

IN THE MATTER OF THE FINANCIAL INSTITUTIONS ACT
R.S.B.C. 1996, C. 141

AND

GORAN DROZDEK doing business as AKOPLEX

AND

GORAN DROZDEK doing business as AKOPLEX
doing business as AKOPLEX INC.

AND

GORAN DROZDEK

AND

DAVID POLARIS

ORDERS UNDER SECTIONS 244(2) AND 238(1), AND

NOTICE OF RIGHT OF HEARING OR APPEAL
UNDER SECTIONS 238(2) AND 242

UPON REVIEWING THE SUBMISSIONS AND EXHIBITS OF STAFF, it appears to the Superintendent of Financial Institutions (the "Superintendent") that:

Background

1. Akoplex has been registered as a sole proprietorship in Ontario since April 17, 2008, with a registered business and mailing address of Suite 1504 – 66 Mooregate Crescent, Kitchener, Ontario. Goran Drozdek ("Drozdek") is the registered sole proprietor of Akoplex.
2. Akoplex Inc. ("AI") is not a registered company in either Ontario or British Columbia.
3. Akoplex and AI are not authorized insurance companies in British Columbia.
4. Akoplex and AI are not licensed insurance agencies in British Columbia.

5. Drozdek and David Polaris ("Polaris") are not licensed insurance agents in British Columbia.

Complaint

6. On February 17, 2012, Scott Wallace ("Wallace"), an investigator in the office of the Superintendent of Financial Institutions (the "Superintendent") received email from representatives of the Motor Vehicle Sales Authority of British Columbia ("MVSA") inquiring about extended vehicle warranty coverage being offered by Akoplex/AI. Accompanying the email were the following documents:

- (a) An email, signed by Polaris of "Akoplex Inc. Corporate Sales", and sent to a motor vehicle dealer in Kelowna, British Columbia which read, in part:

"From: sales@akoplex.com
To: sales@akoplex.com
Subject: Re: Akoplex Extended Vehicle Warranty

I'd like to take a moment of your time to introduce Akoplex Extended Vehicle Warranty to you. We offer affordable and complete coverage options for used vehicles. Offer your customers most complete extended vehicle warranty at affordable prices.

...

What makes Akoplex unique and attractive to your customers?

- Warranties available for vehicles with up to 200,000km and up to 12 years of age at the time of purchase
- Zero deductible on all coverage options
- Unlimited mileage coverage with all plans – warranty is only limited by time period (1-3 years)
- Warranty is fully transferable to the new vehicle owner or to new vehicle purchased by existing client...

...

We make it simple, any and all vehicles...are eligible for our extended warranty coverage as long as they meet two requirements: a) up to 12 years of age at the time of purchase, and b) up to 200,000km at the time of purchase.

We offer full (bumper-to-bumper) and basic (power-train) extended vehicle warranty, for all makes and models.

If you would like more information or want to sign-up and start offering Akoplex Extended Vehicle Warranty to your customers please reply with the following information:

- 1) Dealership name and address
- 2) Owner/manager
- 3) Telephone number"

- (b) An Ontario Motor Vehicle Industry Council ("OMVIC") Dealer Bulletin issued in February 2012. This bulletin warned that Akoplex was soliciting Ontario dealers to sell Akoplex extended warranties. OMVIC had asked Akoplex to provide proof of underlying insurance for the extended warranties being offered (from an insurance company "registered" with the Financial Services Commission of Ontario) or, alternatively, that Akoplex provide an irrevocable letter of credit to the Motor Vehicle Dealers Compensation Fund. Akoplex had provided neither, although one or the other is required in order to comply with the Ontario Motor Vehicle Dealers Act Regulation.
7. By March 2, 2012, Superintendent's Staff ("Staff") had received confirmation from five more motor vehicle dealers in British Columbia that they, too, had been approached by Akoplex/AI by email. Four of these dealers forwarded the email they had received. Each contained the same information set out in the email forwarded to Wallace by MVSA on February 17th, 2012, and set out in paragraph 6(a) above.

Investigation

8. On March 1, 2012, Michael McTavish ("McTavish"), an investigator in the Superintendent's office, conducted a search of the website www.akoplex.com (for which Drozdek is the registered administrative and technical contact). A review of that website, which was no longer online when McTavish checked it again on April 13, 2012, showed the following:

(a) Home page

"Extended Vehicle Warranty Specialist!

Yes!

You're covered!

Akoplex Inc. offers affordable extended vehicle warranty coverage without all the limitations and restrictions that our competitors have. We make it simple and fast to cover your vehicle against all future problems.

...We make it simple by offering only two types of warranty -- full or basic.

Akoplex is the only company offering extended warranty for vehicles with up to 200,000km and up to 10 years old at the time of purchase..."

(b) Coverage Options page

"BASIC COVERAGE

Akoplex Basic Coverage covers two main, and most expensive, components to repair in your vehicle – engine and transmission. There are no restrictions, exclusions or limitations. Your whole engine and transmission are covered under this protection plan. This plan includes basic CAA membership.

Basic coverage includes/covers the following:

- Engine
- Transmission (AWD, FWD, RWD, 4WD)
- Differential (Front and/or Rear)
- Transfer Case (AWD, 4WD)
- Turbo/Supercharger
- Zero Deductible
- CAA Basic Membership

FULL COVERAGE

Akoplex Full Coverage covers your whole vehicle, bumper to bumper. This coverage meets or exceeds warranty offered by vehicle manufacturer for new vehicles. We're not done yet, with this coverage plan we will also cover one of the wear-and-tear parts on your vehicle – brake pads and rotors! This plan includes full CAA membership.

Full coverage includes/covers the following:

- Engine
- Transmission (AWD, FWD, RWD, 4WD)
- Differential (Front and/or Rear)
- Transfer Case (AWD, 4WD)
- Turbo/Supercharger
- Electrical Components
- Brakes (including pads and rotors)
- Suspension Components
- Seals and Gaskets
- Steering
- Fuel injectors/Lines
- Air Conditioning
- Power Equipment
- Electronics (including GPS, Stereo System)
- Zero Deductible
- CAA Full Membership”

(c) FAQs page

“...

What kind of coverage do you offer?

We make it simple – full or basic. For coverage details simply go to our Coverage Options page.

When does my coverage take effect?

Akoplex Extended Vehicle Warranty Inc. is pleased to give our customers first day coverage – it takes effect the day you purchase the coverage!

Is my Akoplex Warranty transferable/renewable?

YES. Should you decide to sell your vehicle you can either transfer the remainder of the warranty to your new vehicle or allow the new owner of your vehicle to enjoy the remainder of Akoplex Warranty.

Do I have to submit a claim form?

NO There are no claim forms, waiting period. We will pay for all repairs directly to the mechanic/garage of your choice.

What is my deductible?

Zero. All warranty plans come with \$0 deductible – you pay nothing...”

9. On February 29, 2012, McTavish initiated a pretext email exchange with Akoplex by using the “Contact” form on the Akoplex website. McTavish, using a pretext name, posed as a BC consumer shopping for a used vehicle, who was interested in purchasing an extended warranty. All responses from Akoplex were signed “David Polaris, Akoplex Inc., Corporate Sales”. Details of this exchange include the following:

- (a) On February 29, 2012, McTavish emailed an inquiry to sales@akoplex.com. McTavish received a response on February 29, 2012 which read, in part, as follows:

“Akoplex extended vehicle warranty coverage can be purchased directly from Akoplex Inc.

As long as the vehicle you are want [sic] to protect is less than 12 years of age and currently has under 200,000km it can be protected by out [sic] extended vehicle warranty.

...

If you would like to purchase extended vehicle warranty for your vehicle please contact me.”

Prices for the various levels of coverage (“Basic” or “Full”) were provided, and varied depending on whether the purchaser was seeking coverage for 1, 2 or 3 years.

- (b) On March 1, 2012, McTavish received the following response to an email he had sent requesting more information about Akoplex, and the process involved in purchasing the extended warranty:

“For a vehicle such as the one you are looking for you can pick any on [sic] our warranty plans...”

Once you purchase your new vehicle, or know which vehicle you will be purchasing, just let me know the make, model, year and VIN# of the vehicle along with your full address.

There are two options for purchasing extended vehicle warranty:

- 1) Online: we will send you form to fill out with the required information via E-mail, once you fill it out you can send it back to us and we accept E-mail Money Transfer as payments.
- 2) By mail: we will send you form to fill out by mail, after you fill it out you would [sic] return it to us by mail with a check for payment.

Once we receive the warranty form and payment you will be mailed your extended vehicle warranty package.”

- (c) On March 2, 2012, McTavish wrote Akoplex indicating that he would likely purchase full coverage for a 3-year period. The email in response from Akoplex included the following:

“Below is the cost for full extended vehicle warranty plans. This fee is payable upfront, the same as any dealer would charge you as well. If you were to purchase same warranty from a dealer you would be paying significantly more as all dealers add surcharge to our warranty cost.

Vehicle coverage starts from day one.

Full (Bumper-to-bumper) Extended Vehicle Warranty Coverage:

- 1 Year - \$480.00
- 2 Years - \$980.00
- 3 Years - \$1,299.00

Once you purchase your new vehicle contact us and we will send you required form to fill out...”

- (d) On March 7, 2012, McTavish had another exchange with Akoplex about the warranty coverage offered. McTavish asked whether Akoplex was licensed in British Columbia. This was the response:

“We are fully licensed and insured to operate in BC. Most dealers offer extended vehicle warranty for use vehicles, however, they also add a mark-up to the cost.”

10. On April 13, 2012, McTavish checked Akoplex’s website (www.akoplex.com) and found that it was no longer online.
11. On April 13, 2012, McTavish contacted the motor vehicle dealers who had advised Staff that they had been solicited by Akoplex to ask when they had last been contacted. Two of those dealers responded, advising that they had last heard from Akoplex on March 13, 2012 and March 14, 2012, respectively.
12. On April 30, 2012, McTavish attempted to contact Drozdek by phone. He spoke with someone who knew Drozdek, and left a message, asking that Drozdek return the call. McTavish has not been contacted by Drozdek since he left the message.

13. On April 30, 2012, McTavish emailed sales@akoplex.com advising that he worked as an investigator with the Financial Institutions Commission of BC, and that he had questions about the nature of Akoplex's business in British Columbia. He asked that someone from Akoplex contact him immediately to discuss. McTavish has not received a response to this email.

Legislation

14. Section 168 of the *Financial Institutions Act* (the "Act") defines "insurance agent" for licensing purposes as follows:

168 In this Division, unless the context otherwise requires,

...

"insurance agent" means a person, other than an insurance company or an extraprovincial insurance corporation, who solicits, obtains or takes an application for insurance, or negotiates for or procures insurance, or signs or delivers a policy, or collects or receives a premium;

...

15. Section 1 of the Act defines "insurance business" as follows:

"insurance business" means

- (a) undertaking or offering to undertake to indemnify another person against loss or liability for loss in respect of a certain risk or peril to which the object of the insurance may be exposed,*
- (b) soliciting or accepting any risk,*
- (c) soliciting an application for a contract of insurance,*
- (d) issuing or delivering a*
 - (i) receipt for any contract of insurance, or*
 - (ii) contract of insurance,*
- (e) in consideration of any premium or payment, granting an annuity on a life or lives,*

- (f) *collecting or receiving any premium for a contract of insurance,*
- (g) *adjusting any loss covered by a contract of insurance, or*
- (h) *advertising for any business described in paragraphs (a) to (g),*

whether or not the person undertaking an activity or activities set out in paragraphs (a) to (h) can or does distribute any gain, profit or dividend, or otherwise disposes of the person's assets, to a member or shareholder of the person other than during winding up or on dissolution;

16. Section 1(5) of the Act reads as follows:

1(5) An activity referred to in paragraph (a) of the definition of "insurance business" in subsection 91), whether or not the activity is conducted in British Columbia, is conclusively deemed for the purposes of the Act to constitute the carrying on of insurance business in British Columbia if the risk or peril is located in British Columbia.

17. Section 75 of the Act prohibits unauthorized insurance business in British Columbia:

75 A person must not carry on insurance business in British Columbia unless the person is

- (a) *an insurance company or extraprovincial insurance corporation that has a business authorization to carry on insurance business,*
- (b) *a company registered under the Insurance (Captive Company) Act,*
- (c) *a member of a reciprocal exchange as defined in section 186 for which a permit under section 187 has been issued and is in effect,*
- (d) *licensed under Division 2 of Part 6 as an insurance agent, insurance salesperson, insurance adjuster or employed insurance adjuster and is carrying on the insurance business only in that capacity,*
- (e) *the deposit insurance corporation, the Canada Deposit Insurance Corporation or the Insurance Corporation of British Columbia,*
- (f) *an insurer*

- (i) *[Repealed 2004-48-48.]*
 - (ii) *that administers an insurance compensation plan designated by regulation for the purpose of section 66(2),*
 - (g) *a society described in section 193(1)(a) to (g) that, immediately before September 15, 1990, was carrying on the business of insurance,*
 - (h) *a credit union that is carrying on insurance business only by making or participating in contracts of insurance as permitted by section 82 of the Credit Union Incorporation Act, or*
 - (i) *a central credit union that is carrying on insurance business only by providing or arranging insurance as permitted by section 90(2) of the Credit Union Incorporation Act.*
18. Section 171 of the Act prohibits unlicensed insurance agent activity in British Columbia:
- 171 (1) *[Repealed 2004-48-79.]*
 - (2) *A person must not act in British Columbia as an insurance agent or insurance salesperson unless the person is licensed as an insurance agent or insurance salesperson, as the case may be.*
 - (3) *Subsection (2) does not apply to a person or class of persons exempted by the regulations.*
19. "Insurance" is defined in section 1 of the *Insurance Act* as follows:
- "insurance"** means the undertaking by one person to indemnify another person against loss or liability for loss in respect of a certain risk or peril to which the object of the insurance may be exposed, or to pay a sum of money or other thing of value on the happening of a certain event;*
20. Neither Drozdek, nor Polaris nor Akoplex, nor AI qualifies for any of the legislative exemptions from licensing or business authorizations under the Act, the *Insurer Exemption Regulation* and the *Insurance Licensing Exemptions Regulation*.
21. A contract providing an extended warranty for loss of or damage to a motor vehicle arising from mechanical failure is considered to be a "vehicle warranty insurance" contract as defined under section 2 of the *Insurance Classes Regulation*:

- 2 For the purpose of the Act and of the Financial Institutions Act except for section 174 of the Financial Institutions Act, each of the classes defined below shall be deemed to be a distinct class of insurance:

...

"vehicle warranty insurance" means insurance, not being insurance included in or incidental to automobile insurance, against loss of or damage to a motor vehicle arising from mechanical failure, that is contracted between the purchaser of the motor vehicle and an insurer whereby the insurer undertakes for a specific period to assume the cost of repairs or replacement, towing fees, car rentals and accommodation as a result of a covered mechanical failure;

Therefore, conducting vehicle warranty insurance business is conducting insurance business under the provisions of the Act.

22. Section 244 of the Act states:

244 (1) *In this section, "committing an act or pursuing a course of conduct" includes failing or neglecting to perform an act or failing or neglecting to pursue a course of conduct.*

(2) *If, in the opinion of the commission, a person is committing an act or pursuing a course of conduct that*

(a) *does not comply with this Act, the regulations or the Company Act as it applies for the purposes of this Act,*

...

(c) *might reasonably be expected to result in a state of affairs not in compliance with this Act or the regulations, with the Company Act as it applies for the purposes of this Act or, in the case of an extraprovincial corporation, with the Business Corporations Act,*

...

then, the commission may

- (f) *order the person to*
 - (i) *cease doing the act,*
 - (ii) *cease pursuing the course of conduct, or*
 - (iii) *do anything that the commission considers to be necessary to remedy the situation, or...*

23. I agree with Staff that the products being offered for sale by Akoplex, AI, Drozdek and Polaris fall within the definition of "insurance", more specifically, "vehicle warranty insurance" and as such the provision of such products constitutes insurance business as defined in the Act.
24. I find that Akoplex/AI has been carrying on insurance business in British Columbia when not authorized or licensed to do so, contrary to section 75 of the Act by:
- (a) offering to undertake to indemnify BC residents against loss in respect of vehicle warranty insurance in British Columbia;
 - (b) soliciting British Columbians to purchase vehicle warranty insurance for sale over the internet; and
 - (d) soliciting applications for contracts of insurance with respect to risks located in British Columbia by soliciting British Columbia residents through motor vehicle dealers located in this Province.
25. I find that Drozdek, who is the registered sole proprietor of Akoplex, and who is also the registered administration and technical contact of Akoplex's website, is conducting the affairs of Akoplex in a way that might reasonably be expected to result in non compliance with the Act by conducting unauthorized insurance business in British Columbia.
26. I find that Drozdek, doing business as Akoplex, Drozdek doing business as Akoplex doing business as Akoplex Inc., and Polaris have acted as unlicensed insurance agents, contrary to section 171 of the Act by offering vehicle warranty insurance for sale in British Columbia to British Columbians.
27. I agree with Staff that a hearing would require at least four witnesses and take approximately five days to complete, and could not be held for at least four months due to scheduling of the hearing officer.

28. The unauthorized and unlicensed conduct of the parties is recent and, while the website may no longer be operational, it is not clear that the conduct has stopped altogether. Efforts have been made to contact Drozdek by phone, and to contact representatives of Akoplex by email, to obtain an explanation as to its activities. Neither phone call, nor email, has been responded to. As a result, a summary order to cease and desist is warranted pursuant to section 238(1)(b) of the Act since the length of time that would be required to hold a hearing would be detrimental to the due administration of the Act and would likely result in further non-compliance with the Act, which would harm the reputation of the British Columbia insurance industry and would be detrimental to the public interest.

WHEREAS the Financial Institutions Commission has delegated to the Superintendent the powers and duties under section 244 of the *Act* in the Instrument of Delegation executed December 18, 2009;

NOW THEREFORE the Superintendent orders pursuant to Sections 244(2)(a),(c) and (f), and 238 of the *Act* that:

- (1) The following cease from the conduct of insurance business in the Province of British Columbia, including insurance business related to vehicle warranty insurance:
 - (a) Drozdek doing business as Akoplex; and
 - (b) Drozdek doing business as Akoplex doing business as Akoplex Inc.
- (2) That Drozdek direct Akoplex and Akoplex Inc. to cease from engaging in insurance business in the province of British Columbia including insurance business related to vehicle warranty insurance.
- (3) The following cease from acting as unlicensed insurance agents in the Province of British Columbia:
 - (a) Drozdek doing business as Akoplex;
 - (b) Drozdek doing business as Akoplex, doing business as Akoplex Inc.; and
 - (d) Polaris.
- (4) That Akoplex, Akoplex Inc., Drozdek and Polaris provide the Superintendent with the following information which is currently in their possession and, in future, as it comes into their possession:

- (a) the name(s) and address(es) of any purchasers of vehicle warranty insurance which they have sold to residents of British Columbia; and
- (b) copies of any vehicle warranty insurance contracts entered into by Akoplex and Akoplex Inc. with residents of British Columbia.

TAKE NOTICE THAT Drozdek doing business as Akoplex, Drozdek doing business as Akoplex doing business as Akoplex Inc., and Drozdek and Polaris may request a hearing before the Superintendent under section 238(2)(a) of the *Act* or appeal to the Financial Services Tribunal under section 238(2)(b) of the *Act*.

Dated at the
City of Vancouver,
Province of British Columbia
this 03 day of May, 2012.



Carolyn Rogers
Superintendent of Financial Institutions
Province of British Columbia

TO: Akoplex and
Akoplex doing business as Akoplex Inc.

[Redacted]

Goran Drozdek

[Redacted]

David Polaris
sales@akoplex.com