The Canadian Association of Financial Institutions in Insurance | L'association canadienne des institutions financières en assurance

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CAFII ALERTS WEEKLY DIGEST: September 30 to October 7, 2022

October 7, 2022

The CAFII Alerts Weekly Digest is intended to provide a curated compendium of news articles, analyses, editorials, and opinion commentary on insurance, regulatory, business/industry/economic, and societal topics of relevance to CAFII Members – drawn from domestic and international industry trade press and mainstream media – to aid in Members' awareness of the spectrum of recently published media content in those areas. Inclusion of a news article, analysis piece, editorial, or opinion column in the Weekly Digest in no way implies CAFII's support or endorsement of the interpretations, analyses, views, and/or opinions therein.

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REGULATOR/POLICY-MAKER NEWS

FSRA Initiates Action Against Life Insurance Agent

By Lyle Adriano, Insurance Business Canada, October 3, 2022

https://www.insurancebusinessmag.com/ca/news/life-insurance/fsra-initiates-action-against-insurance-agent-422551.aspx?utm_source=GA&e=YnJlbmRhbi53eWNrc0BjYWZpaS5jb20&utm_medium=20221003&utm_campaign=IBCW-MorningBriefing-20221003&utm_content=9B8F63D4-69B1-4D0C-AE64-59C8BBAFABC8&tu=9B8F63D4-69B1-4D0C-AE64-59C8BBAFABC8

Ontario's Financial Services Regulatory Authority (FSRA) has announced that it has initiated enforcement action against a life insurance agent for his purported misleading statements and fraud.

The regulator alleges that Sudeep Sharma made false or misleading statements in soliciting or registering insurance. FSRA additionally alleges that Sharma knowingly procured his clients' insurance payments. FSRA has proposed revoking the license of Sharma, as well as imposing three administrative penalties on the agent totalling $35,000.

Sharma is licensed as a life, accident, and sickness insurance agent. At the time of his alleged fraud, he was an agent employed by RBC Insurance.

RBC Insurance began investigating Sharma's actions in May 2020 after receiving a complaint from a policyholder that a new insurance policy had been opened in her name without her knowledge or consent. As a result of the investigation, the insurer later filed a Life Agent Reporting Form (LARF) on Sharma to the FSRA, and the insurer subsequently terminated Sharma's employment for cause on September 16, 2020. In the LARF it submitted to the FSRA, RBC Insurance indicated that it had evidence that Sharma had engaged in forgery, improper paperwork, misrepresentation to the insurer, and lack of trustworthiness.

The FSRA launched its own investigation after reviewing RBC's evidence, interviewing Sharma and his clients. It found that Sharma was placing both current and former clients in additional life insurance policies without their knowledge and consent. For some clients, the agent placed them in disability insurance policies without explaining that by doing so, it would put existing universal life policies on hold – all while using the premiums his clients paid for universal life policies to pay for the disability insurance.

FSRA also found that Sharma signed his clients up for new insurance policies while altering the premium payments of their existing insurance policies, without the knowledge or consent of his clients. He placed some of his clients' existing universal life policies on a premium vacation, which allowed him to use the accumulated savings to pay for the premiums owed on the new policies he "sold" his clients without their knowledge. FSRA suggested that Sharma engaged in these activities for greater variable compensation.

A FSRA release stated that Sharma may request a hearing before the Financial Services Tribunal.

Ontario Regulator Restates Its Position On Life Insurance Agents' Continuing Education

By Alain Castonguay, Insurance Portal, September 29, 2022

Ontario regulator restates position on continuing education - Insurance Portal (insurance-portal.ca)

The Financial Services Regulatory Authority of Ontario (FSRA) reminded stakeholders in a monthly eblast communication that it will no longer accept license renewal applications from life insurance agents if those applications do not contain complete and accurate continuing education (CE) information.

"It is mandatory for agents to complete 30 hours of continuing education before their license expires. They must report specific details on their renewal applications, including course name and provider, completion date, and number of hours," FSRA states in its September communication.

FSRA's guidance indicating its interpretation of the *Insurance Act* and its regulations on the matter of CE, along with the approach it will take going forward, was published in February 2022.

In the guidance document, the regulator says eligible topics must be related to the technical aspects of life insurance or accident and sickness insurance. Education related to increasing sales and lead generation do not meet the CE requirement.

Other courses which do not qualify for CE credit in the province include health, stress management, or exercise courses, recruiting courses, office skills or management training, or training on company-specific products.

Similarly, hours cannot be claimed where course details cannot be supplied or where the agent registered but did not attend. Hours can also not be claimed for time spent as an instructor or where the agent is repeating a course unless there is demonstrated new content.

Hours of CE obtained that exceed the minimum requirement during the license term cannot be used to meet the CE requirement for subsequent periods.

For agents who are not resident in Ontario, FSRA says it considers the CE requirement to be met if the agent's home jurisdiction has a CE requirement that is equivalent to or exceeds Ontario's requirement of at least 30 hours of CE taken every two years. "If the home jurisdiction requires less than 30 hours every two years, the agent must complete additional hours to meet Ontario's 30-hour requirement," FSRA states in its guidance document, *Life Agent Reporting Requirements and Related Insurer Obligations*.

FSRA says the new approach that it is taking when accepting license renewal applications will lead to increased efficiency and fewer processing delays.

NEWS ABOUT CAFII MEMBERS AND/OR THEIR PARENT COMPANIES

Revealed - Which Top Insurers Are Aiming For Net-Zero But Still Heavily Investing In Fossil Fuels?

By Lyle Adriano, Insurance Business Canada, October 6, 2022

https://www.insurancebusinessmag.com/ca/news/breaking-news/revealed--which-top-insurers-are-aiming-for-netzero-but-still-heavily-investing-in-fossil-fuels-423065.aspx?utm_source=GA&e=YnJlbmRhbi53eWNrc0BjYWZpaS5jb20&utm_medium=20221006&utm_campaign=IBCW-MorningBriefing-20221006&utm_content=9B8F63D4-69B1-4D0C-AE64-59C8BBAFABC8&tu=9B8F63D4-69B1-4D0C-AE64-59C8BBAFABC8

Sun Life and Manulife – two of Canada's biggest insurers for life and health – have made commitments to reach net-zero, but a new report reveals that they must walk the talk -- for they still have billions of dollars invested in fossil fuels.

Canada's National Observer obtained data which found that as of June 2022, Sun Life's fossil fuel investments sat at around US$15.9 billion. Meanwhile, Manulife still had about US$ $9.9 billion in coal, gas, and oil investments. This data was based on two lists: the Global Coal Exit List and the Global Oil and Gas Exit List.

The two insurers happen to be Canada's biggest investors, with a combined $3 trillion in assets under management – an amount easily greater than Canada's largest banks. But while the two have promised to transition to net-zero by 2050, it was found that Sun Life and Manulife doubled down on coal by investing more in fossil fuels this year than last.

According to data, Sun Life holds US$13.5 billion worth of investments in coal as of June, which is a 14% increase from 2021. Manulife similarly had $5.5 billion worth of coal investments as of June, up 6% from 2021.

It was noted that the two have invested $2.5 billion (Sun Life) and $676 million (Manulife) into the US power company Duke Energy, which had reported using coal for 27% of its power generation.
The fossil fuels financing of the two insurers also has a major impact on greenhouse gas emissions, researchers found. A report conducted by research firm Profundo and commissioned by Investors for Paris Compliance found that Sun Life is responsible for at least 121 million tonnes of greenhouse gas, based on corporate filings. For its part, Manulife financed at least 77 million tonnes. For both insurers, fossil fuels were the sector that was responsible for the most emissions.

By contributing indirectly to emissions, the insurers are also impacting the health of the very consumers they serve. Citing estimates from the Canadian Institute for Climate Choices, Canada's National Observer said that the financial cost of heat- and ozone-related deaths range from $5.2 billion to $8.5 billion for heat-related deaths, and $87 billion and $246 billion for ozone-related deaths.

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"There is a clear tension between the core mission of life and health insurance companies and their fossil fuel investments," the institute said. "Unless this tension is addressed in favour of rapid decarbonization, their core business will face increasing challenges as the climate crisis drives up risk and causes widespread adverse health outcomes."

Manulife Redoubles Asia Ambitions Amid Mounting Uncertainty

By Kevin Orland, Bloomberg News, October 5, 2022

Manulife redoubles Asia ambitions amid mounting uncertainty | Insurance Business Canada (insurancebusinessmag.com)

Even after operating in Asia for more than a century, Manulife Financial Corp. is counting on the region to be its most promising driver of growth in an increasingly turbulent world.

The Canadian insurer, wealth adviser, and fund manager expects to hit a goal of getting half of its profit from the region by 2025 -- despite recent rocky quarters -- and may not stop there, Chief Executive Officer Roy Gori said in an interview. While Manulife is proud of its geographic diversity, he said, it hasn't set a "fixed ceiling" on the portion of its earnings it sees Asia generating.

Gori spoke after a major review session with his leadership team and signalled the company will stick to the "all-weather" plan it has run during his first five years at the helm. That playbook entails freeing up capital from its legacy portfolio and controlling expenses so it can focus on high-potential businesses -- including Asia and wealth management -- while also improving its technological prowess and creating a culture that attracts top talent.

"Asia and wealth and asset management are massive priorities where we do think we have a right to win and are in fact winning," Gori said in the interview, at Bloomberg's New York headquarters on Friday, September 30.

"How do we double down in those places and continue not just the success we've had, but how do we actually amplify that?"

It remains to be seen whether Manulife's game plan will keep working in a world of surging inflation, rapidly rising interest rates, and an array of geopolitical land mines. That's not to mention the additional challenges in Asia, a region roiled by China's zero-COVID-19 policy, its tensions with the US over Taiwan, and a crackdown on dissent in Hong Kong that has jeopardized the city's status as a global financial hub.

That all makes for a different environment from the one Gori enjoyed in his early days as CEO, a title he's had since October 2017. In his time running the company, Manulife has grown from the sixth-largest pan-Asian insurance company to the third-largest, Gori said. Manulife last year generated about 39% of its core earnings from the region, including contributions from wealth and asset management.

Boosting earnings

The Asia expansion has helped Manulife's results since Gori took the helm, contributing to its almost 20% annualized earnings growth, boosting its return on equity to more than 13% from 10%, and helping drive a key expense measure to less than 50% of revenue.

Flare-ups of COVID-19 infections and government actions to tamp them down have weighed on Manulife's business in the region for the last two quarters, hurting sales and forcing it to pay more than expected in claims.

"We expect some of these issues to normalize over time," Gabriel Dechaine, an analyst at National Bank of Canada, wrote in a note in August. "However, with some governments prone to lock down their economies in order to manage COVID-19 risks, the route back to double-digit earnings growth from Manulife's most valuable segment may be longer than expected."

Investors have so far taken the Asia hiccups in stride, with Manulife's shares falling 5.3% this year, less than the 11% drop for the S&P/TSX Financials Index and an 18% slide for Sun Life Financial Inc., the company's most comparable rival. Yet, since Gori took over, Manulife is down 9.8%, versus a 21% gain for the financials index and a 17% advance for Sun Life.

The insurance industry as a whole is undervalued right now because it generates so much of its earnings from policies that already are in place -- about 75% of profit in Manulife's case, under new international accounting standards, Gori said.

Tailwind provided

And rising interest rates are providing a tailwind, he said. For Manulife, every 50-basis-point increase in rates translates into an additional C$1.6 billion present value of future earnings, he said. Higher rates also help Manulife's global wealth- and asset-management business, which is more heavily weighted toward fixed income than is true for some of Manulife's peers, said Paul Lorentz, who leads the unit.

"In the past, you didn't get paid a lot on that when rates were low, and now we're moving into environment where fixed income becomes a lot more attractive," he said.

Manulife has a strong balance sheet, with CA$23 billion in capital above its supervisory target, which makes it resilient in the face of challenges and allows it to fund share buybacks and dividend increases in an uncertain macro-economic environment, Chief Financial Officer Phil Witherington said.

"We are still in a very strong capital position," Witherington said. "So as well as having that all-weather strategy, it's an all-weather balance sheet."

But the higher rates also threaten to slow growth and increase unemployment, Gori said. The "guessing game" that markets are playing on whether central banks' rate-hiking campaigns are working -- which can be difficult to divine when the lag between monetary policy moves and their effect on inflation can last nine months -- adds a layer of complexity, he said.

'Whack-A-Mole'

"It's playing Whack-A-Mole in slow motion, where the moles are moving at pace but the whacking is done in slow motion," Gori said. "That uncertainty is creating a lot of anxiety, and that is an issue."

Europe will be the most challenged region, while North America is well-positioned to deal with those issues, Gori said. Manulife's businesses in Canada and the US both stand to benefit from an under-penetration of insurance and the growing awareness of the need for such products spurred by the pandemic, he said.

Asia's growing middle class and ageing population bode particularly well for Manulife's business there in the face of global challenges, he said.

"Asia is well-equipped to deal with some of those headwinds just through the demographics that we have in Asia," Gori said. "So I think Asia will continue to outgrow the rest of the world."

Sun Life Announced As Presenting Sponsor For Winter Sports Event

By Lyle Adriano, Insurance Business Canada, September 16, 2022

https://www.insurancebusinessmag.com/ca/news/life-insurance/sun-life-announced-as-presenting-sponsor-for-winter-sports-event-420768.aspx?utm_source=GA&e=YnJlbmRhbi53eWNrc0BjYWZpaS5jb20&utm_medium=20220916&utm_campaign=IBCW-MorningBriefing-20220916&utm_content=9B8F63D4-69B1-4D0C-AE64-59C8BBAFABC8&tu=9B8F63D4-69B1-4D0C-AE64-59C8BBAFABC8

The organizers behind the *24h Tremblant* winter sports event have announced that they have entered into a three-year agreement with Sun Life, making the insurer the event's exclusive presenting sponsor. The *24h Tremblant* is an event held in Mont-Tremblant, Quebec, which is known for its ski resort and winter sports opportunities. For 24 hours, thousands of participants in the event will take turns walking, running, skiing, and alpine touring to raise funds for children.

According to the *24h Tremblant* organization, Sun Life's partnership will boost the event's momentum over the next few years. The insurer's financial contribution allows the organization and participants to focus on raising funds for children's causes.

"Sun Life is pleased to be associated with this major winter sports challenge, a favourite with sports enthusiasts for the past 21 years," said Sun Life Quebec president and CEO Robert Dumas. "At Sun Life, we're building a healthy future for our clients, employees, and communities. We share the values of wellness and surpassing oneself that are promoted by *24h Tremblant*."

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"We are very pleased to have Sun Life join us as a major partner for our 22nd edition on the mountain," said *24h Tremblant* executive producer Simon St-Arnaud. "This alliance is much more than financial support. Sun Life will participate actively in the event with its own teams, which are doing their own donation drives, and improving the experience in many ways for participants. That is the definition of a real partnership."

This year's iteration of the *24h Tremblant* will be held from December 9 to 11.

COVID-19 PANDEMIC RESILIENCE AND RECOVERY NEWS

Travel Insurance Market To Be Worth $63.9 Billion By 2030: Grand View Research, Inc.

The Global Travel Insurance Market Size Is Anticipated To Reach USD 63.9 Billion By 2030, According To A New Report By Grand View Research, Inc. The Market Is Expected To Expand At A Compound Annual Growth Rate Of 15.4% From 2022 To 2030.

By Insurtech Insights, September 30, 2022

[Travel Insurance Market to be Worth $63.9 Billion by 2030: Grand View Research, Inc. | Insurtech Insights]

The demand for travel insurance is poised to skyrocket on the account of growth in the tourism industry and due to the factors such as easy internet travel bookings, extensive media coverage of various holiday types, an increase in disposable income, and enhanced package holidays.

Key Industry Insights & Findings from the Report:

In terms of insurance coverage, the single-trip insurance coverage segment held the largest revenue share of 60.1% in 2021 and is projected to expand at the highest Compound Annual Growth Rate (CAGR) of 16.0% during the forecast period. The adoption of travel insurance is skyrocketing, and organizations are developing and adding more benefits, such as travel insurance for sports activities. The annual multi-trip insurance coverage segment is anticipated to expand at a CAGR of 15.3% during the forecast period.

In terms of distribution channels, the insurance companies' segment dominated the market with a share of 34.8% in 2021 and is projected to maintain its dominance during the forecast period. The market growth of this segment can be attributed to the demand for trusted sources for the distribution of these policies, as they have an authorized set of packages and can rightly advise the customers about their travel insurance plans.

In terms of end-users, the senior citizens segment dominated the market in 2021 and is projected to expand at a CAGR of 13.9% during the forecast period. This growth is attributed to the increase in numerous policy plans for senior citizens, such as COVID-19 insurance coverage and emergency medical coverages. In addition, services such as emergency evacuation, subsidies on tickets, trip cancellation coverage, and coverage for luggage loss have a positive impact on the market.

The business travelers segment is likely to register the highest CAGR of 17.6% during the forecast period. The surge in numbers of business trips in recent years and the increasing number of business travel insurance product offerings by the industry players are the key factors driving the growth of this segment. For instance, in March 2021, Travel Insured International launched a new product, Worldwide Trip Protector, to enhance various insurance policies for families, business travelers, and other travelers.

Europe captured the highest market share of 36.1% in 2021 and is expected to retain its position during the forecast period. This can be attributed to the existence of numerous travel insurance companies as well as the high adoption rate as a result of government policies that encourage travel insurance usage throughout the region. For instance, in April 2022, the Insurance Regulatory and Development Authority of India announced that it will reform regulations and capital requirements and introduce new solutions to expand the penetration of insurance and provide insurers with more flexibility.

Asia Pacific (APAC) is expected to expand at the highest CAGR of over 16.7% during the forecast period. The market growth in this region is primarily due to the expansion of travel insurance policies to transform businesses through the deployment of COVID-19-related coverage for overseas hospitalization expenses, medical evacuation, quarantine allowance, and others to benefit travelers across the region. For instance, in July 2022, Chubb, a travel insurance provider, partnered with Royal Brunei Airlines to provide travel insurance to passengers. It offers a product that covers unexpected overseas medical expenses, accidents, COVID-19 medical coverage, and travel inconveniences, including travel documents, loss of luggage, and trip cancellation.

Read 100-page full market research report, "**Travel Insurance Market Size, Share & Trends Analysis Report By Insurance Coverage (Single-trip Travel Insurance, Annual Multi-trip Travel Insurance), By Distribution Channel, By End-use, By Region, And Segment Forecasts, 2022 – 2030**", published by Grand View Research.

Sunwing Updates Its Travel Insurance Offering

By The Canadian Press, September 20, 2022

https://www.insurancebusinessmag.com/ca/business-news/sunwing-updates-insurance-offering-421047.aspx?utm_source=GA&e=YnJlbmRhbi53eWNrc0BjYWZpaS5jb20&utm_medium=20220920&utm_campaign=IBCW-MorningBriefing-20220920&utm_content=9B8F63D4-69B1-4D0C-AE64-59C8BBAFABC8&tu=9B8F63D4-69B1-4D0C-AE64-59C8BBAFABC8

Sunwing is helping its customers prepare for the unexpected this winter with even more options to travel with peace of mind. Effective September 19, 2022, the tour operator is updating its Worry Free insurance offerings and is introducing Worry Free Plus, a new coverage option to further meet the travel needs of customers and ensure they can vacation in paradise with confidence.

"Demand for winter and holiday travel is at its peak and, as Canadians gear up for their upcoming getaways, we want to meet customers where they are and provide them with more travel insurance coverage options to suit their specific needs," said Andrew Dawson, President of Tour Operations for Sunwing. "We're pleased to continue providing affordable Worry Free coverage and introduce our new Worry Free Plus plan which offers more flexibility for last-minute changes, including the option to transfer their package. Plus, customers can opt for added security by adding Manulife Global Travel Insurance's medical and quarantine coverage to either Worry Free option for even greater peace of mind when travelling this winter."

Customers who book their getaways from September 19, 2022 onward will continue to have the option to purchase Sunwing's Worry Free plan for only $49, offering one change to their vacation package or cancel altogether up to three days before departure. The new Worry Free Plus plan is available for $99, an upgraded coverage option that allows customers to make one change, including the ability to transfer their package up to seven days before departure, or cancel their vacation package up to three hours before departure.

For added travel security, vacationers can purchase the Manulife Global Travel Insurance + Worry Free or Manulife Global Travel Insurance + Worry Free Plus plans, starting from $99 and $149 respectively. With these plans, customers will enjoy the same benefits of Sunwing's Worry Free coverage options, plus emergency medical coverage, quarantine coverage for fully vaccinated passengers, unlimited trip interruption coverage following departure, including baggage loss, damage and delay, plus flight and travel accident insurance.

Worry Free refunds will be paid as a Sunwing travel voucher when purchased within 48 hours of booking. Note that vacationers who purchased Worry Free prior to September 19, 2022, for travel from this date onward, can rest assured knowing their insurance coverage will not change but will be automatically upgraded to Worry Free Plus. No action is required from customers.

Sunwing is giving all Canadians more choice this winter, including the Manulife Pandemic Travel Plan for as low as $4 per day, with emergency medical coverage and quarantine expenses for travellers and fully vaccinated cruise vacationers in the unlikely event that they contract COVID-19 on their getaway.

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Prairie Premiers, Governors Urge Canada, U.S. To Keep Border Crossings Open Longer

By The Canadian Press, October 3, 2022
https://www.nsnews.com/health/prairie-premiers-governors-urge-canada-us-to-keep-border-crossings-open-longer-5902407

Canada's Prairie premiers and two U.S. governors want their respective countries to restore pre-pandemic operating hours at entry points along their shared land border.

The group of provincial and state leaders have written to Prime Minister Justin Trudeau and President Joe Biden to argue that curtailed hours at border crossings are hurting the economy.

The letter is signed by Alberta Premier Jason Kenney, Saskatchewan Premier Scott Moe, and Manitoba Premier Heather Stefanson, as well as Montana Governor Greg Gianforte and North Dakota Governor Doug Burgum.

It says travellers and businesses are being forced to go out of their way to find entry points with longer hours, driving up fuel and labour costs.

The leaders say that's also hurting smaller border communities along the Canada-U.S. border that depend on international traffic for their economic livelihoods.

The letter does not mention that the U.S. still requires visiting foreign nationals to be vaccinated against COVID-19, a requirement Canada lifted over the weekend.

"Residents and businesses on both sides of the border have expressed concern that the reduced hours of operation will become permanent," the letter reads.

It also argues that the supply chain problems that have persisted since the onset of COVID-19 in 2020 will only linger so long as cross-border trade and travel remains curtailed by limited hours at border crossings.

"Resuming pre-pandemic operating hours will ensure the efficient and steady flow of people and goods, which will only improve trade activity and reduce inflationary pressure on both sides of the border."

A notice on the Canada Border Services Agency website warns of limited operating hours at nearly 40 land ports of entry, mostly in the Prairie provinces, along with Quebec, New Brunswick, and B.C.

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OTHER CAFII MEMBER-RELEVANT INDUSTRY/BUSINESS/SOCIETAL NEWS

Disability: Quebec Court Of Appeal Clarifies The Key Concepts In Two Judgments.

By Alain Castonguay, Insurance Portal, October 5, 2022.

The Quebec Court of Appeal recently clarified the concepts of total and partial disability in a case between a family physician and RBC Life Insurance Company and in another dispute between an orthopaedic surgeon and the same insurer.

Dissatisfied with the trial judgment, the first plaintiff, whose initials are G.C., had appealed the decision rendered on February 9, 2021 by Justice Claude Villeneuve**,** of the District of Bedford, to the Superior Court of Quebec**.**

Villeneuve J. allowed only partially the application instituting the proceedings, stating that the applicant was not totally disabled within the meaning of the policy held with the respondent, except for the period from April 13, 2014 to April 11, 2015.

Justice Marie-Josée Hogue drafted the August 23 decision on behalf of her colleagues Mark Schrager and Stéphane Sansfaçon. Lawyer Maurice Charbonneau of Trivium drew the attention of the *Insurance Portal to* this decision.

The claimant had taken out a disability insurance policy in 1998 when he was entering his career as a physician. The contract included an amendment that changed the definition of total disability.

"The appellant will be considered totally disabled if he is no longer able to perform the important tasks of his profession, even if he works and earns income," explains the Court of Appeal.

The applicant practises as a family physician in the Granby region. Starting in 2006, he traveled to Nunavik every six weeks, for a week, to make emergency room stays in kuujjuaq and Chisasibi hospitals. At the time, he earned the majority of his income there.

Around 2009, he became interested in sports medicine and obtained a diploma in this discipline in March 2009. He then perfected his use of musculoskeletal ultrasound and opened a related clinic in June 2013.

Following severe depression, he left the family medicine group where he practised and the Granby hospital. But he continued to travel to Nunavik as of November 2009. The insurer paid him disability benefits from June 2009 until he returned to work in 2010.

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Emergency Physician In Nunavik

At the same time, he practised more often in Chisasibi and less in Kuujjuaq, where demand had declined. The volume of work increased and the doctor had less support. Starting in June 2013, he spent less time in Nunavik, and last worked there during the week of March 11, 2014.

The doctor suffered a cardiac arrest in April 2014. As a result of cerebral anorexia, he plunged into an artificial coma from which he did not wake up until two days later. Thereafter, he retained some residual cognitive impairment and subsequent fatigue.

He reapplied for total disability benefits on June 18, 2014. In September 2014, the insurer agreed to pay total disability benefits until December 11, 2014 and partial disability benefits until February 11, 2015. RBC Life Insurance closed the file while indicating that it would re-open it if there was no return to full-time work after February 11, 2015.

In October 2014, a first medical expert indicated that the applicant could no longer work in the emergency room, but that he could resume practising in an outpatient clinic. The doctor gradually resumed his professional activities at his sports medicine clinic and notified the insurer.

At the same time, a second expert opinion rendered by a neuropsychologist confirmed the family physician’s cognitive impairment. The specialist prescribed a three-month rehabilitation. The first expert produced a second report in February 2015. Two months later, he added that a return to full-time work was possible. That expert recommended partial permanent disability for the portion of the applicant's income that came from his emergency physician activities in Nunavik.

The family physician claimant then informed the insurer that he was not able to return to full-time work, since he was not able to resume his practice in the Far North. He removed his name from the list of doctors available to work in that region in August 2015.

In January 2016, after agreeing to pay him three months of partial disability benefits, the insurer informed the physician that there was "no objective medical evidence to support a continuing partial impairment that would prevent him from returning to full-time work after February 11, 2015."

The family physician challenged that decision. The insurer dismissed his appeal in April 2016. Following a new internal appeal process, the claimant's application was rejected a second time in January 2017. The doctor then began legal proceedings in March 2017.

The insurer appointed another physician to review the claimant's medical record. She opined that the claimant had been functional since at least April 2015. A trial then took place in October 2020.

Judge Villeneuve J. allowed the application in part, but refused to recognize total disability beyond April 11, 2015 and instead concluded that the family physician claimant was entitled to residual disability benefits due to his loss of income until February 2016.

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The insurer explained that the September 2014 agreement prevented the physician from claiming anything more than what was agreed to in the policy. The trial judge refused to see this as a waiver of the right to claim benefits beyond February 2015.

Analysis

The trial judge concluded that total disability must be analyzed as a "substantial" inability to perform the important and regular duties of the claimant's profession as a family physician and general practitioner, including his duties at the sports clinic and in Nunavik.

Villeneuve J. added that the fact that his activities in the Far North were the most lucrative was not relevant for the purposes of determining his disability.

The Court of Appeal found that the trial judge did not commit a manifest and determinative error. The policy is a standard contract and the standard of intervention applicable to the way the court has interpreted the concept of total disability is correctness.

The policy endorsement defines the concept of occupation and the different forms of disability. The policy must be read in the light of the text as a whole, the Court of Appeal said in paragraph 55 of its decision. The words in them must be given their usual meaning.

The applicant argued that Villeneuve J. should have focused his analysis on the tasks he was performing in Nunavik, since it was from these that he derived the majority of his income at the time he became disabled.

According to the Court of Appeal, the judge understood the doctor's proposal, but did not accept it. The appellant practises in two different locations and his duties require different abilities, but the nature of them does not change. The tribunal was correct in finding that the appellant is not incapable of performing the important duties of his profession.

"By using the term 'the duties', the insurance policy, in my view, clearly expresses the idea that the insured must be unable to perform all of the important tasks of his profession and not just some of them," Justice Hogue wrote.

Decision Upheld

The family physician claimant acknowledged that, since February 11, 2016, the income which he has earned while practising his profession is at least 80% of the income he received when he had his cardiac arrest in April 2014. The Court of Appeal dismissed the applicant's appeal and upheld the Superior Court's decision.

In February 2021, in addition to the disability decision, the trial judge stated that the applicant was entitled to total disability insurance benefits for the period from February 11, 2015 to April 11, 2015, at a rate of $7,700 per month.

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The court awarded the family physician claimant residual disability insurance benefits for an additional 10 months, for a total amount of $33,487. The defendant was ordered to reimburse the plaintiff for the premiums paid from February 1, 2015 to February 28, 2016, in addition to paying the legal costs, including the costs of expert opinions.

Other Decision

On the same day, the same trio of judges of the Court of Appeal rendered a decision in another case related to the same insurer which, this time, appealed the judgment rendered on December 15, 2020 in a similar dispute.

In the Superior Court, Justice Michel Déziel, of the District of Montreal, had allowed in part the insured's application to institute legal proceedings and had declared it totally invalid within the meaning of the disability insurance policy taken out with RBC Life. The insurer had to pay the claimant compensation for benefits paid between June 30, 2015 and July 31, 2017, and also had to pay monthly benefits from the latter date.

This time, the court ruled in favour of the insurer and reversed the earlier judgement, for the same reasons as in the previous case. In this case, the insured was a doctor specializing in orthopedic surgery who worked in the Lanaudière region.

The insurer had determined that the claimant was entitled to partial or residual disability benefits as of April 1, 2015. The policy included the same endorsement as in the other case.

At the time of the trial hearing in November 2020, the respondent was practising in another hospital and his income was now higher than it had been when he was declared disabled.

The dispute between the parties concerned the concept of profession. The doctor still holds a position of orthopedic surgeon, but does not perform on-call surgery, unlike what he did before. Hogue J. reused the same definition of the profession's duties as in the previous judgment to settle this dispute.

"Accepting the respondent's proposal would also, in my view, render any usefulness to a part of the definition of partial disability that applies when the insured is unable to perform one or more important tasks in his profession. One may indeed wonder in what circumstances an insured person would be partially disabled if he is to be recognized as totally disabled when he is unable to perform important tasks of his profession," writes the Court of Appeal in paragraph 52 of its decision concerning the insured O.C.

Here, the respondent is unable to perform some important tasks of his profession, but he is able to perform others. He has the privileges required to do so and the fact that he may lose them one day is irrelevant. If his limitations were to cause him to lose these privileges and prevent him from practising his profession, he could then file a new application for disability, the merit of which would be assessed, the Court of Appeal concluded, reversing the Superior Court's decision.

Read Story (Subscription Required): Disability: The Court of Appeal clarified the concepts in two judgements – Portail de l'assurance (portail-assurance.ca)

RESEARCH/THOUGHT LEADERSHIP/TECHNOLOGY/DIGITIZATION NEWS

October 5/22 Pollara Strategic Insights/CAFII Webinar Presentation Deck On Consumer Trends In Financial Services; And Related September 2022 Pollara Industry Sentiment Reports (How Canadians Feel About Different Sectors) Re "Banks" and "Insurers"

By Brendan Wycks, Co-Executive Director, CAFII

Available at **MS365 link** are:

- the presentation deck from CAFII's October 5/22 Webinar with Lesli Martin, Senior Vice-President, Pollara Strategic Insights, on Consumer Trends in Financial Services;
- a related Pollara September 2022 Industry Sentiment Report (How Canadians Feel About Different Sectors) on "Banks"; and
- a related Pollara September 2022 Industry Sentiment Report (How Canadians Feel About Different Sectors) on "Insurers."

UPCOMING WEBINARS AND EVENTS

Web Seminar by Digital Insurance: Digital Insurance Advances in Tech Demo Day Fall 2022

Dates: Tuesday, October 11, 2022
Time: 2:00 – 3:00 p.m. EDT

Leaders in the insurance community are always looking for innovative ways to help their firms speed innovation, increase customer engagement and remain competitive.

The Digital Insurance Advances in Tech Demo event puts the spotlight on some of the latest software and technologies in the industry, which are helping transform the industry.

Join this webinar to learn about trailblazing innovations that will help you build your tech strategy through a series of short demos that showcase what these software and technology companies are doing to advance the industry. Includes a live Q&A.

Register Here

Web Seminar by Insurance Business America: How Artificial Intelligence is Transforming Insurance Underwriting

Dates: Wednesday, October 12, 2022
Time: 11:00 a.m. – 12:00 p.m. EDT

The insurance industry is still largely reliant on manual processes, particularly when it comes to lines of business that use agents and brokers for distribution.

However, with the power of today's rapidly maturing AI technologies, how can you seamlessly integrate your data with data from big tech platforms to make better, faster underwriting decisions?

In this free industry webinar, join a panel of experts from Accenture and Amazon Web Services as they tackle this key question and dive into how AI has emerged as the transformative technology in the insurance industry.

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