



NO. *Court File No.* **NEW-S-S-226323**  
NEW WESTMINSTER REGISTRY

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

BETWEEN:

THE OWNERS, STRATA PLAN LMS 375

PLAINTIFF

AND:

TEMPLE INSURANCE COMPANY, AND IN FRENCH, LA COMPAGNIE D'ASSURANCE  
TEMPLE  
LLOYD'S UNDERWRITERS  
MAX INSURANCE

DEFENDANTS

**NOTICE OF CIVIL CLAIM**

The Owners, Strata Plan LMS 375  
c/o Hamilton & Company  
4<sup>th</sup> Floor, 500 Sixth Avenue  
New Westminster, BC V3L 1V3

|   |                           |
|---|---------------------------|
| Temple Insurance Company, and in French, La | Lloyd's Underwriters      |
| Compagnie D'Assurance Temple                | 1700 – 666 Burrard Street |
| 2400 – 745 Thurlow Street                   | Vancouver, BC V6C 2X8     |
| Vancouver, BC V6E 0C5                       |                           |

Max Insurance  
2700 – 700 West Georgia Street  
Vancouver, BC V7Y 1B8

**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,
- (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, The Owners, Strata Plan LMS 375 (the “Strata Corporation”), is a strata corporation duly subsisting under the provisions of the *Strata Property Act*, S.B.C. 1998, c. 43, and amendments thereto (the “Act”) and its bylaws, and has an address for service in these proceedings at 4<sup>th</sup> Floor, 500 Sixth Avenue, New Westminster, B.C.
2. The Strata Corporation brings this action on its own behalf and on behalf of individual owners pursuant to ss. 171 and 172 of the *Strata Property Act*, S.B.C. 1998, c. 43, and amendments thereto.
3. The Strata Corporation is commonly known as “Abbotsford Place” and is comprised of 122 strata lots located in three, three-storey buildings. Abbotsford Place is civically located at 32830 George Ferguson Way, Abbotsford, British Columbia.

4. The Defendant, Temple Insurance Company, and in French, La Compagnie D'Assurance Temple (“Temple Insurance”), is an extra-provincially registered company and federally incorporated company duly incorporated under the laws of Canada with an attorney office at 2400 – 745 Thurlow Street, Vancouver, British Columbia.
5. The Defendant, Lloyd’s Underwriters, is an extra-provincially registered company and is duly incorporated under the laws of the United Kingdom with an attorney office at 1700 – 666 Burrard Street, Vancouver, British Columbia.
6. The Defendant, Max Insurance, is an extra-provincially registered company and is duly incorporated under the laws of Ontario with an attorney office at 2700 – 700 West Georgia Street, Vancouver, British Columbia.
7. Temple Insurance, Lloyd’s Underwriters, and Max Insurance are hereinafter referred to as the “Insurers”.
8. At all material times, the Strata Corporation had an insurance policy with the Insurers with a policy number of BSP70062 (the “Insurance Policy”). The period ran from March 1, 2017 to March 1, 2018 at 12:01 a.m.
9. The Insurance Policy, amongst other things, provided insurance coverage for loss or damage to the Strata Corporation’s common property, common assets, buildings shown on the strata plan, and fixtures built or installed on a strata lot by the owner/developer as part of the original construction.
10. On February 2, 2018, a fire caused damage to the common property and other nearby strata lots within Abbotsford Place including, but not limited to, smoke damage and structural damage (the “Incident”).
11. In accordance with the terms of the Insurance Policy, the Strata Corporation promptly notified the Insurers through their agent, HUB International Canada West ULC (“HUB”), of the Incident and related damage.
12. On or about October 23, 2018, the Strata Corporation entered into an agreement, partly oral and partly written, with Ocean Pacific Restoration Ltd. (“Ocean Pacific”), whereby

Ocean Pacific agreed to supply labour and materials in relation to restoration of the Incident (the “Agreement”).

13. Ocean Pacific was approved by the Insurers, and/or their agent, to be the contractor for the repairs and for the terms and scope of the Agreement.
14. At the request of the Insurers, and/or their agent, the Strata Corporation filed an interim Proof of Loss on or about January 23, 2020 in relation to the Incident, with a date of loss as at February 2, 2018, although all repair work at the Strata Corporation had not been completed.
15. In accordance with the terms of the Agreement, Ocean Pacific supplied the work/materials and invoiced the Strata Corporation accordingly.
16. The Strata Corporation submitted the invoices from Ocean Pacific to the Insurers for payment, in accordance with the Insurance Policy, however, the Insurers have failed, refused and/or neglected to make certain payments to Ocean Pacific in relation to the invoices submitted.
17. The Strata Corporation says that it was an implied term of the Insurance Policy that the Defendants would, at all times, act reasonably and in good faith in the adjustment of the Strata Corporation’s claim under the Insurance Policy, and that the Defendants failed in this duty and acted in bad faith by failing to cover all invoices submitted by the Strata Corporation in relation to the Incident.

## **Part 2: RELIEF SOUGHT**

1. A declaration that the cost to remedy the Incident is an insurable claim under the Insurance Policy;
2. An order for payment of all loss and expenses suffered by the Plaintiff, as a result of the Incident, in accordance with the Insurance Policy;
3. Further, or in the alternative, general damages;
4. Special damages;

5. Costs of this proceeding;
6. Interest pursuant to the *Court Order Interest Act*; and
7. Such further and other relief as this Honourable Court may deem just and proper.

### **Part 3: LEGAL BASIS**

1. The Insurance Policy is a binding contract between the Plaintiff and the Defendants.
2. The Insurers have breached the contract by failing to provide insurance coverage for the Incident to the Plaintiff pursuant to the terms of the Insurance Policy.
3. The Defendants are required, under the Insurance Policy, to pay for the repair work to the property damaged by the Incident.

Plaintiff's address for service:

Hamilton & Company  
 Attention: Jordan J. Kinghorn  
 4<sup>th</sup> Floor, 500 Sixth Avenue  
 New Westminster, BC V3L 1V3

Fax number address for service (if any):

N/A

E-mail address for service (if any):

jkinghorn@hamiltonco.ca

Place of trial:

New Westminster, BC

The address of the registry is:

651 Carnarvon Street, New Westminster, BC  
 V3M 1C9



Dated: March 31, 2020

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

## **Appendix**

### **Part 1: CONCISE SUMMARY OF NATURE OF CLAIM:**

### **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:**