

DECISION
of the
GENERAL INSURANCE COUNCIL OF MANITOBA
(“Council”)
respecting
GUY ROUIRE
(“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* (“Regulation 227/91”).

In keeping with the Council’s concern based on the seasonal nature of hail insurance, and the Council’s experience in previous years where hail agents had failed to continuously maintain professional liability insurance (“E&O”) as required, Council requested and received notice of non-renewal and reinstatement of liability insurance certificates from the E&O Carrier (the “Carrier”). The Licensee appeared on this list with a gap in his professional liability coverage. 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 *Insurance Agents and Adjusters Regulation 389/87* (“Regulation 389/87”). During the investigation, the Licensee was provided with opportunities to make a submission.

On September 26, 2018, during a meeting of the Council, the evidence compiled during the investigation and the position of the Licensee was reviewed. Upon assess of the evidence, Council determined its Intended Decision. Pursuant to sections 375(1) and 375 (1.1) of the *Act* and *Regulation 227/91*, the Council hereby confirms its decision and corresponding reasons.

ISSUES

1. Did the Licensee fail to continuously maintain liability insurance (E&O) as required by the *Act* and its *Regulation*?
2. Did the Licensee make a material misrepresentation when completing his 2018 hail agent’s licence renewal application?

FACTS AND EVIDENCE

1. The Licensee had misrepresented in his May 31, 2017, hail agent licence renewal application that he had continuously maintained professional liability insurance in accordance with *Regulation 389/87*, and that he would notify Council within 15 days of any material changes to the information in the application.
2. Council had issued a Letter of Caution, dated July 26, 2017, to the Licensee outlining the legal requirements to continuously maintain professional liability, and pointing out that the Licensee had made a material misrepresentation on his 2017 licence renewal application in relation to the continuous maintenance of E&O.
3. On March 16, 2018, the Council emailed all hail agents, including the Licensee, reminding them of the requirement to continuously maintain E&O insurance, regardless of whether they were actively engaged in the business at that time. Licensees were advised of the necessity of updating coverage in the Council's online portal.
4. The expiry date of the Licensee's previous E&O insurance coverage, a certificate issued under the Carrier's policy, was April 1, 2018.
5. The Licensee reported the effective date of his replacing coverage as April 3, 2018, in the Online Portal.
6. On May 28, 2018, the Licensee answered "yes" to the Maintenance of Errors and Omissions Insurance statement on his 2018 licence renewal: "I have continuously maintained professional liability insurance in accordance with the Insurance Agents and Adjusters Regulation 389/87 in accordance with The Act."

Correspondence from the Carrier

7. Council received copies of correspondence between the Carrier and the Licensee showing that on February 20, 2018, notice was provided by email from the Carrier to the Licensee with a highlighted date of prior to **31 March 2018** to return the completed renewal questionnaire and payment.
8. A description of how the agent's E&O could be affected was included: the E&O coverage would lapse, coverage would not be backdated, licence status to inactive might occur, and reapplication for coverage as a new applicant would be required.
9. There was also a warning that provincial Councils were conducting audits, and of the requirement by law for the E&O Carrier to advise the Council of E&O lapses.

10. On May 18, 2018, Council received confirmation from the Carrier that the Licensee did not renew his E&O policy effective April 1, 2018, but rather April 3, 2018. Thus, there had been a gap in coverage.

Response from the Licensee – July 3, 2018

11. The Licensee advised that the Carrier had sent him an email on February 20, 2018, advising him of the renewal procedures, the E&O program and renewal due dates. He noted that he received many emails daily and overlooked it at that time, setting a reminder closer to the due date on his desktop calendar.
12. The Licensee stated that he had been on vacation between March 19, 2018 and March 31, 2018. He noticed the reminder when he returned home.
13. The deadline of April 1, 2018, was Easter (Sunday). When he tried to contact the Carrier's office on April 2, 2018, it was closed. He renewed his policy on Tuesday, April 3, 2018.
14. He advised that he regretted the mistake and the oversight of the lapse of insurance, and requested a pardon from the Council. He assured the Council that his renewals would be done promptly in the future.

ANALYSIS

The Licensee declared in his May 31, 2017, hail agent licence renewal application that he would continuously maintain E&O cover or advise Council otherwise.

Council had warned the Licensee of the regulatory requirement to continuously maintain E&O in a Letter of Caution dated July 26, 2017.

The Carrier provided the Licensee with a renewal notice on February 20, 2018. This notice included a description of the actions which could occur if the renewal questionnaire and payment were not received by that office prior to April 1, 2018. Those actions included regulatory requirements on the part of the Carrier to the Council.

Council reinforced the requirement for continuously maintained E&O in an email to the Licensee, dated March 16, 2018, just a couple of days before he left for vacation.

In his defence, the Licensee advised that he received the Carrier's email on February 20, 2018, providing the E&O renewal information, but decided to proceed with the renewal later. He took vacation on March 19, 2018, returning on March 31, 2018. When he attempted to renew on April 1, 2018 and April 2, 2018, the agency was closed for Easter holidays. Council acknowledged that he renewed on the first date possible after the insurance had lapsed: April 3, 2018.

Council considered that although he received notices from the Council and his Carrier about the importance of renewing his E&O prior to April 1, 2018, and of the potential consequences of

failing to meet that deadline, the Licensee did not secure or attempt to secure his renewal prior to April 1, 2018.

The Licensee entered his E&O renewal date as April 3, 2018, on his May 28, 2018, licence renewal application. However, he misrepresented that he had maintained continuous E&O: there had been a gap between April 1, 2018 and April 3, 2018.

Council relies on the truth and accuracy of statements made by licensees in their renewal applications. These statements indicate the character of the licensee, in addition to, providing confirmation that the licensee has met the requirements to hold a valid licence in the province. When answering the renewal application questions, the Licensee must ensure that the questions are carefully read and that the answers are true and accurate.

The Licensee was in violation of *the Act* s. 371 (1.1) Liability insurance required, s. 372.1(1) Failure to have liability insurance, s. 372.1(2) Notice to superintendent, s. 375 (1) Investigation by superintendent, etc. (a) misrepresentation (b) violated any provision of this Act or regulation under this Act, and *Regulation 389/87* s. 15 (1) and (2) Liability insurance – hail insurance agents.

In making its decision, Council considered that this was not the first time the Licensee had violated *the Act* and *its Regulation* with respect to the continuous maintenance of E&O.

PENALTY AND FINAL DECISION

Council's Decision dated December 17, 2018, was delivered to the Licensee by registered mail on December 24, 2018. 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 sections 7 (1) and 7 (2) of *Regulation 227/91*, the following penalties are imposed on the Licensee, namely:

1. The Licensee be fined \$250.00 and assessed partial investigation costs of \$250.00.

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 the Decision.

The Decision is therefore final. In accordance with Council's determination that publication of its Decisions is 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 January 11, 2019.