

2 motions to certify a claim for Refund of Premium, Due to COVID-19 Lockdowns as Class Actions were withdrawn/dismissed

Class Action 25472-04-20 CamaMia Textile Ltd. and others v. Migdal Insurance Company Ltd. and others

**Class Action 35104-04-20 Rachel Segal and others v. Bituach Haklai and others
Adv. Tammy Greenberg and Adv. Aviv Klepner
Levitan, Sharon & Co.**

The CamaMia claim

The Haifa District Court in a judgment dated 4 August 2021 (Class Action 25472-04-20), declined a request for the certification of a Class Action filed against 7 Insurance Companies, which included a demand for reimbursement of partial premium paid for business insurance, due to alleged reduced risk as a result of national lockdowns and restrictions imposed following the COVID-19 pandemic.

Facts:

Business owners who purchased business insurance policies from 7 insurance companies filed in April 2020 a request for certification of a Class Action lawsuit against insurers following the COVID-19 pandemic. Following the outbreak of the pandemic, starting in March 2020, a number of restrictions were imposed upon Israel's residents, which led to the closure of several businesses. Other businesses reduced their number of employees and faced with reduction in

the number of suppliers and customers visiting the business premises.

It was alleged that as a result, the level of risk to which the insurers were exposed during the period of restrictions has been substantially reduced. Accordingly, the insurers should have significantly reduce the amount of the premium collected from the relevant insureds.

Since the insurers continued to collect the full premium, the Applicants demanded inter alia, that insurers will compensate the insureds for the extra premiums they paid in an estimated amount of at least ILS 81.37 million.

Judgement:

The Court ruled that the legal arguments raised by the Applicants based on the Insurance Contract Law, have no grounds.

In respect of Clause 20 it was decided that the said clause allows the insured, where additional premium was paid due

to aggravation of risk, to notify the insurer that the aggravating circumstances ceased to exist, after which it will be entitled to a reduction in the premium. The announcement cannot be made retroactively, since the principle of insurance is that the pricing of risks is made in advance and not after it is known whether the risk has materialized.

The Applicants have not proved that there were circumstances that aggravated the risk for which an additional premium was charged at the inception of the policy.

Furthermore, the Applicants did not notify the insurers that the aggravating circumstances ceased to exist as required by Clause 20 of the Insurance Contract Law. The Court declined the Applicants' contention that general knowledge of the restrictions and lockdowns is sufficient in this respect, since not all the businesses were affected in the same way.

The Court further ruled that the expert opinion filed by the Applicants was not sufficient to prove that there was a reduction in risk within the coverage of Employers' Liability and Third-Party Liability in business policies, and is based on irrelevant facts.

In conclusion, it was determined that the Applicants have no cause of action and the request for certifying their claim as a Class Action was declined; In addition, the court ruled that the claim is not suitable to litigate as a class action in view of the significant difference between the individual businesses in terms of the way they operated during the COVID-19 pandemic, which requires conducting individual inquiries that are not suitable in such proceedings.

Applicants did not file an appeal on said judgement which became conclusive.

The Rachel Segal claim:

Similar requests for certifying of Class Actions were filed against insurance companies, in the Tel Aviv District Court. regarding car and apartment insurance.

In view of the above conclusive Judgment, the Applicants in Class Action 35104-04-20 decided to withdraw their motion which was filed against 2 insurance companies. They filed an agreed withdrawal motion which was approved by the Court in a judgment dated 10 March 2022.

The Court decided that there is no justification to search for substitute applicants.



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