

C A N A D A

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

(Class Action)
SUPERIOR COURT

NO: 500-06-001279-237

ANTEREAS [REDACTED]
[REDACTED]

Applicant

v.

APPLIED SYSTEMS, INC. legal person
having its head office at 200 Applied
Parkway, University Park, Illinois, 60484,
U.S.A.

and

APPLIED SYSTEMS CANADA INC., legal
person having its elected domicile at 26E-
1501 McGill College Avenue, City and District
of Montreal, Province of Quebec, H3A 3M8

Defendants

APPLICATION TO AUTHORIZE THE BRINGING OF A CLASS ACTION
(ARTICLES 571 AND FOLLOWING C.C.P.)

**TO ONE OF THE HONOURABLE JUDGES OF THE SUPERIOR COURT, SITTING IN
AND FOR THE DISTRICT OF MONTREAL, YOUR APPLICANT STATES:**

I. GENERAL PRESENTATION

1. On November 14, 2023, the Federal Court of Canada granted an order requested by the Competition Bureau requiring the Defendants, Applied Systems Canada Inc. and Applied Systems, Inc. (hereinafter collectively "**Applied Systems**"), notably to produce records and written information that are relevant to the Competition Bureau's investigation against the Defendants for their anti-competitive conduct, the whole as appears from the order communicated as **Exhibit P-1**;
2. As it appears from the Federal Court order (Exhibit P-1), Applied Systems appear

to have violated Part VIII of the *Competition Act*, which expressly prohibits different forms of anticompetitive practices, including prohibitions on refusal to deal, price-fixing, exclusive dealing, tied selling, market restriction, abuse of dominant position, delivered pricing, specialization agreements, agreements or arrangements that prevent or lessen competition substantially, and mergers;

3. On November 16, 2023, the Competition Bureau issued a press release titled "*Competition Bureau obtains court order to advance an investigation of Applied Systems*", which states the following, as it appears from **Exhibit P-2**:

The Competition Bureau has obtained a court order to advance a civil investigation into alleged anti-competitive conduct by Applied Systems, Inc. and its affiliates (Applied Systems) including Applied Systems Canada Inc. (Applied Systems Canada).

The order, granted by the Federal Court of Canada on November 14, 2023, requires Applied Systems Canada to produce records and written information that are relevant to the Bureau's investigation.

The Bureau requires information to determine if **the alleged conduct is harming competition in Canada's insurance technology (insurtech) industry. This includes examining certain practices that may impede insurtech firms from supplying competing products and services to insurance brokerages and brokers in Canada.**

The Bureau is investigating **whether Applied Systems is engaging in conduct contrary to the restrictive trade practices provisions of the *Competition Act***, including the abuse of dominance provision.

There is no conclusion of wrongdoing at this time.

4. According to Bureau's press release (Exhibit P-2), insurtech firms provide specialized technology products and services to insurance brokerages and brokers including rating engines, broker interface software and broker management systems;
5. According to its website, "*Applied' mission to power the global business of insurance through innovative, cloud-based software is our purpose and keeps us focused on why we do what we do*", Applicant communication **Exhibit P-3**;
6. Applied Systems engages in activity that substantially lessens or prevents competition in the insurance industry in Canada and, as such, violates, notably, the abuse of dominance provision provided for in the *Competition Act*, as well its legal obligations under the *Civil Code of Quebec* (including article 6, 7 and 1457);
7. By engaging in this anticompetitive conduct and stifling technology, Applied Systems have caused the Canadian public to pay an artificially inflated price for

their insurance products;

8. Consequently, the Applicant wishes to institute a class action on behalf of the following class of which he is a member, namely:

Class:

All persons, entities, partnerships or organizations resident in Canada who purchased insurance and were impacted by Applied Systems' anticompetitive conduct.

(hereinafter referred to as the "**Class**")

II. THE DEFENDANTS

9. According to the Quebec business registry, the Defendants engage in "*Technologie et services professionnels pour l'industrie de l'assurance*", Applicant communicating **Exhibit P-4**;
10. According to its website (<https://www1.appliedsystems.com/en-ca/contact-us/>), Defendant Applied Systems Canada Inc. has its headquarters at "4388 R. Saint-Denis, #200 Montréal, QC H2J 2L1", which gives the Court jurisdiction to authorize a national class pursuant to article 3148 CCQ, Applicant communicating **Exhibit P-5**;
11. Given the close ties between the Defendants, they are solidarily liable for the acts and omissions of the other;
12. During the Class Period, the Defendants, either directly or through a wholly-owned subsidiary, agent or affiliate, participated in the anticompetitive conduct throughout Canada, including within the province of Quebec;

III. CONDITIONS REQUIRED TO AUTHORIZE THIS CLASS ACTION (S. 575 CCP):

A) THE FACTS ALLEGED APPEAR TO JUSTIFY THE CONCLUSIONS SOUGHT

13. The Applicant is a consumer within the meaning of the Civil Code of Quebec;
14. Applicant is member of the Class on behalf of which he wishes to exercise a class action in light of the fact that during the Class Period he has purchased multiple insurance products which were impact by the Defendants' anticompetitive conduct;
15. Applicant communicates a copy of his Allstate insurance policy as **Exhibit P-6**;
16. The Defendants' anticompetitive conduct was kept a secret and their stifling of technology in the insurance industry was not known to Applicant at the time of his insurance policy purchases, nor could it have been known, even through the

exercise of reasonable diligence;

17. Due to the Defendants' anticompetitive and illegal activities, the Applicant was deprived of the benefit of a competitive market and therefore paid a higher price for the insurance products he has purchased over the years;
18. Consequently, the Applicant suffered damages caused directly by the intentional fault of Defendants;
19. The damages suffered by Applicant are equal to the difference between the artificially inflated price that he paid for his insurance products and the price that he should have paid in a competitive market system;
20. The Defendants' violations are intentional, calculated, malicious and vexatious;
21. In these circumstances, the Applicant's claim for damages and punitive damages are justified;

B) THE CLAIMS OF THE MEMBERS OF THE CLASS RAISE IDENTICAL, SIMILAR OR RELATED ISSUES OF LAW OR FACT:

22. All Class members, regardless of the specific insurance products they purchased (either directly or indirectly), have a common interest both in proving the commission of unlawful activities (the anticompetitive conduct of the Defendants) and in maximizing the aggregate of the amounts overpaid caused by the Defendants;
23. In this case, the legal and factual backgrounds at issue are common to all the members of the Class, namely whether the Defendants unlawfully engaged in anticompetitive conduct and whether the Defendants stifled technology in the insurance field that affected Canadians;
24. The claims of every member of the Class are founded on very similar facts to the Applicant's claims;
25. Every Class member purchased insurance impacted by the Defendants anticompetitive conduct during the Class period;
26. By reason of Defendants' unlawful conduct, Applicant and members of the Class have suffered damages, which they may collectively and solidarily claim against the Defendants;
27. Each Class member has suffered damages equivalent to the difference between the artificially inflated price paid for their insurance products and the price that should have been paid in a competitive market system;
28. The damages suffered by the Class members are directly attributable to the Defendants' anticompetitive and illegal activities and with respect to which each

Class member is justified in claiming damages;

29. Individual questions, if any, pale by comparison to the numerous common questions that are significant to the outcome of the present Application;
30. **The recourses of the Class members raise identical, similar or related questions of fact or law, namely:**
 - a) Did the Defendants engage in anticompetitive conduct contrary to the Competition Act and the Civil Code of Quebec?
 - b) Has the effect of this anticompetitive conduct been an increase in the price paid in Canada for the purchase of insurance and, if so, does the increase constitute a damage for each Class member?
 - c) Did the Defendants act in bad faith?
 - d) What is the total amount of damages suffered by all Class members?
 - e) Are Class members entitled to punitive damages?
 - f) Is the Defendants' solidary liability triggered with respect to the following costs incurred or to be incurred on behalf of Class members in present matter:
 - the costs of investigation;
 - the extrajudicial fees of counsel for the Applicant and Class members; and
 - the extrajudicial disbursements by counsel for the Applicant and Class members?

C) THE COMPOSITION OF THE CLASS

31. The composition of the Class makes it difficult or impracticable to apply the rules for mandates to take part in judicial proceedings on behalf of others or for consolidation of proceedings;
32. Millions of Canadians have purchased insurance policies during the Class Period;
33. The number of persons included in the Class is likely in the tens of millions;
34. The names and addresses of all persons included in the Class are not known to the Applicant, however, some may be in the possession of the Defendants;
35. Class members are very numerous and are dispersed across Canada and elsewhere;

36. These facts demonstrate that it would be impractical, if not impossible, to contact each and every Class member to obtain mandates and to join them in one action;
37. In these circumstances, a class action is the only appropriate procedure for all of the members of the Class to effectively pursue their respective rights and have access to justice without overburdening the court system;

D) THE REPRESENTATIVE PLAINTIFF

38. The Applicant requests that he be appointed the status of representative plaintiff for the following main reasons:
 - a) he is a member of the Class and has a personal interest in seeking the conclusions that she proposes herein;
 - b) he is competent, in that he has the potential to be the mandatary of the action if it had proceeded under article 91 of the *Code of Civil Procedure*;
 - c) his interests are not antagonistic to those of other Class members;
39. Additionally, the Applicant respectfully adds that:
 - a) he has the time, energy, will and determination to assume all the responsibilities incumbent upon him in order to diligently carry out the action;
 - b) he mandated his attorneys to file the present application for the sole purpose of having his rights, as well as the rights of other Class members, recognized and protected so that they can be compensated;
 - c) he cooperates and will continue to fully cooperate with his attorneys, who have experience in consumer protection-related class actions;
 - d) he understands the nature of the action;
40. As for identifying other Class members, the Applicant draws certain inferences from the situation and realizes that by all accounts, there is a very significant number of Class members that find themselves in an identical situation, and that it would not be useful to attempt to identify each of them given their sheer numbers;
41. For the above reasons, the Applicant respectfully submits that his interest and competence are such that the present class action could proceed fairly and in the best interest of Class members;

IV. DAMAGES

42. During the Class Period, it is safe to assume that the Defendants have generated

aggregate amounts in the tens of millions of dollars (at least), while intentionally violating competition laws in Canada;

43. The Defendants' misconduct is reprehensible and to the detriment of unsuspecting Class members;
44. The Defendants must be held accountable for the breach of obligations imposed on them by legislation in Canada and Quebec, including:
 - a) The *Competition Act*; and
 - b) The *Civil Code of Quebec*, notably articles 6, 7, and 1457; and
45. In light of the foregoing, the following damages may be claimed against the Defendants:
 - a) compensatory damages, in an amount to be determined, on account of the aggregate of the damages suffered; and
 - b) punitive damages in an amount to be determined on the merits.

V. NATURE OF THE ACTION AND CONCLUSIONS SOUGHT

46. The action that the Applicant wishes to institute on behalf of the members of the Class is an action in damages and for a declaratory judgment of extracontractual civil liability;
47. The conclusions that the Applicant wishes to introduce by way of an originating application are:

GRANT the Representative Plaintiff's action against Defendants on behalf of all the Class members;

DECLARE the Defendants solidarily liable for the damages suffered by the Representative Plaintiff and each of the Class members;

CONDEMN the Defendants, solidarily, to pay the Representative Plaintiff and the Class members compensatory damages in an amount to be determined on the merits, and **ORDER** collective recovery of these sums;

CONDEMN the Defendants, solidarily, to pay the Representative Plaintiff and the Class members an amount to be determined on account of punitive damages, and **ORDER** collective recovery of these sums;

CONDEMN the Defendants, solidarily, to pay the costs incurred for any investigation necessary to establish their liability in the present proceeding, including the extrajudicial class counsel fees and extrajudicial disbursements, including expert fees, and **ORDER** collective recovery of these sums;

CONDEMN the Defendants, solidarily, to pay interest and the additional indemnity on the above sums according to law from the date of service of the *Application to Authorize the Bringing of a Class Action*;

ORDER the Defendants, solidarily, to deposit in the office of this Court the totality of the sums which forms part of the collective recovery, with interest and costs;

ORDER that the claims of individual Class members be the object of collective liquidation if the proof permits and alternately, by individual liquidation;

CONDEMN the Defendants to bear the costs of the present action including the cost of notices, the cost of management of claims and the costs of experts, if any, including the costs of experts required to establish the amount of the collective recovery orders;

RENDER any other order that this Honourable Court shall determine;

48. The interests of justice favour that this Application be granted in accordance with its conclusions;

VI. JURISDICTION AND NATIONAL CLASS

49. The Applicant requests that this class action be exercised before the Superior Court of the province of Quebec, in the district of Montreal, for the following reasons:
- a) The Defendants admit to having their headquarters in the city and district of Montreal (Exhibit P-5);
 - b) There exists a real and substantial connection between the province of Quebec and the damages suffered by Applicant and Class members; and
 - c) A great number of the Class members, including the Applicant, reside in the district of Montreal, where the damages were suffered.

FOR THESE REASONS, MAY IT PLEASE THE COURT:

1. **GRANT** the present application;
2. **AUTHORIZE** the bringing of a class action in the form of an originating application in damages and declaratory judgment;
3. **APPOINT** the Applicant the status of representative plaintiff of the persons included in the Class herein described as:

Class:

All persons, entities, partnerships or organizations resident in Canada who purchased insurance and were impacted by

Applied Systems' anticompetitive conduct.

(hereinafter referred to as the "**Class**")

4. **DECLARE** the nature of the action to be one of extracontractual civil liability;
5. **IDENTIFY** the principle questions of fact and law to be treated collectively as the following:
 - a) Did the Defendants engage in anticompetitive conduct contrary to the Competition Act and the Civil Code of Quebec?
 - b) Has the effect of this anticompetitive conduct been an increase in the price paid in Canada for the purchase of insurance and, if so, does the increase constitute a damage for each Class member?
 - c) Did the Defendants act in bad faith?
 - d) What is the total amount of damages suffered by all Class members?
 - e) Are Class members entitled to punitive damages?
 - f) Is the Defendants' solidary liability triggered with respect to the following costs incurred or to be incurred on behalf of Class members in present matter:
 - the costs of investigation;
 - the extrajudicial fees of counsel for the Applicant and Class members; and
 - the extrajudicial disbursements by counsel for the Applicant and Class members?
6. **IDENTIFY** the conclusions sought by the class action to be instituted as being the following:

GRANT the Representative Plaintiff's action against Defendants on behalf of all the Class members;

DECLARE the Defendants solidarily liable for the damages suffered by the Representative Plaintiff and each of the Class members;

CONDEMN the Defendants, solidarily, to pay the Representative Plaintiff and the Class members compensatory damages in an amount to be determined on the merits, and **ORDER** collective recovery of these sums;

CONDEMN the Defendants, solidarily, to pay the Representative Plaintiff and the Class members an amount to be determined on account of

punitive damages, and **ORDER** collective recovery of these sums;

CONDEMN the Defendants, solidarily, to pay the costs incurred for any investigation necessary to establish their liability in the present proceeding, including the extrajudicial class counsel fees and extrajudicial disbursements, including expert fees, and **ORDER** collective recovery of these sums;

CONDEMN the Defendants, solidarily, to pay interest and the additional indemnity on the above sums according to law from the date of service of the *Application to Authorize the Bringing of a Class Action*;

ORDER the Defendants, solidarily, to deposit in the office of this Court the totality of the sums which forms part of the collective recovery, with interest and costs;

ORDER that the claims of individual Class members be the object of collective liquidation if the proof permits and alternately, by individual liquidation;

CONDEMN the Defendants to bear the costs of the present action including the cost of notices, the cost of management of claims and the costs of experts, if any, including the costs of experts required to establish the amount of the collective recovery orders;

RENDER any other order that this Honourable Court shall determine;

7. **ORDER** the publication of a notice to the class members in accordance with article 579 C.C.P. pursuant to a further order of the Court, and **ORDER** the Defendants to pay for said publication costs;
8. **FIX** the delay of exclusion at thirty (30) days from the date of the publication of the notice to the members, date upon which the members of the Class that have not exercised their means of exclusion will be bound by any judgment to be rendered herein;
9. **DECLARE** that all members of the Class that have not requested their exclusion, be bound by any judgment to be rendered on the class action to be instituted in the manner provided for by the law;
10. **RENDER** any other order that this Honourable Court shall determine;
11. **THE WHOLE** with costs including publication fees.

Montreal, November 17, 2023

Montreal, November 17, 2023

(s) Renno Vathilakis Inc.

RENNO VATHILAKIS INC.

Mtre Michael E. Vathilakis
Attorney for the Applicant
145 St. Pierre Street, Suite 201
Montréal, Québec, H2Y 2L6
Telephone: (514) 937-1221
Fax: (514) 221-3334
Email: mvathilakis@renvath.com

(s) LPC Avocat Inc.

LPC AVOCAT INC.

Mtre Joey Zukran
Attorney for the Applicant
276 Saint-Jacques Street, Suite 801
Montréal, Québec, H2Y 1N3
Telephone: (514) 379-1572
Telecopier: (514) 221-4441
Email: jzukran@lpclex.com

SUMMONS
(ARTICLES 145 AND FOLLOWING C.C.P)

Filing of a judicial application

Take notice that the Applicant has filed this Application for Authorization to Institute a Class Action and to Appoint the Status of Representative Plaintiff in the office of the Superior Court in the judicial district of Montreal.

Defendant's answer

You must answer the application in writing, personally or through a lawyer, at the courthouse of Montreal situated at 1 Rue Notre-Dame E, Montréal, Quebec, H2Y 1B6, within 15 days of service of the Application or, if you have no domicile, residence or establishment in Québec, within 30 days. The answer must be notified to the Applicant's lawyer or, if the Applicant is not represented, to the Applicant.

Failure to answer

If you fail to answer within the time limit of 15 or 30 days, as applicable, a default judgement may be rendered against you without further notice and you may, according to the circumstances, be required to pay the legal costs.

Content of answer

In your answer, you must state your intention to:

- negotiate a settlement;
- propose mediation to resolve the dispute;
- defend the application and, in the cases required by the Code, cooperate with the Applicant in preparing the case protocol that is to govern the conduct of the proceeding. The protocol must be filed with the court office in the district specified above within 45 days after service of the summons or, in family matters or if you have no domicile, residence or establishment in Québec, within 3 months after service;
- propose a settlement conference.

The answer to the summons must include your contact information and, if you are represented by a lawyer, the lawyer's name and contact information.

Change of judicial district

You may ask the court to refer the originating Application to the district of your domicile or residence, or of your elected domicile or the district designated by an agreement with the plaintiff.

If the application pertains to an employment contract, consumer contract or insurance

contract, or to the exercise of a hypothecary right on an immovable serving as your main residence, and if you are the employee, consumer, insured person, beneficiary of the insurance contract or hypothecary debtor, you may ask for a referral to the district of your domicile or residence or the district where the immovable is situated or the loss occurred. The request must be filed with the special clerk of the district of territorial jurisdiction after it has been notified to the other parties and to the office of the court already seized of the originating application.

Transfer of application to Small Claims Division

If you qualify to act as a plaintiff under the rules governing the recovery of small claims, you may also contact the clerk of the court to request that the application be processed according to those rules. If you make this request, the plaintiff's legal costs will not exceed those prescribed for the recovery of small claims.

Calling to a case management conference

Within 20 days after the case protocol mentioned above is filed, the court may call you to a case management conference to ensure the orderly progress of the proceeding. Failing this, the protocol is presumed to be accepted.

Exhibits supporting the application

In support of the Application to Authorize the Bringing of a Class Action and to Appoint the Status of Representative Plaintiff, the Applicant intends to use the following exhibits:

- Exhibit P-1:** Order rendered by the Federal Court of Canada on November 14, 2023;
- Exhibit P-2:** Press release issued by the Competition Bureau on November 16, 2023 titled "*Competition Bureau obtains court order to advance an investigation of Applied Systems*";
- Exhibit P-3:** Extract of Applied Systems' website;
- Exhibit P-4:** Extract of the Quebec business registry for Applied Systems Canada Inc.;
- Exhibit P-5:** Extract of the Defendant's website: www1.appliedsystems.com/en-ca/contact-us/;
- Exhibit P-6:** Copy of Applicant's All-State insurance policy.

These exhibits are available on request.

Notice of presentation of an application

If the application is an application in the course of a proceeding or an application under Book III, V, excepting an application in family matters mentioned in article 409, or VI of the Code, the establishment of a case protocol is not required; however, the application must be accompanied by a notice stating the date and time it is to be presented.

Montreal, November 17, 2023

Montreal, November 17, 2023

(s) Renno Vathilakis Inc.

RENNO VATHILAKIS INC.

Mtre Michael E. Vathilakis
Attorney for the Applicant
145 St. Pierre Street, Suite 201
Montréal, Québec, H2Y 2L6
Telephone: (514) 937-1221
Fax: (514) 221-3334
Email: mvathilakis@renvath.com

(s) LPC Avocat Inc.

LPC AVOCAT INC.

Mtre Joey Zukran
Attorney for the Applicant
276 Saint-Jacques Street, Suite 801
Montréal, Québec, H2Y 1N3
Telephone: (514) 379-1572
Telecopier: (514) 221-4441
Email: jzukran@lpclex.com

NOTICE OF PRESENTATION
(articles 146 and 574 al. 2 CCP)

TO: APPLIED SYSTEMS, INC.
200 Applied Parkway
University Park, Illinois, 60484
U.S.A.

APPLIED SYSTEMS CANADA INC.
26E-1501 McGill College Avenue
Montreal, Quebec, H3A 3M8

TAKE NOTICE that Applicant's *Application to Authorize the Bringing of a Class Action* will be presented before the Superior Court at **1 Rue Notre-Dame E, Montréal, Quebec, H2Y 1B6**, on the date set by the coordinator of the Class Action chamber.

GOVERN YOURSELVES ACCORDINGLY.

Montreal, November 17, 2023

Montreal, November 17, 2023

(s) Renno Vathilakis Inc.

RENNO VATHILAKIS INC.

Mtre Michael E. Vathilakis
Attorney for the Applicant
145 St. Pierre Street, Suite 201
Montréal, Québec, H2Y 2L6
Telephone: (514) 937-1221
Fax: (514) 221-3334
Email: mvathilakis@renvath.com

(s) LPC Avocat Inc.

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Mtre Joey Zukran
Attorney for the Applicant
276 Saint-Jacques Street, Suite 801
Montréal, Québec, H2Y 1N3
Telephone: (514) 379-1572
Telecopier: (514) 221-4441
Email: jzukran@lpclex.com