

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 Bulldog Benefits Inc.
(the "Agency")

And

As represented by Wade Caughlin
(Designated Representative ("DR"))

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

This case involved an alleged violation pursuant to s. 465(1) of the Act. Specifically, that the Agency failed to have adequate Errors and Omissions ("E&O") insurance coverage between November 1, 2022 and March 16, 2023. In so doing, it is alleged that the Agency subsequently violated s. 480(1)(b) of the Act.

Facts and Evidence

This matter proceeded by way of a written Report to Council dated September 5, 2023 (the "Report"). The Report was forwarded to the Agency for review, and to allow the Agency an opportunity to provide the Council with any further evidence or submissions by way of Addendum.

The AIC conducted an E&O Audit in March 2023, which sought to verify that E&O coverage was in place, as disclosed on the licensees' 2022/23 renewal application. The auditees were selected at random and asked to provide proof of current E&O coverage in compliance with s. 465 of the Act and ss. 33 and 35 of the *Insurance Agents and Adjusters Regulation*, AR 122/01 (the "Regulation"). The Agency was selected as an auditee and, in this instance, was asked to provide proof of current E&O coverage.

The Agency has been the holder of both Life and Accident and Sickness ("A&S") certificates of authority since November 1, 2022.

On March 7, 2023, the AIC sent a demand for information (the “Demand”) to the Agency, via email, which provided a deadline of April 12, 2023, to respond. The Demand sought the following:

[...]

The AIC is conducting an audit to confirm your compliance with section 465 of the Act and sections 33 and 35 of the *Insurance Agents and Adjusters Regulation*, AR 122/2001, relating to E&O insurance. Following the 2022/23 license renewal period, it came to the attention of the AIC that some E&O policies were inaccurately sold to agencies. As such, please provide E&O coverage details of your current E&O insurance policy. The following documents may be submitted by email [...]:

- A copy of an E&O insurance policy summary page(s) showing coverage is currently in place;

[...]

On March 30, 2023, the AIC sent a reminder to the Agency, via email, to respond to the Demand by the deadline provided in the original Demand.

By way of email dated the same, the DR for the Agency provided the AIC with his personal E&O insurance policy.

On April 3, 2023, the AIC requested the following information from the Agency:

[...]

Thank you for your email, we have reviewed the documents provided. Please note your policy must be issued in the name of the business that holds the certificate of authority (license). You may include multiple corporations on your policy, **however they all must be listed as a named insured to meet the requirements in Alberta, and cannot be covered through vicarious liability.** The current Alberta license under audit shows “Bulldog Benefits Inc.” and therefore will need to be updated as a named insured as shown below. If you already have entity E&O insurance for Bulldog Benefits Inc. on a separate policy, please provide.

CERTIFICATE NUMBER: SLC***** [redacted]

INSURED: [Corporation 1] [redacted]
 Bulldog Benefits Inc.

It is also important to note that any certificate of insurance issued must match exactly to the policy issued by the insurer. [...]

[Emphasis added in original document]

On April 4, 2023, the Agency again provided a copy of the DR’s personal E&O policy.

On April 12, 2023, the AIC requested the following from the Agency:

[...]

Do you have separate E&O insurance coverage for Bulldog Benefits Inc?

[...]

On April 13, 2023, the Agency indicated they have E&O insurance coverage in the name of the Agency.

On April 18, 2023, the AIC requested a copy of the E&O insurance coverage in the name of the Agency.

By way of email dated the same, the Agency provided proof of the E&O insurance coverage effective March 16, 2023 to November 1, 2023.

On April 24, 2023, the AIC requested the following information from the Agency:

[...]

Please also forward your 2022-2023 E&O entity insurance for Bulldog Benefits.

[...]

On April 25, 2023, the Agency provided the following information to the AIC:

Sorry I don't know what the difference is. I have E&O for my Proprietorship with [Insurer 1] [redacted], and a 2nd policy for Bulldog. Are you saying I need a 3rd policy??

[...]

By way of email dated the same, the AIC requested the following from the Agency:

[...]

Sorry for any confusion, the documents you sent were for the policy period of April 1, 2023-April 1, 2024. Since your renewal for Bulldog Benefits occurred during our audit, we will also require the E&O certificate for the April 1, 2022-April 1, 2023 policy period. I hope that clarifies what we are looking for.

[...]

On April 26, 2023, the Agency provided the AIC with the following information:

Oh I see, well we literally just started the company and this is the first year of business, the current E&O is our first policy ever.

[...]

On August 4, 2023, the Agency provided the AIC with the following information:

[...]

I'll start by saying that this is catching me off guard, but at the same [sic] time, have intention of clearing this up with yourself and AIC.

I've been licensed since mid 2000, so about 23yrs, [...] and had E&O personally this whole time. And have always been in good standing. I believe I was under the false impression my existing E&O was sufficient.

I had never gone through the process of setting up a corporation before and didn't understand the differences between me holding E&O personally and my new company needing it. That being said as soon as I was notified of the situation I made every attempt to fix it right away.

Bulldog couldn't do any business before Jan. 2023 anyway [...]. I was just trying to get the company set up properly before January 2023 so I could start doing business at that time. It was early 2023 that I started the process of getting contracts with different insurance companies to run my Group Insurance business through, and it was brought to my attention that I needed separate E&O so I went and fixed that ASAP.

I defiantly [sic] tried to do everything properly and answered everything as I believed to be true at the time. I had no intention of doing anything wrong and apologize if I did.

[...]

On August 8, 2023, the Agency provided the “Errors and Omissions Liability Insurance for Life/Accident & Sickness and Mutual Fund Agency” showing the named insured as the Agency and a policy period of March 16, 2023 to November 1, 2023.

On September 6, 2023, the Agency provided the AIC with the following information:

[...]

I’ve been trying to find the relevant emails with [Insurer 2] [redacted] all day between meetings, and finally tracked them down. It shows them asking for different E&O on march [sic] 14th, which led to a conversation and them explaining what I needed to get contracted. It then finishes with them issuing a broker code for me on May 4th. I also have an email from [Insurer 3] [redacted] on May 26th issuing a broker code.

I will write up a formal explanation letter/amendment to present this to the AIC, but I believe this all supports my explanation that I was not doing business in the 4 months between Bulldog being licensed and having its own E&O policy.

I simply failed to understand the process to correctly set the company up, but it was corrected before I did business and no clients were put at risk.

[...]

On September 12, 2023, the Agency provided the following additional information to the AIC:

[...]

Regarding the issue at hand, where Bulldog Benefits Inc. did not have proper E&O insurance from Nov. 1, 2022 to March 16th, 2023.

- First, I wish to make clear that I’ve had E&O for myself for 23yrs as a sole proprietor working with [Insurer 1] [redacted] with no issues or gaps in coverage whatsoever.
- Bulldog Benefits is a brand-new company and 2023 is currently its first year of business, who’s [sic] sole purpose was for me to run Group Benefits business through.
- As such Bulldog Benefits was not in active business during the 4 months in question. There were no contracts in place with any insurance companies to do business with Until [sic] after the E&O was properly placed on March 16th 2023. Ironically, I only applied for the license in November 2022 for the sake of being prepared for the application processes with the insurance companies I intended to pursue in 2023.
- The first insurance company that I applied for a contract with was [Insurer 2] [redacted]. The application process is very strict, and they make sure all agents are properly licensed and insured. It was at this point that I was informed I needed a second E&O policy for Bulldog and that my current E&O would not suffice.
- I immediately took action to correct this. [...]
- To this point, Bulldog Benefits was properly covered by E&O before any Group Insurance business was done, as such no clients were put at risk at any point.
- The period of time in question was the time I was setting aside to set the company up, and get contracted properly to do business. [...]. So I will emphasize again, I had no group clients during this time and as such no clients were at risk.
- Bulldog Benefits is the first time I have ever gone through the process of setting up a corporation myself, to do business through. My entire 23yr career with [Insurer 1] [redacted] I have been a Sole Proprietor, [...]. This is where my initial confusion came from and because even though I have licenses with my Trade Name, I only needed a single E&O policy to satisfy the requirements. I incorrectly assumed the same regarding Bulldog Benefits. This was obviously a mistake, and it bothers me greatly that I fumbled the process.

[...]

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 Agency failed to have adequate E&O insurance coverage. Once this occurs, the onus then shifts to the Agency to establish a due diligence defence. The Agency must prove that all reasonable means were taken to avoid making the offence. There is no requirement on the AIC to prove the Agency’s intent.

In consideration of the evidence before it, the Council is satisfied that the Agency failed to have adequate E&O insurance coverage from November 1, 2022 to March 16, 2023. The Council considered the DR’s explanation which stated, “*This is where my initial confusion came from and because even though I have licenses with my Trade Name, I only needed a single E&O policy to satisfy the requirements. I incorrectly assumed the same regarding Bulldog Benefits.*” However, the Act specifically states, “*Every business [...] that **holds** a certificate of authority [...]*”. Given that the Agency held both Life and A&S certificates of authority, it is the responsibility of the Agency to ensure that they had valid and proper E&O insurance. Therefore, the Agency has not met the burden of proof to establish a due diligence defence. As such, the Council finds the Agency 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. 36.1(1)(b) of the *Insurance Agents and Adjusters Regulation*, A.R. 122/2001, the Council has the discretion to levy a civil penalty in an amount up to \$1,000.00. In consideration of the length of time the Agency was without E&O insurance, the fact that the Agency was not conducting insurance business and the immediate action taken by the Agency to obtain E&O insurance coverage, the Council orders that a civil penalty in the amount of \$300.00 be levied against the Agency.

The civil penalty of \$300.00 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 Agency 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 Life Insurance Council. The motion was duly recorded in the minutes of that meeting.

Dated: January 31, 2024

[Original Signed By]
Usman Mahmood, Vice-Chair
Life 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*