

**IN THE MATTER OF THE *FINANCIAL INSTITUTIONS ACT*,
RSBC 1996, c. 141**

- AND -

IN THE MATTER OF OLD REPUBLIC INSURANCE COMPANY OF CANADA

NOTICE OF PENALTY

(Pursuant to section 253.1(1) of the *Financial Institutions Act*)

Contravention

1. The Superintendent of Financial Institutions (“Superintendent”) has the authority to issue administrative penalties to corporations up to \$50,000 and individuals up to \$25,000 under section 253.1(1) of the *Financial Institutions Act* (“FIA”).
2. Pursuant to section 253.1(1) of the FIA, the Superintendent has determined that Old Republic Insurance Company of Canada (“Old Republic”) accepted insurance applications from unlicensed agents, contrary to section 176 of the FIA.

Legislative Scheme

3. Section 176 of the FIA states in part:

Insurance applications to be accepted only from holders of licences

Subject to section 171(2), an insurer must not make a contract of insurance or issue or deliver a policy unless the application for the insurance is

(b) is received by or from an insurance agent licensee

4. The FIA *Administrative Penalties Regulation* item 101 provides for an administrative penalty not exceeding \$50,000 for a corporation in contravention of section 176.

Background

5. Old Republic has been registered in British Columbia (“B.C.”) as an extra-provincial company since 1995 with its head office located in Hamilton, Ontario. Old Republic is authorized to conduct general insurance business in B.C.

Acceptance of Insurance Applications from a Non-Licensee

6. Between January 25, 2021 and March 15, 2021, BC Financial Services Authority (“BCFSA”) received complaints regarding delays in processing travel insurance claims for secondary school trips that were cancelled in March 2020, as a result of the COVID-19 pandemic.

7. The complainants alleged that they had purchased travel insurance policies for their children's secondary school trips from Explorica Canada Inc. ("Explorica") through a third-party distributor "TM".
8. The policies were underwritten by Old Republic.
9. BCFSAs investigation revealed that the travel insurance policies at issue in the complaints had been sold by Explorica, through TM, until Explorica and another entity, Educatours Ltd. ("Educatours"), amalgamated as Worldstrides Canada, Inc. ("Worldstrides") in February 2020.
10. Educatours held a travel insurance agent licence with the Insurance Council of BC ("Council") from 2016 until the amalgamation in February 2020 when that licence was terminated. Explorica has never been licensed to sell travel insurance policies in B.C.
11. Following the amalgamation, Worldstrides continued to sell travel insurance policies without a travel insurance licence until March 2021.
12. On September 22, 2021, Council approved a license application from Worldstrides; and, accordingly, Worldstrides is now licensed as a travel insurance agent in B.C.
13. Old Republic advised BCFSAs that they had sold 952 insurance policies in B.C. through unlicensed entities, including Explorica and Worldstrides, and more particularly Worldstrides sold 87 policies between February 2020 and March 2021.
14. Old Republic breached section 176 of the FIA by making contracts of insurance and issuing or delivering policies where the application for the insurance was received from persons other than the person to be insured, or an agent thereof, or an insurance agent licensee.

Oversight and Control

15. BCFSAs has endorsed the Canadian Council of Insurance Regulators ("CCIR") "Conduct of Insurance Business and Fair Treatment of Customers" Guidance ("CCIR Guidelines").
16. The CCIR Guidelines state that "The Insurer is responsible for fair treatment of Customers throughout the life-cycle of the insurance product, as it is the Insurer that is the ultimate risk carrier."
17. The CCIR Guidelines state regulator expectations of insurers, including that insurers:
 - a. Handle claims, complaints, and disputes in a fair and timely manner;
 - b. Service policies appropriately throughout the life cycle of the product;
 - c. Manage their relationship with intermediaries to achieve fair treatment outcomes, including that insurers:
 - i. Conduct due diligence in the selection of intermediaries to assess they are authorized and have appropriate governance policies and procedures with respect to fair treatment of customers, and
 - ii. Have contractual arrangements in place that ensure the fair treatment of customers, including ongoing monitoring of compliance with contractual terms;

- d. Ensure outsourced functions to service providers, including the sale of insurance products, do not hinder the quality of services or jeopardize the insurer's ability to achieve fair treatment of customers, including the expectation that insurers:
 - i. Retain full and ultimate responsibility for outsourced functions and monitor them accordingly, and
 - ii. Maintain appropriate controls over outsourced functions;
 - e. Examine and settle claims in a manner that is diligent and fair, simple and accessible; and
 - f. Examine and resolve complaints and disputes in a manner that is diligent and fair, simple and accessible.
18. Old Republic advised BCFSa of challenges in its relationships with TM, including TM's non-compliance with the terms of its contract with Old Republic. For example, TM had not:
- a. Remitted policy information on a timely basis to Old Republic between March 2019 and March 2020; and
 - b. Ensured that distributors, including Explorica and Worldstrides, were properly licensed to conduct business in B.C.
19. Old Republic advised BCFSa that, as a result of its investigation into TM, Old Republic terminated its contract with TM on March 1, 2021.
20. While Old Republic identified that unlicensed sales had taken place, it advised BCFSa that it assessed the risk of future unlicensed sales to be low due to the imposed COVID-19 restrictions and therefore did not take steps to ensure that no further unlicensed sales took place. As a result, Worldstrides continued to sell travel policies through TM and between February 2020 and March 2021. Worldstrides sold 87 further policies.
21. In October 2020, policyholders brought a class action lawsuit against Old Republic and Explorica for their failure to settle claims.
22. Old Republic entered into judicial mediation with Explorica and Worldstrides and it advised BCFSa on July 1, 2021 that the dispute had been resolved and it was processing payments to eligible policyholders.
23. On August 11, 2021, Old Republic advised BCFSa that it was proceeding with the payout of eligible claims. Old Republic estimated that there had been 309 trip cancellation claimants from B.C. totalling \$917,000.

Amount of Penalty

- 24. COVID-19 public health restrictions disrupted the travel plans of many British Columbians.
- 25. British Columbians were, and are, entitled to rely on the protections in their insurance policies in circumstances where travel is disrupted for reasons outside of the policyholder's control.

26. The FIA regulatory framework protects the public by requiring, subject to exceptions, that insurers distribute their products through licensees who are subject to the approval and oversight of Council.
27. Contrary to section 176 of the FIA, Old Republic permitted the sale of its travel insurance products by non-licensees.
28. The FIA breach occurred in the context of challenges in the relationship between Old Republic and its distributors. Those challenges demonstrate a failure to follow regulatory expectations, contained in CCIR Guidelines, which are designed to achieve the fair treatment of customers. The impact on policyholders included significant and unacceptable delays in claims processing.
29. The goal of administrative penalty orders is to protect the public by promoting compliance with the FIA.
30. In assessing an appropriate administrative penalty, I consider both mitigating and aggravating factors to determine an appropriate penalty to provide both specific deterrence to Old Republic and general deterrence to the industry against similar conduct.
31. I find the following to be mitigating factors:
 - a. Old Republic has not been the subject of an administrative order made by the BCFSa;
 - b. Old Republic made no attempt to deny the unlicensed sale of its insurance products through Explorica and Worldstrides; and
 - c. Old Republic terminated its agreement with TM effective March 1, 2021 due to the unlicensed sale of its insurance products by TM distributors.
32. I find the following aggravating factors:
 - a. Old Republic became aware of unlicensed sales in March 2020 and failed to take immediate steps to prevent further unlicensed sales, resulting in the sale of an additional 87 policies;
 - b. Old Republic accepted 952 insurance policy applications sold through unlicensed distributors, including Explorica and Worldstrides, over the course of at least a year; and
 - c. The FIA breach occurred in the context of weak oversight, monitoring, and control over intermediaries and a consequent failure to follow CCIR Guidelines, which are designed to achieve fair treatment of customers. The dispute between insurer and intermediaries resulted in significant claims processing delays for policyholders, totalling \$917,000.

33. Due to the number of policies sold through unlicensed agents, the span of time over which the non-compliance took place, failure to follow CCIR Guidelines, and significant delays in the processing of claims that the risk to the public, and in order to achieve specific deterrence to Old Republic and adequate general deterrence to the industry, I find that an appropriate penalty for Old Republic's contraventions of the requirements in the FIA is \$40,000.

Issued this 1st day of February, 2022, at the City of Vancouver, in the Province of British Columbia.

A handwritten signature in cursive script, appearing to read "Blair Morrison".

BLAIR MORRISON
Superintendent of Financial Institutions

NOTICE TO INSTITUTION

Penalty Calculation Information

You have been assessed an administrative penalty of **\$40,000**.

PAYMENT

Pursuant to section 253.1 of the FIA, you have 14 days after receipt of this Notice of Penalty (“Notice”) to either pay the penalty or deliver a written notice disputing the penalty and/or the amount of penalty. Please remit on receipt of this Notice. Accounts not paid within 30 days of this Notice date will be subject to interest charges. Cheques should be made payable to the ‘BC Financial Services Authority’ and sent to:

Accounting Department
BC Financial Services Authority
600 – 750 West Pender Street
Vancouver, B.C. V6C 2T8

Please note that administrative penalties are subject to the *Interest on Overdue Accounts Receivable Regulation*, under the FIA.

DISPUTE PROCESS

Pursuant to section 253.1 of the FIA, if you wish to dispute this administrative penalty and/or the amount of penalty, you must deliver a written notice of dispute to the BC Financial Services Authority within 14 days of receipt of this Notice. Your notice does not need to set out the particulars of the dispute; you have 30 days from receipt of this Notice to provide your full written submission. However, if you wish to include your submission with the notice you may do so.

WRITTEN DISPUTE

The written submission must clearly articulate the reason for the dispute and the facts that the Superintendent should take into consideration as part of their review, including any extenuating circumstances that prevented compliance from occurring. The complete submission must be received by the Superintendent no later than 30 days after receipt of this Notice. Upon receipt of your submission the Superintendent may decide to confirm the penalty or, by Order, reduce the penalty or order no penalty. The Superintendent cannot increase the penalty.

CONTACT INFORMATION

All correspondence, including payment and any request for dispute, should be addressed to:

BC Financial Services Authority
600 – 750 West Pender Street
Vancouver, B.C. V6C 2T8