

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

D 500-06-000874-178

SUPERIOR COURT
(CLASS ACTIONS)

Patrick Ehouzou domiciled and residing at
43 Edward-Langton-Quirk, Gatineau,
J9H 0C3,

and

Carmen Hodonou domiciled and residing
at 43 Edward-Langton-Quirk, Gatineau,
J9H 0C3

Applicants

v.

**MANUFACTURERS LIFE
INSURANCE COMPANY**, an
incorporated entity, having its principal place
of business at 200 Bloor Street East,
Toronto, Ontario, M4W 1E5

and

MANULIFE FINANCIAL COMPANY,
an incorporated entity, having its principal
place of business at 200 Bloor Street East,
Toronto, Ontario, M4W 1E5

and

BENESURE CANADA INC., an
incorporated entity, having its principal place
of business at 110 Nashville Street, Suite 200,
Kleinburg, Ontario, L0J 1C0

and

BROKER SUPPORT CENTRE INC.,
an incorporate entity, having its principal
place of business at 110 Nashville Street,
Suite 201, Kleinburg, Ontario, L0J 1C0

and

CREDIT SECURITY INSURANCE AGENCY INC., an incorporated entity, legally constituted, having a place of business at 110 Nashville Street, Suite 200, Kleinburg, Ontario, L0J 1C0

and

TACAMOR HOLDINGS INC., an incorporated entity, legally constituted, having a place of business at 1 Augusta Place, P.O. Box 260, Placentia, Newfoundland and Labrador, A0B 2Y0

and

DAVIS + HENDERSON CORPORATION, an incorporated entity, legally constituted, having a place of business at 120 Bremner Boulevard, 30th Floor Toronto, Ontario, M5J 0A8

and

JOHN F. LORRIMAN, businessman, with a business address at 110 Nashville Street, Suite 200, Kleinburg, Ontario, L0J 1C0

and

MARK SMITH, businessman, with business address at 242 Royal Birch Bay NW, Calgary, Alberta, T3G 5X9

Respondents

**APPLICATION FOR AUTHORIZATION TO INSTITUTE A CLASS ACTION
AND TO OBTAIN THE STATUS OF REPRESENTATIVE**

(Sections 571 and following of the
Code of Civil Procedure, CQLR chapter C-25.01)

**TO ONE OF THE HONORABLE JUDGES OF THE SUPERIOR COURT, IN
THE DISTRICT OF MONTREAL, THE APPLICANT RESPECTFULLY
SUBMITS THE FOLLOWING:**

1. This Application is divided into sections and subsections as follows, without prejudice to the generality of the allegations contained herein and for the sole purpose of facilitating reading and comprehension:

INTRODUCTION	4
I. THE RESPONDENTS	4
A. IDENTIFICATION.....	4
B. RESPONDENTS’ JOINT UNDERTAKINGS.....	5
II. GENERAL LEGISLATIVE CONTEXT OF THE INSURANCE INDUSTRY.....	7
III. RESPONDENTS’ WRONGFUL AND UNLAWFUL CONDUCT	7
A. VIOLATION OF CONSUMERS’ PRIVACY	9
B. CONDUCTING THE BUSINESS OF INSURANCE WITHOUT HOLDING THE APPROPRIATE LICENSES	10
C. MISLEADING WAIVER PRACTICES	13
D. SAFETY CATCH PROCEDURE	14
E. EXCESSIVE FEE PRACTICES.....	16
F. FALSE REPRESENTATIONS.....	17
G. RESPONDENT LORRIMAN’S INVOLVEMENT	18
H. RESPONDENT SMITH’S INVOLVEMENT	19
IV. CAUSES OF ACTION	20
A. PRIVACY VIOLATIONS	20
B. FALSE REPRESENTATIONS	21
C. VIOLATION OF THE COMPETITION ACT.....	21
D. ILLEGAL CONTRACT, BREACH OF CONTRACT AND LOSS OF BARGAIN.....	22
E. UNJUST ENRICHMENT	22
F. GROSS NEGLIGENCE THAT AMOUNTS TO A CONSPIRACY OR CONSPIRACY LIKE BEHAVIOUR	23
G. MANULIFE AND BENESURE GROUP NEGLIGENCE AND FAILURE TO INFORM CLASS MEMBERS.....	23
H. DAVIS + HENDERSON’S NEGLIGENCE AND FAILURE TO INFORM CLASS MEMBERS	25
H. PREJUDICE	26
V. THE CLASS.....	27
VI. THE APPLICANT AND FACTS GIVING RISE TO AN INDIVIDUAL REMEDY FOR THE APPLICANT	28
VII. FACTS GIVING RISE TO AN INDIVIDUAL REMEDY FOR EACH OF THE CLASS MEMBERS.....	28
VIII. CONDITIONS FOR CLASS PROCEEDINGS	28
A. IDENTICAL, SIMILAR OR RELATED QUESTIONS OF LAW OR FACT	28
B. THE ALLEGED FACTS WARRANT THE CONCLUSIONS SOUGHT	30
C. THE CLASS’ COMPOSITION MAKES THE APPLICATION OF ARTICLES 91 OR 143 OF THE CODE OF CIVIL PROCEDURE DIFFICULT OR IMPRACTICAL	30
D. THE APPLICANTS ARE ABLE TO ENSURE ADEQUATE REPRESENTATION OF THE CLASS MEMBERS.....	31
IX. NATURE OF THE APPLICATION AND CONCLUSIONS SOUGHT	31

Introduction

2. The Applicants are seeking redress for themselves and the members of the class of persons defined hereunder (in Section V) inasmuch as they and the members of said class have suffered moral and financial injury as a result of the Respondents' predatory and faulty conduct;
3. The Respondents' faults revolve around the fact that they collectively undertook the business of insurance in Canada in ways that were illegal, predatory and deceitful as a result of their willful actions and/or omissions;
4. The Respondents' manner of undertaking the business of insurance was illegal inasmuch as they involved the intentional, repeated and reckless violation of hundreds of thousands, if not millions, of consumers' privacy, without any lawful justification and in such a manner that a reasonable person would consider highly offensive, distressing, humiliating and shocking;
5. The Respondents' manner of undertaking the business of insurance was further illegal because the business models and operations through which the Respondents undertook the business of insurance lacked the mandatory legal authorizations or licences, thereby resulting in (i) illegally marketed products, (ii) products that were unfit or unsafe for the market, or both;
6. The Respondents' manner of undertaking the business of insurance was deceitful because hundreds of thousands of consumers—including the APPLICANTS—were systematically encouraged to purchase products through the use of various forms of misleading and untruthful documentation;
7. The Respondents were further deceitful because thousands of consumers—including the APPLICANTS—were led to believe, through these various forms of misleading and sometimes untruthful documentation, that they had purchased a valid insurance product, when in fact this was not the case;
8. Because of the Respondents' manner of undertaking the business of insurance, hundreds of thousands of consumers—including the APPLICANTS—spent money on substandard products that did not meet mandatory regulatory requirements;
9. The Respondents' faults, and the damages they have caused, entitle the APPLICANTS and the members of the class of persons defined below to the payment of sums in compensation for said damages;

I. The Respondents

A. Identification

10. The Respondent Manufacturers Life Insurance Company is a corporation incorporated under the laws of Canada whose head office is 200 Bloor Street East, Toronto, Ontario, M4W 1E5, and who has a place of business at 2000 Mansfield Street, Suite 200, Montreal, Quebec, H3A 2Y8;

11. The Respondent Manulife Financial Company is a corporation incorporated under the laws of Canada whose head office is 200 Bloor Street East, Toronto, Ontario, M4W 1E5, and who has a place of business at 2000 Mansfield Street, Suite 200, Montreal, Quebec, H3A 2Y8;
12. The above two Respondents, Manufacturers Life Insurance Company and Manulife Financial Company, are hereafter collectively referred to as "**MANULIFE**";
13. The Respondent Credit Security Insurance Agency (hereafter "**CSIA**") is a corporation incorporated under the laws of Ontario, and has a registered office at 110 Nashville Street, Suite 200, Kleinburg, Ontario, L0J 1C0, and a correspondence address at 1 Place Ville-Marie, Suite 2500, Montreal, Quebec, H3B 1R1;
14. The Respondent Benesure Canada Inc. (hereafter "**BENESURE CANADA**") is a corporation incorporated under the laws of Canada, and has a registered office at 110 Nashville, Suite 200, Kleinburg, Ontario, L0J 1C0;
15. The Respondent Broker Support Center Inc. (hereafter "**BSC**") is a corporation incorporated under the laws of Ontario, and has a place of business at 110 Nashville Street, Suite 201, Kleinburg, Ontario, L0J 1C0;
16. The Respondent Tacamor Holdings Inc. (hereafter "**TACAMOR**") is a corporation incorporated under the laws of Newfoundland and Labrador, and has a registered office at 1 Augusta Place, P.O. Box 260, Placentia, Newfoundland and Labrador, A0B 2Y0;
17. The Respondent Davis + Henderson Corporation (hereafter "**DAVIS + HENDERSON**") is a corporation with its registered office at 120 Bremner Boulevard, 30th Floor Toronto, Ontario, M5J 0A8;
18. The Respondent John F. Lorrigan (hereafter "**LORRIGAN**") is a businessman residing in Ontario with a business address at 110 Nashville Street, Suite 200, Kleinburg, Ontario, L0J 1C0;
19. The Respondent, Mark Smith (hereafter "**SMITH**") is a businessman residing in Alberta with a business address at 242 Royal Birch Bay NW, Calgary, Alberta, T3G 5X9;

B. Respondents' Joint Undertakings

20. BENESURE CANADA, CSIA, BSC and TACAMOR are hereafter collectively referred to as "**BENESURE GROUP**";
21. At all material times, BENESURE GROUP and MANULIFE conducted business through an engagement or other written or unwritten profit sharing agreement, including agreements titled "MPP Terms and Conditions of Data Processing & Administrative Services" (hereafter "**ADMINISTRATIVE AGREEMENT**") and "Plan Management Agreement" (hereafter "**MANAGEMENT AGREEMENT**"), under the firm name or through the *firm* called Mortgage Protection Plan, also known in French as "*Régime protection hypothécaire*" (hereafter "**MPP-RPH**");

22. Notice is given in support of the present Application that Applicants intend to refer to The Administrative Agreement as exhibit **R-1** and Management Agreement, as exhibit **R-2**;
23. MPP-RPH served as a common front for BENESURE GROUP, as well as MANULIFE;
24. At all material times, MPP-RPH offered life insurance and disability insurance products under the two different brands;
25. The first *brand* under which MPP-RPH offered life insurance and disability insurance products was called “Mortgage Protection Plan,” or “*Régime protection hypothécaire*” in French, and these products are hereafter collectively referred to as the “**MPP-RPH PRODUCT**”;
26. The MPP-RPH PRODUCT is marketed and distributed via mortgage brokers;
27. The second *brand* under which MPP-RPH offered life insurance and disability insurance products was called “Credit Security Plan”, or “*Régime sécurité crédit*” in French, and these products are hereafter collectively referred to as the “**CSP-RSC PRODUCT**”;
28. The CSP-RSC PRODUCT is marketed and distributed via financial institutions in the mortgage business;
29. The MPP-RPH PRODUCT and the CSP-RSC PRODUCT are hereafter collectively referred to as the “**PRODUCTS**”;
30. In the alternative, at all material times the BENESURE GROUP and each of the individual entities constituting it were agents of MANULIFE and acted within the scope of the powers explicitly or implicitly granted to them by MANULIFE;
31. In the further alternative, at all material times the BENESURE GROUP and each of the individual entities constituting it were acting under the ostensible authority of MANULIFE and had the ostensible authority to take part in the marketing, selling and administration of the PRODUCTS;
32. At all material times, MANULIFE re-reinsured the PRODUCTS;
33. At all material times, BENESURE GROUP used services provided by DAVIS + HENDERSON to undertake the business of insurance and associated activities in Canada;
34. At all material times, DAVIS + HENDERSON was an agent for or a co-conspirator of MANULIFE and the BENESURE GROUP and acted under the authority explicitly or implicitly granted by MANULIFE, BENESURE GROUP, or both;
35. Alternatively, or cumulatively, at all material times DAVIS + HENDERSON acted under the ostensible authority of MANULIFE and the BENESURE GROUP and has ostensible authority to take part in the marketing, selling and administration of the PRODUCTS;
36. On or around October 24th, 2012, MANULIFE announced that it had agreed to purchase BENESURE CANADA, and the sale was completed in January 2013;

II. General Legislative Context of the Insurance Industry

37. The insurance industry is regulated by both federal and provincial legislation;
38. Provincial legislation stipulates that only persons duly authorized and holding appropriate licenses issued by provincial authorities may act as insurers;
39. The purpose of the licensing regime in Canada goes beyond technical requirements. The licensing process ensures that licensed entities meet certain standards of fair and equitable market conduct governed by the respective provincial legislative regime. The legislative regimes also protect the public by insuring that licensed entities meet their financial obligations such as maintaining adequate financial reserves. This reserving aspect is governed by the Office of the Superintendent of Financial Institutions Canada;
40. Anyone who acts as an insurer without holding a license, or anyone who represents that he holds a licence which he does not have, commits an offence under provincial law;
41. There are limited exceptions to the licence requirements stipulated by provincial law, but BENESURE GROUP and affiliate entities do not fall under such exceptions;
42. Provincial statutes also stipulate that persons acting as insurance representatives must hold a certificate or license from provincial authorities, and that persons acting or presenting themselves as insurance firms must be authorized to do so by provincial authorities;
43. Provincial statutes further stipulate general operational conditions that insurance firms must respect if they are to undertake the business of insurance in a province, such as holding sufficient liability insurance;
44. In general, insurance firms or companies are required by law to be financially sound, to treat policyholders in a fair manner, to maintain adequate reserves of funds, to have adequate investments, to follow sound business and management practices, to be adequately managed, and to be accountable to government regulators on a regular basis;
45. In addition, at the federal level, section 992 of the *Insurance Companies Act*, S.C. 1991, c. 47, requires that insurance companies maintain adequate capital, and adequate and appropriate forms of liquidity, while complying with regulations in relation to capital and liquidity;

III. Respondents' Wrongful and Unlawful Conduct

46. The Respondents engaged in six broad categories of wrongful and faulty conducts;
47. The first type of conduct relates to the intentional, repeated and reckless violation of hundreds of thousands, if not millions, of consumers' privacy, without any lawful justification and in such a way that a reasonable person would consider highly offensive, distressing, humiliating and shocking;

48. The second type of conduct relates to undertaking the business of insurance without holding the appropriate licenses;
49. The third, fourth and fifth types of wrongful conduct relate to a three-part scheme devised by MANULIFE and BENESURE GROUP in order to obtain revenue from consumers—members of the class defined below, including the APPLICANTS. These three techniques can be briefly described as follows:
 - a. For the MPP–RPH PRODUCT, MANULIFE and BENESURE GROUP used a misleading standard form document that was represented as being a document through which one could waive the purchase of the PRODUCTS. In fact, this document is worded in such a way as to make the waiver of purchase impossible (hereafter the “**MPP–RPH WAIVER**”). As a result, the class members were deceived into applying for the PRODUCTS (hereafter the “**MISLEADING WAIVER PRACTICES**”);
 - b. Consumers who did not sign the MPP–RPH WAIVER, or a similar waiver for the CSP–RSC PRODUCT, were subject to a program called “Safety Catch,” whereby BENESURE GROUP sent consumers a letter falsely stating that it had been written by the consumers’ mortgage broker (hereafter the “**SAFETY CATCH LETTER**”). The SAFETY CATCH LETTER strongly recommended the purchase of the PRODUCTS (hereafter the “**SAFETY CATCH PROCEDURE**”). The SAFETY CATCH PROCEDURE depended on MANULIFE and BENESURE GROUP obtaining personal and private information about the consumers with the assistance of DAVIS + HENDERSON, in violation of the consumers’ fundamental privacy rights and in contravention of, among others: The *Personal Information Protection and Electronic Documents Act*, SC 2000 chapter 5; and
 - c. If a consumer signed up for one of the PRODUCTS, the consumer was required to complete a health questionnaire designed to ensure that the vast majority of consumers would reply affirmatively to having a health condition that required an individual assessment. Those with mortgages above an undisclosed amount or who were over a certain age were also required to be assessed individually. The individual assessments, and the underwriting for the policies, were conducted by unlicensed TACAMOR employees, on behalf of BENESURE GROUP. Consumers who were individually assessed were switched to less valuable insurance policies that provided restrictive coverage at prices substantially higher than the price of similar policies on the market (hereafter the “**EXCESSIVE FEE PRACTICES**”);
50. The sixth type of wrongful conduct relates to actions and intentional omissions following a Settlement Agreement and Consent Order by the Financial Institutions Commission of British-Columbia dated February 28th, 2014 (hereafter the “**FIC ORDER**”), notice of which is given in support of the present Application as **Exhibit R-3**
51. The FIC ORDER details various illegal and predatory insurance business practices of the Respondents. The FIC ORDER also confirms that the personal and private information submitted by potentially millions of consumers as part of applications

for mortgage financing was compromised. The FIC ORDER triggers an obligation upon the Respondents to (i) inform consumers of the defect in the PRODUCTS (ii) to inform every individual with personal and private information in the tech platform owned by DAVIS + HENDERSON that their personal and private information has been compromised;

52. These six types of wrongful and faulty conduct were interrelated, but are detailed in the following separate subsections in order to facilitate reading and comprehension of this Application;

A. Violation of Consumers' Privacy

53. MANULIFE and BENESURE GROUP intentionally, repeatedly and recklessly violated the privacy of hundreds of thousands possibly millions of consumers without any lawful justification and in such a way that a reasonable person would consider highly offensive, distressing, humiliating and shocking;
54. DAVIS + HENDERSON knowingly enabled and assisted these privacy violations by providing MANULIFE and BENESURE GROUP with access, in consideration of financial payment, to a technical platform originally named Filogix, subsequently renamed Expert (hereafter "**FILOGIX**");
55. FILOGIX was operated and controlled by DAVIS + HENDERSON;
56. On account of the ubiquity of the FILOGIX platform, DAVIS + HENDERSON was and remains Canada's leading provider of information and transaction technologies for residential mortgage and real estate transactions;
57. More than 90% of mortgage brokers across Canada use the FILOGIX platform;
58. FILOGIX can be briefly described as follows:
 - a. FILOGIX is used by both mortgage brokers and mortgage lenders in Canada;
 - b. FILOGIX acts as an electronic intermediary, allowing mortgage brokers to match their clients' mortgage loan requests with lenders willing to offer such loans;
 - c. Mortgage brokers provide personal information details regarding their clients' mortgage loan application;
 - d. Subsequently, FILOGIX provides mortgage brokers with a list of lenders willing to provide a loan corresponding to the terms requested by the broker's client;
 - a. Once the borrower agrees to a mortgage loan with a specific lender, FILOGIX sends commitment documents to the mortgage broker, to be signed by the broker's client;
59. MANULIFE and BENESURE GROUP paid DAVIS + HENDERSON to facilitate the application process for the PRODUCTS;

60. MANULIFE and BENESURE GROUP also paid DAVIS + HENDERSON to access and use FILOGIX in order to obtain access to the information of all the applicants on the FILOGIX platform, information that included consumers' names, addresses, mortgage details, banking and other private financial and credit information of the most sensitive and personal nature (hereafter "**PERSONAL INFORMATION**");
61. FILOGIX processed and continues to process hundreds of thousands of mortgage applications per year, which means that FILOGIX constitutes an enormous store of PERSONAL INFORMATION, all of which was accessed at the whim of MANULIFE and BENESURE GROUP;
62. MANULIFE and BENESURE GROUP had access to the PERSONAL INFORMATION of all consumers that made a mortgage application via a mortgage broker using FILOGIX, irrespective of whether that they applied or not for the Products;
63. Consumers did not consent to MANULIFE and BENESURE GROUP accessing their PERSONAL INFORMATION via FILOGIX;
64. Consumers did not consent to the transfer of their PERSONAL INFORMATION to either MANULIFE or BENESURE GROUP;
65. After obtaining PERSONAL INFORMATION from DAVIS + HENDERSON via FILOGIX, MANULIFE and BENESURE GROUP sent letters to consumers who had not applied for insurance, as part of the SAFETY CATCH PROCEDURE described below;
66. In addition, MANULIFE and BENESURE GROUP were able to use consumers' PERSONAL INFORMATION to withdraw money from their bank accounts, without their consent, for services or products that consumers had never purchased;
67. Some consumers therefore had money withdrawn from their accounts without their consent and unlawfully as a result of the above described violations of their privacy;

B. Conducting the Business of Insurance Without Holding the Appropriate Licenses

68. In the general legislative context outlined in Section II above, it is clear that all individuals and entities undertaking the business of insurance in Canada—whether it be by selling, administering, underwriting or otherwise dealing in insurance—must be appropriately licensed;
69. The federal and provincial governments' regulation of the insurance business is designed to protect consumers by ensuring that qualified individuals and business entities provide proper advice, that they properly perform their duties, and that they have adequate reserves and/or are otherwise financially reliable;
70. At all material times and with the knowledge, consent and assistance of MANULIFE, BENESURE GROUP undertook the business of insurance as insurer despite the fact that none of the members of BENESURE GROUP nor their respective agents or respective employees were ever licensed to do so;

71. By marketing, selling and administering various PRODUCTS —most often through the MPP–RPIH entity and brand—BENESURE GROUP acted as an insurer, or at the very least represented itself as an insurer, despite it lacking the appropriate licenses;
72. In addition, with the knowledge and consent of MANULIFE, PRODUCTS were marketed, sold and managed as insurance products solely by the BENESURE GROUP as covenantor and insurer, despite the fact that neither BENESURE GROUP nor its agents or employees were ever licensed to do so;
73. Furthermore, with the knowledge, consent and assistance of MANULIFE, the BENESURE GROUP sold and managed the PRODUCTS and received premiums, despite the fact that neither BENESURE GROUP nor its agents or employees were ever licensed to do so;
74. According to the MANAGEMENT AGREEMENT, exhibit R-2, between MANULIFE and BENESURE GROUP, BENESURE GROUP pocketed all of the profits made on the sale of the PRODUCTS;
75. Consequently, MANULIFE and BENESURE GROUP circumvented insurance legislation and avoided the associated costs of complying with it, the whole in complete disregard for the fact that said legislation is enacted to protect consumers and the marketplace;
76. BENESURE GROUP did not have sufficient financial resources or capital reserves to continuously meet the financial obligations related to the PRODUCTS it sold and supplied;
77. BENESURE GROUP did not prepare or make available the financial statements required of an insurer that issues or undertakes to issue insurance contracts such as the PRODUCTS;
78. In parallel, MANULIFE and BENESURE GROUP issued to mortgage brokers, property and casualty error and omission insurance policies covering claims against them relating to the PRODUCTS and related activities (hereafter “**E&O BROKER POLICIES**”);
79. MANULIFE and BENESURE GROUP were not licensed or authorized to issue E&O BROKER POLICIES and did not keep reserve funds on their books for claims under these E&O BROKER POLICIES;
80. MANULIFE or BENESURE GROUP commingled funds obtained from PRODUCTS purchased by consumers to fund and subsidized the illegal E&O BROKER POLICIES, to the effect that consumers’ payments for the PRODUCTS subsidized illegal E&O BROKER POLICIES. This amounted to an illegal distribution scheme via the mortgage brokers in parallel with the illegal insurance scheme;
81. For added precision and without limiting the generality of the foregoing, at all relevant times and with the knowledge and consent of MANULIFE, BENESURE GROUP conducted and controlled all aspects of the evaluation, insurance, marketing, sale and administration of the PRODUCTS, as well as the adjustment and settlement of claims. This included but was not limited to:

- a. Developing the wording of the policies and certificates for the PRODUCTS;
- b. Receiving, retaining and investing insurance premiums, and determining the amount of provisions for risk;
- c. Establishing a network comprised of regional representatives, agents, financial institutions and mortgage brokers who sold the PRODUCTS;
- d. Paying commissions or other forms of remuneration to the members of BENESURE GROUP, as well as remunerating DAVIS + HENDERSON, among others, none of whom were or are authorized to sell or assist in the sale of the PRODUCTS;
- e. Assessing policies (i.e. risk assessment), administering policies, adjusting and settling claims, and generally conducting itself as if it were an insurance expert;
- f. Establishing and operating websites directly soliciting consumers to purchase the PRODUCTS and provide them with information and insurance advice;
- g. Establishing a system by which BENESURE GROUP paid DAVIS + HENDERSON for PERSONAL INFORMATION that was disclosed and used to impersonate mortgage brokers via communications advertising PRODUCTS, with the intention of inducing consumers to acquire PRODUCTS;
- h. Entering into insurance contracts with consumers and generally the practice of insurance;
- i. Holding premiums and paying the claims;
- j. Establishing and managing the T&O BROKER POLICIES;
- k. Pocketing all the profits;
- l. Taking money from the bank accounts of consumers without the requisite consent from the consumer;
- m. Arranging for re-insurance of the PRODUCTS;
- n. Entering into Errors and Omissions policies with mortgage brokers and indemnifying them for errors and omissions claims relating to disputes arising from an MPP-RPH PRODUCT

All of which are hereafter collectively referred to as “**BENESURE GROUP OPERATIONS**”;

82. In order to conduct BENESURE GROUP OPERATIONS, possession of a valid license is required, which the BENESURE GROUP did not have;
83. Furthermore, MANULIFE or BENESURE GROUP did not maintain adequate funds or reserves to meet the estimated liabilities associated with the PRODUCTS sold to consumers;

84. MANULIFE, BENESURE GROUP, DAVIS + HENDERSON, SMITH, and LORRIMAN all had agreements in place prior to January 2013 to ensure the continuation of BENESURE GROUP OPERATIONS and the misconduct described in this Application;
85. On a date unknown to the Applicant, BENESURE GROUP announced that BENESURE GROUP OPERATIONS were being conducted by CSLA, a licensed insurance agency, in order to give the impression that BENESURE GROUP was in possession of the appropriate licenses to undertake the business of insurance;
86. In fact, CSLA's licensing only covers the acts of an insurance *agent*, namely the administration and marketing of insurance, and not the other activities of the BENESURE GROUP OPERATIONS. In any event, CSLA did not perform any of the administrative marketing underwriting or other functions contemplated by the Defendants' unlawful insurance scheme. These functions were conducted by TACAMOR, BSC, BENESURE and their respective employees. CSLA was held out as a straw man to cover this up;
87. MANULIFE and BENESURE CANADA paid a commission to DAVIS + HENDERSON for each insurance policy application made as a result of obtaining PERSONAL INFORMATION obtained under the "SAFETY CATCH PROCEDURE" described below;
88. DAVIS + HENDERSON acted and conducted itself as if it was the insurance agent or broker, without ever holding the required licenses or respecting the applicable legal framework;

C. Misleading Waiver Practices

89. MANULIFE and BENESURE CANADA or, alternatively, BENESURE CANADA with the consent and assistance of MANULIFE, advised mortgage brokers offering the PRODUCTS to have consumers execute the MPP-RPII WAIVER;
90. A superficial reading of the MPP-RPII WAIVER gives the impression that it is a means of recording whether consumers apply for or waive the purchase of the PRODUCTS;
91. But in fact, the fine print in the MPP-RPII WAIVER stipulates that the consumer, by signing the MPP-RPII WAIVER, is applying for any insurance product offered by BENESURE CANADA that is not specifically waived by the consumer-applicant;
92. The MPP-RPII WAIVER states:

"I hereby apply for insurance (except coverages waived above) or such alternative coverage as may be available under Mortgage Protection Plan"
[emphasis added]

As appears from a copy of a MPP-RPII WAIVER, notice of which is given in support of the present Application as **Exhibit R-4**:

93. The alternate coverage available under the MPP-RPII is not described in the MPP-RPII WAIVER;

94. Consumers who waived life and disability insurance were sold a more restrictive “accidental” coverage as opposed to a “full” life coverage and were charged an excessive premium in comparison to similar insurance available on the market;

D. Safety Catch Procedure

95. MANULIFE and BENESURE GROUP directly solicited consumers by impersonating mortgage brokers as part of the SAFETY CATCH PROCEDURE;
96. In order to implement the SAFETY CATCH PROCEDURE, MANULIFE and BENESURE GROUP used the FILOGIX platform described above;
97. Aided by DAVIS + HENDERSON (who operated and controlled FILOGIX), MANULIFE and BENESURE GROUP obtained the PERSONAL INFORMATION of hundreds of thousands, potentially millions, of consumers, and sent letters to consumers who had not applied for insurance, letters that were in fact SAFETY CATCH LETTERS;
98. The SAFETY CATCH LETTERS sent to consumers were under *the mortgage broker’s name*, and were purportedly written and signed by that consumers’ mortgage brokers, but they were in fact written, signed and sent by MANULIFE and BENESURE GROUP, as appears from copies of SAFETY CATCH LETTERS, including copies of the MPP–RPH WAIVER forms that were enclosed with them, for which notice is given in support of the present Application as **Exhibit R-5** in bundle;
99. The SAFETY CATCH LETTER strongly recommended purchasing the PRODUCTS, as appears from Exhibit R-5;
100. In addition, the SAFETY CATCH LETTER contained misleading and false statements in order to make consumers believe that their PERSONAL INFORMATION was *protected* by their mortgage broker, as appears from Exhibit R-5;
101. However, in reality, consumers’ PERSONAL INFORMATION had already been provided to BENESURE GROUP by DAVIS + HENDERSON;
102. The template text of the SAFETY CATCH LETTER reads as follows:

*“From the office of
Name of mortgage broker*

Thank you for giving me the opportunity to arrange your mortgage for you. I am writing today to confirm the status of your mortgage protection.

As my client, you are entitled to apply for the Mortgage Protection Plan. My records indicate that you have not applied for this insurance, so your mortgage is not insured under the plan.

As a Mortgage Professional, I believe that every mortgage should be protected against the risk of death or disability. Whether you use our Mortgage Protection Plan option, or you arrange for protection through your own life insurance agent, or have some other means to cover your repayment obligations (such as investments or family assets you can count on)... it doesn’t matter

HOW you protect your mortgage, as long as you arrange some form of protection. Without it, you risk the loss of your family's home.

If you have not yet arranged alternative protection, I strongly recommend that you use the enclosed form to apply for Mortgage Protection Plan today, to get the protection you need as soon as possible. If you arrange alternative protection later, then you can cancel Mortgage Protection Plan when your alternative coverage is in place.

The details shown on the enclosed are based on the information contained in my records of your mortgage application. Please rest assured that to protect your privacy, this information will only be available to Mortgage Protection Plan and its insurer, The Manufacturers Life Insurance Company (Manulife Financial), if you apply for the plan.

If you have any questions about the insurance, please call Mortgage Protection Plan at number . Details about the Plan are also shown in the enclosed brochure.

To apply, simply return the enclosed form in the postage paid envelope or by fax to number by date . Or you may apply by phone at the number shown above.

Once again, I urge you to make sure your mortgage is protected in some way today.

Yours sincerely,

signature

*per/ name of mortgage broker
Brokerage license #: number
Independently owned and operated"*

[emphasis added]

As appears from Exhibit R-5;

103. It should be noted that the signatures on the SAFETY CATCH LETTERS were *identical*, despite the fact that they purportedly emanated from different mortgage brokers, as appears from Exhibit R-5;
104. By the time the SAFETY CATCH LETTER was sent to consumers, DAVIS + HENDERSON had already sold the consumers' PERSONAL INFORMATION to MANULIFE and BENESURE GROUP, in order to allow MANULIFE and BENESURE GROUP to know the consumers' identity, the details regarding their mortgage loans and other information necessary to prepare and send the SAFETY CATCH LETTERS to consumers;
105. MANULIFE, BENESURE GROUP and DAVIS + HENDERSON knew or ought to have known that they were prohibited from having that PERSONAL INFORMATION transferred to MANULIFE and BENESURE GROUP and contacting consumers based on that PERSONAL INFORMATION;

106. MANULIFE, BENESURE GROUP and DAVIS + HENDERSON misused consumers' PERSONAL INFORMATION, they usurped mortgage brokers' identities to circumvent numerous statutory provisions, and they knew or should have known that they were prohibited from engaging in such practices;
107. MANULIFE and BENESURE GROUP knew or ought to have known that a letter recommending the PRODUCTS emanating from consumers' own brokers would have much more weight with said consumers than would a letter from MANULIFE or BENESURE CANADA, and that consumers would rely on the recommendations contained in the SAFETY CATCH LETTER, whether or not these recommendations were sound and in their best interest;
108. The sale of consumers' PERSONAL INFORMATION by DAVIS + HENDERSON to MANULIFE and BENESURE GROUP was intentional, negligent, and unlawful;
109. Such sale of PERSONAL INFORMATION violated the privacy of the consumers without justification, without consumers' consent and for unlawful purposes;
110. DAVIS + HENDERSON acted in bad faith and wrongly profited from their position as operators of PILOGIX by collecting consumers' PERSONAL INFORMATION and selling it, without consumers' consent, to MANULIFE and BENESURE GROUP;
111. MANULIFE and BENESURE GROUP wrongly profited from unlawfully obtained PERSONAL INFORMATION by knowingly purchasing and using PERSONAL INFORMATION that had been obtained in wilful violation of consumers' privacy;
112. The SAFETY CATCH PROCEDURE was knowingly conceived and implemented in order to circumvent privacy legislation and create a "virtual insurance company", as appears from pages 52 and 53 of the document entitled "Employee Training: Benesure History" prepared by BENESURE CANADA, for which notice is given in support of the present Application as **Exhibit R-6**;

E. Excessive Fee Practices

113. Consumers who applied for the PRODUCTS via the MPP-RPI WAIVER had to answer a series standard questions regarding their health, written in the MPP-RPI WAIVER (hereafter "**HEALTH QUESTIONS**"), as appears from Exhibit R-1;
114. The MPP-RPI WAIVER states the following:

"I understand that if I provide incomplete or inaccurate information, no benefits will be paid for any reason [...]"

[...]

"I declare that I have read and understood the medical questions above and that the answers to those questions are my sole responsibility and are complete and true. I understand that I may be required to undergo a medical examination or tests?"

As appears from Exhibit R-4;

115. The HEALTH QUESTIONS are formulated in such general terms that the vast majority of the consumers had to answer at least one of them in the affirmative, as appears from Exhibit R-4;
116. When members of the class defined below answered all of the HEALTH QUESTIONS in the negative, they were given the type of insurance they had requested (hereafter “**ADMITTED CLASS MEMBERS**”);
117. When members of the class defined below answered one or more of the HEALTH QUESTIONS in the affirmative, were over a certain age or mortgage amounts exceeding a certain threshold, MANULIFE and BENESURE GROUP denied their applications and directed them into an individual appraisal and underwriting process (hereafter “**INDIVIDUALLY UNDERWRITTEN CLASS MEMBERS**”);
118. INDIVIDUALLY UNDERWRITTEN CLASS MEMBERS were referred to a call center managed by TACAMOR;
119. TACAMOR engaged in an unlicensed underwriting process using an automatic application review system known as “AURA”;
120. TACAMOR was not and is not authorized to administer or evaluate insurance contracts;
121. By conducting interviews concerning the medical history of the applicants, TACAMOR engaged in the administration and evaluation of insurance contracts without possessing the requisite licenses or authorizations;
122. Having received information from TACAMOR concerning the consumers’ medical history, BENESURE CANADA, with the approval, consent and assistance of MANULIFE, subsequently offered to the INDIVIDUALLY UNDERWRITTEN CLASS MEMBER a limited policy—such as a policy covering accidental death, or a policy with restrictions on claims arising from certain conditions—at prices that substantially exceeded the price INDIVIDUALLY UNDERWRITTEN APPLICANTS could have obtained for similar insurance products from other insurers;

F. False Representations

123. The Respondents made the following false representations, either express or implied, to consumers—members of the class defined below—and the Applicants:
 - a. That BENESURE GROUP, each of its constituting entities and their representatives were licensed, by the appropriate authorities, to (i) undertake the business of insurance, (ii) offer insurance brokerage services, (iii) enter into insurance contracts in order to market, sell and administer the PRODUCTS, and that their services are offered such that the consumers with whom they deal with are protected via the legislation and regulations respecting insurance companies and agents;
 - b. That the PRODUCTS were specifically recommended by the consumers’ own mortgage brokers through the SAFETY CATCH PROCEDURE;

- c. That the PRODUCTS and the underlying covenant to pay and contract of insurance were provided by MANULIFE; and
- d. That the PRODUCTS were offered at a reasonable price and preferable to term life insurance;

All of these representations are hereafter collectively referred to as the “**FALSE REPRESENTATIONS**”;

G. Respondent Lorriman’s Involvement

- 124. At all material times, LORRIMAN was the President, the principal shareholder—either personally or through a holding company he controlled—, the principal director or officer of BENESURE CANADA, and therefore the controlling mind and will of BENESURE CANADA;
- 125. BENESURE CANADA was, in turn, the entity directing the misconduct described above;
- 126. At all material times, LORRIMAN failed in his duty to abide by the rules of conduct which lay upon him as a result of usages and the law, as well as his position and circumstances;
- 127. LORRIMAN personally developed and directed the creation and operation of BENESURE CANADA or MPP–RPH, and played a central role in the creation, coordination and operation of BENESURE GROUP’s unlicensed insurance activities;
- 128. LORRIMAN personally developed and directed the FALSE REPRESENTATIONS and the means through which the FALSE REPRESENTATIONS were made;
- 129. LORRIMAN personally developed and directed the MISLEADING WAIVER PRACTICES, EXCESSIVE FEE PRACTICES and the SAFETY CATCH PROCEDURE;
- 130. LORRIMAN personally directed, authorized, permitted, and acquiesced to the practices, representations and deceptive acts described in this Application;
- 131. LORRIMAN intended to profit from or take advantage of the sums acquired as a result of the illegal activities described above;
- 132. In addition, during the month of January 2013, Manulife completed the purchase of Benesure Canada shares;
- 133. As the principal shareholder of BENESURE CANADA, LORRIMAN benefited from this transaction;
- 134. Moreover, directors and administrators must act with honesty and loyalty in the interest of the legal person;
- 135. A firm’s officers must act with honesty and loyalty in their dealings with their clients;
- 136. Directors and officers of insurers must act with honesty and fairness in the best interest of the insurer, and to this end, the director or officer must consider the interests of the insured, and avoid placing himself in a situation where his personal interest will conflict with his obligations;

137. Under provincial law, directors or officers who authorize, acquiesce or participate in breaches of provincial statutes may be liable to a penalty;
138. By engaging in the conduct described above, LORRIMAN disregarded his legal obligations in order to profit from the creation of a dominant market position for the PRODUCTS;

H. Respondent Smith's Involvement

139. At all material times, SMITH was the Sales Director of the brokers, Regional Vice-President or Senior Manager of BENESURE CANADA;
140. At all material times, Smith failed in his duty to abide by the rules of conduct which lay upon him as a result of usages and the law, as well as his position and circumstances;
141. SMITH led and managed the BENESURE GROUP OPERATIONS, and in this context, this included, namely but without limitation:
 - a. Managing the expansion and operations of an unauthorized insurance company;
 - b. Transmitting FALSE REPRESENTATIONS and managing or coordinating the means through which the FALSE REPRESENTATIONS were made;
 - c. Managing the MISLEADING WAIVER PRACTICES, EXCESSIVE FEE PRACTICES and the SAFETY CATCH PROCEDURE;
 - d. Directing, authorizing, permitting, and acquiescing to the wrongful conduct and FALSE REPRESENTATIONS described above;
142. As Sales Director of the brokers, Regional Vice-President or Senior Manager of BENESURE CANADA, as well as a Certified Insurance Agent in Alberta, SMITH intended to profit from or take advantage of the sums acquired as a result of the illegal activities described above;
143. At all relevant times, SMITH had agreements with BENESURE CANADA and/or MPP-RPII to develop, manage and expand BENESURE GROUP OPERATIONS in Alberta and across Canada;
144. At all relevant times, SMITH supported MPP-RPII and facilitated sales of the PRODUCTS by obtaining and retaining hundreds of licenses for hundreds of mortgage brokers in Alberta;
145. Moreover, directors and administrators must act with honesty and loyalty in the interest of the legal person;
146. A firm's officers must act with honesty and loyalty in their dealings with their clients;
147. Directors and officers of insurers must act with honesty and fairness in the best interest of the insurer, and to this end, the director or officer must consider the interests of the insured, and avoid placing himself in a situation where his personal interest will conflict with his obligations;

148. Under provincial law, directors or officers who authorize, acquiesce or participate in breaches of provincial statutes may be liable to a penalty;
149. By engaging in the conduct described herein, SMITH disregarded his legal obligations in order to profit from the creation of a dominant market position for the PRODUCTS;

IV. Causes of Action

A. Privacy Violations

150. The Respondents deliberately and without lawful justification breached consumers' privacy by unlawfully obtaining consumers' PERSONAL INFORMATION and using it to lure consumers—including the Applicants and members of the class defined below—into purchasing the PRODUCTS;
151. In doing so, the Respondents violated consumers' fundamental privacy rights, and committed faulty or tortious actions;
152. These faulty or tortious actions namely include:
 - a. DAVIS + HENDERSON either concealed or failed to reveal to consumers that their PERSONAL INFORMATION could be accessed by third parties after it had been entered into PHILOGIX;
 - b. DAVIS + HENDERSON willfully profited from the privacy violations that it enabled;
 - c. DAVIS + HENDERSON ignored the statutory and fiduciary obligations it had towards the consumers that used PHILOGIX;
 - d. MANULIFE and BENESURE GROUP knowingly accessed PERSONAL INFORMATION to which they had no right of access, and paid for said access in order to then use the information as part of deceitful schemes designed to profit them;
153. The Respondents are responsible for damages caused by these privacy violations;
154. Regardless of the fact that the privacy violations may, in some cases, not have affected consumers' economic interest, damages are still payable to consumers. Given the predatory and deliberate nature of the privacy breaches they committed, breaches that are made all the more serious given the sensitive financial nature of the underlying information;
155. The information that was illegally accessed by MANULIFE and BENESURE GROUP was also *used* by those persons committing the breach of privacy—MANULIFE and BENESURE GROUP—thereby making the breach of privacy even more egregious;
156. There is a significant risk that the sensitive information accessed was misused or that it could be misused;

157. By their actions, the Respondents committed the tort of intrusion upon seclusion, or failed to abide by the rules of conduct incumbent upon a reasonable person in the same circumstances;
158. These privacy violations are all the more egregious when placed in the context of the Respondents' other wrongful actions;

B. False Representations

159. The Defendants had a general duty to abide by the rules of conduct which lay upon them as a result of usages and the law, as well as their positions and circumstances, including fiduciary obligations as insurer and duties as custodian of the PERSONAL INFORMATION of the members of the class defined below;
160. Within this general duty was the duty to provide consumers with accurate information about the PRODUCTS;
161. Consumers were deliberately misled by the FALSE REPRESENTATIONS, the MISLEADING WAIVER PRACTICES and the SAFETY CATCH PROCEDURE;
162. Respondents knew or should have known that consumers would have been misled;
163. Respondents knew or should have known that by undertaking the business of insurance in the misleading ways described above, they were not only misleading consumers, but also wrongfully enriching themselves at consumers' expense;
164. In the alternative, with respect to the involvement of MANULIFE and DAVIS + HENDERSON: MANULIFE and DAVIS + HENDERSON are jointly and severally liable for the prejudice caused to consumers by the MISLEADING WAIVER PRACTICES, the SAFETY CATCH PROCEDURE, and the EXCESSIVE FEE PRACTICES, even if they did not directly partake in said wrongful conduct, because:
 - a. MANULIFE knew or ought to have known that BENESURE GROUP was undertaking the business of insurance with deliberate disregard for equitable and legal obligations, without the requisite licenses and financial means to back the PRODUCTS;
 - b. DAVIS + HENDERSON knew or ought to have known that BENESURE GROUP was engaged in misleading practices relating to the solicitation, offering, advertising and promotion of PRODUCTS to consumers, and that it was not authorized to undertake the business of insurance in Canada;

C. Violation of the Competition Act

165. The FALSE REPRESENTATIONS, MISLEADING WAIVER PRACTICES, EXCESSIVE FEE PRACTICES and SAFETY CATCH PROCEDURE were created for and directed towards the express purpose of advancing the commercial interests of MANULIFE, BENESURE GROUP, and DAVIS + HENDERSON;
166. By making or permitting the FALSE REPRESENTATIONS, MISLEADING WAIVER PRACTICES, EXCESSIVE FEE PRACTICES and SAFETY CATCH PROCEDURE, MANULIFE,

BENESURE GROUP and DAVIS + HENDERSON were in violation of section 52(1) of the *Competition Act*, RSC 1985, chapter C-34 (hereafter the “**CA**”);

167. In accordance with section 36 of the *CA*, the Respondents are required to pay damages resulting from a breach of section 52(1);

D. Illegal Contract, Breach of Contract and Loss of Bargain

168. At all relevant times, BENESURE GROUP and MPP-RPII were not permitted to undertake, execute or accept insurance contracts with consumers;
169. Thus, any contract resulting from the commercialization, administration and sale of PRODUCTS by MPP-RPII or BENESURE GROUP is null and void *ab initio*;
170. In the alternative, if the insurance contracts established for the PRODUCTS are not void: an explicit or implicit condition of the insurance contracts was that MANULIFE and MPP-RPII or BENESURE GROUP would provide legally authorized and regulated contracts, sold and administered by licensed persons and entities, whereas in reality, the insurance contracts were formed and administered by unlicensed and unregulated entities without appropriate monetary reserves and without other measures for consumer protection;
171. MANULIFE and MPP-RPII or BENESURE GROUP thus violated their contracts with their clients;
172. In addition, the actions of MANULIFE and MPP-RPII or BENESURE GROUP relating to the sale of the PRODUCTS resulted in a loss of bargain for the consumers who purchased the PRODUCTS;
173. Consumers who purchased the PRODUCTS purchased substandard or invalid insurance, yet remained under the impression that they had purchased proper insurance for several years;
174. Since the price of concluding an insurance contract tends to increase as a person gets older, said consumers lost the opportunity to conclude proper insurance contracts at better prices when they were younger and presumably healthier, along with the other advantages that follow when a person purchases insurance sooner rather than later;

E. Unjust Enrichment

175. Respondents were unjustly enriched by their clients through the reception of premiums and other gains attributable to the PRODUCTS (hereafter the “**ILLICIT GAINS**”).
176. Consumers who purchased the products suffered a corresponding impoverishment by paying premiums and other fees for the PRODUCTS;
177. There is no legal or judicial justification for the Respondents’ enrichment;
178. Consumers who purchased the PRODUCTS are entitled to compensation equal to the amount of the ILLICIT GAINS;

F. Gross Negligence that Amounts to a Conspiracy or Conspiracy like behaviour

179. The Defendants agreed to create and operate an unlawful and unlicensed virtual insurance company as described above and acted in concert to give effect hereto;
180. The Defendants knew or ought to have known that their action in implementing the agreement referred above was likely to cause damage to consumers;
181. The Defendants' wrongful conduct caused damages to hundreds of thousand, if not million, of consumers—including the Plaintiffs and members of the class defined below;
182. Said damages included the loss of funds used to pay for the PRODUCTS, said PRODUCTS being unreliable and unregulated insurance sold at excessive prices;

G. Manulife and Benesure Group Negligence and Failure to Inform Class Members

183. MANULIFE has general duties and fiduciary duties towards the consumers it interacted with, including a duty to act honestly, fairly and in good faith, either directly or via intermediaries such as BENESURE GROUP and DAVIS + HENDERSON;
184. This general obligation includes the obligation to take reasonable steps to investigate and control the PRODUCTS, as well as to monitor the conduct of BENESURE GROUP and DAVIS + HENDERSON or any other intermediary;
185. MANULIFE failed to respect these obligations;
186. MANULIFE has ongoing fiduciary duties towards all members of the class defined below;
187. British Columbia's Superintendent of Financial Institutions conducted an investigation of MANULIFE and BENESURE's business practices relative to MPP-RPII, in the course of which the Superintendent observed various contraventions of British Columbia's legislation respecting financial institutions as denoted from exhibit R-;
188. The contraventions contemplated by the FIC ORDER and admitted to by MANULIFE and BENESURE GROUP are sections 75, 91, 176 and 178 of the *Financial Institutions Act*, RSBC 1996, c 141, which read as follow:

1. La fonction de répartition $F(x)$ est définie par $F(x) = P(X \leq x)$.

2. La fonction de densité $f(x)$ est définie par $f(x) = F'(x)$.

3. La fonction de répartition $F(x)$ est définie par $F(x) = \int_{-\infty}^x f(t) dt$.

4. La fonction de répartition $F(x)$ est définie par $F(x) = \int_{-\infty}^x f(t) dt$.

5. La fonction de répartition $F(x)$ est définie par $F(x) = \int_{-\infty}^x f(t) dt$.

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14. La fonction de répartition $F(x)$ est définie par $F(x) = \int_{-\infty}^x f(t) dt$.

15. La fonction de répartition $F(x)$ est définie par $F(x) = \int_{-\infty}^x f(t) dt$.

16. La fonction de répartition $F(x)$ est définie par $F(x) = \int_{-\infty}^x f(t) dt$.

17. La fonction de répartition $F(x)$ est définie par $F(x) = \int_{-\infty}^x f(t) dt$.

18. La fonction de répartition $F(x)$ est définie par $F(x) = \int_{-\infty}^x f(t) dt$.

19.

20. La fonction de répartition $F(x)$ est définie par $F(x) = \int_{-\infty}^x f(t) dt$.

MANULIFE and BENESURE were well aware that the PRODUCTS and associated business practices were illegal, at least as of the date of FIC ORDER;
MANULIFE and BENESURE willfully and negligently created unnecessary risks for consumers, and continued the selling the PRODUCTS and associated business practices throughout Canada beyond the date of the FIC ORDER;
The PRODUCTS are cancellable at law under applicable provincial legislation and in accordance with the PRODUCTS' terms. Had the members of the class defined below been informed of these violations, they would have had the opportunity to cancel their PRODUCTS. MANULIFE and BENESURE knew or should have known this. MANULIFE and BENESURE did not inform members of the class below in order to keep the profits and revenues generated from their illegal, predatory and wrongful schemes;

[emphasis added]

189. MANULIFE and BENESURE did not change their MPP–RPII practices in the rest of Canada, nor did they inform consumers in the rest of Canada of the defect in the PRODUCTS and the illegality of the entire insurance scheme;
190. As of the date of FIC ORDER, MANULIFE and DAVIS + HENDERSON were fully aware of the extent and illegality of the breach of privacy on the FIDLOGIX platform.
191. As soon as MANULIFE and BENESURE became aware of the FIC ORDER, they had a fiduciary obligation to inform all consumers of the defect of the PRODUCTS. Furthermore, they had a duty to inform every individual in the FIDLOGIX platform that their PERSONAL INFORMATION was compromised;
192. MANULIFE and BENESURE failed to execute these duties and never notified the Class of the privacy breach and the fraudulent and illegal manner in which the Products were contracted;
193. MANULIFE and BENESURE were well aware that the PRODUCTS and associated business practices were illegal, at least as of the date of FIC ORDER;
194. MANULIFE and BENESURE willfully and negligently created unnecessary risks for consumers, and continued the selling the PRODUCTS and associated business practices throughout Canada beyond the date of the FIC ORDER;
195. The PRODUCTS are cancellable at law under applicable provincial legislation and in accordance with the PRODUCTS' terms. Had the members of the class defined below been informed of these violations, they would have had the opportunity to cancel their PRODUCTS. MANULIFE and BENESURE knew or should have known this. MANULIFE and BENESURE did not inform members of the class below in order to keep the profits and revenues generated from their illegal, predatory and wrongful schemes;

H. Davis + Henderson's Negligence and Failure to Inform Class Members

196. DAVIS + HENDERSON, with the FIDLOGIX platform, has a monopoly of the mortgage brokers' generated mortgage business in Canada;

197. DAVIS + HENDERSON is the gatekeeper and custodian of the PERSONAL INFORMATION of millions of individuals who seek and obtain mortgages via mortgage brokers;
198. As a repository of the PERSONAL INFORMATION of millions of individual, DAVIS + HENDERSON has obligations, duties and responsibilities to the consumer to protect that information. DAVIS + HENDERSON'S monopoly requires a higher standard to ensure that entities accessing the PERSONAL INFORMATION are licensed and have lawful justifications to do so giving the potential massive harm arising from unlawful accessing
199. DAVIS + HENDERSON failed to uphold these responsibilities and duties when it gave access to unlicensed BENESURE GROUP as insurance provider to the consumers without ensuring that it was a licensed insurer. Not only did they fail these minimum standards but DAVIS + HENDERSON placed BENESURE GROUP as the preferred provider and the default provider to mortgage brokers who did not express a preference for an insurance provider. DAVIS + HENDERSON provided unfettered access to the entire consumer database of FILOGIX to BENESURE GROUP;
200. As soon as DAVIS + HENDERSON became aware of the FIC ORDER, it had an obligation to inform all individual with PERSONAL INFORMATION in the FILOGIX platform that their PERSONAL INFORMATION was compromised;
201. DAVIS + HENDERSON acted in negligent manner and breach of its duties with respect to this entire situation when it:
 - a. Provided to BENESURE unfettered access to the entire consumer database of FILOGIX;
 - b. Made BENESURE the preferred provider and the default provider of insurance on FILOGIX;
 - c. Neglected to inform the brokers using FILOGIX of the nature and scope of the unlawful insurance scheme;
 - d. Neglected to inform consumers whose PERSONAL INFORMATION was incorporated into FILOGIX of the nature and scope of the unlawful insurance scheme;
 - e. Continued to provide MANULIFE and BENESURE GROUP with unfettered access to the PERSONAL INFORMATION contained in FILOGIX

H. Prejudice

202. The Applicants and members of the class defined below have suffered and continue to suffer prejudice. This prejudice includes:
 - a. Payment of premiums and other charges for the PRODUCTS;
 - b. Loss of value related to purchasing a duly regulated insurance product;
 - c. Loss of the value of possession of insurance for the future;

- d. Prejudice arising out of privacy violations committed wilfully and repeatedly;
 - e. Troubles, hassles or inconveniences associated with the purchase of the PRODUCTS;
203. In assessing damages, it is necessary to consider the totality of the Respondents' conduct, which includes:
- a. Wilfully and repeatedly violating consumers' privacy;
 - b. Disseminating misrepresentations in the context of the MISLEADING WAIVER PRACTICES;
 - c. Establishing and structuring the SAFETY CATCH PROCEDURE, which included the wilful and repeated violation of consumers' privacy;
 - d. Establishing and structuring a front that would act as insurance company without being licensed to do so;
 - e. Avoiding applicable insurance legislation and regulations;
 - f. Impersonating mortgage brokers;

All of which was unlawful and done intentionally;

204. The totality of the Respondents' conduct makes the Respondents liable for the payment of punitive damages;

V. The Class

205. The Applicant wishes to institute a class action against Respondents on behalf of all persons forming the following class:
- a. All individuals residing in Canada:
 - i. Whose PERSONAL INFORMATION was accessed by BENESURE GROUP and/or MANULIFE via FIBLOGIX; or
 - ii. Who have purchased the PRODUCTS; or
 - iii. Who have received the PRODUCTS WAIVER; or
 - iv. Who have received the SAFETY CATCH LETTER;
 - b. Excluded from this above-described class (hereafter the "**CLASS**") are the employees, officers and directors of the Respondents, or any entity affiliated with Respondents as well as their legal representatives, heirs, successors and assigns;

All persons included within the CLASS—which includes the APPLICANTS—are hereafter referred to as the "**CLASS MEMBERS**";

VI. The Applicant and Facts Giving Rise to an Individual Remedy for the Applicant

206. The Applicants have applied for a mortgage on or around July 2nd, 2014 through a mortgage broker;
207. The Applicants' mortgage application was processed through the FILOGIX platform;
208. After the application for mortgage was completed, the PRODUCTS were offered to the Applicants;
209. The Applicants' PERSONAL INFORMATION was accessed without legal justification by BENESURE GROUP and/or MANULIFE via FILOGIX;

VII. Facts Giving Rise to an Individual Remedy for Each of the Class Members

210. All of the CLASS MEMBERS are entitled to claim moral damages and punitive damages for the violation of their privacy;
211. Several hundreds of thousands, potentially millions of the CLASS MEMBERS received the PRODUCTS WAIVER or the SAFETY CATCH LETTER, or both;
212. Several thousands of the CLASS MEMBERS paid excessive fees for insurance purchased pursuant to the EXCESSIVE FEE PRACTICES;
213. Each CLASS MEMBER is entitled to request the loss of bargain, alternatively the nullity of contracts they entered into as a result of negligent and willful misrepresentations, as well as general damages;
214. Each CLASS MEMBER is entitled to claim damages for troubles and inconveniences;
215. CLASS MEMBERS who entered into a contract to purchase the PRODUCTS or had applied for a mortgage have had their privacy violated inasmuch as their PERSONAL INFORMATION was transmitted to or accessed by BENESURE GROUP or MANULIFE or both with the assistance of DAVIS + HENDERSON;

VIII. Conditions for Class Proceedings

216. As is explained in the following four subsections, this Application meets all the conditions for a class action to be authorized;

A. Identical, Similar or Related Questions of Law or Fact

217. This Application raises the following questions of fact and law that are identical, similar or related for each of the CLASS MEMBERS as well as for the Respondents collectively:
 - a. Regarding the breach of the CLASS MEMBERS' privacy;

- i. Did the Respondents access, communicate or transmit between each other CLASS MEMBERS' PERSONAL INFORMATION without the consent of CLASS MEMBERS?
 - ii. If so, did the Respondents violate CLASS MEMBERS' privacy rights?
 - b. Regarding the PRODUCTS' conformity to applicable laws and regulations:
 - i. Did the Respondents have the necessary licenses—or other legal authorizations—to undertake the business of insurance as described in this Application?
 - ii. Were the CLASS MEMBERS deceived into purchasing the PRODUCTS?
 - iii. If a contract exists between the parties, is the contract valid and applicable?
 - iv. After the FIC ORDER, did the Respondents have a duty to inform the CLASS MEMBERS of the defect in the Products and of the violation of privacy resulting from illegal access to consumers PERSONAL INFORMATION?
 - v. Did the Respondents have a duty to modify their business practices across Canada in manner that would respect the provincial and federal legislative framework, and did they fail in this duty?
 - c. Regarding the Respondents' false and misleading representations made to CLASS MEMBERS and consumers in general:
 - i. Did the Respondents have duty to completely and truthfully inform CLASS MEMBERS with respect to the offer, sale and marketing of the PRODUCTS?
 - ii. If yes, did the Respondents breach this duty when they undertook the business of insurance and engaged in the conduct described in this Application?
 - iii. Did the Respondents make false or misleading representations to CLASS MEMBERS?
 - d. Regarding the Respondents' unjust enrichment:
 - i. Did the Respondents unjustly enrich themselves via their actions or omissions, to the detriment of the CLASS MEMBERS?
 - ii. In the affirmative, to what extent did the Respondents unjustly enrich themselves?
 - e. Regarding the Respondents' liability:
 - i. Did the CLASS MEMBERS suffer any prejudice because of the acts and omissions of the Respondents?

- ii. What is the general nature and extent of the damages in relation to the prejudice suffered by the CLASS MEMBERS?
- iii. Are the Respondents liable to pay punitive damages to the CLASS MEMBERS, and if so, to what extent?
- iv. Are the Respondents liable:
 1. For reimbursing the CLASS MEMBERS for the sums the Respondents received from the CLASS MEMBERS in connection with the activities related to the sale of the PRODUCTS, by remitting the sums to the CLASS MEMBERS personally, the whole with interest at the legal rate?
 2. To pay the CLASS MEMBERS an amount to be determined by this honourable Court as damages for troubles and inconvenience, including loss of bargain, the whole with interest at the legal rate?
 3. To pay the CLASS MEMBERS an amount to be determined by this honourable Court as punitive damages, the whole with interest at the legal rate?

218. The questions listed above are questions common to all CLASS MEMBERS;

B. The Alleged Facts Warrant the Conclusions Sought

- 219. The facts alleged in the present Application establish the existence of faults on the part of the Respondents;
- 220. The CLASS MEMBERS suffered prejudice as a result of the Respondents' wrongful conduct;
- 221. The alleged facts give rise to liability on the part of the Respondents;
- 222. The conclusions sought include ordering the Respondents to pay damages to repair the prejudice suffered by the CLASS MEMBERS;
- 223. There is a causal link between the wrongful acts of Respondents and the prejudice suffered by the CLASS MEMBERS;

C. The Class' Composition Makes the Application of Articles 91 or 143 of the Code of Civil Procedure Difficult or Impractical

- 224. For the reasons that follow, it is difficult, impractical or even impossible to apply articles 91 or 143 of the *Code of Civil Procedure* in this case;
- 225. The number of CLASS MEMBERS is estimated to be several hundreds of thousand, potentially millions, of people;
- 226. The Applicant does not know the names or the co-ordinates of all the CLASS MEMBERS;

227. Given that the Respondents offer their services throughout Canada, the CLASS MEMBERS are widely dispersed geographically;
228. It is difficult and impractical, if not impossible, to trace all of the persons implicated in the present Application and to contact each of them in order to obtain mandates to take part judicial proceedings on their behalf or to consolidate proceedings;
229. Considering the complexity of the present Application and the relatively small individual damages compensation in relation to the costs of the legal action, it is reasonable to presume that very few CLASS MEMBERS would be willing to make an individual Application;
230. Consequently, if this honourable Court does not authorize the exercise of this class proceeding, the CLASS MEMBERS risk being denied access to justice and having their rights compromised, despite the Respondents' faults and misconduct;

D. The Applicants Are Able to Ensure Adequate Representation of the Class Members

231. The APPLICANTS are CLASS MEMBER, that is: he is part of the CLASS defined in the present Application;
232. The APPLICANTS are ready and available to provide the necessary time for the conduct of the class action, if authorized, and to that end the APPLICANT is willing and able to work with his attorneys;
233. The APPLICANTS intend to take the time required to follow the requisite legal procedures and carry out all the necessary steps in order to fulfil his mandate as representative of the CLASS;
234. The APPLICANTS have sufficient knowledge of the facts justifying the present APPLICATION;
235. The APPLICANTS are prepared to manage this Application in the interest of all CLASS MEMBERS, and are willing and prepared to represent all CLASS MEMBERS and to complete this Application for the benefit of all CLASS MEMBERS;
236. The APPLICANTS have the capacity and standing to adequately represent all CLASS MEMBERS;
237. The APPLICANTS have no interests that are in conflict with those of other CLASS MEMBERS;

IX. Nature of the Application and Conclusions Sought

238. The claim that the APPLICANTS wish to exercise for the benefit of all CLASS MEMBERS is an action for damages and indemnity for unjust enrichment against the Respondents;
239. The submissions sought by the APPLICANT will be:
 - a. **GRANT** the APPLICANTS' Application;

- b. **GRANT** the APPLICANTS' class action on behalf of all CLASS MEMBERS;
- c. **ORDER** Respondents to pay CLASS MEMBERS compensatory damages, in an amount to be determined by this honourable Court, including interest and additional indemnity;
- d. **ORDER** the Respondents to pay to CLASS MEMBERS punitive damages, in an amount to be determined by this honourable Court, as well as the additional indemnity;
- e. **ORDER** the processing of the individual claims of each CLASS MEMBER in accordance with articles 599 to 601 of the *Code of Civil Procedure*;
- f. **THE WHOLE** with interests beginning upon summons plus the additional indemnity pursuant to the *Civil Code of Quebec*;
- g. **THE WHOLE** with legal costs, including expert fees and all costs of publishing notices to members;

240. The APPLICANT suggests that this Application be brought before the Superior Court in the District of Montreal for the following reasons:

- a. A significant number of CLASS MEMBERS reside or work in the District of Montreal, given that the greater Montreal area is by far the most populated region in Quebec;
- b. Some of Respondents have establishments in the District of Montreal;
- c. The APPLICANTS' attorneys practice their profession in the District of Montreal;

241. The interest of justice favours the granting of this Application in accordance with its conclusions;

242. This Application is well founded in both fact and law.

FOR THESE REASONS, MAY IT PLEASE THE COURT TO:

GRANT this Application;

GRANT to the Applicant the status of representative of the persons belonging to the Class described as follows:

- a. All individuals residing in Canada:
 - i. Whose PERSONAL INFORMATION was accessed by BENESURE GROUP and/or MANULIFE via FILOGIX; or
 - ii. Who have purchased the PRODUCTS; or
 - iii. Who have received the MPP RPII WAIVER; or

- iv. Who have received the SAFETY CATCH LETTER;
- b. Excluded from this above-described class (hereafter the “CLASS”) are the employees, officers and directors of the Respondents, or any entity affiliated with Respondents as well as their legal representatives, heirs, successors and assigns;

IDENTIFY the main questions of fact and of law to be treated collectively as follows:

- a. Regarding the breach of the CLASS MEMBERS’ privacy:
 - i. Did the Respondents access, communicate or transmit between each other CLASS MEMBERS’ PERSONAL INFORMATION without the consent of CLASS MEMBERS?
 - ii. If so, did the Respondents violate CLASS MEMBERS’ privacy rights?
- b. Regarding the PRODUCTS’ conformity to applicable laws and regulations:
 - iii. Did the Respondents have the necessary licenses—or other legal authorizations—to undertake the business of insurance as described in this Application?
 - iv. Were the CLASS MEMBERS deceived into purchasing the PRODUCTS?
 - v. If a contract exists between the parties, is the contract valid and applicable?
 - vi. Did the Respondents have a duty to inform the CLASS MEMBERS of the result of the investigation conducted by British Columbia’s Superintendent of Financial Institutions and the resulting Settlement Agreement and Consent Order and Undertakings?
 - vii. Did the Respondents have a duty to modify their business practices across Canada following the Settlement Agreement and Consent Order and Undertakings, and did they fail in this duty?
- c. Regarding the Respondents’ false and misleading representations made to CLASS MEMBERS and consumers in general:
 - viii. Did the Respondents have duty to completely and truthfully inform CLASS MEMBERS with respect to the offer, sale and marketing of the PRODUCTS?
 - ix. If yes, did the Respondents breach this duty when they undertook the business of insurance and engaged in the conduct described in this Application?
 - x. Did the Respondents make false or misleading representations to CLASS MEMBERS?
- d. Regarding the Respondents’ unjust enrichment:

- xi. Did the Respondents unjustly enrich themselves via their actions or omissions, to the detriment of the CLASS MEMBERS?
 - xii. In the affirmative, to what extent did the Respondents unjustly enrich themselves?
- c. Regarding the Respondents' liability:
- xiii. Did the CLASS MEMBERS suffer any prejudice because of the acts and omissions of the Respondents?
 - xiv. What is the general nature and extent of the damages in relation to the prejudice suffered by the CLASS MEMBERS?
 - xv. Are the Respondents liable to pay punitive damages to the CLASS MEMBERS, and if so, to what extent?
 - xvi. Are the Respondents liable:
 1. For reimbursing the CLASS MEMBERS for the sums the Respondents received from the CLASS MEMBERS in connection with the activities related to the sale of the PRODUCTS, by remitting the sums to the CLASS MEMBERS personally, the whole with interest at the legal rate?
 2. To pay the CLASS MEMBERS an amount to be determined by this honourable Court as damages for troubles and inconvenience, including loss of bargain, the whole with interest at the legal rate?
 3. To pay the CLASS MEMBERS an amount to be determined by this honourable Court as punitive damages, the whole with interest at the legal rate?

IDENTIFY the conclusions sought by the class action to be instituted as being the following:

- a. **GRANT** the APPLICANT's Application;
- b. **GRANT** the APPLICANT's class action on behalf of all CLASS MEMBERS;
- c. **ORDER** Respondents to pay CLASS MEMBERS compensatory damages, in an amount to be determined by this honourable Court, including interest and additional indemnity;
- d. **ORDER** the Respondents to pay to CLASS MEMBERS punitive damages, in an amount to be determined by this honourable Court, as well as the additional indemnity;
- e. **ORDER** the processing of the individual claims of each CLASS MEMBER in accordance with articles 599 to 601 of the *Code of Civil Procedure*,

- f. **THE WHOLE** with interests beginning upon summons plus the additional indemnity pursuant to the *Civil Code of Quebec*;
- g. **THE WHOLE** with legal costs, including expert fees and all costs of publishing notices to members;

ORDER the publication of a notice to the Class Members pursuant to section 579 of the *Code of Civil Procedure* and **ORDER** the Respondents to pay the costs of such publication;

DECLARE that any Class Member who has not requested its exclusion from the Class within the prescribed period be bound by any judgment to be given on the class action to be exercised;

SET the exclusion period to 30 days from the date of publication of the notice to Class Members;

THE WHOLE with legal costs, including expert fees and all the publication expenses for notices to Class Members.

MONTREAL, this 11th day of July 2017



LEVESQUE JURISCONSULT INC.

Solicitors for the APPLICANTS

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Montreal (QC) H3B 4W5

clevesque@jurisconsult.ca

Telephone: 514-868-2090

Fax: 514-868-2099

NOTICE OF PRESENTATION

- To :
- X **MANUFACTURERS LIFE INSURANCE COMPANY**, an incorporated entity, having its principal place of business at 200 Bloor Street East, Toronto, Ontario, M4W 1H5

and
- X **MANULIFE FINANCIAL COMPANY**, an incorporated entity, having its principal place of business at 200 Bloor Street East, Toronto, Ontario, M4W 1H5

and
- X **BENESURE CANADA INC.**, an incorporated entity, having its principal place of business at 110 Nashville Street, Suite 200, Kleinburg, Ontario, L0J 1C0

and
- X **BROKER SUPPORT CENTRE INC.**, an incorporate entity, having its principal place of business at 110 Nashville Street, Suite 201, Kleinburg, Ontario, L0J 1C0

and
- X **CREDIT SECURITY INSURANCE AGENCY INC.**, an incorporated entity, legally constituted, having a place of business at 110 Nashville Street, Suite 200, Kleinburg, Ontario, L0J 1C0

and
- X **TACAMOR HOLDINGS INC.**, an incorporated entity, legally constituted, having a place of business at 1 Augusta Place, P.O. Box 260, Placentia, Newfoundland and Labrador, A0B 2Y0

and
- X **DAVIS + HENDERSON CORPORAION**, an incorporated entity, legally constituted, having a place of business at 120 Bremner Boulevard, 30th Floor
Toronto, Ontario, M5J 0A8

and

X **JOHN F. LORRIMAN**, businessman, with a business address at 110
Nashville Street, Suite 200, Kleinburg, Ontario, L0J 1C0

and

X **MARK SMITH**, businessman, with business address at 242, Royal Birch
Bay NW, Calgary, Alberta, T3G 5X9

Respondents

TAKE NOTICE that the **APPLICATION FOR AUTHORIZATION TO INSTITUTE A
CLASS ACTION AND TO OBTAIN THE STATUS OF REPRESENTATIVE** will be
presented for adjudication before one of the Honorable Judges of this Court, sitting in practice
division, for the district of MONTREAL, on **September 21st, 2017, in room 2.16, at 9:00 a.m.**, or
so soon thereafter as counsel may be heard.

DO GOVERN YOURSELVES ACCORDINGLY.

Montreal, July 11th, 2017


LEVESQUE JURISCONSULT INC.
Attorneys for Applicants

21/9

12 JUL. 2017

<p>N^c 500-06-000874-178</p>	<p>SUPERIOR COURT OF QUEBEC (Class Actions Division)</p> <p>PROVINCE OF QUEBEC DISTRICT OF MONTREAL</p>	<p>PATRICK EHOZOU domiciled and residing at 43 Edward-Langton-Quirk, Gatineau, J9H 0C3, et als.</p> <p><i>9-1009</i> Applicants <i>c.c.</i></p> <p>v.</p> <p>MANUFACTURERS LIFE INSURANCE COMPANY, an incorporated entity, having its principal place of business at 200 Bloor Street East, Toronto, Ontario, M4W 1E5, et als.</p>	<p>Respondents</p> <p>APPLICATION FOR AUTHORIZATION TO INSTITUTE A CLASS ACTION AND TO OBTAIN THE STATUS OF REPRESENTATIVE (Sections 571 and following of the <i>Code of Civil Procedure, CQLR chapter C-25.01</i>)</p>	<p><i>ORIGINAL</i></p>	<p>M^e CLAUDE LEVESQUE clevesque@jurisconsult.ca</p> <p>LEVESQUE JURISCONSULT INC. 1000 de la Gauchetière West, 24th floor Montréal (QC) H3B 4W5 Tel : 514-868-2090 Fax : 514-868-2099</p> <p>BL5648</p> <p>O/D : 20000-01</p>
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