Summary of Basis for Class Counsel's Recommendation of Settlement and Distribution Protocol

Why Class Counsel Recommends Approval of the Settlement

Background

This class action was brought on behalf of Royal Canadian Legion branches and similar service organizations who were insured under the PIB Legion Policy issued by Aviva Insurance Company of Canada. When COVID-19 led to provincial closure orders in March 2020, Legion branches were forced to close and they suffered losses of business income. Aviva denied the business interruption insurance claims of all Class Members. This action was commenced in June 2020 to seek compensation for those losses.

The case was certified as a class proceeding in July 2021. Over the following years, Class Counsel conducted extensive work, including documentary productions, examinations for discovery, retaining experts, and preparing for a common issues trial scheduled for early 2026.

The Settlement Achieves a Strong Recovery

Under the Settlement Agreement, Aviva has agreed to pay a total of $5,512,275.50 to settle this class action. This amount includes $3,931,083.50 for damages and interest owed to the Class Members, plus a contribution by Aviva toward legal fees and the costs of administering the settlement. Aviva's contribution to legal fees and administration costs means that more of the settlement money will go directly to Class Members than would otherwise be the case.

The settlement provides compensation to Class Members for business income losses suffered during a 37-day period following the closure orders issued in March and April 2020 in response to COVID-19. The settlement represents a meaningful recovery of a large portion of the business income losses incurred by Class Members during that period.

The Settlement Negotiations Were Thorough and Arm's-Length

The settlement was reached through extensive, arm's-length negotiations between Class Counsel and Aviva's lawyers over the course of several years. The negotiations included five days of mediation with the Honourable George Strathy, former Chief Justice of Ontario, acting as mediator, followed by a half-day pre-trial conference before Justice Black. After further exchanges of proposals, the parties reached an agreement in principle in December 2025. The settlement was then documented in the Settlement Agreement.

The Difficult Issues That Were Resolved

This case involved a number of complex and hotly contested legal and factual issues. Each of these issues carried significant risk for the Class Members. The key issues that needed to be resolved included:

- Whether the closure orders triggered insurance coverage under the "Restricted Access" and "Negative Publicity" provisions of the policy. Aviva argued the coverage was not triggered at all, which would have meant no Class Member would receive anything.
- Whether Class Members were entitled to claim for multiple loss periods or only a single 30-day period. The settlement provides coverage for a 37-day period.

- How to calculate business income losses across the class. Class Counsel relied on expert analysis of actual financial statements from a sample of Class Members, while Aviva relied on older underwriting estimates. Both approaches had strengths and weaknesses.
- Whether the "Measure of Recovery" clause applied, which affected whether ceasing expenses and government subsidies should be deducted from loss calculations. Under the settlement, government subsidies received by Class Members are not deducted, which is favourable to Class Members, although ceasing expenses were deducted.

These issues were fiercely negotiated over many months, including through mediation and the pre-trial conference, with both the mediator and the pre-trial judge weighing in on the strengths, weaknesses, and risks of both sides' positions.

The Settlement Avoids Significant Litigation Risks

Class Counsel considered the significant risks that Class Members would face if the case proceeded to a three-week trial of the common issues rather than settling. These risks included:

- The risk that the court could disagree with the Class Members' position on the interpretation of the insurance coverage, meaning no Class Member would be entitled to any compensation at all.
- The risk that the court could disagree with the Class Members' position on how losses should be calculated, resulting in a significantly reduced recovery.
- The risk of adverse cost awards against the Class Members if any common issues were decided against them.
- Even if the Class Members were successful at trial, Aviva would likely appeal, adding years of further delay and additional costs with no guarantee of success.

The Benefits of a Global Settlement

An important benefit of this settlement is that it resolves everything in one step. If the case had gone to trial, even a complete victory on all the common issues would not have resulted in payment to Class Members. Each individual Class Member would still have been required to undergo a separate claims assessment process with Aviva. Such a process would require individual branches to submit detailed financial documentation for individual review by Aviva. Class Counsel assessed a high risk that many Class Members would be overwhelmed by such a process, or that the costs of participating would be disproportionate to the amount they could expect to recover, meaning legitimate claims would never be paid. By contrast, the global settlement eliminates these risks and allows for a simplified distribution process that maximises recovery for all Class Members on an equitable basis.

The Representative Plaintiff has approved and given instructions to enter into the Settlement Agreement and bring this motion for Settlement Approval.

Conclusion on the Settlement

Class Counsel believes that this class action has merit and that Class Members would likely have succeeded on many of the common issues at trial. However, no litigation is without risk, and Aviva is a large national insurer with substantial resources. The settlement accounts for these litigation risks and represents a fair and reasonable compromise. Class Counsel considers the settlement to be a successful resolution that is in the best interests of all Class Members.

Why Class Counsel Recommends Approval of the Distribution Protocol

Overview

The Distribution Protocol sets out how the Settlement Funds — that is, the Settlement Amount after deducting Court-approved legal fees, disbursements, the Representative Plaintiff honorarium, accounting fees, and administration expenses — will be distributed to Class Members who file valid and timely claims.

The Protocol Is Designed to Be Simple and Fair

One of the key benefits of the settlement is that it avoids the need for each Class Member to undergo a complex, document-heavy individual claims adjustment process with Aviva. Class Members are predominantly not-for-profit organisations run by volunteer boards, and many have relatively small individual losses in the range of a few thousand dollars. A complex claims process would be intimidating, time-consuming, and expensive relative to the amounts at stake, likely discouraging many Class Members from participating.

Class Counsel therefore designed the Distribution Protocol with the goal of making it as simple as possible for Class Members to participate, while still being fair and equitable. This design was informed by substantial financial data collected from hundreds of Class Members during the litigation, and by the professional input of MDD Forensic Accountants, who have been involved in this case since 2021 and have developed a thorough understanding of Legion Branch businesses and finances.

How the Claims Process Works

Class Members will be notified of the claims process and provided with a link to an online claims form. To submit a claim, a Class Member needs to provide basic branch information and their annual financial statement for Fiscal Year 2019. Assistance is available from the Claims Administrator at no charge, and Class Members without internet access can register by telephone and submit documentation by mail.

MDD Forensic Accountants, the proposed Accountant and Claims Administrator, will then calculate each participating Class Member's share of the settlement funds. MDD will apply a "Simplified Calculation of Business Loss Percentage" — determined from a detailed analysis of a representative sample of 30 Class Members across all provinces and territories — to each participating Class Member's 2019 annual revenue. Each Class Member's payment will be their proportionate share of the total settlement funds, based on how their calculated loss compares to the total losses of all valid claims.

Why This Approach Is Appropriate

The Distribution Protocol is designed to capitalise on the extensive accounting work already completed by MDD, reduce administration costs, maximise the funds available for distribution to Class Members, provide a simple and user-friendly claims process, offer an equitable pro rata method of distribution, create a transparent and efficient approach, and minimise or eliminate any unclaimed funds. Any remaining balance six months after distribution will, if feasible, be reallocated among participating Class Members, or otherwise distributed to The Royal Canadian Legion Dominion Command Poppy Trust Fund.

Class Counsel is satisfied that the Distribution Protocol represents a fair and equitable method of administering claims and distributing the settlement funds to Class Members.