SUPERIOR COURT

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

No: 500-06-000874-178

DATE: September 13, 2018

BY THE HONOURABLE CHANTAL TREMBLAY, J.S.C.

PATRICK EHOUZOU
and
CARMEN HODONOU
Applicants
v.
MANUFACTURERS LIFE INSURANCE COMPANY
and
MANULIFE FINANCIAL CORPORATION
and
BENESURE CANADA INC.
and
BROKER SUPPORT CENTRE INC.
and
CREDIT SECURITY INSURANCE AGENCY INC.
and
TOCAMOR HOLDINGS INC.
and
DAVIS + HENDERSON CORPORATION
and
JOHN F. LORRIMAN
and
MARK SMITH
Respondents

JUDGMENT ON LEAVE TO EXAMINE THE APPLICANTS, TO SUBMIT RELEVANT EVIDENCE AND FOR THE ISSUANCE OF A CONFIDENTIALITY AND SEALING ORDER

JT1698

[1] Applicants filed an *Application for Authorization to Institute a Class Action and to Obtain the Status of Representative* (**Authorization Application**). They wish to represent individuals residing in Canada who were approached in view of purchasing or have purchased life and disability insurance through mortgage creditor insurance products referred to as the Mortgage Protection Plan (**MPP**) and the Credit Security Plan (**CSP**) (collectively the "**Products**").

[2] They claim fraudulent and illegal insurance activities regarding the sale of these Products. They also claim breaches of privacy and breaches of fiduciary and extra-contractual duties following an order issued by a provincial financial regulatory agency.

[3] Manufacturers Life Insurance Company, Manulife Financial Company, Benesure Canada Inc., Broker Support Centre Inc. and Credit Security Insurance Agency Inc. (**Manulife Respondents**) seek leave to examine Applicants. They also request the issuance of a confidentiality and sealing order regarding exhibits R-2 and R-6 referred to in support of the Authorization Application[1].

[4] Applicants argue that the scope of the request to examine the proposed class representatives brought by Manulife Respondents is too broad and that the exhibits subject to the confidentiality and sealing order do not contain any commercially sensitive information and that such order does not uphold a broader public interest.

[5] John F. Lorriman and Mark Smith (**L&S Respondents**) also seek leave to examine the Applicants. This request is not contested.

[6] Finally, all Respondents, except for Tacamor Holdings Inc., seek leave to adduce evidence in view of the authorization hearing. These applications are not contested, except for the amended one filed by Manulife Respondents.

[7] The parties submitted detailed written arguments in support of their respective position regarding these preliminary issues. At the Court's suggestion, the parties all agreed not to hold a hearing on such issues given their detailed written submissions.

1. PROCEDURAL CONTEXT

[8] On February 20, 2013, a lawsuit under the *Class Proceedings Act*, RSBC 1996, c. 50 was filed before the Supreme Court of British Columbia concerning these Products and against the same Respondents as in the present proceedings, save for Mark Smith (**BC Claim**).

[9] On February 27, 2013, a lawsuit under the *Class Proceedings Act*, 1992 SO 1992, c. 6 was filed before the Ontario Superior Court of Justice concerning these Products and against the same Respondents as in the present proceedings, save for Mark Smith (**First Ontario Claim**).

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[1] They withdrew their request for a sealing order regarding Exhibit R-1.

[10] On September 9, 2013, a lawsuit was filed before the Superior Court of Quebec concerning these Products and against the same Respondents as in the present proceeding (**First Quebec Claim**). This lawsuit was discontinued on September 22, 2015.

[11] On March 27, 2015, a lawsuit was instituted under the *Class Actions Act*, SS 2001, c. C-12.01 before the Court of Queen's Bench for Saskatchewan concerning these Products and against the same Respondents as in the present proceeding, except for Mark Smith (**Saskatchewan Claim**).

[12] On March 30, 2016, the Application for certification as a class action in the BC Claim was denied by the Supreme Court of British Columbia. This judgment was appealed.

[13] On July 11, 2017, the Applicants filed the present Authorization Application (**Second Quebec Claim**).

[14] On July 13, 2017, the attorneys representing the Applicants also filed a proceeding under the *Class Proceedings Act*, 1992 SO 1992, c. 6 before the Ontario Superior Court of Justice concerning these Products and against the same Respondents as in the present proceedings (**Second Ontario Claim**).

2. ANALYSIS

2.1 Applications by Manulife Respondents, L&S Respondents and Davis + Henderson Corporation Respondent to submit relevant evidence in view of the authorization hearing

[15] The Court of Appeal in *Asselin* v. *Desjardins Cabinet de services financiers Inc.*[2] framed the Court's analysis of an Application to submit relevant evidence in view of the Authorization hearing as follows:

> [37] Autre exemple de glissement : on laissera les parties produire une preuve volumineuse, qu'on examinera ensuite en profondeur comme s'il s'agissait d'évaluer le fond de l'affaire. **Or, ce n'est pas pour rien que, dans *Allstate du Canada, compagnie d'assurances* c. *Agostino*, réitérant un point de vue déjà exprimé dans *Pharmascience inc.* c. *Option Consommateurs*, la Cour met les juges autorisateurs (ou gestionnaires) en garde contre « la tentation d'user de l'article 1002 C.p.c. [maintenant 574 C.p.c.] de manière à faire du mécanisme de filtrage qu'est le processus d'autorisation du recours collectif une sorte de préenquête sur le fond »**, ce qui risque de contaminer l'analyse propre aux conditions d'autorisation en la faisant déborder du champ restreint qui doit être le sien. C'est en effet une tentation à laquelle il est souvent difficile de résister. Mieux vaut donc s'en prémunir.
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> [38] **Bien sûr, aux termes mêmes de l'art. 574 *C.p.c.* (autrefois 1002 a.*C.p.c.*), « le tribunal peut permettre la présentation d'une preuve**

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[2] 2017 QCCA 1673, aux par. 37 à 45 (Application for Leave to Appeal to the Supreme Court, S.C.C, 12-28-2017, nº 37898).

> **appropriée/*the court may allow relevant evidence to be submitted* », accessoirement à la contestation de la demande d'autorisation, le demandeur étant pour sa part autorisé à déposer au soutien de sa procédure, sans permission préalable, certaines pièces qu'il estime de nature à donner du poids à ses allégations. Mais cela doit être fait avec modération et être réservé à l'essentiel et l'indispensable. Or, l'essentiel et l'indispensable, côté demandeur, devraient normalement être assez sobres vu la présomption rattachée aux allégations de fait qu'énonce sa procédure. Il devrait en aller de même du côté du défendeur, dont la preuve, vu la présomption attachée aux faits allégués, devrait être limitée à ce qui permet d'en établir sans conteste l'invraisemblance ou la fausseté.** C'est là le « couloir étroit » dont parle la Cour dans *Agostino*. Car, ainsi que l'écrit succinctement le juge Chamberland, au stade de l'autorisation, « le fardeau [du requérant] en est un de logique et non de preuve ». Il faut conséquemment éviter de laisser les parties passer de la logique à la preuve (prépondérante) et de faire ainsi un pré-procès, ce qui n'est pas, répétons-le, l'objet de la démarche d'autorisation.
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> [39] Évidemment, on peut comprendre que la partie demanderesse, désireuse de contrer par avance la contestation qu'elle prévoit, puisse être portée à déposer d'emblée une preuve abondante, le plus souvent documentaire, au soutien de ses allégations; elle peut encore chercher à produire des éléments supplémentaires au fur et à mesure qu'elle prend connaissance des moyens qu'entend lui opposer la partie défenderesse. Pour échapper à la perspective d'une action collective, cette dernière, pareillement, souhaitera présenter une preuve destinée à démontrer que l'action envisagée ne tient pas et, pour ce faire, elle pourrait bien forcer la note, sur le thème « abondance de biens ne nuit pas ». **Le juge autorisateur (ou gestionnaire) doit résister à cette propension des parties, tout comme il doit se garder d'examiner sous toutes leurs coutures les éléments produits par l'une et l'autre, au risque de transformer la nature d'un débat qui ne doit ni empiéter sur le fond, ni trancher celui-ci prématurément, ni porter sur les moyens de défense de l'intimé**.
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> (Our emphasis and references omitted)

[16] Manulife Respondents seek leave to submit a sworn declaration signed by Wallace Thompson, as officer of The Manufacturers Life Insurance Company, Benesure Canada Inc. and Credit Security Insurance Agency Inc., and the exhibits referred to therein, the contents of which cover the following topics:

a) The involvement of the different Manulife Respondents in the administration and distribution of the mortgage creditor insurance at issue in the proposed class action;

b) The various processes by which MPP product is distributed through the entities of the Benesure Group, including how MPP product is purchased and how coverage is obtained;

c) The framework that has been established in Quebec for the regulation of the insurance industry and changes made over time by the Manulife Respondents and the entities of the Benesure Group more particularly to enhance certain processes and documentation relating to MPP product.

[17] While the case was under advisement, Manulife Respondents filed an Amended Application to Seek leave to Adduce Evidence in view of the authorization hearing (**Amended Application**). The amendments' purpose was to substitute the initial sworn declaration signed by Brian Barr, who is no longer employed by Manulife Respondents, by Wallace Thompson's one. The content of the sworn declaration stayed the same except for the introductory paragraphs concerning the personal background of the affiant.

[18] Applicants object to the amendments and the substituted affidavit. They argue a breach of the judicial contract agreed to by the parties on April 26, 2018.

[19] The agreed timetable and process of proceeding provided for Applicants to examine Mr. Barr on his affidavit through written questions submitted by June 30, 2018. These questions were answered in part[3] by Mr. Thompson in the form of a second affidavit communicated on August 16, 2018[4]. On August 28, 2018, Manulife Respondents filed their Amended Application.

[20] Applicants are also of the view that Manulife Respondents gained a procedural advantage given that they substituted the affidavit after having the benefit of seeing in writing the questions to the affiant. Furthermore, in their view, Manulife Respondents seek to bypass the rule established by article 105 of the *Code of Civil Procedure* (**C.C.P.**), *in fine*[5] as they are attempting to amend their way out of the examination of Mr. Barr.

[21] The Court is of the view that the amendments should be authorized as they do not delay the proceeding and are not contrary to the interests of justice. Moreover, the amendments do not put Applicants in an unfair position since they can still exercise their right to examine Mr. Thompson on his affidavit, which content stayed essentially the same.

[22] In support of their Amended Application, Manulife Respondents argue that the Court does not have sufficient information to render judgment in light of the criteria set forth by article 575 C.C.P. and that they should be authorized to submit evidence that brings precision and contradicts the allegations contained in the Authorization Application. In their view, the evidence they seek to adduce would enable the Court to proceed with an efficient review of the applicable criteria and result in a more efficient hearing of the Authorization Application.

[23] The Court is of the opinion that such evidence is relevant and essential in view of assessing the criteria provided for in article 575 C.C.P. It provides an understanding of the MPP product as well as the marketing, distribution, administration and regulatory

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3 Objections were raised by Manulife Respondents regarding certain questions.

4 Two weeks after the agreed upon deadline of August 3, 2018.

5 If the person refuses to submit to such an examination without valid cause, the pleading or affidavit is rejected.

oversight thereof and the relationships between the various Respondents. It also distinguishes the unlikelihood and falseness of the allegations contained in the Authorization Application, without constituting a pre-enquiry on the merits of the case. Therefore, the Court allows such evidence in view of the authorization hearing.

[24] L&S Respondents also seek leave to adduce evidence to show that the criteria under article 575 C.C.P. are not met. This evidence is composed of Respondent Mark Smith's sworn declaration and the exhibits referred to therein, which contradict the allegations contained in the Authorization Application, by indicating that the latter was never a director or officer of Respondent Benesure Canada Inc. and was never involved in its operations in Quebec.

[25] The Court views this evidence explaining Mark Smith's role and obligations as essential and indispensable for the authorization hearing and therefore allows it.

[26] Finally, Davis + Henderson Corporation Respondent seek leave to adduce a sworn declaration signed by Timothy Rye, as Head, Canadian Lending Technologies at Davis + Henderson Corporation, to outline its relationship with the brokers and other Respondents, its role in the transmission of information from mortgage brokers to distributors and to assist the Court in understanding the operation of Davis + Henderson Expert software referred to in the Authorization Application and the measures implemented to protect confidential information of mortgage brokers' customers.

[27] The Court is of the view that such evidence is essential to assess the criteria provided for in article 575 C.C.P. at the authorization hearing. It distinguishes the unlikelihood and falseness of the allegations contained in the Authorization Application, without constituting a pre-enquiry on the merits of the case. Therefore, the Court allows the filing of Timothy Rye's sworn declaration and the exhibits referred to therein in view of the authorization hearing.

2.2 Examination of the Applicants by L&S Respondents

[28] L&S Respondents seek leave to examine the Applicants on the following topics:

a) Their knowledge of the involvement of the L&S Respondents with Benesure Canada Inc., and the L&S Respondents conduct, acts and representations made to them or to the public and prejudice resulting therefore, as alleged at paragraphs 46 to 52, 84 to 86, 123 to 149, 159 to 167, 175 to 182 and 202 to 215 of the Authorization Application;

b) Their knowledge of the L&S Respondents' purported financial gains relating to their involvement with Benesure Canada Inc., as alleged at paragraphs 132 and 142 of the Authorization Application;

c) Their ability to represent the class, as alleged at paragraphs 219 to 237 of the Authorization Application;

[29] The Applicants do not contest such request.

[30] L&S Respondents argue that the examination of the Applicants is essential and necessary in order to evaluate the nature and constitutive elements of each of the Applicants' individual cause of action and their ability to represent the class.

[31] They claim that the allegations against them are vague and are essentially composed of argument as opposed to the assertion of facts. They also claim that the Applicants have only referred to six exhibits in support of their Authorization Application. They view this situation as unacceptable given that the Applicants seek to lift the corporate veil to make a claim against L&S Respondents and to do so, they must set out the factual allegations against them.

[32] Furthermore, L&S Respondents argue that the Applicants are suing Mark Smith on the basis that he was acting as a Sales Director of the brokers, Regional Vice-president or Senior Manager of Benesure Canada Inc., and allege that he failed to meet his obligations as a director or officer of Benesure Canada Inc. They raise that the latter allegation is unfounded as Mr. Smith was never a director or an officer of any of the corporate Respondents and was never involved in the operations of any of the corporate Respondents in Quebec.

[33] From L&S Respondents' point of view, the allegations set forth by the Applicants do not meet the criteria of 575 C.C.P. and thus, they should be entitled to examine the Applicants to determine whether those criteria are, in fact, met. They claim that without such examination, they will not be able to contest the Authorization Application.

[34] The Court is of the view that L&S Respondents have not demonstrated the usefulness or necessity to examine the Applicants.

[35] As already mentioned by Justice Bisson in *Li* c. *Equifax*[6], if the allegations contained in the Authorization Application are insufficient, incomplete, not supported by evidence or compose of arguments rather than facts, the Court does not see why L&S Respondents would want to examine the Applicants to allow them to improve their allegations or to add new evidence. It would not be in L&S Respondents' interest to do so.

[36] Furthermore, the filing of evidence regarding Respondent Mark Smith's role and involvement was authorized by the Court.

[37] The Court is of the view that L&S Respondents' request is too broad and without sufficient justification. They can contest the Authorization Application without assessing the credibility of the Applicants on all aspects of the Authorization Application which would not be appropriate at this stage.

[38] Therefore, the Court refuses L&S Respondents' request to examine the Applicants.

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6 2018 QCCS 1892 (*Notice of Appeal and Application for leave to appeal*, 06-18-2018 - 500-09-027598-184)

2.3 Examination of the Applicants by Manulife Respondents

[39] Manulife Respondents also seek leave to examine out of Court the Applicants on the following topics:

a) Their knowledge of the Products, including the means through which they are marketed, distributed and administrated;

b) Their knowledge with respect to the class they seek to represent, including the efforts deployed by them to gain knowledge with respect to the group members and to ensure that the Authorization Application is supported by class members;

c) The circumstances pursuant to which they were solicited and accepted to act as representatives;

d) The circumstances surrounding the mortgage application alleged at paragraphs 206 to 209 of the Authorization Application.

[40] They argue that the Court should allow such examination for the purpose of evaluating whether the Applicants have demonstrated a strong appearance of right, that the proposed class action has a reasonable chance of succeeding and that they are in a position to properly represent the class members, all of which are elements that are not adequately addressed in the Authorization Application.

[41] In their view, the proposed examination of the Applicants would enable the Court to proceed with an efficient review of the criteria contained in article 575 C.C.P. It would also ensure that the "authorization hearing will not be a simple formality devoid of any real meaning in which the Court would be bound by allegations and evidence founded solely on editorial choices made to support the sole perspective of the Applicants".

[42] The Applicants contest the request regarding topics (a) and (b) only. They argue that the first topic is irrelevant to the issues at stake since the underlying basis of the class action is that the Products were issued by an unlicensed insurer and there were breaches of privacy with respect to the Applicants and other class members. Furthermore, they argue that answers to the questions raised by the topic (b) are irrelevant since Manulife Respondents already hold a list of all the class members.

[43] For the following reasons, the Court concludes that Manulife Respondents' request to examine the Applicants must be denied.

[44] The Court is of the opinion that Manulife Respondents did not demonstrate the usefulness of topic (a) in assessing the criteria under article 575 C.C.P. Furthermore, the means through which the Products are marketed, distributed and administrated are already covered by the filing of Wallace Thompson's sworn declaration authorized by the Court.

[45] As for topics (b) and (c), the Court is of the opinion that the allegations contained in paragraphs 224 to 237, concerning the class composition and the representation of the class members, are sufficient. The requested discovery on these topics is not essential or indispensable to assess the criteria set forth in article 575 (3) and (4) C.C.P.

[46] Lastly, the Court finds the request regarding topic (d) to be too broad and without proper justification.

2.4 Confidentiality and Sealing Order

[47] The Supreme Court of Canada in *Sierra Club* v *Canada (Minister of Finance)*[7] framed the test as to whether a confidentiality order ought to be granted as follows:

> A confidential order should only be granted when (1) such an order is necessary in order to prevent a serious risk to an important interest, including a commercial interest, in the context of litigation because reasonably alternative measures will not prevent the risk; and (2) the salutary effects of the confidentiality order, including the effects on the right of civil litigants to a fair trial, outweigh its deleterious effects, including the effects on the right to free expression, which in this context includes the public interest in open and accessible court proceedings.

[48] Manulife Respondents ask this Court to issue a confidentiality and sealing order with respect to exhibits R-2 and R-6 referred to in support of the Authorization Application. These exhibits are described as follows:

> Exhibit R-2: The Plan Management Agreement with respect to the MPP and CSP between Manulife and Lorriman & Long Management Inc.;
>
> Exhibit R-6: Benesure Canada Inc. employee training materials.

[49] Manulife Respondents view these exhibits as confidential, proprietary and commercially sensitive documents relating to distribution channels and operations of Manulife Respondents regarding the management of the Products.

[50] The Applicants submit that the evidentiary threshold of the *Sierra Club* decision is not met since there is no meaningful supporting affidavit or objective evidence of any commercial interest being at risk with the disclosure of these exhibits. Furthermore, in their view, there is no evidence to tie any of the documents with a broader public interest.

[51] Manulife Respondents filed Brian Barr's sworn declaration in support of their Application to obtain a confidentiality and sealing order. Mr. Barr affirms having read the Application and that all facts alleged therein are true. The Court is satisfied with such sworn declaration which did not need to repeat the wording of the pleadings[8].

[52] The evidence submitted demontratres that the public dissemination of this material in the proceeding would severely prejudice Manulife Respondents in the following respects:

a) It would provide an advantage to the Manulife Respondents' competitors in an extremely competitive market. As a matter of fact, it would:

   - Enable competitors to emulate the insurance products developed and marketed solely by the Manulife Respondents;

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7 [2002] 2 SCR 522.

8 Article 106 C.P.P.

- Allow competitors to gain an unfair competitive advantage over the Manulife Respondents which would otherwise not be available to them.

b) It would seriously jeopardize the Manulife Respondents' business interests and arrangements going forward and might cause third parties and individuals to pause before or decline altogether from engaging in business with the Manulife Respondents, for fear that their commercial agreements and/or personal information may become public at a later date.

[53] The two documents for which the Manulife Respondents seek a sealing order in the present proceeding were also the subject of a sealing order in the BC Claim. The evidence filed so far does not indicate how the Applicants came into possession of these documents despite the existence of such sealing order.

[54] Based on the above, the Court views the information contained in exhibits R-2 and R-6 as confidential and proprietary and as an important commercial interest which is grounded in a broader public interest. Therefore, the Court is of the view that a sealing order must be issued.

WHEREFORE, THE COURT:

[55] **REFUSES** L&S Respondents' request to examine Applicants;

[56] **REFUSES** Manulife Respondents' request to examine Applicants;

[57] **ALLOWS** the filing of Wallace Thompson's sworn declaration dated August 28, 2018, and Exhibits A, B, C, D and E in support thereof;

[58] **ALLOWS** the filing of Timothy Rye's executed sworn declaration communicated as Exhibit DH-1 and the exhibits in support thereof within a delay of 30 days of the present judgment;

[59] **ALLOWS** the filing of Mark Smith's sworn declaration dated April 13, 2018, and the Exhibits MS-1 and MS-2 in support thereof;

[60] **GRANTS** the application for the issuance of a sealing and confidentiality order;

[61] **ORDERS** that the Confidential Materials, as that term is defined below, be protected by a sealing and confidentiality order in the terms set out hereinafter:

61.1. The following documents (the "**Confidential Materials**") shall be sealed in the court file, kept confidential and not form part of the public record, and only made available to the Applicants' counsel, the Applicants Patrick Ehouzou and Carmen Hodonou, the Respondents and their counsel and the Court, pending further order of this Court:

a. Exhibit R-2 in support of the *Application for Authorization to Institute a Class Action and to Obtain the Status of Representative*, namely the Plan Management Agreement between The Manufacturers Life Insurance Company ("**Manulife**") and Lorriman & Long Management Inc.;

b. Exhibit R-6 in support of the *Application for Authorization to Institute a Class Action and to Obtain the Status of Representative*, namely the Benesure Canada Inc. employee training materials.

Authorized Recipients

61.2. Only the following persons shall be authorized recipients ("**Authorized Recipients**") entitled to have access to the Confidential Materials, subject to the terms and conditions set out in this Order:

a. The external counsel retained by the parties in relation to this proceeding or in the proceedings against Manulife, among others, in British Columbia (*Francoise Leonard et al* v. *The Manufacturers Life Insurance Company et al*, S-131263), in Ontario (*Tony Di Paolo et al* v. *The Manufacturers Life Insurance Company et al*, CV-13-475050-00CP and *Mohammed Benmouffok et al* v. *The Manufacturers Life Insurance Company et al*, 17-73294-CP), and in Saskatchewan (*Tim Stringer* v. *The Manufacturers Life Insurance Company et al*, QBG 778/15), wherever located, and students-at-law, paralegals and necessary secretarial and clerical personnel employed by the external counsel;

b. The parties to this proceeding;

c. The Respondents' in-house counsel or legal department;

d. Expert witnesses retained by the parties in relation to this proceeding;

e. Such other persons as from time to time the Court may name or the parties may jointly agree in writing to name as Authorized Recipients, subject to specified terms and conditions,

f. Provided in the case of the persons referred to in subparagraphs 61.2 (b) to (d) that each such person has agreed in writing by way of agreement or undertaking to the Court:

i) To be bound by the terms and conditions of this Order;

ii) To submit himself or herself to the jurisdiction of this Court for enforcement thereof; and

iii) That he or she has received, read and understood a copy of this Order.

Authorized Recipients Shall Not Disclose the Confidential Material and the information contained therein

61.3. Except as expressly provided in this Order or agreed in writing by the party providing the confidential information, each of the Authorized Recipients shall maintain all Confidential Material, and the information contained therein in strict confidence and shall not:

a. Reveal, disclose or permit access to the Confidential Material and the information contained therein to any person, directly or indirectly, other than the Authorized Recipients, and only in accordance with the terms and conditions in this Order; or

b. Reproduce, release, disclose or use the Confidential Material and the information contained therein in any manner for any purpose other than the purpose of this proceeding,

subject to an Order of this Court to the contrary.

61.4. For certainty, no Authorized Recipient shall disclose the Confidential Materials and the information contained therein to any of the following individuals:

a. Leanne Ranniger; and

b. Matthew Bingham or any person who has been an employee or agent of Bingham Group Services.

61.5. Nothing in this Order shall prevent a party to this proceeding or its external counsel from making use of information which:

a. Was, is or becomes public knowledge by means not in violation of the provisions of this Order or any other confidentiality provision or agreement; or

b. The party or its external counsel lawfully and without legal restriction obtained from a third person not a party to this proceeding who has a right to disclose such information.

Treatment of Transcripts as Confidential Information

61.6. Transcripts of any cross-examinations conducted in the course of this proceeding during which the Confidential Materials and the information contained therein are referred to will also constitute Confidential Materials. Any party that intends to file transcripts of cross-examinations with the Court in connection with this proceeding shall advise the other parties, through their respective counsel, of their intention to do so at least ten (10) days prior to such filing, to allow such other parties the opportunity to indicate what portions of such transcripts are Confidential Materials. The filing party may, upon delivery of the transcripts, advise the receiving parties whether they intend to seek a sealing order from this court in respect of any part or the entirety of such transcripts. The receiving parties shall, within ten (10) days thereafter, advise the other parties whether they intend to seek a sealing order from this court in respect of such transcripts.

Disposition of the Confidential Materials upon Termination of the Proceeding

61.7. Subject to further order of this Court, upon the final termination of this proceeding (including the expiry of all rights of appeal), the parties' counsel shall engage in all reasonable efforts to:

a. Gather and destroy all the Confidential Materials and all copies thereof whether held by the party's counsel or the Authorized Recipients;

b. Destroy all originals and reproductions of other documents and things containing information whose source is the Confidential Materials; and

c. Destroy, delete, or permanently erase all the Confidential Materials in electronic or similar form,

within a period of 30 days (or such longer period as the parties may agree). The parties' counsel shall, in writing to the counsel of the party that provided the Confidential Materials within the 30 day period, confirm that they used reasonable efforts to destroy, delete, or permanently erase the Confidential Materials. To the extent that a receiving party is subject to a regulatory or legal obligation to refrain from destroying or deleting certain documents in its possession, then the obligation of the receiving party to engage in all reasonable efforts to destroy, delete, or permanently erase the Confidential Materials is limited to engaging in all reasonable efforts that do not result in a violation of such regulatory or legal obligation.

61.8. For greater certainty, the obligation to gather and destroy the Confidential Materials set out in paragraph 61.7 above shall not apply to any Confidential Materials that were made part of the public record in the course of this proceeding.

61.9. The termination of these proceedings shall not relieve any person in possession of the Confidential Materials pursuant to this Order from the obligation of maintaining the confidentiality of such Confidential Materials, and the information contained therein, in accordance with the provisions of this Order and any Confidentiality Undertaking.

Implied, Deemed and Previously Executed Undertakings

61.10. This Order does not affect or derogate from any undertaking that may be implied at law or imposed by statute or regulation restricting the use that a person may make of evidence or information obtained in the course of this proceeding or any undertaking previously agreed upon and/or executed in connection with this matter.

Notice

61.11. In the event any of the Authorized Recipients receives a subpoena or receives notice that he or she is or may be required by law to disclose any of the Confidential Materials or the information contained therein, that person shall promptly provide counsel of record for the parties with advance written notice so that any one or more of the parties may seek a protective order or other appropriate remedy. In the event a party does not have counsel of record at the relevant time, the advance written notice for the purposes of this provision is to be given to the party.

Application for Further Directions

61.12. This Order is an initial order governing confidentiality and shall be subject to further direction of the Court. The parties to this proceeding or any parties establishing a legitimate interest in this matter may make an application to the Court, upon reasonable notice to all of the parties to this proceeding, to gain access to any of the Confidential Materials filed under seal, to vary or modify this Order, or to seek directions as to the meaning or application of this Order.

61.13. For greater certainty, nothing in this Order shall affect or derogate from the rights of the Manulife Respondents to seek to vary or modify this Order, or to seek a further order governing confidentiality.

No Determination regarding Admissibility

61.14. Nothing in this Order shall be construed to determine or affect in any way the admissibility of any document, testimony or other evidence in respect of this proceeding.

[62] **THE WHOLE**, with legal costs.

Chantal Tremblay

CHANTAL TREMBLAY, J.S.C.

Me Claude Lévesque
LÉVESQUE JURISCONSULT INC.
Attorney for the Applicants

Me Yves Martineau
Me Guillaume Beaudreau-Simard
STIKEMAN ELLIOTT LLP
Attorney for the Respondent Davis + Henderson Corporation

Me Carolena Gordon
Me Alexandra Teasdale
CLYDE & CIE S.E.N.C.R.L.
Attorney for the Respondents John F. Lorriman and Mark Smith

Me Sylvain Lussier
Me Alexandre Fallon
OSLER, HOSKIN & HARCOURT LLP
Attorneys for the Respondents Manufacturers Life Insurance Company, Manulife Financial Corporation, Benesure Canada Inc., Broker Support Center Inc., Credit Security Insurance Agency Inc.

Date of the last representations: August 29, 2018