



TORONTO INSURANCE CONFERENCE

157 Adelaide Street West, Suite 432

Toronto, ON M5H 4E7

P: (416) 410-4842 (4TIC)

F: 1 (866) 746-3657 (toll free)

E: info@ticonf.com

W: www.ticonf.com

Questions and Answers:

From a TIC / IBAA Meeting 11/3/2010 with Mr. Arthur Hagan, Deputy Superintendent of Insurance, Province of Alberta

Question #1: We read section 61(2.1) of the Act as allowing an insured who places insurance with an unlicensed insurer directly to apply in any circumstances to reduce the charge to an amount not less than 10% of the premium if the Minister is satisfied that the insurance was not available through a licensed insurer. In our meeting last year, you indicated that this section provided a one-time 'voluntary disclosure' process for non-compliant tax payers? Where in the legislation will we find the basis for this interpretation?

Answer: *Yes, we are correct in that the 'one time only' provision is not specified within the legislation. The final version of the legislation was not what they had originally intended it to be. At this point, however, they do not intend to change it so yes, we are also correct in stating that in theory a client could apply more than once under this provision and not be breaking any laws. They did comment, however, that it was probably less likely for a client submitting repeated requests for the minister's discretion to obtain a sympathetic hearing.*

Question #2: While recognizing the fact that it is the Insured who has incurred the tax liability, is the option for voluntary disclosure also available if a broker was involved in the unlicensed placement? (i.e. if an error was made by the broker?)

Answer: *From the perspective of Mr Hagan's office, it is not material whether there is broker, lawyer or tax accountant involvement with a voluntary disclosure situation.*

Question #3: Are there any time guidelines for ministry staff, so that clients have an idea of how quickly they might expect responses on their requests for reduction?

Answer: *Clients should expect an acknowledgement within 30 days but there are no specifications for final decisions. It is not realistic to require these when the decision process in effect is a long discussion between client and the government, including their respective legal counsel, and it is not only the government side which influences how long it takes.*

Question #4: As of last year's meeting there had not yet been any cases where a discretionary decision had been made under the voluntary disclosure provision, to reduce the charge to anything less than 50%. Have there been such decisions made now, and can the general circumstances be shared, to give us an idea of the kinds of situations which would permit a reduction? Are you able to provide any more guidance on the evidence required to support the unavailability? What would determine the level of reduction of the charge below 50%?



TORONTO INSURANCE CONFERENCE

157 Adelaide Street West, Suite 432

Toronto, ON M5H 4E7

P: (416) 410-4842 (4TIC)

F: 1 (866) 746-3657 (toll free)

E: info@ticonf.com

W: www.ticonf.com

Answer: *There are still no actual decisions which have been rendered, though there are a few in process. This is an illustration of the answer for #3 above. There are no specific rules but the emphasis is on 'common sense' ie what is the client's best proof of what transpired eg email, notes regarding what brokers and markets were approached; they may accept a sworn statutory declaration if that is what the client has. One further comment – if a client chooses to exercise the voluntary disclosure option, they must identify themselves, the years they were non-compliant and the unlicensed insurers used. They cannot be selective, and prepared for "full" disclosure.*

Question # 5: Pursuant to s. 71 of the Insurance Act the special broker must submit Monthly Return of Special Insurance Broker with respect to the insurance effected by the broker during the month, within 10 days after the end of the month. Although brokers strive to have the placement bound and invoiced no later than the effective date, there are situations where coverage is not finalized until sometime after the effective date. Administratively, it is inefficient to estimate the premium and report the placement based on the effective date and then later amend this in the Return filed for the month in which the coverage is finalized. Will you consider interpreting "effected" to mean the date the coverage is finalized and issue an interpretive bulletin allowing us to report based on the invoice date which generally is immediately after the coverage is finalized?

Answer: *Brokers should use an estimate if the premium is not finalized. The perception from audits is that adjusting entries are not too cumbersome, and no penalties will be applied for adjustments (with caveat that original estimate must have been reasonable).*

Question #6: There were previous indications that the government would be considering amendments to sections 61 and 72 of the Act, which provide for the late penalty fee of 50%. Do you know when you will be next seeking amendment to the Insurance Act and if you will be seeking to amend these sections to reduce the penalty?

Answer: *Yes, changes to the penalty fee are pending though no specific time line. They are looking to move to an interest rate to be similar to other tax dept processes.*

Question #7: Is it acceptable for affiliate offices of the Special broker, to have obtained the relevant declinations, in order for them to be acceptable?

Answer: *Yes, the Special broker's affiliate may have obtained the declinations, with the special broker reviewing them, for 3% tax to apply.*