



Court File No.

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Electronically issued : 03-Jun-2020  
Délivré par voie électronique : 03-Jun-2020  
Toronto

*(Court Seal)*

PEGASUS ON CHURCH INC.

Plaintiff

and

HDI GLOBAL SPECIALTY SE, GRENVILLE MUTUAL INSURANCE  
COMPANY and A.M. FREDERICKS UNDERWRITING MANAGEMENT  
LTD.

Defendants

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 serve and 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 CONTACTING A LOCAL LEGAL AID OFFICE.

IF YOU PAY THE PLAINTIFF'S CLAIM, and \$5,000 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: Superior Court of Justice  
330 University Avenue, 9th Floor  
Toronto, Ontario  
M5G 1R7

TO: **HDI Global Specialty SE**  
181 University Avenue, Suite 1900  
Toronto, Ontario  
M5H 3M7

AND TO: **Grenville Mutual Insurance Company**  
380 Colonnade Drive  
Kemptville, Ontario  
K0G 1J0

**A.M. Fredericks Underwriting Management Ltd.**  
201-339 Westney Road South  
Ajax, Ontario  
L1S 7J6

## CLAIM

1. The Plaintiff Pegasus On Church Inc. ("**Pegasus**") claims:
  - (a) An order pursuant to the *Class Proceedings Act, 1992*, S.O. 1992, c. 6 ("**CPA**"), certifying this action as a class proceeding and appointing Pegasus On Church Inc. as representative Plaintiff for the Class described below;
  - (b) General and aggravated damages in the sum of \$1,000,000,000.00 (One Billion Dollars);
  - (c) Pre-judgment interest in accordance with section 128 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
  - (d) Post-judgment interest in accordance with section 129 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
  - (e) the costs of this proceeding on a substantial indemnity basis, plus all applicable taxes; and
  - (f) such further and other Relief as to this Honourable Court may seem just.

## THE PARTIES

2. The Plaintiff, Pegasus, operates a bar located in Toronto, Ontario. Christopher Hudspeth ("**Hudspeth**") is the President and General Manager of Pegasus. Pegasus was forced to cease operations to the public on March 15, 2020, based on an Ontario government order due to the COVID-19 pandemic.

3. Since the government order, Pegasus has been unable to operate its business that was deemed non-essential business by the Ontario Government.

4. As a result, Pegasus expected to be paid business interruption insurance from its insurance companies, HDI Global Specialty SE (“**HDI**”) and Grenville Mutual Insurance Company (“**Grenville**”), due to the direct and indirect effects of the COVID-19 pandemic.

5. The Defendant, HDI is an insurance company that carries on business in the Province of Ontario. HDI provides business interruption insurance to several restaurants and bars in Ontario and elsewhere in Canada.

6. The Defendant, Grenville is an insurance company that carries on business in the Province of Ontario. Grenville provides business interruption insurance to several restaurants and bars in Ontario and elsewhere in Canada.

7. The Defendant, A.M. Fredericks Underwriting Management Ltd. (“**A.M. Fredericks**”) is the insurance policy underwriter.

## **THE CLASS**

8. The Plaintiff brings this action under the *Class Proceedings Act, 1992* on its own behalf and on behalf of:

All businesses engaged in the operation of bars in Canada who have; ceased business operations or limited their operations as a result of COVID-19 and/or ensuing governmental orders, and who have sustained a loss as a result, and who were denied coverage for business interruption insurance payments by HDI,

Grenville and/or A.M. Fredericks between March 15, 2020 (the date of Canadian provincial government orders) and the present, or who have yet to file a claim for business interruption insurance due to the blanket denial of coverage.

## **BACKGROUND**

9. Pegasus has operated a bar on Church Street in Toronto, Ontario since 1994. Hudspeth began operating Pegasus in October 2013. Since Hudspeth began operating Pegasus, he understood the importance of purchasing a multi-peril insurance policy for Pegasus.

10. Hudspeth was particularly well-aware of the risks of infectious disease epidemics interrupting business. Hudspeth had previously worked in the film and television industry when SARS, another corona virus, affected Toronto. Hudspeth lost his job due to the impact of SARS on his employer. The tourism industry in general, and more specifically the bar and restaurant industry, were also gravely affected by the SARS pandemic.

11. Many bars and restaurants struggled financially and even closed during the SARS pandemic. When Hudspeth was looking to obtain insurance for Pegasus, he wanted an insurance policy that would provide coverage all risks, including risks associated with the impact of infectious disease pandemics like SARS.

12. Initially, Pegasus was insured by a different insurance provider. However, in or around the summer of 2019, that insurance provider ceased offering policies of the type needed by Pegasus. Thereafter, Pegasus' insurance broker, Mitchell Sandham informed

Hudspeth that there were two insurance providers that could provide insurance for bars in the Toronto area. Mitchell Sandham recommended the Defendants.

### *Insurance Policy*

13. Hudspeth pursued Pegasus' insurance broker's recommendation and decided to obtain insurance from HDI and Grenville (collectively the "**Insurers**"). Hudspeth expected that the Policy offered by the Defendants would cover all perils that could befall Pegasus, subject only to a few express exclusions, which did not include infectious diseases, pandemics and/or epidemics.

14. Hudspeth and Pegasus reasonably expected that a business interruption caused by SARS or any other type of epidemic would be an insured peril.

15. In or around October 2019, Pegasus executed an insurance policy bearing the policy number C39534, which was underwritten by A.M. Fredericks ("**the Policy**"). The policy is a multi-peril policy that insures against various risks and business interruptions. Pegasus made the required premium and other payments.

16. The premium of almost \$20,000.00 per year was substantial, however, Hudspeth believed that obtaining insurance was prudent and essential.

17. The Policy provides coverage when a business is interrupted as a result of damage from a peril insured. The Policy does not exclude loss sustained and resulting from a pandemic, epidemic and/or health crisis which causes the interruption of the business as a direct or indirect result of an epidemic, or orders made by regulatory authorities that interrupt the business in the interests of public health.

18. It was reasonably foreseeable to the Defendants that the business of Pegasus and the Class could be interrupted by SARS or a similar pandemic.

19. The Policy also contains an extension for interruption by a civil authority. This extension provides that the insurer shall be liable for actual loss sustained by the insured during the period of time while access to the premises is prohibited by order of a civil authority.

#### *COVID-19 Pandemic*

20. In or around December 2019, a cluster of cases of pneumonia were reported in Wuhan, China and a novel coronavirus SARS-CoV-2 was eventually identified. The virus causes the disease known as COVID-19 (“**COVID-19**”).

21. In January 2020 the World Health Organization (“**WHO**”) declared COVID-19 as a serious public health threat. In or around March 2020, the WHO declared COVID-19 a worldwide pandemic. Following the WHO pandemic proclamation and an increase in reported COVID-19 cases in Ontario, in or around March 2020, the Ontario Government declared a state of emergency and ordered the closure of non-essential businesses, which included bars and restaurants (“**Order of Ontario Government**”).

22. Other provinces in Canada enacted similar orders, which restricted operations of bars and restaurants and ordered the closure of those businesses.

23. The Ontario Government and other provinces in Canada considered that restaurants and bar premises represented a substantial risk for patrons, staff and the public alike, as SARS-CoV-2 can exist on the physical premises and can be brought into



the premises and easily spread between human beings through saliva droplets and through contact with surfaces on the premises.

24. Pegasus and other bars and restaurants in Canada closed their businesses for two reasons: 1. Risk of spread of COVID-19 itself, and 2. Provincial Orders requiring the closure of bars and restaurants.

25. Following the Order of the Ontario Government, Pegasus, along with neighbouring bars and all bars carrying on business in Ontario, closed their premises. Pegasus is located on Church Street, an area with many bars and restaurants popular with the LGBT Community.

26. Certain bars in Ontario and across Canada that offer take-out and/or delivery services can continue conducting business on a very limited basis. However, even those bars and restaurants have suffered financially. Some bars, including Pegasus, do not have the capacity to conduct take-out and/or delivery services, therefore, their revenue ceased completely.

27. COVID-19 and Provincial Government Orders has resulted in Pegasus, and the Class, ceasing operation and/or has limited their ability to operate to the general public due to the catastrophic and fortuitous event outside of their own control.

28. Pegasus has ceased its operations completely and has suffered serious losses due to the Order of the Ontario Government forcing closure and the impact of COVID-19 on their premises and on neighbouring premises.

*Denial of Insurance Coverage*

29. At the time of the COVID-19 pandemic, Pegasus had an all-risk insurance policy in place with its insurance companies HDI and Grenville for losses from all risks of physical loss or damage, except as excluded by the policy.

30. Pegasus and its principal, Hudspeth, had a reasonable expectation, that its all-risk insurance policy would cover losses resulting from COVID-19 and the orders for business closures that resulted therefrom.

31. On April 20, 2020, Pegasus, through its principal Hudspeth, submitted a claim for coverage, under its insurance policy to HDI and Grenville. The claimed losses arose out of circumstances relating to the COVID-19 pandemic.

32. However, in a letter dated May 11, 2020, the International Programs Group, the Third Party Administrator (“**TPA**”), acting on behalf of the insurers, denied Pegasus’ claim for insurance on the grounds that the presence of COVID-19 at Pegasus’ location does not constitute “direct physical loss of or damage to property”.

33. Further, TPA, on behalf of the Insurers, rejected Pegasus’ claim for insurance under the interruption by civil authority extension. TPA’s position on behalf of the insurers, was that no coverage would be granted for Pegasus’ claim.

34. This decision was made to reject all claims arising out of COVID-19, not because they were not insurable perils, but because of the enormous costs of honouring such claims.

## **INSURANCE POLICY**

35. Pegasus and the Class paid for insurance coverage with the reasonable expectation that the Defendants would honour its contractual obligations in good faith if and when a catastrophic and fortuitous occurrence/peril were to take place.

36. As a result of the COVID-19 pandemic and various Canadian provincial Governments' decisions to order the closure of all restaurants and bars (save and except for take-out and delivery services), a catastrophic and fortuitous event occurred that caused the interruption of business and direct physical loss and/or damage to Pegasus and the Class members. This resulted in a 100% loss of revenue to Pegasus.

37. The Defendants breached the express and implied terms of the policy agreement that it had with Pegasus and the Class when they failed to cover the losses incurred by Pegasus and the Class due to the COVID-19 pandemic and Provincial Orders for closure of bars and restaurants.

38. The Policy does not exclude 'infectious disease(s)', 'COVID-19', 'epidemic(s)' or 'pandemic(s)' as perils to the Policy.

39. The Defendant owed the Plaintiff and the Class a duty of honesty and good faith with respect to the insurance policy agreement. The Defendants decision to deny coverage was made contrary to the insurers obligation to deal with claims and its insured with utmost good faith.

40. The Plaintiff pleads and relies upon the doctrine of honesty and good faith in contractual relations.

41. It is the responsibility of the insurance companies to control the terms of their policy agreements. It was the Defendants duty to exclude the terms 'infectious disease(s)', 'COVID-19', 'epidemic(s)' or 'pandemic(s)' as perils to their policies. Infectious diseases are not a new issue and the Defendants did not exclude these specific perils from the list of exclusions.

42. Further, it is foreseeable that an infectious disease could create a public health concern, as is the case with COVID-19, especially in light of the past impact of SARS in Canada. COVID-19 is normally passed through human-to-human transmission and through contact with physical surfaces that contain the COVID-19 virus.

43. It was reasonable for Pegasus, and the Class to believe that coverage would be extended to losses resulting from COVID-19 and ensuing Government Orders.

44. COVID-19 is a peril in the insurance policies, which has directly and/or indirectly caused direct physical damage to Pegasus. COVID-19 remains on the surface of premises and can be transmitted through contact with those surfaces. COVID-19 caused the Plaintiff and the Class to close their restaurants and bars, and therefore was a proximate cause of the plaintiff's loss.

45. Pegasus and the Class members were not given an opportunity to negotiate the terms of the Policy Agreement. There were no riders available.

46. The Policy is a contract of adhesion that was drafted by the Defendants. Any ambiguity should be interpreted against the Defendants.

47. The Defendants denial of coverage under the Policy runs contrary to the rules of contractual interpretation.

48. Pegasus pleads and relies upon the doctrine of *contra proferentem*.

## **DAMAGES**

49. As a result of the Defendants failure to indemnify Pegasus and the Class, the Defendants have breached their contractual obligations which has resulted in damage to Pegasus and the Class. Specifically, the Plaintiff and the Class claim damages resulting from:

- (a) Loss of revenue caused by a decrease or elimination of customers after social distancing orders;
- (b) Loss of revenue caused by federal, provincial and municipal orders that restricted operation or entirely close businesses;
- (c) Loss of revenue resulting from measures taken to address physical damage to the business premises due to the presence, release, discharge or contamination of COVID-19 at the business premises;
- (d) all other business interruption insurance losses that resulted from the COVID-19 pandemic.

## **STATUTES**

50. The Plaintiff pleads and relies upon the following statutes and regulations:

- (a) The *Class Proceedings Act 1992*, S.O. 1992 c. 6;
- (b) The *Courts of Justice Act*, R.S.O. 1990, c C.43;

51. The Plaintiff proposes that this action be tried in the City of Toronto.

June 3, 2020

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PEGASUS ON CHURCH INC.  
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-and- HDI GLOBAL SPECIALTY SE et al.  
Defendant

Court File No./N° du dossier du greffe: CV-20-00641965-00CP

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PROCEEDING COMMENCED AT  
TORONTO

**STATEMENT OF CLAIM**

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