

DECISION

IN THE MATTER OF THE GENERAL INSURANCE COUNCIL OF SASKATCHEWAN (“Council”)

MARKET PRACTICES COMMITTEE (the “Committee”)

RESPECTING

KEVIN CHARLES BROSINSKY (the “Licensee”)

The Committee is authorized under Council’s Bylaw 2, section 2-3, to investigate complaints and adjudicate or mediate disputes respecting alleged non-compliance with *The Insurance Act* (the “Act”), *The Insurance Regulations* (the “regulations”) or the General Insurance Council’s Bylaws by applicants, licensees or persons who are required to be licensees pursuant to section 5-31(3)(i) of the regulations, and to make decisions respecting penalties and other charges pursuant to section 5-31(3)(k) of the regulations.

In response to a complaint received by Council from the Licensing Department of the Insurance Councils of Saskatchewan (“Licensing”) on June 10, 2022, regarding the conduct of the Licensee, an investigation was undertaken. The outcome of that investigation was submitted to the Committee on October 14, 2022.

A Notice of Proposed Action dated October 17, 2022 with an Investigation Report and a Consensual Agreement and Undertaking (the “Agreement”) was sent to the Licensee by registered mail.

The Licensee chose to submit Written Representations to the Committee pursuant to section 10-11(3)(b) of the Act, respecting why the Licensee felt the actions identified in the Agreement should not be taken.



The investigator subsequently delivered a Rebuttal to the Written Representations of the Licensee, dated December 8, 2022. On December 20, 2022, the Licensee delivered a response to that Rebuttal for consideration by the Committee.

On January 12, 2023, in accordance with section 10-11(10)(a) of the Act, the Committee met to consider the Licensee's Written Representations and the other documents exchanged by the parties regarding the misconduct identified below.

MISCONDUCT AND BYLAW VIOLATIONS BY THE LICENSEE:

The Licensee failed to maintain errors and omissions ("E&O") insurance coverage for a period of forty-five (45) days, from April 1, 2022 to May 15, 2022, contrary to the requirements set out in the Act, the regulations, and Council Bylaws, which provide as follows:

The Act, section 5-26 Financial security required for insurance intermediaries

(1) Every business and individual that applies for or holds an insurance intermediary's licence shall meet and maintain the prescribed financial security requirements.

Regulation 5-10 Financial security – insurance intermediaries and adjusters

(1) For the purposes of subsections 5-26(1) and 5-47(1) of the Act:

(c) every business that applies for or holds an insurance agent's or managing general agent's licence for crop hail insurance shall maintain and provide annually proof of a valid policy of errors and omissions insurance that:

- (i) provides a minimum of \$250,000 coverage with respect to any one occurrence and a minimum aggregate limit of \$500,000 with respect to all occurrences within a year;
- (ii) covers the insurance activities of the licensee; and
- (iii) is underwritten by an insurance company licensed to do business in Canada;

Bylaw 3-1 Licences and obligations

(4) A licence imposes on the licensee, and if a business, the designated representative, obligations including but not limited to, the following:



- (c) to immediately notify GICS of:
 - (i) the failure to maintain the prescribed financial security requirements (errors and omissions insurance or the bond), pursuant to sections 5-10 and 5-23 of the regulations;

Bylaw 4-1 Professional misconduct

(1) For the purposes of the Act, the regulations and these bylaws, professional misconduct is a question of fact but includes any matter, conduct or thing, whether or not disgraceful or dishonorable that:

- (c) is a breach of the Act, the regulations or these bylaws.

REASONS FOR THE DECISION:

The Licensee has argued that he pays for his E&O coverage at the same time each year, before hail season starts, so he does not understand why Council advised him that his coverage had lapsed. He stated that hail insurance is only sold in June, July and August every year, and that is the period when he had his E&O coverage in force every year.

The Committee reviewed the Licensee's E&O Certificate of Insurance for the period 2020 to 2021, which shows the effective dates of coverage as April 1, 2020 to April 1, 2021. The Certificates of Insurance for the periods 2021 to 2022, and 2022 to 2023 show the effective dates of coverage as May 26, 2021 to April 1, 2022, and May 16, 2022 to April 1, 2023, respectively. All three (3) Certificates of Insurance indicate that coverage expires on April 1 each year, and as a result, the Committee finds that coverage under the E&O policies held by the Licensee was supposed to be effective for a period of 12 months each year, and not for the months of June, July and August only.

The Licensee also argued that he provided proof of valid E&O coverage to Council by the deadline specified in the reminder emails sent to him by Council. However, the Committee notes that while proof of coverage was delivered by the deadline, the effective date of coverage was May 16, 2022, a period of forty-five (45) days after his prior coverage had expired.

Two (2) auto-generated emails requesting a copy of the Licensee's current E&O Certificate of Insurance were sent to the Licensee on the following dates:



- a) On March 2, 2022, the email reminder indicated that Council required a copy of the Licensee's E&O Certificate no later than May 21, 2022, as his current policy would expire on April 1, 2022;
- b) On April 2, 2022, another email reminder was sent to the Licensee, advising that his E&O policy had expired on April 1, 2022.

While the Licensee provided a Certificate of Insurance to Council on May 17, 2022, the Committee notes that the effective date was May 16, 2022. Thus, the evidence shows that there was a gap in the Licensee's E&O coverage from April 1, 2022 to May 15, 2022.

Further, the agency through which the Licensee obtained his E&O coverage indicated that renewal reminders were sent out to policyholders in February of each year, prior to the hail insurance sales season.

The Licensee argued that he did not receive any reminder emails from Council or renewal letters from the agency through which he arranged his E&O coverage. He claimed this was the fault of his internet service provider or Canada Post, and he advised that the Committee should contact his service provider in that regard. The Committee notes that it is the Licensee's responsibility to keep track of when his coverage expires, and that the Licensee did not provide any proof to support his allegations against his internet service provider or Canada Post.

The Licensee also argued that because he did not engage in any insurance-related activities during the period when he did not have E&O coverage in place, it should not matter that there was a gap in his E&O coverage. The Committee notes that the legislation in place in Saskatchewan provides that coverage must be maintained by all individuals and businesses which hold a licence to act as an insurance intermediary in Saskatchewan.

The Committee notes that it is a licence holder's responsibility to ensure that he has satisfied all legislative requirements in order to obtain and retain an insurance licence in the Province of Saskatchewan.

The Licensee raised a number of arguments suggesting that the Committee should be contacting various third parties for answers to questions raised during the investigation or to require that those third parties change their business practices to align with the requirements of Council. The Committee notes that these questions and business practices fall outside of Council's jurisdiction.



After considering all of the evidence and submissions in this case, the Committee finds that the Licensee violated Bylaw 4-1(1)(c) when he failed to meet the requirements set out in section 5-26 of the Act and 5-10(1)(c) of the regulations, namely, that he maintain a valid and subsisting policy of E&O insurance. The Committee unanimously agrees that the fine recommended in the Investigation Report should stand, and that the costs of investigation proposed in the Investigation Report be increased from four (4) to six (6) hours.

THE COMMITTEE HEREBY ORDERS THAT:

1. The Licensee pay the following fines:

Bylaw 4-1(1)(c) for E&O Lapse:	\$ 76.00
Total:	<u>\$ 76.00</u>

Costs of investigation: 6 hours at \$110.00 per hour	\$ 660.00
Total:	<u>\$ 736.00</u>

2. The licensee must pay the fine and costs within 30 days of his receipt of this Decision.

Dated at Regina, in the Province of Saskatchewan, this 19 day of January, 2023.

Originally signed by: Anne Parker

Anne Parker, Chair
Market Practices Committee
General Insurance Council of Saskatchewan

5-39(3)

If a penalty imposed against a holder of an insurance intermediary's licence pursuant to subsection (2) is not paid within 30 days after the holder is served with the written notice of the penalty and the decision of the Superintendent is not appealed, the licence is automatically suspended immediately following the last date for paying the penalty or appealing the decision, whichever is later, and remains suspended until the penalty is paid or the licence expires.