Court File No.: CV-16-550579

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

TORONTO TRANSIT COMMISSION

Plaintiff

- and -

THE MANUFACTURERS LIFE INSURANCE COMPANY o/a MANULIFE

Defendant

STATEMENT OF CLAIM

Notice of Action Issued on 8 April 2016

1. The plaintiff claims:

   (a) Damages on the basis of negligence, negligent misrepresentation and breach of contract, for all amounts lost by the plaintiff due to the "Fraudulent Claims Scheme" (as that term is defined and described in the plaintiff's related action as against the fraudulent parties in Court File No. CV-15-540054) perpetrated against the plaintiff by Adam Clayton Smith, Healthy Fit Inc. and Sola Judy Smith also known as Judy Sola also known as Judy Sola Smith (hereafter, collectively referred to as "the Fraudulent Parties");

   (b) Damages and/or reimbursement for all costs and expenses incurred by the plaintiff in connection with its investigation into, and its quantification of, the Fraudulent Claims Scheme;

   (c) Damages and/or reimbursement for all costs and expenses incurred by the plaintiff in Court File No. CV-15-540054 ("the Healthy Fit Action") which were otherwise not recovered in that Action;

   (d) prejudgment interest pursuant to the Courts of Justice Act;

(e) its costs in this action on a substantial indemnity basis; and

(f) such further and other relief as this Honourable Court may deem just.

2. The plaintiff ("TTC") operates the public transit system in the City of Toronto. At all material times, TTC has provided a comprehensive group benefits plan to its large workforce. These benefits include health benefits.

3. The defendant The Manufacturers Life Insurance Company, operating as Manulife and as Manulife Financial (hereafter, "Manulife") is an insurance company and financial services provider, with its corporate headquarters in Toronto, Ontario, Canada. At all material times, and among other things, Manulife has engaged in the business of providing Group Benefits Services to the employees of third party companies and entities, pursuant to Administrative Services Only ("ASO") contracts with such companies and entities.

4. At all material times, TTC partnered with Manulife for the administration of claims under TTC's benefits plan. In this regard, at all material times, pursuant to an ASO contract which was effective as of January 1, 2012 ("the ASO Contract") Manulife has acted as an ASO provider to the TTC. As such, at all material times, for all benefits claims made by TTC employees, the benefits claims were submitted to Manulife, which then processed the claims, and, if applicable, advanced money to the particular claimant (TTC employee) to pay the claim. TTC then reimbursed Manulife in respect of these claims payments, and paid Manulife an additional administration charge. Effectively, the money paid out to TTC employees on their claims has been money belonging to TTC that was advanced to the TTC employees via Manulife. As such, any loss suffered due to a fraudulent benefits claim involving a TTC employee is and was wholly borne by TTC.

5. In the course of the negotiations between TTC and Manulife which led to the creation of the ASO Contract, Manulife made various oral and written representations to TTC (hereafter "the Fraud Control Representations") about comprehensive systems and procedures which Manulife apparently had in place for the prevention, and detection of fraudulent benefits claims, and for the proactive identification of employees and third party service providers involved or possibly involved in such fraudulent benefits claims (collectively, "the Systems and

Procedures"). Manulife represented to TTC that it would utilize such Systems and Procedures in the then-proposed ASO Contract and it represented that the use of such Systems and Procedures would significantly reduce the risk to the TTC of losses arising out of fraudulent benefits claims and schemes. The Fraud Control Representations included, among other things, representations that Manulife:

(a) Was an industry leader in actively combating fraud and benefits abuse;

(b) Had in place an appropriate variety of effective fraud management controls, and sophisticated technology to detect and prevent fraud and abuse in employee benefits claims, and to minimize fraud losses in such claims;

(c) Could and would monitor claims history of individual insureds (TTC employees) in order to detect service providers who are over-supplying treatments and products;

(d) Had systems that could detect, analyze and report on unusual trends and patterns which might indicate fraud or abuse;

(e) Would conduct frequent medical supply audits, practitioner audits, and provider investigations in order to track and monitor unusual transactions among TTC employees and third party medical suppliers and in particular, would conduct such audits with respect to suppliers of orthotics, orthopaedic shoes and support stockings;

(f) Had sophisticated software and systems for the detection, analysis and reporting on unusual claims trends and patterns so as to be able to detect fraud at an early stage;

(g) Would proactively use its systems and procedures for the prevention and detection of fraud in order to minimize the risk on the TTC of significant losses as a result of fraudulent activity of TTC employees and/or third party benefits providers; and

(h) Could and would retain records in an easy-to-access computerized format so as quickly to be able to track and monitor benefits paid to individual TTC employees and to third party medical suppliers.

6. In reliance upon the Fraud Control Representations, TTC entered into the ASO Contract with Manulife which became effective January 1, 2012. The Fraud Control Representations were incorporated implicitly or explicitly into the terms of the ASO Contract.

7. TTC states that the Manulife owed a duty of care to TTC in tort and in contract to ensure not only that the Systems and Procedures were in fact in place at Manulife, and were to be utilized for the benefit of TTC, but also to ensure that Manulife take such care and attention and to expend such resources in both equipment and staff as might be required to ensure that the Systems and Procedures were fully and properly utilized for their stated purpose. As set out below, TTC states that Manulife breached its duties of care in this regard, and such breaches caused or contributed to the losses suffered by TTC in the Fraudulent Claims Scheme, as described below.

8. Healthy Fit Inc. ("Healthy Fit") is a corporation incorporated pursuant to the laws of Ontario. At all material times, it maintained an office in Toronto which has supplied medical equipment and supplies, such as orthotics and compression socks, to individual customers. Up until 2014, Healthy Fit also maintained an office in Mississauga.

9. Adam Clayton Smith ("Smith") is an individual who lives in Mississauga. At all material times, he has been an owner and operator of Healthy Fit and he was aware of, and participated in the Fraudulent Claims Scheme the full particulars of which are described in detail in the Healthy Fit Action.

10. Sola Judy Smith also known as Judy Sola Smith, also known as Judy Sola ("Sola Smith") is an individual who lives in Mississauga. At all material times, Sola Smith has been Smith's spouse. At all material times, Sola Smith has been an owner and operator of Healthy Fit, and she was aware of, and participated in the Fraudulent Claims Scheme, the particulars of which are described below.

11. Healthy Fit, Smith and Sola Smith (the Fraudulent Parties) are defendants to the Healthy Fit Action.

12. At all material times, TTC's benefits plan provided, among other things, that TTC employees and their dependents were entitled to receive a certain dollar value per year of "covered" (i.e. covered under the plan) orthotics, orthopedic shoes and certain other medical products such as compression sleeves (collectively, "the Products"). At all material times, Healthy Fit was a supplier of such covered Products to TTC employees. The Products supplied by Healthy Fit were not always available "off the shelf". In particular, for orthotics, measurements of TTC employees' feet had to be taken, and the orthotics were then prepared off-site and then delivered back to Healthy Fit, where TTC employees would then have to return for pick-up.

13. At all material times, in order to claim under the TTC benefits plan for the purchase of any Products, the plan member (TTC employee) was obliged to purchase the item, and then prepare a claims form setting out the items to be claimed, and attach the related invoices and proof of sale documentation. The plan member/employee was then to sign the claims form and submit it, with the supporting documentation referred to above, to Manulife. Manulife would then process the claim and if the claim were properly payable, Manulife would remit a cheque or initiate an electronic funds transfer to the plan member for the amount of the claim.

14. In or about 2014, and as set out in the Healthy Fit Action (Court File No. CV-15-540054), TTC received a tip from a whistleblower that Smith and Healthy Fit were engaging in a practice of submitting fraudulent benefits claims to Manulife in respect of TTC employees, and then sharing with such employees the proceeds of the fraud. At some point, TTC shared this information with Manulife after which TTC and Manulife together commenced and carried out an investigation, which is ongoing. In the course of this investigation, TTC has thus far discovered that between at least the years 2012 to 2015, the Fraudulent Parties stole the sum of at least $5,000,000 from TTC using the Fraudulent Claims Scheme. Full particulars of the Fraudulent Claims Scheme are set out in the statement of claim to the Healthy Fit Action, a true copy of which is attached herein as Schedule A.

The Liability Of Manulife

15. TTC states that Manulife owed duties of care to TTC in contract and in tort to employ its Systems and Procedures in such a manner as to prevent, and detect any fraudulent benefits schemes, and to prevent or minimize any losses which might be suffered by TTC as a result of such schemes.

16. TTC states that in failing to prevent, or to detect in a timely way the Fraudulent Claim Scheme, and in failing to prevent or to minimize the losses to TTC which arose out of such Scheme, Manulife breached the duties of care in tort and contract which it owed to TTC. As a result of such negligence and breach of contract, TTC has suffered losses in an amount equal to the losses sustained due to the Fraudulent Claims Scheme.

17. The particulars of Manulife's negligence and breach of contract include the following:

(a) The Systems and Procedures were poorly designed and were inadequate in all of the circumstances to prevent and detect fraud;

(b) Manulife failed to utilize and to follow in a reasonable manner such Systems and Procedures as were in place;

(c) Manulife employed incompetent managers, employees and contractors in connection with administration and operation of the Systems and Procedures so that such Systems and Procedures were inadequate in all of the circumstances for the purposes of preventing and detecting fraud;

(d) Manulife failed to train its managers, employees and contractors in connection with the administration and operation of the Systems and Procedures so that such Systems and Procedures were incapable of operating such Systems and Procedures in a competent fashion;

(e) Manulife devoted insufficient resources in connection with administration and operation of the Systems and Procedures so that such Systems and

Procedures were incapable in all of the circumstances of preventing and detecting fraud; and

(f) Manulife was inattentive or careless in the manner in which it administered and operated the Systems and Procedures so that such Systems and Procedures were ineffective in the prevention and/or detection in a reasonably timely way of the Fraudulent Claims Scheme.

18. TTC further states that since the discovery of the Fraudulent Claims Scheme, TTC has encountered difficulties in its investigation and quantification of its losses as a result of the systemic limitation and impediments in Manulife's computer database. As a result of such limitations, TTC has been forced to incur considerable investigation expenses beyond what ought to have been required in the circumstances.

19. In addition to the foregoing, or in the alternative, TTC states that Manulife is liable to it in respect of the tort of negligent misrepresentation. In this regard, TTC states that the Fraud Control Representations were not true, or were inaccurate, exaggerated and/or misleading. TTC further states that Manulife made the Fraud Control Representations to TTC intending that TTC rely upon such representations, and that TTC did in fact rely upon such representations to its detriment. In this regard, had TTC been aware prior to the 2012 that the Fraud Control Representations were not true, or were inaccurate, exaggerated and/or misleading, TTC would have behaved differently so as to protect itself against potential benefits fraud. In particular, TTC would have contracted elsewhere for its ASO contractor, or would have insisted that Manulife improve the Systems and Procedures. Further, TTC would have undertaken to enhance its own internal systems and procedures for the prevention and detection of fraudulent benefits claims.

20. The plaintiff has incurred expenses in connection with the audits and other investigations which it needed to undertake in order to determine the nature and the extent of the defendants' misappropriations and to attempt to reconstruct and otherwise remedy the inaccuracies and omissions in its books and records. The particulars of these expenses will be provided to the defendants prior to trial.

21. TTC states that the trial in the within matter should take place in Toronto.

May 6, 2016

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Barristers & Solicitors
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Toronto, ON M5E 1M2

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Lawyers for the Plaintiff

SCHEDULE “A”

CV-15-540054

Court File No.:

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

TORONTO TRANSIT COMMISSION

Plaintiff

- and -

ADAM CLAYTON SMITH, HEALTHY FIT INC., and SOLA JUDY SMITH also known as JUDY SOLA also known as JUDY SOLA SMITH

Defendants

STATEMENT OF CLAIM

TO THE DEFENDANTS

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the *Rules of Civil Procedure*, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service, in this court office, WITHIN TWENTY DAYS after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the *Rules of Civil Procedure*. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

IF YOU PAY THE PLAINTIFF'S CLAIM, and $3,000 for costs, within the time for serving and filing your statement of defence, you may move to have this proceeding dismissed by the court. If you believe the amount claimed for costs is excessive, you may pay the plaintiff's claim and $400.00 for costs and have the costs assessed by the court.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date: November 6, 2015

Issued by ______________________
Local registrar

Address of court office: Superior Court of Justice
393 University Avenue
Toronto, Ontario M5G 1E6
10th floor

TO: Adam Clayton Smith
1141 Saginaw Crescent
Mississauga, ON L5H 3W4

AND TO: Healthy Fit Inc.

AND TO: Sola Judy Smith, also known as Judy Sola Smith, also known as Judy Sola
1141 Saginaw Crescent
Mississauga, ON L5H 3W4

CLAIM

1. The plaintiff claims as against all the defendants:

   (a) damages in the amount of $5,000,000 in respect of monies fraudulently misappropriated from the plaintiff by these defendants in connection with the "Fraudulent Claims Scheme" (as described below), and in respect of breach of trust, breach of fiduciary duty, knowing assistance of a breach of fiduciary duty and the tort of bribery arising out of the Fraudulent Claims Scheme;

   (b) alternatively, an order that the defendants account to the plaintiff for all amounts misappropriated by these defendants and their co-conspirators pursuant to the Fraudulent Claims Scheme and in respect of the defendants' fraud, breach of trust, breach of fiduciary duty, knowing assistance of a breach of fiduciary duty and the tort of bribery arising out of the Fraudulent Claims Scheme;

   (c) a declaration that the defendants have directly and indirectly fraudulently misappropriated significant funds properly belonging to the plaintiff and that, through the actions of the defendants as described in paragraph 11 herein, these defendants have systematically engaged in activities *vis a vis* the plaintiff which amount to fraud, breach of trust, breach of fiduciary duty, knowing assistance of breach of trust, knowing assistance of breach of fiduciary duty and bribery;

   (d) a declaration that the defendants owed fiduciary duties to the plaintiff, and were trustees or constructive trustees in respect of all amounts paid directly or indirectly by the plaintiff to the defendants, as described in paragraph 11 herein, that the defendants have been unjustly enriched in respect of such amounts, and that they are liable to account to the plaintiff in respect of such amounts;

(e) interim *ex parte* and permanent orders restraining these defendants from selling, mortgaging, pledging, transferring, assigning, diminishing or otherwise disposing of or dealing with any of their assets within the jurisdiction of this Court, and anywhere in the world, until this Court rules otherwise;

(f) orders requiring each of these defendants to provide to the plaintiff an accounting of any funds they received from, or paid to, directly or indirectly, employees of the plaintiff in connection with benefits claims, and orders requiring each of these defendants to provide to the plaintiff an accounting of any funds they received or paid which were fraudulently misappropriated from the plaintiff, and/or were obtained through a breach of trust, breach of fiduciary duty, or knowing assistance of breach of fiduciary duty (collectively, "the Stolen Funds"), and any profits they have made from such funds;

(g) an order that the defendants deliver to the plaintiff, through its solicitors, listings in writing and by way of sworn affidavit of their assets, and of their interests, direct or indirect, in other assets wherever located, whether in their own name or not, and whether jointly or solely owned, and whether such funds are nominally or otherwise held in trust, and that the defendants include in such affidavits the value, location and details of such assets;

(h) a declaration that, to the extent that any of the defendants have been directly or indirectly in receipt of Stolen Funds, the defendants hold such funds, and any assets or bank accounts, or other accounts of any kind maintained at any financial institutions, into which such Stolen Funds have been invested or can be traced (collectively "the trust property"), in trust for the plaintiff, and orders requiring that the defendants repay such funds to the plaintiff with interest;

(i) a tracing order in respect of all Stolen Funds;

(j) an order requiring each of the defendants to transfer to the plaintiff all assets, funds or bank accounts, or other accounts of any kind maintained at any financial institutions, held in trust by the defendants for the plaintiffs;

(k) damages for breach of trust and/or breach of fiduciary duty and/or knowing assistance of breach of fiduciary duty in respect of any trust property which has been dissipated by the defendants;

(l) prejudgment interest pursuant to the Courts of Justice Act;

(m) its costs in this action on a substantial indemnity basis; and

(n) such further and other relief as this Honourable Court deems just.

2. The plaintiff claims as against the defendants Adam Clayton Smith ("Adam Smith") and Sola Judy Smith ("Sola Smith"):

(a) a declaration that the plaintiff is the beneficial owner of the equity of redemption and of any and all estates, interests and properties held by the defendants in the property or properties set out in Schedule "A" attached ("the Property") and that these defendants hold their interests in such Property in trust for the benefit of the plaintiff;

(b) an order vesting in the plaintiff any and all estates, interest and properties held by these defendants, or any of them, in the Property;

(c) a certificate of pending litigation in respect of the Property.

3. The plaintiff ("TTC") operates the public transit system in the City of Toronto. At all material times, TTC has provided a comprehensive group benefits plan to its large workforce. These benefits include health benefits.

4. At all material times, TTC partnered with Manulife Financial ("Manulife") for the administration of claims under TTC's benefits plan. In this regard, at all material times, Manulife has acted as an "ASO" ("Administrative Service Only") provider. As such, at all material times,

for all benefits claims made by TTC employees, the benefits claims were submitted to Manulife, which then processed the claims, and, if applicable, advanced money to the particular claimant (TTC employee) to pay the claim. TTC then reimbursed Manulife in respect of these claims payments, and paid Manulife an additional administration charge. Effectively, the money paid out to TTC employees on their claims has been money belonging to TTC that was advanced to the TTC employees via Manulife. As such, any loss suffered due to a fraudulent benefits claim involving a TTC employee is and was wholly borne by TTC.

5. Healthy Fit Inc. ("Healthy Fit") is a corporation incorporated pursuant to the laws of Ontario. At all material times, it has maintained an office in Toronto which has supplied medical equipment and supplies, such as orthotics and compression socks, to individual customers. Up until 2014, Healthy Fit also maintained an office in Mississauga.

6. Adam Clayton Smith ("Smith") is an individual who lives in Mississauga. At all material times, he has been an owner and operator of Healthy Fit and he was aware of, and participated in the Fraudulent Claims Scheme which is described below.

7. Sola Judy Smith also known as Judy Sola Smith, also known as Judy Sola ("Sola Smith") is an individual who lives in Mississauga. At all material times, Sola Smith has been Smith's spouse. At all material times, Sola Smith has been an owner and operator of Healthy Fit, and she was aware of, and participated in the Fraudulent Claims Scheme which is described below.

8. At all material times, the TTC's benefits plan provided, among other things, that TTC employees and their dependents were entitled to receive a certain dollar value per year of "covered" (i.e. covered under the plan) orthotics, orthopedic shoes and certain other medical products such as compression sleeves (collectively, "the Products"). At all material times, Healthy Fit was a supplier of such covered Products to TTC employees. The Products supplied by Healthy Fit were not always available "off the shelf". In particular, for orthotics, measurements of the TTC employees' feet had to be taken, and the orthotics were then prepared off-site and then delivered back to Healthy Fit, where the TTC employees would then have to return for pick-up.

9. At all material times, in order to claim under the TTC benefits plan for the purchase of any Products, the plan member (TTC employee) was obliged to purchase the item, and then prepare a claims form setting out the items to be claimed, and attach the related invoices and proof of sale documentation. The plan member/employee was then to sign the claims form and submit it, with the supporting documentation referred to above, to Manulife. Manulife would then process the claim and if the claim were properly payable, Manulife would remit a cheque or initiate an electronic funds transfer to the plan member for the amount of the claim.

10. In or about 2014, TTC received a tip from a whistleblower that Adam Smith and Healthy Fit were engaging in a practice of submitting fraudulent benefits claims to Manulife in respect of TTC employees, and then sharing with such employees the proceeds of the fraud. At some point, TTC shared this information with Manulife after which TTC and Manulife together commenced and carried out an investigation, which is ongoing. In the course of this investigation, TTC has thus far discovered that between at least the years 2012 to 2015, the defendants stole the sum of at least $5,000,000 from TTC using the Fraudulent Claims Scheme, in the manner set out below.

<u>The Fraudulent Claims Scheme</u>

11. Between the years 2012-2015, the defendants regularly solicited TTC employees and their covered dependants to attend at Healthy Fit to make benefits claims in respect of certain covered Property, such as orthotics or compression sleeves, regardless as to whether the employee or his/her defendants required such items. Once the TTC employees were at the Healthy Fit premises, the defendants would induce many of these employees to participate in the Fraudulent Claims Scheme, the particulars of which were generally as follows:

(a) The defendants sold to the TTC employees certain covered Products, some of which often were not immediately available so that the defendants would order Products from third party suppliers for later delivery;

(b) The defendants charged the TTC employees inflated prices for the Products and/or charged for Products which were never provided, and the employees, using their own funds, or using monies borrowed from the defendants' financing companies (described below) paid the amounts charged. The amounts charged by the defendants for any given transaction (i.e., the fraudulent, inflated price) were the values of the claims that were subsequently submitted to Manulife.

(c) The TTC employees executed claims forms, some of which were blank forms, and provided these forms to the defendants so that the defendants could then file the claims with Manulife.

(d) The invoices submitted by the defendants to Manulife were fraudulent in that they: (i) overstated both the quantities of items that were supplied to the TTC employees and the price/cost of such items, (ii) included items that were never provided, and/or (iii) included items that were not medically necessary or required. The values of the claims submitted to Manulife were ostensibly covered under the TTC benefits plan, however, so that Manulife (and thus, the TTC) paid the full amount of the fraudulent invoices.

(e) Manulife then approved these falsified, fraudulent claims and sent benefit payments to the TTC employees for these fraudulently inflated dollar amounts ("the fraudulent claims benefit"). In the manner set out below, the TTC employees would either retain the amount of the claims benefit, repay the amounts paid earlier to the defendants, or the employee would pay over a portion of the benefit to the defendants.

(f) The defendants induced the TTC employees to participate in the Fraudulent Claims Scheme through the payment of cash kickbacks to the employees. These kickback payments were made both directly and indirectly, and generally, the manner in which the kick-backs were paid depended on the source of the funds used by the particular TTC employee to finance the purchase of the Products at first instance. [Some of the TTC employees funded the purchases themselves; others borrowed funds from one or other financing company (controlled by the defendants) in order to finance the purchase of the Products.]

(g) The kickback payments were always made in cash or by email so that they could not be easily traced through the business accounts of Healthy Fit.

(h) While the plaintiff's investigation is not yet complete, it appears that the value of the kickback to the TTC employee on any given transaction generally amounted to roughly 60% of the fraudulent benefit for the particular transaction while the defendants received roughly 40% of the benefit. For example, if the fraudulent benefit claimed by the defendants and paid by Manulife was $1,000, the employee was provided with a kickback of roughly $600.

12. The process by which the fraudulent benefits arising out of the Fraudulent Claims Scheme were shared as between the defendants and the TTC employees is described below.

(i) <u>TTC Employees Paid For Products Using Their Own Funds</u>

13. Some TTC employees who participated in the Fraudulent Claims Scheme paid for the Products using their own funds (generally, by credit card). The sales process would proceed as set out in paragraph 11 (a) – (f) above. Because Healthy Fit was charging a fraudulently inflated amount for the Products, not medically required, and/or charging for items that were not supplied at all (i.e., collectively, "the fraudulent benefit"), the defendants would then already be in possession of the fraudulent benefit for that particular transaction (as the employee would pay for the entire amount of the benefits claimed, which would be reimbursed by Manulife). The defendants would then make a cash payment (a kickback) to the particular employee for some portion of value of the fraudulent benefit, and retain a portion for their own benefit. Once Manulife paid the claim, the TTC employee would then be able to pay off the amount s/he had paid by credit card to Healthy Fit in respect of the transaction.

14. In this scenario set out in paragraph 13, the TTC employee would be enriched by the value of the kickback s/he had received from the defendants, while the defendants would be enriched by the amount of the fraudulent benefit, less the kickback.

(ii) TTC Employees Paid For Products Using Borrowed Funds

15. Some TTC employees who participated in the Fraudulent Claims Scheme chose not to use their own funds for the purchase of the Products. In this case, the sales process would proceed as set out in paragraph 11 (a) – (f) above. However, in order to fund the purchases, the TTC employees would borrow money from one or other financing company controlled directly or indirectly by the defendants (there were at least two such companies).

16. In such cases, the defendants, through the auspices of the financing company, advanced funds by cash or by email transfer to the TTC employees. The employees would execute a promissory note for the value of the loan, plus an administration fee. The employees then paid such borrowed funds to Healthy Fit as ostensible payment for the Products. Because the defendants were charging fraudulently inflated amounts for the Products or charging for Products that were never provided, the defendants would then be in possession of the full amount of the fraudulent benefit for the particular transactions, although the financing company would be out-of-pocket these same amounts.

17. The defendants then submitted the fraudulent claims to Manulife, and once the TTC employees received payment from Manulife, the employees re-attended at the Healthy Fit premises and repaid in cash to the defendants (thus to the particular financing company) the amounts owing on the loans. In other words, the employees would return to Healthy Fit after receiving payment from Manulife to pay-off the outstanding promissory note. While the TTC's investigation is not yet complete, it appears that in some instances, the employees retained a portion of the claim payment for themselves which would represent the value of the kickbacks to the employees. The defendants would repay the financing company the amounts of the loan using the cash from the employees, augmented by cash from the defendants (which had been obtained through the initial payment by the employees of the Products). In other instances, the employees paid the entire amount of the claim payments to the defendants, at which point, the defendants would make a cash/email transfer (kickback) payment to the particular TTC employee.

18. In the scenario set out at paragraphs 15-17 above, the TTC employees were enriched by the values of the cash kick-backs – which were paid either directly to the employee by the

defendants, or which were withheld by the employee out of the claim payment. The defendants were enriched by the value of the fraudulent benefit initially received from the TTC employee in ostensible payment for the Products, less the amount of the kick-back paid to the employee.

(iii) Other Types of Kickback Payments

19. In other instances, the defendants paid kickbacks to TTC employees directly through the use of internet or email cash transfers.

Other Allegations Relating to the Fraudulent Claims Scheme

20. The defendants were fully aware that they were submitting fraudulent benefits claims to Manulife and that the fraudulent over-charging on these claims represented funds (hereafter, "the Stolen Funds") stolen from Manulife or from TTC.

21. At no time prior to April 12, 2014, were Manulife or the TTC aware of the Fraudulent Claim Scheme or of the payments by the defendants to the TTC employees. The defendants and the TTC employees who participated in the Fraudulent Claims Scheme took steps to hide from Manulife and the TTC their fraudulent activities.

22. At no time were any of the defendants entitled to any of the Stolen Funds. At all material times, the defendants were aware of, and participated in, both the Fraudulent Claims Scheme and/or the distribution of the Stolen Funds. While the defendants received only a portion of the Stolen Funds, they are responsible at law and in Equity to repay to the plaintiff the full value of the Stolen Funds.

23. While the TTC's investigation is not yet complete, the TTC has thus far established that in the years 2012- 2015, Healthy Fit has submitted benefits claims to Manulife in the names of TTC employees having a total value in excess of $5,000,000. As a result of the Fraudulent Claims Scheme, the defendants have caused a direct and/or indirect loss to the plaintiff in the approximate amount, thus far, of at least this amount of $5,000,000, the full particulars of which will be provided to the defendants prior to trial.

24. Some portion of the Stolen Funds was invested in the property ("the Property") owned by Smith and/or Sola Smith (the full legal description of which is set out in the attached Schedule

A). The plaintiff therefore owns a beneficial interest in the Property by virtue of its ability to trace Stolen Funds to it.

25. As a result of the foregoing, among other things, the equity of redemption in the Property which is legally owned by Smith and Sola Smith (whether jointly or individually) is impressed with a resulting, constructive or other trust to the benefit of the plaintiff, and the plaintiff is entitled to an equitable charge or mortgage on the Property, such mortgage to be held in trust by the defendants for the plaintiff.

26. The defendants have invested all or a portion of the Stolen Funds into a variety of real and personal property assets which assets are controlled directly or indirectly by the defendants and in doing so, the defendants have attempted to obscure and/or have obscured the identities of the assets into which the Stolen Funds can be traced.

27. To the extent that the defendants or any other person acting on their behalf have retained the Stolen Funds or have invested the Stolen Funds into other assets, including bank accounts or investment accounts, held at any bank or other financial institution, whether in Ontario or elsewhere, such funds and assets are impressed with a resulting, constructive or other trust to the benefit of the plaintiff.

28. Further, to the extent that the defendants have dissipated the Stolen Funds, or have sold, encumbered or otherwise dealt with assets which were purchased with the Stolen Funds or into which the Stolen Funds can be traced, the plaintiff states that the defendants are in breach of the terms of any trust which exists in respect of the Stolen Funds or the aforementioned assets, and the defendants are liable to the plaintiff in the amount by which the Stolen Funds and/or aforementioned assets have been dissipated.

29. The plaintiff pleads and relies upon the doctrines of Equity including the doctrine of Equitable Tracing.

30. The plaintiff has incurred expenses in connection with the audits and other investigations which it needed to undertake in order to determine the nature and the extent of the defendants' misappropriations and to attempt to reconstruct and otherwise remedy the inaccuracies and

omissions in its books and records. The particulars of these expenses will be provided to the defendants prior to trial.

November 6, 2015

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Lawyers for the Plaintiff

SCHEDULE "A"

Item	Description
1.	PCL 36-1 SEC M224; LT 36, PL M224; S/T LT156875 MISSISSAUGA, known municipally as **1141 Saginaw Crescent, Mississauga** (owned by **Adam Clayton Smith and Sola Judy Smith**) [PIN 13452 - 0266 (LT)]

CV-15-540054

TORONTO TRANSIT COMMISSION
Plaintiff

and

ADAM CLAYTON SMITH et al
Defendants

Court File No.: »

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at Toronto

STATEMENT OF CLAIM

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Lawyers for the Plaintiff

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TORONTO TRANSIT COMMISSION and MANULIFE
Plaintiff Defendants

Court File No.: CV-16-550579

ONTARIO
SUPERIOR COURT OF JUSTICI

Proceeding commenced at Toronto

STATEMENT OF CLAIM

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