

JUN 15 2022



S-224837

No.
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

CITY OF PRINCE GEORGE

PLAINTIFF

AND:

ROYAL & SUN ALLIANCE INSURANCE COMPANY OF CANADA AND IN FRENCH,
ROYAL & SUN ALLIANCE DU CANADA, SOCIETE D'ASSURANCE

DEFENDANT

NOTICE OF CIVIL CLAIM

FORM 1 (RULE 3-1(1))
[AMBC REG. 95/2011, SCH. A, S. 11]

This action has been started by the plaintiff for the relief set out in Part 2 below.

If you intend to respond to this action, you or your lawyer must

- (a) file a response to civil claim in Form 2 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim on the plaintiff.

If you intend to make a counterclaim, you or your lawyer must

- (a) file a response to civil claim in Form 2 and a counterclaim in Form 3 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim and counterclaim on the plaintiff and on any new parties named in the counterclaim.

JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the response to civil claim within the time for response to civil claim described below.

Time for response to civil claim

A response to civil claim must be filed and served on the plaintiff,

- (a) if you were served with the notice of civil claim anywhere in Canada, within 21 days after that service,
- (b) if you were served with the notice of civil claim anywhere in the United States of America, within 35 days after that service,

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- (c) if you were served with the notice of civil claim anywhere else, within 49 days after that service, or
- (d) if the time for response to civil claim has been set by order of the court, within that time.

CLAIM OF THE PLAINTIFF

Part 1: STATEMENT OF FACTS

1. The plaintiff, City of Prince George, is a city municipality incorporated under the provincial *Municipal Act*, R.S.B.C. 1960, c. 25 with an address for service in these proceedings at 3200 – 650 West Georgia, in the City of Vancouver, in the Province of British Columbia (“Prince George”).
2. The defendant, the Royal & Sun Alliance Insurance Company of Canada (“RSA”) is an extraprovincial company registered under the laws of British Columbia with a British Columbia attorney located at 2400 – 200 Granville Street, Vancouver, British Columbia. At all material times, RSA was an insurance company engaged in the business of insurance in British Columbia and Canada.

Pandemic

3. A strain of coronavirus, SARS-CoV-2 (the “Virus”) causes a disease known as “COVID-19” (an abbreviation for coronavirus disease 2019). From the fall/winter of 2019 onwards, there was rapid spread of COVID-19 cases affecting a significant proportion of the population across the world and in Canada (the “Pandemic”).
4. On or about January 28, 2020, the first case of COVID-19 was confirmed in British Columbia.
5. In March of 2020, the Virus was spreading exponentially throughout the province and Canada and threatened to overwhelm the healthcare system causing massive loss of life, unless drastic measures were taken to stop its spread.
6. The Virus is able to spread via fomites: inanimate objects that when exposed to infectious agents, can sustain the agent until another person comes in contact with the pathogen on the object.
7. Moreover, Viruses that come into contact with physical surfaces or objects can survive and remain infectious for days and potentially even weeks.
8. As a result of the fact that COVID-19 is highly infectious and dangerous, the physical presence of the Virus on property or in the vicinity of property, and even the threat of its physical presence, renders property unsafe and unfit for use, and results in both physical damage to and loss of property.
9. As a result of the actual, inevitable and/or threatened spread of the Virus, government authorities imposed certain measures, including the following:

- (a) On March 16, 2020, the provincial health officer made an order prohibiting public gatherings of 50 or more people.
 - (b) On March 17, 2020, the provincial health officer of BC declared a public health emergency. The BC Provincial Government also declared a provincial state of emergency under the *Emergency Program Act*, RSBC 1996, c. 11.
 - (c) In March of 2020 the provincial government issued a directive temporarily closing certain establishments including all gaming facilities. Casinos in British Columbia, including Treasure Cove Casino in Prince George, closed in March 2020 and did not re-open until July 1, 2021.
 - (d) On March 19, 2020, the provincial health officer of BC ordered that the public follow the rules of social distancing and to only shop for essentials.
 - (e) On March 20, 2020, and March 21, 2020, British Columbia issued two more orders under the *Public Health Act*, S.B.C. 2008, c. 28. The first ordered owners and operators of premises where food and drink is served, and retail liquor stores, that they may only provide take-out or delivery services.
 - (f) On March 27, 2020, BC Transit implemented measures to address the Pandemic by limiting the number of passengers on buses.
 - (g) On April 16, 2020, the provincial health officer ordered the closure of all personal service establishments stating that a person infected with the Virus can infect other people from fluid containing the Virus left on surfaces.
 - (h) On May 19, 2020, some facilities were permitted to re-open under certain conditions with restrictions on capacity and activities. Casinos were not permitted to re-open.
 - (i) On November 19, 2020 the government imposed additional Pandemic restrictions limiting social gatherings. Northern Health, the public health authority overseeing Prince George, declared an outbreak.
 - (j) On July 1, 2021, casinos were permitted to operate at limited capacities with certain restrictions.
10. Other measures to stop the spread included the temporary closure of premises frequented by one or more persons who had contracted, or who were suspected of contracting, COVID-19. Any property frequented by a person infected with the Virus, or where the surfaces of buildings, equipment, contents or stock were suspected of harbouring the Virus, posed an immediate risk to further spread of the Virus. The businesses on such premises could not reasonably continue normal operations, even if legally permitted to do so.
11. The underlying premise for the Pandemic measures and government orders was that the Virus could be circulating between people or via fomites in any space where a person has been present, particularly the enclosed spaces where in-person operations are conducted

including the Casinos, pools, arenas, civic centres, and other business operations of Prince George and contingent businesses. The presence or threat of presence of the viral particles on surfaces caused or contributed to the resulting pandemic and government measures.

12. Based on the information available in 2020, civil authorities and the general public had to assume that the Virus was or could be present and transmissible in persons frequenting virtually any property where business was conducted, or on the surfaces of tangible property at those locations. In other words, every place of business or municipal operations had to be treated as a site where the Virus was present.
13. Further, or in the alternative, given the prevalence and transmissibility of the Virus, it is more likely than not that the Virus was present at the business premises of Prince George or the contingent business where business interruptions occurred.
14. Due to the Virus, Pandemic measures and/or government orders, Prince George and its contingent businesses were effectively forced to interrupt their business operations and experienced damage to, or loss of, their tangible property, including impairment of function or loss of use. With the premises inaccessible and property thereon unusable, Prince George suffered significant losses.
15. More specifically, on March 17, 2020 Prince George closed civic facilities, including the following:
 - (a) All arenas: CN Centre, the Rolling Mix Concrete Arena, Elkensentre, and the Kin Centres;
 - (b) Pools: the Prince George Aquatic Centre and the Four Seasons Leisure Pool;
 - (c) Prince George Conference and Civic Centre.

(The “Civic Facilities”)
16. Prince George suffered a significant loss of revenue from the closure and then limited operations of the Civic Facilities.
17. On or about March 17, 2020, Treasure Cove Casino temporarily closed. It did not reopen until July 2, 2021, but at only limited capacity. Prince George receives a percentage of the net gaming income from casinos, including Treasure Cove, for hosting the casino in the City. Prince George suffered a significant loss of gaming revenue due to the casino closures.
18. As a result of the Pandemic and/or government orders, Prince George also suffered a significant loss of revenue from BC Transit due to reduced ridership and a “no fare” model being implemented.
19. Overall, Prince George suffered significant losses as a result of the interruptions to its businesses, operations and contingent businesses due to the Pandemic, the actual, perceived or threatened presence of the Virus, and/or government measures from March 16,

2020 onwards. Its normal operations were partially or fully interrupted for the entire policy period. The losses to Prince George include, but are not limited to:

- (a) Loss of profits;
- (b) Loss of revenues;
- (c) Loss of rents;
- (d) Extra expense incurred;
- (e) Loss of property; and
- (f) Loss of patrons.

Insurance Contract with RSA

- 20. Prince George contracted with RSA to insure its property and to provide business interruption coverage. RSA issued a municipal property policy to Prince George for the period July 1, 2019 to 2020 (the “Policy”). The first policy period was extended an additional 120 days under the declaration of emergency extension. The Policy was also renewed for the period July 1, 2020 to 2021.
- 21. Prince George paid significant insurance premiums to RSA in order to gain protection under the Policy and peace of mind.

General Civil Authority Coverage

- 22. The Policy contained a general provision stating the policy insured loss, covered under the Policy, which was sustained by Prince George as a result of damage caused by order of civil authority to retard or prevent a conflagration or other catastrophe (the “General Civil Authority Coverage”).
- 23. There is no requirement for any physical damage in order for this general coverage provision to apply.
- 24. Prince George suffered business interruption losses as a result of the government measures including the orders of civil authorities described above.
- 25. These orders of civil authority were issued to prevent or retard the catastrophe of the Pandemic.
- 26. Accordingly, RSA is contractually bound pursuant to the General Civil Authority Coverage to cover some or all of Prince George’s losses.

Business Interruption Coverage and Civil Authority Extension

- 27. The Policy also provided coverage for Prince George’s losses resulting from interruption of business caused by damage by an insured peril occurring during the term of the Policy to any insured property.

28. The Policy was an “all risks” policy insuring all risks of direct physical loss of or damage to insured property except as expressly excluded.
29. Viruses are insured perils. The insured perils include known and unknown risks, including substances such as viral agents that render areas unusable. There is no specific exclusion in the Policy for the peril or risk of viral pathogens, contagious disease or a pandemic.
30. Insured property includes all locations owned, occupied or used by Prince George including the Civic Facilities, BC Translink Vehicles and contingent business locations such as Treasure Cove Casino.
31. There was damage to insured property as a result of the Virus. Further, or in the alternative, there was physical loss of insured property as a result of the Virus.
32. The Virus caused physical changes to the air, surfaces, and interior spaces of the Civic Facilities, the casinos, BC TransLink vehicles, and other insured properties and rendered such properties physically unusable for their intended purpose.
33. At all materials times, the Virus was present at the insured property rendering the buildings uninhabitable interrupting business operations. Further, or in the alternative, absent the closure of the buildings, the presence of the Virus would have been inevitable. As a result of the Virus, there was a loss of function and use of the insured property.
34. RSA is contractually bound under the Business Interruption Coverage to provide indemnity for some or all of Prince George’s losses.
35. Under the Business Interruption Section of the Policy, the Policy was also extended to cover loss while business was affected as a result of an order of civil authority where such order was given as a result of loss or damage by a peril insured or the threat thereof (the “BI Civil Authority Extension”). There is no requirement for any physical damage to property in order for this extension to apply.
36. As a result of the covered peril of a Virus, or the threat of a Virus, the government measures were enacted resulting in loss sustained by Prince George due to an interruption of business.
37. Prince George is also entitled to indemnification for some or all of its losses under the BI Civil Authority Extension.

Breach of Contract and Duty of Good Faith

38. Prince George sought indemnification from RSA under the Policy for the following covered losses:
 - (a) Loss of monthly gaming revenue due to closure of one or more casinos within Prince George including the Treasure Cove Casino;

- (b) Loss of monthly revenue due to the closure of community services, including the Civic Facilities;
 - (c) Loss of monthly BC Transit revenue due to the reduction in bus services and the move to a “no fare” model.
39. On or about August 4, 2020, RSA denied coverage for the loss on the following bases:
- (a) There had been no physical loss or damage to insured property in order to trigger business interruption coverage.
 - (b) The BI Civil Authority Extension did not apply because the government orders were not made because of actual or threatened physical loss or damage, rather they were made because of the pandemic and to prevent or limit the spread of the disease.
40. RSA did not consider the General Civil Authority Provision in its coverage denial. RSA did not deny coverage on the basis of any exclusion clauses.
41. RSA breached the terms of its contract with Prince George by denying coverage despite the contractual terms for such coverage having been satisfied.
42. RSA is in breach of contract for failing to properly indemnify Prince George for the loss sustained pursuant to the terms of the contract.

Part 2: RELIEF SOUGHT

1. Prince George claims against RSA for the following relief:
- (a) A Declaration that Prince George is entitled to indemnity pursuant to the Policy;
 - (b) General Damages;
 - (c) Damages for breach of contract;
 - (d) Special Damages;
 - (e) Interest pursuant to the *Court Order Interest Act*, [RSBC] 1996, c. 79;
 - (f) Costs; and
 - (g) Such further relief as this honourable court may deem just.

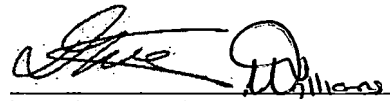
Part 3: LEGAL BASIS

1. The Policy was a binding contract between Prince George and RSA.
2. RSA failed to provide Prince George with payment properly payable under the Policy in breach of the agreement between the parties.

3. *Insurance Act*, RSBC 2012, c. 1.

(1) The plaintiff's address for service is: HARPER GREY LLP Barristers and Solicitors 3200 - 650 West Georgia Street Vancouver, BC V6B 4P7 Fax number for service: (604) 669-9385
(2) Place of trial: Vancouver The address of the registry is: 800 Smithe Street Vancouver, BC V6Z 2E1
(3) The name and office address of the plaintiff's solicitor is: HARPER GREY LLP Barristers & Solicitors 3200 - 650 West Georgia Street Vancouver, BC V6B 4P7 Telephone: 604 687 0411 Fax: 604 669 9385 Attn: Djuna M. Field/DMF/ab

Date: 15 June 2022


HARPER GREY LLP
(Per Djuna M. Field) *Agent for*
Lawyer for the Plaintiff

Rule 7-1(1) of the *Supreme Court Civil Rules* states:

- (1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,
 - (a) prepare a list of documents in Form 22 that lists
 - (i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and

- (b) (ii) all other documents to which the party intends to refer at trial, and serve the list on all parties of record.

APPENDIX

Part 1: CONCISE SUMMARY OF NATURE OF CLAIM:

A claim arising from an insurer's breach of contract for the payment of an insurance policy payable to the plaintiff. Contrary to the terms and conditions of the insurance policy, the defendant insurer has refused to indemnify the plaintiff insured for claims for damages arising out of an interruption of business.

Part 2: THIS CLAIM ARISES FROM THE FOLLOWING:

A personal injury arising out of:

- a motor vehicle accident
- medical malpractice
- another cause

A dispute concerning:

- contaminated sites
- construction defects
- real property (real estate)
- personal property
- the provision of goods or services or other general commercial matters
- investment losses
- the lending of money
- an employment relationship
- a will or other issues concerning the probate of an estate
- a matter not listed here

Part 3: THIS CLAIM involves:

- a class action
- maritime law
- aboriginal law
- constitutional law
- conflict of laws
- none of the above
- do not know

Part 4:

Insurance Act, [R.S.B.C. 2012] ch. 1, and amendments thereto; and

Court Order Interest Act [R.S.B.C. 1996] c. 79, and amendments thereto.