



Court File No.

Electronically issued : 16-Jun-2021  
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Toronto

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**

**B E T W E E N :**

**RUSSELL GROZELLE, GILDA EVERETT, LUCIE LOMBARDO, THOMAS BEUKELMAN,  
MIKE WILKINSON, AND LARRY HOWE**

Plaintiffs

- and -

**CORBY SPIRIT AND WINE LIMITED**

Defendant

**STATEMENT OF CLAIM**

**TO THE DEFENDANT:**

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiffs. 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 Plaintiffs' lawyer or, where the Plaintiffs do not have a lawyer, serve it on the Plaintiffs, 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 WILL 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.

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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: June 16, 2021

Issued by: \_\_\_\_\_

Address of Courthouse:  
330 University Avenue  
Toronto, ON  
M5G 1R7

TO: Corby Wine and Spirit Limited  
225 King St W #1100  
Toronto, ON  
M5V 3M2

## CLAIM

1. The Plaintiffs, Russell Grozelle, Gilda Everett, Lucie Lombardo, Thomas Beukelman, Mike Wilkinson, and Larry Howe, claim on their own behalf and on behalf of the Class against the Defendant:
  - (a) general damages in the amount of \$50,000,000.00;
  - (b) exemplary, punitive and or aggravated damages in the amount of \$50,000,000.00;
  - (c) Pre-judgment and post-judgment interest pursuant to the *Courts of Justice Act*, R.S.O. 1990, c. C.43.
  - (d) an order directing a reference, or such other directions as may be necessary to determine issues not determined at the trial of the common issues;
  - (e) costs of this action on a full indemnity basis, inclusive of all disbursements and HST;
  - (f) such further and other relief as counsel may advise and this Court may permit and deem just and appropriate in the circumstances.

## THE PARTIES

### The Proposed Representative Plaintiffs

1. Russell Grozelle is an individual who currently resides in the Municipality of Lakeshore, in the same home that he has lived in for 35 years, which is in close proximity to an alcohol aging and storage facility located at or near the municipal property address known as 168 East Pike Creek Road (the “HW Facility”), but at the time that he moved to the area, Russell was unaware of any potential impact to his property, health or quality of life from said facility.
2. Gilda Everett is an individual who currently resides in the Municipality of Lakeshore, in the same home that she has lived in for 35 years, which is in close proximity to the HW Facility,

but at the time that she moved to the area, Gilda was unaware of any potential impact to her property, health or quality of life from the HW Facility.

3. Lucie Lombardo is an individual who currently resides in the Municipality of Lakeshore, in the same home that she has lived in for 10 years, which is in close proximity to the HW Facility, but at the time that she moved to the area, Lucie was unaware of any potential impact to her property, health or quality of life from the HW Facility.

4. Thomas Beukelman is an individual who currently resides in the Municipality of Lakeshore, in the same home that he has lived in for two years, which is in close proximity to the HW Facility, but at the time that he moved to the area, Thomas was unaware of any potential impact to his property, health or quality of life from the HW Facility.

5. Mike Wilkinson is an individual who currently resides in the Municipality of Lakeshore, in the same home that he has lived in for 27 years, which is in close proximity to HW Facility, but at the time that he moved to the area, Mike was unaware of any potential impact to his property, health or quality of life from the HW Facility.

6. Larry Howe is an individual who currently resides in the Municipality of Lakeshore, in the same home that he has lived in for 15 years, which is in close proximity to the HW Facility, but at the time that he moved to the area, Larry was unaware of any potential impact to his property, health or quality of life from the HW Facility.

### **The Class**

7. The proposed Class (collectively the “Class” or “Class Members”) herein is defined as all current and former residents within the affected area whose property was negatively impacted by the ethanol emissions from the HW Facility.

8. The Sub-Classes are defined as:
- a. all persons who have lived or are currently living within the area eligible for reimbursement of cleaning expenses by the Defendant, generally understood to be the area within the Municipality of Lakeshore, north of County Road 22, from Pike Creek to Patillo Road (the “Approved Cleaning Zone”) and who were impacted by property or quality of life issues caused by the HW Facility (the “Approved Cleaning Zone Class”);
  - b. all persons who have lived or are currently living outside the Approved Cleaning Zone and who were impacted by the same property, health or quality of life issues caused by the HW Facility, as those in the Approved Cleaning Zone Class (the “Non-Approved Cleaning Zone Class”);
  - c. all persons who sold a property within the Approved Cleaning Zone at a discounted price and all persons who purchased a property within the Approved Cleaning Zone at an inflated price and who were impacted by property, health or quality of life issues caused by the HW Facility (the “Approved Cleaning Zone Real Estate Class”); and
  - d. all persons who sold a property outside the Approved Cleaning Zone at a discounted price and all persons who purchased a property outside the Approved Cleaning Zone at an inflated price, who were impacted by the same property, health or quality of life issues caused by the HW Facility, as those in the Approved Cleaning Zone Class (the “Non-Approved Cleaning Zone Real Estate Class”).

### **The Operations of the Defendant**

9. The HW Facility is managed by Corby Spirit and Wine Limited, which is headquartered in Toronto (the “Defendant”).

10. The Defendant is vicariously liable for the acts and omissions of their employees, agents, and servants.

### **THE NATURE OF THE ACTION**

11. This action arises out of property, health or quality of life issues caused by the HW Facility, believed to be attributable to ethanol emissions from the HW Facility, as a result of the activities carried out there, which include but are not limited to the aging and maturation of whiskey, which requires products to be stored in barrels for a number of years, depending on the type of product.

12. The *Food and Drugs Act* requires Canadian whiskey to be aged in wood barrels in Canada for a period of at least three years. During this aging process, product losses are expected, as distilled spirits escape the oak barrels and are released into the ambient air, largely in the form of ethanol.

13. Residents in the area surrounding the HW Facility have complained that a black, mold-like substance, has been accumulating in, on, and around their homes, properties, and possessions, resulting in a dirty and unsightly appearance, resulting in cleaning costs to these residents to clean and remove the accumulated substance. This black, mold-like substance is believed to be *Baudoinia compniacensis*, which is fungus that consumes ethanol as a food source, whose growth is accelerated by ethanol vapors, and is commonly known as the whiskey fungus.

14. For several years, residents in the area surrounding the HW Facility have sought further information directly from the Defendant, as well as other official sources, regarding the black, mold-like substance. Despite their efforts, residents were unable to obtain any reliable explanation for the presence or identification of black, mold-like substance. Indeed, a variety of explanations have been offered, which suggest that there is no connection between the black, mold-like substance and the HW Facility.

15. In 1983, Ministry of Environment Phytotoxicology staff prepared a report following their inspection of the area near the HW Facility and noted a black, mold-like substance to be growing in particularly dense layers without the benefit of apparently higher than normal humidity or poor air circulation. Through the use of controlled environment exposures, it was found that ethanol, promoted the growth of the black, mold-like substance at a rate substantially higher than that which grew in the absence of ethanol. The report concluded that there was a definite pattern of enhanced growth of the black, mold-like substance that centered around the HW Facility.

16. A further study of the black, mold-like substance was conducted by the Ministry of Environment in the early 2000's, which concluded that the enhanced growth of the black, mold-like substance in the area surrounding the HW Facility, was the result of ethanol emissions from the HW Facility. The report also found that there appeared to be an increase in the extent of the black, mold-like substance, especially to the south and southwest of the HW Facility.

17. It is pleaded that the release of ethanol from the HW Facility is primarily responsible for the black, mold-like substance that has been accumulating in, on, and around the homes, properties, and possessions of residents living in the area surrounding the HW Facility, and that this fact has been known to the Defendant for several years.

18. In 2003, the Defendant organized and began funding a cleaning program limited to the exterior walls, fascia, soffit, eaves, troughs, downspouts and window trim for the main house on each property and, if applicable, a detached garage, in the Approved Cleaning Zone. All other surfaces and properties were excluded. It is believed that participation in the cleaning program was contingent upon residents signing a Waiver, which included a confidentiality clause to not discuss the cleaning program, but did not include any information regarding the background leading to the creation of the cleaning program, its association with the HW Facility, or any specifics regarding any substances that the cleaning program was attempting to remove.

19. Since 2003, residents living outside the Approved Cleaning Zone, who were impacted by the same property, health or quality of life issues caused by the HW Facility, as those in the Approved Cleaning Zone, have sought inclusion in the Approved Cleaning Zone and reimbursement for cleaning expenses to clean their homes, properties, and possessions, similar to what was being provided to the residents living in the Approved Cleaning Zone. To date, the Defendant has refused to even acknowledge the existence of *Baudoinia compniacensis* outside the Approved Cleaning Zone and caused by the HW Facility, let alone provide any compensation or reimbursement to residents living outside the Approved Cleaning Zone.

## **CAUSES OF ACTION**

### **1. NEGLIGENCE**

20. The Defendant owed a duty of care to the Plaintiffs and the Class to, among other things:

- (a) exercise reasonable care in formulating, manufacturing, and testing of the products;

- (b) study and conduct trials on the release of ethanol on an ongoing basis to determine safety issues;
- (c) rectify any problems as they arise and alert the regulatory authorities;
- (d) conduct ongoing testing and analyses to determine if any impurities or risks associated with the release of ethanol in the production of its goods exist or arise;
- (e) test their products' effect on the surrounding environment;
- (f) inform the public and regulatory authorities if any problems arise; and
- (g) warn the public and alert Health Canada.

## **2. NEGLIGENT MISREPRESENTATION AND CONCEALMENT DAMAGES**

21. As a result of the Defendant's actions or omissions, the Plaintiffs and the Class have suffered and is entitled to damages, including pecuniary and non-pecuniary general damages, special damages and aggravated, exemplary and punitive damages.

22. As a result of actions, errors and omissions of the Defendant as set out above, the Plaintiffs and the Class suffered and will continue to suffer damages due to the:

- (a) Cleaning and repair expenses incurred in relation to one's property and the surrounding yard;
- (b) Impairment of the quiet enjoyment of one's property and the surrounding yard;
- (c) Diminishment of the value of one's property; and
- (d) Such further and other harms and injuries as shall be discovered and/or particularized.

23. As a further result of the injuries suffered, the Plaintiffs and the Class have incurred, and will continue to incur expenses, including: expenses for repairs and the replacement of the

siding and other collaterals around and outside the home and out-of-pocket expenses, the full particulars of which are not within the Plaintiffs' and the Class' knowledge at this time.

### **3. PUNITIVE DAMAGES REQUESTED**

24. The conduct of the Defendant merits punitive damages in that the conduct constituted highhanded, malicious, and reprehensible conduct that departs to a marked degree from the standards expected of the designers, manufacturers, marketers, suppliers, distributors, and sellers of goods.

### **THE RELEVANT STATUTES**

25. The Plaintiffs and the Class plead and rely upon, and the amendments made thereto and the regulations thereunder and the Provincial equivalents:

- a. *Class Proceedings Act*, 1992, S.O. 1992, c. 6;
- b. *Environmental Protection Act*, R.S.O. 1990, c. E.19;
- c. *Food and Drugs Act*, R.S.C., 1985, c. F-27;
- d. *Health Insurance Act*, R.S.O. 1990, c. 11-6; and
- e. *Negligence Act*, R.S.O. 1990, c. N.1.

26. The Class proposes that this action be tried at the City of Toronto, in the Province of Ontario.

June 16, 2021

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HOWE  
Plaintiffs

- and -

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