

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 Rilanne Pardy
(the "Agent")

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

This case involves an allegation pursuant to s. 480(1)(a) of the Act. Specifically, it is alleged that the Agent submitted a fraudulent automobile claim on the Agent's own policy. In so doing, it is alleged that the Agent is guilty of misrepresentation, fraud, deceit, untrustworthiness or dishonesty, as contemplated by s. 480(1)(a) of the Act.

Facts and Evidence

This matter proceeded by way of a written Report to Council dated April 20, 2023 (the "Report"). The Report was forwarded to the Agent for review and to allow the Agent to provide the Council with any further evidence or submissions by way of Addendum. In arriving at its conclusion, the Council carefully reviewed all evidence presented.

The Agent is the holder of a General Level 2 insurance agent certificate of authority and has been licensed since May 2, 2007.

On September 29, 2022, the AIC received a termination notice (the "Termination Notice") from [W.F.G.N.I.] [redacted] (hereinafter referred to as the "Former Agency"). The Termination Notice stated:

[...]

Please terminate the following license effective **September 28, 2022**:

Rilanne Pardy, license # [License Number] [redacted], **Dismissal with Cause**

Reason: Employee attempted to submit a claim that turned out to be fraudulent.

[...]

[Emphasis added in original document]

On October 12, 2022, the AIC investigator sent a request for information to the Former Agency. The request for information stated:

[...] Further to your September 29, 2022 correspondence notifying the AIC that your company terminated [the Agent] for cause, I write to you to request that you forward the following documentation and information that your company relied on to determine that [the Agent] attempted to submit a fraudulent claim. [...] include the following:

- All documents your company relied on to make the decision to terminate. For example,
 - Any claims forms submitted by agent
 - The review/analysis file which resulted in the claim being denied
 - Any correspondence with agent about this matter
- Any/all other relevant information you relied on to make your decision.

[...]

On October 20, 2022, the Former Agency provided the AIC investigator with a redacted copy of the Investigation Summary Report, dated September 15, 2022 (the “Investigation Summary Report”), prepared by [W.M.I.C.] [redacted] (hereinafter referred to as the “Insurer”).

On November 18, 2022, the AIC investigator sent a request for information to the Insurer. The request for information stated:

[...] The AIC was notified of a termination for cause for [the Agent] as a result of the submission of a fraudulent claim. To assist with my investigation, please provide the following information and/or document [...]:

- All documents your company relied on to make the decision to decline the claim due to fraud. For example,
 - Any claim forms submitted by agent
 - Policy documents/contract for which the claim was submitted on
 - Correspondence between [the Insurer] and [the Agent]
- Any/all other relevant information you relied on to make your decision.

[...]

On November 23, 2022, the Insurer responded to the AIC investigator with the following:

[...] I had a chance to connect with [the Former Agency] regarding this matter as well, and I understand they have provided you with materials. I expect that includes the investigation report, which should provide the comprehensive info you need.

I wanted to touch base to ensure you’ve received sufficient information for your fact-finding. [...]

On November 24, 2022, the AIC investigation requested the following information from the Insurer:

[...]

As per the summary report, the report is prepared to document the findings of the investigation. It is noted that it is based on interviews and supporting documents. We would require the evidence you relied on to determine the claim was fraudulently submitted by the agent, [...].

Further to the request for information, we will require the following:

- All documents your company relied on to make the decision to decline the claim due to fraud. For example,
- Any claim forms submitted by agent
 - Policy documents/contract for which the claim was submitted on
 - Correspondence between [the Insurer] and [the Agent]
- Any/all other relevant information you relied on to make your decision.

[...]

On December 9, 2022, the Insurer provided the AIC investigator with the following information:

1. The Former Agency's Code of Conduct;
2. An unredacted version of the Investigation Summary Report;
3. The Collision Report Form, dated August 26, 2022;
4. The SIU Report dated August 22, 2022 (the "SIU Report"), prepared by the Insurer; and
5. The Statement of Allegation dated September 8, 2022 (the "Statement of Allegation"), sent to the Agent.

The Investigation Summary Report stated, in part:

[...]

Executive Summary:

A report was received by Corporate Compliance on August 29, 2022, advising an employee of [the Former Agency] was complicit in submitting a fraudulent auto claim until a Claims Investigator delved deeper, resulting in the employee requesting the claim be withdrawn. [...]

It was noted that [the Agent] and [T.P.] [redacted] (hereinafter the "Agent's Spouse") stated that [J.L.G.] [redacted] (hereinafter "Passenger 1") was the driver of the vehicle at the time of the accident. [Passenger 1] along with [J.G.] [redacted] (hereinafter "Passenger 2") stated that [the Agent's Spouse] was the driver of the vehicle, creating he said, she said scenario.

On August 18, 2022, [B.B.] [redacted] (hereinafter the "Claims Investigator Sr.") interviewed [the Agent] a second time. [The Claims Investigator Sr.] advised [the Claims Investigator Sr.] had obtained evidence from the Event Data Recorder in the vehicle, including seatbelt status, airbag deployment, and speed of the vehicle just prior to the accident. [The Claims Investigator Sr.] further advised matching DNA from the deployed airbags to everyone in the vehicle was a possibility to aid in determining who was the actual driver of the vehicle during the collision.

On August 22, 2022, [the Agent] contacted [the Claims Investigator Sr.] to advise [the Agent] made a mistake and admitted [the Agent's Spouse] was driving during collision. [...] [The Agent] advised [the Agent] wished to withdraw the claim altogether. Despite [the Agent's] wish, the claim was denied, and a denial letter was approved and distributed on August 26, 2022.

On September 12, 2022, during an interview with Corporate Compliance, [the Agent] recanted [the Agent's] statement and suggested [the Claims Investigator Sr.] misunderstood her. [The Agent] continued to suggest [Passenger 1] as the driver of the vehicle and [the Agent's Spouse] only drove earlier that day.

Due to the inconsistencies from [the Agent], the statements from other persons in the vehicle and the evidence collected from the Event Data Recorder, it is more likely than not that [the Agent's Spouse] was driving the vehicle and [the Agent] willfully submitted a fraudulent claim. Based on this information, the allegation against [the Agent] of fraud is substantiated.

[...]

Summary of Findings:

Interviews were conducted to obtain documentation and facts surrounding this matter.

[Claims Investigator Sr.] (Reporter) – [...]

[The Claims Investigator Sr.] was contacted on August 30, 2022, via Microsoft Teams to discuss claim [Claim Number] [redacted] submitted by [the Agent]. [The Claims Investigator Sr.] advised that the Adjuster, [C.D.] [redacted] (hereinafter the "Inside Claims Representative") spoke with passengers in the vehicle at the time of the accident and a dispute on who was driving the vehicle ensued. Initially [the Agent] advised the driver was [Passenger

1] and both [Passenger 1] and [Passenger 2] are suggesting [the Agent's Spouse] was the driver. This initiated an SIU Investigation.

[...]

On August 18, 2022, [the Claims Investigator Sr.] spoke with [the Agent] a 2nd time and provided [the Agent] with the information obtained from the Event Data Recorder, which outlines inconsistencies in [the Agent's] original statement. On August 22, 2022, [the Agent] contacted [the Claims Investigator Sr.] to request the claim be withdrawn altogether and that [the Agent] would arrange to pick up the vehicle and deal with the damages.

[The Claims Investigator Sr.] noted that [the Agent] and [the Agent's Spouse] knowingly misrepresented the facts on this claim.

[Inside Claims Representative]

[The Inside Claims Representative] initially setup the claim and spoke with [the Agent]. [The Inside Claims Representative] confirmed that [the Agent] stated [Passenger 1] was driving the vehicle throughout the claim process. It was only after speaking with [Passenger 2] did a discrepancy of the driver ensue and referred the claim to SIU for investigation. [The Inside Claims Representative] did not speak with [the Agent's Spouse] or [Passenger 1] at all.

[The Inside Claims Representative] noted [the Agent] advised [the Agent] wished to withdraw the claim on August 22, 2022. However, due to several factors including, payments processed for towing the vehicle, the speed vehicle was travelling at time of accident and [the Agent's] change in statement, the claim was ultimately denied on August 26, 2022. [...]

[The Agent]

[The Agent] was interviewed on September 12, 2022. [...]

[The Agent] confirmed the individuals in the vehicle at the time of the accident on August 1, 2022. [...] [The Agent] noted that [Passenger 1] used to work at [the Former Agency] with [the Agent] until 2017 when [Passenger 1] was let go from the company. [The Agent] suggested that [the Agent] moved into [Passenger 1's] position, and that may be a reason for [Passenger 1] creating this conflict regarding the accident.

[...]

[The Agent] advised that [Passenger 1] was driving the vehicle at the time of the accident. When asked about [the Agent's] statement to [the Claims Investigator Sr.] on August 22, 2022, suggesting [the Agent] was intoxicated, made a mistake, and advised [the Agent's Spouse] was indeed driving, [the Agent] suggested [the Claims Investigator Sr.] must have misunderstood. [The Agent] noted that [the Agent's Spouse] was driving but pulled over due to being tired and [Passenger 1] began to drive. [The Agent] suggested this occurred shortly before the accident.

Discussion ensued regarding the inconsistencies in [the Agent's] statement with the evidence obtained from the Event Data Recorder, including Seatbelt status, Pre-Crash data speed, and airbag deployment. [The Agent] advised [the Agent] has no comments to that and continues to suggest that [Passenger 1] was driving the vehicle.

[...]

Analysis of Findings:

Based on the preponderance of evidence obtained the allegation against [the Agent] is substantiated.

[...]

A. Location of passengers in the vehicle

[Passenger 1] provided a written statement along with photos of the accident. In [Passenger 1's] statement [Passenger 1] noted [the Agent's Spouse] driving at high speeds and that [Passenger 1] was sitting in the backseat, behind the

driver without [Passenger 1's] seatbelt on. [Passenger 1] notes [Passenger 2] yelled for [the Agent's Spouse] to slow down while also in the backseat.

[The Agent] and [the Agent's Spouse] suggest that [Passenger 1] was driving the vehicle and [the Agent's Spouse] sat in the back passenger [sic] seat, behind [the Agent] in front.

The Event Data Recorder shows the seatbelt status for all passengers in the vehicle at the time of collision. It shows that each of the seatbelts were buckled, except for the back, driver side seat. This would corroborate [Passenger 1's] statement that [Passenger 1] was sitting in that position.

[The Agent's Spouse] and [the Agent] both stated they were wearing seatbelts at the time of the collision.
[...]

E. Credibility

Upon submitting the auto claim on August 4, 2022, until August 18, 2022, [the Agent] maintained that [Passenger 1] was the driver of the vehicle at the time of the collision. It was only after speaking with [the Claims Investigator Sr.] on August 18, 2022, where [the Claims Investigator Sr.] presented [the Agent] with the Event Data Recorder evidence did, [the Agent] submit a second audio recorded statement on August 22, 2022, advising [the Agent] was mistaken, and advised [the Agent's Spouse] was indeed the driver. [...]

Despite this recorded statement, [the Agent] advised Corporate Compliance on September 12, 2022, that [Passenger 1] was driving, and [the Claims Investigator Sr.] must have misunderstood [the Agent]. The audio recorded statement is clear and [the Agent] specifically names [the Agent's Spouse] as the driver of the vehicle. [The Agent] did not seem truthful in her answers with Corporate Compliance.

During the interview, [the Agent] did not show any emotion in trying to prove her truthfulness [...]

[The Agent's Spouse] and [the Agent] presented no evidence to show that [Passenger 1] was the driver of the vehicle.

It is more likely than not that [the Agent's Spouse] was driving the vehicle at the time of collision and convinced [Passenger 1] to tell RCMP [Passenger 1] was driving to prevent any financial or legal hardships.

[...]
[Emphasis added in original document]

The SIU Report stated, in part:

[...]

Details Reported:

APD-New claim

[...]

Insd [sic] adv [sic] that [the Agent] friend was driving the vehicle [...].

[...] [The Agent] adv [sic] they were at the friends [sic] house for maybe an hour or two and then **[Passenger 1] drove was driving [sic] home.** [...]

APD-Call to [Passenger 2]

[...]

They told me to say [Passenger 1] was driving [Passenger 1] was not, [Passenger 1] was in the back of the vehicle with me. [...] [The Agent's Spouse] was driving so fast and good think [sic] [the Agent's Spouse] didn't turn or we would all be dead, [the Agent's Spouse] went straight off the corner into the field and hit a post.

They kept telling me to say [Passenger 1] was driving [Passenger 1] was not, [Passenger 1] has a bruise on [Passenger 1's] arm and it will prove it based on the airbags that [Passenger 1] was not in the front seat.

[...]

**I don't know why they want to lie, [...], [Passenger 1] asked and asked to drive we were scared we told [the Agent's Spouse] to slow down [...]
[...] after the accident they tried to ask who they can say who was driving, [...]**

SIU Investigation

Persons mentioned in this report: What I know so far:

[The Agent] [...] -our insured states [the Agent's] friend [Passenger 1] was driving. [The Agent] states [the Agent's Spouse] drove to [Passenger 1] and [Passenger 2's] and then [the Agent's Spouse] drove to a third residence / friends house where they stayed for a couple of hours. [Passenger 1] then drove from the friends [sic] house and got into the collision.

[...]

[Passenger 2] [...] – denies [Passenger 1] was driving. States [the Agent's Spouse] was driving at the time of the collision and [Passenger 2] and [Passenger 1] were in back seat. [...]
[...]

Aug11, 2022 11:18

[...]

11:40 Question to [Passenger 2] [...]

11:44 Response – [...] [The Agent's Spouse] was driving [the Agent] was in the passenger seat and [Passenger 1] was in the back behind [the Agent's Spouse] beside me without a seat belt on. [...]

August 16, 2022, 09:21 – obtained an audio recorded statement from [the Agent's Spouse] that I summarize.

-[...] I got in the back seat with [Passenger 2], sat behind [the Agent]. **So, [Passenger 1] was driving, [the Agent] in the front passenger seat and myself behind [the Agent] in the rear passenger seat. [Passenger 2] was sitting in the back seat behind [Passenger 1] driving. Yes, I was sitting behind [the Agent]. [...]**

August 16, 2022, 10:59 Statement of [Passenger 2] [...] that I summarize.

-[...] we left with [the Agent's Spouse] driving around 10 PM ish. [...]

-[...] Both [the Agent's Spouse] and [the Agent] pressured us to say [Passenger 1] was driving.

-[Passenger 2] was in the rear passenger side, [Passenger 1] was next to [Passenger 2] behind the driver. [...] [The Agent's Spouse] was driving and [the Agent] was sitting next to him.

-when we left [...] [the Agent's Spouse] said [Passenger 1] was not allowed to drive. [...] [The Agent's Spouse] was driving when we left there [...]

August 16, 2022, 1:12 PM Statement of [Passenger 1] [...] that I summarize.

[...]

-[...] We left [...]. [the Agent's Spouse] driving. [...] [The Agent's Spouse] and [the Agent] did not want us to say [the Agent's Spouse] was driving and asked me to say I was driving. [...]

Our driver, [the Agent's Spouse] started going through the gears and picking up speed. [...]

We were nearing the first curve and [Passenger 2], yelled for [the Agent's Spouse] to "slow down".

[...]

August 18, 2022, 10:30 – Results of the vent Data Recorder from [A.B.F.] [redacted] (hereinafter the “Forensic Engineers”);

Seatbelt Status:

5.1. Seatbelt status

The EDR had the capability to store data relating to seatbelt use for the driver, front passenger, and both rear passengers, [...]. The EDR data shows:

- Safety Belt Status for the Driver was “Buckled”
 - Safety Belt Status for the Front Passenger was “Buckled”
 - Safety Belt Status for the Second Row, Driver side was “Unbuckled”
 - Safety Belt Status for the Second Row, Front Passenger side was “Buckled”
- [...]

August 18, 2022, 12:15 PM Statement of [the Agent] [...] that I summarize:

-[...] when we left [the Agent’s Spouse] was driving and [the Agent’s Spouse] was really tired, so [Passenger 1] offered to drive. I was in the front with [Passenger 1], [Passenger 2] behind me and [the Agent’s Spouse] behind [Passenger 1]. [...]

Q. What were the final seating positions in the car? A. [Passenger 1] driving, me sitting next to [Passenger 1] in the front, [the Agent’s Spouse] in the back behind [Passenger 1] and [Passenger 2] behind me.

Q. Were you wearing your seat belt? A. Of course, Q. Was [the Agent’s Spouse]? A. Of course.

Q. According to the Event Data Recorder all the seatbelts were showing buckled except the one behind the driver seat where [Passenger 1] said [Passenger 1] was sitting. [Passenger 1] was the only one of the 4 of you who said [Passenger 1] was not wearing [Passenger 1’s] seatbelt. [...]

Aug 22, 2022, 09:11 Received text from [...] [the Agent]: [...]

09:14 Phoned [...] and obtained quick withdrawal statement from [the Agent].

-[The Agent] says [the Agent] made a mistake and did not realize [the Agent’s Spouse] was driving [...]

[...]

Investigation summary

-On August 3, 2022, [the Agent] reported to [the Insurer] that their [vehicle make] [redacted] was involved in a collision and [Passenger 1] was driving.

-both [Passenger 1] and [Passenger 2] denied this from the start with [the Insurer] and both said [the Agent’s Spouse] was driving.

-[Passenger 1] had told the RCMP at the scene [Passenger 1] was driving and had the key fob [...]. [Passenger 1] said [Passenger 1] did this to help [the Agent] and [the Agent’s Spouse].

-[...]

-On August 18, 2022, an audio recorded statement was obtained from [the Agent] and [the Agent’s Spouse]. Both maintained [Passenger 1] was driving at the time of the collision.

-On August 22, 2022, [the Agent] provided another audio statement requesting the claim be withdrawn and that they would pick up [vehicle] [redacted] and deal with the damages.

-[The Agent] and [the Agent's Spouse] KNOWINGLY Misrepresented the facts on this claim.

[...]

[Emphasis added in original document]

The Statement of Allegations stated, in part:

[...]

An allegation has been received against you, which if proven true, would violate [the Former Agency's] Code of Conduct. A copy of the policy has been attached for your review.

The Company's Code of Conduct policy outlines what constitutes misconduct, including fraud on page 6. Furthermore, page 3 outlines [the Former Agency's] Guiding Principles, including Truthfulness, and page 4 states that all employees are expected to abide by the Code Principles and advises that violations of the policy will be investigation which may result in disciplinary action, up to and including termination.

Allegations:

Fraud

Summary of Allegations:

It is alleged to you ([the Agent]) submitted false claim information regarding an auto accident that occurred on August 1, 2022.

Detailed Allegations:

- You submitted a claim with the insurance provider on August 3, 2022, regarding an auto accident involving 1 vehicle.
- You advised that the driver was a friend named [Passenger 1] and two other passengers were in the vehicle: [the Agent's Spouse] and [Passenger 2], along with yourself.
- On August 18, 2022, statements were recorded from yourself and [the Agent's Spouse] who maintained that [Passenger 1] was driving at the time of the accident.
- On August 22, 2022, you provided a second statement requesting the claim be withdrawn due to a mistake on your part, not realizing [the Agent's Spouse] was the driver of the vehicle.

[...]

[Emphasis added in original document]

In the same email of December 9, 2022, the Insurer also provided a copy of the following, recorded investigation meetings with the Agent:

1. Statement of the Agent, August 18, 2022 (the "August 18 Statement"); and
2. August 22, 2022 Statement of the Agent (the "August 22 Statement").

Subsequent to receiving the recordings from the Insurer, the AIC investigator created a typed transcript of the August 18 Statement and the August 22 Statement.

The August 18 Statement provided, in part:

[...]
00:02:20 [The Agent] [...] Ummm actually, no initially when we first got to that place, I had asked [Passenger 1] if there was a possibility of [Passenger 1] driving if either one of us wasn't fit to and [Passenger 1] said that would be OK. Ummm and then so when we went to leave [the Agent's Spouse] was tired, but [the Agent's Spouse] started to drive. And I don't know how far that we drove before [Passenger 1] said that [Passenger 1] thought that [Passenger 1] should drive because [the Agent's Spouse] was too tired to drive on an unfamiliar road at dark, and then so they switched seats and [Passenger 1] was driving [...]

00:05:53 [Claims Investigator Sr.] [...] So when they pulled over then can you, you know, the final seating position, what were the final seating positions?

00:06:01 [The Agent] [The Agent's Spouse] was sitting behind me. [Passenger 1] was in the driver's seat and uh [Passenger 2] was behind [Passenger 1].
[...]

00:07:37 [Claims Investigator Sr.] [...] what did [Passenger 1] tell the police there about the collisions you remember or what did you guys, you had a conversation with the police?

00:07:46 [The Agent] [Passenger 1] did, [Passenger 1] said [Passenger 1] told them that [Passenger 1] was driving the car.
[...]

00:08:03 [Claims Investigator Sr.] [...] So what we have right now [the Agent] is a basically a, he said, she said kind of thing because [Passenger 2] and [Passenger 1] are saying that [the Agent's Spouse] was driving and yourself and [the Agent's Spouse] are saying [Passenger 1] was driving, right?

00:08:22 [The Agent] Yes
[...]

00:10:11 [Claims Investigator Sr.] [...] Were you wearing your seat belt at the time?

00:10:56 [The Agent] Of course.

00:10:58 [Claims Investigator Sr.] Was [the Agent's Spouse] in the back seat wearing [the Agent's Spouse's]?

00:11:01 [The Agent] Of course.

00:11:02 [Claims Investigator Sr.] Ok. And [Passenger 2] said [Passenger 2] was wearing [Passenger 2's]. Well, the only person that said out of the four of you, they weren't wearing a seat belt was [Passenger 1]. [Passenger 1] said [Passenger 1] was not wearing a seat belt. Guess which seat belt was not buckled up when the event data recorder recorded that collision?

00:11:21 [The Agent] I have no idea.

00:11:22 [Claims Investigator Sr.] It was the seat behind the driver in the back seat. So that seat belt was not buckled up and that's where [Passenger 1] said [Passenger 1] was sitting. [...] But since [Passenger 1] was the only one said [Passenger 1] wasn't wearing a seat belt. That would indicate [Passenger 1] was in the back seat.
[...]

The August 22 Statement provided, in part:

[...]
00:00:45 [The Agent] Uh Yeah, I umm made an error when I was reporting my claim [...] I wasn't aware of who was driving umm after I got out of the car, [Passenger 1] told me that [Passenger 1] was driving so, that wasn't true I guess, but.

00:01:05 [Claims Investigator Sr.] K, so who was driving?

00:01:08 [The Agent] It was [the Agent's Spouse]

00:01:10 [Claims Investigator Sr.] [The Agent's Spouse] was driving, k

00:01:11 [The Agent] Yes

00:01:12 [Claims Investigator Sr.] yeah [the Agent's Spouse] told me [the Agent's Spouse] was driving. So, uh,

00:01:16 [The Agent] Sorry

00:01:17 [Claims Investigator Sr.] [The Agent's Spouse], or sorry, uh, [the Agent's Spouse] told me [the Agent's Spouse] was was [sic] not driving at the time when I got [the Agent's Spouse's] statement, hey?

00:01:23 [The Agent] Yes

00:01:24 [Claims Investigator Sr.] yeah, so [the Agent's Spouse] was driving so you

00:1:27 [The Agent] [The Agent's Spouse] was
[...]

On December 13, 2022, the AIC investigator sent the Agent a request for information by way of email and priority mail. The request for information stated:

[...]
The AIC received a termination for cause notice citing the reason was for the submission of a fraudulent claim. To assist in my investigation, please provide the following information and/or documents, [...]:

- A detailed timeline and explanation of the events that pertain to this matter;
- Any other information or documentation which you feel may assist in the understanding of the material facts.

[...]

On January 3, 2023, the Agent responded to the AIC investigator with the following:

[...]
The whole issue with a miscommunication/misunderstanding between the claims [sic] investigator and myself. I was confused about what [the Claims Investigator Sr.] was asking me.
[...]

On May 4, 2023, the Agent provided the following documents:

1. A letter dated May 4, 2023 (the "May 4 Correspondence"); and

2. An undated letter (the “Undated Correspondence”).

The May 4 Correspondence stated:

[...]

I have maintained my innocence throughout this process and continue to do so.

I became confused and felt threatened by the investigator which caused me to say what I felt [the Claims Investigator Sr.] was asking me to say. I tried to correct the miscommunication with the compliance officer to no avail.

I feel it is important to mention that the claims investigator had told me that the claim was going to be denied due to the speed of the vehicle. I attempted to withdraw the claim as a result of what I was told. I did not understand the point of wasting any more resources on a claim that would ultimately be denied.

I have read in the report that I had seemed unconcerned about the loss I took on our new vehicle but that was and is still far from the truth. [...]

The Undated Correspondence stated:

[...]

The investigator believed that we were attempting to make a false claim to avoid the consequences of an accident on our policy. We both had accident waiver endorsements so an at fault loss would not have increased our rates. [...]

When I spoke with the claim investigator [the Claims Investigator Sr.’s] tone and questions got me confused, [sic] and feeling intimidated. I still feel that I misunderstood what was being asked of me at times during the phone call. [...]

Page 5 B – In my 15 years working in the insurance industry, I was never aware that the speed that a vehicle is travelling could affect the outcome of a claim. I was not aware of the speed of the vehicle [...].

Page 5 D – Referring to [Passenger 1’s] account of events, I believe that [Passenger 1] was driven by a motive of revenge. [Passenger 1] was terminated from [Passenger 1’s] job, which [Passenger 1] had trained me for. The reason for [Passenger 1’s] termination had more to do with her absenteeism, but it was widely known that [Passenger 1] was training me to take [Passenger 1’s] place.

Section E – Credibility – Regarding the statement, “[The Agent] did not show any emotion in trying to prove [the Agent’s] truthfulness” made by the compliance officer. Again, I was feeling stressed about the situation, [...]. Again, I had to make use of my [...] medication. Looking back on it, I should have advised the compliance officer of this. The [medication] [redacted] would easily make me appear docile or too calm.

At no time did I ever ask [Passenger 1] to claim [Passenger 1] was driving. [...] [The Agent’s Spouse] said [the Agent’s Spouse] was going to find help and got lost, doing so [the Agent’s Spouse] also lost [the Agent’s Spouse’s] footing and fell down which is what [Passenger 2] witnessed. The reason why I didn’t speak to the RCMP at the scene is because I was looking for [the Agent’s Spouse], [...].

There is no way to verify that the bruise on [Passenger 1’s] arm was a result of this accident. [...]

I also believe that the council should know that both [Passenger 1], and [Passenger 2] have tried to tarnish our reputation in this small town by spreading rumors and lies about us.
[...]

Discussion

In order for the Council to conclude that an agent has committed an offence pursuant to s. 480(1)(a) of the Act, the Report must prove, on the basis of clear and cogent evidence, that it is more likely than not that the Agent committed

the act as alleged. The Council is cognizant that findings of guilt under s. 480(1)(a) can dramatically impact an insurance agent's ability to remain in the industry. Therefore, the Council carefully weighs all evidence before it before reaching its' Decision.

The applicable legal test to determine the Agent's guilt in violating s. 480(1)(a) of the Act is set out in the Court of Queen's Bench of Alberta Decision, *Roy v. Alberta (Insurance Councils Appeal Board)*, 2008 ABQB 572 (hereinafter referred to as "Roy"). In *Roy*, the Life Insurance Council found that an agent violated s. 480(1)(a) of the Act by attesting to completing the required continuing education hours when he did not, in fact, complete the required continuing education hours. The *Insurance Councils Appeal Board* also found the agent guilty on appeal. The agent advanced the decision to the Court of Queen's Bench of Alberta.

In his reasons for judgment dismissing the appeal, Mr. Justice Marceau wrote as follows at paragraphs 24 to 26:

[24] The *Long* case, albeit a charge under the Criminal Code of Canada where the onus of proof is beyond a reasonable doubt (not on a preponderance of evidence as in this case), correctly sets out the two step approach, namely the court or tribunal must first decide whether objectively one or more of the disjunctive elements have been proven. If so, the tribunal should then consider whether the mental element required has been proved. While the Appeal Board said it was applying the Long decision, it did not make a finding as to whether step 1 had been proved with respect to each of the disjunctive elements. Rather it immediately went into a step 2 analysis and found that the mental element required for untrustworthiness might be less than the mental element required for fraud (as a given example).

[25] I am of the view that statement was in error if it was made to convey a sliding scale of *mens rea* or intent depending on which of the constituent elements was being considered. In my view, **the difference between the disjunctive elements may be found in an objective analysis of the definition of each** and certainly, as demonstrated by the Long case, what constitutes fraud objectively may be somewhat different from untrustworthiness. However **once the objective test has been met, one must turn to the mental element.** Here to decide the mental element the Appeal Board was entitled, as it did, to find the mental element was satisfied **by the recklessness of the Applicant.**

[26] While the language used by the Appeal Board may be characterized as unfortunate, on this review on the motion of the Applicant I need not decide whether the Appeal Board reasonably could acquit the Applicant on four of the disjunctive elements. Rather, the only matter I must decide is whether the Appeal Board **acting reasonably could conclude, as they did, that the Applicant's false answer together with his recklessness justified a finding of "untrustworthiness".**

[Emphasis added]

The Decision of the *Insurance Council's Appeal Board* (of Alberta) was subsequently upheld, its' findings confirmed, and the agent was found guilty of an offence pursuant to s. 480(1)(a) of the Act.

The evidence in these types of cases is based on the concept of "*clear and cogent*" evidence. In *The Matter of the Appeal of Arney Falconer*, Chairperson Hopkins dealt with this principal of clear and cogent evidence and provided as follows:

The Life Insurance Council stated in the Decision that there is a requirement “for ‘clear and cogent evidence’ because our findings can dramatically impact an insurance agent’s ability to remain in the industry”. However, the requirement for clear and cogent evidence does not mean that the evidence is to be scrutinized any differently than it should be in any other civil case. **In all civil cases evidence must be sufficiently clear, convincing and cogent to satisfy the balance of probabilities.** In *F.H. v. McDougall* 2008 SCC) [sic]; [2008] 3 S.C.R. 41 the Supreme Court of Canada states:

[45] To suggest that depending upon the seriousness, the evidence in the civil case must be scrutinized with greater care implies that in less serious cases the evidence need not be scrutinized with such care. I think it is inappropriate to say that there are legally recognized different levels of scrutiny of the evidence depending upon the seriousness of the case. There is only one legal rule and that is that in all cases, evidence must be scrutinized with care by the trial judge.

[46] Similarly, evidence must always be sufficiently clear, convincing and cogent to satisfy the balance of probabilities test. But again, there is no objective standard to measure sufficiency. In serious cases, like the present, judges may be faced with evidence of events that are alleged to have occurred many years before, where there is little other evidence than that of the plaintiff and defendant. As difficult as the task may be, the judge must make a decision. If a responsible judge finds for the plaintiff, it must be accepted that the evidence was sufficiently clear, convincing and cogent to that judge that the plaintiff satisfied the balance of probabilities test.

Contraventions of s. 480(1)(a) are *mens rea* offences that require proof of intent, knowledge, or recklessness on a balance of probabilities. Section 480(1)(a) of the Act reads:

If the Minister is satisfied that the holder or a former holder of a certificate of authority has been guilty of misrepresentation, fraud, deceit, untrustworthiness or dishonesty, [...] the Minister may revoke, suspend or refuse to renew or reinstate one or more of the certificates of authority held by the holder, impose terms and conditions provided for in the regulations on one or more of the certificates of authority held by the holder and impose a penalty on the holder or former holder.

The Report alleged that the Agent was guilty of fraud, deceit, dishonesty, untrustworthiness and/or misrepresentation as contemplated by s. 480(1)(a) of the Act when the Agent submitted a fraudulent automobile claim in the Agent’s own policy.

The Council was concerned by the multiple inconsistencies in the statements made by, not only the passengers in the vehicle, but also the Agent’s multiple statements. Between the date of the claim and the August 22 statement, the Agent maintained the position that Passenger 1 was driving the vehicle at the time of the accident. However, after being informed that the Insurer had information from the Event Data Recorder, the Agent changed the position in the August 22 Statement by stating, “[...] I umm made an error [...] I wasn’t aware of who was driving [...]”.

Despite the Agent ultimately changing the initial statement made on August 18, 2022 naming Passenger 1 as the driver of the vehicle, to implicate the Agent’s Spouse as the driver of the vehicle in the statement of August 22, 2022, the Agent stated in the May 4 Correspondence, “I became confused and felt threatened by the investigator which caused me to say what I felt [the Claims Investigator Sr.] was asking me to say.” The Council was concerned by the Agent’s lack of credibility and truthfulness and the Agent’s inability to take responsibility for her actions.

In light of the Agent's change in story throughout the Insurer's investigation process and the Agent's inability to take responsibility for the false statements made during the claims process, the objective and subjective elements of the applicable legal test under s. 480(1)(a) of the Act are met. This was intentional conduct, and it is fraud, deceit, dishonesty, untrustworthiness and/or misrepresentation as contemplated by s. 480(1)(a) of the Act.

The Council believes that a substantial civil penalty is warranted under the circumstances and reiterates that honesty and transparency are hallmarks of a trustworthy insurance agent. Given the seriousness of the breach, the Council orders that a civil penalty in the amount of \$5,000.00 be levied against the Agent, pursuant to s. 36.1(1)(a) of the *Insurance Agents and Adjusters Regulation*, AR 122/2001. Council also has the ability to order that the certificate of authority be revoked for one year or suspended for a period of time. The Agent was granted and currently holds an active certificate of authority, this certificate of authority provides the Agent with a protective title to act as an insurance agent and to perform specialized and specific duties. Given the actions of the Agent, the Council orders that the Agent's certificate of authority be revoked for the period of one year. The revocation shall commence immediately upon the service or attempted service of this Decision.

The civil penalty must be paid within thirty (30) days of the date the decision is mailed. In the event that the civil penalty is not paid within thirty (30) days, interest will begin to accrue. Pursuant to s. 482 of the Act (copy enclosed), the 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: July 12, 2023

[Original Signed By]

Janice Sabourin, Chairperson
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.

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*