

Court File No. T-382-18

FEDERAL COURT

PROPOSED CLASS PROCEEDING

BETWEEN:

KALEVI HAIKOLA

Plaintiff

- and -

**THE PERSONAL INSURANCE COMPANY and
DESJARDINS GENERAL INSURANCE GROUP INC.**

Defendants

**STATEMENT OF DEFENCE OF THE DEFENDANTS,
THE PERSONAL INSURANCE COMPANY AND
DESJARDINS GENERAL INSURANCE GROUP INC.**

1. The defendants The Personal Insurance Company (“**TPIC**”) and Desjardins General Insurance Group Inc. (“**DGIG**”, collectively with TPIC, the “**Defendants**”) admit the allegations contained in paragraphs 2 and 3 of the Amended Statement of Claim (the “**Claim**”).

2. The Defendants deny the balance of the allegations in the Claim unless expressly admitted below, and deny that Kalevi Haikola (“**Mr. Haikola**”) or any member of the proposed class is entitled to the relief claimed at paragraph 1 of the Claim.

THE DEFENDANTS

3. DGIG is a holding company incorporated pursuant to the laws of Quebec, with a head office in Lévis, Quebec. It is the holding company for TPIC.

4. TPIC is a property and casualty insurer providing home and automobile insurance. TPIC is incorporated pursuant to the laws of Canada. Its head office is in Lévis, Quebec and its principal place of business in Ontario is in Mississauga.

INSURANCE OBTAINED

5. Mr. Haikola telephoned TPIC on August 19, 2011 to obtain a quotation for property and automobile insurance. Mr. Haikola obtained an automobile insurance policy from TPIC effective on October 22, 2011.

CONSENT TO ACCESS CREDIT SCORE

6. On November 24, 2012, Mr. Haikola telephoned TPIC to report an automobile accident and make an accident benefit claim ("**November 2012 Claim**"). This was the second automobile accident benefit claim made since becoming insured by TPIC on October 22, 2011.

7. Mr. Haikola spoke with a TPIC claims advisor (the "**Advisor**"). The Advisor informed Mr. Haikola that TPIC would like to obtain his consent to collect his current credit score. The Advisor informed Mr. Haikola that the credit score would be used to, *inter alia*, facilitate the claim and to prevent and detect fraud. Mr. Haikola provided his verbal consent to TPIC collecting and using his credit score. The consent was voluntary.

8. Prior to providing this express verbal consent, Mr. Haikola had on at least two occasions provided his consent to TPIC collecting his personal information. On August 19, 2011 and November 24, 2012, TPIC played Mr. Haikola an interactive voice response recording ("**IVR**"). On November 24, 2012, the IVR advised Mr. Haikola that TPIC may collect personal information from external sources to prevent, detect, and prosecute fraud, and that by proceeding

with the call, he was giving TPIC his consent to collect this information. Mr. Haikola proceeded with the call.

9. In addition to providing this express verbal consent, Mr. Haikola also expressly provided his consent in writing. On January 11, 2013, Mr. Haikola executed the TPIC Application for Accident Benefits. In so doing, he confirmed his understanding that TPIC would be collecting and using his personal information in order to, *inter alia*, investigate and process his claim, and prevent and detect fraud. He expressly consented to, *inter alia*, TPIC collecting information and documentation from credit reporting agencies.

10. Following receipt of Mr. Haikola's consent to do so, TPIC requested and received Mr. Haikola's credit score from Equifax. TPIC's request was a "soft hit", meaning the collection of his credit score had no impact on Mr. Haikola's credit score. The credit score was transferred and stored electronically and was never accessible to anyone working on Mr. Haikola's accident benefit file.

CLAIM PAID

11. On or around May 2, 2015, Mr. Haikola agreed to accept TPIC's offer to settle the November 2012 Claim. On or around May 11, 2015, Mr. Haikola executed a Full and Final Release in favour of TPIC (the "**Release**").

KNOWLEDGE OF CONCERNS

12. No later than May 19, 2013, Mr. Haikola began to communicate his concerns to TPIC regarding its request to collect and use his credit score information. On each occasion, TPIC provided appropriate responses to those concerns.

13. In or around September 2014, Mr. Haikola initiated a complaint to the Office of the Privacy Commissioner of Canada (the “**OPC**”), alleging that TPIC collected his credit score information without his meaningful consent.

14. The OPC rendered a preliminary report which included various recommendations. Without admitting wrongdoing and in a good faith effort to collaborate with the regulator, TPIC agreed to implement those practice recommendations. Most significantly, this included that it would refrain on a go-forward basis from collecting and using credit scores during the claim assessment process for automobile insurance.

15. On March 14, 2017, the OPC rendered its final report (the “**OPC Report**”), which concluded that the matter was conditionally resolved. In April 2017, TPIC ceased collecting and using credit score as part of its automobile claims assessment process.

16. The OPC Report has no binding effect on this Honourable Court. This Court hears Mr. Haikola’s Claim on a *de novo* basis. With respect to Mr. Haikola’s claims in relation to an alleged breach of PIPEDA, this Court cannot adjudicate concerns that were not complained of by Mr. Haikola or referred to in the OPC Report.

TPIC UPDATES ITS PROCEDURES

17. On February 28, 2018, Mr. Haikola contacted TPIC to report another automobile accident claim – his third since obtaining automobile insurance from TPIC. TPIC determined that it needed consent to access Mr. Haikola’s prior accident benefit claims file(s). TPIC inadvertently sent Mr. Haikola a consent form which included, *inter alia*, a reference to the collection and use of information and documentation from credit reporting agencies.

18. TPIC neither sought to access, nor in fact accessed, Mr. Haikola's credit information following the February 28, 2018 accident. In fact, TPIC had ceased collecting and using credit scores as part of its automobile claims assessment process in April 2017.

19. Mr. Haikola expressed concerns to TPIC about receiving the form. As soon as the situation was drawn to TPIC's attention, it determined that the incorrect form had been sent to Mr. Haikola and it immediately advised Mr. Haikola he did not have to complete the form.

NO BREACH OF PIPEDA

20. Prior to and during the relevant time period, there was a growing concern with respect to fraudulent claims being made in the automobile insurance industry. Fraudulent claims harm everyone. They drive up the costs to customers of obtaining automobile insurance, and they slow down the approval process for all claims. TPIC appropriately sought to respond to this challenge by developing analytics to assist in the proper management of its claims operations. TPIC reasonably concluded that there was a strong correlation between credit score and the risk of fraudulent claims.

21. TPIC appropriately sought and obtained specific consent to use credit score as part of its improved claims management process.

22. Collecting and using insureds' credit scores was rationally connected to a *bona fide* fraud detection and prevention need. It was effective at meeting that need.

23. A reasonable person would consider the collection and use of credit scores as reasonable or appropriate in these circumstances.

24. TPIC sought and obtained Mr. Haikola's valid consent to collect and use his credit scores in the processing of his claim. Mr. Haikola understood that his credit score would be used to facilitate the claim and to prevent, detect and prosecute fraud. He provided his consent. Mr. Haikola understood, and any reasonable person would have understood, that this consent was optional.

NO INTRUSION UPON SECLUSION

25. The Defendants deny that they intruded upon Mr. Haikola's seclusion in any way.

26. Mr. Haikola provided his consent for TPIC to obtain his credit score for purposes of processing his November 2012 Claim. TPIC only accessed Mr. Haikola's credit score on one occasion and had a lawful justification for doing so.

27. No reasonable person would regard TPIC's access or use of Mr. Haikola's credit score as highly offensive, causing distress or anguish, particularly in circumstances where consent was sought and granted.

NO BAD FAITH OR BREACH OF DUTY

28. The Defendants deny that they owed Mr. Haikola a duty of the utmost good faith. The information accessed was not shared with anyone outside of TPIC.

29. Alternatively, and in any event, the Defendants specifically deny breaching any such duty, to the extent one exists.

30. The Defendants expressly deny the allegation that either or both of them have acted in bad faith.

MR. HAIKOLA'S CLAIM IS BARRED BY THE RELEASE

31. For good and valuable consideration, Mr. Haikola executed the Release in favour of TPIC. In so doing, Mr. Haikola released and forever discharged TPIC from, *inter alia*, any and all actions, causes of actions, litigation claims and demands, including claims for aggravated or bad faith damages. The within Claim is barred by virtue of this Release.

MR. HAIKOLA'S CLAIM IS STATUTE-BARRED

32. Mr. Haikola did not commence his Claim within the time prescribed by the applicable limitation period.

33. Mr. Haikola discovered his claim more than two years prior to the commencement of this action. Alternatively, Mr. Haikola's claim was discoverable more than two years prior to the commencement of this action.

34. As admitted in the Statement of Claim, Mr. Haikola had concerns about TPIC's request for his personal information, including his credit score, at the time TPIC requested it on November 27, 2012. Shortly thereafter, he complained to TPIC regarding its request for access to his credit information. Mr. Haikola also complained to the OPC that TPIC invaded his privacy. Yet he waited until February 27, 2018, well over five years from the date of the alleged breach, before he commenced his action, which includes common law claims, against TPIC.

35. Mr. Haikola's claims are statute-barred.

DAMAGES

36. The Defendants deny that Mr. Haikola has suffered any loss or damage for which the Defendants are responsible in fact or in law, or any loss or damages whatsoever. The Defendants

deny that he is entitled to any damages, whether statutory, compensatory, exemplary or punitive in nature.

37. Without limiting the generality of the foregoing, Mr. Haikola suffered no economic damage related to the alleged privacy breach. The collection of this information had no effect on his credit score or credit history as it was a "soft hit". It had no bearing on his application for benefits, which was approved. His credit score was kept confidential at all times. There is no suggestion that it was or could have been accessed by third parties.

38. There are no damages arising from the alleged breach.

STATUTES

39. The Defendants plead and rely upon the *Personal Information Protection and Electronic Documents Act*, SC 2000, c. 5 and Schedule 1 to same; the *Limitations Act, 2002*, S.O. 2002, Chap. 24, s. 4.; and the *Federal Courts Act*, RSC 1985, c. F-7.

40. The Defendants ask that this action be dismissed, with costs.

July 31, 2018

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