



**ONTARIO
SUPERIOR COURT OF JUSTICE**

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

B E T W E E N .

SUNG TAEK LEE

Plaintiff

– and –

ALLSTATE INSURANCE COMPANY OF CANADA

Defendant

Proceeding commenced under the *Class Proceedings Act, 1992*

STATEMENT OF CLAIM

TO THE DEFENDANT

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.

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.

IF YOU PAY THE PLAINTIFF'S CLAIM, and \$10,000 for costs, within the time for serving and filing your statement of defence you may move to have this proceeding dismissed by the court. If you believe the amount claimed for costs is excessive, you may pay the plaintiff's claim and \$400 for the costs and have the costs assessed by the court.

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:
393 University Avenue
Toronto, ON M5G 1E6

To: Allstate Insurance Company of Canada
27 Allstate Parkway, Suite 100
Markham, Ontario, L3R 5P8

RELIEF CLAIMED

1. The Proposed Representative Plaintiff claims the following on his behalf, and on behalf of members of the Class:
 - a) The sum of \$80,000,000 as general damages covering the damages to the class;
 - b) The sum of \$80,000,000 as punitive, aggravated and/or moral damages;
 - c) an order certifying this action as a class proceeding and appointing Sung Taek Lee as Representative Plaintiff of the Class;
 - d) a declaration that the members of the Class are owed public holiday and vacation pay on commissions above and beyond the compensation they were paid;
 - e) a declaration that members of the Class are owed overtime pay on commission income for work in excess of 44 hours per week;
 - f) that damages be paid to each class member equal to the public holiday, vacation pay and overtime pay that they ought to have received during their employment with the Defendant;
 - g) pre-judgment interest in accordance with section 128 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43 as amended;
 - h) post-judgment interest in accordance with section 129 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43 as amended;
 - i) any goods and services tax or harmonized sales tax which may be payable on any amounts pursuant to Bill C-62, the *Excise Tax Act*, R.S.C. 1985, as amended or any other legislation enacted by the Government of Canada or Ontario;
 - j) the costs of this action on a substantial indemnity basis; and
 - k) such further and other relief as counsel may advise and this Honourable Court permits.

BACKGROUND

2. The Defendant Allstate Insurance Company of Canada “**Allstate**” is a licensed insurance company selling property and automobile insurance in Ontario and several other provinces.
3. Sung Taek Lee is an individual residing in the Province of Ontario. Mr. Lee worked for Allstate as a Business Development Agent (“**BDA**”) from April to October 2019.
4. As an Advisor, Mr. Lee was a commissioned salesperson. His pay was comprised of commissions and a performance bonus, with a base salary that was characterized as an advance against future commissions. The commissions and bonus were based on Mr. Lee’s ability to sell home and auto insurance policies when he was a Business Development Agent.
5. This class action is brought because Mr. Lee, and other commissioned salespeople working for the Defendant, were systemically denied the minimum standards to which they were entitled under the *Employment Standards Act, 2000*, S.O. 2000 (“*ESA*”) or the corresponding statutes in other provinces.
6. Mr. Lee, and other commissioned salespeople working for the Defendant received vacation and public holiday pay solely on his base salary and not on his total compensation, as required by the *ESA*.
7. Mr. Lee, and other commissioned salespeople working for the Defendant, were not compensated by overtime pay when they worked more than 44 hours per week, as required by the *ESA*.

COMPENSATION POLICY EXCLUDED VACATION AND PUBLIC HOLIDAY PAY ON COMMISSIONS

8. Allstate compensates all Business Development Agents based on their “Business Development Agent Compensation Package” policy guide.

9. The policies in this guide systemically apply to all commissioned salespeople in their respective areas.
10. The compensation policies applicable to Mr. Lee and other BDAs did not provide for Vacation and Statutory Holiday Pay calculated based on his total wages, in violation of the *ESA*. Mr. Lee seeks to be a representative Plaintiff for all persons denied such compensation while working for the Defendants.
11. The Business Development Agent Compensation Package states that agents will be paid a basic 15% commission on the value of insurance policies sold. There is an Individual Performance Bonus representing an additional commission for agents who exceed their basic sales target by prescribed percentages. This is a rising percentage, reaching an additional 6% commission for agents who reach double their target sales level.
12. Mr. Lee was paid semi-monthly. He would receive a base salary consisting of an advance against his future commissions at an annual rate of \$45,000 even in a period when he did not sell anything. In periods where his sales were high enough to earn commissions or bonus, he would receive that in addition to his base salary.
13. Mr. Lee was entitled to 1.25 days of vacation for each month worked. On the days when he was on vacation, he was paid his daily rate based on an annual rate of \$45,000, with no vacation pay corresponding to his commission and bonus earnings in excess of \$45,000 per year.
14. The Allstate office was closed on statutory holidays and Mr. Lee was not required to work. On those days, he was paid his daily rate based on an annual rate of \$45,000, with no holiday pay corresponding to his actual commission and bonus earnings in excess of \$45,000 per year.

The Class

15. This action is brought on behalf of a class of persons, defined as:

All commissioned employees of ALLSTATE INSURANCE COMPANY OF CANADA in Canada who were paid for vacation and public holiday pay on their base draw and not

total wages; or who worked in excess of 44 hours per week and not paid overtime and who are not exempt from such payments; and who have not filed a complaint pursuant to s. 96 of the *ESA* or corresponding provisions of the statute in another province.

16. Mr. Lee seeks to have the class time period run from the earliest of the start date of any employee who was terminated or resigned within the last two years before this claim was issued and until the date when the notice of class action is sent out to class members with the opt-out forms.

APPLICATION OF STATUTORY ENTITLEMENTS

17. Under the *Employment Standards Act, 2000* (“*ESA*”) employees must be paid additional Public Holiday Pay above and beyond their regular pay as per sections 24-32. As per s. 24(1) of the *ESA*, for employees with variable compensation this pay is to be an average of what they made over the preceding 20 days.
18. Under the *ESA* employees must be paid additional Vacation Pay above and beyond their regular pay, as per s. 35.2. This pay must be at least 4 per cent of the wages earned by the employee for those with less than five years seniority and 6 per cent for those with greater than five years seniority.
19. In the *ESA*, wages are defined to include commission income.
20. As per s. 5(1) no employee may opt out of a benefit of the *ESA* unless the employee receives a greater benefit.
21. Mr. Lee pleads that as per s. 15.1 of the *ESA* the Defendants were required to keep detailed records of his vacation pay, but he was not provided any such records and was not aware of any such records existing.
22. The Defendants’ compensation plan does not provide for Public Holiday Pay or Vacation Pay computed as a percentage of the fixed and variable components of an Agent’s wage. The policy therefore violates the *ESA* and the employees are owed additional compensation throughout their employment.

23. As per s. 40(1) and (2) of the *ESA*, the Vacation Pay that ought to have been paid has a trust over it and creates a lien upon the assets of the employer in the amount of the monies that ought to have been paid.
24. Similar provisions apply under the employment standards statutes of other provinces, as listed in Schedule A.

EMPLOYEES SYSTEMICALLY DENIED OVERTIME PAY

25. Mr. Lee pleads that Business Development Agents often worked overtime in excess of 44 hours per week and were not compensated by overtime pay.
26. Employees were required to follow a schedule of working 37.5 hours each week in Allstate's storefront office.
27. In order to earn the Individual Performance Bonus component of his compensation, employees had to meet very high sales targets that could only be achieved by spending additional time following up with clients after hours.
28. Allstate has a systemic policy of recruiting employees by telling them about the possibility of high bonus incomes, while knowing that it could only be achieved by working in excess of 44 hours per week.
29. Allstate knew or ought to have known that many employees were working overtime, due to the large number of client files that many of them handled, which could not be done in less than 44 hours per week.
30. Allstate avoided or disregarded its overtime obligations at a systemic level: it had no written policies or directives; no printed information for employees; and, no standardized systems or centralized record-keeping.
31. Allstate had a systemic policy of never paying overtime premium pay to its employees. There was never any information provided by Allstate to its employees suggesting that they could ask for overtime pay.

32. There is no mention of the possibility of overtime pay in the Compensation Package document provided by Allstate to its employees.
33. Mr. Lee pleads that the compensation policy of Allstate placed a special premium on top performance. In order to earn more than minimal bonus pay, employees had to work in excess of 44 hours per week.
34. As per s. 22(1) of the *ESA*, an employer shall pay an employee overtime pay of at least one and one-half times his or her regular rate for each hour of work in excess of 44 hours in each work week.
35. The regular rate is to be calculated by taking the total earnings per week, including base salary and incentive pay, and dividing it by 44 hours, as provided in s. 1 of the *ESA*.

PUNITIVE DAMAGE MORAL AND/OR AGGRAVATED DAMAGES

36. Mr. Lee pleads that this case is appropriate for Punitive, Moral and/or Aggravated damages. The non-exclusive reasons for these damages are set out below:
 - a. Allstate failed to provide minimum employment standards relating to their employees, including but not limited to Vacation Pay, Statutory Holiday Pay, and Overtime Pay computed on the employee's compensation inclusive of commissions, thus breaching the *ESA* and disadvantaging their employees;
 - b. Allstate benefited from their employees being forced to work overtime contrary to the *ESA* for which there ought to be more of a punishment than to merely pay the money which was initially owed.
 - c. Allstate acted in a callous manner by not resolving the issues of underpayment of wages once they learned of it but instead attempting to not pay back-wages to those employees affected;
 - d. Allstate has failed and continues to fail to provide the statutory benefits to employees including up to and at any final hearing of this matter.

37. The behavior, if applicable, of the Defendants in defending this action which is found to be overly zealous in the face of evidence showing their employees are owed their statutory benefits.
38. The principle of deterrence dictates for punitive and aggravated damages to be awarded in order to discourage other companies from short changing their workers as the Defendants have in this case.

LOCATION

39. Mr. Lee proposes this action be tried at the City of Toronto, in the Province of Ontario.

Schedule A: Provincial Employment Standards Statutes Relied on by the Class

Province	Statutory Provisions
Alberta	<i>Employment Standards Code</i> , RSA 2000, c E-9, s. 14, 21, 22, 34, 34.1, 34.2 and regulations thereto.
British Columbia	<i>Employment Standards Act</i> , RSBC 1996, c 113, s. 28, 35, 45, 57, 58, and regulations thereto.
Manitoba	<i>The Employment Standards Code</i> , CCSM c E110, s. 17, 23, 34, and regulations thereto.
New Brunswick	<i>Employment Standards Act</i> , SNB 1982, c E-7.2, s. 14, 18, 21, 22, 24, 25, and regulations thereto.
Newfoundland and Labrador	<i>Labour Standards Act</i> , RSNL 1990, c L-2, s. 8, 9, 15, 25, and regulations thereto.
Nova Scotia	<i>Labour Standards Code</i> , RSNS 1989, c 246, s. 10, 15, 32, 35, 42, and regulations thereto.
Ontario	<i>Employment Standards Act</i> , 2000, S.O. 2000, c. 41, s. 12, 22, 24, 27, 33, 35.2, 36, and regulations thereto.
Prince Edward Island	<i>Employment Standards Act</i> , RSPEI 1988, c E-6.2, s. 5.3, 10, 11, 15, 15.1, and regulations thereto.
Quebec	<i>Act respecting labour standards</i> , CQLR c N-1.1, s. 46, 52, 55, 62, 67, 68, 69, 74, and regulations thereto.
Saskatchewan	<i>Saskatchewan Employment Act</i> , SS 2013, c S-15.1, s. 2-18, 2-24, 2-27, 2-32, 2-37, and regulations thereto.

MONKHOUSE LAW
220 Bay Street, Suite 900
Toronto, ON M5J 2W4

Andrew Monkhouse (64529L)
Alexandra Monkhouse (70390L)

Tel: 416-907-9249
Fax: 888-501-7235

Lawyers for the Plaintiff, Sung Taek Lee

SUNG TAEK LEE v. ALLSTATE INSURANCE COMPANY OF CANADA
Plaintiff Defendant

ONTARIO
SUPERIOR COURT OF JUSTICE

**Proceeding under the *Class*
*Proceedings Act, 1992***

Proceeding commenced at TORONTO

STATEMENT OF CLAIM

MONKHOUSE LAW

220 Bay Street, Suite 900
Toronto, Ontario M5J 2W4

Andrew Monkhouse (64529L)
andrew@monkouselaw.com

Alexandra Monkhouse (70390L)
alexandra@monkouselaw.com

Tel: (416) 907-9249
Fax: (888) 501-7235

Lawyers for the Plaintiff