



Court File No.

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Electronically issued : 20-Oct-2020
Délivré par voie électronique : 20-Oct-2020
Toronto

(Court Seal)

**TANDIA MOLOT, a minor by her litigation guardian, DAWN MOLOT,
DAWN MOLOT, OWEN MUNGY and LUCINDA MUNGY**

Plaintiffs

and

**WORLDSTRIDES CANADA, INC., ARCH INSURANCE CANADA LTD./
ARCH ASSURANCES CANADA LTÉE. and OLD REPUBLIC INSURANCE COMPANY
OF CANADA/L'ANCIENNE REPUBLIQUE, COMPAGNIE D'ASSURANCE DU
CANADA**

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.

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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.

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 ON M5G 1R7

TO: WorldStrides Canada, Inc.
199 Bay Street
Suite 4000
Toronto, ON M5L 1A9

AND TO: Arch Insurance Canada Ltd./
Arch Assurances Canada Ltée.
77 King Street West
Suite 3600
Toronto, ON M5K 1K2

AND TO: Old Republic Insurance Company of Canada/
L'Ancienne Republique, Compagnie d'Assurance du Canada
Box 557
100 King Street West
Hamilton, ON L8N 3K9

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CLAIM

1. The plaintiffs, Tandia Molot, a minor by her litigation guardian, Dawn Molot, Dawn Molot, Owen Mungy, and Lucinda jointly on behalf of all Class Members seek:

- (a) an order certifying this action as a class proceeding and appointing the plaintiffs as the representative plaintiffs;
- (b) a declaration that the Plaintiffs and the Class all entered into a contract for services with Explorica Canada, Inc.;
- (c) a declaration that Tandia Molot, and certain members of the class, are insured persons pursuant to the Arch Policy;
- (d) a declaration that Owen Mungy, and certain members of the class, are insured persons pursuant to the Old Republic Policy;
- (e) a declaration that Explorica breached the terms of the Explorica Contract;
- (f) a declaration that Arch breached the terms of the Arch Policy;
- (g) a declaration that Old Republic breached the terms of the Old Republic Policy;
- (h) in the alternative to paragraph (e), a declaration that the Explorica Contract was frustrated and an order pursuant to the *Frustrated Contracts Acts*, RSO 1990, c F.34;

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- (i) general damages against Explorica for breach of contract, as applicable in an amount to be particularized prior to trial;
- (j) in the alternative, a declaration that Explorica has been unjustly enriched and an order that it disgorge any monies collected, including profits or amounts collected;
- (k) damages for any sums due and owing to the Plaintiffs and the Class pursuant to and in accordance with the terms of the Arch Policy or Old Republic Policy, as applicable;
- (l) punitive, aggravated, and exemplary damages against Arch and Old Republic in the amount of \$5,000,000;
- (m) pre-judgment and post-judgment interest on the amounts payable as set out above in equity or otherwise at common law, or alternatively pursuant to sections 128 and 129 of the *Courts of Justice Act*, RSO 1990, c C.43, compounded annually;
- (n) costs of this action pursuant to the *Class Proceedings Act, 1992*, SO 1992, c 6, or alternatively, on a full or substantial indemnity basis together with applicable HST thereon;
- (o) the costs of administration of a plan of distribution of the recovery in this action and notice pursuant to section 26(9) of the *Class Proceedings Act, 1992*, SO 1992, c 6 plus applicable taxes; and

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- (p) such further and other relief as may be required by the *Class Proceedings Act, 1992*, SO 1992, c 6 or as this Honourable Court may deem just.

A. DEFINED TERMS

2. In this statement of claim, in addition to the terms that are defined elsewhere herein, the following terms have the following meanings:

- (a) “**Arch**” means Arch Insurance Canada Ltd. / Arch Assurances Canada Ltée;
- (b) “**Arch Policy**” means the travel insurance policy issued by Arch bearing policy number AC433C;
- (c) “**CJA**” means the *Courts of Justice Act*, RSO 1990, c C.43;
- (d) “**Class**” or “**Class Members**” means: “All persons in Canada who entered into a contract with Explorica for trip(s) which were to occur any time during the period from January 1, 2020 to the date of certification whose trip(s) did not occur and/or who entered into a contract of insurance with Arch or Old Republic related to such trip(s) and have not received some or all of the monies owed to them”;
- (e) “**CPA**” means the *Class Proceedings Act, 1992*, SO 1992, c 6;
- (f) “**Explorica**” means Explorica Canada, Inc.;
- (g) “**Explorica Contract**” means the contract for services entered into between the traveller and Explorica, including the travel form, any tour fee paid and all attached Terms and Conditions.

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- (h) “**Old Republic**” means Old Republic Insurance Company of Canada/ L’Ancienne Republique, Compagnie d’Assurance du Canada;
- (i) “**Old Republic Policy**” means the travel insurance policy issued by Old Republic bearing plan number OR433C; and
- (j) “**WorldStrides**” means WorldStrides Canada, Inc., and includes Explorica. On January 1, 2020, Explorica was amalgamated into WorldStrides.

B. NATURE OF THE ACTION

3. Explorica is an educational tour provider that is used by various schools and groups across Canada. Explorica offers tours within Canada and internationally.
4. Each school or group engages Explorica to plan and administer its tour. Each participant directly enters into an Explorica Contract, which includes the payment of a specified tour fee.
5. Explorica through the Explorica Contract advertises travel protection plans through Trip Mate, its third-party travel protection plan provider.
6. Prior to on or about May 1, 2019, Trip Mate provided the Arch Policy as a travel protection plan. Since on or about May 1, 2019, Trip Mate provided the Old Republic Policy as a travel protection plan.
7. On March 11, 2020, the World Health Organization declared the COVID-19 outbreak a global pandemic. The Government of Canada issued various travel advisories for international travel due to the risks of COVID-19. Several provinces also restricted inter-provincial travel.

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Shortly after, on March 13, 2020 the Government of Canada issued an official global travel advisory to avoid non-essential travel abroad. Most travel restrictions in Canada still exist as of the date of this filing.

8. Due to the travel advisories, various tour groups and school boards cancelled their travel with Explorica. In certain circumstances, individuals cancelled prior to the tour group itself.

9. Since that time, Class Members have not received full refunds from Explorica, Arch or Old Republic as applicable.

C. THE DEFENDANTS

10. The defendant WorldStrides is an education tour company incorporated under the laws of the Province of Ontario, and is headquartered in Toronto.

11. Explorica was an educational tour company incorporated under the laws of the Province of Ontario. On January 1, 2020, Explorica was amalgamated into WorldStrides. WorldStrides continues to operate using the Explorica web domain as “Explorica by WorldStrides”.

12. The defendant Arch is an insurance company incorporated pursuant to the *Canada Business Corporations Act* and is headquartered in Toronto.

13. The defendant Old Republic is an insurance company incorporated pursuant to the laws of the Province of Ontario and is headquartered in Hamilton.

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D. THE EXPLORICA CONTRACT

14. An individual that wishes to travel with Explorica must, enter into an Explorica Contract.

If the individual is a minor, the individual's parent or guardian enters into the Explorica Contract.

15. The Explorica Contract requires a tour fee to be paid by a variety of methods. In the terms and conditions, the Explorica Contract states the tour fee includes:

- (a) round-trip airfare from your departure city;
- (b) accommodations that sleep 3 to 4 per room;
- (c) airport transfers at destination and all transportation between cities;
- (d) local public transportation to all scheduled itinerary activities;
- (e) full European or buffet style breakfast daily (unless otherwise noted);
- (f) dinner daily at your destination (unless otherwise noted);
- (g) all excursions, led by professional local guides per program description;
- (h) city walks led by an Explorica Tour Director, per program description;
- (i) visits to select attractions and theatre tickets per program description;
- (j) full-time services of a professional Tour Director;
- (k) 24-hour emergency service.

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16. After detailing the “what does the tour fee include” as noted above, the Explorica Contract states that:

If we fail to deliver any of the above services, we will promptly refund you its value.

17. The Explorica Contract includes the following under a section entitled “What is the cancellation policy?”:

Before the tour begins, Explorica reserves space for each enrolled traveller and thus incurs costs. For this reason, we must charge cancellation fees. In order to protect your travel investment in the event you cancel your tour, Explorica strongly recommends purchasing its travel protection plan. The following cancellation policies apply:

If you withdraw this many days prior to departure	You will receive a full refund minus the following amounts
More than 140 days	\$300 + \$195 non-refundable fee
140-100 days	\$500 + \$195 non-refundable fee
99-31 days	50% of All Fees + \$195 non-refundable fee
30 days or less	No refund*

*If you notify us of your cancellation in writing at least 24 hours prior to your departure, you will receive \$100 refund.

18. The Explorica Contract details and recommends travel protection plans, namely the Arch Policy and Old Republic Policy.

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19. In the Additional Information section, the Explorica Contract states that:

Explorica reserves the right to cancel a tour at its discretion and **in any such case all monies paid to Explorica for the trip will be refunded**. Decisions to cancel a tour may be based on advisories to avoid travel to a destination city on that tour issued by the Government of Canada. [Emphasis added]

E. THE POLICIES

20. The travel protection plan referred to in the Explorica Contract provided by Trip Mate is the Arch Policy or Old Republic Policy, depending on the date of the Explorica Contract. The policies are similar in nature.

The Arch Policy

21. The Arch Policy is entitled a Travel Protection Plan.
22. The Arch Policy states the following:

Section I – COVERAGES

TRIP CANCELLATION

We will reimburse You, up to the Maximum Benefit Amount shown in the Schedule of Benefits, for the amount of the unused non-refundable prepaid Payments or Deposits for the Travel Arrangements You purchased or were assessed for Your Trip, when you cancel Your Trip for a covered Unforeseen reason.

Trip Cancellation must be due to one of the following Unforeseen reasons:

...

3. for Other Covered Events, as defined;

provided any such covered Unforeseen reason occur while coverage is in effect for you.

23. Among others, the Arch Policy defines “Other Covered Events” as:
- a. You or Your Traveling Companion being hijacked, quarantined, required to serve on a jury...

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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...

24. For the purposes of Trip Cancellation, the Arch Policy states that:

Coverage begins at 12:01 a.m. at Your location on the day after the date the required payment for this plan to cover Your Trip is received by Explorica...

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.

25. The Schedule of Benefits lists "Trip Cost" as the Maximum Benefit Amount.

The Old Republic Policy

26. The Old Republic Policy is entitled a Travel Insurance Policy.

27. The Old Republic Policy states the following:

Section I – COVERAGES

TRIP CANCELLATION, TRIP INTERRUPTION, MISSED CONNECTION AND TRAVEL DELAY

Trip Cancellation: Benefits will be paid, up to 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.

...

3. for Other Covered Reasons, listed below;

provided such circumstances occurred after Your Effective Date.

28. Among others, the Arch Policy defines "Other Covered Reasons" as:

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b. You or Your Traveling Companion being hijacked, quarantined, required to serve on a jury...

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 due to an event directly affecting the destination You are travelling to and occurring within 90 days of Your departure date...

29. For the purposes of Trip Cancellation, the Old Republic Policy states that:

Coverage begins at when the required premium for this Policy to cover Your Trip is received by Explorica...

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.

30. The Schedule of Benefits lists "Trip Cost" as the Maximum Benefit Amount.

F. THE PLAINTIFFS

31. The plaintiffs, Tandia Molot, Dawn Molot, Owen Mungy and Lucinda Mungy are all residents of Ontario.

Tandia and Dawn Molot

32. Tandia Molot resides with her parents in Ottawa, Ontario. She is a minor and brings this action by her litigation guardian, Dawn Molot. Dawn Molot is the mother of Tandia Molot. Tandia Molot was born on January 13, 2003.

33. On or about January 20, 2019, Dawn Molot entered into the Explorica Contract for her daughter Tandia Molot to tour in France, England and Belgium. The trip was scheduled to leave Ottawa on March 11, 2020 and return to Ottawa on March 21, 2020. The trip was organized through her high school.

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34. On or about January 20, 2019, Dawn Molot purchased the Travel Protection Plus option for \$220.00 and Tandia Molot was issued the Arch Policy.

35. Dawn Molot, paid a total of \$4,594.00 to Explorica for the Explorica Contract and the Arch Policy. The payments were made in installments.

36. On or about March 6, 2020, the Ottawa-Carleton District School Board sent a letter to the parents of those affected stating that “as a result of the evolving risk posed by the Coronavirus disease (COVID-19), the Canterbury France-UK Trip (March 11-21, 2020) is cancelled.”

37. On or about March 7, 2020, Tandia Molot was informed via email by the school administrator a group claim for the trip refund was being made by Explorica.

38. At some point, Explorica transferred the claim to Arch. Tandia Molot received a claim transfer letter on or about August 21, 2020 stating Arch will process her claim directly.

Owen and Lucinda Mungy

39. Owen Mungy resides in Fenelon Falls, Ontario. He is 18 years old.

40. On September 16, 2019, Lucinda Mungy entered into the Explorica Contract for her then minor son, Owen Mungy, to tour in Central Europe, including Germany, Poland and the Czech Republic. The trip was scheduled to leave on April 10, 2020 and return on April 19, 2020. The trip was organized through his high school.

41. On September 16, 2019, Lucinda Mungy purchased the Travel Protection Plus option for \$150.00 for Owen Mungy issued by the Old Republic Policy.

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42. Lucinda Mungy paid a total of \$3335.00 to Explorica for the Explorica Contract and the Old Republic Policy. The payments were made in installments. On or about June 16, 2020, Lucinda Mungy was refunded \$1,472.00 from Explorica to her credit card.

43. On or about March 3, 2020, the Trillium Lakelands District School Board sent a letter to the parents and students affected stating that “[d]ue to the increasing concern about the spread of COVID-19, Trillium Lakelands District School Board is cancelling the Fenelon Falls Secondary School/Linsay CVI trip to Europe...”

44. On or about March 5, 2020, Owen Mungy, and/or Lucinda Mungy, received a letter from Explorica stating a group claim had been commenced and no further action was required by him.

45. At some point prior to October 7, 2020, Explorica transferred the claim to Old Republic.

46. Both Plaintiffs have received communications stating that their respective insurer cannot process their claim as they have not received adequate information from Explorica.

G. CLAIM AGAINST EXPLORICA

47. The Plaintiffs or the Class did not receive the services contracted for under the Explorica Contract. Specifically, the Plaintiffs did not receive the services detailed in the “What does the tour fee include?” section of the Explorica Contract. Explorica has failed to provide a refund for failing to provide these services and, as such, has breached the Explorica Contract.

48. Explorica has further breached an implied term of the Explorica Contract in failing to provide any and all information necessary to Arch and Old Republic on behalf of the Plaintiffs.

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49. The Plaintiffs and Class Members have suffered losses and damages due to Explorica's breach of contract.

50. On or about October 8, 2020, counsel for Explorica wrote to counsel for the Plaintiffs that "Explorica has provided the necessary information to and has made efforts to engage in dialogue with Arch Insurance Canada Ltd. ("Arch") and Old Republic Insurance Company of Canada ("ORIC") with the goal of resolving this issue and having Arch and ORIC pay the to customers the insurance process due to them." The Plaintiffs have no knowledge of any such discussions.

51. In the alternative, if Explorica did not breach the terms of the Explorica Contract, Explorica was unable to fulfill its obligations under the Explorica Contract due to the COVID-19 pandemic, government travel restrictions and/or airline cancellation. The Plaintiffs state that the Explorica Contract was frustrated.

52. In the further alternative, Explorica has been unjustly enriched as it has collected monies from the Plaintiffs and Class Members and did not provide the travel services included in the Explorica Contract. The Plaintiffs and Class Members have suffered a loss due to this enrichment for which there is no juristic reason.

H. CLAIM AGAINST ARCH AND OLD REPUBLIC

53. Arch and Old Republic have not denied the Plaintiffs or the Class Members coverage under the Arch Policy or the Old Republic Policy.

54. Arch and Old Republic have alleged they cannot process the Plaintiffs' or the Class Members' claims due to having insufficient information from Explorica.

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55. Arch and Old Republic have a contractual obligation to refund the Plaintiffs and Class Members pursuant to the Arch Policy and Old Republic Policy terms. Arch and Old Republic have failed to pay any amounts pursuant to the Arch Policy or Old Republic Policy to the Plaintiffs or Class Members. The failure to pay the Trip Cost to the Plaintiffs is a breach of the Arch Policy and Old Republic Policy, respectively.

56. The Plaintiffs and Class Members, as applicable, have suffered losses and damages due to Arch and Old Republic's breach of contract.

I. AGGRAVATED, PUNITIVE AND EXEMPLARY DAMAGES

57. Arch and Old Republic as insurers owe the Plaintiffs and Class Members a duty of utmost good faith and fair dealing arising out of the Arch Policy and Old Republic Policy, respectively.

58. Arch's and Old Republic's conduct as pleaded above is unlawful, high-handed and carried out in bad faith.

59. Arch and Old Republic have acted in bad faith by:

- (a) failing to investigate and fairly assess the Plaintiffs and class members claims;
- (b) failing to fully consider all evidence provided in the circumstances;
- (c) failing to pay any amounts under the Arch Policy or Old Republic Policy; and
- (d) failing to follow acceptable industry practices in handling the claims of the Plaintiffs and Class Members.

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60. The conduct of Arch and Old Republic is especially egregious considering the economic hardship the effects of the COVID-19 pandemic has had on many Canadians.

61. Arch and Old Republic's conduct constitutes a disregard for the rights and interests of Class Members who were and are vulnerable to the actions, decisions and power of Arch and Old Republic.

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October 20, 2020

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Plaintiffs

-and- **WORLDSTRIDES CANADA, INC. et al**
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STATEMENT OF CLAIM

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