

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 Mark Osaka
(the "Adjuster")

DECISION
OF
The Insurance Adjusters' Council
(the "Council")

This case involved an alleged violation pursuant to s. 465(1) of the Act. Specifically, that the Adjuster failed to have active Errors and Omissions ("E&O") insurance coverage. In so doing, it is alleged that the Adjuster subsequently violated s. 480(1)(b) of the Act.

Facts and Evidence

This matter proceeded by way of written Report to Council dated November 8, 2022 (the "Report"). The Report was forwarded to the Adjuster for review, and to allow the Adjuster an opportunity to provide the Council with any further evidence or submissions by way of Addendum.

The Adjuster has been the holder of a Restricted Hail Adjuster Certificate of Authority since June 5, 2020.

On May 18, 2022, the AIC received the Adjuster's application to renew his certificate of authority. In the section of the Application that required the Adjuster to input the status of their E&O insurance, the Adjuster stated, "*none required*".

On July 18, 2022, the AIC investigator sent a Request for Information to the Adjuster requesting the following information:

[...]

AIC received your application for your Hail Adjuster certificate of authority, dated May 18, 2022. In your application you noted in the E&O policy number that no policy number was required. Please provide a copy of your Errors & Omissions insurance policy that was in force at time of license application and that is currently in place [...].

By way of email dated the same, the Adjuster notified the AIC investigator that he was in the process of obtaining E&O insurance coverage.

On July 20, 2022, the Adjuster provided the AIC investigator with a copy of the Adjuster's E&O insurance policy, with a policy coverage period of July 20, 2022 to April 1, 2023.

On July 21, 2022, the AIC investigator requested that the Adjuster provide documentation showing E&O insurance coverage from May 18, 2022.

By way of email dated the same, the Adjuster provided the AIC investigator with the following information:

[...] did not start adjusting till July 10 /22.
My insurance company was supposed to have given me coverage, but [sic] did not have E&O insurance. They did not let me know that till you emailed me.
I had to find one that did and put insurance on as soon as I could.
[...]

On November 8, 2022, the Adjuster provided the AIC investigator with the following additional information:

[...]
I think what you have to realize is that when I was an adjuster with [A.F.S.C.] [redacted] I did not need O &E [sic] insurance , [sic] That [sic] was for 10 years.
Then when I worked for [A.D.] [redacted] I did not need O & E insurance.
Both these company [sic] covered me.
Now when I worked [sic] for [P.A.] [redacted] I needed insurance but did not know that. When you informed me that I needed to have O &E [sic] insurance I got it as quick as I could [...].
It was about 20 days before I could get it but I did get it [...]

Discussion

The Council contemplated s. 465(1) of the Act, which provides that *“Every business and individual that holds a certificate of authority must meet the requirements respecting financial guarantees set out in the regulations.”* (emphasis added). This offence is strict liability in nature. Under a strict liability offence, the AIC has the onus to prove that the Adjuster failed to have active E&O insurance coverage during a period in which they held a certificate of authority. Once this occurs, the onus then shifts to the Adjuster to establish a due diligence defence. The Adjuster must prove that all reasonable means were taken to avoid making the offence. There is no requirement on the AIC to prove the Adjuster's intent.

In consideration of the evidence before it, the Council is satisfied that the Adjuster failed to have the proper E&O insurance coverage in place during the period of May 18, 2022 to July 19, 2022. The Council considered the explanation provided by the Adjuster indicating that the previous companies the Adjuster

was employed by did not require the Adjuster to have E&O insurance coverage. However, the Act specifically states, "Every [...] individual that **holds** a certificate of authority [...]". Given that the Adjuster held a certificate of authority, it is the responsibility of the Adjuster to ensure that he also held valid E&O insurance coverage. The Adjuster has not met the burden of proof to establish a due diligence defence. As such, the Council finds the Adjuster guilty of violating s. 465(1) and has subsequently violated s. 480(1)(b) of the Act.

In terms of the applicable sanction, the Act requires that all holders of certificates of authority have active E&O insurance coverage. Pursuant to s. 13(1)(b) of the *Certificate Expiry, Penalties and Fees Regulation*, A.R. 125/2001, the Council has the discretion to levy a civil penalty in an amount up to \$1,000.00. In consideration of all the evidence, the Council orders that a civil penalty in the amount of \$1,000.00 be levied against the Adjuster.

The civil penalty of \$1,000.00 must be paid within thirty (30) days of the mailing of the Decision. In the event that the civil penalty is not paid within thirty (30) days, interest will begin to accrue at the prescribed rate. Pursuant to s. 482 of the Act (excerpt enclosed), the Adjuster 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 Insurance Adjusters' Council. The motion was duly recorded in the minutes of that meeting.

Dated: March 29, 2023

[Originally Signed By]
Michael Ilnycky, Chair
Insurance Adjusters' 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.

Contact Information and Useful Links for Appeal:

Email: tbf.insurance@gov.ab.ca

Phone: 780-643-2237

Fax: 780-420-0752

Toll-free in Alberta: Dial 310-0000, then the number

Mailing Address: 402 Terrace Building, 9515 – 107 Street Edmonton, AB T5K 2C3

Link: [Bulletins, notices, enforcement activities | Alberta.ca](#) – *Interpretation Bulletin 02-2021 – Submitting Notices of Appeal of Insurance Council Decisions*