

**DECISION**  
**of the**  
**GENERAL INSURANCE COUNCIL OF MANITOBA**  
**(“Council”)**  
**respecting**  
**DENNIS L. MAGWOOD**  
**(“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* (“Regulation 227/91”).

In keeping with the Council’s concern based on the seasonal nature of hail insurance, and the Council’s experience in previous years where hail agents had failed to continuously maintain professional liability insurance (“E&O”) as required, Council requested and received notice of non-renewal and reinstatement of liability insurance certificates from the E&O Carrier (the “Carrier”). The Licensee appeared on this list with a gap in his professional liability coverage. 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 *Insurance Agents and Adjusters Regulation 389/87* (“Regulation 389/87”). During the investigation, the Licensee was provided with opportunities to make a submission.

On September 26, 2018, during a meeting of the Council, the evidence compiled during the investigation and the position of the Licensee was reviewed. Upon assess of the evidence, Council determined its Intended Decision. Pursuant to sections 375(1) and 375 (1.1) of the *Act* and *Regulation 227/91*, the Council hereby confirms its decision and corresponding reasons.

**ISSUES**

1. Did the Licensee fail to continuously maintain liability insurance (E&O) as required by *the Act* and *its Regulation*?
2. Did the Licensee make a material misrepresentation when completing his 2018 hail agent’s licence renewal application?

## **FACTS AND EVIDENCE**

1. In 2014, before the Council was responsible for the administration of hail licenses, the Licensee applied for a licence with the Financial Institutions Regulation Branch and declared that he would maintain professional liability insurance in his Application for an Insurance Agent's Licence dated 04/03/2014.
2. On October 19, 2016, the Council issued a Letter of Caution to the Licensee outlining his failure to continuously maintain professional liability, with a gap between April 1, 2015, and May 15, 2015, and pointing out that he had made a material misrepresentation on his May 15, 2015, licence renewal application in relation to the continuous maintenance of E&O.
3. The Licensee made representations in his May 26, 2017, licence renewal application that he had continuously maintained professional liability insurance in accordance with *Regulation 389/87*, and that he would notify Council within 15 days of any material changes to the information in the application.
4. On March 16, 2018, the Council emailed all hail agents, including the Licensee, reminding them of the requirement to continuously maintain E&O insurance, regardless of whether they were actively engaged in the business at that time. Licensees were advised of the necessity of updating coverage in the Council's online portal.
5. The expiry date of the Licensee's previous E&O insurance coverage, a certificate issued under the Carrier's policy was April 1, 2018.
6. The Licensee reported the effective date of his replacing coverage as May 1, 2018, in the Online Portal.
7. On May 2, 2018, the Licensee answered "yes" to the Maintenance of Errors and Omissions Insurance statement on his 2018 licence renewal: "I have continuously maintained professional liability insurance in accordance with the Insurance Agents and Adjusters Regulation 389/87 in accordance with The Act."
8. On May 18, 2018, Council received confirmation from the Carrier that the Licensee had not renewed his E&O policy effective April 1, 2018, but rather he had renewed his E&O on May 1, 2018. Thus, there had been a gap in coverage.

### **Response from the Licensee**

9. Council received a fax response to its letter dated June 15, 2018. The Licensee attached his renewal application for E&O dated February 28, 2018, and he acknowledged that this application had not been sent to the Carrier on that date.

10. On May 1, 2018, the Licensee contacted an employee with the Carrier, who assisted him with the application. He stated to the Council that he lived in the country and had problems with online business.
11. The Licensee reminded the Council that he had made 2 ½ hour trips to Winnipeg to complete his licence renewal applications in 2016 and 2017.

Information from the Carrier

12. On June 27, 2018, the Associate Financial Advisor, Manager Commercial Dept. ("Carrier's Advisor") provided a policy history for the Licensee.
13. The Carrier's Advisor confirmed that each year since at least 2013, except for 2015 as the Licensee had not renewed in 2014, the Carrier had sent renewal questionnaires to the Licensee by Canada Post. In 2018, it was mailed on February 12, 2018.
14. The Carrier did not receive the completed questionnaire prior to the April 1, 2018 renewal date.
15. On May 1, 2018, the coverage for the Licensee was processed over the phone with a confirmation sent by fax.

**ANALYSIS**

At least since 2011, the Licensee had held a hail agent's licence issued by the province of Manitoba. During this entire period, professional liability (E&O) had been mandatory with a requirement that it be continuously maintained for an individual to hold a valid hail insurance agent's licence.

The Licensee did not renew his E&O with the Carrier on the expiration date of April 1, 2014, leaving a gap until he purchased coverage more than a year later: May 15, 2015. In 2016 and 2017, the Licensee renewed this coverage before the policy expiry date of April 1.

Council had warned the Licensee of the regulatory requirement to continuously maintain E&O in a Letter of Caution dated October 19, 2016. He was warned about violation of *the Act* and *its Regulation*, in making a false statement in his 2015 licence renewal application by answering that he had continuously maintained the coverage.

The Licensee declared in his May 26, 2017, licence renewal application that he would maintain E&O or advise Council otherwise during the licence term.

On February 12, 2018, the Carrier provided notice for the renewal of the Licensee's policy by Canada Post. The document stated that the renewal application must be received in the Carrier's office no later than April 1, 2018, and it outlined the regulatory requirement to maintain coverage.

The Licensee acknowledged receipt of the E&O renewal application which he completed on February 28, 2018 but failed to mail it back to the Carrier.

Council had reinforced the requirement to maintain E&O during the licencing year, with all hail licensees, in an email dated March 16, 2018.

On April 1, 2018, the Licensee's professional liability coverage lapsed.

Between February 28, 2018, and May 1, 2018, there was no indication that the Licensee enquired about the renewal.

On May 1, 2018, the Licensee secured coverage by telephone with the Carrier. The Licensee had failed to continuously maintain E&O with a gap between April 1, 2018, and May 1, 2018.

The Licensee entered his E&O renewal date as May 1, 2018, on his licence renewal application, but misrepresented on his May 2, 2018, licence renewal application that he had continuously maintained his E&O. Therefore, the Licensee was in violation of *the Act* s. 371 (1.1) Liability insurance required, s. 372.1(1) Failure to have liability insurance, s. 372.1(2) Notice to superintendent, s. 375 (1) Investigation by superintendent, etc. (a) misrepresentation (b) violated any provision of this Act or regulation under this Act, and *Regulation 389/87* s. 15 (1) and (2) Liability insurance – hail insurance agents.

Council relies on the truth and accuracy of statements made by licensees in their renewal applications. These statements indicate the character of the licensee, in addition to, providing confirmation that the licensee has met the requirements to hold a valid licence in the province. When answering the renewal application questions, the Licensee must ensure that the questions are carefully read and that the answers are true and accurate.

Council considered that there was a reoccurring theme with the Licensee of failing to obtain or continuously maintain E&O, and of making material misstatements to Council regarding his meeting the regulatory requirements.

The Licensee's position that he had problems with online business as a mitigating factor did not resonate with the Council. The E&O renewal application had been sent by Canada Post and received by the Licensee.

### **PENALTY AND FINAL DECISION**

Council's Decision dated December 17, 2018, was delivered to the Licensee by registered mail on December 18, 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 sections 7 (1) and 7 (2) of *Regulation 227/91*, the following penalties are imposed on the Licensee, namely:

1. The Licensee be fined \$250.00 and assessed partial investigation costs of \$250.00.

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 January 11, 2019.