

ALBERTA INSURANCE COUNCIL
(the "AIC")

In the Matter of the *Insurance Act*, R.S.A. 2000, Chapter I-3
(the "Act")

And

In the Matter of the Appeal of Paul Moore
(the "Agent")

AGREED STATEMENT OF FACTS AND JOINT SUBMISSION

WHEREAS the AIC undertook a review of the Agent's practices in and around Individual Variable Insurance Contract ("IVIC") redemptions and purchases the Agent conducted on behalf of 19 Alberta clients (the "Clients");

AND WHEREAS the Life Insurance Council (the "LIC"), by way of Decision dated July 22, 2015, sanctioned the Agent for this conduct;

AND WHEREAS the Agent initiated an appeal of the LIC Decision pursuant to s. 482 of the Act;

AND WHEREAS the Appeal Panel was appointed on August 14, 2015 to hear the Agent's appeal and that it is properly constituted and has jurisdiction over the Agent's appeal;

AND WHEREAS the Agent has retained and instructed legal counsel with respect to the matters referred to in this Agreed Statement of Facts and Joint Submission;

AND WHEREAS the Agent and the AIC wish to resolve the Appeal on the basis of this Admission of Facts and Joint Submission;

NOW THEREFORE the Agent and the AIC agree as follows:

- 1.0 For the purposes of this Agreed Statement of Facts and Joint Submission, the Agent makes the following admissions and submissions:
 - 1.1.1 The Agent is a resident of British Columbia and has been licensed to act as a life and accident & sickness insurance agent in Alberta since April 1, 2008;
 - 1.1.2 In processing the IVIC transactions the Agent relied on written authorizations from the client allowing the Agent full discretion to invest, transfer or reallocate the Clients' investments. The Agent did not seek or receive specific instructions to process the redemptions or purchases at issue in this proceeding, but relied upon the previously signed authorizations.

- 1.1.3 The strategy the Agent employed consisted of transferring the allowable portion of group RRSP Client funds from deferred service charge (“DSC”) accounts into companion initial service charge (“ISC”) accounts underwritten by the same insurer (the “Strategy”).
 - 1.1.4 The Strategy created liquidity in the Clients’ portfolio allowing for potential reinvestment in alternative DSC funds including into DSC funds with a greater potential return on investment.
 - 1.1.5 The ISC funds would subsequently be transferred into a different or, in some cases, the same DSC fund with the same insurer and the insurer paid commissions on some, but not all, of the transactions resulting from the Strategy.
 - 1.1.6 The Agent was not acting in bad faith in relation to the Clients.
 - 1.1.7 The Agent believed that the Strategy to be in Clients’ best interest.
 - 1.1.8 There was no intention to breach the Act.
 - 1.1.9 None of the Clients made any complaint to the AIC or to the Insurer regarding the Agent’s conduct or the implementation of the Strategy nor is there any evidence that any of the Clients suffered financial harm as a result of the Strategy.
 - 1.1.10 Upon being asked to discontinue the Strategy by the insurer, the Agent has done so.
- 2.0 As a result of the facts set out in this Agreed Statement of Facts and Joint Submission, the Agent does not contest that the Strategy may be considered an unintentional unfair market practice pursuant to s.509(1)(c) of the Act and thereby contravened a section of the Act as contemplated in s. 480(1)(b) of the Act, and further that the Strategy was employed in respect of 19 distinct Client accounts.
 - 3.0 The Agent and the AIC jointly recommend to the Appeals Panel that the Panel approve this Agreed Statement of Facts and Joint Submission and resolve, dispose of and finally conclude this matter involving the Dealership by approving a decision in the form annexed hereto as Schedule 1, which provides for a civil penalty in the amount of \$650.00 for each of the 19 offences (\$12, 350.00 in total) in accordance with s. 13(1)(b) of the Certificate Expiry, Penalties and Fees Regulation, A.R. 125/2001.
 - 4.0 The Agent recognizes that the acceptance of the decision set out in Schedule 1 shall be at the unfettered discretion of the Appeal Panel.
 - 5.0 The Agent is aware of and acknowledges that upon receiving notification of the Panel’s decision, the civil penalty specified in Schedule 1 is due on January 1, 2016.
 - 6.0 The Agent is also aware of and acknowledges that by entering into this Agreed Statement of Facts and Joint Submission, the Agent waives its right to appeal this decision as set out in section 482 of the Act.

- 7.0 The Agent also waives any right or action under the Act or otherwise to a hearing, review, judicial review or appeal of this matter.
- 8.0 The Agent acknowledges that this Agreed Statement of Facts and Joint Submission may be referred to in this or any other proceeding under the Act, and in regulatory proceedings in other jurisdictions.
- 9.0 The Agent recognizes that this Agreed Statement of Facts and Joint Submission resolves all issues involving the Agent in this matter only, as the matter is described above.
- 10.0 The Agent and the AIC agree that if this Agreement and Joint Submission is accepted by the Appeal Panel the appeal fee be remitted to the Agent.

Dated at the City of Calgary, in the Province of Alberta this 5th day of November 2015.

ALBERTA INSURANCE COUNCIL
PER:

Original Signed By _____
Warren Martinson,
Director of Legal & Regulatory Affairs

Dated at Vancouver, in the Province of British Columbia, this 4th day of November, 2014.

Original Signed By _____
The Agent

In the presence of:

Signed _____
Signature of Witness

Name of Witness (please print)

* Document compiled from signed counterparts and personal information regarding witness identity removed in accordance with s. 40(4) of the Freedom of Information and Protection of Privacy Act.

SCHEDULE 1

INSURANCE COUNCILS APPEAL BOARD OF ALBERTA

ALBERTA INSURANCE COUNCIL
(the "AIC")In the Matter of the *Insurance Act*, R.S.A. 2000, Chapter I-3
(the "Act")

And

In the Matter of the Appeal of Paul Moore
(the "Agent")

WHEREAS the Alberta Insurance Council ("AIC") undertook an investigation of the Agent's market practices;

AND WHEREAS the AIC and the Agent entered into an Agreed Statement of Facts and Joint Submission, a copy of which is attached hereto;

AND WHEREAS pursuant to the Agreed Statement of Facts and Joint Submission, the Agent has agreed that he contravened s. 509(1)(c) of the Act, the Agent will pay a civil penalty in the amount of TWELVE THOUSAND THREE HUNDRED FIFTY DOLLARS (\$12,350.00);

AND WHEREAS the Appeal Panel considers that it would be in the public interest to approve the said Agreed Statement of Facts and Joint Submission;

IT IS ORDERED that:

1. The Appeal is allowed.
2. The Agreed Statement of Facts and Joint Submission be accepted and is hereby approved;
3. The Agent is to pay a civil penalty of TWELVE THOUSAND THREE HUNDRED FIFTY DOLLARS (\$12,350.00) in accordance with the terms and conditions set out in this Agreed Statement of Facts and Joint Submission.
4. That the appeal fee be remitted to the Agent pursuant to s. 24 of the *Insurance Councils Regulation*.

The attached Agreed Statement of Facts and Joint Submission was reviewed by the Panel and a motion to approve this decision was made and carried at a properly conducted meeting of the Insurance Appeals Panel. The motion was duly recorded in the minutes of that meeting.

Date: December 2, 2015

Original Signed By

Nancy Cumming, Chair
Insurance Council Appeals Board Panel