

Summer Travels Outside Of Canada? Be Aware

Insurance Act | Litigation | Litigation & Dispute Resolution

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Your bags are packed and you suddenly remember that you haven't purchased travel medical insurance. After employing your finely honed "google-fu" you make a call to an insurance company which came highly recommended by "funinthesun38". Done. You're "covered"...or are you?

For 99% of travellers, the brief phone call they make to arrange travel medical insurance will never need to be revisited. Pay a fee — feel reassured — go on trip — come back healthy. Simple right? However, for the other 1% the story is drastically different and can be life altering and financially ruinous.

We have seen several instances where travellers have run into major medical issues while abroad only to later be denied coverage under their travel medical insurance and be stuck with hospital, specialist, clinic and/or air ambulance bills exceeding \$100,000 — sometimes for only a couple days in hospital. The scenario is actually not that uncommon, particularly with the aging baby boomer population choosing to shelter in more favourable climates during the Canadian winter months.

If there is something to take home from this post, it is this — take your time during the insurance application (whether by phone or in writing) and make sure you answer everything with absolute precision. Leave no medical detail undisclosed, however minor or innocuous it may seem. If you have questions, ask them. This is not the time to concern yourself with "oversharing".

Travel medical insurance is considered "accident and sickness" insurance under provincial legislation (*Insurance Act, RSO 1990, c.1.8*) and insurance applicants are required to answer questions honestly and to disclose any matters that are "material" to the travel insurance policy. Generally speaking, materiality is always a question of degree and the onus is on the insurer to establish that a particular fact is "material". The test is whether the insurer would have acted differently based on a "true" response either by declining the risk of insurance or by stipulating a higher premium for the policy. Significantly, a "material" misrepresentation can entitle an insurer to void the policy even after your medical expenses have been incurred abroad and the insurer's only obligation will be to return the premium you paid. Remember, the answers you provide on your application can be used by the insurer in the defence of any subsequent claims.

While you may think it would be easy to avoid a "material misrepresentation", it isn't always that straightforward. For instance, an insurance application might ask whether you have been prescribed a particular class of medication, for example, a steroid. At first blush, you don't recall ever being prescribed a "steroid" (that sounds serious) and answer "no". However, you may be surprised to find out that many prescription drugs such as anti-inflammatories and allergy medications can have a steroid component which may not be immediately obvious from the brand name of the drug. Oops.

The law is also clear that even if you suffer an injury or ailment unrelated to the condition for which an innocent misrepresentation was made, the insurer is still entitled to void the policy. Remarkable, yes. By way of example, in *Kulak v. Reliable Life Insurance Co.*, 2012 BCSC 1738 (CanLII), Mr. Kulak travelled to Arizona on vacation. Prior to leaving, he applied for travel insurance which would indemnify him for medical expenses he might incur while on vacation. Mr. Kulak was struck by a car in Arizona and incurred medical expenses of nearly US \$170,000. The travel insurer refused to honour the policy on the grounds that Mr. Kulak (innocently) materially misrepresented his medical condition by failing to answer questions related to a heart condition accurately. Mr. Kulak's "heart condition" had no bearing whatsoever on his accident. Nevertheless, it voided his policy.

We have also seen insurance companies claim material misrepresentation based on responses to application questions that are somewhat ambiguous. However, in those instances, an insurer is not protected if the answers provided by the applicant are accurate based on the ambiguity. In fact, the law is clear that any ambiguity will be resolved against the insurer who, unlike the applicant, had the opportunity to carefully word the question asked. Courts have also strived to read

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questions in an insurance application together (rather than in a vacuum) and interpret them as a layperson would which can be a particularly helpful tool when arguing ambiguity.

Understand that once a claim is made, your insurance company will obtain copies of your medical records from various sources (hospitals, specialists, your GP etc.) and will scrutinize these records against the answers on your insurance application. Consider this at the application stage. If necessary, you should consult your physician to help you assess and answer certain questions in the application correctly and accurately.

There are a number of factors at play in any denial of coverage and given the typically high cost of medical bills you might face, it is well worth taking the time to consult a professional to see whether your insurance company is simply calling your bluff. It certainly wouldn't be the first time we've seen that be the case.

In closing, here are a few important points to remember before you travel:

- Read all of the fine print in the travel medical insurance application. Failing to do so is not a valid defence to a denial of coverage.
- If you have a change in health status between the date of your insurance application and date of travel, consult the insurance company to see how that might impact your coverage.
- Insurance companies are understandably concerned with "pre-existing conditions" and may request your confirmation that your condition has been stable in the prior 6-12 months. However, even if the pre-existing condition is stable but you have had regular routine screening or investigation relating to that pre-existing condition in the prior 6-12 month period, you should disclose this to the insurer. The same is true for any routine screening or investigation that occurs between the date of your insurance application and the date of departure. We have seen insurance companies take the position that such routine measures are an indication that the condition is not in fact "stable".
- Your first phone call following a medical emergency abroad (after calling 911 or the hospital) should be to your insurer so they can advise you as to what steps to take to ensure proper coverage. Failure to notify your insurer promptly may be grounds for voiding coverage.
- Make sure the insurance company has your mobile contact information and is instructed to send all notifications to you at those coordinates. We have seen scenarios where an insurance company denies coverage on the basis that the policy is void and sends the applicable notification to a home address (in Canada). Meanwhile, the traveller has no knowledge of this and carries on with their trip believing they are insured. According to the letter from the insurance company sitting in the mailbox at home, they are not.
- Insurance companies have a vested interest in getting the insured (you) back to Canada to receive "free" treatment as soon as possible and will often do so via air ambulance. Although the insurance company may pay the air ambulance fee up front (often more than \$15,000) they will reserve their right to recover that fee from you in the event that coverage is later denied. Yes, your insurance company may both deny coverage and then later sue you for the return of any expenses paid on your behalf.

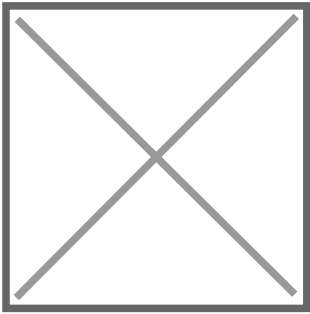
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