

Order No. 20/22

**MANITOBA PUBLIC INSURANCE CORPORATION (MPI OR THE CORPORATION):
COMPULSORY 2022/23 DRIVER AND VEHICLE INSURANCE PREMIUMS
AND OTHER MATTERS AND 2022 SPECIAL REBATE APPLICATION**

**APPLICATION FOR REVIEW AND VARIANCE OF ORDER 134/21
FILED BY INSURANCE BROKERS ASSOCIATION OF MANITOBA**

February 28, 2022

**BEFORE: Irene A. Hamilton, Q.C., Panel Chair
Robert Gabor, Q.C., Chair
Michael Watson, Member**

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1. BACKGROUND

On December 15, 2021, the Public Utilities Board (Board) issued Order No. 134/21 with respect to the General Rate Application (GRA) of Manitoba Public Insurance (MPI or the Corporation) for rates and premiums for compulsory vehicle insurance and driver insurance premiums effective April 1, 2022, and ordered an overall rate decrease of 1.57% for all major classes combined. Order 134/21 also approved a rebate in the approximate amount of \$312 million pursuant to MPI's 2022 Special Rebate Application (SRA), which filed with the Board on July 19, 2021 and consolidated with the GRA. The Board made a number of findings in Order 134/21, including findings related to MPI's broker commission expenses.

Insurance Brokers Association of Manitoba (IBAM) did not apply for Intervener status in the GRA and SRA. However, following the issuance of Order 134/21, IBAM filed this application with the Board, seeking a review and variance of certain Board findings on the issue of broker commissions. By this Order, the Board has allowed IBAM's application in part, as set out below.

2. IBAM APPLICATION

Following Order 134/21 and the issuance of the Board's News Release dated December 15, 2021 which announced the Order (News Release), IBAM wrote to the Board through counsel and advised that it was concerned about the contents of the News Release and Section 8.6 of Order 134/21. In particular, IBAM took issue with the information in Order 134/21 and the News Release stating that brokers will play no role in online transactions and would be paid the same rates for online transactions and in-person transactions for the 2021/22 and 2022/23 years. IBAM pointed out that online transactions will not be implemented until the 2023/24 year at the earliest.

By letter dated January 10, 2022, through counsel, the Board advised IBAM that the News Release contained excerpts of information found within Order 134/21 and that the Board's Rules of Practice and Procedure (Rules) provide the process for review and variance of

a decision or order made by the Board, on the Board's own initiative, or upon application by a person. As IBAM's letter of December 17, 2021, was a request for a retraction of the News Release, the Board did not consider it a request for a review and variance of Order 134/21, but if the Board were to receive a request for review and variance, in accordance with its usual practice, it would seek the positions of the parties and then determine whether or not to hold a hearing. In the absence of any such formal process, the Board advised IBAM that in its role as an independent, quasi-judicial administrative tribunal, it would not be taking any further action in response to IBAM's request. The Board also pointed out that under section 56(1) of *The Public Utilities Board Act*, C.C.S.M. c. P280, it has the discretion to determine whether or not to order costs of an application for review and variance, and the amount of costs payable.

IBAM then filed this application for review and variance of Order 134/21 with the Board on January 14, 2022. IBAM's position was that a portion of Section 8.6 of Order 134/21 was inaccurate. For reference, with respect to the agreement reached between IBAM and MPI in respect of broker commissions for 2021/22 to 2025/26, that section provides:

The agreement also requires that a commission be paid for Basic online transactions, where brokers provide no service in the transaction, at the same rate as in-person transactions for 2021/22 and 2022/23. The Basic online transaction rate then decreases to 2.25% for the period from 2023/24 through to 2025/26. Under the Broker Agreement, once Project Nova is completed, any person renewing online will be required to select an agent before the transaction can be completed, and even though the broker has played no role in the transaction, that broker will receive a commission.

IBAM submits that the details of the process by which brokers will be involved in the transactions are still being fully developed with MPI, but that the goal is to have brokers involved in the review of online transactions by assigning a broker of record to each customer, in order to protect Manitobans. Accordingly, according to IBAM, brokers will play a role in online transactions.

IBAM asserts that the Board heard little to no evidence on this issue and at most, the evidence in support of the Board's finding was from an MPI witness who conceded that it is possible that someone who might be characterized as a sophisticated customer renewing online would likely never need to go see a broker. In IBAM's view, this does not establish that brokers will not play a role in online transactions.

IBAM also states that it considered whether or not it would seek to intervene in this GRA and attended a meeting of counsel on June 29, 2021, and the Pre-Hearing Workshop held on July 5, 2021, at which time all counsel advised they did not expect the brokers to be a central area of focus in this GRA. Based on that information, as well as a prior Board order which dismissed IBAM's application for intervener status in the 2021 GRA, IBAM chose not to intervene in this GRA. Had the Board notified IBAM that it would be examining brokers in any detail in this GRA, IBAM would have supplied the Board with the requisite information in order to ensure that the issue was fully canvassed.

With respect to the News Release, IBAM states that it draws only negative information respecting brokers to Manitobans' attention, while omitting any information speaking to the benefits of brokers and the costs savings derived from IBAM's agreement with MPI.

IBAM submits that if the findings made by the Board regarding brokers are not corrected, they are likely to cause significant reputational damage to brokerages in Manitoba. IBAM therefore requests that the Board strike the following portions of page 101 of Order 134/2:

The agreement also requires that a commission paid for Basic online transactions, where brokers provide no service in the transaction, at the same rate as in-person transactions for 2021/22 and 2022/23; and

...and even though a broker has played no role in the transactions, that broker will receive a commission.

IBAM also requests that the News Release be retracted and a correction issued, removing the statements set out above, and that the corrected version of the News Release contain a reference to a corresponding decrease in negotiated Extension

commissions as set out at page 33 of Order 134/21. IBAM also requests an award of costs, in accordance with the Board's usual award of costs to an Intervener.

3. MPI RESPONSE

The Board requested written responses from parties to the GRA and SRA, and received responses from MPI and one Intervener, Consumers' Association of Canada (Manitoba) Inc. (CAC).

MPI, in its letter dated January 31, 2022, notes that although Order 134/21 correctly recites the various commission rates to be paid for services over specified timeframes, this information discounts the evidence from MPI that online transactions will not be available in 2021/22 or 2022/23. MPI also supports of IBAM's request that the Board vary Order 134/21 to remove the statement that even though a broker played no role in a transaction, that broker will receive the commission and for the Board to issue another news release.

On the issue of costs, MPI notes that IBAM did not apply to participate in the GRA and does not agree that IBAM should be awarded costs if successful, or at all.

4. CAC RESPONSE

CAC opposes IBAM's application, arguing that it does not raise an error of fact and that it raises substantial doubt as to the correctness of the Board's order. CAC submits that the Board made its findings of fact based on the entirety of the evidence before it, including information provided in the GRA, responses to Information Requests, and cross-examination. CAC notes that the onus lies with IBAM, and the issue is not whether a reasonable person might have come to a different conclusion based on the same evidence, but whether there is an error of law, jurisdiction or fact that raises substantial doubt as to the correctness of the Board's decision or there are new facts or change in circumstances have arisen, raising a reasonable possibility that the Board's decision might be materially changed.

While CAC notes there do not appear to be any errors of fact in the Board's findings relating to brokers, the Board could add a sentence of clarification to make it apparent that MPI's evidence was that it does not expect take-up of online transactions until 2023/24.

5. BOARD FINDINGS

Pursuant to the Board's Rules of Practice and Procedure, and in particular, Rules 36(1) and 40(2) thereof, the Board may on application or on its own initiative review, rescind, change, alter or vary any decision or Order it has made. The Board's jurisdiction in that regard flows from section 44(3) of *The Public Utilities Board Act (the Act)*.

In accordance with Rule 36(4), upon receipt of an application for review and variance, the Board is to determine, with or without a hearing, in respect of an application for review, the preliminary question of whether the matter should be reviewed and whether there is reason to believe the order or decision should be rescinded, changed, altered or varied.

After determining the preliminary question under Rule 36(4), pursuant to Rule 36(5), the Board may:

- a) Dismiss the application for review if,
 - i. In the case where the applicant has alleged an error of law or jurisdiction or an error in fact, the Board is of the opinion that the applicant has not raised a substantial doubt as to the correctness of the Board's order or decision;
or
 - ii. In the case where the applicant has alleged new facts not available at the time of the Board's hearing that resulted in the order or decision sought to be reviewed or a change of circumstances, the Board is of the opinion that the applicant has not raised a reasonable possibility that the new facts of change in circumstances as the case may be, could lead the Board to materially vary or rescind the Board's order or decision; or

- b) Grant the application; or
- c) Order that a hearing or proceeding be held.

The Board has reviewed and considered the submissions of IBAM, MPI, and CAC. The Board's findings in Order 134/21 were grounded in the evidence before it: the agreement between MPI and IBAM provided a commission rate payable for online transactions beginning in 2021/22, and there was evidence adduced by CAC on cross-examination that it is possible that some MPI customers who transact online will have no interaction with a broker.

Nevertheless, the Board appreciates that it could bring clarification to Section 8.6 of the Order, such that the public is not under a misapprehension about when it will begin paying commissions for online transactions. Similarly, with respect to the Board's finding regarding the involvement of brokers in online transactions, while in a given transaction, a broker may provide no service to a customer, this may not be the case in all online transactions. The Board will therefore vary Section 8.6 of Order 134/21, to read as follows:

The Broker Agreement has increased the commission rate on Basic in-person transactions from 3.0% to 3.49% in 2021/22 and 2022/23, 4.01% in 2023/24, and 4.19% in 2024/25 and 2025/26. The agreement also requires that a commission be paid for Basic online transactions, ~~where brokers provide no service in the transaction,~~ at the same rate as in-person transactions for 2021/22 and 2022/23. The Corporation's evidence was that it does not expect take-up of online transactions until 2023/24. The Basic online transaction rate then decreases to 2.25% for the period from 2023/24 through to 2025/26. Under the Broker Agreement, once Project Nova is completed, any person renewing online will be required to select an agent before the transaction can be completed, and even though the broker may have ~~has~~ played no role in the that particular transaction, that broker will receive a commission.

With respect to IBAM's request regarding the News Release, the issuance of a news release is an administrative function of the Board, not one undertaken by the Board in its role as decision-maker of the matters at issue in the GRA and SRA, nor did the News Release form part of Order 134/21. Therefore, it is not a decision or order of the Board subject to an application for review and variance, and the Board dismisses IBAM's specific request for relief regarding the News Release. That said, the Board expects that an updated news release will issue following the release of this order.

Finally, costs are in the discretion of the Board. The Board finds that in these unique circumstances, where an application was brought by an entity that did not have Intervener status in the GRA and SRA, it would not be appropriate to have costs dealt with in the same manner as those of an approved Intervener. The Board therefore dismisses IBAM's request for an award of costs and finds that it is appropriate for all parties to bear their own costs of this application.

6. IT IS THEREFORE ORDERED THAT:

6.1. Section 8.6 of Order 134/21 at page 101 shall be varied, to read as follows:

The Broker Agreement has increased the commission rate on Basic in-person transactions from 3.0% to 3.49% in 2021/22 and 2022/23, 4.01% in 2023/24, and 4.19% in 2024/25 and 2025/26. The agreement also requires that a commission be paid for Basic online transactions at the same rate as in-person transactions for 2021/22 and 2022/23. The Corporation's evidence was that it does not expect take-up of online transactions until 2023/24. The Basic online transaction rate then decreases to 2.25% for the period from 2023/24 through to 2025/26. Under the Broker Agreement, once Project Nova is completed, any person renewing online will be required to select an agent before the transaction can be

completed, and even though the broker may have played no role in that particular transaction, that broker will receive a commission.

6.2. IBAM's request for retraction of the News Release dated December 15, 2021 and the issuance of a corrected News Release is hereby dismissed.

6.3. The parties shall bear their own costs of this application.

Board decisions may be appealed in accordance with the provisions of Section 58 of *The Public Utilities Board Act*, or reviewed in accordance with Section 36 of the Board's Rules of Practice and Procedure. The Board's Rules may be viewed on the Board's website at www.pubmanitoba.ca.

THE PUBLIC UTILITIES BOARD

"Irene Hamilton, Q.C."
Panel Chair

"Darren Christle, PhD, CCLP, P.Log., MCIT"
Secretary

Certified a true copy of Order 20/22
issued by the Public Utilities Board


Secretary