NO. S243397
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN

GEISS HOLDINGS LTD.

PLAINTIFF

AND

RBC LIFE INSURANCE COMPANY doing business as RBC INSURANCE,
and ROYAL BANK OF CANADA

DEFENDANTS

Brought under the *Class Proceedings Act*, R.S.B.C. 1996, c. 50

APPLICATION RESPONSE

Application response of: the defendants, RBC Life Insurance Company dba RBC Insurance and Royal Bank of Canada (the "**Defendants**")

THIS IS A RESPONSE TO the UNFILED Notice of Application of the plaintiff, Geiss Holdings Ltd.

The Defendants estimate that the application will take 5 days.

PART 1: ORDERS CONSENTED TO

The Defendants consent to the granting of the orders set out in NONE of the paragraphs of Part 1 of the Notice of Application (the "**Application**").

PART 2: ORDERS OPPOSED

The Defendants oppose the granting of the orders set out in ALL of the paragraphs of Part 1 of the Application.

PART 3: ORDERS ON WHICH NO POSITION IS TAKEN

The Defendants take no position on the granting of the orders set out in NONE of the paragraphs of Part 1 of the Application.

PART 4: FACTUAL BASIS

<u>Overview</u>

1. The corporate plaintiff seeks to represent a class of policyholders of a complex life insurance policy underwritten by RBC Life. The controlling mind of the proposed representative plaintiff, Bernie Geiss, is a licensed insurance advisor who sold more than 130 of these policies to his clients.

2. The proposed class members are, in large part, high net worth individuals who historically used the policy as part of a "10/8" leveraged life insurance arrangement, which generated significant tax advantages for the policyholders. When the federal government changed the rules applicable to such arrangements in 2014, RBC Life and PPI Management Inc. designed a new product that would allow policyholders to continue enjoying the benefits of a leveraged life insurance arrangement while complying with the new provisions of the *Income Tax Act*.

3. The putative class members did not have to participate in the new product, but they chose to do so. Presumably, that is because they wanted to continue benefitting from the significant and highly individualized tax and estate planning benefits available through the policy and its investment and leveraging options.

4. The plaintiff's application for certification fails to meet the requirements of s. 4(1) of the *Class Proceedings Act*, for several reasons, including (among others) the following:

(a) The plaintiff has failed to plead material facts necessary to establish many of the pleaded causes of action.

(b) The proposed class definition is overbroad, capturing persons who never invested in the investment account that is at the core of the plaintiff's claim.

(c) The proposed common issues (of which there are 48) are prolix, duplicative and unworkable as a basis for a common issues trial.

(d) A class proceeding is not preferable, including because individual issues would overwhelm any progress that could be made by litigating certain issues in common.

(e) Mr. Geiss is not suitable as a representative plaintiff – he sold the very policies of which he now complains to his clients, and is an obvious source of recourse for those clients.

5. For the reasons set out below, and those that will be developed in the Defendants' certification submissions, the plaintiff's claim should not be certified as a class proceeding.

<u>Facts</u>

6. RBC Life Insurance Company ("**RBC Life**") is an indirect, wholly-owned subsidiary of Royal Bank of Canada ("**RBC**"). RBC Life does business as "RBC Insurance."

The Security Fund Policy

7. RBC Life is the underwriter of a universal life insurance product known as the "Security Fund" policy (the "**SF Policy**").

8. The SF Policy is a universal life insurance policy: a form of 'permanent' insurance designed to remain in force for the insured's lifetime, typically until their death. Universal life insurance policies' favourable investment and tax benefits make them a common tool in estate planning for high net-worth individuals.

9. RBC Life did not sell the SF Policy directly to policyholders. Rather, the SF Policy was sold by PPI Management Inc. ("**PPI**"), a Managing General Agent with a network of independent licensed insurance advisors.

10. SF Policyholders purchased the product on the recommendations of independent insurance advisors who were required to understand and explain the SF Policy's risks and benefits, and ensure that the SF Policy was suitable for the client.

11. SF Policyholders are responsible for depositing sufficient money into their SF Policy to cover its cost. These deposits are added to the policy's "Accumulation Fund" and could then be allocated to investment accounts within the SF Policy.

12. Prior to 2014, many SF Policyholders participated in a "10/8" insurance arrangement that involved leveraging an investment account within their SF Policy to secure a loan from RBC Life. These arrangements were advantageous to SF Policyholders in various ways, including because they provided the opportunity to deduct the interest paid on the loans. A unique feature of the "10/8" arrangement was that the interest credited to the policyholder's investment account (e.g., 8%) was fixed at 2% below the rate of interest on the associated loan (e.g., 10%).

The Introduction of the Smoothed Return Investment Account

13. Effective January 2014, the federal government amended the Income Tax Act to eliminate the tax benefits previously associated with "10/8" leveraged insurance arrangements.

14. In response, RBC Life worked with PPI to design and introduce a new investment option within the SF Policy to comply with the revised tax rules while preserving the ability to leverage the SF Policy. This new option is known as the Smoothed Return Investment Account (the "**SRIA**").

15. The SRIA was only available to holders of SF Policy versions 4.1 to 4.7, and only some of those policyholders elected to invest in the SRIA.

16. To create the SRIA, RBC Life introduced an endorsement to the SF Policy (the "**SRIA Endorsement**"), which was effective January 1, 2014.

17. In parallel, RBC Life provided two new loan options to policyholders: the "Credit Facility" and the "Annual Rate Policy Loan."

18. SF Policyholders that invested money in the SRIA ("SRIA Policyholders") were not required to take a loan from RBC Life. The vast majority of SRIA Policyholders, however, chose to leverage their SRIA investment, either through loans provided by RBC Life or through loans provided by third-party lenders.

19. Licenced Insurance Advisors such as Mr. Geiss and Mr. Stone had professional obligations to review the SRIA Endorsement and the new loan options with their clients, and to ensure their clients understood the changes to the SF Policy and the risks and benefits of the newly available investment and loan options.

20. Mr. Geiss and Mr. Stone advised many of their clients to invest in the SRIA and to accept the SRIA Endorsement. They did so without any suggestion that the information about the SRIA and SF Policy was inadequate for them to discharge their suitability obligations as insurance advisors.

21. SF Policyholders were not required to participate in the SRIA. They had other choices. Many of them, however, chose to participate in the SRIA and to continue leveraging their SF Policy.

The Smoothed Return Investment Account

22. The SRIA is different from a traditional investment fund, like a mutual fund. It was not designed to generate the highest possible credited rate in any given year. Rather, the SRIA was

designed to deliver a stable credited rate that would enable SRIA Policyholders to use the policy as collateral for an associated loan, from RBC Life or from a third-party lender.

23. The SRIA has other features that make it unlike a mutual fund. The credited rate is set annually, in advance; it had a fixed credited rate for the first five years; and the credited rate for any year cannot go below 0%.

24. Also unlike a traditional investment fund, the credited rate for the SRIA is set at RBC Life's discretion, with reference to the returns of a reference portfolio known as the "Smoothed Return Reference Portfolio ("**SRRP**")".

The Smoothed Return Reference Portfolio

25. The SRRP is a "reference portfolio", which means that it is a notional portfolio of assets selected by RBC Life. SRIA Policyholders do not own those assets, directly or indirectly.

26. The SRRP is mainly segmented into two parts: the leveraged and non-leveraged portions.

27. The returns of the non-leveraged portion of the SRRP are determined with reference to the interest received from policyholders who have leveraged their SF Policy using a Credit Facility or Annual Rate Policy Loan.

28. The returns of the leveraged portion of the SRRP are determined with reference to the returns of the RBC Select Conservative Portfolio (Series A), a managed fund offered by RBC Global Asset Management Inc. ("**GAM**").

The Management Fee

29. In accordance with the SF Policy, RBC Life applies a management fee to the value of the SRRP. The notional returns of the SRRP are calculated net of the management fee. The management fee can range between 1.5% and 2.25% per annum (150 to 225 basis points), at RBC Life's discretion. RBC Life has always applied a management fee within that permitted range.

30. RBC Life has not charged any "additional" or "hidden" fees. Further, any fees associated with reference assets of the SRRP are not paid by SRIA Policyholders. SRIA Policyholders have no ownership interest in the reference assets of the SRRP and they do not pay fees or expenses associated with those assets or any of RBC Life's assets in its general funds.

The Proposed Class Members

31. Policyholders acquired and maintained their SF Policies for various, individual, purposes. Many utilized the policies as part of leveraged insurance strategies. Others did not. The extent to which any individual policyholder benefited from leveraging arrangements, and the associated tax and investment advantages that they received, vary from person to person based on their individual circumstances.

32. The value that SRIA Policyholders (or their beneficiaries) ultimately realize from the SRIA also varies significantly depending on a number of factors, including when they invested in the SRIA, whether (and when) they withdrew funds during their lifetime, whether they leveraged the value of the SRIA, whether the value of the SRIA was included in a death benefit, and other factors.

The Representative Plaintiff

33. The representative plaintiff is a corporation: Geiss Holdings Ltd. Geiss Holdings Ltd.'s only two directors are spouses Bernhard Geiss and Christie Geiss.

34. Mr. Geiss, as a licensed insurance advisor, sold the SF Policy to his clients through Cove.

PART 5: LEGAL BASIS

35. The plaintiff has failed to satisfy the five statutory requirements for certification prescribed by s. 4(1) of the *Class Proceedings Act*, R.S.B.C. 1996, c. 50 (the "**CPA**").

36. The proposed representative plaintiff bears the onus of satisfying all the requirements for certification in section 4(1) of the CPA. To meet the first requirement, the plaintiff must demonstrate that the pleadings disclose a cause of action. For the remaining four requirements, the plaintiff must provide admissible evidence demonstrating that there is some basis in fact that the proposed class is identifiable, the proposed issues are common, a class proceeding is preferable, and the proposed representative plaintiff is adequate.

37. The certification application remains a "meaningful screening device" for proposed class proceedings.[1] It must involve more than a mere "superficial level of analysis into the sufficiency

[1] *Pro-Sys Consultants Ltd. v. Microsoft Corp.*, 2013 SCC 57 at para. 99, citing *Hollick v. Toronto (City)*, 2001 SCC 68 at para. 25; *Cleaver v. The Cadillac Fairview Corporation Limited*, 2025 BCSC 910 at para. 102.

of the evidence [such] that it would amount to nothing more than symbolic scrutiny."[2] The standard of "some basis in fact" cannot equate to mere speculation.[3] There must be a genuine foundation in admissible evidence.

Cause of Action – s. 4(1)(a)

38. Section 4(1)(a) of the CPA requires that the pleadings disclose a cause of action. An action will fail at this stage if, assuming the facts pleaded are true, it is plain and obvious that the claim cannot succeed.[4]

39. Among other reasons, a cause of action is bound to fail if:

(a) the plaintiff fails to plead the mandatory elements of a cause of action;[5]

(b) the plaintiff does not clearly plead the facts necessary to establish the pleaded claim;[6] or

(c) the plaintiff pleads a cause of action that does not exist or arise in law.[7]

40. The plaintiff has failed to plead sufficient facts to ground many of the proposed causes of action, including as follows:

(a) The plaintiff fails to plead a claim in breach of fiduciary duty. In particular, the plaintiff does not plead the existence of either a *per se* fiduciary relationship or an *ad hoc* fiduciary relationship. There is no *per se* fiduciary relationship between insurer and insured, and the plaintiff has pleaded no undertaking by the Defendants to act in the best interests of the plaintiff or putative class members.

(b) The plaintiff fails to plead a claim in fraudulent misrepresentation. Among other things, the plaintiff fails to plead the particulars of any alleged misrepresentation nor any conduct on behalf of the Defendants' that could give rise to fraudulent misrepresentation.

(c) The plaintiff fails to plead a claim in unjust enrichment. Among other reasons, the pleaded contracts between the SF Policyholders and the Defendants provide a juristic reason for any benefit received by the Defendants or either of them.

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[2] *Pro-Sys Consultants Ltd. v. Microsoft Corp*., 2013 SCC 57, at para. 103.

[3] *Sun-Rype Products Ltd. v. Archer Daniels Midland Company*, 2013 SCC 58 at para. 70.

[4] *Hollick v. Toronto (City)*, 2001 SCC 68 at para. 25.

[5] *Sherry v. CIBC Mortgage Inc.*, 2018 BCSC 1484 at para. 24.

[6] *Hunt v. Carey Canada, Inc.*, [1990] 2 S.C.R. 959 at 980; *MacFarlane v. United Parcel Services,* 2010 BCCA 171 at paras. 20-22; *R. v. Imperial Tobacco Canada Ltd.*, 2011 SCC 42 at para. 22; and *Bhangu v. Honda*, 2021 BCSC 794.

[7] *Alberta v. Elder Advocates of Alberta Society*, 2011 SCC 24 at paras. 57-63 and 71-75.

(d) The plaintiff fails to plead necessary material facts to establish any elements of a civil conspiracy claim, whether by lawful or unlawful means.

(e) The plaintiff concedes that "fraudulent concealment" is not a cause of action. [8]

Identifiable Class – s. 4(1)(b)

41. The plaintiff's proposed class definition does not satisfy section 4(1)(b) of the CPA. A class definition must not be overbroad and must have a rational relationship with the proposed common issues arising out of the claims advanced.[9]

42. The proposed class definition is overbroad and disconnected from the plaintiff's claim. In particular, the proposed class definition captures persons who never invested any money in the SRIA, and therefore could never have suffered any of the losses alleged by the plaintiff.

Common Issues – s. 4(1)(c)

43. Section 4(1)(c) of the CPA requires that "the claims of the class members raise common issues." To satisfy the requirements of s. 4(1)(c), the plaintiff must provide admissible evidence showing some basis in fact for each of the proposed common issue common issues "must be capable of significantly advancing litigation."[10]

44. Where a proposed common issue requires an individual rather than common inquiry, the court should not certify the issue as a common issue. Certain kinds of issues are generally found to be unsuitable for a common inquiry. These include a plaintiff's claim for aggravated damages.[11]

45. Even where a common issue might otherwise be certifiable, common issues should not be certified if they are:

(a) duplicative or add nothing to uncontested common issues;[12]

(b) redundant and do not move the litigation forward;[13] or

[8] Claim at para. 76; Application at para. 34.

[9] *Jiang v. Peoples Trust Company*, 2017 BCCA 119, at para. 82.

[10] *Williamson v. Johnson & Johnson*, 2020 BCSC 1746 at para. 243.

[11] *Syngenta AG v. Van Wijngaarden*, 2025 BCCA 334 at para. 153, citing *Gomel v. Live Nation Entertainment, Inc.*, 2021 BCSC 699, rev'd in part (but not on this point) 2023 BCCA 274 at para. 168.

[12] *Bosco v. Mentor Worldwide LLC*, 2024 BCSC 1931 at para. 204.

[13] *Somerville v. Catalyst Paper Corporation*, 2011 BCSC 331 at para. 57.

(c) too broad or vague for their answers to meaningful advance the litigation.[14]

46. While common issues should not be outlined in overly broad terms, they should still be framed in general terms. Particularization of common issues should wait for a later stage in the proceeding.[15] Plaintiffs in most proposed class proceedings propose five or six common issues.[16] The plaintiff in this case proposes no less than 48.

47. Where a plaintiff proposes to rely on an expert methodology to resolve a common issue, the proposed methodology "must be sufficiently credible or plausible to establish some basis in fact for the commonality requirement." For example, where a plaintiff proposes relying on an expert methodology to prove a loss common to the class, "the methodology must offer a realistic prospect of establishing loss on a class-wide basis" and "cannot be purely theoretical or hypothetical, but must be grounded in the facts of the case in question."[17]

48. The plaintiff has failed to satisfy its evidentiary burden for commonality. The plaintiff fails to plead some basis in fact for the proposed common issues. For many of the dozens of proposed common issues, the plaintiff has provided no evidence that could provide any basis in fact.

49. In particular, but without limitation, the plaintiff's experts have not provided any basis in fact for a plausible methodology that could be used to establish causation of harm or quantification of damage in common. The harm alleged by the plaintiff (both causation and quantification) could only ever be determined on an individual basis.

50. The plaintiff proposes several issues that cannot be resolved in common, regardless of the state of evidence. Two examples of such issues include:

(a) Proposed common issue 21, which asks if the relationship between policyholders and RBC Life gave rise to a fiduciary duty. Any such fiduciary relationship would necessarily rely on the individual vulnerability of any alleged beneficiary, and the alleged "undertakings" to act in the beneficiary's best interest. This is an individual exercise.

(b) Proposed common issue 46, which asks whether aggravated damages are appropriate. This is an individual exercise.

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[14] *Mackenzie v. Chartwell Asset Management Inc.*, 2024 BCSC 1185 at para. 76; *Reilly v. Alberta*, 2024 ABCA 270 at para. 249

[15] *Kirk v. Executive Flight Centre Fuel Services*, 2017 BCSC 726, which states at para. 105.

[16] *Canadian Society for the Advancement of Science in Public Policy v. British Columbia*, 2025 BCSC 2051 at para. 303.

[17] *Pro-Sys Consultants Ltd. v. Microsoft Corp.*, 2013 SCC 57 at para. 118.

51. The plaintiff's 48 proposed common issues are duplicative and redundant and overly granular. If certified, they would result in an unworkable and inefficient set of common issues that would not focus the issues for the parties or the court at a future common issue trial. These defects include, among others:

(a) The plaintiff provides no less than 15 proposed common issues regarding alleged breaches of contracts (proposed common issues 1 and 4–17) which boil down to the same two questions: was there a contract and was it breached?

(b) The plaintiff provides no less than 6 proposed common issues regarding alleged breaches of fiduciary duties (proposed common issues 21–26)—not including 4 sub-issues—which boil down to two questions: was a fiduciary duty owed and was it breached?

(c) The plaintiff provides no less than 11 proposed common issues regarding an alleged civil conspiracy (proposed common issues 30–40).

(d) The plaintiff asks the court to determine whether interest is payable as a common issue. The certification judge should not clutter up the list of common issues with such issues.[18]

Preferable Procedure – s. 4(1)(d)

52. A class proceeding is not the preferable procedure. This proceeding would not be manageable, efficient or fair as a class proceeding. Among other reasons, the proposed common issues will not materially advance the claims of the proposed class members, which inevitably will devolve into individual issues about the policyholder's individual circumstances, including their reasons for purchasing the SF Policy, the advice that they received from their insurance advisor, the manner in which they used and benefited from their policy (including any associated leveraging options), the tax benefits that they received, among other things.

Representative Plaintiff – s. 4(1)(e)

53. Geiss Holdings Ltd. is not a suitable representative plaintiff, and it has not presented a workable plan to advance the proceeding on behalf of all class members.

54. A representative plaintiff is not suitable where: (i) it would not fairly or adequately represent the interests of the class; (ii) it has not produced a workable litigation plan; or (iii) on the common issues, it has an interest that is in conflict with the interests of other class members.[19] Additionally,

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[18] *Da Silva v. 2162095 Ontario Ltd.*, 2016 ONSC 2069 at para. 14.
[19] *CPA*, s. 4(1)(e).

a representative plaintiff should not derive a cognizable benefit that is separate and distinct from any benefit to other class members.[20]

55. Geiss Holdings Ltd. is unsuitable because its Director and controlling mind has an interest in conflict with the interest of class members. While Mr. Geiss attests to not being aware of any conflicts between himself and other members of the proposed class,[21] he ignores that his own company Cove sold the impugned policies to clients and to the proposed representative plaintiff.

56. The court may find a representative plaintiff unsuitable on the basis of a conflict if they had been involved in selling or promoting an impugned product to class members.[22] In such a case, the representative stands in a fundamentally different relationship to the defendant than the other class members and may itself stand in an advisor/client relationship with certain class members rising to the level of a fiduciary.[23] In other words, with respect to at least some class members, the representative plaintiff may itself be liable. A potential defendant or third party is not a suitable representative plaintiff.[24]

Evidentiary Issues

57. The plaintiff's burden at certification can only be discharged by admissible evidence. The rules and principles governing admissibility of evidence on a certification motion are the same as for other civil proceedings and the ordinary rules of evidence apply.[25]

58. The plaintiff seeks to rely on inadmissible evidence, including (without limitation):

(a) Evidence provided by Yves Bergeron, one of the plaintiff's proposed experts, who has offered inadmissible opinion evidence, including inadmissible legal opinions about the interpretation of the SF Policy and the ultimate issues before the Court.

(b) Evidence provided by Wayne Stone, one of the plaintiff's fact witnesses, who has offered inadmissible opinion evidence on various topics (including some of the same topics covered by the plaintiff's proposed expert, Yves Bergeron).

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[20] *Warner v Google LLC*, 2020 BCSC 1108 at para. 93.

[21] Geiss Affidavit #1 at para. 42.

[22] *Piett v Global Learning Group Inc*., 2021 SKQB 232 at paras. 15, 16, 68, 78, 83, 84.

[23] *Piett* at paras. 80–81.

[24] *T.L. v. Alberta (Child, Youth and Family Enhancement Act, Director)*, 2008 ABQB 114 at paras. 44–45.

[25] *Syngenta AG v. Van Wijngaarden*, 2025 BCCA 334 at para. 63, citing *Ernewein v. General Motors of Canada Ltd.*, 2005 BCCA 540, leave to appeal to SCC ref'd. 31218 (23 March 2006) at para. 31.

Conclusion

59. The application for certification should be dismissed.

60. The Defendants will rely on their full written argument, to be filed and exchanged with the plaintiffs according to an agreed-upon schedule prior to the hearing of the certification application.

PART 6: MATERIALS TO BE RELIED ON

1. The Defendants will rely on:

    (a) Affidavit #1 of Maria Winslow, made November 20, 2025;

    (b) Affidavit #1 of Josephine Marks, made November 19, 2025;

    (c) Affidavit #1 of Nicole Lorieau, made November 19, 2025.

    (d) the written submissions and authorities of the Defendants to be filed in advance of the certification hearing pursuant to the schedule agreed by the parties; and

    (e) such further and other materials as counsel may advise and this Honourable Court may allow.

The Defendants estimate that the application will take 5 days.

☒ The Defendants have filed in this proceeding a document that contains their address for service.

DATE: November 21, 2025

K. Hanowski

JILL YATES
KEVAN HANOWSKI
Counsel for the Defendants, RBC Life and RBC