

In the Matter of

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

and

The INSURANCE COUNCIL OF BRITISH COLUMBIA
(“Council”)

and

INSUREBC UNDERWRITING SERVICES INCORPORATED
(the “Agency”)

and

ALLISON RAE BERGEN
(the “Nominee”)

ORDER

As Council made an intended decision on February 14, 2017, 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 27, 2017; and

As the Agency and the Nominee requested a hearing of Council’s intended decision in accordance with the Act, but no longer wish to proceed with the hearing;

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

1. A condition is imposed on the Nominee’s general insurance licence that requires the Nominee to successfully complete Council’s Level 3 seminar, *Duties and Responsibilities of a Level 3 General Insurance Agent*, on or before **May 31, 2018**, otherwise the Nominee’s general insurance licence will be suspended without further action from Council and the Nominee will not be permitted to complete any subsequent annual filings until such time as the seminar is successfully completed.

Order

InsureBC Underwriting Services Incorporated and Allison Rae Bergen

LIC-164970C100404R1 and LIC-90675C70424R1 / COM-2017-00030

February 27, 2018

Page 2 of 2

2. A condition is imposed on the Nominee's general insurance licence that the Nominee is prohibited from being designated as the nominee of more than two general insurance agencies, and if either of the agencies has more than one branch office, each branch office must have a full-time Level 3 general insurance agent in regular attendance.
3. The Agency is fined \$10,000.00.
4. The Nominee is fined \$5,000.00.
5. The Agency is assessed Council's investigative costs of \$2,750.00.
6. A condition is imposed on the Agency's general insurance licence that requires the Agency to pay the above-ordered fine and investigative costs no later than **May 31, 2018**. If the Agency does not pay the ordered fine and investigative costs in full by this date, the Agency's general insurance licence is suspended as of **June 1, 2018**, without further action from Council and the Agency will not be permitted to complete any subsequent annual filings until such time as the ordered fine and investigative costs are paid in full.
7. A condition is imposed on the Nominee's general insurance licence that requires the Nominee to pay the above-ordered fine no later than **May 31, 2018**. If the Nominee does not pay the ordered fine in full by this date, the Nominee's general insurance licence is suspended as of **June 1, 2018**, without further action from Council and the Nominee will not be permitted to complete any subsequent annual filings until such time as the ordered fine is paid in full.

This order takes effect on the **27th day of February, 2018**.



Michael Connors, CIP, CRM
Chairperson, Insurance Council of British Columbia

INTENDED DECISION

of the

INSURANCE COUNCIL OF BRITISH COLUMBIA
(“Council”)

respecting

INSUREBC UNDERWRITING SERVICES INCORPORATED
(the “Agency”)

and

ALLISON RAE BERGEN
(the “Nominee”)

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

As part of Council’s investigation, on December 12, 2016, a Review Committee (the “Committee”) met with the Nominee and the Agency’s director, Jacobus (Jack) Meier (“Meier”), to discuss allegations that the Agency and the Nominee failed to adequately supervise Antony Ronald Fransen (“Fransen”) during the period he had authority to represent the Agency.

The Committee was comprised of one voting member and three non-voting members of Council. Prior to the Committee’s meeting with the Nominee and Meier, an investigation report was distributed to the Committee and the Nominee for review. A discussion of this report took place at the meeting, and the Agency and the Nominee were provided an opportunity to make further submissions. Having reviewed the investigation materials and after discussing this matter with the Nominee, the Committee prepared a report for Council.

The Committee’s report, along with the aforementioned investigation report, were reviewed by Council at its February 14, 2017 meeting, where it was determined the matter should be disposed of in the manner set out below.

PROCESS

Pursuant to section 237 of the Act, Council must provide written notice to the Agency and the Nominee of the action it intends to take under sections 231, 236, and 241.1 of the Act before taking any such action. The Agency and the Nominee 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 Agency and the Nominee.

FACTS

The Nominee has over 25 years of experience as a general insurance licensee, and has been the Agency's nominee since May 13, 2014. The Nominee is also the nominee of nine other insurance agencies.

The Agency gave Fransen, the former nominee and owner of Fransen Insurance Services Ltd. dba Sea to Ski Insurance Services ("Sea to Ski"), authority to represent it on August 10, 2015. At the time of granting Fransen the authority to represent the Agency, the Agency and the Nominee were aware that Sea to Ski was the subject of a suspension order by Council effective July 22, 2015, following an investigation related to the improper remittance of insurance premiums. Council's suspension order rendered Fransen's general insurance licence inactive, as he no longer represented an insurance agency.

The Agency and the Nominee became responsible for Fransen's insurance activities on August 10, 2015, when Fransen was granted authority to represent the Agency. In granting Fransen the authority to represent it, the Agency took over responsibility for Sea to Ski's insurance business.

In granting Fransen the authority to represent it, the Agency permitted Fransen to continue to work from his home in Kelowna, even though the Agency is located in Vancouver. The Agency stated that its intent in giving Fransen the authority to represent it, and consequently in taking over Sea to Ski's insurance business, was to assist Fransen in maintaining Sea to Ski's book of business, and to help service Sea to Ski's customers during the suspension of Sea to Ski's licence.

The Agency and the Nominee acknowledged that they were aware of Fransen and Sea to Ski's compliance and disciplinary issues leading up to Sea to Ski's licence suspension, and the Agency's decision to grant Fransen authority to represent it.

Failure to Remit Premiums

On February 15, 2016, Council received notification from a managing general agent (the “MGA”) that Fransen had failed to remit premiums for insurance policies procured for two clients. The insurance coverage was initially placed by Sea to Ski prior to its insurance licence being suspended by Council. After placing the insurance coverage, and while its licence was still active, Sea to Ski collected a portion of the premiums due from the clients. However, at the time of Sea to Ski’s suspension, two premium installment payments were still due from the clients. Fransen, after obtaining authority to represent the Agency, proceeded to collect the two outstanding premium installments from the clients, which were remitted to neither the MGA nor the Agency, and which have yet to be paid in full to the MGA.

Continued Representation of Sea to Ski

After being suspended, Sea to Ski continued to maintain an active website, and even after Fransen was authorized to represent the Agency, Fransen operated the website (Kelownainsuranceservice.com), which included Fransen’s Sea to Ski email address and telephone number.

Unlicensed Activity

On March 8, 2016, Council suspended Fransen’s general insurance licence after it learned about the unremitted premiums to the MGA. After his insurance licence was suspended, the Agency permitted Fransen to continue to work in an unlicensed capacity.

A subsequent review of Fransen’s insurance activity identified an insurance renewal that commenced in January 2016, while he was still licensed. A commercial insurance policy was issued effective January 19, 2016 to January 19, 2017. Around the time the renewal was taking place, the client requested an increase in limits of coverage, which Fransen brought to the attention of the insurer. According to the insurer’s records, Fransen inquired about increasing coverage by email on January 20, 2016, and again on January 22, 2016. Ultimately, the policy was bound as per the terms of the previous year, while Fransen continued to negotiate an increase to the coverage limits.

The insurer stated that Fransen called on May 6, 2016 to enquire about increasing coverage. On May 18, 2016, Fransen sent an email to the underwriter requesting an increase in contents insurance for the client. On June 24, 2016, Fransen sent the insurer another email outlining specific changes to the client’s commercial policy. Around the same time, Fransen also notified the insurer, by email, of an insurance claim he was managing for the same client. The insurer was not aware that Fransen’s insurance licence was suspended, having not been advised by the Agency of this occurrence.

The Nominee acknowledged that she did not directly notify all relevant insurers with regard to Fransen's licence restrictions or subsequent licence suspension. However, she stated she verbally warned Fransen on multiple occasions not to engage in any insurance activity after his licence was suspended in March 2016.

The Nominee explained that she had many responsibilities, and did not track Fransen's insurance activities while he had authority to represent the Agency. The Nominee was unable to demonstrate there were any procedures in place with regard to his supervision, or the scope of the insurance activities he was permitted to engage in while representing the Agency. The Nominee acknowledged that while Fransen had authority to represent the Agency, she did not take any steps to determine whether Fransen was acting in compliance with his licence restrictions.

The Nominee advised that when she learned that Fransen was continuing to operate Sea to Ski's website, she instructed Fransen to take the website down. The Nominee acknowledged that after instructing Fransen to take down the website, she did not follow up to see that it was done, nor did she take any additional steps to ensure Fransen was acting in accordance with his licence restrictions or in accordance with Council's Code of Conduct.

ANALYSIS

Council considered the actions of the Agency and the Nominee in their supervision of Fransen during the period he held authority to represent the Agency, and subsequently when Fransen's licence was suspended but he continued to work for the Agency.

Council determined that both the Agency and the Nominee failed to take adequate steps to ensure that Fransen was properly supervised while he had authority to represent the Agency. Council found the Agency's and the Nominee's failure to properly supervise Fransen represented a failure in their responsibilities.

The Agency and the Nominee were aware of Fransen's history before granting him authority to represent the Agency; however, no specific steps to monitor Fransen's insurance activities were put in place. This lack of supervision was found to be even more egregious when it was noted that Fransen was allowed to work from his home in Kelowna, while the Agency's office is located in Vancouver.

Council noted that even after the Nominee learned that Fransen was continuing to operate Sea to Ski's website, other than giving Fransen a verbal warning, no other actions were taken to supervise Fransen's insurance activities. Council found that Fransen was allowed to work without supervision from his home, and the Agency and the Nominee made no attempt to monitor his insurance activities.

Council noted that the Agency and the Nominee took no steps to ensure Fransen acted in accordance with his licence restrictions, either by closely monitoring his insurance activities or by notifying all insurers of his licence restrictions. Even after Fransen had his insurance licence suspended in March 2016, the Agency allowed Fransen to continue to work for it, and took no steps to advise its insurers that Fransen was no longer licensed.

Based on Fransen's history, along with the fact that he was permitted to work a significant distance from the Agency office, Council found that the Agency's and the Nominee's failure to implement an appropriate level of supervision, represented negligent behavior, and brought into question the Agency's and the Nominee's competency and ability to carry on insurance in accordance with the usual practice of the business of insurance.

In determining penalty in this matter, Council considered the precedent *The Whistler Shoppe Ltd. dba The Whistler Insurance Shoppe and P. Johannson*, where the agency was fined \$5,000.00, and the nominee was fined \$2,500.00 and required to take a course, for operating an agency without proper oversight. Council determined this was a more serious matter, given the known risk posed by Fransen and the complete lack of any procedures for the Agency and the Nominee to supervise him.

INTENDED DECISION

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

1. Fine the Agency \$10,000.00.
2. Fine the Nominee \$5,000.00.
3. Impose a condition on the Nominee's general insurance licence that requires the Nominee to complete Council's Level 3 seminar, *Duties and Responsibilities of a Level 3 General Insurance Agent*, within 90 days of the date of Council's order.
4. Impose a condition on the Nominee's general insurance licence that limits the number of agencies for which she can be the nominee to a maximum of two. In limiting the number of agencies to two, if either of the agencies has more than one office, each office location must have a full-time Level 3 general insurance agent in regular attendance at each agency location.
5. Assess the Agency Council's investigative costs of \$2,750.00.

The Agency and the Nominee are advised that should the intended decision become final, the fine and investigative costs will be due and payable within 90 days of the date of the order.

The Agency is advised that failure to pay the fine and investigative costs within the 90 days will result in the automatic suspension of its general insurance licence, and the Agency will not be permitted to complete any annual filing until such time as the fine and investigative costs are paid in full.

The Nominee is advised that failure to pay the fine within the 90 days, or failure to successfully complete the Level 3 seminar within the 90 days, will result in the automatic suspension of her general insurance licence, and the Nominee will not be permitted to complete any annual filing until such time as the fine is paid in full and the Level 3 seminar is successfully completed as required.

The intended decision will take effect on **April 19, 2017**, subject to the Agency's and the Nominee's right to request a hearing before Council pursuant to section 237 of the Act.

RIGHT TO A HEARING

If the Agency and/or the Nominee wish to dispute Council's findings or its intended decision, the Agency and/or the Nominee 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 Agency and/or the Nominee must give notice to Council by delivering to its office written notice of this intention by **April 18, 2017**. 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 Agency and/or the Nominee do not request a hearing by **April 18, 2017**, the intended decision of Council will take effect.

Even if this decision is accepted by the Agency and/or the Nominee, 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 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

Intended Decision
Insurebc Underwriting Services Incorporated and Allison Rae Bergen
LIC-164970C100404R1 and LIC-90675C70424R1
March 27, 2017
Page 7 of 7

Dated in Vancouver, British Columbia, on the 27th day of March, 2017.

For the Insurance Council of British Columbia



Gerald Matier
Executive Director
604-695-2001
gmatier@insurancecouncilofbc.com

GM/gh