

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE)
JUSTICE E.M. MORGAN)
MONDAY, THE 8TH DAY OF
JANUARY 2024

B E T W E E N:

**NORDIK WINDOWS INC., CASH AND CARRY INC.,
HANGAR9STUDIOS INC. and REAL FOOD FOR REAL KIDS INC.**

Plaintiffs

- and -

**AVIVA INSURANCE COMPANY OF CANADA, AVIVA GENERAL
INSURANCE COMPANY and AVIVA CANADA INC.**

Defendants

Proceeding under the *Class Proceeding Act, 1992*

NOTICE ORDER

THIS MOTION, made by the Plaintiffs for an Order approving the form of notice to be provided to class members under section 17 of the *Class Proceedings Act, 1992* was heard on January 5, 2024, by judicial videoconference.

ON READING this Court's Order of March 22, 2023 (the "Certification Order") certifying this action as a class proceeding and approving the Plaintiffs' Litigation Plan, and on being advised that all appeals with respect to the Certification Order and companion orders have been resolved, and further to Paragraph 11 of

the Certification Order, and on reading the Plaintiffs' and Defendant's case conference briefs and hearing the submissions of counsel on January 5, 2024,

1. **THIS COURT ORDERS** that the Notice of Certification (the "Notice"), a copy of which is attached as **Schedule "A"**, is hereby approved for distribution in accordance with the Notice Program as set out at paragraph 5 below.

2. **THIS COURT FURTHER ORDERS** that Epiq Class Action Services Canada Inc. is appointed as Administrator for the purpose of disseminating the Notice to Class Members and receiving opt-out forms.

3. **THIS COURT FURTHER ORDERS** that the Defendant provide Class Counsel, by February 19, 2024, with the names and last known contact mailing addresses for the approximate 44,093 Aviva Enterprise and pre-Enterprise policyholders.

4. **THIS COURT FURTHER ORDERS** that the Defendant provide Class Counsel, by February 19, 2024, with the names and last known contact mailing addresses of the 745 insurance brokers offering the Defendant's products as of March 2020.

5. **THIS COURT FURTHER ORDERS** that by April 19, 2024, the Notice will be given in the following manner (the "Notice Program"):

a) Epiq Class Action Services Canada Inc. shall:

i) Deliver the Notice via physical mail to the approximately 44,093 Aviva Enterprise and pre-Enterprise policyholders at the physical address provided by the Defendant;

ii) Deliver the cover letter attached as **Schedule “B”** and the Notice via physical mail to the 745 insurance brokers at the physical address provided by the Defendant;

iii) Deliver the Notice to any Class Members in contact with Class Counsel by direct e-mail;

b) Class Counsel shall post the Notice on the websites for this class proceeding:

www.avivacanadaclassaction.ca and
www.avivacanadaclassaction.com

d) Class Counsel shall deliver the Notice by direct email to those Class Members they are in contact with or that request it from them.

6. **THIS COURT FURTHER ORDERS** that if the Defendant is contacted by Class Members or insurance brokers regarding the cover letter and/or the Notice delivered to them in accordance with paragraph 5(a), the Defendant shall direct the insurance brokers to the website: www.avivacanadaclassaction.ca.

7. **THIS COURT FURTHER ORDERS** that Class Members may opt out of this class proceeding by delivering an opt-out form in the manner set out in the Notice.

8. **THIS COURT FURTHER ORDERS** that the Notice is deemed given on April 19, 2024, and that the opt-out period expires at 5:00 pm E.S.T. on May 19, 2024 (the “Opt-Out Deadline”).

9. **THIS COURT FURTHER ORDERS** that the Notice Program satisfies the requirements of section 17 of the *Class Proceedings Act, 1992* and is the best notice practicable under the circumstances.

10. **THIS COURT FURTHER ORDERS** that any person or party who opts out of this action in accordance with the provision for doing so in the Notice and paragraph [8] of this Order shall be excluded from the Class and the action.

11. **THIS COURT FURTHER ORDERS** that within 30 days of the Opt-Out Deadline, Epiq Class Action Services Canada Inc. shall submit a report to the Defendant containing the names of each Class Member who has validly and timely opted out of the class proceeding.

12. **THIS COURT FURTHER ORDERS** that the Defendants and the Plaintiffs shall equally share Epiq Class Action Service Canada Inc.'s costs and disbursements of delivering notice to Class Members and brokers.

13. **THIS COURT FURTHER ORDERS** that within 30 days of the Opt-Out Deadline and 90 days thereafter, Epiq Class Action Service Canada Inc. shall submit a report to the Defendant containing the information contained in the claim form or otherwise received by Epiq Class Action Service Canada Inc. pursuant to the terms of the Notice under "Submitting Notice of Your Claim".

14.

THIS COURT FURTHER ORDERS that, irrespective of any obligations under the *Insurance Act*, R.S.O. 1990, c. I.8, companion legislation in other Canadian provinces, or at law, the Defendant is directed not to provide any response, denial or request for information to any Class Member that submits a notice of claim to Epiq Class Action Services Canada Inc. pursuant to the Notice, and such lack of response or request for information shall not provide any basis for a claim or defence against the Defendant for delay, laches, breach of the duty of good faith, or other claims at law. Paragraph 14 of this Order does not preclude the Class from seeking declaratory relief that submitting a notice of claim to Epiq Class Action Services Canada Inc. pursuant to the Notice is a proper method for submitting a claim to the Defendant and/or seeking relief from forfeiture of the requirement to strictly comply with the Defendant's claim process.



Morgan J.

Authorized by the Ontario Superior Court of Justice

**NOTICE OF CERTIFICATION OF THE AVIVA COVID-19
BUSINESS INTERRUPTION CLASS ACTION**

If you held business interruption insurance with Aviva in Canada at any time between March 1, 2020 through August 31, 2021, your legal rights might be affected. You should read this notice carefully.

WHAT IS THIS NOTICE ABOUT?

This Notice sets out a summary of a class action against Aviva Insurance Company of Canada ("Aviva Canada"). If you or your business had business interruption insurance coverage from Aviva Canada at the relevant time, described below, your business may be entitled to participate in this class action.

WHAT IS THIS CLASS ACTION ABOUT?

This class action is about whether business interruption insurance offered by Aviva Canada under a variety of different policies provides coverage for losses related to COVID-19. The core of the Class' claim is that Aviva Canada improperly denied payment for losses suffered by policy holders during COVID-19. The allegations made by the Class have not yet been proven in court.

More information about the class action can be found at the following website:

www.avivaclassaction.ca

WHO IS A MEMBER OF THE CLASS?

The Class includes any person, corporation, or other entity carrying on business anywhere in Canada that had business interruption coverage from Aviva Canada and suffered business interruption losses related to COVID-19, regardless of whether they have already submitted notice of a claim to Aviva Canada or not. The formal class definition is set out below.

CLASS MEMBERS BOUND BY RESULT

Each member of the Class who does not opt out of the class action will be bound by the decisions made in the action, and the terms of any judgment or settlement – whether favourable or not – and will not be allowed to start their own action against Aviva Canada for the same claims. If you wish to opt out of this class action, please follow the procedure set out on the following page.

SUBMITTING NOTICE OF YOUR CLAIM

Each Class Member is encouraged to submit a claim for coverage under their policy. This is important because the timeline for submitting a claim is in dispute and it will also help the parties evaluate the number of potential claims. The Plaintiffs therefore strongly encourage all Class Members to submit claims as soon as possible. This is a quick and easy process that will take no more than five minutes to complete. Simply go to the following website and fill out the information requested in the form to submit notice of your claim:

[insert Epiq link with claim form]

CERTIFICATION

Certification is a preliminary step in a class action, where the court assesses various criteria before determining whether the proposed representative plaintiffs can advance the claims of all class members through a class action. On March 22, 2023, the Ontario Superior Court of Justice certified the action *Nordik Windows Inc. v Aviva Insurance Company of Canada* as a class proceeding and appointed Nordik Windows Inc., Cash and Carry Inc., Hangar9 Studios Inc., and Real Food for Real Kids Inc. as the representative Plaintiffs of the Class (the “*Nordik class action*”).

The *Nordik* class action alleges that Aviva Canada breached its insurance contracts with Class Members by adopting the institutional position that its business interruption policies do not provide coverage for losses caused by COVID-19 and by directly denying claims made by Class Members or discouraging claims to be made. The *Nordik* class action seeks over \$500 million in damages on behalf of the Class (defined below).

OPTING OUT

Members of the Class who do not want to participate in the class action must formally “opt out”. To opt out you must complete and submit the opt-out form found at [insert Epiq website] or send by mail to Epiq Class Action Services Canada Inc. a written, signed opt-out election indicating:

- the Class Member’s name and policy number;
- your name and contact information, including phone and email address;
- your authority to act on behalf of the Class Member; and
- a statement that the Class Member wishes to opt out.

If sending a written opt-out by mail, you must address it to: [insert Epiq mailing info]

No Class Member will be permitted to opt out of the class action unless the election to opt out is received by Epiq on or before **May 19, 2024 at 5:00 p.m. E.S.T.**

A member of the Class who opts out will not be entitled to participate in the class action, will not be bound by any judgment in the class action, and will not be eligible for any recovery in the class action. A Class Member who opts out may be eligible to pursue a claim in a separate proceeding. If you wish to pursue your own claim in a separate proceeding, you should consult with a lawyer immediately.

CLASS COUNSEL FEES AND DISBURSEMENTS

The representative Plaintiffs and Class Counsel entered into a retainer agreement providing for the payment of legal fees, disbursements and applicable taxes. As a member of the Class, you will not be required to pay any costs in the event that the class action is unsuccessful. The agreement provides that Class Counsel will not receive payment for their work unless and until the class action is successful, by way of judgment or settlement. In that case, Class Counsel will be paid out of any recovery in the class action. The Class Counsel fees, disbursements and applicable taxes must be approved by the Court.

If the class action is successful, it may be necessary for Class Members to have their claims individually determined. Class Counsel will assist Class Members with respect to determination of their individual claim amounts if requested by the Class Member. Class Members will have the opportunity to decide if you wish to proceed with their individual loss claim before it begins.

FORMAL CLASS DEFINITION

The formal Class Definition approved by the Court is:

All persons, corporations, or other entities carrying on business in Canada who purchased any of the following business interruption insurance policies from the Defendant that was in force for some or all of the period from March 1, 2020 through August 31, 2021, whether Aviva Enterprise, Aviva Commercial, or any other policy: (collectively, the “Policies”)

- (i) Business Income Actual Loss Insurance Form 912000-01, Form 912000-01, Form 921005-01, Form 402014-02, Form H001803, Form H2; and/or
- (ii) Such other policies as may contain ‘Negative Publicity’ or ‘Restricted Access’ coverage; and/or
- (iii) Such other policies issued by the Defendant as may contain coverage for suspension of the insured’s business caused by damage to the insured’s or contributing/neighbouring premises; and/or
- (iv) Such other policies as may provide substantially similar coverage.

DO NOT CALL THE COURT WITH ANY QUESTIONS ABOUT THIS NOTICE

Any questions regarding the class action should be directed to: [insert Epiq email info] or to Class Counsel [insert email address for Class Counsel]

This Notice is a summary of some of the terms of the certification order. If there is a conflict between the provisions of this Notice and the terms of the certification order, the certification order prevails.

Additional information, including the certification order, may be found at: www.avivaclassaction.ca



Stephen Birman
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To Whom It May Concern

Dear Mesdames/Sirs:

**Nordik Windows Inc. et al. v. Aviva Insurance Company of Canada (“Aviva Canada”)
Our File No. 903333**

Enclosed is a Notice advising of a class proceeding that has been certified in respect of all Aviva policyholders that had business interruption insurance between March 1, 2020 through August 31, 2021.

We are counsel to the businesses/policyholders that are impacted by this class proceeding. The Notice advises policyholders/Class Members of their rights, at this time, with respect to the ongoing litigation.

We kindly request that you forward this Notice to any of your clients that qualify as Class Members as set out in subparagraphs (ii), (iii) and (iv) of the class definition set out below.

We are not asking you to forward this Notice to Class Members with Aviva Enterprise or Aviva Commercially Branded Policies as identified below in paragraph (i) or with the following Form Numbers:

002400 402003
002693 402004
003000 402005
003020 402006
003092 402008
003407 402010
0A2820 402014
)D2700 402015
0G1803 912000
0G1820 912001
0G1903 912002
402001 912005
402002 913103
SYPRO2 NPMLTP
NPFIRE

This Notice is already being provided to these Aviva policyholders directly.

This is a request for assistance only. There is no court order or direction demanding or compelling your assistance.

Class Members are all persons, corporations or other entities carrying on business in Canada who purchased any of the following insurance policies from Aviva that was in force for some or all of the period from March 1, 2020 through August 31, 2021 whether Aviva Enterprise, Aviva Commercial, or any other policy:

- (i) Business Income Actual Loss Insurance Form 912000-01, Form 912000-01, Form 92100501, Form 402014-02, Form H-001803, Form H2; and/or
- (ii) Such other policies as may contain “Negative Publicity” or “Restricted Access” coverage; and/or
- (iii) such other policies issued by Aviva as may contain coverage for suspension of the insured’s business caused by damage to the insured’s or contributing/neighbouring premises; and/or
- (iv) such other policies as may provide substantially similar coverage

If you have any questions about this request, please visit : www.avivacanadaaction.ca

Yours very truly,



Stephen Birman

SB/sig
Enclosure

Court File No. CV-20-00643386-00CP

ONTARIO

SUPERIOR COURT OF JUSTICE

Proceeding Commenced at Toronto

ORDER

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