



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

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE
JUSTICE E.M. MORGAN

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THURSDAY, THE 16th
DAY OF FEBRUARY, 2023

B E T W E E N :

KEVIN LYONS

Plaintiff

- and -

TD HOME AND AUTO INSURANCE COMPANY

Defendant

Proceeding under the *Class Proceedings Act, 1992*

**JUDGMENT
(SETTLEMENT APPROVAL)**

THIS MOTION made by the Plaintiff for an Order approving the settlement of this proceeding in accordance with a Settlement Agreement dated October 6, 2022 (the “**Settlement Agreement**”) which includes a distribution protocol (the “**Distribution Protocol**”) entered into with the defendant, TD Home and Auto Insurance Company (“**TDHA**”) and dismissing this action as against TDHA was heard this day at the Courthouse, by videoconference, at Toronto, Ontario.

ON READING the Certification Order dated October 15, 2021, as amended by further Order dated October 11, 2022 (which set out the common issues and describe the class and the nature of the claims asserted on behalf of the class, hereinafter the “Certification Order”) attached to this Judgment as **Schedule “A”**, the materials filed, including the affidavit of Kevin Lyons sworn February 2, 2023, and the Settlement Agreement attached to this Judgment as **Schedule “B”**, and on hearing the submissions of counsel for the Plaintiff and counsel for TDHA, and any objectors or reading submissions of any objectors, fair and adequate notice of this hearing having

been provided to Class Members in accordance with the Order of this Court dated October 11, 2022;

AND ON BEING ADVISED that the deadline for objecting to the Settlement Agreement has passed and there were no objections to the Settlement Agreement;

AND ON BEING ADVISED that the deadline for opting out of this action has passed and 70 persons validly exercised the right to opt out, who are listed in **Schedule “C”** to this Order, attached;

AND ON BEING ADVISED that, subject to Court approval, the Plaintiff and TDHA have consented to all the terms of this Judgment,

1. **THIS COURT ORDERS AND DECLARES** that the settlement of this Class Action on the terms set forth in the Settlement Agreement is fair and reasonable and in the best interests of the Class Members and is hereby approved pursuant to section 29 of the *Class Proceedings Act, 1992*, S.O. 1992, c. 6 (as it then was), and shall be implemented and enforced in accordance with its terms.

2. **THIS COURT ORDERS** that the use of capitalized terms in this Judgment shall have the same meaning as found in the Settlement Agreement except to the extent that the definition of a term in the Settlement Agreement and this Judgment conflict, in which case the definition of the term as set out in this Judgment shall govern.

3. **THIS COURT ORDERS** that the Distribution Protocol shall be utilized by the Claims Administrator (as defined in the Settlement Agreement) in administering the Settlement Agreement, and the Claims Administrator may at its discretion seek additional information in administering the settlement as provided in the Settlement Agreement, or direction of this Court as to the implementation of the Settlement Agreement.

4. **THIS COURT ORDERS, ADJUDGES AND DECLARES** that the Settlement Agreement is expressly incorporated by reference into this Judgment, and this Judgment and the Settlement Agreement are binding upon all Class Members who have not validly opted-out from the Class Action in accordance with the Order of this Court dated October 11, 2022, whether or

not such Class Members receive or claim compensation, including persons who are minors or are mentally incapable, and the need for service or notice of this or any further steps in these proceedings on the Public Guardian and Trustee, as well as all other requirements in the *Public Guardian and Trustee Act*, R.S.O. 1990 c. P.51, and the requirements of Rules 7.04(1) and 7.08(4) and any other service or notice requirements of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, are hereby dispensed with.

5. **THIS COURT FURTHER ORDERS, DECLARES AND ADJUDGES** that the releases provided at section 10 of the Settlement Agreement are approved and take effect as of the date of this Judgment, and each Class Member who has not validly opted-out from the Class Action has released and shall be conclusively deemed to have forever and absolutely released the Releasees, including TDHA, from the Released Claims (as that term is defined in section 10 of the Settlement Agreement).

6. **THIS COURT FURTHER ORDERS, DECLARES AND ADJUDGES** that each Class Member who has not validly opted-out from the Class Action and their respective heirs, administrators, executors, successors and assigns, shall not now or hereafter institute, continue, maintain, intervene in or assert, either directly or indirectly, whether in Canada or elsewhere, on their own behalf or on behalf of any class or any other person, any proceeding, cause of action, claim or demand against any of the Releasees, or any other person who may claim contribution or indemnity or other claims over for relief from any of the Releasees, whether pursuant to the *Negligence Act*, R.S.O. 1990, c. N.1 or other legislation or at common law or equity in respect of any claim released in this Judgment.

7. **THIS COURT FURTHER ORDERS, DECLARES AND ADJUDGES** that as of the date of this Judgment, each Class Member who has not validly opted-out from the Class Action shall be deemed to have consented to the dismissal of any other action or proceeding he or she may have commenced asserting Released Claims as against the Releasees, including TDHA, without costs and with prejudice.

8. **THIS COURT ORDERS** that neither the Settlement Agreement (including all terms thereof), nor its performance and implementation, shall be construed as any admission by TDHA, including but not limited as to: (1) the validity of any claim, theory, or fact; (2) any liability, fault,

or responsibility; or (3) the existence, cause, or extent of any damages or losses alleged or suffered by any Class Member.

9. **THIS COURT ORDERS** that other than that which has been provided in the Settlement Agreement, no Releasee shall have any responsibility or liability whatsoever relating to the administration of the Settlement Agreement.

10. **THIS COURT ORDERS** that the persons who have validly opted-out from the Class Action are not entitled to any relief or given any rights under the Settlement Agreement.

11. **THIS COURT ORDERS** that this Class Action is dismissed without costs and with prejudice and such dismissal shall be a defence to any subsequent action in respect of the subject matter hereof.

12. **THIS COURT ORDERS AND DECLARES** that, without in any way affecting the finality of this Judgment, for the purposes of administration and enforcement of the Settlement Agreement and this Judgment, this Court will retain an ongoing supervisory role and reserves exclusive and continuing jurisdiction over this action, the Plaintiff, all of the Class Members and TDHA, and the parties acknowledge and attorn to the jurisdiction of this Court solely for the purpose of implementing, administering, and enforcing this Settlement Agreement and this Judgment, subject to the terms and conditions set out in the Settlement Agreement and this Judgment.

13. **THIS COURT ORDERS** that the legal fees and disbursements of Class Counsel shall be determined by further order of this Court.

14. **THIS COURT ORDERS** that any appeal from this Judgment be brought within 30 days of the date of this Judgment pursuant to Rule 61.04 of the *Rules of Civil Procedure*.



Morgan J.

SCHEDULE "A"

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



**ONTARIO
SUPERIOR COURT OF JUSTICE**

HONOURABLE
JUSTICE MORGAN

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)

TUESDAY, THE *11th*
DAY OF *OCTOBER*, 2022

BETWEEN:

KEVIN LYONS

Plaintiff

- and -

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

Defendants

PROCEEDING UNDER THE *CLASS PROCEEDINGS ACT, 1992*

**ORDER
(AMEND CERTIFICATION ORDER)**

THIS MOTION, made by the Plaintiff for an Order amending an Order dated October 15, 2021 that certified this action as a class proceeding (the "**Certification Order**"), was heard this day in the presence of counsel for the Plaintiff and the Defendant, TD Home and Auto Insurance Company ("**TDHA**"), at Toronto, Ontario.

ON READING the affidavit of Michael Gerhard, sworn October 6, 2022, the affidavit of Kevin Lyons, sworn February 23, 2021, on being advised of the consent of the parties, and on hearing the submissions of counsel for the Plaintiff and for TDHA,

1. **THIS COURT ORDERS** that the Certification Order shall be and is amended by adding to the common issues certified at paragraph 5 the following common issues:
 - b. Did TD Home and Auto Insurance Company owe the Class a duty of good faith, whether pursuant to contract, statute, or otherwise?
 - c. If the answer to question (b) is yes, did TD Home and Auto Insurance Company breach their duties to the Class, or members thereof, by denying claims for a Trip Cancellation Benefit under the Policy, wholly or in part, on the basis of the availability of non-monetary compensation, such as credits, coupons, or vouchers?
 - d. If the answer to question (a) is no or question (c) is yes, does TD Home and Auto Insurance Company owe members of the Class monetary damages?
 - e. Has TD Home and Auto Insurance Company been unjustly enriched, to the deprivation of Class members, by the receipt of the value of premiums, credit card charges, interest and/or other consideration under the Cardholder Agreement by denying claims for a Trip Cancellation Benefit under the Policy, wholly or in part, on the basis of the availability of non-monetary compensation, such as credits, coupons, or vouchers?
 - f. If the answer to question (a) is no or the answer to question (c) and/or (e) is yes, is the Class entitled to punitive, exemplary or aggravated damages?
2. **THIS COURT ORDERS** that, for greater certainty, notwithstanding this Order amending the Certification Order, the date of certification of this action as a class proceeding is October 15, 2021.

3. **THIS COURT ORDERS** that paragraph 2 of the Certification Order shall be and is amended to confirm the date of certification of this proceeding as a class proceeding as follows:

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 (October 15, 2021) 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.



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

ORDER

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

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Electronically issued : 18-Oct-2021
Délivré par voie électronique : 18-Oct-2021
Toronto

) **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.



Morgan J.

KEVIN LYONS
Plaintiff

-and-

THE TORONTO-DOMINION BANK, et al
Defendant

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

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT
TORONTO

CERTIFICATION ORDER

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Lawyers for the Plaintiff

SCHEDULE "B"

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

**ONTARIO
SUPERIOR COURT OF JUSTICE**

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*

SETTLEMENT AGREEMENT AGREED UPON AS OF OCTOBER 6, 2022

WHEREAS, on September 4, 2020, the plaintiff commenced a proposed class proceeding Action, bearing Court File No. CV-20-646789-00CP, which was amended on November 30, 2020,

AND WHEREAS the Action advanced a claim for, among other things, breach of contract against The Toronto-Dominion Bank and/or TD Home and Auto Insurance Company in respect of claims made between March 16, 2018 and the date of certification under Policy TGV006 respecting a Trip Cancellation Benefit under the Policy, and where such claims were wholly or partly denied based on the availability of non-monetary compensation such as credits, coupons, or vouchers;

AND WHEREAS all claims by and against the defendant, The Toronto-Dominion Bank, were dismissed, without costs and with prejudice, by Order of the Honourable Justice Morgan October 15, 2021;

AND WHEREAS the Action was certified as a class proceeding for purposes of determining a threshold issue by Order of the Honourable Justice Morgan dated October 15, 2021;

AND WHEREAS the certified class definition was:

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.

AND WHEREAS the representative plaintiff, Kevin Lyons, with the assistance of Class Counsel, and the Defendant, TD Home and Auto Insurance Company, have engaged in arm’s-length settlement discussions and negotiations with the assistance of mediators Mike Eizenga and Meg Bennett of Bennett Jones LLP, resulting in this Settlement Agreement;

AND WHEREAS the Plaintiff and the Defendant intend by this Settlement Agreement to achieve a final resolution of the claims asserted or which could have been asserted by or on behalf of members of the Class in the Action;

NOW THEREFORE in consideration of the covenants, agreements and releases set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is agreed that, subject to the approval of the Court, the Action be settled on the following terms and conditions:

DEFINITIONS

1. For the purposes of this Settlement Agreement (including the Recitals) the following definitions apply:
 - a. **Action** or **Class Action** means the class proceeding in the Ontario Superior Court of Justice under Court File No. CV-20-646789-00CP.
 - b. **Administration Expenses** means all fees, disbursements, expenses, costs, taxes, and any other amounts incurred or payable for the implementation and operation of this Settlement Agreement including the Notice Plan and Plan of Distribution and any costs of translation. For greater certainty, all fees payable to the Administrator in connection with any services provided by the Administrator in administering and implementing this Settlement Agreement are included in Administration Expenses.
 - c. **Administrator** or **RicePoint** means RicePoint Administration Inc.
 - d. **Class** means

“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 October 18, 2021 (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”.

and ***Class Member*** means a member of the Class.

- e. ***Class Counsel*** means Adair Goldblatt Bieber LLP and Samfiru Tumarkin LLP.
- f. ***Class Counsel Fees*** means the portion of the Settlement Funds (as defined below) that is to be paid to Class Counsel for its fees and disbursements as approved by the Court on the Fees Approval Motion.
- g. ***Class Proceedings Fund Levy*** means the amount required to be paid to the Class Proceedings Fund under O. Reg. 771/92.
- h. ***Defendant*** means TD Home and Auto Insurance Company.
- i. ***Effective Date*** means the date on which the last of the Parties executes this Settlement Agreement.
- j. ***Fees Approval Motion*** means the motion by which Class Counsel seeks to have its fees and disbursements approved and paid from the Settlement Funds.
- k. ***Final Order*** means a final order, judgment or equivalent decree entered by the Court approving this Settlement Agreement substantially in the form attached as Schedule “D”, once the time to appeal such order has expired without any appeal being taken, if an appeal lies, or if such order is appealed, upon the affirmation of the order upon a final disposition of all appeals and the expiry of the time for any further appeal.
- l. ***Notice*** means the notice approved by the Court informing the Class Members of:
 - i. the elements of certification and settlement;
 - ii. the Class Members’ right to opt-out of the Action;
 - iii. the opt-out procedure;
 - iv. the Opt-Out Deadline;
 - v. the date and location of the Settlement Approval Motion;
 - vi. the date and location of the Fees Approval Motion; and
 - vii. the process of objecting to the Settlement Approval Motion or the Fees Approval Motion.

- m. **Notice Plan** means the manner by which Notice is to be provided to Class Members, as approved by the Court.
- n. **Opt-Out Deadline** means the last date by which the Class Members may provide notice of their intention to opt-out of this Action as prescribed by the Notice.
- o. **Parties** means the Plaintiff and the Defendant and **Party** means either of them.
- p. **Plaintiff** means Kevin Lyons.
- q. **Plan of Distribution** means the manner by which the Settlement Funds are to be distributed among Class Members, as approved by the Court.
- r. **Policy** means the group policy of insurance bearing policy number TGV006 issued by the Defendant for the benefit of the Class Members.
- s. **Releasees** means, jointly and severally, individually and collectively, the Defendant and all of its present and former direct and indirect parents, owners, subsidiaries, divisions, affiliates, associates (as defined in the *Canada Business Corporations Act*, R.S.C. 1985, c. C-44), partners, joint ventures, franchisees, dealers, insurers, and all other persons, partnerships or corporations with whom any of the former have been, or are now, affiliated, and all of their respective past, present and future officers, directors, employees, agents, mandataries, shareholders, attorneys, trustees, servants and representatives, members, managers and the predecessors, successors, purchasers, heirs, executors, administrators and assigns of each of the foregoing.
- t. **Settlement Agreement** means this agreement, including all recitals herein and all schedules attached hereto.
- u. **Settlement Amount** means the amount of the Settlement Funds remaining after deducting \$100,000 on account of Administration Expenses and payment of the Class Proceedings Fund Levy and Class Counsel Fees.
- v. **Settlement Approval Motion** means the motion to be brought by the Plaintiff seeking an Order in the form attached hereto as Schedule “D” which, inter alia,
 - i. approves this settlement as fair reasonable and in the best interests of the Class.
 - ii. approves the proposed distribution protocol as set out in Schedule “C”; and
 - iii. dismisses the Action with prejudice and without costs.

- w. **Settlement Funds** means the sum of \$5,100,000.00 CAD to be paid by the Defendant, For greater certainty, the Settlement Funds comprise:
- i. \$4,800,000 in respect of amounts in satisfaction of the claims asserted on behalf of the Class;
 - ii. \$200,000 on account of costs; and
 - iii. \$100,000 on account of Administration Expenses.
- x. **Travel Expenses** means amounts that were insured under the Policy in respect of which non-monetary compensation such as credits, coupons or vouchers was available to a Class Member and in respect of which the Class Member's request for payment was denied between March 16, 2018 and October 15, 2021.

PAYMENT, ADMINISTRATION, RESOLUTION

2. The Plaintiff shall retain RicePoint to administer the Settlement Amount in accordance with the Plan of Distribution and provide Notice in accordance with the Notice Plan.
3. Within thirty days of the later of the Final Order and approval of Class Counsel Fees, the Defendant shall pay from the Settlement Funds to the Administrator, or otherwise as may be directed by Court Order, the Settlement Amount.
4. The Settlement Funds shall not bear interest. The Administrator, on receipt of the Settlement Amount shall not place the Settlement Amount in an interest earning account.
5. The Administrator shall distribute the Settlement Amount in accordance with the Plan of Distribution approved by the Court.
6. Within thirty days of the later of the Final Order and approval of the Class Counsel Fees, the Defendant shall pay from the Settlement Funds to Class Counsel the Class Counsel Fees.
7. Within thirty days of the Final Order, the Defendant shall pay from the Settlement Funds to the Administrator \$100,000 on account of the Administration Expenses. To the extent that the Administration Expenses are less than \$100,000, the balance of any amount remaining shall be part of a cy-près distribution referred to in the Distribution Protocol. Any Administration Expenses in excess of \$100,000 shall be the responsibility of and paid by Class Counsel.
8. Within thirty days of the Final Order, the Defendant shall pay from the Settlement Funds the Class Proceedings Levy Fee in accordance with the Final Order.

9. Except as set out herein, the Defendant shall have no further or other obligation to the Plaintiff, Class, Class Counsel or the Administrator.
10. In consideration of payment of the Settlement Funds and for other valuable consideration set forth in the Settlement Agreement, the Plaintiff on his own behalf and on behalf of all Class Members (other than Class Members who validly opt out of the Action) and their respective heirs, administrators, executors, successors and assigns, fully, finally, irrevocably, and forever releases, waives, discharges, relinquishes, settles, and acquits any and all claims, demands, actions, or causes of action, of any kind or nature whatsoever, whether in law or in equity, contractual, quasi-contractual, or statutory, known or unknown, direct, indirect or consequential, liquidated or unliquidated, past, present or future, foreseen or unforeseen, developed or undeveloped, contingent or noncontingent, suspected or unsuspected, whether or not concealed or hidden, that any such person may have, purport to have, or may have hereafter against any and all Releasees, that arise from or in any way relate to the Travel Expenses or the administration and implementation of this Settlement Agreement including claims for interest, costs, expenses, class administration expenses (including Administration Expenses), penalties, and lawyers' fees (including Class Counsel Fees and Class Counsel disbursements) and including but not limited to any claims that were or could have been asserted in the Action (the "**Released Claims**").
11. For such consideration the Plaintiff on his own behalf and on behalf of each Class Member (other than Class Members who validly opt out of the Action) and their respective heirs, administrators, executors, successors and assigns further agrees that no such person shall now or hereafter institute, continue, maintain, intervene in or assert, either directly or indirectly, whether in Canada or elsewhere, on their own behalf or on behalf of any class or any other person, any proceeding, cause of action, claim or demand against any Releasee, or any other person who may claim contribution or indemnity, or other claims over relief, from any Releasee, whether pursuant to the *Negligence Act*, R.S.O. 1990, c. N.1 or other legislation or at common law or equity in respect of any claim herein released. For greater certainty and without limiting the generality of the foregoing, such persons shall not assert or pursue any such claim against any Releasee under the laws of any foreign jurisdiction.

MOTIONS AND COURT APPROVAL

12. Following the Effective Date, the Plaintiff will initiate motions to:
 - a. Amend the Certification Order to include all of the common issues set out in Schedule "A" to this Settlement Agreement; and

- b. Seek an order approving the Notice and proposed Notice plan as set out at Schedule “B” to this Settlement Agreement.
13. Not less than 45 days after the Opt-Out Deadline, the Plaintiff will make returnable the Settlement Approval Motion seeking a judgment substantially in the form attached as Schedule “D” to this Settlement Agreement approving the Settlement Agreement including the proposed distribution protocol attached to this Settlement Agreement as Schedule “C”, releasing the Releasees, and dismissing the Action.
14. Concurrent with the Settlement Approval Motion, Class Counsel shall make returnable the Fees Approval Motion seeking approval of Class Counsel Fees, Administration Expenses and payment of the Class Proceedings Fund Levy to be paid from the Settlement Funds.
15. The Defendant shall take no position in respect of the Fees Approval Motion.

NOTICE

16. Class Counsel shall be responsible for providing the Notice in accordance with the Notice Plan approved by the Court and, subject to order of the Court, shall employ RicePoint in this regard.
17. In the event that this Settlement Agreement is terminated, the Class shall be given notice of the termination of the Settlement, in such form as may be approved by the Court.
18. If a Final Order is not issued, Class Counsel shall be responsible for the cost of disseminating the Notice and implementing the Notice Plan approved by the Court. The Defendant shall pay to Class Counsel 50% of the amount paid to the Administrator in respect of disseminating the Notice and implementing the Notice Plan.
19. The Notice shall be disseminated in English and French.

DISTRIBUTION PROTOCOL

20. The distribution protocol is part of this Settlement Agreement and will be subject to Court Approval as part of the Settlement Approval Motion. The proposed distribution protocol is appended as Schedule “C” to this Settlement Agreement.

TERMINATION OF SETTLEMENT AGREEMENT

21. This Settlement Agreement shall terminate if a Final Order is not issued by the Court and upheld on any subsequent appeal.
22. The Defendant shall have the right to terminate the Settlement Agreement in the event that:
 - a. the Plaintiff breaches a material term of the Settlement Agreement; or
 - b. 200 or more Class Members opt-out of the Class Action (the “**Opt-out Threshold**”).
23. The Plaintiff shall have the right to terminate the Settlement Agreement in the event that the Defendant breaches a material term of the Settlement Agreement.
24. If the Defendant elects to terminate the settlement as a result of the Opt-out Threshold having been exceeded, it must exercise such election within five business days of receiving advice in writing from the Plaintiff or the Administrator that the Opt-out Threshold has been exceeded. If the Defendant does not terminate the Settlement Agreement within five business days from having been so advised that the Opt-out Threshold has been exceeded, then it will be deemed to have waived this right under the Settlement Agreement.
25. If, for any other reason, the Plaintiff or the Defendant seek to exercise their right to terminate the Settlement Agreement under this section, such right must be exercised within five business days of the date that such Party had knowledge of the act giving rise to an entitlement to terminate the Settlement Agreement. A Party who does not elect to exercise a right to terminate the Settlement Agreement within five business days of such date will be deemed to have waived this right under the Settlement Agreement.
26. If this Settlement Agreement is terminated, then
 - a. any step taken in this Action pursuant to the Settlement Agreement shall be without prejudice to any other position a Party may later take in respect of procedural or substantive issues raised in the Action;
 - b. any Order made by a Court pursuant to this Settlement Agreement (including any order amending the Certification Order) shall be set aside or vacated on the consent of the Parties, to the extent possible; and
 - c. the Parties, to the extent possible, shall be returned to their position in the litigation as if this Settlement Agreement had not been reached.

27. In the event the Settlement Agreement is terminated, it shall be null and void and have no further force or effect, and shall not be binding on the Parties, and shall not be used as evidence or otherwise in any litigation or in any other way for any reason, except as required by law.

OTHER

28. Except as provided herein, this Settlement Agreement does not settle, compromise, release or limit in any way whatsoever any claim by the Class Members against any person or entity other than the Releasees.
29. The Plaintiff agrees that he will not opt-out of the Class Action.
30. The Plaintiff, on his own behalf and on behalf of the Class Members agrees, whether or not this Settlement Agreement is approved, terminated, or otherwise fails to take effect for any reason, that this Settlement Agreement and anything contained herein, and any and all negotiations, documents, discussions, and proceedings associated with this Settlement Agreement, and any action taken to carry out this Settlement Agreement, shall not be deemed, construed, or interpreted to be an admission by any of the Releasees, or as any evidence in any proceeding, of any violation of any statute or law, or of any wrongdoing, fault, omission, or liability by any of the Releasees, or of the truth or validity of any of the claims or allegations contained in the Action or any other pleading filed against the Defendant by, or on behalf of, the Plaintiff, or the Class Members.
31. The parties acknowledge that they have required and consented to this Settlement Agreement being prepared in English.
32. The following schedules annexed hereto form part of this Settlement Agreement:
- a. **Schedule “A”**: Proposed Amended Common Issues
 - b. **Schedule “B”**: Notice and Notice Plan
 - c. **Schedule “C”**: Distribution Protocol
 - d. **Schedule “D”**: Judgment
33. Each of the Parties hereby affirms and acknowledges that:
- a. he, she, or a representative of the Party with the authority to bind the Party with respect to the matters set forth herein has read and understood the Settlement Agreement;

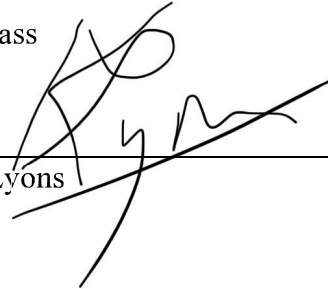
- b. the terms of this Settlement Agreement and the effects thereof have been fully explained to him, her or the Party's representative by his, her or its counsel;
 - c. he, she or the Party's representative fully understands each term of the Settlement Agreement and its effect; and,
 - d. no Party has relied upon any statement, representation or inducement (whether material, false, negligently made or otherwise) of the other Party, beyond the terms of the Settlement Agreement, with respect to the first Party's decision to execute this Settlement Agreement.
34. This Settlement Agreement shall be governed by and construed and interpreted in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.
35. The terms and provisions of this Settlement Agreement may be amended, modified, or expanded by written agreement of the Parties and approval of the Court provided, however, after the date of the Final Order, the Parties may by written agreement effect such amendments, modifications, or expansions of this Settlement Agreement and its implementing documents (including all schedules hereto) without further notice to the Class or approval by the Court if such changes are consistent with the Final Order and do not limit the rights of Class Members under this Settlement Agreement.
36. The Ontario Superior Court of Justice shall exercise ongoing jurisdiction in relation to the implementation, administration, and enforcement of the terms of this Settlement Agreement, and the Plaintiff or the Defendant may apply to the Ontario Superior Court as may be required for directions in respect to the interpretation, implementation, and administration of this Settlement Agreement. However, before making any such application to Court, the Parties shall make best efforts to resolve their dispute(s) through negotiation.
37. In the computation of time under this Settlement Agreement, where there is reference to a number of days between two events, the number of days shall be counted by excluding the day on which the first event happens and including the day on which the second event happens.
- a. "Business days" refer to all calendar days, except weekends and holidays, as "holiday" is defined in the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194.

- b. Where the number of days is specified as calendar days (or unspecified), where the time for doing an act expires on a weekend or a holiday the act may be done on the next day that is not a weekend or holiday.
38. This Settlement Agreement may be signed in counterparts, each of which will be deemed an original and all of which, when taken together, will be deemed to constitute one and the same agreement.
39. This Settlement Agreement may be signed electronically, and an electronic signature shall be deemed an original signature for purposes of executing this Settlement Agreement.
40. This Settlement Agreement shall be translated into French, and made available at <https://stlawyers.ca/td-travel-insurance-class-action-lawsuit/>. To the extent there are any discrepancies between the English and French versions of the Settlement Agreement, the English version shall govern.

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41. The Parties agree that the recitals to this Settlement Agreement are true and form part of this Settlement Agreement.

Kevin Lyons on his own behalf and on behalf of the Class




Kevin Lyons

TD HOME AND AUTO INSURANCE COMPANY

Name of Authorized Signatory:


James Russell

Signature of Authorized Signatory:



"I have authority to bind the corporation"

Class Counsel

Jordan Goldblatt, Adair Goldblatt Bieber LLP


SCHEDULE “A” – PROPOSED AMENDED COMMON ISSUES

I. AMENDED COMMON ISSUES

- (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?
- (b) Did TD Home and Auto Insurance Company owe the Class a duty of good faith, whether pursuant to contract, statute, or otherwise?
- (c) If the answer to question (b) is yes, did TD Home and Auto Insurance Company breach their duties to the Class, or members thereof, by denying claims for a Trip Cancellation Benefit under the Policy, wholly or in part, on the basis of the availability of non-monetary compensation, such as credits, coupons, or vouchers?
- (d) If the answer to question (a) is no or question (c) is yes, does TD Home and Auto Insurance Company owe members of the Class monetary damages?
- (e) Has TD Home and Auto Insurance Company been unjustly enriched, to the deprivation of Class members, by the receipt of the value of premiums, credit card charges, interest and/or other consideration under the Cardholder Agreement by denying claims for a Trip Cancellation Benefit under the Policy, wholly or in part, on the basis of the availability of non-monetary compensation, such as credits, coupons, or vouchers?
- (f) If the answer to question (a) is no or the answer to question (c) and/or (e) is yes, is the Class entitled to punitive, exemplary or aggravated damages?

SCHEDULE “B” – NOTICE AND NOTICE PLAN

1. Class Members shall receive notice of certification, the Settlement Agreement, the Settlement Approval Motion, the Fees Approval Motion and the opt-out procedure in the following form (the “Notice”):

TD HOME AND AUTO INSURANCE COMPANY CLASS ACTION – NOTICE OF SETTLEMENT

Lyons v. TD Home and Auto Insurance Company, Court File No. CV-20-646789-00CP

THIS NOTICE AFFECTS YOUR RIGHTS – PLEASE READ IT CAREFULLY

TO: All persons in Canada who were insured by TD Home and Auto Insurance Company under the terms of a travel insurance policy, bearing policy number TGV006 (the “Policy”) and an applicable Certificate of Insurance (the “Certificate”) who, between March 16, 2018 and October 15, 2021 (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

(collectively, the “Class” or “Class Members”, as appropriate).

This Notice is published and/or being sent to you by order of the Ontario Superior Court of Justice.

In September 2020, the law firms of Adair Goldblatt Bieber LLP and Samfiru Tumarkin LLP (collectively, “**Class Counsel**”) commenced a class action on behalf of the Class alleging that TD Home and Auto Insurance had breached the terms of the Policy by not honouring claims for trip cancellation benefits where non-monetary compensation such as credits, coupons, or vouchers were available.

After the class proceeding was commenced, many airlines or travel providers including Air Canada, Air France, Air Transat, British Airways, Emirates, Porter, Ryanair, Sunwing, Swoop, United Airlines, and WestJet who had previously only offered credits for cancelled trips changed their policies and made cash refunds available for certain periods.

In October 2021, the Claim was certified as a class proceeding. Under the Certification Order, Kevin Lyons was appointed the Representative Plaintiff.

No notice of certification was sent out at the time to permit the parties to better identify members of the Class.

In June 2022, the parties attended a mediation in respect of the Class’s claims. Arising from the mediation, the parties entered into a Settlement Agreement. Class Counsel is of the view that the Settlement Agreement is fair, reasonable and in the best interests of the Class. A copy of the

Settlement Agreement can be found at <https://stlawyers.ca/td-travel-insurance-class-action-lawsuit/> .
Une copie de l'accord de règlement en français est disponible sur <https://stlawyers.ca/td-travel-insurance-class-action-lawsuit/>

Under the terms of the Settlement Agreement, \$4,800,000 is being made available to satisfy the Class's claims, less the amount that must be paid to the Class Proceedings Fund of Ontario and an amount approved by the court for class counsel fees (discussed further below). Under the terms of the Settlement Agreement:

i) The Class Members (as defined above) whose claims related to amounts paid to Air Canada, Air France, Air Transat, British Airways, Emirates, Porter, Ryanair, Sunwing, Swoop, United Airlines, and WestJet for travel during the periods and subject to the conditions outlined below will receive \$100.00, regardless of the quantum of their claim.

Air Canada	Travel dates on or after February 1, 2020.
Air Canada Rouge	Travel dates on or after February 1, 2020.
Air France	Travel up to and including June 30, 2022.
Air Transat	Travel on or after February 1, 2020 up to and including April 29, 2021.
British Airways	Travel dates from March 9, 2020 to November 19, 2020.
Emirates	Travel on or before August 31, 2022.
Porter Airlines	Travel on or after February 1, 2020 up to and including July 4, 2021 cancelled by Porter Airlines.
Ryanair	Travel up to and including January 22, 2021.
Sunwing	Travel on or after February 1, 2020.
Swoop	Travel cancelled by Swoop.
United Airlines	Travel from March 1, 2020 up to and including June 6, 2020.
WestJet	Travel up to November 14, 2020 cancelled by WestJet.

ii) The Class Members whose claims related to other vendors, or related to airlines listed above but which do not meet the travel date and other conditions listed above in (i), will receive a proportionate amount of the balance of the settlement amount available, which Class Counsel estimates will be approximately 40% of the value of their claim that was denied on the basis of non-monetary compensation such as credits, coupons, or vouchers (subject to applicable Policy limits), and will not be required to surrender any credits they received.

iii) The Class Members whose claims related to both (i) and (ii) above will receive \$100.00 in respect of the portion of their claim related to (i) above and a proportionate amount of the balance of the settlement amount available, which Class Counsel estimates will be approximately 40% of the remaining value of their claim that was denied on the basis of non-monetary compensation such as credits, coupons, or vouchers (subject to applicable Policy limits), in respect of the portion of their claim related to (ii) above, and will not be required to surrender any credits they received.

The Settlement Agreement does not entitle any Class Members to additional compensation.

Of the settlement amount being paid by the Defendant, 10% of the amount directed to the Class must be paid to the Class Proceedings Fund of Ontario.

Class Counsel intends to seek an Order paying it approximately 21.5% of the settlement amount made available by the Defendant. The Defendant has agreed to pay costs of \$200,000 which will go to defraying Class Counsel fees. The Defendant is also paying \$100,000 towards administration expenses. Any out-of-pocket amounts over and above the \$100,000 provided by the Defendant in respect of administration expenses will be paid by Class Counsel from Class Counsel fees.

The amounts set out above respecting anticipated payments to the Class have been calculated *after* payment of administration expenses and Class Counsel fees. They are, however, estimates.

If there are differences between this Notice and the Settlement Agreement, then the terms of the Settlement Agreement prevail.

YOUR OPTIONS

You are being provided with this notice because you previously filed an insurance claim with TDHA for cancelled trip benefits, and your claim was denied in whole or in part on the basis of the availability of credits, coupons or vouchers. As such, your rights are affected by the outcome of this lawsuit.

Your right to choose whether or not to be part of the lawsuit

IF YOU WISH TO PARTICIPATE IN THE SETTLEMENT AGREEMENT, DO NOTHING. If you are a person falling within the Class definition described above, you will automatically be included in the Class. **This means that you will be bound by the Settlement Agreement if it is approved.** If the Settlement Agreement is approved, you will be paid pursuant to the terms of the Settlement Agreement as summarized and estimated above.

IF YOU DO NOT WANT TO BE BOUND BY THE OUTCOME OF THIS PROCEEDING, you must fill out the “opt-out” form below and send it by regular mail to RicePoint Administration Inc. The deadline by which your opt out notice must be post-marked is ***December 15, 2022***. If your written request to opt out is not post-marked by that date you will remain a member of the Class.

By opting out of this Class, you are confirming that you do not wish to participate in the Settlement Agreement, and you will not receive any compensation from the Settlement Agreement. Once you opt-out, you will receive no further communications regarding this action from Class Counsel.

Settlement Approval Motion and Fees Approval Motion

Before any step can be taken to implement the Settlement Agreement, the Ontario Superior Court of Justice must first consider whether to approve the Settlement Agreement and Class Counsel’s Fees. The Settlement Approval Motion and Fees Approval Motion will take place by Zoom on the 17th of February, 2023

If you wish to attend the Settlement Approval Motion and Fees Approval Motion please email LyonsClassAction@agblp.com and you will be provided with a link to the hearing.

If you do not oppose the terms of the Settlement Agreement or Class Counsel's fees, you need not do anything, and do not need to appear at the hearing.

Objecting to the Settlement Approval Motion and Fees Approval Motion

If you intend to object to either the Settlement Approval Motion or the Fees Approval Motion you must provide notice of your intention to do so by email to LyonsClassAction@agblp.com.

Any notice of intention to object must be received by no later than February 10, 2023.

A written objection should include:

- a. Your name, address and contact information;
- b. A brief statement setting out your reason for objecting; and
- c. Notification as to whether you (i) intend to make a statement at the Settlement Approval Motion or the Fees Approval Motion and (ii) if so, whether you have or anticipate retaining counsel to do so.

All written objections will be provided to the Court and to the Defendant. If you object, you need not also attend the Settlement Approval Motion or the Fees Approval Motion.

If you do not opt-out, but object to the Settlement Agreement or the Fees Approval Motion, and these motions are approved, you will be bound by the result reached by the Court.

If you do not opt-out, but object to the Settlement Agreement or the Fees Approval Motion, and the court does not accept the Settlement Agreement you will be bound by the eventual results of the litigation.

Financial consequences for you

All members of the Class who do not opt out of the class action will be bound by the Settlement Agreement, if approved.

If you choose to opt out, you may start your own lawsuit against the Defendant in relation to your claims, subject to the applicable limitation period.

Questions

If you have questions in regard to this settlement you can direct them to Class Counsel at LyonsClassAction@agblp.com

OPT OUT NOTICE

To:

Lyons v. TD Home and Auto Insurance
c/o RicePoint Administration Inc.
P.O. 3355
London, ON N6A 4K3

I confirm that I **do not** wish to be a Class Member in the class action lawsuit *Lyons v. TD Home and Auto Insurance Company*, Court File No. CV-20-646-789CP. I confirm that having chosen to opt-out of this class, I will receive no further communications from Class Counsel regarding this class action and will receive no payment under any settlement or judgment in the class action.

Signature

Print Name: _____

Address: _____

Postal Code: _____

Telephone: _____

Email: _____

*Note: To opt out this notice must be post-marked before **December 15, 2022***

2. The Opt-Out Deadline, as specified in the Notice, shall be 65 days after the date when the Court approves the Notice and Notice Plan (the “**Approval Date**”).
3. The Defendant shall deliver to RicePoint last known email addresses of the Class Members within five business days of the date the Court approves the Notice and Notice Plan.
4. RicePoint shall send the Notice to the Class Members by email, to each Class Member’s last known email address in the Defendant’s records, within seven business days of the date it receives this information from the Defendant, or seven business days from the Approval Date, whichever is later.
5. In the event that the Defendant does not have an email address, or RicePoint receives a ‘return-to-sender’ notification for any Class Member, Class Counsel and the Defendant shall be notified, and RicePoint shall make best efforts to contact the Class Member and deliver the Notice through any and all other contact coordinates Class Counsel and/or the Defendant has/have in their records for the Class Member.

6. The Notice shall also be posted on Class Counsel's website.
7. Class Counsel and/or RicePoint will maintain copies of the opt-out notices and will prepare a list of all Class Members who have opted out.
8. Within fifteen (15) days of the opt-out deadlines, Class Counsel will provide to the Defendant, and file with the Court, a list of all Class Members who opted-out of the proceedings. Any issues related to the timing of receipt or the fact of receipt of any opt out form shall be addressed before the case management judge.

SCHEDULE “C” – DISTRIBUTION PROTOCOL

A. Definitions

1. For the purposes of this Distribution Protocol the capitalized terms have the same meaning as set out in the Settlement Agreement.
2. In particular, the following definitions apply:
 - a. *Administration Expenses* means all fees, disbursements, expenses, costs, taxes, and any other amounts incurred or payable for the implementation and operation of this Settlement Agreement including the Notice Plan and Plan of Distribution and any costs of translation. For greater certainty, all fees payable to the Administrator in connection with any services provided by the Administrator in administering and implementing this Settlement Agreement are included in Administration Expenses.
 - b. *Administrator* or *RicePoint* means RicePoint Administration Inc.
 - c. *Class* means

“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 October 18, 2021 (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”

and *Class Member* means a member of the Class.
 - d. *Plan of Distribution* means the manner by which the Settlement Funds are to be distributed among Class Members, as approved by the Court.
 - e. *Settlement Amount* means the amount of the Settlement Funds remaining after deducting \$100,000 on account of Administration Expenses and payment of the Class Proceedings Fund Levy and Class Counsel Fees.
 - f. *Settlement Funds* means the sum of \$5,100,000.00 CAD to be paid by the Defendant. For greater certainty, the Settlement Funds comprise:
 - i. \$4,800,000 in respect of amounts in satisfaction of the claims asserted on behalf of the Class;

- ii. \$200,000 on account of costs; and
- iii. \$100,000 on account of Administration Expenses.

g. *Travel Expenses* means amounts that were insured under the Policy in respect of which non-monetary compensation such as credits, coupons or vouchers was available to a Class Member and in respect of which the Class Member's request for payment was denied between March 16, 2018 and October 15, 2021.

B. General Principles of the Administration

3. This Distribution Protocol is intended to govern the administration and disbursement of the Settlement Funds. This protocol is intended to provide an expeditious and user-friendly distribution to the Class Members.
4. The Administrator shall carry out all steps required of it and as set out under (i) this Distribution Protocol and (ii) the Settlement Agreement.
5. The Administrator shall rely on information delivered to it by the Defendant and Class Counsel in the course of carrying out its obligations under this Distribution Protocol.
6. The Administrator shall administer this Distribution Protocol in accordance with the provisions of the Orders of the Courts, the Settlement Agreement and the ongoing authority and supervision of the Courts.
7. The Administrator's duties and responsibilities shall include the following:
 - a) providing notice(s) to the Class Members as may be required;
 - b) overseeing the administration process and communicating with the Class Members, including in English and French as may be required;
 - c) making calculations of Class Members' relative share of the Settlement Amount;
 - d) arranging payments to Class Members in a timely fashion;
 - e) reporting the results of the administration process and the intended distributions to Class Counsel in a timely fashion;
 - f) performing such recalculation of the distributions as may be required under this Distribution Protocol;
 - g) maintaining administration information so as to permit Class Counsel to audit the administration at the discretion of Class Counsel or if ordered by the Court;

- h) dedicating sufficient personnel to respond to Class Members inquiries in English or French, as the Class Member elects;
 - i) reporting to Class Counsel respecting claims received and administered and administration expenses;
 - j) cash management and audit control; and
 - k) preparing and submitting reports and records as directed by Class Counsel or the Court.
8. Class Counsel shall oversee the claims process and provide advice and assistance to the Administrator regarding this Distribution Protocol and the claims process.

C. Delivery of Data to Administrator

9. Following the Effective Date, the Defendant, or its counsel, shall deliver to the Administrator information provided to the Defendant by Allianz Global Assistance (“**Allianz**”) and Global Excel Management (“**GEM**”) in summary form respecting claims filed by the Class Members who, between March 16, 2018 and October 18, 2021 had their claims for Trip Cancellation Benefits 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 (the “**Class Data**”). The Class Data shall consist of the details further particularized in section 12 below.
10. The Defendant will provide Class Counsel and the Administrator with the Class Data in summary form in an Excel file. The Excel file will identify which claims are Fixed Claims and which claims are Residual Claims, as those terms are defined below.
11. The Class Data need not include entries in respect of claims filed under policies other than the Policy.
12. The Class Data, to the extent possible, shall contain summary information known to the Defendant in respect of claims filed by Class Members, including (i) the name of the individual who submitted the claim to Allianz or GEM, as applicable, and their contact information; (ii) the type of credit card used to purchase the trip; (iii) the planned travel departure date; (iv) any case or claim identifying number; (v) the name of the travel provider where available (e.g., “Air Canada”, “Avis Car Rental”, “Airbnb”) (the “**Service Provider**”); (vi) the total amount of the claim; (vii) the amount of the claim granted; (viii) the amount of the claim denied on the basis of the availability of a credit, coupon, or voucher; (ix) the amount of the claim denied for any other reasons; (x) the reason(s) provided by Allianz or GEM, as applicable, for denial of the claim.
13. The Administrator shall be entitled to rely on the accuracy of the Class Data.

D. Distribution of Net Settlement Amounts

14. The Administrator shall make payments as set out herein.
15. First, the Administrator shall calculate the total number of claims where a Class Member sought compensation under the Policy where the Service Provider was Air Canada, Air France, Air Transat, British Airways, Emirates, Porter, Ryanair, Sunwing, Swoop, United Airlines, and WestJet during the periods and under the conditions defined below. Each Class Member whose claim meets these criteria shall receive the total amount of \$100.00, regardless of the quantum of their claim (the “**Fixed Claims**”):

Air Canada	Travel dates on or after February 1, 2020.
Air Canada Rouge	Travel dates on or after February 1, 2020.
Air France	Travel up to and including June 30, 2022.
Air Transat	Travel on or after February 1, 2020 up to and including April 29, 2021.
British Airways	Travel dates from March 9, 2020 to November 19, 2020.
Emirates	Travel on or before August 31, 2022.
Porter Airlines	Travel on or after February 1, 2020 up to and including July 4, 2021 cancelled by Porter Airlines.
Ryanair	Travel up to and including January 22, 2021.
Sunwing	Travel on or after February 1, 2020.
Swoop	Travel cancelled by Swoop.
United Airlines	Travel from March 1, 2020 up to and including June 6, 2020.
WestJet	Travel up to November 14, 2020 cancelled by WestJet.

16. Next, the Administrator shall calculate the value of the claims made by Class Members who submitted a claim to the Defendant in respect of a Service Provider other than those that comprise the Fixed Claims (the “**Residual Claims**”). The Administrator shall calculate these amounts assuming a uniform policy limit of \$5,000.
17. The Administrator shall calculate the amount available to satisfy the Residual Claims by subtracting the value of the Fixed Claims from the Settlement Amount (leaving the “**Residual Amount**”).
18. The Residual Amount shall be distributed to Class Members proportionate to the amount of their claim denied on the basis of non-monetary compensation such as credits, coupons, or vouchers that is not a Fixed Claim. Please see the “Example” section of this Distribution Protocol for greater information.
19. A Class Member may be compensated in respect of both Fixed Claims and Residual Claims.

20. After having calculated the Settlement Amount to be allocated to each Class Member, the Administrator shall deliver to each Class Member, by email if available, a statement setting out (1) the total Settlement Amount; (2) the total amount allocated to the Fixed Claims; (3) the total amount allocated to the Residual Claims, being the Residual Amount; (4) the total dollar amount of all Residual Claims made by all Class Members; (5) a statement setting out whether the Class Member is receiving \$100.00 in respect of a Fixed Claim; (6) the quantum of that individual Class Member's Residual Claim, if applicable; (7) the amount of the Class Member's proportionate share, if any, of the Residual Amount; and (8) the total amount proposed to be paid to the Class Member under the terms of the settlement (the "**Payment Notice**").
21. The Payment Notice shall be delivered in English and French. Class Counsel shall seek the Defendant's comments on the form and content of the Payment Notice.
22. The Payment Notice shall advise each Class Member of the mailing address listed for the Class Member in the Class Data and request that the Class Member provide an up-to-date mailing address if the listed address is not correct.
23. The Payment Notice shall advise the Class Member that any amount set out therein in respect of payment is provisional, and may be re-adjusted should the Administrator reclassify any amounts.
24. The Payment Notice shall state that if a Class Member is of the view that there is an error in respect of only (i) the amount comprising the Class Member's initial claim, but only in respect of a Residual Claim; (ii) the travel dates or airlines in respect of which the Class Member's claim has been classified as a Fixed Claim; or (iii) the Administrator's arithmetic, then written correspondence may be sent to the Administrator, by e-mail at an address to be specified by the Administrator, requesting recalculation of the Payment Notice (a "**Notice of Request for Recalculation**"). The Payment Notice shall state that a Notice of Request for Recalculation in respect of an amount less than \$50.00 shall not be considered. For greater certainty, a Class Member's failure to claim or receive a refund from an airline in respect of a claim that has been accurately classified as a Fixed Claim according to the definition in paragraph 15 of this Distribution Protocol shall not entitle the Class Member to a recalculation or any reconsideration of the amount specified in a Payment Notice.
25. A Notice of Request for Recalculation must be sent within twenty days of the date the Payment Notice was sent to the Class Member, if sent by email. Where a Payment Notice could not be sent by email and was sent by regular mail, then a Notice of Request for Recalculation must be post-marked within thirty days of the date the Payment Notice was sent by regular mail.
26. The Administrator shall advise Class Counsel in respect of all Notices of Request for Recalculation received.

27. Should the Administrator receive a Notice of Request for Recalculation, it shall have the sole and exclusive right to consider the issue raised and shall have the right to request further claims information from the Defendant. In no case shall the Administrator be permitted to consider information, or claims documents, that were not previously provided to the Defendant or its agents.
28. The Administrator may accept a Notice of Request for Recalculation in whole or in part. The Administrator may also deny a Notice of Request for Recalculation
29. The Administrator shall communicate to a Class Member in writing its reason for accepting, denying, or denying in part a Notice of Request for Recalculation.
30. The decision of the Administrator in response to a Notice of Request for Recalculation shall be final, binding, and not subject to appeal.
31. The Administrator may re-adjust payments to all Class Members as a result of a successful Notice of Request for Recalculation without delivery of a further Payment Notice.
32. If Class Counsel has reasonable and material concerns that the Distribution Protocol is producing an unjust result on the whole or to any material segment of the Class or that a modification is required or recommended, Class Counsel shall seek a reasonable modification to this Distribution Protocol or further directions from the Court with respect to the distribution of the Settlement Amount.
33. In arriving at a determination that an unjust result is occurring or that a modification is required or recommended, and in considering what modification may be required, Class Counsel shall seek comments or input from the Defendant and the Administrator. If Class Counsel seeks further directions from the Court with respect to the distribution of the Settlement Amount, it must do so on notice to the Defendant.
34. The Administrator shall make arrangements to pay claims as expeditiously as possible.
35. The Administrator shall make payment to the Class Members by way of cheques. The Administrator shall deliver cheques to the Class Members using the Class Data or the mailing address provided by the Class Member following receipt of the Payment Notice, as applicable.
36. If a cheque is returned to the Administrator, the Administrator shall discuss with the Defendant and Class Counsel whether other contact information is available for the Class Member. Class Counsel and the Administrator shall make reasonable efforts to locate the Class Member.
37. Reminders will be sent to class members who have not cashed their cheques after 120 days. Cheques that remain uncashed at the later of either 180 days after the original cheque or 60 days after any reissued cheque will be directed to a *cy pres* recipient, being the Law Foundation of Ontario. No cheques will be reissued after 180 days of the original cheque.

38. Following payment of all amounts set out pursuant to the Distribution Protocol, the Administrator shall prepare a report, and deliver same to Class Counsel, who shall file same with the Court. The Administrator's report shall comply with s. 27.1(16) of the *Class Proceedings Act*.

E. Examples

39. If the Settlement Amount is \$3,500,000, and there are 5,000 Fixed Claims, and the amount payable to Class Members in respect of Fixed Claims is \$500,000 (5,000 x \$100) then the Residual Amount shall be \$3,000,000 (\$3,500,000 - \$500,000).

Then, if the total value of all Residual Claims is \$7,500,000, and the Residual Amount is \$3,000,000, each Class Member who has a Residual Claim shall receive 40% of the value of their claim (since \$3,000,000 is 40% of \$7,500,000), regardless of the amount of the claim.

For example:

- A Class Member with a \$3,000 Residual Claim would receive \$1,200 (40% of \$3000);
- A Class Member with a \$2,000 Residual Claim would receive \$800 (40% of \$2000).

As described above, the Residual Claim cannot exceed the policy limit (assumed here to be \$5,000), minus any amounts already paid to the Class Member under the Policy. So, for example, if a Class Member submitted a claim for \$8,000 of which \$7,000 was denied on the basis of the availability of a credit, coupon or voucher, then:

- If the remaining \$1,000 was denied for other reasons, then the Class Member's Residual Claim would equal the Policy limit of \$5,000 and in this example the Claimant would receive \$2,000 (40% of \$5,000).
- If the remaining \$1,000 was paid out to the class member under the Policy, then the Class Member's Residual Claim would be \$4,000 (the Policy limit of \$5,000 minus the \$1,000 already paid out under the Policy) and in this example the Claimant would receive \$1,600 (40% of \$4,000).

If a Class Member submitted a claim for \$5,000 which included: (1) a claimed expense for a \$2,500 Air Canada flight taken on or after February 1, 2020 (for which the Class Member has a Fixed Claim), and (2) a claimed expense for \$2,500 in respect of a cruise for which no refund was available (for which the Class Member has a Residual Claim), and credits were available for both claimed expenses such that the claim was denied in its entirety, then:

- The Class Member would receive \$100.00 in respect of the Fixed Claim, and would receive a proportionate amount (in this example, 40%) in respect of the \$2,500 Residual

Claim resulting from the cruise. The total amount paid to the Class Member would be $\$100 + (40\% \text{ of } \$2,500 = \$1000) = \1100 .

F. Other

40. All information received from the Defendant or the Class shall be collected, used, and retained by the Administrator pursuant to, inter alia, the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5, or any other applicable data protection legislation.
41. Following the conclusion of the administration of this Distribution Protocol, the Administrator shall securely destroy all copies of the Class Data, all related work products, and any other information or documents received from the Defendant, Class Counsel, or Class Members.
42. The Administrator shall administer this Distribution Protocol under the ongoing authority and supervision of the Superior Court of Justice.
43. The Administrator shall provide reports to Class Counsel regarding the administration.

SCHEDULE “D”- JUDGMENT

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

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE) DAY, THE
JUSTICE MORGAN)
DAY OF , 2023

B E T W E E N:

(Court Seal)

KEVIN LYONS

Plaintiffs

- and -

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

Defendants

JUDGMENT

THIS MOTION for an order approving the settlement of this proceeding in accordance with a Settlement Agreement dated October 6, 2022 (the “Settlement Agreement”) which includes a distribution protocol (the “Distribution Protocol”) was heard this day in the presence of counsel for the Plaintiff and the Defendant TD Home and Auto Insurance Company (“TDHA”),

ON READING the Certification Order herein dated October 15, 2021 (as amended) (which sets out the common issues and describes the class and the nature of the claims asserted on behalf of the class, hereinafter the “Certification Order”) attached to this Order as Schedule “A”,

the Notice of Motion and the evidence filed by the parties, including the Settlement Agreement attached to this Judgment as Schedule “B”, and on hearing submissions of counsel for the Plaintiff and counsel for TDHA, and any objectors or reading submissions of any objectors, fair and adequate notice of this hearing having been provided to Class Members in accordance with the Order of this Court dated **[October 11, 2022]**,

AND ON BEING ADVISED that the deadline for opting out of the action has passed and that the persons who have opted-out from the Class Action are listed in Schedule “C” attached,

AND ON BEING ADVISED that the deadline for objecting to the Settlement Agreement has passed,

AND ON BEING ADVISED that, subject to Court approval, the Plaintiff and TDHA have consented to all the terms of this Order,

1. **THIS COURT ORDERS AND DECLARES** that the settlement of this Class Action on the terms set forth in the Settlement Agreement is fair and reasonable and in the best interests of the Class Members and is hereby approved pursuant to section 29 of the *Class Proceedings Act, 1992*, S.O. 1992, c. 6 (as it then was), and shall be implemented and enforced in accordance with its terms.

2. **THIS COURT ORDERS** that the use of capitalized terms in this Judgment shall have the same meaning as found in the Settlement Agreement except to the extent that the definition of a term in the Settlement Agreement and this Judgment conflict, in which case the definition of the term as set out in this Judgment shall govern.

3. **THIS COURT ORDERS** that the Distribution Protocol shall be utilized by the Claims Administrator (as defined in the Settlement Agreement) in administering the Settlement Agreement, and the Claims Administrator may at its discretion seek additional information in administering the settlement or direction of this Court as to the implementation of the Settlement Agreement.

4. **THIS COURT ORDERS, ADJUDGES AND DECLARES** that the Settlement Agreement is expressly incorporated by reference into this Judgment, and this Judgment and the Settlement Agreement are binding upon all Class Members who have not opted-out from the Class Action, whether or not such Class Members receive or claim compensation, including persons who are minors or are mentally incapable, and the need for service or notice of this or any further steps in these proceedings on the Public Guardian and Trustee, as well as all other requirements in the *Public Guardian and Trustee Act*, R.S.O. 1990 c. P.51, and any other service or notice requirements in the *Rules of Civil Procedure*, R.S.O. 1990, Reg. 194, are hereby dispensed with.

5. **THIS COURT FURTHER ORDERS, DECLARES AND ADJUDGES** that the releases provided at section [10] of the Settlement Agreement are approved and take effect as of the date of this Judgment, and each Class Member has released and shall be conclusively deemed to have forever and absolutely released the Releasees, including TDHA, from the Released Claims (as that term is defined in section 10 of the Settlement Agreement).

6. **THIS COURT FURTHER ORDERS, DECLARES AND ADJUDGES** that each Class Member (other than Class Members who validly opt out of the Action) and their respective heirs, administrators, executors, successors and assigns, shall not now or hereafter institute, continue, maintain, intervene in or assert, either directly or indirectly, whether in Canada or elsewhere, on

their own behalf or on behalf of any class or any other person, any proceeding, cause of action, claim or demand against any Releasee, or any other person who may claim contribution or indemnity or other claims over for relief from any Releasee, whether pursuant to the *Negligence Act*, R.S.O. 1990, c. N.1 or other legislation or at common law or equity in respect of any claim released in this Judgment.

7. **THIS COURT FURTHER ORDERS, DECLARES AND ADJUDGES** that as of the date of this Judgment, each Class Member shall be deemed to have consented to the dismissal of any other action or proceeding he or she may have commenced asserting Released Claims as against the Releasees, including TDHA, without costs and with prejudice.

8. **THIS COURT ORDERS** that neither the Settlement Agreement (including all terms thereof), nor its performance and implementation, shall be construed as any admission by TDHA, including but not limited as to: (1) the validity of any claim, theory, or fact; (2) any liability, fault, or responsibility; or (3) the existence, cause, or extent of any damages or losses alleged or suffered by any Class Member.

9. **THIS COURT ORDERS** that other than that which has been provided in the Settlement Agreement, no Releasee shall have any responsibility or liability whatsoever relating to the administration of the Settlement Agreement.

10. **THIS COURT ORDERS** that the persons who have opted-out from the Class Action are not entitled to any relief or given any rights under the Settlement Agreement.

11. **THIS COURT ORDERS** that this Class Action is dismissed without costs and with prejudice and such dismissal shall be a defence to any subsequent action in respect of the subject matter hereof.

12. **THIS COURT ORDERS AND DECLARES** that, without in any way affecting the finality of this Judgment, for the purposes of administration and enforcement of the Settlement Agreement and this Judgment, this Court will retain an ongoing supervisory role and reserves exclusive and continuing jurisdiction over this action, the Plaintiff, all of the Class Members and TDHA, and the parties acknowledge and attorn to the jurisdiction of this Court solely for the purpose of implementing, administering, and enforcing this Settlement Agreement and this Judgment, subject to the terms and conditions set out in the Settlement Agreement and this Judgment.

13. **THIS COURT ORDERS AND DECLARES** that the requirements of Rules 7.04(1) and 7.08(1) and (2) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194 are dispensed with in respect of this action.

14. **THIS COURT ORDERS** that the legal fees and disbursements of Class Counsel shall be determined by further order of this Court.

15. **THIS COURT ORDERS** that any appeal from this Order be brought within 30 days of the date of this Order pursuant to Rule 61.04 of the *Rules of Civil Procedure*.

(Signature of judge, officer, or registrar)

KEVIN LYONS -and- THE TORONTO-DOMINION BANK et al.
Plaintiff Defendants

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

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

JUDGMENT

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KEVIN LYONS
Plaintiff

-and-
Defendants

THE TORONTO-DOMINION BANK et al.

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

ONTARIO
SUPERIOR COURT OF JUSTICE
PROCEEDING COMMENCED AT
TORONTO

JUDGMENT
(SETTLEMENT APPROVAL)

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RCP-E 4C (September 1, 2020)