In the Matter of

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

and

The INSURANCE COUNCIL OF BRITISH COLUMBIA
("Council")

and

STACY LYNN JACOB PHILLIPS
(the "Nominee")

ORDER

As Council made an intended decision on August 16, 2011, pursuant to sections 231 and 236 of the Act; and

As Council, in accordance with section 237 of the Act, provided the Nominee with written reasons and notice of the intended decision dated August 26, 2011; and

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

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

1. the Nominee is fined $200.00; and

2. as a condition of this Order, the Nominee is required pay the above ordered fine no later than **December 21, 2011.** If the Nominee does not pay the ordered fine in full by this date, the Nominee's Level 3 insurance adjuster licence is suspended as of **December 22, 2011**, without further action from Council and the Nominee will not be permitted to complete any annual filing until such time as the ordered fine is paid in full.

This Order takes effect on the **21st day of September, 2011**.

David Porter, LL.B., FCIP, CRM
Vice Chairperson, Insurance Council of British Columbia

In the Matter of

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

and

The INSURANCE COUNCIL OF BRITISH COLUMBIA
("Council")

and

CLAIMSPRO INC.
(the "Firm")

ORDER

As Council made an intended decision on August 16, 2011, pursuant to sections 231 and 236 of the Act; and

As Council, in accordance with section 237 of the Act, provided the Firm with written reasons and notice of the intended decision dated August 26, 2011; and

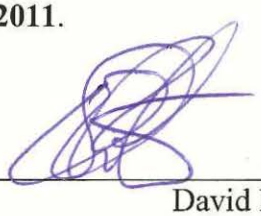
As the Firm has not requested a hearing of Council's intended decision within the time period provided by the Act;

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

1. the Firm is fined $2,000.00; and

2. as a condition of this Order, the Firm is required to pay the above ordered fine no later than **December 21, 2011**. If the Firm does not pay the ordered fine in full by this date, the Firm's insurance adjuster licence is suspended as of **December 22, 2011**, without further action from Council and the Firm will not be permitted to complete any annual filing until such time as the ordered fine is paid in full.

This Order takes effect on the **21st day of September, 2011**.



David Porter, LL.B., FCIP, CRM
Vice Chairperson, Insurance Council of British Columbia

INTENDED DECISION

of the

INSURANCE COUNCIL OF BRITISH COLUMBIA
("Council")

STACY LYNN JACOB PHILLIPS
(the "Nominee")

and

CLAIMSPRO INC.
(the "Firm")

INTRODUCTION

Pursuant to section 232 of the *Financial Institutions Act* (the "Act"), Council conducted an investigation to determine whether there had been compliance by the Nominee and the Firm with the requirements of the Act.

The Firm's Nominee attended an Investigative Review Committee ("IRC") meeting on June 22, 2011. The IRC was held to review incidents of non-compliance with Council Rules that occurred at the Firm. Specifically, the allegations were:

- the Firm failed to comply with Council Rule 7(3)(b) by not notifying Council within five business days that an adjuster had ceased to represent the Firm on August 6, 2010; and

- on five previous occasions between August 25, 2006 to May 15, 2009, the Firm breached Council Rule 7(3)(b) and, in each instance, written reminders were issued by Council.

INTENDED DECISION PROCESS

Pursuant to section 237 of the Act, Council must provide written notice to the Nominee and the Firm 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 the Firm 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 Firm.

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FACTS

Based on the information contained in the investigation report, Council made the following findings of fact:

1. the Nominee was first licensed with Council as a Level 3 insurance adjuster on October 1, 2002, and became the nominee of the Firm on April 4, 2006;

2. the Nominee has held an administrative role within the Firm for the past nine years. Adjusters authorized to represent the Firm report to one of four District Managers, each of whom reports to the Nominee;

3. the Nominee is not always made aware of terminations or departures of adjusters and is reliant on others to pass this information on to him;

4. for part of the time in question, the Firm had experienced growing pains concurrently with unexpected high volumes of work due to the rainstorms in 2006/2007;

5. the Nominee became very busy when the Firm assigned him responsibility for other Canadian regions and it became difficult to track licensees who ceased to represent the Firm;

6. at the Nominee's request, the Firm hired an individual at the Ontario head office, who was responsible for tracking licensees and handling notifications to each jurisdiction. While this proved effective, the individual did not report to the Nominee, and therefore, when the individual left the Firm's employment, the Nominee was not notified and a replacement was not hired;

7. the Firm is now taking steps to improve its procedures and submitted that future notifications to Council will be received in compliance with Council Rules;

8. the Firm has conducted an audit to identify deficiencies in their systems and processes. New protocols have been established to ensure the Firm is in compliance with all jurisdictions, not only British Columbia; and

9. in addition to upgrading the Firm's licensing database and establishing regular reporting protocols, on May 27, 2011, the Firm hired a full-time Licensing Compliance Officer, whose primary role is to administer licensing throughout the Firm.

LEGISLATION

Rule 7(3)(b) of Council Rules
Licence Conditions

Applicable to All Classes of Licences

(3) A licensee must notify Council within 5 business days:

(b) when a licensee's authorization to represent an insurance agency, adjusting firm or general insurance direct writer is withdrawn;

Section 231 of the Act
Part 7 – Administration of the Regulation of Financial Institutions
Division 2 – Insurance Council of British Columbia

Council may suspend, cancel or restrict licences and impose fines

(1) If, after due investigation, the council determines that the licensee or former licensee or any officer, director, employee, controlling shareholder, partner or nominee of the licensee or former licensee

(a) no longer meets a licensing requirement established by a rule made by the council or did not meet that requirement at the time the licence was issued, or at a later time,

(b) has breached or is in breach of a term, condition or restriction of the licence of the licensee,

(c) has made a material misstatement in the application for the licence of the licensee or in reply to an inquiry addressed under this Act to the licensee,

(d) has refused or neglected to make a prompt reply to an inquiry addressed to the licensee under this Act,

(e) has contravened section 79, 94 or 177, or

(e.1) has contravened a prescribed provision of the regulations,

then the council by order may do one or more of the following:

(f) reprimand the licensee or former licensee;

(g) suspend or cancel the licence of the licensee;

(h) attach conditions to the licence of the licensee or amend any conditions attached to the licence;

(i) in appropriate circumstances, amend the licence of the licensee by deleting the name of a nominee;

(j) require the licensee or former licensee to cease any specified activity related to the conduct of insurance business or to carry out any specified activity related to the conduct of insurance business;

(k) in respect of conduct described in paragraph (a), (b), (c), (d), (e), or (e.1), fine the licensee or former licensee an amount

(i) not more than $20 000 in the case of a corporation, or

(ii) not more than $10 000 in the case of an individual.

(2) A person whose licence is suspended or cancelled under this section must surrender the licence to the council immediately.

(3) If the council makes an order under subsection (1)(g) to suspend or cancel the licence of an insurance agent, or insurance adjuster, then the licences of any insurance salesperson employed by the insurance agent, and of any employees of the insurance adjuster are suspended without the necessity of the council taking any action.

(3.1) On application of the person whose licence is suspended under subsection (1)(g), the council may reinstate the licence if the deficiency that resulted in the suspension is remedied.

(4) If an insurance agent's licence or an insurance adjuster's licence is reinstated, the licences of any insurance salespersons or employees of the insurance adjuster who
- (a) were employed by that agent or adjuster at the time of the suspension, and
- (b) remain employees of that agent or adjuster at the time of reinstatement,

are also reinstated without the necessity of the council taking any action.

Section 236 of the Act
Part 7 – Administration of the Regulation of Financial Institutions
Division 2 – Insurance Council of British Columbia

Power to impose conditions

(1) The commission, superintendent or council, depending on which of them has the power to make the order, give the consent or issue the business authorization permit or licence may
- (a) impose conditions that the person considers necessary or desirable in respect of
  - (i) an order referred to in section 235(1),
  - (ii) a consent referred to in section 235(2),
  - (iii) a business authorization,
  - (iv) a permit issued under section 187(1), or
  - (v) a licence issued under Division 2 of Part 6, and
- (b) remove or vary the conditions by own motion or on the application of a person affected by the order or consent, or of the holder of the business authorization, permit or licence.

(2) A condition imposed under subsection (1) is conclusively deemed to be part of the order, consent, business authorization, permit or licence in respect of which it is imposed, whether contained in or attached to it or contained in a separate document.

(3) Except
- (a) on the written application or with the written permission of the holder, or
- (b) in the circumstances described in section 164, 231 or 249(1),

a power of the commission, superintendent or council under this Act to impose or vary conditions in respect of
- (c) a business authorization is exercisable only on or before its issue date, or
- (d) a permit under section 187(1) or a licence under Division 2 of Part 6 is exercisable only on or before its issue date

with effect on and after that date.

ANALYSIS

Council found the above mentioned facts constituted a breach of Council Rule 7(3)(b) by both the Nominee and the Firm.

While some attempts at correcting the problem took place, the Firm did not appear to understand the seriousness of its responsibilities to notify Council, despite five written reminders. There were no direct precedents for Council to consider in this matter, as it was the first disciplinary action for a breach of this nature. However, in light of the number of warnings issued, Council is of the opinion that a significant fine to the Firm was warranted.

The Nominee was responsible to Council for all activities of the Firm and must accept a level of responsibility for the breaches identified. In considering the extent of the Nominee's accountability and responsibility for these incidents, Council took into consideration that the Firm is a national corporation and, while the Nominee holds the legislative responsibilities as a nominee, there is a national head office located out of province and the Firm's systems are outside of his control. Despite that, the Nominee made several attempts to have procedures implemented at the national level to ensure both he, as nominee, and the Firm met their obligations. Further, the Firm itself did not appear to acknowledge its Nominee's responsibilities by failing to keep him informed of changes in staff which affected his responsibilities to Council.

Although Council saw these as mitigating factors and agreed that the majority of responsibility should be assigned to the Firm, it was not of the position that the Nominee could be considered free of all responsibility.

INTENDED DECISION

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

1. fine the Nominee $200.00; and

2. fine the Firm $2,000.00.

The Nominee and the Firm are advised that should the intended decision become final, the fines 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 **September 21, 2011**, subject to the Nominee and the Firm's right to request a hearing before Council pursuant to section 237 of the Act.

RIGHT TO A HEARING

If the Nominee and the Firm wish to dispute Council's findings or its intended decision, the Nominee and the Firm 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 and the Firm must give notice to Council by delivering to its office written notice of this intention by **September 20, 2011**. 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 and the Firm does not request a hearing by **September 20, 2011**, the intended decision of Council will take effect.

Even if this decision is accepted by the Nominee and the Firm, 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 **26th day of August, 2011**.

For the Insurance Council of British Columbia

Gerald D. Matier
Executive Director

GM/cc