In the Matter of

The *FINANCIAL INSTITUTIONS ACT*
(the "Act")
(RSBC 1996, c.141)

and

The INSURANCE COUNCIL OF BRITISH COLUMBIA
("Council")

and

SSEI INSURANCE AGENCY LTD.
(the "Agency")

and

NICHOLAS DI PERNO
(the "Nominee")

ORDER

As Council made an intended decision on February 14, 2012, pursuant to sections 231, 236 and 241.1 of the Act; and

As Council, in accordance with section 237 of the Act, provided the Agency and the Nominee with written reasons and notice of the intended decision dated March 5, 2012; and

As the Agency and the Nominee have not requested a hearing of Council's intended decision within the time period provided by the Act;

Under authority of sections 231, 236 and 241.1 of the Act, Council orders:

1. The Nominee's general insurance licence is cancelled for a period of three years, commencing November 16, 2010.

2. The Nominee is prohibited from holding a Level 3 general insurance agent's licence, or being a director, officer, partner, or controlling shareholder of an insurance licensee for a period of ten years, commencing November 16, 2010.

3. The Agency is fined $20,000.00.

4. The Nominee is fined $10,000.00.

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5. The Agency and the Nominee are held jointly and severally liable for the costs of the investigation, which are $5,687.50.

6. As a condition of this Order, the Agency and the Nominee are required to pay the above-ordered fines and investigative costs in full, no later than **July 1, 2012**. Where this condition is not met, a licence application will not be considered for either the Agency or the Nominee, and the Agency's licence, if active, will be suspended.

This Order takes effect on the **31st day of March, 2012**.

Dan Swanlund, B.Comm, CFP
Chairperson, Insurance Council of British Columbia

INTENDED DECISION

of the

INSURANCE COUNCIL OF BRITISH COLUMBIA
("Council")

respecting

SSEI INSURANCE AGENCY LTD.
(the "Agency")

and

NICHOLAS DI PERNO
(the "Nominee")

INTRODUCTION

Pursuant to section 232 of the *Financial Institutions Act* (the "Act"), Council conducted an investigation to determine whether the Nominee and the Agency acted in compliance with the requirements of the Act.

As part of Council's investigation, on December 12, 2012, an Investigative Review Committee (the "Committee") met with the Nominee and his legal counsel to discuss the following allegations of non-compliance at the Agency:

1. ten instances of unauthorized insurance policy documents issued;

2. five claims made in relation to policies issued by the Agency, whereby coverage was denied either because the validity or effective date of the policy was disputed, two of which have led to litigation;

3. retention of premiums for policies that were not bound or confirmed as valid by the purported insurer or coverholder, and an apparent absence of any procedure to reconcile accounts or follow up on funds acquired;

4. unlicensed employees engaging in insurance business; and

5. non-disclosure of policy fees.

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The Committee was comprised of one voting member and three non-voting members of Council. Prior to the Committee's meeting with the Nominee, an investigation report was distributed to the Committee and the Nominee for review. The report was also distributed to the Nominee's brothers, Mark and Mike Di Perno, who, along with the Nominee, were directors and officers of the Agency at the material time. A discussion of this report took place at the meeting and the Nominee was provided an opportunity to clarify the information contained therein and make further submissions. Having reviewed the investigation materials and after discussing this matter with the Nominee, the Committee made a recommendation to Council as to the manner in which this matter should be disposed.

A report setting out the Committee's findings and recommended disposition, the aforementioned investigation report, and a February 13, 2012 submission from the Nominee, were reviewed by Council at its February 14, 2012 meeting.

At the conclusion of its meeting, Council accepted the Committee's recommended disposition and determined the matter should be disposed of in the manner set out below.

INTENDED DECISION PROCESS

Pursuant to section 237 of the Act, Council must provide written notice to the Nominee and the Agency of the action it intends to take under sections 231, 236 and/or 241.1 of the Act before taking any such action. The Nominee and/or the Agency may then accept Council's decision or request a formal hearing. This intended decision operates as written notice of the action Council intends to take against the Nominee and the Agency.

FACTS

Council reached the following conclusions in this matter:

Background Information – Licensing and Agency Structure

The Nominee became licensed with Council in December 2004, as the nominee for an insurance agency he created named Assuremoi.com Inc. ("Assuremoi"). Assuremoi, which was licensed with Council at the same time as the Nominee, operated under two trade names: SSEI Sports and Special Events Insurance Agency and Adventure Insurance Agency. Assuremoi's business involved placing liability insurance for various sport based activities and events, ongoing sport lessons, activities and children camps, sport specific instructors, and facilities such as skate parks. Its primary insurance markets were a Canadian insurer ("Insurer A") and an insurance agency based in the United States ("U.S. broker") which represented an international insurer ("Insurer B") authorized to do business in Canada.

On September 3, 2008, Assuremoi's licence with Council was terminated. On the same day, the Agency was licensed with Council, took over Assuremoi's business, and operated from the same location as Assuremoi.

Agency Operations – Disputed Authority and Coverage

Council found there were irregularities with the business at Assuremoi and the Agency, as evidenced in part by the suspension of the Agency's relationship with the U.S. broker in December 2008 at the direction of Insurer B. This suspension was lifted on or around December 23, 2008, after the Nominee signed a written agreement with the U.S. broker acknowledging the Agency would abide by the following with respect to the U.S. broker's business:

- report any fees the Agency charges in addition to the policy premium;
- the U.S. broker's documentation must not be changed or altered in any way and must be remitted to the broker/insured;
- the Agency must not issue any policy documents;
- the Agency and its staff must be fully compliant with any and all requirements; and
- premiums collected by the Agency on coverage bound by the U.S. broker, must be remitted within 45 days.

More specifically, the irregularities involved unlicensed staff at both Assuremoi and the Agency binding coverage and issuing policy documents to clients without authority from either Insurer A or the U.S. broker, as well as the failure of these agencies to remit the information and corresponding premiums to the insurers. In particular:

- In or around May 2007, unbeknownst to the U.S. broker, Assuremoi bound coverage and issued policy documents for an Ontario based skate park and collected a policy premium under the guise that coverage was being placed through the U.S. broker. As the U.S. broker has no record of this policy, a loss suffered by the skate park during the supposed policy term appears to be uninsured.
- In mid-2008, unbeknownst to the U.S. broker, Assuremoi bound coverage and issued policy documents on Assuremoi letterhead for a two day rave event in Vancouver and collected a policy premium, under the guise that coverage was placed through the U.S. broker.

- In November 2008, the U.S. broker bound coverage and issued policy documents for an outdoor adventure company. The U.S. broker sent policy documents to the Agency to forward to the client. However, unbeknownst to the U.S. broker, the Agency issued its own policy documents for the coverage and, in doing so, increased the excess liability limit on the coverage by an additional $3,000,000.00. The U.S. broker did not have authority from Insurer B to authorize this type of limit increase. Further, unbeknownst to the U.S. broker, the Agency later re-issued the policy documents in order to change the effective dates of coverage for the client.

- In November 2008, unbeknownst to the U.S. broker, the Agency issued policy documents to a vacation services company that set out policy limits well in excess of what the U.S. broker had approved for the client's coverage. Specifically, the Agency increased the liability coverage without authority to $5,000,000.00.

- In 2008, Assuremoi bound coverage and issued policy documents to two clients (a kayaking company and a heli-skiing company) on behalf of Insurer A. However, Insurer A had no record of coverage being placed for these clients for the supposed policy terms between 2008 and 2009. In fact, Insurer A claimed it had informed Assuremoi that policies for these clients for 2007/2008 policy terms would be lapsing. With respect to one of the clients, Assuremoi notified Insurer A it had advised the client about the lapse of its 2007/2008 policy. As Insurer A has no record of coverage for these clients for the said policy terms, losses suffered by these clients during this period appear to be uninsured.

- In 2006 and 2007, Assuremoi bound coverage for an outdoor adventure leadership group for a one year term, issued policy documents to this client, and failed to report the risk or remit the premiums collected to Insurer A. The same sequence of events with respect to this client took place with the Agency in 2008.

In response to these matters, it was the Nominee's position that his agencies (Assuremoi and the Agency) had implied authority to bind coverage on behalf of the U.S. broker, particularly since there were ongoing bordereaux reporting arrangements with the U.S. broker at the time. Council acknowledged the Nominee's agencies had placed business through the U.S. broker and reported some risks on bordereaux reports as required. However, in the instances cited above, Council concluded the Nominee's agencies had not met the terms of their agreements with the U.S. broker given the U.S. broker expressly submitted the Nominee's agencies never had authority to bind coverage on its behalf. The Nominee also could not prove otherwise.

Regarding the situations involving Insurer A, Council did not accept the Nominee's position that fault rested with Insurer A. The Nominee explained that an agency agreement was created between his agencies and Insurer A, and therefore his agencies had authority to bind coverage with Insurer A. This is contrary to Insurer A's position however, as it advised the draft agency agreements between the parties were never executed and remained unsigned. In any event, Insurer A neither had a record of the aforementioned coverage placed by the Nominee's agencies nor had it received premiums for the coverage, and the Nominee could not establish the risks in question were reported to Insurer A, as required.

Council determined the problems at the Agency continued despite the Nominee's written agreement with the U.S. broker in December 2008, as cited earlier. In particular, the following took place after December 2008:

- In June 2009, unbeknownst to the U.S. broker, the Agency bound coverage and issued policy documents for a U.S. based skate park, under the letterhead of the Agency's affiliated New York office. Invoicing for the risk was done by the Agency's office in West Vancouver and, in this case, the coverage was based on a master skate park policy put in place by the U.S. broker which expired on May 15, 2009. In addition, a document was issued by the Agency showing a policy limit that was $2,000,000.00 above the limit in the master policy. As the U.S. broker has no record of this policy, a loss suffered by the skate park during the supposed policy term may be uninsured.

- In April 2009, unbeknownst to the U.S. broker, the Agency bound coverage and issued policy documents for an Alberta based rugby club under the guise that coverage had been placed through the U.S. broker. The policy number used in this case was a number that already existed for a different client of the U.S. broker.

- In April 2009, unbeknownst to the U.S. broker, the Agency bound coverage and issued policy documents for a cycling association using Agency letterhead. In addition, limits of coverage issued by the Agency exceeded what the U.S. broker was authorized to allow. As the U.S. broker has no record of this policy, a loss suffered by the cycling association during the supposed policy term may be uninsured.

- In or around April 2009, the Agency bound coverage and issued policy documents for a rafting company using Agency letterhead, even though the Agency had been advised by the U.S. broker that coverage could not be bound on this particular risk because there were outstanding requirements. The Nominee was informed of the outstanding requirements, yet coverage was nonetheless placed by the Agency. As the U.S. broker has no record of this policy, a loss suffered by the rafting company during the supposed policy term may be uninsured.

ANALYSIS

To Council, this was a matter which initially reflected on the competency of the Nominee and the Agency, and evolved into behaviour which demonstrated a lack of good faith and regard for consumers and the regulatory requirements. As such, Council found its Code of Conduct had not been met by the Nominee and the Agency as required through a condition of licensing, pursuant to section 231(1)(b) of the Act and Council Rule 7(8).

Council did not accept the Nominee's argument that this was a situation where unrelated insurers misunderstood the terms of their relationship with the Nominee's agencies. Instead, Council found repeated failures to report business to insurers as required, as well as policy documentation and coverage being issued on several occasions without authority. There were too many cases to believe it was a one-off situation that could be attributed to a mistake or an oversight.

The Nominee was directly responsible for his agencies, however, he relied upon one of his key unlicensed staff to operate the business, essentially without any oversight. It was inexcusable to Council for the Nominee to have delegated such important responsibilities to an unlicensed individual, particularly as this individual required a licence to carry out many of her responsibilities. Adding to the concerns was the Nominee directing blame for the matters at his key unlicensed staff member. This indicated to Council that the Nominee failed to appreciate the responsibility that comes with being an agency nominee.

The policy fee disclosure by the Nominee's agencies was also problematic. In particular, the Nominee's agencies admittedly did not disclose policy fees to clients as required. While the Nominee addressed the fee concerns once brought to his attention, the fact remained that clients were not informed in writing they were being assessed policy fees. Instead, clients received documentation from the agencies showing only a policy premium as being charged, even though the premium included an agency policy fee. Council noted it was not acceptable for fees to be disclosed verbally to clients, as the Nominee claimed to have occurred.

The matter turned worse, however, when the Nominee failed to address the irregularities at the Agency despite his awareness of the problems. This demonstrated to Council that the Nominee had no regard for proper practices or the risk the Agency posed to the public, the consequence of which appears to be considerable public harm. Had the Nominee taken his responsibilities seriously, he would have implemented necessary steps to ensure the past problems did not resurface. Instead, the Nominee continued to eschew his responsibilities and lay blame at the feet of his key unlicensed staff member. This was egregious, flagrant and reckless conduct, and demonstrated to Council that the Nominee is not suitable to hold an insurance licence. Council also noted the Nominee has yet to account for the premiums collected for certain risks that were never reported or remitted to insurers.

Further, Council concluded the Agency should also bear responsibility for the misconduct which arose from the culture of non-compliance. Council did not accept the Nominee's position that the Agency had been licensed incorrectly and that another registered corporation (SSEI Insurance Agency (B.C.) Ltd.), of which the Nominee was the sole director and officer, was in fact the entity carrying on the insurance business in question after September 3, 2008, as discussed above. In particular, Council's licensing records indicate the Agency (which had its licence terminated on July 31, 2011 for non-filing) was the licensed entity under which the activities in question occurred, and its directors and officers during the material time were the Nominee and his brothers, Mark and Mike Di Perno.

In determining an appropriate penalty, Council considered these previous decisions:

- *Apex Insurance Services Ltd. et al*;
- *Accost Insurance and Financial Centre Inc.*, *G. Lehal* and *S. Mann;*
- *J. Fenelon;*
- *Roadways Insurance Agencies Inc.* and *Y. Hui;* and
- *Aurora Underwriting Services Inc.*, *N. McCreedy* and *L. Hayne*.

Finally, Council noted two things. First, the Nominee's licence was suspended on November 16, 2010, pursuant to section 238 of the Act, pending conclusion of the investigation into this matter. Accordingly, it felt this should be taken into account when imposing any penalty. Second, as Mark and Mike Di Perno were directors and officers of the Agency during the material time, they also bear responsibility for the aforementioned culture of non-compliance. Accordingly, should either of them seek to hold an insurance licence with Council or seek to be a director or officer of an insurance agency or firm that is or intends to be licensed with Council, their role in this matter will be taken into consideration at that time.

INTENDED DECISION

Pursuant to sections 231, 236 and 241.1 of the Act, Council made an intended decision to:

1. cancel the Nominee's general insurance licence for a period of three years, commencing November 16, 2010;

2. prohibit the Nominee from holding a Level 3 general insurance agent's licence, or being a director, officer, partner, or controlling shareholder of an insurance licensee for a period of ten years, commencing November 16, 2010;

3. fine the Nominee $10,000.00;

4. fine the Agency $20,000.00; and

5. hold the Nominee and the Agency jointly and severally liable for the costs of the investigation, which are $5,687.50.

The Nominee and the Agency are advised that, should the intended decision become final, the fines and investigative costs which will form part of the Order will be due and payable within 90 days of the date of the Order.

The intended decision will take effect on **March 31, 2012**, subject to the Nominee's and the Agency's right to request a hearing before Council pursuant to section 237 of the Act.

RIGHT TO A HEARING

If the Nominee or the Agency wish to dispute Council's findings or its intended decision, the Nominee or the Agency may have legal representation and present a case at a hearing before Council. Pursuant to section 237(3) of the Act, to require Council to hold a hearing, the Nominee or the Agency must give notice to Council by delivering to its office written notice of this intention by **March 30, 2012**. A hearing will then be scheduled for a date within a reasonable period of time from receipt of the notice. Please direct written notice to the attention of the Executive Director.

If the Nominee or the Agency does not request a hearing by **March 30, 2012**, the intended decision of Council will take effect.

Even if this decision is accepted by the Nominee or the Agency, pursuant to section 242(3) of the Act, the Financial Institutions Commission still has a right to appeal this decision of Council to the Financial Services Tribunal ("FST"). The Financial Institutions Commission has 30 days to file a Notice of Appeal, once Council's decision takes effect. For more information respecting appeals to the FST, please visit their website at www.fst.gov.bc.ca or contact them directly at:

Financial Services Tribunal
PO Box 9425 Stn Prov Govt
Victoria, British Columbia
V8W 9V1

Reception: 250-387-3464
Fax: 250-356-9923
Email: FinancialServicesTribunal@gov.bc.ca

Dated in Vancouver, British Columbia, on the **5th day of March, 2012**.

For the Insurance Council of British Columbia

Gerald D. Matier
Executive Director

GM/cc