

**ONTARIO
SUPERIOR COURT OF JUSTICE**

**THE HONOURABLE
JUSTICE MORGAN**

) **FRIDAY the 15th**
)
) **DAY OF OCTOBER, 2021**

B E T W E E N:

KEVIN LYONS

Plaintiff

- and -

**THE TORONTO-DOMINION BANK and
TD HOME AND AUTO INSURANCE COMPANY**

Defendants

PROCEEDING UNDER THE *CLASS PROCEEDINGS ACT, 1992*

**ORDER
(CERTIFICATION and MOTION TO STRIKE)**

THIS MOTION, made by the Plaintiff for certification of this action as a class proceeding pursuant to the *Class Proceedings Act, 1992*, S.O. 1992, c.6 together with this motion, made by the Defendant The Toronto-Dominion Bank to strike the claim against it, was read this day at Toronto, Ontario.

ON READING the affidavit of Kevin Lyons, sworn February 23, 2021, the affidavit of Rohit Thomas, sworn April 30, 2021, and on being advised of the consent of the parties,

Certification & Class Definition

1. **THIS COURT ORDERS** that this action is hereby certified as a class proceeding as against the defendant TD Home and Auto Insurance Company.
2. **THIS COURT ORDERS** that the "Class" is defined as:

Any person in Canada insured under the terms of Policy TGV006 (the "Policy") and the applicable Certificate of Insurance who, between March 16, 2018 and the date of certification had their claim for a Trip Cancellation Benefit under the Policy fully or partially denied based, wholly or in part, on the availability of non-monetary compensation such as credits, coupons, or vouchers.

Representative Plaintiff & Class Counsel

3. **THIS COURT ORDERS** that Kevin Lyons is appointed as the Representative Plaintiff on behalf of the Class, and that Samfiru Tumarkin LLP and Adair Goldblatt Bieber LLP, collectively referred to as "Class Counsel", are hereby appointed as counsel for the Class.

Relief Sought

4. **THIS COURT ORDERS** that the relief sought in the Amended Statement of Claim by the Class, and the associated claims asserted by the Class, includes the following:
 - a. a declaration that the Plaintiff and the Class are insured persons of TD Home and Auto Insurance Company pursuant to the Policy;
 - b. a declaration that TD Home and Auto Insurance Company breached the terms of the relevant cardholder agreement and the Policy by failing to act in accordance with their terms;
 - c. a declaration that TD Home and Auto Insurance Company breached its duty of good faith in contractual performance and its duty of utmost good faith to the Plaintiff and the Class;
 - d. damages for TD Home and Auto Insurance Company's breach of the Policy along with aggravated, punitive and/or exemplary damages in the sum of \$10 million for the Plaintiff and the Class;

- e. payment of other sums due and owing to the Plaintiff and the Class pursuant to and in accordance with the terms of the Policy and the relevant cardholder agreement; and
- f. in the alternative, a declaration that TD Home and Auto Insurance Company has been unjustly enriched, to the deprivation of the Plaintiff and the Class together with an order of disgorgement.

Common Issue

- 5. **THIS COURT ORDERS** that the certified common issue for the Class is:
 - a. Does TD travel insurance policy bearing Group Policy No. TGV006 and the applicable Certificate of Insurance, as contained within the class member's Cardholder Agreement permit the denial, in whole or in part, of claims for Trip Cancellation Benefits for reimbursement of Eligible Trip Cancellation Expenses forfeited as a result of Non-Medical Covered Causes for Cancellation on account of the availability of non-monetary compensation, such as credits, coupons, or vouchers which the class member has received or which the class member was entitled to receive from a travel service provider?
- 6. **THIS COURT ORDERS** that nothing in this Order shall prevent the Representative Plaintiff from seeking leave of the Court to move for certification of some or all of the remaining alleged common issues identified in the Plaintiff's Certification Motion Record dated February 26, 2021 (the "Remaining Common Issues") following the determination of the common issue certified herein and all appeals in respect thereto having been finally determined.

Notice of Certification & Opting Out

7. **THIS COURT ORDERS** that the form of notice of this certification order, the manner of giving notice, and all other related matters, including opt-out procedures, shall be determined by further order of this Court.

Dismissing Claim Against Toronto-Dominion Bank

8. **THIS COURT ORDERS** that all claims by and against the Defendant, The Toronto-Dominion Bank, be and are dismissed, without costs and with prejudice.

Costs

9. **THIS COURT ORDERS** that both parties shall bear their own costs of these motions.

A handwritten signature in blue ink, appearing to read 'Morgan J.', is centered on a light blue rectangular background.

Morgan J.

KEVIN LYONS
Plaintiff

-and-

THE TORONTO-DOMINION BANK, et al.
Defendants

Court File No. CV-20-646789-00CP

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT
TORONTO

CERTIFICATION ORDER

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