

DECISION
of the
GENERAL INSURANCE COUNCIL OF MANITOBA
(“Council”)
respecting
EDWARD TETRAULT (“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*.

Following the receipt of a consumer complaint that the Licensee failed to follow instructions to add coverage to an existing policy, resulting in an uncovered consumer financial loss in a subsequent claim, 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 *its Regulations*, and/or *its Rules*, and/or the General Insurance Agent Code of Conduct (“*Code of Conduct*”). During the investigation, the Licensee was provided an opportunity to make submissions.

On February 28, 2018, during a meeting of the Council, the evidence compiled during the investigation and the position of the Licensee was reviewed. Upon assessment of the evidence, Council determined its Intended Decision. Pursuant to section 375(1) and 375 (1.1) of the *Act* and *Regulation 227/91*, the Council confirms its decision and corresponding reasons.

ISSUES

1. Did the Licensee fail to provide proper advice regarding coverages, limits and restrictions?
2. Did the Licensee fail to add business interruption coverage as instructed by Complainant A and Complainant B (the “Complainants”)?
3. Did the Licensee violate the privacy of the Complainants by discussing their policy in front of a third party without their permission?

FACTS AND EVIDENCE

1. At all material times, the Licensee was a Level 2 general insurance agent representing the Agency.
2. On November 2, 2015, the Licensee provided a quote for the Complainants' business. This quote included: Building - \$500,000.00 limit, Replacement Cost Basis, 90% co-insurance, and a \$1,000.00 deductible. Included was Loss of Income, Profits form – Actual Loss Sustained.
3. Complainant A noted that when they first arranged the coverage she asked, "The quote u gave us are we able to shave it down a bit...Maybe take wage loss off and replacement at \$400k".
4. According to Complainant A, when the Licensee explained business interruption at the time they purchased their first policy, she understood it to be wage loss. As the Complainants were not taking wages, they did not believe that they needed the coverage.
5. Complainant A advised that their December 2015 policy did not arrive until July/August of 2016, after four requests for the policy.
6. In September 2016, while the Licensee attended the Complainants' business, the Licensee began discussing the renewal coverage on the Complainants' establishment with Complainant A, specifically business interruption, in front of a mutual acquaintance. The Licensee noted that the policy was coming due for renewal and he had identified that the policy did not provide that coverage.
7. At Complainant A's request, the Licensee met with the Complainants in a part of the business away from the public to discuss the coverage. All agreed to add it to the upcoming policy renewal, and the Licensee confirmed he would do so. At the time, the Complainants advised that an alarm system had been installed.
8. On November 2, 2016, the Complainants received an email from licensed Agent A requesting information for the renewal. Agent A was a colleague of the Licensee who assisted the Licensee with files when he was unavailable.
9. Included in the November 2, 2016, email was: 6) Any changes required to limits or operations.
10. This was followed up via email on November 22, 2016. Although the email had indicated "There is a question regarding BI coverage", Complainant B did not recall

a discussion with Agent A at that time. Complainant A believed that the Licensee did tell Agent A to add the coverage because of the email.

11. Between November 22, 2016 and December 2, 2016, Agent A and Complainant A held several telephone discussions regarding other business activities. Complainant A stated that she remembered saying to Agent A that they had to add cover for wages and bills in a loss and he corrected her with the term business interruption.
12. During the first week of December (*renewal date December 3*), Complainant A confirmed by telephone that coverage was in place, and the amount of the bill. As the bill was slightly higher, Complainant A assumed the coverage had been placed for business interruption.
13. The Complainants suffered a water damage loss on January 5, 2017. They were advised by the adjuster that they did not have business interruption coverage.
14. When Complainant A contacted the Licensee regarding the fact that there was no business interruption, the Licensee stated that it had just slipped his mind. He stated that he was going to see if it could be added since it was his error. Later he advised that it would not be added as too much time had passed.
15. During the phone conversations between the Licensee and Complainant A, the Licensee stated that he felt badly, and he was trying to get management to pay for half of the deductible on the Errors & Omissions (E&O) policy as his deductible was \$10,000.00. The Licensee asked for a settlement statement to pass along to his management.
16. On February 24, 2017, the Complainants forwarded a statement for the period of January 5, 2017 to April 30, 2017, the expected date of reopening, for an amount of \$34,919.71 plus \$5,000.00 total profit lost. The Complainants received no response. The Licensee noted that management did not believe there to be a claim and that the Complainants might need to take them to court. If so, the Licensee would not lie in court.
17. On January 11, 2017, business interruption coverage was added. (*Additional coverage for property was added effective February 16, 2017.*)
18. On March 1, 2017, the Licensee left for an extended trip outside of Canada.
19. The Agency's CEO advised Complainant A that during a review of the previous policy, it was noted that the Complainants had declined business interruption and

there was no coverage. He suggested a full liability claim against the Agency rather than an agency settlement.

20. On August 22, 2017, the Complainants received a call from the adjuster advising them that they did not meet the requirements of the 90% co-insurance clause for replacement cost and would be penalized \$21,857.65 toward the rebuild.
21. The Complainants provided information to the Agency's E&O carrier but were advised in a letter dated September 6, 2017, from the carrier's legal representative, that there was no negligence on the part of the Agency.
22. The Complainants believed that the Licensee failed to advise Agent A to add the business interruption and/or Agent A failed to pursue the coverage.

The Licensee's response - January 2, 2018

23. The Licensee advised that the issue of building limits was discussed with the Complainants prior to the placement of insurance. He advised them to insure the building for \$500,000.00. The Complainants provided a business valuation of the building that was far too low. He advised that the valuation was inadequate, as it was not based on replacement cost, and suggested that the Complainants obtain a building estimate from a contractor. The Licensee discussed the limits of liability and how co-insurance would affect them.
24. In his initial discussion with the Complainants, the Licensee reviewed the importance of business interruption and the expenses that would be covered. The original quote from Insurer A included business interruption coverage.
25. Insurer A's quote produced on October 26, 2015, stated a building valuation of \$500,000.00 with 90% co-insurance and replacement cost, and Loss of Income Insurance – Actual Loss Sustained Loss of Income (Profits) at location 1 for a premium of \$439.00.
26. On November 5, 2015, the Licensee advised Complainant A that this was the best price; he would be away on holidays; and Agent A would be handling their file.
27. On November 26, 2015, Complainant A requested a reduced total premium – perhaps eliminating the wage loss and reducing the replacement to \$400,000.00.
28. The Licensee believed that when the Complainants gave instructions to lower the limits to \$400,000.00 and eliminate the business interruption, they were aware of the consequences of each decision as he had discussed the cover with them.

29. A file note dated 12/03/2015 11:08AM confirmed that the Complainants had approved the revised quote and requested policy issuance.
30. The policy for the Complainants arrived at the office when the Licensee was away. The Agency did not deliver the policy as it was the Licensee's practice to deliver his policies, and it was believed that the Licensee would deliver the policy on his return. On the other hand, the Licensee assumed that the policy had been delivered. When it was brought to his attention, the Licensee delivered the policy sometime in May 2016.
31. The discussion with Complainant A at the Complainant's business was in front of their mutual acquaintance who had introduced the Licensee to the Complainants. On the day in question, the mutual acquaintance was on his phone when Complainant A approached the Licensee and was not part of the discussion. The Licensee suggested that the Complainants consider adding business interruption as he had originally arranged.
32. The Licensee met with the Complainants in the area away from the public area of the business and recommended that they add business interruption coverage. According to the Licensee, the Complainants advised that they would consider his recommendation, but they did not provide instructions to add the coverage. The Licensee disputed that he had confirmed that he would add the coverage as he had not received instructions.
33. The Licensee was out of the country at the time of the November 2016 renewal negotiations, and he arranged for Agent A to assist in the renewal. The Licensee did not advise Agent A that there had been discussions with the Complainants over the possibility of adding business interruption.
34. On or about January 5, 2017, extensive water damage resulting from a burst pipe closed the business.
35. The Licensee disagreed that he had advised the Complainants that it was his error that there was no business interruption. He checked with his Agency to determine if coverage had been added. The Complainants proposed that the loss was under \$10,000.00, and the Licensee suggested that he would see if it could be covered under "extra expense". He also suggested that the Agency might consider paying the loss rather than incur an E&O claim. On February 24, 2017, the Complainants provided an assessment of the claim and offered to settle in the approximate amount of \$40,000.00 (\$34,919.71 plus \$5,000.00 to cover the period between January 5, 2017, and expected reopening of April 30, 2017). The Licensee

forwarded this to the Agency which decided that it was not a claim that could be resolved on a nuisance-value basis.

36. The Licensee agreed that he made the statement that he "would not lie in a court of law". It was made in the context that they had discussed business interruption but had not provided instructions.

37. In an email dated January 18, 2018, it was confirmed that there were no cover letters to the client for either the 2015 or the 2016 policies. No file notes of the discussions were provided to the Council.

ANALYSIS

In late 2015, the Complainants arranged coverage for their newly purchased business. The only quote available from the Licensee was provided by Insurer A. To save money, the Complainants reduced the building limit from the recommended \$500,000.00 to \$400,000.00 and eliminated the business interruption coverage. Complainant A advised the Council that, at that time, she understood the business interruption to be loss of wages and the owners were not taking wages; therefore, they did not require the cover. No notes, correspondence or cover letter on the issue of the 2015 policy were presented by the Licensee to the Complainants confirming the importance of the building limits or consequences of reducing the limit in either a full or partial loss. Neither were notes of discussions, correspondence or cover letter on the issue of the 2015 policy presented in which the Licensee provided advice against the elimination of business interruption and potential consequences of eliminating that cover from the policy.

In September 2016, the Licensee raised the issue of business interruption while attending the Complainants' business. The Licensee discussed this coverage with the Complainants in an area away from the public area of the business, where there were two differing opinions on the outcome: the Complainants that they asked for the cover to be added on renewal, and the Licensee that the Complainants did not give instructions to do so. Neither the Complainants nor the Licensee mentioned a discussion of other changes to the 2016 renewal. No follow up correspondence of the conversation and its outcome was provided by the Licensee to the Complainants to confirm whether the Complainants instructed the Licensee to apply the cover on renewal or rejected his proposal.

Council believed there was insufficient explanation of the coverages or the importance of the coverages between the Licensee and the Complainants, in 2015 and in 2016. The Licensee failed to discuss the potential undervaluation of the building limits and consequences.

Neither the building limit nor business interruption were amended on the 2016 renewal, leaving deficiencies when a claim occurred on January 5, 2017.

Later when the claim occurred, the Licensee suggested that he would try to obtain coverage under "extra expense", or have the Agency pay the loss or at least half of the \$10,000.00 E&O policy deductible. The amount of the business income loss was approximately \$40,000.00 and the Agency determined that it should be handled as an E&O claim, rather than an agency expense.

The 2016 renewal was handled by the Licensee's colleague, Agent A. In Agent A's email prior to the renewal was a comment about business interruption, but whether that was as a result of the September 2016 discussion is unclear. Again, there were no notes of the conversation in a non-public area of the business, either that the coverage was to be added on renewal or that the Licensee had discussed it with the Complainants in September.

Council noted there were no file notes, correspondence or binders/cover letters outlining discussions of the importance of sufficient building limits or business interruption between the Licensee and the Complainants.

Council concluded that the Licensee failed to meet the standard of a general insurance agent and violated the *Act* s. 375(1) (e), and Code of Conduct, s. 2, s. 3, and s. 4.

Council opined that it was not its role to determine negligence with respect to the claim settlement, and it dismissed the allegation of the violation of privacy with discussion in the presence of their mutual acquaintance.

PENALTY AND FINAL DECISION

Council's Decision dated June 12, 2018, was delivered by registered mail to the Licensee on June 13, 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 section 7 (1) of *Regulation 227/91*, the following penalties are imposed on the Licensee, namely:

1. The Licensee be fined \$500.00 and assessed partial investigation costs of \$550.00.

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 the 9th day of July, 2018.