

(PRECEDENT STATEMENT OF CLAIM "A")

Court File No.

ONTARIO

SUPERIOR COURT OF JUSTICE

B E T W E E N :

Plaintiff

and

***** corporation

Defendant

STATEMENT OF CLAIM

TO THE DEFENDANT

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.

Issue Date:

Issued by:

Local Registrar

Address of Court Office: 393 University Avenue, 10th Fl.
Toronto, ON
M5G 1E6

TO: *** corporation**
123 Street
Toronto, Ontario
123 456

CLAIM

1. The Plaintiff claims:
 - a. payment of long-term disability benefits at the rate of \$1,932.82 per month from September 15, 2003 for the duration and extent of the Plaintiff's disability as provided for in group policy of insurance number *****;
 - b. a declaration that the Plaintiff is totally disabled and entitled to payment of long-term disability benefits for the duration and extent of her disability as provided for in group policy of insurance number *****;
 - c. damages for mental and emotional distress in the amount of \$500,000.00;
 - d. punitive and/or aggravated and/or exemplary damages in the amount of \$1,000,000.00;
 - e. prejudgment interest pursuant to the provisions of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
 - f. her costs of this action on a substantial indemnity basis together with applicable goods and services tax payable pursuant to the provisions of the *Excise Tax Act*, R.S.C. 1985, c. E-15, as amended;
 - g. such further and other relief as to this Honourable Court may seem just.

2. The Plaintiff, *****, resides in the City of Toronto, in the Province of Ontario, and was at all material times an "insured person" within the meaning of the policy referred to in paragraph 4 below.

3. The Defendant, ***** corporation (hereinafter referred to as "***** corporation"), is a body corporate duly authorized to carry on business in the Province of Ontario and was at all material times engaged in the business of insurance underwriting.

4. In consideration of the premium specified, the Defendant, ***** corporation,

issued a Group Policy of Insurance, more particularly described as Group Policy No. *****. The policy provided, *inter alia*, for the payment of long-term disability benefits in the event the Plaintiff, *****, was unable to perform the duties of her normal occupation as a ***** or of any other occupation for which she is or becomes qualified by her education, training or experience. The agreed monthly benefit under the policy is \$1,932.82 per month.

5. While the aforesaid policy was in full force and effect, the Plaintiff, *****, became totally disabled from her employment as a result of ***** incidents which occurred on or about January 12, 2001 and March 16, 2001 respectively and as such became entitled to payment of disability benefits. As a result of these incidents, the Plaintiff has been and remains totally disabled from her employment and any other employment for which she is or becomes qualified by her education, training or experience within the meaning of the policy and as such is entitled to payment of long-term disability benefits.
6. ***** corporation initially paid long-term disability benefits to the Plaintiff until on or about September 14, 2003. On or about September 15, 2003, ***** corporation terminated the Plaintiff's long-term disability benefits, notwithstanding that the Plaintiff, *****, remains totally disabled within the meaning of the policy and entitled to payment of long-term disability benefits.
7. The Plaintiff, *****, claims that she is owed payment of long-term

disability benefits which ***** corporation has refused and continues to refuse to pay notwithstanding the submission of supporting medical documentation confirming that ***** is totally disabled within the meaning of the policy. Further, the Defendant has failed to consider properly or at all the reports submitted, including the reports of the Plaintiff's treating psychiatrist.

8. The Plaintiff, *****, states that the Defendant, ***** corporation, owes her the highest duty of care and the obligation to act in the utmost of good faith at all times in dealing with her.
9. The Plaintiff, *****, was reasonably entitled to expect that the power imbalance between the Plaintiff and the Defendant insurer, which has existed since the date of the insurable loss, would not be abused by the Defendant, ***** corporation, for its own financial gain.
10. The Plaintiff, *****, states that the Defendant, ***** corporation, has failed in its obligation to act in good faith throughout the adjustment of the loss payable under the contract of insurance and, in particular, in respect of its failure to consider the treating physicians' statements and/or to follow up with the treating physicians for clarification of the precise nature and estimated length of the Plaintiff's disability.

11. The Plaintiff claims that the Defendant's refusal to pay long-term disability benefits under the terms of the policy of insurance was an arbitrary decision entirely unjustified by the facts.
12. The Plaintiff further claims that ***** corporation failed adequately to investigate the claim and doggedly pursued a denial of the claim by ignoring evidence favourable to the Plaintiff's claim.
13. The Plaintiff further claims that the termination of benefits by the Defendant has had a severe and prolonged impact upon the Plaintiff's financial ability to meet her day-to-day needs and to support herself and her family.
14. The Plaintiff further claims that the Defendant has breached the representations and warranties made to its policy holders regarding the quality of service a policy holder could expect at the time of an insurable loss.
15. The Plaintiff has endured emotional distress and social embarrassment due to the financial circumstances she must now endure as a result of the Defendant's conduct, the particulars of which will be provided at or before the trial of this action.
16. The Plaintiff further claims that the Defendant maintained policies or procedures, including claims manuals and other memoranda and instructions to its employees and/or agents which encouraged bad faith conduct. These policies or procedures

were the part of a systemic corporate strategy to act in bad faith or, in the alternative, the Defendant failed to comply with its own internal policies, manuals, or directives which serve to protect its insureds from bad faith conduct.

17. The Plaintiff further claims that the Defendant seeks to profit from its wrongful denial of the Plaintiff's claim by abusing the Plaintiff's financial vulnerabilities in an attempt to force her into an unfavourable settlement.
18. The Plaintiff further claims that the Defendant engaged in the practice of terminating or denying benefits to force unfavourable settlements or to deter policy holders from obtaining their rightful entitlement under their insurance coverage.
19. The Plaintiff further claims that the Defendant utilized a claims management system and procedure which was intended to wear down the Plaintiff, *****, into a position of vulnerability for manipulative purposes.
20. The Plaintiff further claims that the Defendant encouraged its employees, servants, or agents to engage in the conduct outlined herein and/or allowed its employees, servants, or agents to engage in such conduct and/or failed to properly train, supervise, and control its employees, servants, or agents to ensure that such conduct is avoided.

21. The Plaintiff further claims that the Defendant knew or ought reasonably to have known, having regard to its intimate knowledge of the Plaintiff's financial and emotional status, that its conduct would result in pecuniary losses and would cause mental distress and suffering to the Plaintiff, *****, and her family.

22. The Plaintiff further claims that the reprehensible conduct exhibited by the Defendant in the adjusting of the Plaintiff's claim has caused the Plaintiff, *****, to suffer and incur significant losses, the particulars of which will be provided at the trial of this action.

23. The Plaintiff further claims that the Defendant failed to treat the Plaintiff, *****, fairly, reasonably and humanely at a time of extreme trauma and stress resulting from unforeseen events which were covered by an insurance policy intended to give the Plaintiff peace of mind. Instead of giving the Plaintiff peace of mind, the Defendant has deliberately set upon a course of action to aggravate the Plaintiff's trauma and stress.

24. The Plaintiff further claims that the Defendant has failed to be candid, reasonable, honest, and forthright in its dealings with the Plaintiff and has dealt with the Plaintiff in a misleading and insensitive manner.

25. The Plaintiff further claims that the Defendant capriciously terminated her claim based on monetary and business reasons and not on the basis of any good faith determination of entitlement.

26. The Plaintiff, *****, states that the Defendant has been in flagrant breach of its duties and obligations owed to her and has behaved toward her in a high-handed, contumacious and arrogant fashion by ignoring the conclusions and opinions of her treating physicians and by terminating her long-term disability benefits without justification. Further, ***** claims that the manner in which her claim has been handled has caused her profound mental and emotional distress and upset. ***** claims damages for the Defendant's negligent infliction of mental and emotional distress.

27. The Plaintiff, *****, claims that she is entitled to payment of disability benefits and that the wrongful and unjustified withholding of these benefits justifies an award of aggravated, punitive and exemplary damages.

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

Issue Date:

BOGOROCH & ASSOCIATES

Barristers and Solicitors

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Solicitors for the Plaintiff

and ***** corporation

Plaintiff

Defendant

Court File No.

ONTARIO
SUPERIOR COURT OF JUSTICE
Proceeding commenced at Toronto

STATEMENT OF CLAIM

(Form 14A under the Rules)
LexWrite Document Preparation Software
www.nereosoft.com

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