

DECISION
of the
GENERAL INSURANCE COUNCIL OF MANITOBA
(“Council”)
Respecting
MML CLUB SERVICES LTD. O/A MML TRAVEL AGENCY; CAA MANITOBA; CAA
MANITOBA TRAVEL (“Licensee”)

INTRODUCTION

The General Insurance Council of Manitoba (the “Council”) derives its authority from *The Insurance Act* C.C.S.M. c. 140 (the “Act”) and the *Insurance Councils Regulation 227/91*.

Following receipt of a complaint from a consumer that he had suffered a medical emergency in the United States of America (the “USA”) and was advised that his policy would not provide coverage due to his occupation, one for which he had received confirmation from the agent who had sold him the policy that the occupation was not a policy exclusion, an investigation was conducted pursuant to sections 375(1) and 396.1(7) (e) of the *Act* and section 7(2) (e) of *Regulation 227/91*. The purpose of the investigation was to determine whether the Licensee had violated the *Act*, and/or *its Regulations*. During the investigation, the Former Designated Official of the Licensee was provided an opportunity to make submissions.

On September 7, 2017, during a meeting of the Council, the evidence compiled during the investigation and the position of the Licensee were reviewed. Upon assessment of the evidence, Council determined its Intended Decision. Pursuant to section 375(1) and 375 (1.1) of the *Act* and *Regulation 227/91*, the Council now confirms its decision and corresponding reasons.

ISSUES

1. Did the Licensee violate *the Act* by employing unlicensed agents for the sale of the accident and sickness insurance policies which were not incidental to the sale of other travel agency products?
2. Did the Licensee fail to advise the Complainant that another policy form of coverage was available for, and more appropriate to, his occupation, and that his policy excluded his occupation?

FACTS AND EVIDENCE

1. During all material times, the Former Designated Official was responsible for the licensing in the travel agency.

History – Accident and Baggage Licences (prior to June 1, 2015) and Restricted Insurance Agent Licences (effective beginning June 1, 2015)

2. Prior to June 1, 2015, there were four types of licence which allowed agents to sell travel accident and sickness policies: general insurance agent licence, life insurance agent licence (restricted to sponsor's policies), accident and sickness agent licence, and accident and baggage licence. Effective June 1, 2015, individual accident and baggage licences were replaced by the Restricted Insurance Agent (the "RIA") regime.
3. The accident and baggage licence, which had been issued by the Financial Institutions Regulation Branch prior to June 1, 2015 was an individual licence. There was no educational requirement. Professional liability ("E&O") was mandatory. An application was sponsored, typically by the insurer which would be the sole provider of the coverage sold by the agent/agency. Insurance offered and sold by these licence holders was incidental to the sale of travel products.
4. On February 2, 2015, notices were issued by the Deputy Superintendent of Financial Institutions - Insurance, and by the Insurance Council of Manitoba ("ICM") identifying that the new RIA licence was for the incidental sale of insurance products. All travel agents who wished to continue to transact insurance incidental to travel transactions would be required to obtain a Restricted Insurance Agent's Licence through the ICM.

ICM Licensing File Documentation

5. On January 29, 2015, ICM's Supervisor, Licensing & Administration emailed the Manager and Operating Agent of the general insurance agency of MML Club Services Ltd. clarifying that a current accident & baggage licensee would be required to hold a licence under RIA. Those individuals not meeting this criterium would require a different type of licence.
6. A review of the ICM licensing file confirmed that MML Club Services Ltd. changed its licensing in June 2015 with the licensing of travel insurance under CAA Manitoba and CAA Travel moved to the new Restricted Insurance Agents Licence under the Former Designated Official's responsibility.

The Complaint

7. The Complainant was a member of, and a long term medical travel insurance client of, the Canadian Automobile Association, at least since 2011. In 2011, the product being sold was "Everywhere you go Insurance" This was later replaced by "Away from home" coverage on or about June 3, 2014.

8. Section 380.1(1) of the *Act* defines incidental seller of insurance as one who in the course of providing goods or services, sells, negotiates or arranges insurance that relates to those goods or services. Section 380.1(3) permits the holder of a restricted insurance agent licence to act as an agent, through its employees in Manitoba, in the class or type of insurance for which a licence is held. The entity was licensed to sell "personal travel insurance" under its business as a travel agency.
9. The Licensee providing the product held a Restricted Insurance Agent ("RIA") licence.
10. The Complainant did not purchase his personal travel insurance in conjunction with other travel agency goods or services from the Licensee.
11. The Complainant advised that when he applied for the medical travel coverage he told the representative of the Licensee that he was an owner/operator of a commercial truck and drove for a living by delivering product in Canada and the USA.
12. The Complainant stated that the representative confirmed that there was no problem with the fact that he was a commercial trucker and a yearly plan would allow him to be out of the country for up to 15 days at a time.
13. On that basis and assurance, the Complainant purchased the policy. He had a policy with a September 26, 2014 to September 25, 2015 term, and later, purchased a policy effective September 26, 2015 to September 25, 2016.
14. On September 10, 2015, while in New Mexico, USA, the Complainant suffered a major medical emergency and was advised by the insurer that he was not eligible for the coverage under the Away from home - General Exclusion #14 and his claim(s) would not be paid.

Former Designated Official's responses to Council August 2, 2017, and August 22, 2017

September 26, 2014 – September 25, 2015 policy

15. Policy A was issued on September 25, 2014, effective September 26, 2014 – September 25, 2015 for the Complainant. The policy was issued by the Licensee's Employee A. In the Former Designated Official's letter to the Council dated August 2, 2017, it was confirmed that Employee A did not hold a licence required to sell accident and sickness policies at the time of the sale to the Complainant, regardless of the type of licence required.
16. As the incidents in the initial complaint occurred on September 10, 2015, and September 25, 2015, they occurred under the policy sold by Employee A for the Licensee.

17. Policy B was issued on September 4, 2015, effective September 26, 2015 – September 25, 2016. The policy was issued by Employee B who was authorized under the RIA licence held by the Licensee. Employee B was not licensed to sell a travel accident and sickness policy for a stand-alone policy not sold in conjunction with the sale of travel products.
18. The Former Designated Official confirmed that the policy issued to the Complainant was through the Manitoba RIA Licence. He provided the standard guidelines and steps to be completed for the sale of its product.
19. During the 2015 – 2016 medical application completed by the Complainant and Employee B, health issues were presented, and additional file notes were recorded by Employee B. The file notes did not mention the Complainant's occupation. In a September 22, 2015, email from Employee B, she stated that she remembered the Complainant and assisted him for about 45 minutes. In the email, she underlined that he never once mentioned that he was a truck driver. At one point, she discussed the application with another individual identified as Employee C.
20. The Former Designated Official noted that the Medical Declaration – Important Notice stated the importance of reading and understanding the policy before travelling, as coverage may be subject to certain limitations and exclusions. The agent performs the client review and points out the importance of reviewing the policy wording.
21. Exhibit 7 provided by the Former Designated Official was a copy of the 74 – page wording of the policy. The Table of Contents, Section 3 – Package Plans Coverage B - Plans Offered referred to vacation package plan. On page 19, General Exclusions number 14 read as follows:

“A trip outside *your* province or territory of residence in a commercial *vehicle* for the purpose of delivering goods or carrying a load. This exclusion applies to the driver, the operator, a co-driver, a crew member and any other passenger of the commercial *vehicle*.”
22. The Former Designated Official advised Council in an email dated August 22, 2017, that it had been his understanding that the accident and baggage licence(s) were being replaced by the RIA licence effective June 1, 2015.
23. The Former Designated Official noted that the first policy issued to the Complainant by Employee A on September 25, 2014, was sold prior to Employee A receiving her accident and baggage licence, which was issued on October 9, 2014. He noted that it was an administrative oversight and they were examining their internal procedures to determine how it occurred. Employee A had attended product training on August 19, 2014, and the policy exclusion in question would have been fresh in her mind. Furthermore, her activities were conducted under the supervision of a more experienced licensed sales agent who had initialed the Complainant's medical declaration. There was no evidence that the

Complainant had disclosed that he was a commercial truck driver. If he had, an alternate insurance policy would have been offered to suit his insurance needs.

24. The Former Designated Official noted in his submission to the Council that other products would have been available if they had been aware of the Complainant's occupation.

ANALYSIS

Prior to the licensing period of June 1, 2015, individuals obtained an accident and baggage licence from the Financial Institutions Regulation Branch of the Manitoba government for the incidental sale of accident and sickness policies for the travel industry. Where the sale of a travel accident and sickness policy was not incidental to other sales, a different type of licence was required by the salesperson.

The Complainant was a commercial trucker who was sold an annual travel accident and sickness policy on September 25, 2014. The sale of this policy was not incidental to the sale of another travel product. At the time of this sale, the individual who sold the policy, Employee A, had been trained, and may have been qualified, but she was unlicensed. The Former Designated Official stated that at that time, Employee A would have been supervised, noting the initial of that supervising person appeared on the medical declaration. No notes exist of the discussion between the Complainant and Employee A with respect to the fact that there was an exclusion for the occupation of commercial trucker.

Regardless, the policy sold by Employee A to the Complainant was for vacation travellers, and the sale of the insurance policy was not incidental to another travel agency sale.

In 2014, the Complainant was sold a policy by a representative of the travel agency who was not licensed and was in contravention of s. 369(1) of the *Act*.

In September 2015, and while he believed he was covered by the September 26, 2014 – September 25, 2015 policy, the Complainant suffered medical emergencies for which he was denied insurance due to the fact he was a commercial trucker.

On June 1, 2015, MML Club Services Ltd. O/A MML Travel Agency; CAA Manitoba; CAA Manitoba Travel became licensed under the Restricted Insurance Agent regime and all travel agents were covered under this licence. Eligibility to sell insurance products under this licence required the insurance product to be incidental to the sale of another product – not unlike the previous licence. The Licensee's Employee B sold the stand-alone policy to the Complainant on September 4, 2015, although the firm was only licensed to sell travel accident and sickness policies incidental to the sale of another travel agency product or service.

Council noted that it could not determine whether the Complainant had asked if commercial truckers would be covered under the policy or what, if any, advice was received. It did recognize that this was not an area of expertise for which the employees of the Licensee were licensed, as the Complainant was not travelling as a vacationer.

On September 4, 2015, the Complainant should have been directed to an agent qualified and licensed to sell the product required by the Complainant as noted by the Former Designated Official. This Licensee's valid licence did not authorize it to sell this product to the Complainant.

In September 2015, the Former Designated Official was, or ought to have been aware, of the licensing activity permitted under the RIA's licence. He permitted unlicensed travel agents to sell stand-alone policies in contravention of s. 369(1) and s. 380.1 of the *Act*, and s. 35 of *Regulation 389/87R*.

Council concluded that the Licensee must limit its agent activities to those for which the Licensee has a valid licence. Agents must be competent and provide complete and correct advice to their clients to meet their needs. Part of that competency is addressed in prequalification and licensing requirements.

PENALTY AND FINAL DECISION

Council's Decision dated February 8, 2018, was delivered by registered mail to the Licensee on February 9, 2018. The Decision outlined the foregoing background, analysis, and conclusions. Having regard to the determination of the violations aforesaid, and pursuant to sections 375 (1.1) (c) and (d) of *the Act* and section 7 (1) of *Regulation 227/91*, the following penalties are imposed on the Licensee, namely:

1. The Licensee be fined \$3,000.00 and assessed partial investigation costs of \$825.00.

As part of its Decision, Council further informed the Licensee of its right to request an Appeal to dispute Council's determinations and its penalty/sanction. The Licensee expressly declined its right, chose not to pursue a statutory Appeal, and accepted the Decision.

The Decision is therefore final. In accordance with Council's determination that publication of its Decisions is in the public interest, this will occur, in accordance with sections 7.1(1) and (2) of *Regulation 227/91*.

Dated in Winnipeg, Manitoba on the 8th day of March, 2018.