

M A N I T O B A

THE PUBLIC UTILITIES BOARD ACT

THE MANITOBA PUBLIC INSURANCE ACT

**THE CROWN CORPORATIONS PUBLIC
REVIEW AND ACCOUNTABILITY ACT**

Order No. 19/10

February 9, 2010

Before: Graham Lane, CA, Chairman
Eric Jorgensen, Member
Len Evans LLD, Member

**MANITOBA PUBLIC INSURANCE: APPLICATION TO REVIEW AND VARY
ORDER 161/09**

Background

On December 4, 2009, The Public Utilities Board (Board) issued Order 161/09 with respect to Manitoba Insurance Corporation's (Corporation) General Rate Application (GRA) for rates and premiums for compulsory vehicle insurance effective March 1, 2010.

On December 21, 2009, the Corporation filed an application with the Board pursuant to subsection 44(3) of *The Public Utilities Board Act*, seeking to review and vary one directive contained in the Order.

The Application

In particular, the Corporation requested the following in its application:

1. Delete Section 6.2 of Order 161/09, which states,

"MPI's proposal for a change to a client-based (rather than vehicle-based) late fee be amended to apply only to four classes - private passenger vehicles, motorcycles, trailers and off-road vehicles." (Section 6.2)

2. Insert a new Section 6.2 (for Order 161/09), as follows:

"MPI's proposal for a change to a client based (rather than vehicle based) late fee
BE AND IS HEREBY APPROVED."

In the alternative, the Corporation requested that the Board approve the Corporation's proposal for a one-year period, and make a new decision after full consideration of the Corporation's next GRA (to be heard in the fall of 2010).

In addition to the information in its application to review and vary, the Corporation, on the afternoon of Friday, February 5, 2010, filed with the Board responses to information requests posed by the Board with respect to the Corporation's application to review and vary on January 7, 2010.

The Corporation provided three broad reasons why its application to review and vary Order 161/09 should be granted, namely, and in the Corporation's opinion:

- A) Section 6.2 is contrary to the overall structure of the Corporation's business practices and computer systems;
- B) The impact of implementing Section 6.2, as per Order 161/09, would not achieve the Board's interests as stated at page 71 of Order 161/09; and
- C) Section 6.2, as it now stands, cannot be implemented within the remaining time available.

The Corporation provided submissions with respect to each of its reasons, summarized as follows:

Contrary to Business Practices and Computer Systems

The Corporation submits that its "foundational category" of business is the "customer", of which there are two types, "individual" and "business". The Corporation further submits that its insurance major class categorization is intended to group like kinds of insurance use together, as opposed to either the grouping of vehicles or the grouping of customers. As a result, different types of vehicles and both types of customers (individuals and corporations) are found within the three major classes (private passenger, commercial and public).

The Corporation put forward statistics with respect to these categories, which include the following:

- 15% of fleets consist of only private passenger vehicles;
- 45% of fleet vehicles are private passenger vehicles; and
- 36% of commercial and public service vehicles are not fleet vehicles.

Failure to Achieve Board's Interests

The Corporation submits that because one customer may have vehicles in a number of different classes, if that customer's payment is late, pursuant to Section 6.2 of Order 161/09, that

customer would pay one late payment fee for a number of the vehicles (those in the public passenger, motorcycle, trailer and off-road vehicle classes) but would pay multiple late fees for the vehicles in the public and commercial classes. The Corporation submits that such an approach would be inequitable.

The Corporation further submits that fleets contained within the private passenger class would be subject to only one late payment fee, pursuant to current Section 6.2 of Order 161/09, which would not achieve the interests of the Board. The Corporation opined that it would be inequitable for a customer to pay late fees based on the class in which their vehicle is categorized.

Inability to Implement within Time Available

The Corporation notes that there was limited evidence sought and presented with respect to its proposed change in late payment fees over the course of the 2010 GRA, and that it did not anticipate that this aspect of its GRA would not be accepted by the Board as presented, and that it had continued its business and system development processes on the assumption that Board approval would likely be granted.

The Corporation stated in its application for the review and varying of Order 161/09 that, on January 10, 2010, it would implement a software launch with a number of components, including customer-based late fees for 4-pay (quarterly payment plan) customers, and that it was, essentially, too late to change the software to accommodate the present wording of Section 6.2 of Order 161/09.

In addition, the Corporation states that there are five technological challenges that it would need to overcome to implement the present Section 6.2 of Order 161/09, including a detailed customer look-up, the creation of new audit trails, the implementation of retroactive adjustments for customers whose vehicles were written off, the re-coding of forms (and possibly the creation of new ones), and, as well, significant effects upon the data model and business rules. The

Corporation submitted that these changes could neither be made by January 10, 2010 nor were likely to be accomplished by 2011, without a negative affect upon its other initiatives.

The Corporation states further that, after the software changes were addressed, the Corporation's staff and brokers would require training on the new rules, which also could not be accomplished within the stated timeframe.

Lastly, the Corporation states that communications materials including brochures, websites and policy guides could not be revised within the stated timeframe to accommodate the change reflected in Section 6.2 of Order 161/09.

Intervenors' Positions

The Corporation's application for the review and varying of Order 161/09 was shared by the Corporation with Intervenors that participated in the 2010 GRA, those being Consumers' Association of Canada (Manitoba) Inc./Manitoba Society of Seniors (CAC/MSOS), Coalition of Manitoba Motorcycle Groups (CMMG), Manitoba Bar Association (MBA), and Canadian Automobile Association - Manitoba Division (CAA).

CAC/MSOS filed comments with the Board in respect of the Application on January 5, 2010, wherein it expressed agreement with the Corporation's submission that the implementation of Section 6.2 was neither technically nor logically feasible within the limited time frame available. CAC/MSOS stated that a complete discussion on late payment fees, and perhaps the fleet program, should be conducted at the next GRA proceeding.

That said, CAC/MSOS expressed reservations about the Corporation taking steps to premise its business and systems development on the assumption that the Board would approve the change to late payment fees requested in the Corporation's 2010 GRA, given that in doing so the Corporation constrained the Board's decision making power (as has occurred in the past, in relation to the Driver Safety Rating system).

CAC/MSOS suggested that the Corporation's proposal be approved for a one-year period and that the Corporation be directed to bring forward a more complete application in respect of late payment fees for consideration at the next GRA proceeding, together with more complete evidence detailing the timing, logistics and costs associated with ongoing information technology development activities, and with recommendations from the Corporation to address the problem of technological developments constraining the decision making authority of the Board.

None of CMMG, MBA or CAA took any position with respect to the Application.

The Order

As reflected in Order 161/09, the Board is of the view that the change to late payment fees requested by the Corporation should be approved only as it applies only to four vehicle classes, namely private passenger vehicles, motorcycles, trailers and off-road vehicles.

The Board is of the view that a single late payment fee in respect of commercial and public utility vehicles, which often involve fleets comprised of numerous vehicles, is inadequate.

Board Findings

The Board thanks the Corporation and CAC/MSOS for their thoughtful submissions with respect to the Application. That said, the Corporation would best have alerted the Board to the fact that some owners with multiple vehicles have registered vehicles in more than one class.

The Board requested clarification of the Corporation's "Review and Vary Application" by submitting seven interrogatories to the Corporation on January 7, 2010. The Board received responses to the questions posed only on the afternoon of Friday, February 5, 2010, three weeks before the commencement of the new insurance year. The Corporation advised the Board, through counsel, and on January 8, 2010, that there would be a delay in the Corporation answering the interrogatories because of implementation of the BPR 2A software by the

Corporation on or before January 11, 2010. The Corporation later advised the Board, also through counsel, that it hoped to submit the interrogatory responses on or before Friday, January 22, 2010. When the Corporation filed the responses with the Board on February 5, 2010, it advised that the delay in providing the responses was attributable to the "enormous work undertaking by many individuals for the successful release to the BPR 2A software".

The Board has reviewed the responses to the interrogatories and accepts that, given the timing, with this Order being issued less than a month from the start of the new insurance year, the Corporation may encounter implementation issues if anything other than full acceptance of the Corporation's requested changes (as set out in its Review and Vary Application) is granted.

Nonetheless, the Board continues to have a concern with respect to the effect of the Corporation's request, in that where customers owning multiple vehicles would, in the case of being late in paying due premium payments, be required to pay only one late payment fee, \$20. In the case of large fleets, the Corporation reported in its submissions of February 5, 2010 that "the largest quarterly payment from a registered owner in 2009 was \$143,501 for 247 vehicles". The Corporation would, with its proposal in effect, run the risk of becoming the "banker" of customers with a large number of insured vehicles and choosing to be late in making premium payments with respect to those vehicles.

Depending upon the total amount of premiums owing by a customer, one \$20 late fee for being late on many vehicles will be far less costly than would be the case either if the customer paid the late fees pursuant to the current wording of 6.2 of Order 161/09, i.e. \$20 per vehicle, or had borrowed the required premium funds from a bank and paid on time and avoided the late fees.

In short, the Board has serious concerns that if the Corporation's approach, a change to a "customer-based" late fee approach from a "policy-based" approach is approved and implemented, choosing to pay multiple premiums late, and on a regular basis, may become attractive to some multi-vehicle customers, given an opportunity to save on financing costs.

Under the Corporation's proposal, and even under the proposal accepted by Order 161/09 for all classes other than commercial and public service vehicles, the Corporation will be at risk of being "gamed", while also running the risk of becoming an unsecured creditor in the case a delinquent owner of many vehicles becomes insolvent without having paid premiums due.

In the interests of clarity, the Board provides an example. Under the current system, if the owner of 100 commercial and/or public service vehicles was late paying the premiums on all of those vehicles at each of four due dates in a year, the total late fee assessed will be \$8,000 pursuant to the directions of Order 161/09. Under MPI's proposed approach, that same owner with the same number of vehicles, being late for four due dates in a year for all of the vehicles, would be required to pay late fees of only \$80.

Even if that customer did end up paying the premiums due, with late fees totaling \$80 as per the example described above, and made those payments 20 days after the due date for those payments, and assuming that each quarterly payment due for the 100 vehicles, in aggregate, was \$58,098, the late fees paid would represent the equivalent of an annual interest rate of less than 1%.

Again, the Board notes also that the Corporation, as an unsecured creditor of such a customer, may or may not ever be in a position to recover the funds owing in respect of unpaid premiums and late fees if that customer became insolvent before having made the required premium and late payment fee payment, affecting the Corporation's overall basic revenue, with implications for all basic policyholders.

The approach proposed by the Corporation is likely to provide an incentive to the owners of large fleets to regularly miss premium due dates, reducing the timely flow of funds into the Corporation, which are invested to the benefit of all policyholders, incurring opportunity costs for the Corporation while "running the risk" of experiencing increased bad debts.

The Board will deny the Corporation's request in its Review and Vary Application, but will change the directions of Order 161/09 to require that the currently in place "policy-based" approach to late fees remain in effect for 2010/11.

And acknowledging the Corporation's indication that fleets exist within the four vehicle classes that 6.2 of Order 161/09 allowed MPI's customer-based late fee approach to apply to, the Board anticipates and will direct a thorough review of this issue at the upcoming 2011 GRA.

The Board accepts the premise that the Corporation's intended conversion to a client-based versus premium-based system may have benefits to the Corporation and its policyholders with respect to aspects other than late fees. However, the program as proposed, with respect to late fees, does not address the risk of abuses which may occur through customers with multiple vehicles "gaming the system" (to obtain significant financing at a low annual interest rate from MPI, by choosing to pay late, an incurring a very modest penalty of \$20 per due date regardless of the number of vehicles involved).

The approach proposed by the Corporation provides no incentive to pay on time for the owners of many vehicles, in fact, the approach may well encourage late payment.

The deficiencies in the Corporation's intended customer-based approach to late fees needs to be addressed and considered at the next GRA, if any change is to be considered for a future date.

The Board requested clarification of the four issues raised in MPI's Review and Vary Application including:

- i. Should fleets be treated differently than owners with fewer vehicles?
- ii. Is the number of vehicles/ policies relevant or is the amount of premium owed on the late payment of more importance?
- iii. Is the "4-pay plan" still relevant, or should all time payment customers be migrated to monthly payments?

- iv. Is a fixed dollar late fee still relevant, or should a late payment interest charge be considered?

Based on the Corporation's responses, albeit late with respect to the amount of time remaining to the start of the new insurance year, to the Board's queries, further research is required. If the Corporation intends on introducing a change from premium to customer-based late fees for all vehicle classes at the next GRA, the Board will require that the above issues to be fully studied, with the analyses resulting filed with the Board, to support consideration of any change.

The Corporation's interrogatory report that all vehicle classes contain owners with multiple vehicles of either the same or different classes, require the Board to direct that the above and any related issued be fully studied, with the analyses resulting filed with the Board for review at the upcoming GRA. In short, the Board will direct MPI to undertake research and analysis and report back to the Board at the next GRA on the four above issues.

The Board states further, in respect of future applications to be filed by the Corporation, that if the Corporation is experiencing business practice and/or technological issues that appear to dictate one action as opposed to another, said restraints should be referenced within the application filed and specifically made known in the Corporation's oral testimony at the GRA, in order to ensure that the Board is aware of the issues and can examine those issues with full knowledge during the proceeding. The Corporation should never assume a proposal of the Corporation will be accepted by the Board until the Board has, indeed, accepted it.

As well, in cases where a Review and Vary Application is filed by the Corporation, the Corporation should, from the outset, and particularly following questions being provided the Corporation by the Board, or interveners, ensure that in as timely a manner as is possible, the Corporation's technical restrictions and/or difficulties are made known to the Board.

In this matter, the Board acknowledges that if the Board had been as aware of the deficiencies of the proposed customer-based late fee approach at the time of determining and issuing Order 161/09 as the Board now is, following its review of the Corporation's Review and Vary

Application, which included, albeit at a “late” date the Corporation’s responses to the Board’s questions, the Board would likely have rejected the implementation of the customer-based late fee approach for any and all classes, rather than just for the commercial and public service vehicle classes, at that time.

That said, hindsight is of little value at this time, and the Board’s determination as reflected in this Order reflect its understanding of what is currently both practical and necessary.

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 (Rules). The Board’s Rules may be viewed on the Board’s website, www.pub.gov.mb.ca

IT IS THEREFORE ORDERED THAT:

1. The request of the Application is dismissed in such that Section 6.2 of Order 161/09 shall not be varied as sought by Manitoba Public Insurance deleted from the Order.

2. Section 6.2 of Order 161/09 is varied and now states:

MPI's proposal for a change to a client-based (rather than vehicle-based) late fee is rejected, and the current vehicle-based late fee shall continue to apply for all vehicle classes.

3. The Corporation is to carefully review its proposed customer-based late fee approach from a variety of perspectives, and provide the results of its analyses, including the pros and cons of options, in its 2011 GRA filing.

THE PUBLIC UTILITIES BOARD

"GRAHAM LANE, C.A."

Chairman

"KRISTINE SHIELDS"

Acting Secretary

Certified a true copy of Order No. 19/10 issued by
The Public Utilities Board

Acting Secretary