CITATION: Workman Optometry et al v. Aviva Insurance et al, 2021 ONSC 142
COURT FILE NUMBERS: CV-20-643488-CP
20-643386-CP
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20-000981-CP
20-001194-CP
DATE: 20210126

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

WORKMAN OPTOMETRY PROFESSIONAL CORPORATION, 1298928 ONTARIO LTD., THE SUIT SHOP CO. LTD., 2328867 ONTARIO INC. (o/a BOOSTER JUICE 369, BOOSTER JUICE 388, BOOSTER JUICE 375, AND BOOSTER JUICE 452), 2635774 ONTARIO INC (o/a BOOSTER JUICE 275), 2660364 ONTARIO INC (o/a BOOSTER JUICE 200), IN HARMONY DANCE STUDIO LTD, RANA TAJI OPTOMETRY PROFESSIONAL CORPORATION

Plaintiffs

- and –

AVIVA INSURANCE COMPANY OF CANADA, AVIVA GENERAL INSURANCE COMPANY, AVIVA CANADA INC., CO-OPERATORS GENERAL INSURANCE COMPANY, CONTINENTAL CASUALTY COMPANY, DESJARDINS GENERAL INSURANCE SERVICES INC., ECONOMICAL MUTUAL INSURANCE COMPANY, FEDERATED INSURANCE COMPANY OF CANADA, GORE MUTUAL INSURANCE COMPANY, INTACT INSURANCE COMPANY, LLOYD'S CANADA INC., MARC LIPMAN AS ATTORNEY-IN-FACT IN CANADA FOR LLOYD'S UNDERWRITERS, LLOYD'S UNDERWRITERS, NORTHBRIDGE GENERAL INSURANCE CORPORATION, NOVEX INSURANCE COMPANY, ROYAL & SUN ALLIANCE INSURANCE COMPANY OF CANADA, SGI CANADA INSURANCE SERVICES LTD., TRAVELERS INSURANCE COMPANY OF CANADA, THE WAWANESA MUTUAL INSURANCE COMPANY, and WYNWARD INSURANCE GROUP

Defendants

AND BETWEEN:

NORDIK WINDOWS INC.

Plaintiff

-and-

AVIVA INSURANCE COMPANY OF CANADA, AVIVA GENERAL INSURANCE COMPANY, and AVIVA CANADA INC.

Defendants

AND BETWEEN:

THE ROYAL CANADIAN LEGION, VICTORY BRANCH #317

Plaintiff

-and-

AVIVA INSURANCE COMPANY OF CANADA

Defendant

AND BETWEEN:

MATT MCCALLUM and MATT MCCALLUM DENTURIST PROFESSIONAL CORPORATION

Plaintiff

-and-

AVIVA INSURANCE COMPANY OF CANADA

Defendant

AND BETWEEN:

ROSHAN HOLDINGS INC.

Plaintiff

-and-

AVIVA INSURANCE COMPANY OF CANADA

Defendant

Proceedings under the *Class Proceedings Act, 1992*

BEFORE: Justice Edward P. Belobaba

COUNSEL: *Scott Hutchison* for the plaintiffs in the *Workman Optometry et al v Aviva Insurance et al* "omnibus" action and the Workman Consortium

Chris G. Paliare and Andrew Lokan for the plaintiff in the *Nordik Windows v. Aviva Insurance et al* action and the Nordik Consortium

Michael G. Robb and Kevin L. Ross for the plaintiffs in the Aviva sub-group actions: *Royal Canadian Legion Victory Branch #317, McCallum,* and *Roshan Holdings* and Lerners LLP

Alan L.W. D'Silva, Glenn Zacher and Lesley Mercer for the Aviva Defendants

HEARD: January 6 and 15, 2021 via Zoom

Carriage Motions

[1] The impact of the Covid-19 pandemic on business operations in Canada has been devastating. An immediate issue for businesses that have business interruption insurance is whether their policy provides coverage for the Covid-related income losses caused by the various restrictions and lockdowns. It appears that many insurers are routinely denying such coverage despite policy language that arguably suggests otherwise. Over a dozen proposed class actions have been filed across the country and more are expected.

[2] Initially, five such proposed class actions were before this court with three class counsel groups vying for carriage:

(i) An "omnibus" action against 16 defendant insurers including Aviva, advanced by the Workman Consortium (Koskie Minsky LLP and Merchant Law Group LLP);

(ii) An action against only Aviva, advanced by the Nordik Consortium (Lax O'Sullivan Lisus Gottlieb LLP, Thomson Rogers, and Miller Thomson LLP); and

(iii) Three smaller actions against Aviva, advanced by Lerners LLP on behalf of three Aviva insured sub-groups: Royal Canadian Legion branches, denturists and hotels.

[3] Shortly after the carriage hearing concluded, counsel for the Nordik Consortium and Lerners advised me that they had reached an agreement regarding their respective

actions against Aviva. The Nordik Consortium would absorb the hotel class within their proposed class action and Lerners would retain carriage of the legion and denturists actions.

[4] What remains, in essence, is a carriage battle between two groups: the Nordik Consortium and Lerners, whose clients are suing only Aviva, and the Workman Consortium, whose clients are suing some 16 insurers including Aviva. This is obviously not the usual carriage motion where the competing actions involve the same proposed class and the same set of defendants. Here, there are significant differences in both the proposed classes and the targeted defendants.

[5] The relationship between the Lerners, Nordik and Workman actions is akin to Russian Matryoshka nesting dolls: the two Lerners' actions fit within the Nordik Aviva Action which fits within the Workman Omnibus Action.

The applicable law

[6] The applicable law is not in dispute. In deciding the carriage of competing class actions the court should consider (i) the best interests of the proposed class, (ii) fairness to the defendants and (iii) the objectives of the *Class Proceedings Act*[1] - namely, access to justice, judicial economy and behaviour modification.[2]

[7] In the more conventional carriage motion - same class, same defendants - the "best interests of the class" can be determined by considering a list of some 13 or 14 factors[3] that have been summarized under six heads: (i) the experience and resources of the competing firms; (ii) the proposed plaintiffs and defendants; (iii) the causes of action; (iv) the state of preparation; (v) the overall approach and theory of the case; and (vi) the proposed fee and funding arrangements.[4]

[8] Here, although some of these factors are addressed in counsels' submissions, the key determinants are more fundamental. The competing camps are not vying for carriage of the same class action but for carriage of the Aviva portion that also happens to be a subset of the larger Omnibus Action. And they are doing so in the context of a pandemic

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[1] *Class Proceedings Act, 1992*, S.O. 1992, c. 6.

[2] *Mancinelli v Barrick Gold*, 2014 ONSC 6516, at para. 8, aff'd 2016 ONCA 571.

[3] *Mancinelli* (C.A.), at paras. 14-16.

[4] *MacBrayne v. LifeLabs Inc*., 2020 ONSC 2674, at para. 9.

that is wreaking havoc on large and small businesses. For businesses whose loss of income claims have been denied by their insurers, a speedy legal determination is obviously of paramount importance.

[9] The carriage decision therefore turns less on the conventional carriage factors and more on the over-arching criteria just stated: the best interests of the class, fairness to the defendants and the objectives of the CPA, especially access to justice.

Decision

[10] When these criteria are properly considered, the carriage decision is relatively straightforward. For the reasons that follow, I conclude that the Nordik/Lerners Aviva Actions should be "carved out"[5] of the Workman Omnibus Action and be allowed to proceed as expeditiously as possible. The Omnibus Action will also proceed, but without the Aviva defendants.

[11] For ease of reference, I will refer to the Workman Consortium as WC, to the Nordik Consortium as NC, and to 'business interruption insurance' generally as BII. I recognize that, strictly speaking, the WC Omnibus Action is not an "omnibus" or comprehensive action against all the Canadian insurers that provide BII coverage. There are at least seven other BII insurers that are not named as defendants in the WC Omnibus Action. However, since all counsel use the term "omnibus", I will as well.

[12] I will now discuss each of the governing criteria in turn - the best interests of the class, fairness to the defendants and the CPA objectives of access to justice, judicial economy and behaviour modification.

Discussion

(1) The best interests of the class

[13] WC submits that its Omnibus Action makes the most sense because the BII coverage provided to the proposed class member claimants by all 16 insurer defendants[6] has "identical or strikingly similar policy wordings". If this were true, then granting carriage to the WC Omnibus Action and staying the NC/Lerners Aviva Actions might make sense.

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[5] The Nordik/Lerners Aviva Actions are not really being "carved out" of the Workman Omnibus Action. They are ready to proceed on their own. The correct terminology is that the claims against the Aviva defendants in the Workman Omnibus Action would be *stayed*. Because it is visually more understandable when I use the "carve out" metaphor, I will continue to do so. The final Order, however, will be drafted with more precision.

[6] There are 20 corporate defendants and 16 actual insurers.

[14] But WC's submission is incorrect. The BII coverage provided to the proposed class members by the 16 insurers is not "identical or strikingly similar". The differences in the defendant insurers' BII coverage are many and significant.[7] And the most important difference in coverage is arguably found in the Aviva policies.

[15] This court's review of the coverage provided by the 16 insurers reveals the following:

- All 16 insurers provide some level of coverage where the loss of income is caused by "physical damage to property";
- 14 of the 16 also provide some level of coverage if access to the insured's premises is prohibited by a civil order made as a result of damage to a neighbouring premises;
- Only seven have explicit "infectious disease" coverage and of those some require that the infectious disease be manifested by an employee and others specifically exclude "pandemics";
- Only three (Aviva, Gore Mutual and Wynward) provide "negative publicity coverage" for loss of income caused by an "outbreak of an infectious disease" within [x] kilometres of the premises and required to be reported to government authorities;
- And only one, Aviva, provides "restricted access coverage" for loss of income "caused by the interruption of the business when ingress or egress from the premises is restricted in whole or in part by order of a civil authority resulting from an outbreak of a contagious or infectious disease that is required by law to be reported to government authorities."

[16] NC and Lerners are understandably of the view that the most viable coverage for Covid-related BII income loss is the coverage provided by Aviva by way of its Negative Publicity Coverage and especially its Restricted Access Coverage. Indeed, as already noted, most of the other insurers don't even provide BII coverage that is triggered by "infectious disease".

[17] The evidence suggests that Aviva is nonetheless denying coverage for Covid-related income loss claims. For example, Nordik Windows (the proposed representative

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[7] This is not surprising. As British judges discovered when they reviewed some 21 sample BII coverage provisions, there were many and significant differences with potentially wide-ranging implications for Covid-related loss of income claims: see *The Financial Conduct Authority v. Arch Insurance (UK) Ltd. et al*, [2020] EWHC 2448 (Comm.), aff'd [2021] UKSC 1.

in the NC Aviva Action) has sustained more than $1.5 million in Covid-related business losses. Nordik's BII claim was rejected by Aviva on June 1, 2020 because:

> As the Covid-19 virus itself does not constitute "direct physical loss or damage" to property, sections 1 and 2 above do not apply. Also, the negative publicity and restricted access coverages, described in section 3 do not provide cover for global pandemics such as COVID-19.

[18] NC and Lerners submit that it is in the best interests of the Aviva class members to advance a focused claim against only Aviva. That it is in the best interests of the Aviva class members to take the express bus, if you will, and not be forced to board the slower-moving Omnibus.

[19] It is true that the WC Omnibus Action as currently framed would also advance the Aviva class members' claims and the arguably on-point coverage in Aviva's Negative Publicity and Restricted Access provisions. But consider the following.

[20] The Covid-19 restrictions and lockdowns continue to decimate Canadian business.[8] This is that rare class action where real people are sustaining real harm in real time. It is therefore important to every class of BII claimants to get to a legal determination as quickly as possible. The out-of-the-gate advantage of the Aviva classes is that they have already commenced focused class actions. The other BII claimants insured by, say, Lloyds or Wawanesa or the other 13 insurers will advance their claims as best they can in the WC Omnibus Action.

[21] It is beyond dispute that the WC Omnibus Action would take longer to decide than the sleeker Aviva-only actions. With 16 insurers represented by 12 different law firms, scheduling alone could see weeks go by just trying to find convenient court dates. Not to mention the time-consuming complexities that more than a dozen different insurance policies with a wide range of BII coverages would bring to certification, summary adjudication and the almost certain appeals.

[22] Compare this to this court's case management of the NC/Lerners Aviva Actions – a *de facto* single class action with one defendant that is represented by one law firm. Scheduling would obviously be easier, the certification process would be less complicated, common issues more discernible, summary judgment more manageable and any appeals more focused and to the point and thus more quickly decided.

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[8] The Canadian Federation of Business reports that "more than 239,000 businesses could vanish because of Covid-19 as the new wave of restrictions and lockdowns leave a growing number of entrepreneurs considering giving up": see *The Globe & Mail Report on Business* (January 21, 2021) at B-1.

[23] The Aviva classes represented by NC and Lerners may not prevail on certification or summary judgment but it is to their clear advantage to get to these determinations as quickly as possible – even if it turns out, as counsel for Aviva has suggested, that the actual financial recoveries (if the plaintiffs prevail) may be smaller than the amounts claimed and could well be limited by 30 or 60-day coverage limitations or maximum recovery amounts.

[24] I was struck by the thoughtful affidavits that were filed by Aviva insureds in support of the NC and Lerners Actions. The affiants were uniformly of the view that an Aviva-focused action is very much in their best interests. Here is some of their uncontroverted evidence:

- ***Philippe Bechard., CEO of Nordik Windows*****:** "I became aware that there was already a class action underway against all Canadian insurance companies that had denied COVID-19 related business interruption claims. I had no interest in being part of that class action when I realized that not every insurance company provided the same coverage as the Aviva policy. The policy Nordik purchased provided specific coverage for business interruption resulting from an infectious or contagious disease.

  I did not believe it made sense for Nordik's claims to be grouped with other companies who did not purchase Aviva policies with the same coverage. I wanted to proceed with the claim as quickly and efficiently as possible. I did not believe that joining a class action against every insurance company in Canada would be efficient or effective."

- ***Brian Harris, treasurer and representative of Victory Legion*****:** "Victory Legion is concerned that if its claim … in this class proceeding is subsumed in broader, omnibus actions … [it] will not receive the attention and focus that they will in this proceeding … Victory Legion is also concerned that the strength and focus of the local branches' claims could be diluted or 'traded off' in a global settlement of all claims in the omnibus-style actions, which would not be in the best interests of the particular class Victory Legion seeks to represent."

- ***David Warren, an Aviva-insured hotel representative*****:** "The concern is that our discrete, focused claim would get lost in the uncertainty and variability of many different policy wordings for different industry sectors obtained in completely different contexts than those of us who purchased insurance as part of the Aviva Hotel Program Policy. Getting our claim caught up in this broad claim as well as claims involving "direct physical loss or damage to property" will delay the coverage determination of our focused claim where an early decision will benefit so many hotels that all have the same policy wording."

- ***Mark Bingeman, President of Bingemans, the largest hospitality company in Waterloo Region*****:** "We have lost millions of dollars in business income as a result of COVID-19. It is important to our business that our claim against Aviva be resolved as quickly as possible. Compensation for our lost business income would be a massive relief to our business. I agreed to join the class action on the basis that it would proceed

> only against Aviva and be prosecuted as quickly as possible. I have been made aware of the national class action commenced against all of Canada's insurers for business interruption coverage and have no interest in being part of it.
>
> I believe that a class action against Aviva is a fair and efficient way to advance Bingemans' claim, as well as the claims of all Aviva policyholders. However, we should not have our claim delayed as part of an action against a large number of insurers with different and less favourable policies. I believe that an action against multiple insurers will take years to advance and Bingemans will suffer if it has to wait that long.

[25] My conclusion on the first criterion is not controversial. I am more than satisfied that it is in the best interests of the Aviva classes that the NC/Lerners Aviva Actions should continue. They are focused and will proceed efficiently. There is an obvious and pressing need to get these class actions, if certified, to a merits-determination as expeditiously as possible. Indeed, NC and Lerners are prepared to file a certification record within 60 days of this decision and bring a motion for summary judgement immediately or shortly thereafter. The Aviva BII classes may or may not prevail either at certification or on the merits but on the basis of the "best interests of the class" criterion, their proposed class actions should proceed.

[26] Let me add a few words about the more conventional carriage factors.

[27] The factors that are neutral or add little to the discussion can be quickly itemized. The competing class actions are all represented by knowledgeable and experienced legal counsel. There are no meaningful differences in the competing (contingency) legal fee arrangements. WC can easily rectify the so-called *Ragoonanan* problem[9] by simply adding a representative plaintiff that has a cause of action against Aviva.[10] And given the NC/Lerners' recent carriage agreement, there are no disqualifying conflicts of interest.

[28] The two factors that merit a bit more discussion are the identified differences in Lerners and WC's pleaded causes of action and Nordik Windows' decision to self-fund adverse cost awards in the NC Aviva Action.

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[9] "For each defendant there must be a representative plaintiff who has a valid cause of action against that defendant": see *Ragoonanan Estate v Imperial Tobacco Canada Ltd*., (2000) 51 O.R. (3d) 603 (S.C.) and *Hughes v. Sunbeam Corp. (Canada) Ltd.* (2002) 61 O.R. (3d) 433 (C.A.).

[10] There is no need to explore WC's other submission – that the so-called *Ragoonanan* requirement has been over-ruled by the Supreme Court of Canada in *Bank of Montreal v. Marcotte*, 2014 SCC 55. WC argues, in my view compellingly, that in *Marcotte* the Court brought Quebec class proceeding rules into line with the approved approach in the Western Provinces, where it is sufficient if, for each defendant, there is a *class member* [not a representative plaintiff] who has a valid cause of action against that defendant.

[29] WC notes correctly that Lerners does not plead a property-damage-dependent loss of income claim in either the denturists or legions actions. Lerners responds that this type of loss of income claim has zero chance of success and in any event is explicitly excluded from the more on-point Restricted Access Coverage. Lerners also says that its failure to plead three other causes of action advanced in the WC Omnibus action - bad faith, conspiracy and breaches of federal competition law - was intentional, to avoid burdening the denturists and legions actions with unnecessary and arguably frivolous claims.

[30] Fortunately, there is no need to resolve this debate about comparative pleading deficiencies because even if WC is right in this regard, none of these differences is enough to dislodge my findings under the over-arching criterion, the best interests of the Aviva classes.

[31] WC also argues that Nordik Windows' decision to self-fund adverse cost awards may cause this representative plaintiff to acquiesce to a sub-optimal settlement that is not in the best interests of the class. I have two responses. First, this submission at this point in the proceeding is pure speculation. Secondly, and in any event, any such trade-off favouring the representative plaintiff's personal interests over those of the class will be exposed when this court reviews the proposed settlement under s. 29(2) of the CPA to ensure that it is genuinely in the best interests of the class.

[32] In sum, none of the applicable conventional factors, even in combination, can alter the finding that it is in the best interests of the Aviva classes that the NC/Lerners Aviva Actions proceed.[11]

(2) Fairness to the defendants

[33] The second criterion, fairness to the defendants, is also achieved if the Aviva Actions are allowed to proceed – carved out of the WC Omnibus Action. The case law is clear that there cannot be two or more certified class actions in the same jurisdiction representing the *same class* in relation to the same claim.[12] In other words, it would not have been fair to Aviva if it had to defend both the NC/Lerners Actions *and* the WC Omnibus Action as initially presented.

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[11] I pause here to acknowledge that on a carriage motion the court should not embark on a comparative analysis of which claim is most likely to succeed: see *Setterington v. Merck Frosst Canada Ltd.,* [2006] O.J. No. 376 (S.C.J.) at para. 19 and 24. Here, however, I am not engaging in this kind of comparative analysis. The arguably "on point" Negative Publicity and Restricted Access coverage provided by Aviva is being advanced in *both* the WC Omnibus Action and the NC/Lerners Actions. Any comparison is not about the claims *per se* but about the speed of the vehicle that will carry these claims – and that a non-stop Express Bus is faster than a multi-stop Omnibus.

[12] *Mancinelli* (C.A.), *supra,* note 2, at para. 11; *McSherry v. Zimmer GMBH,* 2012 ONSC 4113 at para 92.

[34] But they will not have to do so. Given the decision herein, Aviva will only have to defend the NC/Lerners Actions. And, as already noted, this court will case manage these actions in lock-step as a *de facto* single class proceeding.

[35] Aviva, however, argues that even so, it will still be defending three separate class actions and that this is unfair. I do not agree. Recall the prohibition that was stated above: no defendant should have to defend two or more class actions with the *same class* and the same claims in the same jurisdiction. Here, the classes in the Lerners and NC Aviva Actions are not the same: one is limited to legion branches, the other to denturists, and the third advances the claims of the remaining Aviva BII insureds.

[36] The importance of the "same class" requirement is made clear in the "Carriage Motions" provision that is found in the recent Bill 161 amendments to the CPA.[13] Section 13.1(2) provides as follows:

> Where two or more proceedings under this Act involve the same or similar subject matter *and some or all of the same class members*, the court may, on the motion of a representative plaintiff in one of the proceedings, order that one or more of the proceedings be stayed. [Emphasis added].

[37] The protection provided to defendants facing two or more class actions involving similar subject matter but *different* class members is found in strong case management and not in staying one or more of these actions and arbitrarily denying their class members access to justice and their day in court.[14]

[38] The decision to allow the NC/Lerners Aviva Actions to proceed together with the WC Omnibus Action (minus the Aviva defendants) is not unfair in any way to Aviva. Both NC and Lerners have provided an undertaking to stay any parallel proceedings in other provinces and refrain from commencing new ones. And the fact that WC may be pursuing other actions against Aviva outside Ontario is not something that can be resolved on this carriage motion.

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[13] The amendments only affect proposed class actions commenced on or after October 1, 2020 (and thus do not apply here): see *Smarter and Stronger Justice Act, 2020*, S.O. 2020, c. 11, Sched. 4, s. 16.

[14] Consider this example: say ten different Aviva BII classes (denturists, legions and hotels plus seven more: restaurants, clothing stores, hair salons etc.) filed ten different class actions in Ontario against Aviva. The ten parallel actions would probably be case managed in lock-step and heard together. But none of the proposed class actions (all with different classes) would or could be stayed via a carriage motion. When facing multiple class actions *with different classes*, the defendant's protection against any perceived unfairness is found in strong judicial case management, not in staying otherwise legitimate proceedings.

(3) CPA objectives

[39] The decision to allow the NC/Lerners Actions to proceed together with the WC Omnibus Action (minus the Aviva defendants) achieves each of the CPA's well-known objectives.

[40] Access to justice is the primary objective.[15] For the class members in the WC Omnibus Action (minus the Aviva defendants), access to justice is unaffected. However, for the class members in the NC/Lerners Aviva Actions, access to justice is now made immediate and meaningful. Nothing more need be said.

[41] Judicial economy is of moderate concern in the context herein. This CPA objective is generally attained when individual claims can be aggregated into a single class proceeding under the certification requirements set out in s. 5(1). The CPA is also concerned with resolving carriage battles involving competing actions with the same or overlapping classes. However, class actions with *different* class members may and do proceed in parallel. There is nothing in the CPA that suggests otherwise or that mandates the aggregation of parallel class actions into a single "mega" or omnibus action.

[42] Sometimes, as here, it makes sense that class actions (with different classes) proceed in parallel. For example, in a recent matter involving auto insurers and their allegedly improper deduction of HST from statutory accident benefit payments, class counsel filed 15 separate class actions, one against each of the impugned insurers.[16] No one suggested that judicial economy was compromised or that judicial economy demanded a single omnibus proceeding.

[43] The third CPA objective, behaviour modification, is also of little import on carriage motions. However, to the extent that it merits consideration, I note that Aviva's behaviour is more likely to be modified for the better (if the NC/Lerners Aviva Actions prevail) when it is the sole target in focused Aviva-only actions than when it is just one of 16 defendants in an Omnibus Action.

Conclusion

[44] For all these reasons, I conclude that it is in the best interests of the Aviva classes, fair to the Aviva defendants and consistent with the objectives of the CPA, especially

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[15] See the analysis and case law discussed in Good, "Access to Justice, Judicial Economy and Behaviour Modification: Exploring the Goals of Canadian Class Actions", (2009) 47 Alta. L.R. 185.

[16] *Dorman v. Economical Mutual Insurance Company*, 2020 ONSC 4004.

access to justice, that the NC/Lerners Aviva Actions proceed on their own, carved out of the WC Omnibus Action.

[45] As the Court of Appeal recently reaffirmed: "the whole *raison d'être* of the civil justice system…is that courts will work to provide the "most expeditious…determination of every civil proceeding on its merits".[17] The same norm permeates the CPA[18] and drives this carriage decision.

Disposition

[46] The NC/Lerners Aviva Actions may proceed - with the Nordik Consortium and Lerners appointed as carriage counsel.

[47] The WC Omnibus Action may proceed minus the Aviva defendants - with the Workman Consortium appointed as carriage counsel.

[48] Order to go accordingly.

[49] I am grateful to all counsel for their assistance.

Signed: *Justice Edward P. Belobaba*

Notwithstanding Rule 59.05, this Judgment [Order] is effective from the date it is made, and is enforceable without any need for entry and filing. Any party to this Judgment [Order] may nonetheless submit a formal Judgment [Order] for original signing, entry and filing when the Court returns to regular operations

Date: January 26, 2021

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[17] *Louis v. Poitras*, 2021 ONCA 49, at para. 22, referring to Rule 1.04(1) and citing Brown J.A. in *Louis v. Poitras* 2020 ONCA 815, at para. 33.

[18] See section 12: "The court … may make an order it considers appropriate respecting the conduct of a class proceeding to ensure its fair and expeditious determination …"