

ONTARIO  
SUPERIOR COURT OF JUSTICE

THE HONOURABLE

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Friday, THIS 1<sup>st</sup>

JUSTICE CHARBONNEAU

DAY OF November, 2019

BETWEEN:

KRISTY LYNNE ARMOUR

Plaintiff

- and -

INDUSTRIAL ALLIANCE INSURANCE AND FINANCIAL SERVICES INC.

Defendant

Proceeding under the *Class Proceedings Act, 1992*

CERTIFICATION ORDER

**THIS MOTION** by the plaintiff for certification and for disclosure of information was heard on November 1, 2019, at the Court House, 161 Elgin Street, Ottawa, Ontario.

**ON READING** the notice of motion, the affidavit evidence of the plaintiff and the defendant, all of which have been filed,

**ON CONSENT** of the parties, filed,

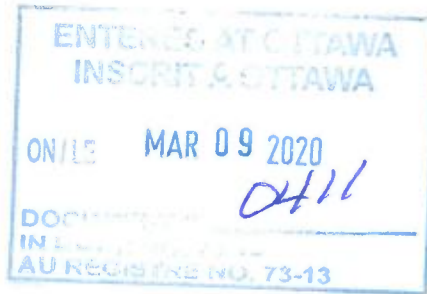
1. **THIS COURT ORDERS THAT** this action be certified as a class proceeding under the *Class Proceedings Act, 1992, S.O. 1992, c. 6*.
2. **THIS COURT FURTHER ORDERS THAT** the representative plaintiff for the class shall be Kristy Lynne Armour.
3. **THIS COURT FURTHER ORDERS THAT** the class shall be defined as follows:

Any and all persons who are currently, or were at any time on or subsequent to November 13, 2003, in receipt of long-term disability benefits, payable by Industrial Alliance Insurance and Financial Services Inc. ("Industrial Alliance") and/or its predecessor National Life Assurance Company of Canada (for whom Industrial Alliance is responsible at law) under the terms of the Public Service Management Insurance Plan bearing Group Policy No. G68-1400 (the "Policy"), and whose disability benefits were (1) reduced by reason of a specified deduction(s) under the Policy and (2) adjusted by a cost of living increase.

4. **THIS COURT FURTHER ORDERS THAT** the claims of class members with presumptively time-barred claims pursuant to section 5(2) of the *Limitation Act, 2002, S.O. 2002, c.24, Sched. B* that raise common issues of fact and law not shared by those timely claims, shall form a sub-class.
5. **THIS COURT FURTHER ORDERS THAT** the subclass of class members, as defined in paragraph 4 above, shall include those persons in receipt of long-term disability benefits under the Policy between November 13, 2003 to November 13, 2016.
6. **THIS COURT FURTHER ORDERS THAT** the common issues are as follows:
  - (a) Should the cost of living increase to monthly disability benefits under the Policy be calculated on the gross amount of the monthly benefit before applicable deductions or on the net amount after applicable deductions?
  - (b) If the answer to the above question is that the annual cost of living increase should be applied against the gross amount of the disability benefit before applicable deductions, then what methodology should be applied to determine the difference between the net benefit calculation undertaken by Industrial Alliance and the gross benefit calculation that ought to have been made?
  - (c) If the class members are entitled to receive compensation as a result of the answers in questions (a) and (b) above, what rate of prejudgment interest should apply to their claims?
  - (d) Are the class members entitled to an award of punitive and/or exemplary damages against the defendant for knowingly and wilfully breaching its obligations of good faith towards its insureds? If so, what amount of punitive and/or exemplary damages is appropriate in the circumstances?
7. **THIS COURT FURTHER ORDERS THAT** the Litigation Plan is approved in the form attached hereto as Schedule "A".
8. **THIS COURT FURTHER ORDERS** that the defendant forthwith produce, based on its best available resources, the names and last known addresses or coordinates of all known class members.
9. **THIS COURT FURTHER ORDERS** that plaintiff's counsel shall receive the information provided to them pursuant to paragraph 8 hereof in the strictest confidence and must not disclose that information to any person nor use the information except as may be strictly required for the purpose of advancing the present litigation, unless otherwise ordered by the Court.
10. **THIS COURT FURTHER ORDERS** that upon delivery of the documents specified in paragraph 8, the plaintiff shall amend the Litigation Plan to outline the specific procedures for notice to the class as well as the procedure by which the class members may opt out of the class proceeding.
11. **THIS COURT FURTHER ORDERS** that the within Order is made without prejudice to any limitation defences which the defendant may assert.

12. **THIS COURT ORDERS** that no other proceeding relating to the subject matter of this action may be commenced without leave of the Court on notice to the plaintiff and the defendant.

*Jean La Kuley*  
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*Registrar*



**SCHEDULE "A"**

Court File No.: CV-18-00078412-00CP

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

BETWEEN:

**KRISTY LYNNE ARMOUR**

Plaintiff

- and -

**INDUSTRIAL ALLIANCE INSURANCE AND FINANCIAL SERVICES INC.**

Defendant

Proceeding under the *Class Proceedings Act, 1992*

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**LITIGATION PLAN OF THE REPRESENTATIVE PLAINTIFF,  
KRISTY LYNNE ARMOUR**

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The representative Plaintiff, Kristy Armour, proposes the following Litigation Plan on behalf of the class members with respect to the within motion for Certification of this action, pursuant to section 5(1)(e)(ii) of the *Class Proceedings Act 1992* S.O. 1992, c.6.

**Case Management and Notification of the Class**

The Plaintiff proposes that once this action is certified, a subsidiary hearing be held to determine the content, scope of distribution and payment for the costs of distribution of notice to the class, and that the parties shall agree upon a discovery plan to be approved by the Court. At this time, there are records in the control, power or possession of the defendant which might assist in notifying the class members and the issue will need to be revisited once documentary production is exchanged between the parties.

### **Common Issues**

- (a) Should the cost of living increase to monthly disability benefits under the Policy be calculated on the gross amount of the monthly benefit before applicable deductions or on the net amount after applicable deductions?
- (b) If the answer to the above question is that the annual cost of living increase should be applied against the gross amount of the disability benefit before applicable deductions, then what methodology should be applied to determine the difference between the net benefit calculation undertaken by Industrial Alliance and the gross benefit calculation that ought to have been made?
- (c) If the class members are entitled to receive compensation as a result of the answers in (a) and (b) above, what rate of prejudgment interest should apply to their claims?
- (d) Are the class members entitled to an award of punitive and/or exemplary damages against the defendant for knowingly and wilfully breaching its obligations of good faith towards its insureds? If so, what amount of punitive and/or exemplary damages is appropriate in the circumstances?

### **Compensatory Damages**

Calculated in accordance with the terms of the Policy, on a retroactive basis, with prejudgment interest in accordance with issue (c).

### **Punitive Damages**

The Plaintiff proposes that the quantum of punitive damages be determined by the trial judge and that same be shared as between the individual class members on a *pro rata* basis in accordance with section 23 of the *Act* based on length of time that the class member has been in receipt of a monthly benefit.

### **Special Damages**

The Plaintiff proposes that class members who believe they have special damages be given the option to proceed with individual assessments of damages pursuant to section 25 of the *Act* following determination of the common issues.

### **Funding**

The law firm of **CONNOLLY OBAGI LLP** has agreed to fund the disbursements required to advance this class proceeding although it reserves the right to seek certain disbursements paid in advance by the defendant subject to any Orders of the court.

### **Settlement**

With the assistance of her solicitors, the representative Plaintiff, Kristy Armour, will be encouraged to participate in court connected mediation at the earliest possible stage once full disclosure is obtained to

determine the size of the class and size of the potential compensatory damages which may be due and owing if the claim is allowed.

Any settlement will, of course, have to be approved by the Court.

**Kristy Lynne Armour**

Plaintiff

and

**Industrial Alliance Insurance and Financial Services Inc.**  
Defendants

Court File No. CV-18-00078412-00-CP

**SUPERIOR COURT OF JUSTICE**  
Proceeding commenced at Ottawa  
*Proceeding under the Class Proceedings Act, 1992*

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**CERTIFICATION ORDER**

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