



Court File No:

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Toronto

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**B E T W E E N .**

**CARTER ADNAMS, a minor by his litigation guardian, SCOTT ADNAMS**

Plaintiff

- and -

**ARCH INSURANCE CANADA LTD.**

Defendant

**Proceeding under the *Class Proceedings Act, 1992***

**STATEMENT OF CLAIM**

**TO THE DEFENDANTS**

**A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU** by the Plaintiff. The claim made against you is set out in the following pages.

**IF YOU WISH TO DEFEND THIS PROCEEDING**, you or an Ontario lawyer acting for you must prepare a Statement of Defence in Form 18A prescribed by the *Rules of Civil Procedure*, serve it on the Plaintiff's lawyer, or where the Plaintiff does not have a lawyer, serve it on the Plaintiff and file it, with proof of service, in this Court office, **WITHIN TWENTY DAYS** after this Statement of Claim is served on you, if you are served in Ontario.

If you are served in another Province or Territory of Canada or in the United States of America, the period for serving and filing your Statement of Defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a Statement of Defence, you may serve and file a Notice of Intent to Defend in Form 18B prescribed by the *Rules of Civil Procedure*. This will entitle you to ten more days within which to file your Statement of Defence.

**IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY**

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**LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTRACTING A LOCAL LEGAL AID OFFICE.**

**IF YOU PAY THE PLAINTIFF'S CLAIM**, and \$5,000.00 for costs, within the time for serving and filing your statement of defence you may move to have this proceeding dismissed by the court. If you believe the amount claimed for costs is excessive, you may pay the plaintiff's claim and \$400 for costs and have the costs assessed by the court.

**TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED** if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date \_\_\_\_\_

Issued by \_\_\_\_\_  
Local Registrar

**Address of Court Office:**

330 University Avenue  
8<sup>TH</sup> Floor  
Toronto, Ontario  
M5G 1R8

**TO:**           **Arch Insurance Canada LTD.**  
Suite 3600, 77 King Street West, PO Box 308  
Toronto, Ontario  
M5K 1K2  
Canada

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**CLAIM**

1. The Plaintiff, Carter Adnams, a minor by his litigation guardian, Scott Adnams, claims from the Defendant, Arch Insurance Company Ltd. (“**Arch**”), on his own behalf and on behalf of the Class (defined below), the following relief:
  - a) An order certifying this proceeding as a class proceeding and appointing the Plaintiff as representative Plaintiff for the Class (defined below);
  - b) A declaration that the Plaintiff and the Class are insured persons of Arch pursuant to a travel insurance policy bearing Group Policy No. AC433C (the “**Policy**”);
  - c) A declaration that Arch breached the terms of the Policy by failing to act in accordance with its terms;
  - d) A declaration that Arch breached its duty of good faith in contractual performance and its duty of utmost good faith to the Plaintiff and the Class;
  - e) Damages for Arch’s breach of the Policy, in an amount to be particularized in advance of trial;
  - f) Aggravated, punitive and/or exemplary damages in the sum of \$10 million for the Plaintiff and the Class, or such other sum as this Honourable Court deems just;
  - g) Payment of other sums due and owing to the Plaintiff and the Class pursuant to and in accordance with the terms of the Policy;
  - h) In the alternative, a declaration that Arch has been unjustly enriched, to the deprivation of the Plaintiff and the Class, in that it received the value of premiums and/or other consideration for underwriting and providing the Policy to the Plaintiff and the Class without complying with its terms, and an order requiring Arch to disgorge to the Plaintiff and the Class all amounts withheld by Arch in respect of its failure to comply with the terms of the Policy;

- i) An order, pursuant to s. 24 of the *Class Proceedings Act, 1991*, directing an aggregate assessment of damages;
- j) Relief from forfeiture pursuant to s. 98 of the *Courts of Justice Act*, R.S.O. 1990, chapter C.43 or s. 129 of the *Insurance Act*, R.S.O. 1990, chapter I.8, in the event that this Honourable Court finds imperfect compliance with respect to the application for coverage or claim for benefits pursuant to the Policy;
- k) An order appointing Scott Adnams litigation guardian for the minor Plaintiff, Carter Adnams, pursuant to Rule 7 of the *Rules of Civil Procedure*, R.R.O 1990, Reg. 194;
- l) Pre- and post-judgment interest pursuant to the *Courts of Justice Act*, R.S.O. 1990, chapter C.43;
- m) Costs of this action on a substantial indemnity basis, together with applicable Harmonized Sales Tax, payable pursuant to the provisions of the *Excise Tax Act*, R.S.C., 1985, c. E-15, as amended;
- n) The costs of administering the plan of distribution of recovery in this action; and
- o) Such further and other relief as this Honourable Court deems just.

## THE PARTIES

- 2. The Plaintiff, Carter Adnams resides with his parents in Guelph, Ontario. He is a minor and brings this action by his litigation guardian and father, Scott Adnams. Carter was born on February 1, 2003. At all material times, Carter was insured for trip cancellation insurance pursuant to the Policy.
- 3. The Defendant, Arch, is a commercial property casualty insurer based in Toronto, licensed to transact insurance in Canada. It is a subsidiary of Arch Capital Group Ltd., a publicly traded, Bermuda-based company which provides insurance, reinsurance, and mortgage insurance on a worldwide basis through its wholly owned subsidiaries. Arch underwrote insurance policies in relation to student trips purchased through Explorica Canada Inc.

(hereinafter referred to as “**Explorica**”), a travel supplier, from January 1, 2016 to April 30, 2019.

## **THE CLASS**

4. The Plaintiff brings this action pursuant to the *Class Proceeding Act, 1992* on his own behalf and on behalf of the following class of persons:

“Any person who since April 15, 2018, was an insured under the terms of the Policy, who asserted, or was entitled to assert a claim for Trip Cancellation benefits pursuant to the Policy, and was not paid all or some of their claim.”

(the “**Class**” or “**Class Members**”)

## **THE POLICY**

5. The Plaintiff, Carter, and the Class Members were, at all material times, insured for travel insurance with Arch, and in particular, trip cancellation insurance in accordance with the terms of the Policy.
6. The Policy was underwritten by Arch for student trips purchased through Explorica from January 1, 2016 to April 30, 2019.
7. Pursuant to the Policy, coverage begins and ends as follows:

### **When Coverage Begins:**

**Trip Cancellation:** Coverage begins at 12:01 a.m. at Your location on the day after the date the required payment for this plan to cover Your Trip is received by Explorica. This is Your “Effective Date” and time for Trip Cancellation and Cancellation For Any Reason.

### **When Coverage Ends:**

**Trip Cancellation:** Your coverage automatically ends on the earlier of: 1) the scheduled departure time on the Scheduled Departure Date of Your Trip; 2) the date and time You depart on Your Trip; or 3) the date and time You cancel Your Trip.

8. Under Section I (“Coverages”) of the Policy, Arch provided trip cancellation insurance for Unforeseen reasons and Other Covered Events:

**SECTION I  
COVERAGES**

No benefit will duplicate any other benefit or coverage provided under this policy. Should there be a duplication of coverage or benefits, then We will pay the benefit providing the largest amount of coverage.

**TRIP CANCELLATION**

We will reimburse You, up to the Maximum Benefit Amount shown in the Schedule of Benefits, for the amount of the unused non-refundable prepaid Payments or Deposits for the Travel Arrangements You purchased or were assessed for Your Trip, when You cancel Your Trip for a covered Unforeseen reason.

**Trip Cancellation must be due to one of the following Unforeseen reasons:**

1. Your, a Family Member's, a Traveling Companion's, a Business Partner's or a Traveling Companion's Family Member's death, that occurs before departure on Your Trip;
2. Your, a Family Member's, a Traveling Companion's, a Business Partner's or a Traveling Companion's Family Member's covered Sickness or Injury, that: a) occurs before departure on Your Trip; b) requires Medical Treatment at the time of cancellation; and c) as certified by a Physician, results in medical restrictions so disabling as to cause Your Trip to be cancelled; or
3. for Other Covered Events, as defined;

provided any such covered Unforeseen reason occur while coverage is in effect for You.

9. "Other Covered Events" include:

- o. The cancellation of Your Trip by the school board due to a teacher's labour strike or the school board determines there is a risk of harm to You during Your Trip when You are scheduled to visit a destination listed on the itinerary of Your insured Trip. Applicable to Elementary or High Schools only, the school board cancels Your Trip due to a union directed work to rule job action.

10. Pursuant to the Policy, Carter and the Class Members were insured for the following:

SCHEDULE OF BENEFITS	
Plan Benefits	Maximum Benefit Amount
Trip Cancellation.....	Trip Cost
Trip Interruption.....	Trip Cost
Missed Connection .....	\$500
Travel Delay (Up to \$100 Per Day) .....	\$500
Accidental Death & Dismemberment.....	\$25,000
Medical Expense/Emergency Assistance	
Accident and Sickness Medical Expense	
for individuals up to age 74.....	\$1,000,000*
for individuals age 75 or over .....	\$25,000*
Emergency Evacuation and Repatriation .....	\$50,000
Baggage and Personal Effects .....	\$2,000
Baggage Delay .....	\$100
* Medical Expense/Emergency Assistance Benefits of this plan are subject to a Maximum Benefit Limit of \$25,000 for;	
(1) those persons who at the time of a covered Injury or Sickness do not have valid hospital and medical insurance under a Government Health Insurance Plan of a province or Territory of Canada;	
(2) and any claim related to any Pre-Existing Condition whether Stable or not.	

### CIRCUMSTANCES GIVING RISE TO THIS ACTION

11. On December 19, 2018, Carter's father, Scott, booked Carter a trip with Explorica to Costa Rica, scheduled for March 13-20, 2020 (the "**Trip**"). The Trip cost \$3,006 and was paid in full by January 12, 2020. The Trip cost included purchase of the Policy with Arch, naming Carter as an Insured.
12. Carter is a student at the Guelph Collegiate Vocational School, a high school under the supervision and direction of the Upper Grand District School Board (the "**School Board**").
13. On March 10, 2020, the School Board advised parents and guardians by letter that, due to the rapid increase in reported COVID-19 cases in Costa Rica, the Trip would be cancelled.
14. On April 4, 2020, Explorica submitted a trip cancellation claim to Arch on Carter's behalf for Trip Cancellation benefits, including full reimbursement of the cost of the Trip. Explorica submitted similar trip cancellation claims across the board, on behalf of all Class Members registered for similarly affected trips.

## **BREACH OF CONTRACT BY ARCH**

15. Despite not disputing the Plaintiff's eligibility under the Policy, Arch has refused to pay the Plaintiff his insured benefits in accordance with the terms of the Policy.
16. In explaining its refusal to pay the Policy benefits, Arch alleges that Explorica has failed to provide information and documentation it requires for the adjudication of the Plaintiff's claims. While Explorica has denied this explanation, it is irrelevant to the determination of the Plaintiff's claim under the Policy.
17. Arch has not alleged that the Plaintiff is in anyway in default or in breach of the terms of the Policy.
18. To date, Arch continues to wrongfully withhold payment of insurance monies owing to the Plaintiff, as well as the putative Class Members, pursuant to the provisions of the Policy.
19. Arch is contractually obligated to compensate the Plaintiff and Class Members for any loss or damages referred to in the Policy. By failing to do so, Arch has breached the corresponding contractual obligations owed to the Plaintiff and Class Members under the Policy.
20. The Plaintiff and Class Members paid Arch premiums and/or other consideration for underwriting and providing the Policy to the Plaintiff and Class Members with the understanding and expectation that Arch would honour its contractual obligations in good faith. Due to Arch's breach of contract, the Plaintiff and Class Members have suffered losses and damages.
21. Further, by refusing to honour its contractual obligations, Arch has failed to deliver the "peace of mind" that the Plaintiff and Class Members relied upon when they paid for same and when they paid for their trips.

## **BREACH OF DUTY OF CARE AND GOOD FAITH BY ARCH**

22. At all material times, Arch owed a duty of *uberrima fides* to the Plaintiff and Class Members to treat them with utmost good faith. The Plaintiff pleads that Arch has breached this duty and that Arch has behaved with arrogance and high-handedness and has shown a callous disregard and complete lack of care for the Plaintiff and Class Members in that:

- a) Arch took an adversarial and hostile approach to the Plaintiff and Class and their claims for trip cancellation in accordance with the provisions of the Policy, treating them with suspicion and contempt from the outset of the claim;
- b) Arch is seeking to transfer the burden of its dispute with Explorica onto the Plaintiff and Class, despite knowing that the Plaintiff and the Class are entitled to benefits under the Policy;
- c) Arch pre-judged the Plaintiff's and Class' trip cancellation claims and failed to consider fully and fairly all of the evidence with respect to the circumstances surrounding their claims;
- d) Arch's failure to pay benefits under the Policy was made strategically and in bad faith in that it was driven not by a determination that the claims were not covered but rather by Arch's dispute with Explorica, and/or Arch's knowledge of how many of such claims would be made and its desire to avoid paying them; and
- e) Arch interpreted the provisions of the Policy in a vague and arbitrary manner and without regard to a plain reading of the Policy.

23. Arch has equally breached its duty of good faith in contractual performance of the Policy.

## **DAMAGES**

24. As a result of the defendant's wrongful conduct, the Plaintiff and the Class have suffered and continue to suffer damages pertaining to the claimed expenses under the provisions of the Policy which, to date, have not been paid by Arch.

25. Arch's irresponsible refusal to provide the benefits to which the Plaintiff and Class Members are entitled has caused them financial hardship and has failed to deliver the "peace of mind" they contracted for and relied upon when they paid for insurance under the Policy. This warrants and award of non-pecuniary general damages.
26. By failing to pay benefits pursuant to the terms of the Policy, the Defendant acted callously, in a high-handed manner, flagrantly and without regard to the health and well-being of the Plaintiff and Class Members, and without proper regard to or consideration of the available information and documentation.
27. As a result of such conduct, the Plaintiff and Class are entitled to aggravated, exemplary and punitive damages. A financial consequence beyond simply ordering the defendant to pay the claims is needed to deter insurers from making such strategic, bad faith denials and/or decisions withholding of benefits in the future.

### **UNJUST ENRICHMENT**

28. Arch has been unjustly enriched in that it received the value of premiums and/or other consideration for underwriting and providing the Policy to the Plaintiff and the Class without complying with its terms. The Plaintiff and the Class have suffered a corresponding deprivation for which there is no juristic reason.

### **CLASS PROCEEDING**

29. The Policy was broadly made available to other insureds, and as such the Class Members are similarly situated in respect to the breaches of law, and harm caused.
30. This action should be certified as a class proceeding.

### **LEGISLATION AND JURISDICTION**

31. Sections 6, 11, 12, 24 and 25 of the *Class Proceedings Act*, 1992, S.O., c.6, as amended; the *Insurance Act*, *supra*; the *Courts of Justice Act*, *supra*; and the *Rules of Civil Procedure*, *supra*.

32. The Plaintiff proposes that the trial of this action take place at the City of Toronto, in the Province of Ontario.

Date: October 14, 2020

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**ONTARIO  
SUPERIOR COURT OF JUSTICE**PROCEEDING COMMENCED AT  
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