11th Edition of Optimum Seminar on Travel Insurance

Where is Travel Insurance Heading?
On-Line Medical Underwriting

Practical and Legal Considerations...

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Disclaimer: The information in this presentation is solely for information and illustrative purposes and is not meant as legal advice or to provide a legal opinion.
• On-Line Medical Underwriting and Questionnaires

• View from the Bench

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On-line Medical Underwriting

- Medical underwriting determines the appropriate premium based on medical conditions at the time of application for a policy, or at the time it comes into effect
- Most often used for Snowbirds, defined as:
  - Travellers over the age of 55; and
  - Going out of the country for more than 45 days
- Travel insurance is currently underwritten after the fact
- Applicant’s medical information only obtained at claim time
- Could be done on-line for all applicants
- Once properly underwritten, insurance should pay out
- Only deny claims where:
  - Non-payment of premium
  - Incorrect or incomplete disclosure
  - Fraudulent /negligent misrepresentation
On-line Travel Medical Questionnaires

The Pricing Challenge:
- Difficult to design and price product ‘on the fly’
- Medical underwriting rates often based on a guesstimate
- Rates are set for the new season before having full experience of the past season
- Rate distribution means ‘healthy’ risks pay extra to cover potential claims from ‘un-healthy’ risks
- Knowing exact claims experience for collected premium can take more than one year

The Design Challenge:
- Medical questions must be easy to read and simple to understand
- Transactions must be time and cost effective
- Need selling process for on-line and in-person sales
- Same system for call-centre sales
- Potential purchasers have short attention span
- Keep in mind demographic issues (age/language)
- Have English and French available
The On-Line Medical Questionnaire Today

- Generally required for applicants above a certain age and/or an extended trip duration
- On-screen version of the former paper questionnaire
- Some are a PDF of the paper form
- Best ones are interactive and build on answers to move logically to the next question
- Terms on the questionnaires are similar; their meaning may differ between underwriters
- Not all related questions on one page which requires the applicant to remember answers to previous questions
- If conditions change prior to departure, the history may not have been saved and procedure may have to be repeated
- Post-claim underwriting is still part of the procedure
- End Result:
  - The applicant never knows for certain if he/she will be covered
Sample On-Line Questionnaire – Question 1

At the time of application, how many medications in total do you take or have you been ordered to take by a physician for one or more of the following medical conditions:

- Heart conditions/disease (include aspirin, but exclude medication taken for hypertension or high cholesterol)
- Lung conditions (including asthma)
- Diabetes

If you have any doubt about your medical condition(s) as it relates to this question, please consult your physician for advice before completing this medical health questionnaire.

The above medical question is specifically asking for the total number of medications being taken by the applicant, not the number of conditions the applicant is taking medication for.

Example: Applicant is taking 4 medications in total, 2 medications are taken for a heart condition, and 2 medications are taken for diabetes. The applicant would answer that they are taking 3 or more medications.
Sample On-Line Questionnaire – Question 2

At the time of application, **how many of the following medical conditions** are you receiving **treatment** for? **Treatment** includes **medication** that you take or have been ordered to take by a physician.

- **Heart conditions/disease**
  (include aspirin)
- **Lung Conditions/Disease**
  (including asthma)
- **Diabetes**
  (controlled by medication or diet)
- **Hypertension**
- **Diverticulitis**
- **Bowel Obstruction**
- **Peptic ulcer**
- **GERD**
  (gastro-esophageal reflux disease)
- **Kidney Infections**
- **Kidney stones / Kidney failure**
- **Cancer**

If you have any doubt about your medical condition(s) as it relates to this question, please consult your physician for advice before completing this medical health questionnaire.

**NOTE:** To assist you in answering, EACH of the **BLUE** terms can be clicked to provide you with a lengthy explanation of what that term means in the context of THIS questionnaire!
Considerations when Designing the Questionnaire

- Use simple language
- Ask YES/NO questions
- Ask questions to be answered with a number
- Do not combine questions
- Make the questions unambiguous
- Test the questionnaires on a sample audience that is not familiar with insurance and is similar to the target market
- Validate the results
- Remember non-native English speaker issues of language and interpretation
- Tie questionnaires to policy wording
- Keep language of the questionnaire similar to wording in the policy, to questions on the claim form as well as on the form sent to physician at time of claim

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A Modest Proposal…

- Medically underwrite all policies, ask three simple questions:
  - Do you have a medical condition
  - Do you take any medication
  - Have you been in-patient in a hospital in the past two years

- Most applicants will answer NO to these questions
- If the answer is YES explore medical condition further
- Questionnaire more extensive depending the combination of age and trip length
- Adjust the premium for all applicants who answered YES to any of the above three questions so premiums is distributed more appropriately across all applicants
- Have system track premium and corresponding claims
- Pay all claims where answers were correctly provided
- Adjust premium as required - remember, only between 2% and 4% of applicants make a claim
Insurance Act Provisions

Duty to disclose

- An applicant for insurance and a person whose life is to be insured shall each disclose to the insurer in the application, on a medical examination, if any, and in any written statements or answers furnished as evidence of insurability, **every fact within the person’s knowledge** that is **material** to the insurance and is not so disclosed by the other.

Failure to disclose

- ...a failure to disclose, or a **misrepresentation** of, such a fact renders the contract voidable by the insurer.

- Many decisions have dealt with the subtleties of what should be disclosed, what are facts within someone’s knowledge and what is material to the insurance

*R.S.O. 1990, c. I.8, s. 183

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Duty to Disclose - The insurance contract imposes a duty on applicants to make full and true representations of facts which are material to the insurance risk.

Material Facts - Facts that influence a reasonable insurer to decline the risk or to request a higher premium. It is up to the Insurance company to prove that these facts would have led to declining the policy or charging more.

Fraud - If the insurer claims fraud, actual fraud must be established and not just innocent or negligent material misrepresentation.

The test for fraud in civil cases is a false representation, made knowingly, without belief in its truth, or recklessly, without care whether it is true or false. It needs a fraudulent mind and must be proven by the defendant insurer on the balance of probabilities.

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*Mutual Life Insurance Company of New York v. Ontario Metal Products Company Ltd., [1925]*
Walsh v. Unum Provident
2012 Nova Scotia Supreme Court

Background:
- Insured applied for disability insurance in 1993, was medically underwritten and a policy was issued
- In 2000 made a claim for long-term disability benefits as a result of bi-polar disease and benefits paid for several years
- Insurer was purchased by other insurer who cancelled the benefits
- Claimed the 1993 contract of insurance was void from the beginning because the plaintiff did not disclose in his application several known illnesses
- Insurer sued for the total of payments made

The Trial:
- Initially insurer denied LTD claim claiming that insured was not totally disabled
- When researching medical information to substantiate this, insurer found many medical conditions had never been disclosed on original insurance application
- Insurer claimed policy void ab initio, requested return of all payments

Decision:
- Court decided that indeed, there had been non-disclosure and ordered repayment of over $120,000 of benefits that had been paid

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Quinn v. Canada Life Assurance Co.
2005 BC Supreme Court; 2006 BC Court of Appeal

Background:
- Canada Life denied a life insurance policy claim on the premise that the deceased insured had omitted important medical history information.
- At the initial trial, the judge held that there was ambiguity in the policy language, the questions had been answered in accordance with the language and said the claim was to be paid.
- Canada Life appealed.

The Trial:
- Canada Life’s V.P. and Medical Director testified that the omission of the medical information was material and would have caused the policy to be declined.
- The Court of Appeal found that the questions were clear and not ambiguous.
- The applicant had omitted to disclose several x-rays and further follow up by her doctor.
- There is no difference in law if the omission was intentional or inadvertent.

Decision:
- The Appeal was decided in favour of Canada Life and the policy was not paid out.

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A Question of Grammar …

Kong v. Manulife Financial Services Inc.
2008 BC Supreme Court; 2009 BC Court of Appeal

The Background:
- Life insurance policy with a $1 million death benefit, issued by Manulife (ML) in December 2001
- Insured dies in 2004, wife is named beneficiary
- ML contends the policy is void because of fraudulent misrepresentation on the policy application with regard to answers on medical questionnaires

The Facts:
- The medical questionnaire asked the following:
  - To your knowledge, have you ever had or been told you had any problem with…?
  - 7. THE HEART, BLOOD VESSELS, such as:
    - (a) Heart murmur, shortness of breath, swelling of ankles, irregular pulse, rheumatic fever, or poor circulation?
    - (b) Heart disease, angina, chest discomfort?
    - (c) High blood pressure?
    - (d) Have you ever had any electrocardiograms or other heart investigations? If “Yes”, give type, when, why, what result.
  - 8. THE NOSE, THROAT, LUNGS, such as: asthma, tuberculosis, chronic bronchitis, persistent cough, pleurisy, emphysema, allergies, tumour?
Kong v. Manulife Financial Services Inc. (continued)

The Facts:

- Insured answered “no” to each of these questions
- ML said that medical information received indicated that should have answered “yes” to Questions 7(a), (b), and (d), and to Question 8.
- Several years prior Insured had complained to his doctors about chest discomfort, shortness of breath, and other matters. These complaints were investigated, including by means of two electrocardiograms
- Treating doctor told Insured that he did not have a heart problem, or asthma

Decision:

- The Trail Judge found that the medical questionnaire was ‘ambiguous’ specifically because of the phrase: “such as…”
- There were two possible answers and the Insured had answered to the best of his ability and on advice received from his doctor
- Where a question asked is not clear, the ambiguity is resolved in favour of the Insured
- The Court further found that there was no misrepresentation and that ML had not proven fraud to void the policy
- ML appealed the decision on the grounds of error of law, (i.e. there was no ambiguity in the wording)
- Appeal Court disagreed and unanimously dismissed the appeal

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Background:
- Bellefontaine, an Insurance Agent, sold the Insured a Federated life insurance policy
- Insured passed away, Fleet, the beneficiary claims under the policy
- Insurer denies the claim claiming misrepresentation on medical questionnaire
- Fleet sues the Insurer and the Agent
- The Insurer sues the Agent

The Trial:
- Insureds were long time clients of the Agent and had cover with Zurich
- In 2003, the Agent phoned Fleet and what he said was a better policy and a better rate
- At that time the Agent asked Fleet about his health and changes in his spouse’s health since buying the Zurich policy seven years earlier
- In response to the question about the spouse’s health, Fleet answered that her health was fine “as far as I know”
- The Agent insisted on a ‘yes’ or ‘no’ answer and Fleet finally said ‘yes’
- Insurer denies claim based incorrect answers on medical questionnaire
- At trial it becomes evident that the Agent filled out the questionnaire and signed the policy, on behalf of the Insureds and without their approval

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The Broker did it…

Federated Life Insurance Company v. Fleet and Bellefontaine
(continued)

The Decision:

- Court found that the answers on the questionnaire were incorrect and the Insured had several medical conditions
- The Agent had answered the questionnaire based on his interpretation of the Insured’s spouse
- While the Insured’s spouse had not provided detailed medical information, he was not found to have been untruthful
- The Court decided that the Insurer was liable to pay the $150,000 to the Insured’s spouse/beneficiary
- Further, the Court decided that the Agent was liable to pay the $150,000 to the Insurer

The Appeal:

- The Agent and the Insurer appealed the judgement based on error of law
- The Court of Appeal dismissed both appeals and awarded costs of the appeal to Fleet

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Pay the Claim..and More

*Badenhorst v. The Great-West Life Assurance Company*

2011 MB Court of Queen’s Bench

**Background:**
- Claimant was a physician who caught her husband with another woman in July 2006 and because of this saw a marriage counsellor and a psychiatrist between July 2006 and October 2006
- A disability policy was applied for and issued in November 2006
- The application included a medical questionnaire that was completed with the help of an agent
- Questions included the following:
  - Question 15 (a) Have you ever consulted a psychiatrist, psychologist or Counsellor for any reason? (b) Have you ever had any symptoms of anxiety, depression, stress or fatigue? The questions were answered in the negative
  - GWL denied the claim based on misrepresentation

**The Trial:**
- The evidence was that the Insured had seen a counsellor and a psychiatrist for marriage counselling, not to treat an illness
- The Court stated that it was important to determine what the medical questions meant to the claimant and to a reasonable claimant

**Decision:**
- The Court ordered GWL to pay the disability insurance and ordered a further payment of $35,000 as damages for mental distress as the policy was meant to be a “Peace of Mind” policy
Questions? - Comments?

Thank You

Those curious enough to want to read the full legal cases can find them at: www.canlii.ca