

CANADA

SUPERIOR COURT
(Class Action)

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

No : 500-06-000874-178

PATRICK EHOUZOU
-and-
CARMEN HODONOU

Applicants

-vs-

MANUFACTURERS LIFE INSURANCE
COMPANY

-and-

MANULIFE FINANCIAL COMPANY

-and-

BENESURE CANADA INC.

-and-

BROKER SUPPORT CENTRE INC.

-and-

CREDIT SECURITY INSURANCE
AGENCY INC.

-and-

TACAMOR HOLDINGS INC.

-and-

DAVIS + HENDERSON CORPORATION

-and-

JOHN F. LORRIMAN

-and-

MARK SMITH

Respondents

**MOTION FOR LEAVE TO SUBMIT EVIDENCE
(ARTICLE 574 C.C.P.)**

TO THE HONORABLE JUSTICE PIERRE-C. GAGNON OF THE SUPERIOR COURT, SITTING IN THE DISTRICT OF MONTREAL, THE RESPONDENT DAVIS + HENDERSON SUBMITS THE FOLLOWING:

1. Applicants Patrick Ehouzou and Carmen Hodonou (the "Applicants") have filed an *Application for Authorization to Institute a Class Action and to Obtain the Status of Representative* (the "Application") against Davis + Henderson ("D+H") and the other Respondents herein, as more fully appears from the Court record.
2. The Applicants allege, *inter alia*, that some of the Respondents misled the Class Members in selling certain creditor insurance products sold under the brand names Mortgage Protection Plan and Credit Security Plan, and that they violated the privacy of said Class Members in doing so.
3. The Application is also almost identical to the *Motion to Authorize the Bringing of a Class Action and to Ascribe the Status of Representative* which was filed before this Court on September 9, 2013 under Court file number 500-06-00061-138 (the "Leroux Class Action").
4. D+H requests permission to adduce evidence at the hearing of the said Application, which will assist the Court in considering whether the conditions of article 575 C.C.P. are fulfilled and whether it should authorize the bringing of a class action in this matter.
5. As appears from paragraph 205 of the Application, the Applicants wish to represent the following group:

"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 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".*

6. D+H wishes to submit an affidavit outlining its limited role in the transmission of information from mortgage brokers to distributors of mortgage creditor insurance products (referred to as the *PRODUCTS* in the Application), as appears from a copy of the Affidavit of Timothy Rye communicated as Exhibit DH-1 in draft form.
7. More particularly, the proposed affidavit will assist the court in understanding the operation of the *Filogix Expert* (now known as *D+H Expert*) software referred to in the Application.
8. The affidavit also describes the measures implemented by D+H to protect the confidential information of mortgage brokers' customers and the contractual relationships D+H has with mortgage brokers and certain other Respondents engaged in distributing mortgage creditor insurance products.
9. For instance, at paragraphs 54, 59, 60, 81 (d) and (e), 104 and 108 of the Application, the Applicants allege that the Benesure Group (as defined in the Motion) pays D+H so-called commissions for selling or assisting in selling certain creditor insurance products, and that D+H sold personal information to the Benesure Group.
10. The Applicants also allege that the Benesure Group used the *Filogix Expert* software owned by D+H to assist them in sending what are called "Safety Catch Letters" (par. 96 and 97 of the Application).
11. The facts described in the affidavit will allow a better understanding of these allegations.
12. In order to assert its arguments and have a fair hearing, D+H needs to bring evidence as to its role in the transactions alleged in the Application, as outlined in the Affidavit of Timothy Rye.
13. Such evidence is relevant to determine if the four conditions of article 575 C.C.P. are met.
14. In fact, Justice David C. Collier, J.C.S., allowed the production of an affidavit substantially similar to the one submitted today as part of the Leroux Class Action and deemed such affidavit to be relevant to the analysis of the conditions of article 575 C.C.P., as appears from a copy of the judgement on the motion to submit evidence in that case communicated as Exhibit DH-2.
15. The evidence will also help this Court to exercise its discretion in accordance with article 18 C.C.P.
16. Moreover, even if the Application were to be granted, such evidence would be relevant to determine an appropriate group description and identify the questions to be dealt with collectively, in accordance with article 576 C.C.P.

FOR THESE REASONS, MAY IT PLEASE THE COURT TO:

ALLOW the filing of an executed affidavit of Timothy Rye, similar to the draft communicated as Exhibit DH-1, and the exhibits in support thereof.

THE WHOLE without costs, save in case of contestation.

MONTREAL, November 15, 2017



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NOTICE OF PRESENTATION

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Attorneys for Manufacturers Life Insurance Company, Manulife Financial Company, Benesure Canada Inc., Broker Support Centre Inc. and Credit Security Insurance Agency Inc.

TAKE NOTICE that the present *Motion for Leave to Submit Evidence* will be presented for hearing on a date and place to be determined by the Honourable Pierre C.-Gagnon of the Superior Court of Québec, given the case management.

DO GOVERN YOURSELVES ACCORDINGLY.

TRUE COPY

MONTRÉAL, November 15, 2017


STIKEMAN ELLIOTT LLP

(S) STIKEMAN ELLIOTT LLP

STIKEMAN ELLIOTT LLP
Attorneys for Davis + Henderson

EXHIBIT DH-1

CANADA

SUPERIOR COURT
(Class Action)

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

No : 500-06-000874-178

PATRICK EHOZOU

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-and-

DAVIS + HENDERSON CORPORATION

-and-

JOHN F. LORRIMAN

-and-

MARK SMITH

Respondents

AFFIDAVIT OF TIMOTHY RYE

I, the undersigned, Timothy Rye, Head, Canadian Lending Technologies at D+H Mortgage Technology Corporation ("D+H"), exercising my profession at 120 Bremner Blvd, Suite 3000, Toronto, Ontario, M5J 0A8, solemnly declare the following:

1. I am a duly authorized representative of Respondent D+H and I have held the position of Head, Canadian Lending Technologies since June 2016. I have worked for D+H since March 2014.
2. As such, I have, amongst other things, supervisory responsibilities for D+H's marketing of its software program known as D+H Expert® (described below) and D+H's contractual relationships with mortgage brokers governing their use of D+H Expert®.
3. I have taken cognizance of the Application, which is almost identical to the Plaintiffs' motion for class certification filed in British Columbia in court docket S-131263 in 2013.
4. The Application is also almost identical to the *Motion to Authorize the Bringing of a Class Action and to Ascribe the Status of Representative* which was filed before this Court on September 9, 2013 under Court file number 500-06-00061-138 and discontinued with permission of the Court on September 22, 2015.

Overview of D+H's Position in the Action

5. I have reviewed the application for authorization filed by Mr. Ehouzou and Ms. Hodonou in the present matter (the "**Application**") and understand the Applicants to allege, among other things, that the "Benesure Group" (i.e. Benesure Canada, CSIA, BSC and Tacamor) pays D+H so-called "commissions" for selling or assisting in selling certain creditor insurance products sold under the brand names Mortgage Protection Plan or Credit Security Plan (*Régime Protection Hypothécaire* or *Régime Sécurité Crédit*) ("**MPP Products**").
6. The Application reveals a confusion as to the role of D+H in the alleged sales of MPP Products, which this affidavit will clarify.

7. In fact, D+H has no involvement or role in the sale, marketing, distribution or administration of MPP Products and has no dealings or interactions with customers of MPP Products.
8. Moreover, D+H in itself does not act as an insurance agent or broker.
9. As described further below, D+H hosts and maintains a web-based software application, known as D+H Expert® (“D+H Expert®”), which is used by thousands of mortgage brokers and in-house sales specialists at financial institutions in Canada to connect to mortgage lenders, as well as credit bureaus, appraisers, and insurance providers during the mortgage origination process.
10. D+H has contractual relationships with mortgage brokers concerning their access to and use of D+H Expert® to obtain mortgage loans and/or mortgage creditor insurance products for their customers.
11. D+H also has a contractual relationship with Broker Support Centre Inc. (“BSC”) in respect of BSC’s access to D+H Expert® to facilitate applications for MPP Products by customers of some mortgage brokers in Quebec (and Canada).
12. D+H requires all mortgage brokers, as a condition of using D+H Expert®, to acknowledge that they have obtained their customers’ consent to the transfer of personal information through the application. D+H does not “sell” personal information.
13. The Application reflects a basic misunderstanding of the services D+H provides to mortgage brokers, mortgage lenders, mortgage creditor insurance product providers and others through D+H Expert®.

D+H Expert®

14. In 2006, a predecessor of D+H acquired Filogix Holdings Inc. (“Filogix”), which owned the leading software application for mortgage origination services in Canada, then known as Filogix Expert.
15. D+H Expert® is currently used by over 15,000 independent mortgage brokers and in-house mortgage sales representatives in Canada.
16. D+H Expert® can be used by mortgage brokers as a solution for the capture, submission, and management of mortgage loan applications, from the initial submission of applications to mortgage lenders, through

commitment letters from the lender to the applicant, to the funding of the loan.

17. The application allows mortgage brokers to connect with over 55 mortgage lenders, as well as credit bureaus, appraisers, and providers of mortgage creditor insurance products, such as the MPP Products and others, as part of the mortgage origination process.
18. The degree to which D+H Expert® is used in the mortgage origination process can (and does) vary from mortgage broker to mortgage broker, lender by lender and transaction by transaction.
19. While D+H Expert® can provide a complete “end to end” solution, it does not need to be and often is not used at every stage of the mortgage process.
20. For example, while a mortgage broker may send mortgage applications to lenders via D+H Expert®, some lenders may not provide their approvals for applications through D+H Expert®. In other cases, both the mortgage application and the commitment letter from the lender will be transmitted to/from the mortgage broker via D+H Expert®, but the broker will not use D+H Expert® to “close the deal” for the customer’s loan.
21. With respect to the use of D+H Expert® by mortgage brokers to obtain and submit applications for creditor insurance products on behalf of their customers, such usage also can (and does) vary from broker to broker and transaction by transaction.

D+H’s Contractual Relationships with Mortgage Brokers

22. Mortgage brokers who contract with D+H to use D+H Expert® range from large national brokerages, with operations in all (or most) Canadian provinces, to regional or provincial brokerages with operations throughout one or more provinces, to small brokerage firms or individual brokers operating in (part of) one Canadian city.
23. D+H negotiates master agreements that govern the use of D+H Expert® by the national brokerage and its associated mortgage brokers with each national brokerage firm individually.
24. These agreements are confidential and many of their terms are very commercially sensitive to D+H.

25. Among other things, in the master agreements the national brokerages acknowledge and agree that personal information of the brokers' customers may be transmitted through D+H Expert®, and that the brokers will, and will cause their affiliated mortgage brokers to, obtain their customers' consent to the collection, use and disclosure of personal information through D+H Expert® as a condition of using the application.
26. From my review of the materials submitted by the Applicants in their Application and D+H's records, I understand the Applicants Patrick Ehouzou and Carmen Hodonou used Opulent Mortgages ("Opulent") as a mortgage broker in 2014.
27. At that time, Opulent was a member of Mortgage Architects Inc. ("MA"), which was a national network of broker firms in the Canadian mortgage industry.
28. MA was a client of D+H. D+H and MA were party to a Master Services Agreement, dated as of December 1, 2011 (the "MA Agreement"), as appears from a copy of the MA Agreement, with redactions to remove confidential information, **Exhibit R-●**.
29. Section 9.1 of the MA Agreement addresses the requirement that MA obtain, and cause its licensed members, such as Opulent, to obtain consent from their customers to the transfer of personal information through D+H Expert®. Paragraph 9.1(a) of the MA Agreement provides:

"Each Customer acknowledges that information made available to it via the D+H Marketplace and more specifically through the use of the D+H Expert Services, relating to prospective customers, is owned by such prospective customers, may be protected by Privacy Laws, and shall not be distributed, published or used in any way by such Customer, without such prospective customers' consent. Similarly, D+H acknowledges that such Personal Information is owned by such prospective customers and may be protected by Privacy Laws, and shall not be distributed, published or used in any way by D+H without such prospective customers' consent. D+H acknowledges that as between the Parties, each Customer is the owner of its Customer Data. Each Customer will and will cause all Customer Licensed Members, if any, to obtain from their customers all consents to the collection, use of disclosure of such customers' Personal Information necessary for D+H to provide the Data Access Rights via the D+H Expert Services in accordance with this Agreement."

30. D+H also has contractual relationships with thousands of individual independent mortgage brokers and firms which operate in Canada.
31. D+H uses a standard template for such contracts which requires the brokers to obtain their customers' consent to the collection, use and disclosure of personal information through D+H Expert®, as appears from a copy of the current template for these contracts, **Exhibit R-●**.
32. D+H makes available to mortgage brokers through D+H Expert®, a sample consent form with respect to the transmission of their customers' personal information. Among other things, the sample consent form provides that:

"The mortgage application form as well as other information you [the mortgage broker] obtain in relation to my credit history may be disclosed to potential mortgage lenders, mortgage insurers, other service providers, organizations providing technological or other support services required in relation to this application and any other parties with whom I/we propose to have a financial relationship."

A copy of the sample consent form available through D+H Expert® is communicated as **Exhibit R-●**.

33. Although D+H makes this sample consent form available, mortgage brokers may (and do) choose to use their own forms with respect to obtaining their customers' consent. Accordingly, the form of consent used and obtained by mortgage brokers will vary from broker to broker and, over time.
34. In addition to the contractual relationships described above, when mortgage brokers sign on as users of D+H Expert®, the brokers acknowledge to D+H as a condition of gaining access to the application that they are required to and have obtained their customers' consent to the disclosure of personal information. Attached as **Exhibit R-●** is a "screen shot" of the log-in page for mortgage brokers signing on to D+H Expert®.
35. D+H's Terms and Conditions with respect to mortgage brokers' use of D+H Expert® (the "**D+H Expert® Terms and Conditions**") are provided on D+H's website login page for D+H Expert®. Mortgage brokers agree to be bound by the Terms and Conditions by selecting "I agree" on the D+H Expert® login page the first time they sign on to the application. Brokers who do not accept the D+H Expert® Terms and Conditions are unable to

proceed to use D+H Expert®. A copy of the D+H Expert® Terms and Conditions is attached as **Exhibit R-●**.

36. As part of the D+H Expert® Terms and Conditions, mortgage brokers agree that D+H's Privacy Policy (the "Privacy Policy") applies in respect of the brokers' use of D+H Expert®. The Privacy Policy may be accessed by link from the D+H Expert® Terms and Conditions on the D+H Expert® website. A copy of D+H's Privacy Policy is attached as **Exhibit R-●**.
37. The Privacy Policy covers the privacy practices that D+H employs with respect to the collection, use, sharing, disclosure and protection of "Customer Data" submitted to D+H Expert®.
38. The wording of the D+H Expert® Terms and Conditions and the process followed by mortgage brokers at sign on to D+H Expert® have changed from time to time over the years since D+H acquired Filogix. The requirement that mortgage brokers acknowledge that they are required to and have obtained their customers' consent to the disclosure of personal information as a condition of using D+H Expert® has existed throughout this period.

Mortgage Brokers' Use of D+H Expert® for Mortgage Creditor Insurance Products

39. Mortgage brokers may, but do not necessarily, use D+H Expert® in connection with offering mortgage creditor insurance products to their customers.
40. The application allows mortgage brokers to connect with entities providing a variety of mortgage creditor insurance products in Canada, including MPP Products and other competitive insurance products.
41. The extent to which mortgage brokers make use of D+H Expert® in that regard varies from broker to broker, from customer to customer for any particular broker, and over time.
42. The "set-up" of D+H Expert® for each mortgage broker includes a field for the designation of a creditor insurance products provider. Brokers in Quebec may at any time in the mortgage origination process manually request an insurance referral form from their designated insurance provider through D+H Expert®. Upon such requests, the insurance referral form will be sent to the mortgage broker through D+H Expert® as

a PDF document which the broker can view and print, but which the software application does not save.

43. In addition, for Quebec brokers set up on D+H Expert® with MPP as their designated creditor insurance products provider (“MPP Brokers”), when the MPP Broker submits a mortgage application to a mortgage lender, D+H Expert® transfers data to BSC to enable BSC to generate a pre-populated referral form.
44. The MPP Broker will automatically be sent the MPP referral form by BSC through D+H Expert® when the MPP Broker views or accepts a commitment letter from the mortgage lender. The MPP Broker can then present the insurance referral form along with the commitment letter so that the customers may (or may not) agree to receive further information/applications for mortgage creditor insurance in connection with obtaining the mortgage.

The Safety Catch Letter

45. D+H provides access to D+H Expert® to BSC pursuant to an agreement dated as of February 1, 2005, which was amended effective January 15, 2008 (the “BSC Agreement”).
46. The BSC Agreement contains terms which are confidential and commercially sensitive to D+H and BSC.
47. Under the terms of the BSC Agreement, BSC has access to D+H Expert® with respect to MPP Brokers.
48. D+H hosts and maintains D+H Expert® and receives revenues based on usage of the application.
49. D+H has no role in the distribution of MPP Products (or any mortgage creditor insurance products) in Quebec (or Canada). D+H has no contact with mortgage brokers’ customers and makes no representations to them.
50. I understand from my review of the Application that the Applicants allege that, having received confidential information from D+H, Manulife and the Benesure Group send a “Safety Catch Letter” to customers of MPP Brokers who have not applied for or waived mortgage-related insurance.
51. I understand the Applicants further allege that the Safety Catch Letter includes statements which mislead the Class Members into thinking that

their Personal Information was being protected by their mortgage broker when in fact it has already been given to the Benesure Group by D+H.

52. D+H has no role in the preparation, authorization, or transmission of Safety Catch Letters.
53. Moreover, for MPP Brokers, D+H Expert® will transmit customer information to BSC (not to Manulife or the Benesure Group) upon the happening of certain events, such as a manual request for an insurance referral from the MPP Broker or the submission of a mortgage application to a mortgage lender.
54. As stated above, the MPP Broker has agreed and represented to D+H, both in its contract with D+H and at the time of log-on to D+H Expert®, that the broker has obtained the customer's consent to the transfer of this information through D+H Expert®.
55. D+H has not "given" or "sold" to Manulife and the Benesure Group, any personal information of customers of MPP Brokers.

The FIC Order

56. I understand the Applicants allege that D+H has obligations towards the Class Members following the execution of a Settlement Agreement and Consent Order dated February 28, 2014 between the Superintendent of Financial Institutions of British Columbia, Manulife Financial Corporation, Manufacturers Life Insurance Company and Benesure Canada Inc. (the "FIC Order").
57. However, as more fully appears from Exhibit R-● in support of the Application, D+H is not party to the FIC Order.
58. All facts herein alleged are true.

AND I HAVE SIGNED:



Solemnly declared before me at Toronto, Ontario
this ____th day of _____ 2017

A Notary Public in and for the Province of Ontario

EXHIBIT DH-2

SUPERIOR COURT

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

No: 500-06-000661-138

DATE: DECEMBER 17, 2014

BY THE HONOURABLE DAVID R. COLLIER, J.S.C.

JEAN-PIERRE LEROUX

Petitioner

v.

LA COMPAGNIE D'ASSURANCE-VIE MANUFACTURERS

-and-

FINANCIÈRE MANUVIE

-and-

BESENURE CANADA INC.

-and-

BROKER SUPPORT CENTRE INC.

-and-

AGENCE D'ASSURANCE SÉCURITÉ DU CRÉDIT INC.

-and-

TACAMOR HOLDINGS INC.

-and-

DAVIS + HENDERSON

-and-

JOHN F. LORRIMAN

-and-

MARK SMITH

Respondents

JUDGMENT

INTRODUCTION

[1] The petitioner has filed a motion for authorization to institute a class action. The respondents seek permission to examine the proposed class representative, Mr Leroux, and to file affidavit evidence. They argue that these preliminary steps will assist the Court in deciding whether the proposed class action meets the criteria for certification under article 1003 C.C.P.

[2] Counsel for Mr Leroux does not contest the motions to examine his client, but argues that the examinations should be limited, and in writing. Counsel for the petitioner also does not object to the filing into evidence of an affidavit from Mr Chris Pornaras; nevertheless he reserves his right to request a complete, unedited copy of exhibit CP-2 to that affidavit.

[3] Counsel for Mr Leroux does object, however, to the filing by Manufacturers Life Insurance Co. and other respondents of the affidavit of Mr Wally Thompson dated July 11, 2014. He argues that Mr Thompson's affidavit goes well beyond simply providing useful information for the purposes of certification, and constitutes a veritable defence to the claim. If Mr Thompson's affidavit is produced, however, counsel takes no position regarding the respondents' request that certain parts of it be kept confidential.

[4] The Court heard argument and received ample notes and authorities. On the basis of the authorities the Court concludes that it may admit evidence under article 1002 C.C.P. at the authorization stage, but that its discretion in this regard should be exercised with prudence and with a view to admitting only that evidence as will assist the Court with its examination of the certification factors under article 1003 C.C.P.¹

[5] According to the authorities, at the certification stage, the facts alleged by the petitioner are taken as true; nevertheless this does not prevent the Court from admitting evidence which may go to show that the allegations are *invraisemblables, faux ou non plausibles*.²

¹ *Options Consommateurs c. Banque Amex du Canada*, 2006 QCCS 6290, para. 20; *Bouchard c. Agropur Coopérative*, 2006 QCCA 1342, para. 45.

² *Leblanc c. Capital d'Amérique CDPQ inc.*, 2007 QCCS 1757, para. 9; *Options Consommateurs c. Fédération des Caisses Desjardins du Québec*, 2007 QCCS 6497, paras. 18 and 19; *Benoit c. Amira Entreprises inc.*, 2012 QCCS 351, para. 17; *Fortin c. Banque de Nouvelle-Écosse*, 2014 QCCS 2093, para. 12.

[6] Moreover, when the petitioner's allegations are general in nature and prejudicial to the respondents, the Court may allow evidence to clarify or contradict the allegations, as long as the evidence is relevant to the criteria set out in article 1003 C.C.P.³

[7] In the present case, the petitioner alleges that the respondents have participated in a complex scheme to fraudulently sell insurance to consumers at inflated prices. The petitioner seeks to bring a class action on behalf of all persons in Canada who purchased certain insurance products from the respondents.

[8] In their preliminary motions the respondents contend that the petitioner's allegations are false and misleading. They also claim that the petitioner's allegations are vague and offer few details regarding the alleged fraud. They argue that since Mr Leroux was not himself a victim of the alleged fraud, he has no personal knowledge of the facts alleged in the motion and cannot adequately represent the proposed class members (art. 1003(d) C.C.P.). Therefore, argue the respondents, it is necessary to examine Mr Leroux regarding his knowledge of the facts, and to file the Pornaras and Thompson affidavits in order to clarify the relationships between the respondents and describe their insurance products and how they are regulated and sold.

[9] In the Court's opinion, the respondents are correct to characterize the petitioner's allegations as general in nature and lacking in detail. The allegations are also extremely prejudicial, since the respondents are accused of conspiring to defraud the public.

[10] Moreover, the petitioner's allegations lack precision. Generally, the motion is ambiguous as to who participated in the allegedly illicit activities, at what time, and in what manner.

[11] For example, the respondents are referred to collectively in the motion, apparently for the commodity of the drafters. Thus, Manufacturers Life Insurance Co. and Financière Manuvie are referred to as "Manuvie", while Benesure Canada Inc., Broker Support Centre Inc., Agence d'assurances Sécurité du Crédit inc. ("CSIA") and Tacamor Holdings Inc. are all referred to as "RPH". As a result of this grouping together of respondents, when the petitioner alleges that RPH defrauded consumers with the knowledge and consent of Manuvie, it is not clear what act or knowledge is imputed to which specific respondent.

[12] Moreover, at paragraph 41 of the motion the RPH group – which includes CSIA – is alleged to have carried out a number of illegal activities. However, at paragraph 52,

³ *Jacques c. Pétroles Therrien inc.*, 200-06-000102-080, September 9, 2009, per Bélanger J., paras. 28 and 29.

the petitioner claims that CSIA performed none of these activities. In the Court's view, this apparent contradiction opens the door to the production of evidence by the respondents demonstrating that the allegations of wrongdoing by CSIA, and possibly other RPH entities, are false or implausible.

[13] As for the respondents Lorriman and Smith, besides the very general assertion that they directed the respondents' fraudulent activities, the petitioner's motion provides no details whatsoever regarding their specific actions or participation in the fraudulent scheme.

[14] Given the ambiguity regarding the respondents' activities, and the fact that Mr Leroux may not himself have been the victim of the alleged fraud, there is reason to allow the examination of Mr Leroux and admit the Pornaras and Thompson affidavits. These steps are likely to provide the Court with information allowing it to better evaluate whether, i) the recourses of the proposed members raise identical or similar issues (art. 1003(a)), ii) the proposed action has a reasonable chance of success (art. 1003(b)), and Mr Leroux is in a position to represent the members adequately (1003(d)).

[15] Finally, after reviewing the Thompson affidavit the Court is satisfied that it contains confidential business information, the disclosure of which could cause harm to the respondents. Since no action has yet been authorized against the respondents and Mr Leroux has no status as a class representative, no one beyond the parties has an interest in seeing this information. It is therefore appropriate to protect the confidential information in the Thompson affidavit from public disclosure.

[16] **FOR THESE REASONS, THE COURT:**

[17] **GRANTS** the respondents' motions to examine Mr Leroux;

[18] **AUTHORIZES** the respondents, John F. Lorriman and Mark Smith, to examine the petitioner on discovery concerning paragraphs 2, 32 to 37, 39 to 41, 50 to 52, 69 to 85, 89, 93 to 99, 101 to 117, 119 to 122 and 130 to 134 of the Petition for Authorization to Institute a Class Action and to Obtain the Status of Representative;

[19] **ORDERS** that the aforesaid examination shall not exceed 90 minutes in duration;

[20] **AUTHORIZES** the respondents La Compagnie d'Assurance-Vie Manufacturers, Financière Manuvie, Benesure Canada Inc., Broker Support Centre Inc. and Agence D'assurance Sécurité du Crédit Inc. to examine the petitioner on discovery regarding the following topics:

- (a) his knowledge of the MPP and *Régime Sécurité Crédit* mortgage creditor life and disability insurance products, including the means through which they are marketed, distributed and administered;
- (b) his knowledge with respect to the group he seeks to represent including the efforts deployed by him to gain knowledge with respect to the group members and to ensure that the motion, including the conclusions sought therein, is supported by group members;
- (c) the circumstances pursuant to which he accepted to act as representative;
- (d) the circumstances surrounding his purchase of MPP, including:
 - (i) the advice received from his insurance broker with respect to insurance products, including with respect to MPP;
 - (ii) the factors which led him to apply for MPP;
 - (iii) the factors which led him to cancel his MPP policy.

[21] **ORDERS** that the aforesaid examination shall not exceed two hours in duration;

[22] **ORDERS** that the examinations be completed by March 30, 2015.

[23] **GRANTS** the respondents' motions to file affidavits from Chris Pornaras and Wally Thompson;

[24] **AUTHORIZES** the filing of an executed affidavit of Chris Pornaras, and exhibits, in the form communicated as Exhibit DH-1 to the motion of Davis + Henderson dated July 11, 2014;

[25] **RESERVES** the petitioner's right to request a complete, unedited copy of exhibit CP-2;

[26] **AUTHORIZES** the filing of the affidavit of Wally Thompson dated July 11, 2014 and exhibits;

[27] **GRANTS** the motion for the issuance of a sealing and confidentiality order;

[28] **ORDERS** that the affidavit of Wally Thompson and exhibits attached thereto be protected by a sealing and confidentiality order in the terms set out in Schedule A hereto;

[29] **WITH COSTS** to the respondents.



DAVID R. COLLIER, J.S.C.

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Date of hearing: December 9, 2014

ANNEXE A

Sealing and Confidentiality Order

[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 petitioner's counsel, the petitioner Jean-Pierre Leroux, the respondents and their counsel and the Court, pending further order of this Court:

(a) Affidavit of Wally Thompson, sworn July 11, 2014, including exhibit E filed in support thereof;

provided that counsel for the Manulife Respondents will prepare and file in the court file a redacted version of the Confidential Materials from which the text and exhibits described in paragraph 2 below are excluded.

[2] For greater certainty, paragraphs 21, 24, 31-32, 40, 43, 50, 52-54, 69-71, 73-82 and Exhibit E of the Affidavit of Wally Thompson, will be excluded in their entirety from the court file.

Authorized Recipients

[3] The following persons only 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 the Manulife Respondents, among others, in Ontario ((Di Paolo and Lacasee v. The Manufacturers Life Insurance Company and others, Court file No. CV-13-475050-00CP) and British Columbia (Leonard and Ranniger v. The Manufacturers Life Insurance Company et al., Court File no S-13163), 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 3 (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

- [4] Except as expressly provided in this Order or agreed in writing by the party providing the Confidential Information, the 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.

- [5] For certainly, no Authorized Recipient shall disclose the Confidential Materials and the information contained therein to any of the following individuals:
 - (a) Leanne Ranniger;
 - (b) Matthew Bingham or any employee or agent of Bingham Group Services; and
 - (c) Bernard Bissonnette or any employee or agent of Programme Protection Hypothécaire Avantages inc.

- [6] 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 become 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

- [7] 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 solicitors, 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

- [8] Subject to further order of this Court, upon final termination of this proceeding (including the expiry of all rights of appeal), the parties' solicitors 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 solicitors 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' solicitors 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.

- [9] For greater certainty, the obligation to gather and destroy the Confidential Materials set out in paragraph 8 above shall not apply to any Confidential Materials that were made part of the public record in the course of this proceeding.
- [10] 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

- [11] 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

- [12] 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

- [13] 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
- [14] 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

- [15] 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.

**SUPERIOR COURT
(Class Actions)**

N°. 500-06-000874-178

**CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL**

**PATRICK EHOZOU
-and-
CARMEN HODONOU**

Applicants

- vs -

MANUFACTURERS LIFE INSURANCE COMPANY ET AL.

Respondents

BS0350

File: 124099-1024

**MOTION FOR LEAVE TO SUBMIT EVIDENCE and
EXHIBITS DH-1 to DH-2**

ORIGINAL

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