

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 Livingston International Inc.
(the "Restricted Agent")

As represented by
Designated Individual, Shiloe Gow
(the "DI")

DECISION
OF
The General Insurance Council
(the "Council")

This case involved an allegation pursuant to s. 452(1) of the Act. Specifically, it is alleged that the Restricted Agent acted as a restricted insurance agent during a period of time in which it did not hold a valid and subsisting Certificate of Authority and that this constitutes an offence pursuant to s. 480(1)(b) of the Act.

Facts and Evidence

This matter proceeded by way of a written Report to Council dated December 19, 2014 (the "Report"). The Report was forwarded to the DI for review and to allow the Restricted Agent to provide the Council with any further evidence or submissions by way of Addendum. The DI signed the Report on January 9, 2015 and did not adduce any further evidence.

The Restricted Agent is the holder of a restricted insurance agent's certificate of authority for the sale of cargo insurance, and was first licensed on May 28, 2008. Between May 28, 2008 and October 31, 2009, the Restricted Agent's sponsoring insurer was St. Paul Fire and Marine Insurance Company ("St. Paul"). Between November 1, 2009 and January 13, 2014, the Restricted Agent did not hold a license to sell cargo insurance.

The Designated Individual has acted in this capacity since May 28, 2008.

The DI, by letter dated August 29, 2013, advised the AIC that it was applying to renew the Restricted Agent's license as it had recently become aware that it expired on October 31, 2009. In this letter, the DI further indicated that the license was not previously put in place because the individual responsible for this left the company in September 2009 and that no one was aware the license needed to be renewed. The Restricted Agent also explained that the Restricted Agent's address changed in November 2009 and that, as a result, it would not have received any correspondence from the AIC as a result.

The Restricted Agent thereafter submitted an application form that was signed on August 29, 2013 (the "August 29, 2013 Application") by "CM" rather than the DI. The insurer recommendation by AIG was signed on September 11, 2013 by "AD".

An AIC licensing official wrote to the DI on September 17, 2013. In this letter, she advised that the AIC could not process the August 29, 2013 Application because it was deficient for a number of reasons. After outlining these deficiencies and the information that was needed, she advised the DI that the Restricted Agent was not authorized to act as an insurance agent until its certificate was issued.

The DI or Restricted Agent did not respond. As a result, the same AIC licensing official wrote to the DI on October 3, 2013 as a reminder that the August 29, 2013 Application was still incomplete and that the Restricted Agent's application would be closed if the Restricted Agent did not provide the missing information by November 5, 2013. The AIC also reminded the DI that the Restricted Agent could not act as an insurance agent until such time as the certificate of authority was issued.

The AIC received another application form on October 15, 2013 that the DI signed on October 9, 2013 (the "October 9, 2013 Application"). However, AD's recommendation on behalf of AIG appears to have been signed on September 26, 2013. The DI also wrote to the AIC, by letter dated October 10, 2013, and confirmed that the Restricted Agent had been compensated for the sale of insurance since November 1, 2009. On November 6, 2013, the Restricted Agent's licensing file was closed and its fees were refunded.

On November 29, 2013 and December 19, 2013, the AIC received the 2013/2014 Form 5 Application for Restricted Agents Certificate of Authority dated November 14, 2013 (the "November 14, 2013

Application”). The November 14, 2013 Application contained a signature on behalf of a recommending insurer. However, it did not indicate the name of the recommending insurer. Therefore, an AIC licensing official wrote to the DI to advise that the AIC could not issue a certificate of authority. She also outlined what information was missing and again reminded the DI that the Restricted Agent was not authorized to act as an insurance agent until its certificate was issued.

On January 3, 2014 (approximately 45 days later), the same AIC official wrote to the DI as the Restricted Agent did not respond to her December 3, 2013 letter. Once again, the official advised that the licensing file would be closed if a response was not received by January 18, 2014. As a matter of course, the letter reminded the DI that the Restricted Agent was not authorized to act as an insurance agent until its certificate was issued. Ultimately, the AIC issued the Restricted Agent’s certificate of authority on January 14, 2014.

On February 21, 2014, an AIC investigator wrote to SG and requested information and documentation relating to the Restricted Agent’s insurance activities during the period in which it was not authorized to act as an insurance agent. The investigator asked that the Restricted Agent confirm the number of insurance sales it undertook while unlicensed and the manner in which it was compensated.

The Restricted Agent’s Senior Corporate Counsel responded by way of fax dated March 12, 2014 wherein she advised that “[t]he number of files for which we provided insurance coverage during the period from November 1, 2009 to January 13, 2014 was 2372.” She also detailed the underwriting insurers and the formula used to determine the calculation of premiums payable by the clients and the total amount of premiums charged while unlicensed. As to why the Restricted Agent sold insurance when it was not authorized to do so, she wrote that that there was no intent to provide cargo insurance without a valid license and that they were not aware that their license expired as the person responsible left the company in September of 2009.

The investigator wrote to an official with St. Paul on June 24, 2014 and requested that the insurer provide information and documents regarding the sales that the Restricted Agent made on its behalf. The investigator wrote a similar letter to AIG on June 26, 2014.

A St. Paul/Travelers Canada official responded by email on July 11, 2014. The email and accompanying documents suggested that St. Paul/Travelers Canada did not have a direct relationship with the Restricted

Agent. Rather, she explained that the insurer's direct contact was with Aon Reed Stenhouse Inc. ("Aon") and that the policies were sold as some type of "package marine policy" placed for the Restricted Agent as the insured by AON as broker. Specifically, she wrote:

For Travelers Canada's purposes, AON was the insurance broker and the [Restricted Agent] was the client of Aon and the insured under the above referenced policy. We understand that, the [Restricted Agent] could then, as a freight forwarder, offer to provide insurance to their clients who had contracted with the [Restricted Agent] for the movement of a cargo shipment from one place to another by issuing certificates of insurance to their clients off of the master policy.

Further, she advised that St. Paul/Travelers Canada was not aware of any fee arrangement between the Restricted Agent and Aon and that a flat annual premium of \$245,000.00 for the insurance was paid through Aon. She went on to write that:

Given the nature of the way the Policy was placed by Aon, with the [Restricted Agent] (as insured) paying to the Travelers Canada a flat annual premium, the compensation or profit from the [Restricted Agent's] perspective, if the [Restricted Agent] issued any certificates of insurance to its clients, would hinge on whether they placed more or less cargo premium than the flat annual amount of cargo insurance premium paid to Travelers Canada during the course of the policy period in question.

AIG's Vice President-General Counsel responded to the investigator's letter on September 17, 2014 wherein he indicated that AIG issued a policy of insurance to the Restricted Agent through the Restricted Agent's broker Aon and that AIG's relationship with the Restricted Agent was one of "insurer and insured, business and client." Further, he wrote that AIG provided "freight insurance coverage" to the Restricted Agent for a set annual premium. He also advised that AIG did not compensate the Restricted Agent "...for any activity including, soliciting for the sale, taking an application, delivering a policy or negotiating the terms of insurance."

The investigator spoke with the DI on September 18, 2014. Among other things, the DI indicated that a new person had taken on the role of Senior Corporate Counsel. The investigator and the Restricted Agent's new counsel spoke on September 18, 2014. During this call, the investigator asked him how the Restricted Agent was compensated for selling cargo insurance. In response, counsel stated that the Restricted Agent is not paid compensation. However, he further advised that they charge their client a minimum premium/fee of \$45.00 and that they essentially negotiate insurance coverage with their services as freight forwarders and that the insurance is then included amongst the other services they provide. The Investigator requested that he confirm this in writing.

The Restricted Agent's counsel emailed the investigator on September 24, 2014. Among other things, he wrote:

Compensation for Insurance Coverage. [emphasis in original] Livingston pays an annual premium for a blanket cargo insurance policy. Livingston then charge insurance premiums to customers who desire cargo coverage on an individual basis using the formula set out in our letter dated March 12, 2014 and reproduced below:

The greater of

$$\text{a) } \frac{[(\text{Cost of goods} + \text{Cost of freight}) + (\text{Cost of goods} + \text{Cost of Freight}) \times 10\%]}{0.25/100}$$

and

$$\text{b) } \$45$$

Livingston is in no way compensated by the blanket insurance provider or its insurance broker for these arrangements, and they are not compensated by Livingston. Further, Livingston's employees do not receive commissions or other incentives or compensation for arranging insurance for cargo customers. Rather, Livingston uses the premiums received from customers to partially offset the cost of its own annual insurance premiums. Total insurance premiums charged to customers for the period in questions are set out in our March 12, 2014 letter: CDN\$605,079.80 [sic]

Attachments to this email included a copy of a sample certificate of insurance issued to the Restricted Agent's customers, which indicates that Aon, in their capacity as the insurance broker, certified that insurance was placed with the underwriting insurer. In subsequent correspondence, the Restricted Agent's counsel advised that the Restricted Agent treated the difference between the cost of insurance premiums it paid and the amount collected from clients as revenue for income tax purposes.

Discussion

In order to prove the allegations in the Report, the AIC must adduce sufficient evidence to demonstrate that the Restricted Agent acted in the capacity of an insurance agent, as defined in the Act, during a period in which it did not hold a valid and subsisting certificate of authority. Once this is done, the onus shifts to the Restricted Agent to demonstrate that it took all reasonable measures to avoid acting as an insurance agent when it did not hold a valid and subsisting insurance agent certificate of authority. The evidence in the Report establishes that the Restricted Agent held a certificate of authority for some

period of time and that the last one expired on October 31, 2009 when the Restricted Agent did not process its renewal. It is equally clear that the Restricted Agent did not obtain another certificate of authority until January 14, 2014. During this period, it extended insurance coverage in approximately 2400 instances.

The definition of “insurance agent” is defined in s. 1(bb) of the Act and it reads as follows:

“insurance agent” means a person who, for compensation,

- (i) solicits insurance on behalf of an insurer, insured or potential insured,
- (ii) transmits an application for insurance from an insured or potential insured to an insurer,
- (iii) transmits a policy of insurance from an insurer to an insured,
- (iv) negotiates or offers to negotiate insurance on behalf of an insurer, insured or potential insured or the continuance or renewal of insurance on behalf of an insurer or insured, or
- (v) enrolls individuals in prescribed contracts of group insurance,

Therefore, in order to find that the Restricted Agent acted as an insurance agent, as alleged in the Report, there must be evidence that it was compensated for one of the activities found in the definition.

In our view, the evidence proves that the Restricted Agent was compensated for its activities. The Restricted Agent admits that it charged and collected insurance premiums for clients who received insurance coverage. The formula upon which clients were charged premiums required that they pay either \$45.00 or an amount based upon the value of the goods shipped, whichever was greater. In our view, it does not matter whether or not the cost of insurance was an exact flow-through and was revenue neutral as a result. Additionally, it does not matter whether or not the compensation was paid by the insurers or AON, The insurance agent definition does not require that compensation be paid by an insurer or another insurance agent. In this case, the compensation was paid directly by the clients to the Restricted Agent.

We further find that the evidence in the Report proves that the Restricted Agent undertook activities that fall under the Act’s insurance agent definition in that it was issuing policy documents to its clients evidencing insurance coverage, the terms and conditions of that coverage and even the claims processes that would be used in the event of loss. While the documents were issued on AON letterhead, the

Restricted Agent was acting in the capacity of an insurance agent, albeit more in the nature of a sub-broker and it required a certificate of authority to act in this manner. Therefore, the Restricted Agent contravened s. 452(1) by acting as an insurance agent without a valid certificate of authority. While we could find that it committed 2372 separate offences (one for each of the policies around which it acted as an agent), we choose instead to treat the period of unlicensed activity as one offence as this is the first time that the Restricted Agent has been sanctioned for unlicensed activity.

In terms of the applicable sanction, we have the ability to levy civil penalties in an amount not exceeding \$1,000.00 pursuant to ss. 480(1)(b) of the Act and 13(1)(b) of the *Certificate Expiry, Penalties and Fees Regulation* (A/R 125/2001). We also have the jurisdiction to suspend its certificate of authority or revoke it for one year. Despite the length of time the Restricted Agent acted without a valid certificate of authority and the number of policies it processed, we do not believe that a civil penalty at the high end of the spectrum would be appropriate. The Restricted Agent's certificate of authority expired and was not renewed due to administrative errors on its part and the conduct did not appear to be intentional. Additionally, it has cooperated through the course of the investigation and took steps to obtain a certificate again. In light of all the evidence, we order that a civil penalty in the amount of \$300.00 be levied against the Restricted Agent. However, the Restricted Agent must recognize the fact that further instances of unlicensed activity (or other prohibited conduct) could expose it to significant penalties if a Council treated each policy as a separate offence.

The civil penalty must be paid within thirty (30) days of receiving this notice. In the event that the civil penalty is not paid within thirty (30) days, the Restricted Agent's certificate of authority will be automatically suspended pursuant to s. 480(4) of the Act. Pursuant to s. 482 of the Act (copy enclosed), the Restricted Agent has thirty (30) days in which to appeal this decision by filing a notice of appeal with the Office of the Superintendent of Insurance.

This Decision was made by way of a motion made and carried at a properly conducted meeting of the General Insurance Council. The motion was duly recorded in the minutes of that meeting.

Date: March 26, 2015

Original Signed By

Louise Clare, Chair
General Insurance Council

Extract from the *Insurance Act*, Chapter I-3**Appeal**

482 A decision of the Minister under this Part to refuse to issue, renew or reinstate a certificate of authority, to impose terms and conditions on a certificate of authority, to revoke or suspend a certificate of authority or to impose a penalty on the holder or former holder of a certificate of authority may be appealed in accordance with the regulations.

Extract from the *Insurance Councils Regulation*, Alberta Regulation 126/2001**Notice of appeal**

16(1) A person who is adversely affected by a decision of a council may appeal the decision by submitting a notice of appeal to the Superintendent within 30 days after the council has mailed the written notice of the decision to the person.

(2) The notice of appeal must contain the following:

- a) a copy of the written notice of the decision being appealed;
- b) a description of the relief requested by the appellant;
- c) the signature of the appellant or the appellant's lawyer;
- d) an address for service in Alberta for the appellant;
- e) an appeal fee of \$200 payable to the Provincial Treasurer.

(3) The Superintendent must notify the Minister and provide a copy of the notice of appeal to the council whose decision is being appealed when a notice of appeal has been submitted.

(4) If the appeal involves a suspension or revocation of a certificate of authority or a levy of a penalty, the council's decision is suspended until after the disposition of the appeal by a panel of the Appeal Board.

Address for Superintendent of Insurance:

Superintendent of Insurance
Alberta Finance
402 Terrace Building
9515-107 Street
Edmonton, Alberta T5K 2C3