



Court File No:

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Toronto

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N,

MARK CHMIELOWIEC and ERICA LAUREN CHMIELOWIEC

Plaintiff

- and -

OLD REPUBLIC INSURANCE COMPANY OF CANADA

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 Plaintiffs do not have a lawyer, serve it on the Plaintiffs 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

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
8TH Floor
Toronto, Ontario
M5G 1R8

TO: **Old Republic Insurance Company of Canada**
Box 557, 100 King Street West
Hamilton, ON, CA
L8N 3K9

CLAIM

1. The Plaintiffs, Mark Chmielowiec and Erica Lauren Chmielowiec, claim on their own behalf and on behalf of other members of the Class (defined below) from the Defendant, Old Republic Insurance Company of Canada (“**ORIC**”), the following relief:
 - a) An order certifying this proceeding as a class proceeding and appointing the Plaintiffs as representative Plaintiffs for the Class (defined below);
 - b) A declaration that the Plaintiffs and the Class are insured persons of ORIC pursuant to a travel insurance policy bearing Group Policy No. OR433C (the “**Policy**”);
 - c) A declaration that ORIC breached the terms of the Policy by failing to act in accordance with its terms;
 - d) A declaration that ORIC breached its duty of good faith in contractual performance and its duty of utmost good faith to the Plaintiffs and the Class;
 - e) Damages for ORIC’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 Plaintiffs and the Class, or such other sum as this Honourable Court deems just;
 - g) Payment of other sums due and owing to the Plaintiffs and the Class pursuant to and in accordance with the terms of the Policy;
 - h) In the alternative, a declaration that ORIC has been unjustly enriched, to the deprivation of the Plaintiffs and the Class, in that it received the value of premiums and/or other consideration for underwriting and providing the Policy to the Plaintiffs and the Class without complying with its terms, and an order requiring ORIC to disgorge to the Plaintiffs and the Class all amounts withheld by ORIC 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) Pre- and post-judgment interest pursuant to the *Courts of Justice Act*, R.S.O. 1990, chapter C.43;
- l) 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;
- m) The costs of administering the plan of distribution of recovery in this action; and
- n) Such further and other relief as this Honourable Court deems just.

THE PARTIES

- 2. The Plaintiff, Mark Chmielowiec, resides in Etobicoke, Ontario. He is a teacher at Michael Power St. Joseph High School where his daughter, the Plaintiff Erica Lauren Chmielowiec, attends.
- 3. Mark purchased and paid for a trip, which included travel insurance with the Defendant, for his daughter, through Explorica Canada Inc. (hereinafter referred to as “**Explorica**”), a travel supplier.
- 4. Erica resides with her parents in Etobicoke, Ontario. She was born on May 13, 2002.
- 5. At all material times, Mark and Erica were insured for trip cancellation insurance pursuant to the Policy.
- 6. The Defendant, ORIC, is a Canadian federally licensed insurance company with its head office located in Hamilton, Ontario.

7. ORIC encompasses the entire Canadian operations of Old Republic International Corporation (“ORI” on the new York Stock Exchange), which is one of America’s 50 largest shareholder-owned insurance businesses and currently ranks among the Fortune 500 list of the nation’s biggest companies.
8. ORIC underwrote insurance policies in relation to student trips purchased through Explorica Canada Inc. (hereinafter referred to as “**Explorica**”), a travel supplier, after May 1, 2019.

THE CLASS

9. The Plaintiffs bring this action pursuant to the *Class Proceeding Act, 1992* on their behalf and on behalf of the following class of persons:

“Any person who since April 21, 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

10. The Plaintiffs and the Class Members were, at all material times, insured for travel insurance with ORIC, and in particular, trip cancellation insurance in accordance with the terms of the Policy.
11. The Policy was underwritten by ORIC for student trips purchased through Explorica after May 1, 2019.
12. Pursuant to the Policy, coverage begins and ends as follows:

When Coverage Begins:

For Trip Cancellation: Coverage begins when the required premium for this Policy to cover Your Trip is received by Explorica. This is Your “Effective Date” and time for Trip Cancellation.

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.

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

TRIP CANCELLATION, TRIP INTERRUPTION, MISSED CONNECTION AND TRAVEL DELAY

Trip Cancellation: Benefits will be paid, up to the Maximum Benefit Amount shown in the Schedule of Benefits, to cover You for the unused non-refundable prepaid expenses for Travel Arrangements You purchased for Your Trip, when You cancel Your Trip prior to departure due to:

1. Death involving You or Your Travelling Companion or Your or Your Travelling Companion's Business Partner or Your Family Member;
2. A covered Sickness or Injury involving You, Your Travelling Companion or Business Partner, or Your Family Member which necessitates Medical Treatment at the time of cancellation and results in medically imposed restrictions, as certified by a Legally Qualified Physician, which prevents Your participation in the Trip; or
3. For the **Other Covered Reasons** listed below;
provided such circumstances occurred after Your Effective Date.

14. “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.

15. Pursuant to the Policy, the Plaintiffs and the Class Members were insured for the following:

SCHEDULE OF BENEFITS

Benefit	Maximum Benefit Amount
Accidental Death and Dismemberment.....	\$25,000
Medical Expense/Emergency Assistance	
Emergency Accident and Sickness Medical Expense.....	\$1,000,000*
Emergency Dental Expense.....	\$750
Medical Evacuation & Return of Mortal Remains.....	\$50,000
One Call 24-Hour Assistance Services	Included
Trip Cancellation.....	Trip Cost
Occupancy Upgrade	Included
Trip Interruption	Trip Cost
Occupancy Upgrade	Included
Missed Connection.....	\$500
Travel Delay (Up to \$100 Per Day).....	\$500
Baggage and Personal Effects	\$2,000
Baggage Delay	\$100

CIRCUMSTANCES GIVING RISE TO THIS ACTION

16. On May 28, 2019, Mark booked Erica a trip with Explorica to Italy (specifically, Rome and Sicily) and Greece, scheduled for March 11-21, 2020 (the “**Trip**”).
17. The Trip cost \$4,163.60, including the cost for travel insurance with ORIC, and was fully paid by January 5, 2020. Mark initially paid for the Trip, and Erica later refunded him.
18. Erica is a student at the Michael Power St. Joseph, a high school under the supervision and direction of the Toronto Catholic School Board (the “**School Board**”).
19. Mark is a teacher at Erica’s high school and was scheduled to lead a 16-student group on the Trip.
20. On March 3, 2020, the School Board announced the cancellation of March trips due to COVID-19.
21. On March 6, 2020, Erica’s high school principal advised parents and guardians by letter that letter that,

As a result of increased numbers of reported cases of COVID-19 virus in European countries, the Toronto Catholic District School Board (TCDSB) has determined that the scheduled trips to Europe during the March Break for Michael Power-St. Joseph H.S. students and staff is cancelled because

the TCDSB feels there is a risk of harm in the regions of the destination specified.

The TCDSB does not allow travel to places that pose a risk of harm to students' health and safety. Following the news of the last few days about the COVID-19 virus, we no longer consider this to be a safe trip.

22. Explorica submitted a trip cancellation claim to ORIC on the Plaintiffs' behalf for Trip Cancellation benefits, including full reimbursement of the cost of the Trip.
23. Explorica submitted similar trip cancellation claims across the board, on behalf of all Class Members registered for similarly affected trips.

BREACH OF CONTRACT BY ORIC

24. Despite not disputing the Plaintiffs' eligibility under the Policy, ORIC has refused to pay the insured benefits to the Plaintiffs in accordance with the terms of the Policy.
25. In explaining its refusal to pay the Policy benefits, ORIC alleges that Explorica has failed to provide information and documentation it requires for the adjudication of the Plaintiffs' claims. While Explorica has denied this explanation, it is irrelevant to the determination of the claim under the Policy.
26. ORIC has not alleged that the Plaintiffs are in default or breach of the Policy.
27. To date, ORIC continues to wrongfully withhold payment of insurance monies owing to the Plaintiffs, as well as the putative Class Members, pursuant to the provisions of the Policy.
28. ORIC is contractually obligated to compensate the Plaintiffs and Class Members for any loss or damages referred to in the Policy. By failing to do so, ORIC has breached the corresponding contractual obligations owed to the Plaintiffs and Class Members under the Policy.
29. The Plaintiffs and Class Members paid ORIC premiums and/or other consideration for underwriting and providing the Policy to the Plaintiffs and Class Members with the understanding and expectation that ORIC would honour its contractual obligations in good

faith. Due to ORIC's breach of contract, the Plaintiffs and Class Members have suffered losses and damages.

30. Further, by refusing to honour its contractual obligations, ORIC has failed to deliver the "peace of mind" that the Plaintiffs 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 ORIC

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

- a) ORIC took an adversarial and hostile approach to the Plaintiffs 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) ORIC is seeking to transfer the burden of its dispute with Explorica onto the Plaintiffs and Class, despite knowing that the Plaintiffs and the Class are entitled to benefits under the Policy;
- c) ORIC pre-judged the Plaintiffs' 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) ORIC's failure to pay benefits under the Policy was made strategically and in bad faith. It was driven not by a determination that the claims were not covered, but by ORIC's dispute with Explorica, and/or ORIC's knowledge of how many of such claims would be made and its desire to avoid paying them; and
- e) ORIC interpreted the provisions of the Policy in a vague and arbitrary manner and without regard to a plain reading of the Policy.

32. ORIC has equally breached its duty of good faith in contractual performance of the Policy.

DAMAGES

33. As a result of the defendant's wrongful conduct, the Plaintiffs 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 ORIC.
34. ORIC's irresponsible refusal to provide the benefits to which the Plaintiffs 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.
35. 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 Plaintiffs and Class Members, and without proper regard to or consideration of the available information and documentation.
36. As a result of such conduct, the Plaintiffs 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

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

CLASS PROCEEDING

38. 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.

39. This action should be certified as a class proceeding.

LEGISLATION AND JURISDICTION

40. 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*.
41. The Plaintiffs propose that the trial of this action take place at the City of Toronto, in the Province of Ontario.

Date: October 20, 2020

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RCP-E 18A (July 1, 2007)

MARK CHMIELOWIEC & ERICA LAUREN
CHMIELOWIEC
Plaintiffs

Court File No./N° du dossier du greffe: CV-20-00649709-00CP
-and- OLD REPUBLIC INSURANCE COMPANY OF CANADA
Defendant

Court File No.

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT
TORONTO

STATEMENT OF CLAIM

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