

**DECISION**  
**of the**  
**GENERAL INSURANCE COUNCIL OF MANITOBA**  
**("Council")**  
**respecting**  
**HUB INTERNATIONAL MANITOBA LTD. ("Agency")**  
**KEITH JORDAN ("Licensee")**

**INTRODUCTION**

The General Insurance Council of Manitoba (the "Council") derives its authority from *The Insurance Act* C.C.S.M. c. 140 (the "Act") and the *Insurance Councils Regulation 227/91*.

Following an enquiry with respect to coverage provided by an insurance policy at the time of an insurance loss, an investigation was conducted pursuant to sections 375(1) and 396.1(7) (e) of the *Act* and section 7(2) (e) of *Regulation 227/91*. The purpose of the investigation was to determine whether the Licensee had violated the *Act*, and/or the General Insurance Agent Code of Conduct ("*Code of Conduct*"). During the investigation, the Licensee was provided an opportunity to make submissions.

On December 21, 2016, during a meeting of the Council, the evidence compiled during the investigation and the position of the Licensee were reviewed. Upon assessment of the evidence, Council determined its intended decision. Pursuant to section 375(1) of the *Act* and *Regulation 227/91*, the Council now confirms its decision and corresponding reasons.

**ISSUE**

1. Did the Agency fail to provide a review of the Complainant's file to ensure adequate limits and coverage for the Complainant's buildings?

**FACTS AND EVIDENCE**

1. The Licensee was the Operating Agent responsible for managing the office of the general insurance agency at the time of the initial complaint and presently.

Agency A

2. On January 19, 2009, the Complainant attended Agency A and completed the Insurer's application showing replacement cost on his house and barn, and garage. The application indicated personal outbuildings \$28,400.00 with Guaranteed Replacement Cost.
3. There was an additional application item under Barns, Buildings, Structures. #1 Miscellaneous Farm Building with 3 parts: 25 x 26 Insulated area for horse, 25 x 60 – 3 car garage, and 16 x 30 storage area, with replacement cost coverage in the Building amount of \$40,000.00 completed as "yes."
4. The Insurer's Insurance rate calculation form used at the time of application showed replacement cost, and the premium was paid based on the rate calculation sheet which showed farm buildings at replacement cost.
5. When the policy was issued, the Complainant was made aware that it was not a farm policy, but that the policy had been issued as a homeowner's package. When the Complainant approached Agency A, he was told that the Insurer did not know how to classify a barn and 3 car garage. The shop area had been separated. The policy stated coverage for Seasonal Dwellings in the amount of \$40,000.00; the Complainant advised he did not have seasonal dwellings. The Complainant was told on several occasions that between the two values provided on the declaration pages for the "seasonal" there was enough coverage. There was no documentation to support that the Complainant had ever been advised of the difference between his application for replacement cost and the coverage issued on actual cash value basis.
6. Documents produced after the 2015 fire loss suggest that the reason the buildings were written on actual cash value was due to age and/or condition. The Insurer suggested that the three outbuildings were insured separately as the Insurer was not prepared to offer all risk replacement cost.

HUB International Manitoba Ltd. ("Agency")

7. On June 1, 2013, Agency A was purchased by the Agency.
8. The policy in effect for the Complainant included a seasonal dwelling located on the same property as the homeowners. There was no contents coverage specified on the policy for this seasonal property.
9. On January 15, 2014, a letter was mailed to the Complainant from the Agency recommending that he review the policy and wordings and contact the Agency if interested in comparing coverage/premium against other insurance companies, eleven of which were available.
10. December 11, 2014, a letter was sent to the Complainant from the Agency recommending review of the policy and wordings and a suggestion that cover be upgraded from the broad

to the comprehensive form. No mention of the basis of the "seasonal" being actual cash value, there being no contents cover for the seasonal, or the availability of bylaws cover appeared in this letter. It was noted that due to the age of the seasonal building, the Insurer was applying a wind and hail exclusion on an actual cash value basis. The building, however, was already on an actual cash valuation.

11. On January 19, 2015, the Complainant attended the Agency office on Regent and upgraded his policy from Broad to Comprehensive. The endorsement request outlined changes to the location 1 including upgrades. Mention of location 2 stated that the client had requested the wind and hail exclusion be replaced as the roof was metal, not shingles. The Agency did not present a copy of other file notes to indicate that there had been a further review of the seasonal or the offer of bylaws coverage.
12. Subsequently a fire affected the outbuildings-seasonal on or about February 4, 2015. The Complainant attended the Agency's Beausejour office and met with Agent A who had discussed the seasonal dwelling allocation and the combination of values on several occasions. Agent A assured the Complainant that he had replacement cost and a combination of values. She accessed a copy of the policy on the computer and left the Complainant to print a copy. Upon her return, Agent A advised that she could not provide a copy of the policy or discuss the file further. According to the Complainant, he was escorted out of the office.
13. The initial position taken after the fire was that there was one building, depreciated and no contents coverage as it was a seasonal. During the renewal in 2015, as the policy had been amended from a broad form to a comprehensive form, limited contents on a replacement cost became available. The Complainant would be responsible for the cleanup.
14. Building on the same location was not permitted and the Complainant had to rebuild the barn 125 ft. from the neighbours' houses, resulting in additional costs.

## **ANALYSIS**

The original application for the Complainant was written in 2009 and indicated replacement cost on the outbuildings. Due to the insurer underwriting, the requirements of the three elements of the barn/shed etc. were written under a "seasonal" form. This seasonal form provided for settlement on the basis of actual cash value. The Complainant stated that he did not amend the coverage on the application to actual cash value and understood the cover to be on replacement cost. He also stated that on a yearly basis he would ask whether or not there was sufficient coverage on this group of buildings and was always told there was. There is no cover letter from Agency A (or later from the Agency) identifying that the basis of settlement had been changed from replacement cost to actual cash value, either on the issue of the policy or subsequently, until the claim. The various policy wordings for the risk applicable prior to the loss indicated a loss would be paid on an actual cash basis. However, the Complainant stated that he had not received copies of the policy wording.

On June 1, 2013, the Agency became responsible for the coverage provided to the Complainant. There was no indication that the Agency performed a complete underwriting review of the file. There were a number of coverage issues: the outbuildings on the principal property were written as a "seasonal" with an actual cash valuation, coverage on the building was without contents cover, and there was no offering of additional cover for by-laws. Cover which applied due to the amendment from the broad form to comprehensive form just immediate to the loss was fortuitous rather than planned, otherwise the Complainant would have suffered a greater loss. The Agency failed to provide a complete review of the file after acquiring the business from Agency A and therefore did not provide the competent advice required by a general agent in the handling of a client's risks. Thus the *Act* s.375 (1) (e) and *Code of Conduct* sections 2, 3, and 4 were violated.

### **PENALTY AND FINAL DECISION**

Council's Decision dated October 2, 2017, was delivered by registered mail to the Licensee on October 4, 2017. The Decision outlined the foregoing background, analysis, and conclusions. Having regard to the determination of the violations aforesaid, and pursuant to sections 375(1.1) (c) and (d) of *the Act* and section 7(1) of *Regulation 227/91*, the following penalties are imposed on the Licensee, namely:

1. The Licensee be fined \$1,000.00, and assessed partial investigation costs of \$800.00.

As part of its Decision, Council further informed the Licensee of his right to request an Appeal to dispute Council's determinations and its penalty/sanction. The Licensee expressly declined his right, chose not to pursue a statutory Appeal, and accepted this Decision.

This Decision is therefore final. In accordance with Council's determination that publication of its decisions are in the public interest, this will occur, in accordance with sections 7.1(1) and (2) of *Regulation 227/91*.

Dated in Winnipeg, Manitoba on the 27th day of October, 2017.