**In the Matter of**

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

**and**

**The INSURANCE COUNCIL OF BRITISH COLUMBIA**
("Council")

**and**

**WEI GAO**
(the "Licensee")

# ORDER

As Council made an intended decision on May 15, 2012, pursuant to sections 231 and 236 of the Act; and

As Council, in accordance with section 237 of the Act, provided the Licensee with written reasons and notice of the intended decision dated May 23, 2012; and

As the Licensee 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 the Licensee's life and accident and sickness insurance licence is terminated.

This order takes effect on the **12th day of June, 2012**.

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

**INTENDED DECISION**

**of the**

**INSURANCE COUNCIL OF BRITISH COLUMBIA**
("Council")

**respecting**

**WEI GAO**
(the "Licensee")

## INTRODUCTION

Pursuant to section 232 of the *Financial Institutions Act* (the "Act"), Council conducted an investigation to determine whether there was compliance by the Licensee with the requirements of the Act.

At its March 13, 2012 meeting, Council considered allegations the Licensee failed to meet the requirements of Council Rule 7(11) by not having maintained his errors and omissions ("E&O") insurance.

The Licensee was sent three letters requesting confirmation his E&O insurance is current and in effect and was advised that if no response was received, Council would consider terminating his licence. No response was received. Council staff also attempted to contact the Licensee by telephone; however, the residence telephone number was not in service and there was no answer or voicemail on the cellular telephone number provided by the Licensee. Council staff therefore contacted his managing general agent who advised it was its understanding the Licensee had left the country.

## PROCESS

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

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## FACTS

Based on the Licensee's file, Council made the following findings of fact:

1. Council received notification from Willis Canada Inc. ("Willis") that the Licensee's E&O insurance lapsed as of Friday, October 14, 2011.

2. On five separate days in November 2011, Council staff telephoned the Licensee on the cellular telephone number provided to Council. There was no answer and no ability to leave a voicemail.

3. On November 25, 2012, a letter was mailed to the Licensee requesting confirmation that he was in compliance with the requirements of Council Rule 7(11). No response was received.

4. A follow-up request was sent on December 13, 2012. No response was received.

5. On February 2, 2012, a letter was sent to the Licensee advising that if no response was received, Council would consider terminating his licence. No response was received.

## ISSUES

Council considered the following issues:

1. Does the Licensee have E&O insurance as required under Council Rule 7(11)?

2. If not, has the Licensee been without E&O insurance for more than 30 days and therefore should his licence be terminated in accordance with Council Rule 7(11)(e)?

## LEGISLATION

**Council Rule 7(11)**
**Licence Conditions**

**Applicable to All Classes of Licences**

(1) Effective January 1, 2006, unless otherwise determined by Council a licensee:

(a) must maintain or be covered by E&O insurance, which extends to all activities as a licensed insurance agent, salesperson or adjuster, with:

(i) a minimum limit of $1,000,000.00 per claim; and

(ii) a minimum aggregate limit of $2,000,000.00;

(b) who is a direct employee of an insurer is exempt from subsection (a) where:
  (i) the licensee only sells the products of that insurer; and
  (ii) the licensee provides certification from the insurer that:
    (A) the licensee is an employee of the insurer;
    (B) the company accepts responsibility for the licensee's activities as a licensee; and
    (C) the company will respond to E&O claims against the licensee on the same basis as set out in subsection (a);

(c) that is no longer insured as required under subsection (a) or (b) must:
  (i) notify Council within 5 business days; and
  (ii) immediately stop conducting any insurance activities;

(d) will have the licence automatically suspended without Council taking any action, where the licensee remains uninsured for a period exceeding 30 calendar days; and

(e) will have the licence suspended under subsection (d) automatically reinstated where:
  (i) the licensee obtains the required E&O insurance within 30 calendar days from the date of the suspension; and
  (ii) the licensee delivers to Council the required verification;
  otherwise the licence is terminated.

## ANALYSIS

Section 231 of the Act requires a licensee to continue to meet the licensing requirements established by a rule made by Council. Council Rule 7(11) requires a licensee meet a minimum level of E&O insurance. When this condition is not met, the licence is suspended. If E&O insurance is not in place for a period exceeding 30 calendar days, the licence is terminated.

As a result of the Licensee's failure to provide the required proof or respond to any of Council's enquiries, and in light of Willis' notification that the Licensee's coverage had lapsed as of October 25, 2012, Council determined the Licensee to be in breach of Council Rule 7(11) by not having the required E&O insurance in place for an excess of 60 days.

## INTENDED DECISION

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

1. Terminate the Licensee's life and accident and sickness insurance licence.

The intended decision will take effect on **June 12, 2012**, subject to the Licensee's right to request a hearing before Council pursuant to section 237 of the Act.

## RIGHT TO A HEARING

If the Licensee wishes to dispute Council's findings or its intended decision, the Licensee 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 Licensee must give notice to Council by delivering to its office written notice of this intention by **June 11, 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 Licensee does not request a hearing by **June 11, 2012**, the intended decision of Council will take effect.

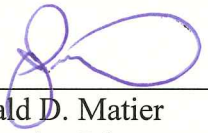
Even if this decision is accepted by the Licensee, pursuant to section 242(3) of the Act, the Financial Institutions Commission still has a right to appeal this decision of Council to the Financial Services Tribunal ("FST"). The Financial Institutions Commission has 30 days to file a Notice of Appeal, 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 **23rd day of May, 2012**.

For the Insurance Council of British Columbia



Gerald D. Matier
Executive Director

GM/AH/cc