in Form 2000.01 of the Policy, Plaintiff calculates such loss of business income at \$341,943.00, as appears from the calculation prepared by the Plaintiff's accountant, communicated herewith as **Exhibit P-7**.

25. All other members of the Class also necessarily sustained an actual loss of business income during the same period of time, the whole to be proven at the recovery stage of the present class action, following adjudication of the collective questions.
26. The Defendant has failed to honour its contractual obligations towards the Plaintiff and all members of the Class, by failing to deliver the peace of mind upon which all insureds rely when they pay for insurance.
27. The Plaintiff, both personally and on behalf of all members of the Class, is accordingly entitled to claim an indemnity for business interruption losses, as well as \$5,000.00 of damages for each and every Class member from L'Unique, in accordance with the Business Interruption Coverage form, to be recovered collectively. The Plaintiff calls upon L'Unique to provide the information and documentation necessary to enable the Plaintiff to make sufficiently precise proof of the number of members of the Class, for purposes of establishing the foregoing damages.

INTERPRETATION OF THE POLICY

28. The Plaintiff submits that it is clear that all members of the Class are entitled to be indemnified for the actual losses they sustained, in light of the broad coverage language chosen by L'Unique in the Business Interruption Coverage form of the Policy.
29. At the very least, however, the Business Interruption Coverage language in the L'Unique Policy is *ambiguous*, as decided in the Judgment authorizing the present class action.
30. The expectation of the Plaintiff was that Business Interruption Coverage would be owed in the event of an unforeseen and unintentional peril resulting in an interruption or reduction of its business activities, which is precisely what took place from March to May 2020 during the Shutdown.
31. Under the circumstances, it is settled law that the insurance contract must be interpreted *against* the insurer that drafted the Policy, and in favour of coverage for the insureds.
32. The Plaintiff and all members of the Class are entitled to be indemnified under the Policy, and L'Unique's public denial of coverage of any Business Interruption losses sustained by any member of the Class is unfounded and in bad faith.

33. Furthermore, there are no exclusions applicable to the Business Interruption Coverage in this matter and notably, there are no exclusions for a virus, an infectious disease or a pandemic.
34. As well, the Business Interruption Coverage does **not** contain exclusions that L'Unique chooses to include in *other policies* that it offers, for example in its residential insurance policy, which expressly states the following:

“3) Contamination

NOUS NE COUVRONS PAS les dommages ou frais occasionnés directement ou indirectement par la contamination **qui résulte d'une maladie infectieuse**”,

the whole as appears more fully from a copy of L'Unique's residential insurance policy entitled “Multi-choix des propriétaires” produced herewith as **Exhibit P-8**.

35. The present Originating Application is well-founded in fact and in law;

FOR THESE REASONS, MAY IT PLEASE THIS HONOURABLE COURT TO:

GRANT the present class action;

ANSWER the principal questions of fact and law to be treated collectively as follows:

- a. Must L'Unique indemnify class members for Business Interruption Insurance due to COVID-19 in accordance with the terms and conditions of its insurance policy (Exhibit P-1)? **Yes**
- 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? **Yes**

DECLARE that the business interruption losses caused by COVID-19 are covered under the Business Interruption Insurance (Form E2000.01) issued by Defendant to Class Members;

CONDEMN the Defendant to pay the Plaintiff the amount of **\$341,943.00** for its business interruption losses, the whole with interest and the additional indemnity provided by law, to be calculated from and as of April 2, 2020;

CONDEMN the Defendant to pay the Plaintiff, as well as each and every Class member, damages of \$5,000.00, the whole with interest and the additional indemnity provided by law, to be calculated from and as of April 2, 2020, the whole to be recovered collectively;

ESTABLISH a claims procedure in order to enable each Class Member to substantiate its loss of business income in accordance with the formula set forth in

Form E2000.01 of the L'Unique Policy, the whole with interest and the additional indemnity provided by law from and as of April 2, 2020;

CONDEMN the Defendant to pay each and every Class member such loss of business income substantiated in accordance with the formula set forth in Form E2000.01 of the L'Unique Policy, the whole with interest and the additional indemnity provided by law, to be calculated from and as of April 2, 2020;

ORDER the Defendant to deposit in the office of this Court the totality of the sums which forms part of any collective recovery, with interest and costs;

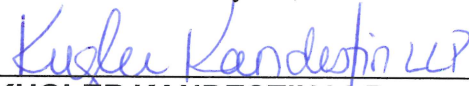
ORDER that the claims of the Class members be the object of collective liquidation if the proof permits and alternatively, by individual liquidation;

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 Honourable Court shall determine;

THE WHOLE with costs, including publication fees.

Montreal, January 19, 2022



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