

Form 4.02A

2024



Hfx. No. 5 3 8 9 4 1

SUPREME COURT OF NOVA SCOTIA

BETWEEN:

**PETER BOULTON, DMITRY YUZEFOVICH, NANCY MARTIN,  
 MICHAEL CONDRAN, A STAR SERVICE INC., a body corporate,  
 and WISSAM (SAM) FAKHREDDINE**

PLAINTIFFS

- and -

**AVIVA GENERAL INSURANCE COMPANY, AXA INSURANCE  
 (CANADA), BENEVA INSURANCE COMPANY, THE DOMINION  
 INSURANCE CORPORATION, ECONOMICAL INSURANCE, INTACT  
 INSURANCE COMPANY, JEVCO INSURANCE COMPANY,  
 NORTHBRIDGE GENERAL INSURANCE CORPORATION, RBC  
 INSURANCE AGENCY LTD., ROYAL & SUN ALLIANCE INSURANCE  
 COMPANY OF CANADA, SECURITY NATIONAL, TRAVELERS  
 INSURANCE COMPANY OF CANADA, and THE WAWANESA MUTUAL  
 INSURANCE COMPANY**

DEFENDANTS

*Proceeding under the Class Proceedings Act, S.N.S. 2007, c. 28*

Notice of Action

**TO: AVIVA GENERAL INSURANCE COMPANY**  
 c/o Jocelyn Campbell, K.C.  
 112 4 Avenue SW  
 Suite 2100  
 Calgary, AB T2P 0H3

**AND TO: AXA INSURANCE (CANADA)**  
 c/o Alan Blair  
 20 Hector Gate, Suite 200  
 Dartmouth, NS B3B 0K3

**AND TO: BENEVA INSURANCE COMPANY**

c/o Ian Dunbar  
McInnes Cooper  
1969 Upper Water Street, Suite 1300  
Purdy's Wharf Tower II  
Halifax, NS B3J 3R7

**AND TO: THE DOMINION INSURANCE CORPORATION**

c/o E. Atcheson Cassels  
130 Adelaide Street West  
Toronto, ON M5H 3P5

**AND TO: ECONOMICAL INSURANCE**

c/o Karen Kaminksa  
238A Brownlow Avenue  
Park Place 2, Suite 310  
Dartmouth, NS B2B 2B4

**AND TO: INTACT INSURANCE COMPANY**

c/o Natalie Higgins  
20 Hector Gate, Suite 200  
Dartmouth, NS B3B 0K3

**AND TO: JEVCO INSURANCE COMPANY**

c/o Natalie Higgins  
20 Hector Gate, Suite 200  
Dartmouth, NS B3B 0K3

**AND TO: NORTHBRIDGE GENERAL INSURANCE CORPORATION**

c/o Stanley Keeping  
5770 Spring Garden Road, Suite 403  
Halifax, NS B3H 4J8

**AND TO: RBC INSURANCE AGENCY LTD.**

c/o Stewart Robinson  
6880 Financial Drive, West Tower  
Mississauga, ON L5N 7Y5

**AND TO: ROYAL & SUN ALLIANCE INSURANCE COMPANY OF CANADA**

c/o Murray Ritch, K.C.  
Ritch, Williams and Richards  
1809 Barrington Street, Suite 1200  
Halifax, NS B3J 3K8

**AND TO: SECURITY NATIONAL**  
c/o Fae J. Shaw, K.C.  
McInnes Cooper  
1969 Upper Water Street, Suite 1300  
Purdy's Wharf Tower 2  
Halifax, NS B3J 3R7

**AND TO: TRAVELERS INSURANCE COMPANY OF CANADA**  
c/o Misty Preece  
100 Venture Run, Suite 300  
Dartmouth, NS B3B 0H9

**AND TO: THE WAWANESA MUTUAL INSURANCE COMPANY**  
c/o Guy Wellard  
Cox & Palmer  
Nova Centre, South Tower  
1625 Grafton Street, Suite 1500  
Halifax, NS B3J 0E8

**Action has been started against you**

The plaintiffs take action against you.

The plaintiffs started the action by filing this notice with the court on the date certified by the prothonotary.

The plaintiffs claim the relief described in the attached statement of claim. The claim is based on the grounds stated in the statement of claim.

**Deadline for defending the action**

To defend the action, you or your counsel must file a notice of defence with the court no more than the following number of days after the day this notice of action is delivered to you:

- 15 days if delivery is made in Nova Scotia
- 30 days if delivery is made elsewhere in Canada
- 45 days if delivery is made anywhere else.

**Judgment against you if you do not defend**

The court may grant an order for the relief claimed without further notice, unless you file the notice of defence before the deadline.

**You may demand notice of steps in the action**

If you do not have a defence to the claim or you do not choose to defend it you may, if you wish to have further notice, file a demand for notice.

If you file a demand for notice, the plaintiffs must notify you before obtaining an order for the relief claimed and, unless the court orders otherwise, you will be entitled to notice of each other step in the action.

**Rule 57 - Action for Damages Under \$100,000**

Civil Procedure Rule 57 limits pretrial and trial procedures in a defended action so it will be more economical. The Rule applies if the plaintiffs state the action is within the Rule. Otherwise, the Rule does not apply, except as a possible basis for costs against the plaintiffs.

This action is not within Rule 57.

**Filing and delivering documents**

Any documents you file with the court must be filed at the office of the Prothonotary, The Law Courts, 1815 Upper Water Street, Halifax, Nova Scotia (telephone #902-424-4900).

When you file a document, you must immediately deliver a copy of it to each other party entitled to notice, unless the document is part of an *ex parte* motion, the parties agree delivery is not required, or a judge orders it is not required.

**Contact information**

The plaintiffs designate the following addresses:

Wagners  
1869 Upper Water Street  
Suite PH301, Historic Properties  
Halifax, Nova Scotia  
B3J 1S9

Gluckstein Lawyers  
595 Bay Street  
Suite 301, PO Box 53  
Toronto, Ontario  
M5G 2C2

Documents delivered to these addresses are considered received by the plaintiffs on delivery.

Further contact information is available from the prothonotary.

**Proposed place of trial**

The plaintiffs propose that, if you defend this action, the trial will be held in Halifax, Nova Scotia.

**Signature**

Signed this 5th day of December, 2024.



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**RAYMOND F. WAGNER, K.C.**  
Wagners Law Firm  
Counsel for the Plaintiffs

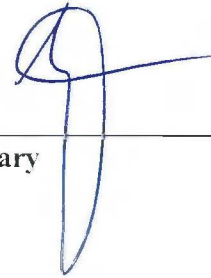


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**STEVE RASTIN**  
Gluckstein Lawyers  
Counsel for the Plaintiffs

**Prothonotary's certificate**

I certify that this notice of action, including the attached statement of claim, was filed with the court on December 5, 2024.



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**Prothonotary**

**YASMINE YOUSEFI**  
Deputy Prothonotary

**Form 4.02B**

**Statement of Claim**

**Proceeding under the *Class Proceedings Act*, S.N.S. 2007, c. 28**

1. The Plaintiffs are each described individually below.
2. In each case, s/he was insured by a Defendant insurance company, also identified specifically below, under a policy of automobile insurance in force at the time of a motor vehicle accident, an accident resulting in the total loss to his/her motor vehicle.
3. Each named Plaintiff therefore has a contractual relationship with a named Defendant arising under a contract of automobile insurance.
4. The persons individually listed below as a plaintiff will be referred to collectively herein as the “Plaintiffs”.
5. The defendant insurance companies individually listed below will be referred to collectively herein as the “Defendants”.
6. The Plaintiffs brings this action on his/her/their own behalf and on behalf of a proposed Class, defined as follows:

All persons who made a first party physical damage claim on a policy of automobile insurance issued by a Defendant to a Canadian resident, excluding residents of the Province of Quebec, and a Defendant insurance company determined the vehicle for which a claim was submitted was a total loss, and that Defendant determined the actual cash value of the claim based on a market survey report or valuation report in which a Projected Sold Adjustment or Typical Negotiation Adjustment or substantially similar adjustment (however named) was applied to the list price of at least one comparator vehicle.

7. Excluded from the proposed Class are the Defendants' officers, directors, employees, servants or agents, including those of corporate members, affiliates, parent or associated companies, subsidiaries, successors, or assigns.

## I. OVERVIEW

8. This is a class action filed on behalf of the Plaintiffs and all Class Members who received a payment for the loss of an insured vehicle from a Defendant (a "total loss payment"), where a Defendant used valuation reports prepared by Mitchell International, Inc. and/or Audatex (also known as Solera) to determine the actual cash value ("ACV") of the loss vehicle, and that valuation report applied a "Projected Sold Adjustment", "Typical Negotiation Adjustment" or substantially similar "adjustment" (however named) purporting to reflect consumer behaviour in successfully negotiating downwards a sale price from a list price when purchasing a used vehicle to replace a total loss vehicle.
9. Statutes governing contracts of automobile insurance across Canada provide, in the same or substantively similar terms the following, as found for example in the *Nova Scotia Standard Automobile Policy*:

4(5) Insurer liable for cash value of automobile — The insurer shall not be liable for more than the actual cash value of the automobile at the time any loss or damage occurs, and the loss or damage shall be ascertained or estimated according to that actual cash value with proper deduction for depreciation, however caused, and shall not exceed the amount that it would cost to repair or replace the automobile, or any part thereof, with material of like kind and quality; but if any part of the automobile is obsolete and out of stock, the liability of the insurer in respect thereof shall be limited to the value of that part at the time of loss or damage not exceeding the maker's latest list price.
10. The Plaintiffs plead the following statutes or regulations for this, the same or a similar statutory or regulatory provision:
  - (a) B.C. Reg. 4/2021, s. 15(1)(b) (Regulation)
  - (b) R.S.A. 2000, c. I-3, s. 556 (Statutory Conditions)

- (c) S.S. 2015, c. I-9.11, s. 8-41 (Statutory Conditions)
- (d) R.S.M. 1987, c. I40, s. 237 (Statutory Conditions)
- (e) O. Reg. 777/93, Sched. [1], s. 6 (Regulation)
- (f) R.S.N.B. 1973, c. I-12, s. 230 (Statutory Conditions)
- (g) N.S. Reg. 181/2003, Sched. 1 (Regulation)
- (h) R.S.N. 1990, c. A-22, s. 8 (Statutory Conditions)
- (i) R.S.P.E.I. 1988, c. I-4, s. 220 (Statutory Conditions)
- (j) R.S.Y. 2002, c. 119, s. 137 (Statutory Conditions)
- (k) R.S.N.W.T. 1988, c. I-4, s. 129 (Statutory Conditions)
- (l) R.S.N.W.T. (Nu.) 1988, c. I-4, s. 129 (Statutory Conditions)

11. The Plaintiffs plead that in law, the “actual cash value” of a motor vehicle is the market value of the vehicle if sold on a free market on the date of loss. If, rather than suffering an accident and a total loss of the vehicle, an insured motorist brought his/her vehicle to market for sale on the date of loss, selecting a sale price based on the list price of comparator vehicles, and that insured motorist sells his/her vehicle at a sale price reflecting the list price of comparator vehicles, s/he would not suffer a loss as described in this action, but would rather have received the “actual cash value” of that vehicle without any reduction (“adjustment”) as described in this action.
12. The Defendants, however, systemically thumb the scale when calculating the ACV of claimants’ loss vehicles, by applying a so-called “Projected Sold Adjustment” or “Typical Negotiation Adjustment” (or similar alleged consumer behaviour “adjustment”, however named), to lower the value of the vehicle, adjustments the Plaintiffs plead are:
- (a) not reflective of either actual cash value or true depreciation;
  - (b) arbitrary and deceptive;
  - (c) contrary to generally accepted appraisal standards and methodologies; and
  - (d) contrary to the used car industry’s pricing and inventory management practices.



13. In the event of a “total loss” of an insured vehicle, after an insurer determines repair of the vehicle is impossible or uneconomical, the Defendants’ uniform insurance policies with the Plaintiffs and Class Members promise to pay to the insured the ACV of the vehicle.
14. After determining an insured’s vehicle is a “total loss” under their policy of insurance, the Defendants turn to non-party valuation companies including Mitchell International, Inc. / Audatex to research the value of comparator vehicles.
15. Defendants using Audatex’s products including “Autosource”, deliver to their insured a valuation report, and thereby Defendants make deceitful representations to Class Members including as follows:
  - a. Insurers represent Audatex’s valuation product as something that will simply “assist in establishing a fair and reasonable market value for your vehicle”, when in fact it will systemically reduce the market value of comparator vehicles;
  - b. Audatex is presented as having unique access to a large database containing detailed seller information, to which proprietary software is applied to arrive at a “typical vehicle” price;
  - c. An incomplete description of the methodology used by Audatex is offered, including by stating:

“The market value of your vehicle is determined by comparing it to other vehicles in your area of similar make, model, equipment, mileage and condition that have been offered for sale or sold.”
  - d. Vehicles are identified for comparison, but the selling price of unsold comparator vehicles is represented as likely “substantially less than asking price”, with no evidence or authoritative source information offered justifying this representation;
  - e. An anticipated percentage difference between asking and selling price is stated the applied for the loss vehicle, taking into account only the vehicle’s year, make and model, including as follows:

“In the case of this [vehicle’s year, make, model], the difference between the asking price and selling price is generally [x]%.”

- f. All adjustments made before arriving at the typical vehicle price are represented to be vehicle-specific, but in fact include adjustments for assumed consumer behaviour said to occur across the board, in all circumstances, adjustments that are neither vehicle- nor market-specific and do not reflect depreciation in value;
  - g. Further adjustments are represented as reflecting only “driving habits and condition for the vehicle's market”, but in fact take into account variables that are not specific to the owner’s “driving habits” or the vehicle’s condition, replacement market or due to value depreciation;
  - h. A “typical vehicle” price is then stated at the outset of each valuation report in a manner that obscures the price adjustments made before arriving at this “typical vehicle” price; and
  - i. Each defendant insurer using an Audatex product then makes a monetary offer to their insured incorporating this “typical vehicle” valuation amount (before further adjustments are made for odometer reading, condition and optional features), representing in the end that their settlement offer premised on this “typical vehicle” base value reflects the vehicle’s “fair market value” when it in fact does not.
16. Defendants using Mitchell’s products, including Mitchell Work Center Total Loss, also deliver to their insured a valuation report, and Defendants thereby also make deceitful representations to Class Members including as follows:
- a. The insurer represents to their insured a dollar amount (“Settlement Value”) for the loss vehicle, obscuring the fact that the loss vehicle’s “Base Value”, upon which the Settlement Value is premised, has been reduced by first applying a “Projected Sold Adjustment”;
  - b. The report provided to the insured is called a “Market Survey Report”, when in fact it uses a methodology that consistently results in valuation of loss vehicles below their true ACV, due to the application of a “Projected Sold Adjustment”;

- c. Mitchell's valuation product is held out as being offered by "an expert in data analysis with years of experience in vehicle pricing", obscuring Mitchell's contractual relationship with the defendant insurer;
- d. Mitchell's valuation product further represents that adjustments to comparator vehicle prices are made -- "with certain adjustments to both the comparable vehicle and loss vehicle depending on the facts of a particular claim" -- when in fact a Projected Sold Adjustment is applied across the board and without regard to the particular vehicle's condition, replacement market or due to value depreciation;
- e. Mitchell's valuation product is held out as "accurate and easy-to-understand", when in fact it obscures and does not make transparent that the market value it states for the loss vehicle does not reflect that vehicle's ACV;
- f. Mitchell is held out by defendant insurers as having a database containing "millions of vehicles listed for sale", but the list prices of those vehicles are not in fact applied when determining the Base Value of the loss vehicle as Projected Sold Adjustment is first made to systemically lower comparator vehicle values below their ACV;
- g. Regarding the Projected Sold Adjustment, the Mitchell valuation product says this: Projected Sold Adjustment - where the comparable vehicle is listed for sale, this adjustment reflects the fact that consumers typically negotiate a purchase price less than the list price. (There is no projected sold adjustment where the comparable vehicle has actual sold data, or where a vehicle is listed for sale at a "no haggle" dealership.)
- h. All adjustments made before arriving at the "Base Value" are represented to be vehicle-specific, but in fact include adjustments for assumed consumer behaviour said to occur across the board, in all circumstances, and are neither vehicle- nor market-specific;
- i. Each defendant insurer using a Mitchell valuation product then makes a monetary offer to their insured incorporating this "Base Value" amount (before further adjustments are made for odometer reading, condition and optional features), representing in the end that their "Settlement Offer" reflects the loss vehicle's "fair market value" when it in fact does not.

17. The Plaintiffs and Class Members rely upon such representations when subsequently reviewing a valuation report or market summary report later received from their insurer, a report accompanying a settlement offer for their loss vehicle.
18. The Defendants do not, however, offer to pay or in fact pay the “actual cash value with proper deduction for depreciation, however caused”, as is required by law and their contracts of insurance. Instead, they “adjust” the ACV downward as described herein. This results in a monetary loss to each insured and corresponding gain to each insurer.
19. The valuation procedure followed by these non-party companies (Mitchell and Audatex) is as follows:
  - a. The insurance company that has retained the company provides information regarding the loss vehicle, including the insured’s geographic location / market, the vehicle’s VIN (vehicle identification number), the vehicle’s odometer reading on date of loss, and available information regarding make, model, year and optional features associated with the loss vehicle;
  - b. With this information, the non-party valuation companies identify in their database and through other search methods “comparator vehicles”, and describe in a report those vehicles’ characteristics in comparative terms to the loss vehicle. The defendant insurers later deliver a copy of this report to their insured;
  - c. In each case a “sale price” or “list price” of the comparator vehicle is stated;
  - d. If a “sale price” is stated, no deduction is made to that price for a “Projected Sold Adjustment” or “Typical Negotiation Adjustment”;
  - e. If a “list price” is stated, a “Projected Sold Adjustment” or “Typical Negotiation Adjustment” (or substantially similar “adjustment”, however named, said to reflect “consumer behaviour”), usually stated as a percentage, is applied to each comparator vehicle;
  - f. An average of all “sale prices” and downward-adjusted “list prices” is calculated and that average is put forward as the “base value” or “typical vehicle” value of the insured’s own vehicle. It is this “base value”, which already incorporates the

“adjustment” described above, that is put to the insured by their defendant insurer as the value of their vehicle before considering true depreciation;

- g. Adjustments to the stated “base value” are next made for true depreciation, such as in light of the current odometer reading, which may be higher or lower than the comparator vehicle average, or for the presence or absence of optional features, or for condition differences between the loss and comparator vehicles;
  - h. A valuation report is generated using the non-party valuation product and a dollar amount arrived at by this methodology is put forward as a settlement offer by each Defendant to their insured, stating this to be a fair and accurate value for the loss vehicle. The Plaintiffs and Class Members are induced to accept this offer by the above-described deceitful and misleading representations and their dire circumstances following an accident and the total loss of their motor vehicle.
20. The Plaintiffs plead that using this valuation procedure when valuing total loss claims for insured vehicles is improper, as by this method the defendant automobile insurance companies systemically undervalue and underpay insured total loss claims by manipulating the “base value” or “typical vehicle” value of comparator vehicles using a Projected Sold Adjustment or Typical Negotiation Adjustment (or similar “adjustment”, however named). These “adjustments” are not fact-based and do not reflect true value “depreciation”. This is a methodology used for ascertaining or estimating the value of the loss vehicle that systemically and unlawfully undervalues those vehicles’ “actual cash value”, to the monetary loss of the insured and corresponding gain of the insurer.
21. The Plaintiffs plead that no Defendant automobile insurance policy or insurance statute permits an insurer to reduce a vehicle’s value on the basis of fictional, invented or arbitrarily assumed “adjustments”. All such policies and statutes require insurers to pay to their insured the actual cash value of the loss vehicle, being its market price on a free market on the date of loss, taking into account only true value depreciation.
22. The Plaintiffs plead that use of Mitchell and Audatex Vehicle Valuation Reports during the relevant period followed the procedure described above, provided and disclosed the

same or substantially the same material information, and presented that material information in the same or substantially the same format. These valuation reports purport to contain values for comparable vehicles recently sold or for sale in the claimant's geographic area. The report properly adjusts the advertised prices of those comparable vehicles to account for differences in condition, equipment, odometer reading, and vehicle configuration. However, those reports further "adjust" the value of such comparator vehicles by a percentage said to reflect buyer-seller "negotiations", always reducing the list price down to a lower sale price. It is this reduced fictional sale price that is then put forward by the defendant insurers as the value of comparator vehicles.

23. These "adjustments" assume, without factual foundation, that all buyers can and do engage in price negotiation in the used vehicle market. A "Projected Sold Adjustment" or "Typical Negotiation Adjustment" discounts objective "list price" information based on an unfounded, subjective methodological assumption. This adjustment is applied to each of the comparable vehicles before true depreciation adjustments for differences such as odometer reading, optional equipment and condition. The only explanation for this uniformly downward adjustment appears on the last page of the valuation reports (an adjustment made to reflect consumer purchasing behaviour). These reports assume, in short, that buyers of comparator vehicles in fact negotiate, in every case, a lower price, regardless of circumstances such as supply and demand or pricing and selling practices in the actual market of the insured who has suffered a total loss of their motor vehicle.
24. Under their insurance policy terms and applicable laws, the Defendants have a duty to pay the actual cash value of the vehicle, with proper deduction only for true depreciation or any true deductible expressly stated in the policy. The Defendants represent to their insured Class members that they are in fact paying the actual cash value of the vehicle when using the procedure and methodology described above. This is a misrepresentation and is deceitful. The Defendants do not pay "actual cash value".
25. The Plaintiffs plead that the Defendants gain materially and economically by such undervaluation in direct proportion to the loss suffered by the Plaintiffs and Class Members. The Defendants knowingly retain a non-party valuation firm that applies a

methodology materially beneficial to the insurance company that has retained it, knowing their insured will suffer a corresponding loss when this methodology is applied. The Defendants obscure the gain and loss by holding out the non-party valuation companies as respected, neutral and fair valuers. The Plaintiffs and Class members rely on these representations, causing a material loss to them and corresponding gain to their insurer.

26. The Plaintiffs plead that a negotiated discount off the list price is in fact highly atypical and it is not proper to include such an adjustment when determining ACV. The inclusion of this downward adjustment purportedly to reflect “consumer behaviour” is particularly improper in the context of insureds who have lost their vehicle in an accident and are financially vulnerable and in immediate need of a replacement vehicle. These insureds have limited time to search for an illusory opportunity to obtain a below-market deal on a comparator vehicle, if such a vehicle even exists, or to “negotiate” a sale price. Often faced with “no haggle pricing” and similar trade practices in the used vehicle market, these insured must accept a vehicle at list price, without the benefit of “negotiations” lowering that price. Such purchases are further compelled by the Defendants’ practice of providing only time-limited rental replacement vehicles following the submission of a total loss claim. This is the marketplace in which Class Members seek replacement vehicles.
27. The Plaintiffs further plead that the Covid-19 pandemic that commenced in Canada on or about March 15, 2020, caused new motor vehicle under-production and/or reduced trade-in availability of used vehicles relative to buyer demand, as well as causing supply chain bottlenecks, and vehicle and automotive parts scarcity and undersupply, creating a shortage of both new and used vehicles in Canada. From this date and continuing, the used vehicle market has been and is currently a “sellers’ market” for both new and used motor vehicles. Methodological assumptions about “consumer behaviour” or the engagement of automobile buyers and sellers in “price negotiations” for scarce vehicles has had and now has no factual basis. Percentage “adjustments” in list prices to reflect “consumer behaviour” that does not in fact occur is a breach of the Defendants’ policies of insurance and is an unfair and unreasonable action on the part of the insurer when applying and implementing out the terms of such a policy.

28. The Defendants' systemic practice of undervaluing comparable and total loss vehicles when paying automobile total loss claims is arbitrary, unsupported, unjustified, and a systemic use of deceptive and oppressive adjustments, which benefit the insurer at the expense of the insured, violate the Defendants' policies with Class members and result in an unreasonable, unfair and inaccurate valuation and settlement of total loss claims.
29. The Defendants' application of a Projected Sold Adjustment or Typical Negotiation Adjustment is also deceptive. It proposes then applies a deduction for consumer behaviour that does not, in fact, typically occur in actual market conditions. This method of valuing vehicles is a deceptive practice to lower the value of insured property claims. In result, the Defendants do not do what they say they will do under the terms of the automobile insurance policy; that is, pay their insured the ACV of the loss vehicle.

## **II. THE PLAINTIFFS**

30. The following Plaintiffs bring this action on his/her/their own behalf, and on behalf of the proposed Class defined above.

### **(a) Peter Boulton**

31. On or about July 2, 2015, the Plaintiff, Peter Boulton, was involved in a motor vehicle accident. Mr. Boulton was at the time a resident of the Province of Nova Scotia, Canada.
32. At the time of Mr. Boulton's accident, he had contracted with the Defendant, Intact Insurance, under the terms of a valid automobile insurance policy, entered into in Nova Scotia, Canada, Policy Number 7M5063382.
33. On or after July 2, 2015, Mr. Boulton submitted a loss claim in relation to his motor vehicle as required under his automobile policy.
34. This Defendant, Intact Insurance, then determined Mr. Boulton's vehicle to be a total loss and followed the valuation procedure described above.



35. Intact Insurance provided an Audatex Vehicle Valuation Report (“Market-Driven Valuation”) to Mr. Boulton on or about July 11, 2015, applying a Typical Negotiation Adjustment of 7.0% and held out to Mr. Boulton \$5,815 as the ACV of his vehicle.
36. Mr. Boulton accepted these representations and this offer, not knowing the valuation methodology systemically reduced the vehicle’s actual cash value.
37. Due solely to the application of a “Typical Negotiation Adjustment” in determining an average “base value” of comparator vehicles, Mr. Boulton suffered a loss of approximately \$560.

**(b) Dmitry Yuzefovich**

38. On May 30, 2021, the Plaintiff, Dmitry Yuzefovich, was involved in a motor vehicle accident. Mr. Yuzefovich was at the time a resident in the Province of Nova Scotia, Canada.
39. At the time of Mr. Yuzefovich’s accident, he had contracted with the Defendant, Travelers Canada, under the terms of a valid automobile insurance policy, entered into in Nova Scotia, Policy Number APP3945060.
40. On or before June 2, 2021, Mr. Yuzefovich submitted a loss claim to Travelers Canada relation to his motor vehicle as required under his/her automobile policy.
41. Travelers Canada then determined Mr. Yuzefovich’s vehicle to be a total loss and followed the valuation procedure described above.
42. Travelers Canada provided an Audatex Vehicle Valuation Report (“Market-Driven Valuation”) to Mr. Yuzefovich on or about June 2, 2021, applied an 11% Typical Negotiation Adjustment and held out to Mr. Yuzefovich, \$2,426 as the ACV of his vehicle.

43. Mr. Yuzefovich accepted these representations and this offer, not knowing the valuation methodology systemically reduced the vehicle's actual cash value.
44. Due solely to the application of a "Typical Negotiation Adjustment" in determining an average "base value" of comparator vehicles, Mr. Yuzefovich suffered a loss of approximately \$299.

**(c) Nancy Martin**

45. On or about March 10, 2019, the Plaintiff, Nancy Martin, was involved in a motor vehicle accident. Ms. Martin was at the time a resident of the Province of Nova Scotia, Canada.
46. At the time of Ms. Martin's accident, she had contracted with the Defendant, Security National, under the terms of a valid automobile insurance policy, entered into in Nova Scotia, Canada, Policy Number 52342631.
47. On March 11, 2019, Ms. Martin submitted a loss claim in relation to her motor vehicle as required under her automobile policy.
48. This Defendant, Security National, then determined Ms. Martin's vehicle to be a total loss and followed the valuation procedure described above.
49. Security National, provided a Mitchell Vehicle Valuation Report to Ms. Martin, applied a percentage Projected Sold Adjustment and held out to Ms. Martin an ACV for her vehicle reduced in value by the amount of the Projected Sold Adjustment.
50. Ms. Martin accepted these representations and this offer, not knowing the valuation methodology systemically reduced the vehicle's actual cash value.
51. Due solely to the application of a Projected Sold Adjustment in determining an average "base value" of comparator vehicles, Ms. Martin suffered a loss of several hundred dollars.

**(d) Michael Condran**

52. On or about August 11, 2019, the Plaintiff, Michael Condran, was involved in a motor vehicle accident. Mr. Condran was at the time a resident of the Province of Nova Scotia, Canada.
53. At the time of Mr. Condran's accident, he had contracted with the Defendant, Aviva, under the terms of a valid automobile insurance policy, entered into in Nova Scotia, Canada, Policy Number A44157237PLM.
54. On or after August 11, 2019, Mr. Condran submitted a loss claim in relation to his motor vehicle as required under his automobile policy.
55. Aviva then determined Mr. Condran's vehicle to be a total loss and followed the valuation procedure described above.
56. The Defendant, Aviva, provided an Audatex Vehicle Valuation Report to this Mr. Condran, applied a percentage Typical Negotiation Adjustment and held out to Mr. Condran an ACV for his vehicle reduced in value by the amount of the Typical Negotiation Adjustment.
57. Mr. Condran accepted these representations and this offer, not knowing the valuation methodology systemically reduced the vehicle's actual cash value.
58. Due solely to the application of a Typical Negotiation Adjustment in determining an average "base value" of comparator vehicles, Mr. Condran suffered a loss of several hundred dollars.

**(e) A Star Service Inc.**

59. On February 5, 2021, the Plaintiff, John Bull, an employee and director of A Star Service Inc., was involved in a motor vehicle accident. Mr. Bull lived at the time in Ontario, Canada and was killed in the accident.

60. At the time of the accident, John Bull's employer, A Star Service Inc., had contracted with the Defendant, Northbridge General Insurance Corporation ("Northbridge"), under the terms of a valid automobile insurance policy, entered into in Ontario, Canada, Policy Number 2600976.
61. On or about March 17, 2021, A Star Service Inc. submitted a loss claim in relation to its motor vehicle as required under its automobile policy.
62. Northbridge, then determined the vehicle to be a total loss and followed the valuation procedure described above.
63. Northbridge provided a Mitchell Vehicle Valuation Report ("Market Survey Report") to A Start Service Inc. or about March 17, 2021, applied a "Projected Sold Adjustment" of about 6.69% before stating \$3,047.78 as the ACV of his vehicle.
64. A Star Service Inc. accepted these representations and this offer, not knowing the valuation methodology systemically reduced the vehicle's actual cash value.
65. Due solely to the application of a "Projected Sold Adjustment" in determining an average "base value" of comparator vehicles, A Star Service Inc. suffered a loss of approximately \$209.06.
66. Mitch Bull, the son of John Bull, is presently the owner/operator of A Star Service Inc., its Director of Operations, and advances this claim on behalf of A Star Service Inc.

**(f) Wissam (Sam) Fakhreddine**

67. On August 30, 2017, the Plaintiff, Sam Fakhreddine, was involved in a motor vehicle accident. Mr. Fakhreddine lives in Alberta, Canada.

68. At the time of Mr. Fakhreddine’s accident, he had contracted with the Defendant, Intact Insurance, under the terms of a valid automobile insurance policy, entered into in Alberta, Canada, Policy Number 7V5109082.
69. On or after August 30, 2017, Mr. Fakhreddine submitted a loss claim to Intact Insurance in relation to his motor vehicle as required under his automobile policy.
70. Intact Insurance then determined Mr. Fakhreddine’s vehicle to be a total loss and followed the valuation procedure described above.
71. Intact Insurance provided an Audatex Vehicle Valuation Report (“Market-Driven Valuation”) to Mr. Fakhreddine on or about September 8, 2017, applied a Typical Negotiation Adjustment of 5.0%, and held out to Mr. Fakhreddine \$12,194 as the ACV of his vehicle.
72. Mr. Fakhreddine accepted these representations and this offer, not knowing the valuation methodology systemically reduced the vehicle’s actual cash value.
73. Due solely to the application of a “Typical Negotiation Adjustment” in determining an average “base value” of comparator vehicles, Mr. Fakhreddine suffered a loss of approximately \$596.11.

### **III. POTENTIAL CLASS MEMBERS**

74. Transport Canada, a federal government agency, maintains a motor vehicle collision database, stating the number of collisions reported each year in Canada and the number of motor vehicles involved. The most recent available data years are as follows:

Year	Raw Number of Collisions in Canada	Number of Vehicles Involved
2016	118,321	212,815
2017	114,412	206,046
2018	111,334	199,699
2019	104,630	188,716
2020	79,990	139,722

2021	83,590	147,918
2022	Not available	Not available
2023	Not available	Not available
2024	Not available	Not available

75. The Plaintiffs further plead the following facts:

“Each year, approximately 17 per cent of Canadian auto physical damage claims results in a vehicle being deemed a total loss.”

Jeremy Bowler, Senior Director, Insurance Practice, J.D. Power, *Canadian Underwriter*, article dated July 31, 2014

76. On this basis, the Plaintiffs plead the following facts regarding total loss claims in Canada, including but not limited to the most recent available data years:

Year	Number of Vehicles Involved in a Collision (Transport Canada)	Approximate Number Resulting in a Total Loss Claim (17%)
2016	212,815	36,178
2017	206,046	35,027
2018	199,699	33,948
2019	188,716	32,081
2020	139,722	23,752
2021	147,918	25,146
2022	Not available	Not available
2023	Not available	Not available
2024	Not available	Not available

77. The Plaintiffs further plead as follows regarding some of the named Defendants:

- (a) In 2005, Audatex represented to the public via its company website that it had signed Aviva Canada, Economical Insurance, and RBC Insurance as client insurance companies using Audatex vehicle valuation products;
- (b) In 2008, Audatex represented to the public via its company website that it had signed Dominion Canada and RSA Insurance as client insurance companies using Audatex vehicle valuation products;

- (c) In 2012, Audatex represented to the public via its company website that it had signed AXA Insurance, Wawanesa and Jeyco Insurance as client insurance companies using Audatex vehicle valuation products;
  - (d) In 2022, Mitchell represented to the public via its company website that it had signed Aviva and Beneva as client insurance companies using Mitchell vehicle valuation products.
78. The Plaintiffs and each member of the proposed Class suffered damages by the Defendants' application of a Projected Sold Adjustment or Typical Negotiation Adjustment as these insured were not paid the ACV that they would have received had each Defendant applied neutral rather than self-serving valuation methodologies and current rather than fictional appraisal standards.
79. Were it not for this deceptive and improper adjustment, the "Base Value" or "Typical Vehicle" value in each valuation report would have been higher, resulting in a higher "settlement value" and in turn a higher payment by a Defendant for ACV. To date, full payment of each of the Plaintiffs' claims and that of each Class members has been unreasonably and wrongfully withheld by their insurer, a named Defendant.
80. The Plaintiffs says that s/he did not know, and could not reasonably have known, that s/he had suffered an injury, loss or damage caused the Defendant's acts and omissions due to the Defendant retaining Mitchell or Audatex to complete vehicle valuation reports as described herein, as each Defendant presented to each Plaintiff and Class Member a settlement valuation proposed by Mitchell or Audatex as if it were truly reflective of the ACV of his/her motor vehicle as of the date of loss.
81. By the Defendants' representations and actions in adopting the valuation procedures described herein, the Defendants obscured from the Plaintiffs and all Class Members the nature, value and cause of his/her injury, loss or damage. The Plaintiffs say that their loss is only now readily apparent as equal to the Projected Sales Adjustment or Typical Negotiation Adjustment that was applied by their insurer to the list prices of available comparator vehicles when settling total loss claims.

#### IV. THE DEFENDANTS

82. The insurers listed immediately hereafter are each automobile insurance companies offering policies of insurance that include coverage for first party property damage and vehicle repair or replacement, including coverage for total loss.
83. In each case the named Defendant has a policy of insurance with a Plaintiff as identified above, or the above-named non-party valuation companies (Mitchell and Audatex) has held out to the public that the named insurance company is a client of Mitchell or Audatex who uses their valuation product as described herein. The Plaintiffs plead that all Defendants named herein use either Mitchell or Audatex valuation products that systemically undervalue total loss vehicles as described in this Statement of Claim.
84. The Defendant, Travelers Insurance Company of Canada (in this claim referred to as “Travelers”), is such an insurer with registered offices at:100 Venture Run, Suite 300, Dartmouth, Nova Scotia, B3B 0H9; recognized agent, Misty Preece.
85. The Defendant, Intact Insurance Company (in this claim referred to as “Intact Insurance”), is such an insurer with registered office at 20 Hector Gate, Suite 200, Dartmouth, Nova Scotia, B3B 0K3; recognized agent, Natalie Higgins.
86. The Defendant, Northbridge General Insurance Corporation (in this claim referred to as “Northbridge”) is such an insurer with registered offices at 403-5770 Spring Garden Road, Halifax, Nova Scotia, B3H4J8; recognized agent: Stanley Keeping. The Defendant, Security National, is such an insurer with registered offices at 320 Front Street, 3<sup>rd</sup> Floor, Toronto, Ontario, M5V 3B6; recognized agent: Fae Shaw, K.C.
87. The Defendant, Aviva General Insurance Company (in this claim referred to a “Aviva”), is such an insurer with registered offices at 112 4 Avenue SW, Suite 2100, Calgary, AB, T2P 0H3; recognized agent: Jocelyn Campbell, K.C.



88. The Defendant, Economical Insurance, is such an insurer with registered offices at 238A Brownlow Avenue, Park Place 2, Suite 310, Dartmouth, Nova Scotia, B2B 2B4; recognized agent: Karen Kaminksa.
89. The Defendant, RBC Insurance Agency Limited (in this claim referred to as “RBC”), is such an insurer with registered offices at 6880 Financial Drive, Mississauga, Ontario, L5N 7Y5; recognized agent: Stewart Robinson.
90. The Defendant, AXA Insurance (Canada) (in this claim referred to as “AXA”), is such an insurer with registered offices at 20 Hector Gate, Suite 200, Dartmouth, Nova Scotia, B3B 0K3; recognized agent: Alan Blair.
91. The Defendant, The Wawanesa Mutual Insurance Company (in this claim referred to as “Wawanesa”), is such an insurer with registered offices at 1500-1625 Grafton Street, Halifax, Nova Scotia, B3J 0E8; recognized agent: Guy Wellard.
92. The Defendant, Beneva Insurance Company, is such an insurer with registered offices at 1300-1969 Upper Water Street, Purdy’s Wharf, Tower II, Halifax, Nova Scotia, B3J 3R7; recognized agent: Ian Dunbar.
93. The Defendant, The Dominion Insurance Corporation (in this claim referred to as “Dominion”), is such an insurer with registered offices at 130 Adelaide Street West, Toronto, Ontario, M5H 3P5; recognized agent: E. Atcheson Cassels.
94. The Defendant, Royal & Sun Alliance Insurance Company of Canada (in this claim referred to as “RSA”), is such an insurer with registered offices at 1809 Barrington Street, Suite 1200, Halifax, NS, B3J 3K8; recognized agent: Murray Ritch, K.C.
95. The Defendant, Jevco Insurance Company (in this claim referred to as “Jevco”), is such an insurer with registered offices at 20 Hector Gate, Suite 200, Dartmouth, Nova Scotia, B3B 0K3; recognized agent, Natalie Higgins.

## V. DEFENDANTS' BREACHES

96. The Plaintiffs plead that the Defendants, to further their own business model and enhance profitability, adopted a flawed valuation process that systematically undervalued the amount of compensation payable under the insurance policies sold by the Defendants and purchased by the Plaintiffs and Class Members to replace loss vehicles.
97. In particular, the Defendants:
- (a) systemically used Mitchell or Audatex Vehicle Valuation Reports in adjusting total loss claims to determine ACV;
  - (b) relied on Mitchell or Audatex Vehicle Valuation Reports that included Projected Sold Adjustments or Typical Negotiation Adjustments to the value of the comparable vehicles that reduced base value;
  - (c) paid an amount less than “actual cash value” for total loss vehicles;
  - (d) acted deceptively in representing to their insured that the Mitchell or Audatex valuation methodology reflects true market value;
  - (e) exercised whatever contractual discretion it had under the contract unreasonably and for improper purposes, in breach of the Defendants’ common law duties to their insured;
  - (f) breached its obligations of good faith and fair dealing with an improper motive (to save itself from paying lawfully owed monies), and in a manner that was arbitrary, capricious, and inconsistent with the reasonable expectations of the parties, specifically, by arbitrarily reducing the amount of its total loss payments to its insured;
  - (g) requested and received a monetary benefit at the expense of the Plaintiffs and Class Members, both in the form of premium payments for automobile insurance coverage purporting to pay actual cash value in the event of a total loss without honouring those terms and instead retaining monies that should

have been paid out on total loss claims under the terms of their insurance policies;

- (h) misrepresented, omitted, concealed, and/or failed to disclose material facts regarding its promise to pay ACV in the event of a total loss, specifically the Defendants' use of an arbitrary Projected Sold Adjustment or Typical Negotiation Adjustment respecting comparable vehicles to artificially reduce their ACV payment to their insured; and
- (i) were unjustly enriched by the premiums paid by the Plaintiffs and Class Members and monies retained by the Defendant without juridical reason, to the corresponding detriment of insured Plaintiffs and Class Members.

98. The Plaintiffs plead there was and is a significant knowledge and sophistication imbalance between each Defendant and each insured Plaintiff and/or Class Member, making insured Class members particularly vulnerable to a Defendant's wrongful conduct. The Defendants' conduct was wilful, deliberate, wanton, entirely without care, high-handed, and in intentional disregard of the rights of insured Plaintiffs and Class Members. A punitive damage award is necessary to deter the Defendants from acting similarly in the future.

99. The Plaintiffs plead and rely upon the following statutes and regulations made thereunder, as amended from time to time, which were breached by the Defendant:

- (a) *Insurance Act*, RSBC 2012, c1 and *Business Practices and Consumer Protection Act*, SBC 2004, Chapter 2;
- (b) *Insurance Act*, RSA 2000, c. I-3 and *Consumer Protection Act*, RSA 2000, c C-26.3;
- (c) *The Insurance Act*, Chapter I-9.11 and *The Consumer Protection Act*, SS 1996, c C-30.1;
- (d) *The Insurance Act*, CCSM c 140 and *Consumer Protection Act*, CCSM C C200;

- (e) *Insurance Act*, RSO 1990, c. I.8 and *Consumer Protection Act, 2002*, S.O. 2002, c. 30;
- (f) *Insurance Act*, RSPEI 1988, c I-4 and *Consumer Protection Act*, RSPEI 1988 c C-19;
- (g) *Insurance Act*, RSNB 1973, c I-12;
- (h) *Insurance Act*, RSNS 1989, c 231 and *Consumer Protection Act*, RSNS 1989, c. 92;
- (i) *Insurance Companies Act*, RSNL 1990, c I-10 and *Consumer Protection and Business Practices Act*, 2016 c46;
- (j) *Insurance Act*, RSNWT (Nu) 1988, c I-4 and *Consumer Protection Act*, RSNWT (Nu) 1988, c C-17;
- (k) *Insurance Act*, RSY 2002, c 119 and *Consumer Protection Act*, RSY 2002, c 40; and
- (l) *Insurance Act*, RSNWT 1988, c I-4 and *Consumer Protection Act*, RSNWT 1988, c C-17.

100. The Plaintiffs claim on his/her/their own behalf and on behalf of all members of the Class as follows:

- (a) an order certifying this action as a Class Proceeding under the *Class Proceedings Act*, SNS 2007, c. 28 and appointing the proposed Plaintiffs as representatives for the Class;
- (b) a declaration that the Defendants owed a duty of utmost good faith when handling Class members' claims for total loss of their vehicles;
- (c) a declaration that, when paying automobile total loss claims to first-party insureds, it is a breach of the Defendants' insurance contracts, as well as a violation of law and common law, for the Defendants to base the valuation and payment of claims on adjusted values of comparable vehicles, reduced by a Projected Sold Adjustment or Typical

Negotiation Adjustment (or similarly named “adjustment”, premised on alleged consumer behaviour) that are (a) not due to depreciation; (b) arbitrary, (c) contrary to industry practices and consumer experiences (d) not reflective of the vehicle’s fair market value, and (e) not as reasonable or appropriate as to dollar amount;

- (d) a declaration that the Defendants engaged in unfair and deceptive business practices, breach of contract, and breach of their duty to exercise contractual discretion in good faith and not arbitrarily, in valuing payments made to the Plaintiffs and Class Members in response to vehicle total loss claims;
- (e) a declaration that the Defendants breached the provincial Insurance Acts and Consumer Protection legislation identified above by engaging in the wrongful conduct described herein;
- (f) a declaration that the Defendant was unjustly enriched by the wrongful conduct described herein;
- (g) a declaration that the Defendant made financial gains through the wrongful conduct described herein and an Order for disgorgement of any further monetary benefit that the Defendant obtained as a result of the wrongful conduct described herein;
- (h) special damages in an amount to be disclosed prior to trial;
- (i) aggravated, exemplary and/or punitive damages;
- (j) pre-judgment interest;
- (k) costs of this action, including the costs of notice and of administering the plan of distribution of the recovery in this action, plus applicable taxes, as well as Class Counsel fees and disbursements;
- (l) a *cy-près* award for any undistributed recovery;
- (m) an injunction restraining the Defendant from engaging in future wrongful conduct as described herein; and

(n) such further and other relief as counsel may advise and this Honourable Court considers just.

Dated this 5th day of December, 2024.



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**Raymond F. Wagner, K.C.**  
**Counsel for the Plaintiffs**  
**Wagners**  
1869 Upper Water Street  
Suite PH301, Historic Properties  
Halifax, NS B3J 1S9 Canada



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**Steve Rastin**  
**Counsel for the Plaintiffs**  
**Gluckstein Lawyers**  
301-595 Bay Street, P.O. Box 53,  
Toronto, Ontario, M5G 2C2 Canada