

August 8, 2019

Public Utilities Board  
400-330 Portage Avenue  
Winnipeg, Manitoba R3C 0C4

**Attention: Mr. Darren Christle**

Manitoba Public Insurance – Legal Department  
702-234 Donald Street  
Winnipeg, Manitoba R3C 4A4

**Attention: Messrs. Mike Triggs and Steve Scarfone**

Dear Sirs:

**Re: Manitoba Public Insurance Corporation (“MPI”) 2020/2021 General Rate Application**

We are writing to you in our capacity as legal counsel for the *Insurance Brokers Association of Manitoba (“IBAM”)*, and this is further to the letter from MPI addressed to *The Manitoba Public Utilities Board* (the “**Board**”) and IBAM dated August 7, 2019 (the “**Letter**”). Please accept this correspondence as IBAM’s response to the Letter and as supplementary information to IBAM’s application to be accepted as an Intervenor (the “**Application**”) in the *2020/2021 MPI General Rate Application (“GRA”)*.

**I. Introductory Remarks re: The (Late) Filing of the Application**

At the outset, IBAM readily acknowledges that it submitted the Application after the deadline(s) that had been previously set by the Board. However, this was due to the fact that IBAM had no reason to believe that the role of brokers in the “*delivery of MPI services throughout Manitoba and the commissions paid for those services*”<sup>1</sup> was going to be a key area of inquiry raised by MPI and/or the *Manitoba Branch of the Consumers' Association of Canada (“CAC Manitoba”)* at the GRA until it had reviewed the *MPI Pre-Hearing Transcript of Proceedings* from June 27,

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<sup>1</sup> See Pre-Hearing Transcript, June 27, 2019, page 39.

2019 (the “**Pre-Hearing Transcript**”). Upon learning that MPI and CAC Manitoba<sup>2 3 4</sup> intended to refer to the role of brokers and the commissions paid to them for the delivery of MPI services throughout Manitoba, IBAM immediately sought permission from the Board to file the Application. As per the timelines set out in Mr. Darren Christle’s email dated July 31, 2019, it proceeded to do so. Although IBAM has (admittedly) arrived late to the GRA, it should not be precluded from participating in the GRA for the purposes of ensuring that the Board has a full and proper understanding of the issues relating to broker agreements entered into with MPI and the services that brokers provide to the citizens of the Province of Manitoba.

## **II. MPI Is Not Opposed to the Application**

At the outset, we note that the Letter confirms that MPI is *not* opposed to the Application. However, following this confirmation, MPI proceeds to raise some issues and/or seeks to have the Board impose conditions on IBAM’s potential participation in the GRA. We will deal with each of MPI’s comments vis-à-vis IBAM’s potential participation in the GRA, in order.

## **III. The Issues and/or Possible Conditions Set Out in the Letter**

IBAM’s response to MPI’s comments vis-à-vis IBAM’s potential participation in the GRA is as follows:

### **a) IBAM Should Be Limited to a Single Round of Information Requests**

First, the Letter states that if the Application is granted, IBAM should be subject to the same obligations set out in Order 92/19 as the other parties, and must not be afforded any “*special treatment*”. As an example, MPI submits that IBAM should be limited to a single round of information requests.

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<sup>2</sup> CAC Manitoba has stated that it “*intends to examine the impact of any future changes to MPI’s agreements with brokers and the impacts that this will have on ratepayers*” (see Pre-Hearing Transcript, June 27, 2019, page 50).

<sup>3</sup> CAC Manitoba has also stated that “*any changes that are anticipated will have an ongoing impact on ratepayers because ... these costs are incorporated directly into MPI’s cost of operation and therefore into rates*” (see Pre-Hearing Transcript, June 27, 2019, page 50).

<sup>4</sup> Finally, CAC Manitoba expects that the issue of “*broker commissions and any implications flowing from brokers agreements and commissions paid to brokers will be explored under cost of operations and cost containment measures*” (see Pre-Hearing Transcript, June 27, 2019, page 85).

Although being limited to a single round of information requests is not ideal, IBAM recognizes that if the Board grants its request for Intervenor status – which would be granted after the deadline(s) previously set by the Board – it must not delay the GRA proceedings. Although IBAM's preference would be to have two (2) rounds of information requests, it recognizes that this may not be possible. If the Board does grant IBAM Intervenor status, it would be prepared to accept only one (1) round of information requests, if necessary.

**b) IBAM's Request for Costs**

In the Application, IBAM has confirmed that it intends to seek an award of costs in the event that it is granted Intervenor status. This is no different than the vast majority of organizations that seek Intervenor status before the Board. In doing so, IBAM cited the Board's *Intervenor Costs Policy* (the "**Policy**"). The Policy states that the Board may award costs to be paid to any Intervenor who has:

- (a) made a significant contribution that is relevant to the proceeding and contributed to a better understanding, by all parties, of the issues before the Board;<sup>5</sup>
- (b) participated in the hearing in a responsible manner and cooperated with other Intervenors who have common objectives in the outcome of the proceedings in order to avoid a duplication of intervention;<sup>6</sup>
- (c) represented interests beyond their sole business interest;<sup>7</sup> and

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<sup>5</sup> IBAM intends to make a significant contribution to the GRA as it will ensure that the interests of brokers and consumers are made known to the Board (by way of questioning, submitting information and/or providing written submissions). It is important for IBAM and brokers to be able to represent the views of brokers and consumers in any number of topic areas that will arise as part of the GRA. Its proposed intervention will be guided by the Board's criteria for the consideration of just and reasonable rates.

<sup>6</sup> IBAM will participate in the Application in a reasonable manner and will cooperate with other Intervenors who have common objectives. This may include, but not be limited to, CAC Manitoba, Bike Winnipeg and/or CAA. IBAM will make reasonable efforts to ensure that its participation is not unduly repetitive of other Intervenors.

<sup>7</sup> IBAM will represent interests beyond its sole business interests. This includes, but is not limited to, the interests of Manitobans that use broker services.

(d) a substantial interest in the outcome of the proceeding and represents the interests of a substantial number of ratepayers.<sup>8</sup>

In response, MPI has referred to *Rule 43* of the Board's *Rules of Practice* (the "**Rules**"). It states that the Board may award costs to an Intervenor who has "*insufficient financial resources to present the case adequately without an award of costs.*" IBAM notes that this provision under the Rules (re: "*insufficient financial resources*") is *not* a requirement under the Policy. Regardless, as set out in the Application,<sup>9</sup> IBAM is a *not-for-profit* organization that represents the interests of brokers and consumers of *Property & Casualty ("P&C")* insurance in Manitoba. A *not-for-profit* organization, by its very nature, utilizes all of the money that it receives to pursue its objectives and keep it running; IBAM is no different. As a result, IBAM does not have the resources to present its case adequately without an award of costs. We understand that CAC Manitoba, Bike Winnipeg and CAA will also be seeking costs on similar grounds.

MPI has also noted that IBAM has not provided a detailed cost estimate for its participation in the GRA. In the event that the Board grants IBAM Intervenor status, it will proceed to provide a detailed cost estimate pursuant to the terms of the Policy.

#### **c), d) & e) IBAM's Participation in the GRA**

The Letter goes on to summarize IBAM's proposed involvement in the GRA. As set out in the Application,<sup>10</sup> if granted Intervenor status, IBAM will be in attendance throughout the hearing and will monitor discussion(s) and provide information, as required. IBAM will also participate fully and actively throughout the course of the hearing, as may be required. This participation will include, but not necessarily be limited to, the submission of evidence, the cross-examination of witnesses and providing written submissions for the Board's consideration. Although the Application does not commit to IBAM providing *viva voce* evidence, there is no requirement for

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<sup>8</sup> As set out in the Application, IBAM represents all consumers of insurance in Manitoba as well as (virtually) all brokerages located throughout the Province of Manitoba. IBAM therefore represents the interests of a substantial number of ratepayers. Moreover, no other Intervenor is currently representing the interests of brokers. As a result, the over 2,000 Manitobans that are currently members of IBAM [and the over 2,600 Manitobans employed by *Property & Casualty ("P&C")* brokerages] have a substantial interest in the outcome of the GRA.

<sup>9</sup> See *Appendix "A"* of the Application, page 1.

<sup>10</sup> See *Appendix "A"* of the Application, page 8.

it to do so. Currently, IBAM is in the process of determining the most appropriate way to participate fully and actively in the GRA, while at the same time ensuring that its intervention is guided by the Board's criteria for the consideration of just and reasonable rates. In the event that the Board grants IBAM Intervenor status, it will provide a more detailed overview of its involvement at the GRA.<sup>11</sup>

The Letter also expresses concern that IBAM may not add value to the GRA. This concern is premised, at least in part, on the fact that there are currently six (6) lawyers scheduled to be in attendance to cross-examine MPI on various issues, “*including cost of operations and cost containment measures*”. Although the other lawyers that will be present at the GRA are no doubt competent and capable advocates, the reality is that they are there to represent the interests of their own respective clients. Those clients – including CAC Manitoba, Bike Winnipeg and/or CAA – do not have the same interests, experience, information and/or expertise relating to the general operations of MPI's distribution model and/or the sale and servicing of insurance and Autopac services at brokerages throughout the Province of Manitoba. In short, no other Intervenor has the experience, information and/or expertise that IBAM and its members have in this very important area of the hearing before the Board. In other words, IBAM and its members will see the issues before the Board through a different lens. Based on this reasoning alone, IBAM should be granted Intervenor status at the GRA.

**f) The Directive Issued by the Government of Manitoba**

MPI has referred to “*A Directive to [MPI] Respecting Conciliation with [IBAM]*” issued by the Honourable Minister Colleen Mayer on July 24, 2019 (the “**Directive**”). In doing so, MPI stated, in part:

*“... The conciliator was agreed to on August 2, 2019 (appointment pending) and negotiations are expected to commence in the fall of 2019. The Directive sets out principles to be applied in the negotiations, one of which is that IBAM and MPI will not make public statements about the subject matter of the negotiations during the continuation of the conciliation process. MPI understands this to mean, should the conciliation process proceed, that IBAM and MPI could discuss historical facts and issues at the GRA, but will not be permitted to discuss the status and content of the negotiations.”<sup>12</sup>*

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<sup>11</sup> In the alternative, IBAM requires an extension of time in order to formalize its position.

<sup>12</sup> A copy of the Directive can be found online at:  
[https://wfpquantum.s3.amazonaws.com/pdf/2019/94071\\_Directive%20-%20MPI%20-%20IBAM%20Conciliation.pdf](https://wfpquantum.s3.amazonaws.com/pdf/2019/94071_Directive%20-%20MPI%20-%20IBAM%20Conciliation.pdf)

IBAM agrees that the Directive imposes some restrictions on what may be discussed regarding the Future Service Delivery Strategy for customer transactions under both *The Manitoba Public Insurance Corporation Act* and *The Drivers and Vehicles Act*.<sup>13</sup> In doing so, IBAM wishes to draw the Board's attention to the *Terms of Reference* set out in the Directive, a copy of which is attached hereto as *Appendix "B"*. More specifically, the *Terms of Reference* state, in part:

*"8. The discussions in the conciliation process will be confidential unless the parties agree otherwise. The process will be without prejudice and any statements made by a party may not be used by the other party as evidence in any legal proceedings.*

*9. Conciliation process discussions shall be held in private.*

*10. IBAM and MPI will not make public statements about the subject matter of the negotiations during the continuation of the conciliation process."*

We can advise that IBAM intends to respect the Directive and the *Terms of Reference* set out therein. However, by doing so, it will *not* detract from the importance of its participation in the GRA. As set out in its Application,<sup>14</sup> IBAM represents all consumers of insurance in Manitoba as well as (virtually) all brokerages in the Province of Manitoba. No other Intervenor is currently representing brokers at the GRA. IBAM has expertise in the general operations of MPI's distribution model and in the sale and servicing of insurance and Autopac services at brokerages throughout the Province of Manitoba.

#### **IV. Concluding Remarks**

In closing, we would like to thank the Board for considering the Application. As set out above, IBAM readily acknowledges that it submitted the Application after the deadline(s) that had been previously set by the Board. However, this was due to the fact that IBAM had no reason to believe that the role of brokers in the "*delivery of MPI services throughout Manitoba and the commissions paid for those services*"<sup>15</sup> was going to be a key area of inquiry raised by MPI and/or CAC Manitoba at the GRA until it had reviewed the Pre-Hearing Transcript. Upon

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<sup>13</sup> See Directive, *Appendix "B"*, page 1.

<sup>14</sup> See page 5 of *Appendix "A"* to the Application.

<sup>15</sup> See Pre-Hearing Transcript, June 27, 2019, page 39.

learning that MPI and CAC Manitoba intended to refer to the role of brokers and the commissions paid to them for the delivery of MPI services throughout Manitoba, IBAM immediately sought permission from the Board to file the Application.

Although IBAM has (admittedly) arrived late to the GRA, it should not be precluded from participating in the GRA. For the numerous reasons set out in the Application and above, IBAM should be granted Intervenor status to ensure that the Board has a full and proper understanding of the issues relating to broker agreements entered into with MPI and the services that brokers provide to the citizens of the Province of Manitoba.

Please do not hesitate to contact us should you have any questions or require any additional information for the purposes of considering the Application.

We look forward to hearing from you.

Yours truly,

**MLT AIKINS LLP**

Per:   
**Curtis M. Unfried**

cc. IBAM – via email

**APPENDIX "B"****A Directive to The Manitoba Public Insurance Corporation Respecting  
Conciliation with the Insurance Brokers Association of Manitoba****Issued by: Honourable Minister Colleen Mayer****Effective: July 24, 2019****BACKGROUND**

*The Crown Corporations Governance and Accountability Act* provides for the issuing of directives to one or more Crown corporations as follows:

13(1) the minister may — with the approval of the Lieutenant Governor in Council — issue a directive to a corporation

(a) respecting:

- (i) matters of policy and the accounting policies and practices for the corporation,
- (ii) standards to be complied with in respect of advertising done by the corporation, and
- (iii) the conduct of special organizational reviews to be conducted by the corporation;

(b) to ensure that practices of two or more corporations are consistent; and

(c) to ensure that two or more corporations act in concert with each other or with government departments or agencies when doing so will further efficiency and effectiveness.

**PURPOSE**

This directive provides instruction to The Manitoba Public Insurance Corporation (MPI) to engage in a process of conciliation with the Insurance Brokers Association of Manitoba (IBAM) to reach an agreement regarding the Future Service Delivery Strategy for customer transactions under both *The Manitoba Public Insurance Corporation Act* and *The Drivers and Vehicles Act*.



## **APPLICATION AND SCOPE**

This directive applies to the development and introduction of on-line services relating to motor vehicle licensing and insurance in Manitoba and the participation of insurance brokers in providing those services.

The Minister of Crown Services acknowledges IBAM is an independent organization not subject to this directive but strongly encourages it to participate in the conciliation process to achieve a resolution on the matters of contention.

## **DIRECTIVE**

MPI will engage in a conciliation process with IBAM to reach agreement regarding future service delivery strategies and the modernization of service delivery options.

MPI will work with IBAM to select a mutually acceptable individual to act as conciliator, and will identify that individual to Manitoba. If a mutually acceptable individual is not identified by August 2, 2019 then the Minister of Crown Services will identify a conciliator.

The conciliation process will be governed by the following Terms of Reference:

MPI and IBAM will negotiate with the objective of reaching one or more agreements or written letters of understanding (“agreements”) to address the development and introduction of on-line services relating to motor vehicle licensing and insurance in Manitoba and the participation of insurance brokers in providing those services.

The principles to be applied in the negotiations are as follows:

1. Manitobans expect and must be able to access an online distribution and payment channel for their automotive insurance needs.
2. Manitoba is committed to supporting the stability and health of small business in the province.

3. A conciliator will be retained by Manitoba to assist the parties to seek to reach these agreements. The conciliator will be an individual who is wholly independent of the parties, wholly impartial and free of any personal interest or other conflict of interest.
4. Each of the parties will be responsible for its own costs of participating in the conciliation process. MPI will pay the reasonable costs of the conciliator, in accordance with a budget agreed by the conciliator.
5. The conciliator will be responsible for the conduct of the conciliatory process in accordance with practices and procedures commonly used in commercial mediations. This may include the conciliator proposing to IBAM and MPI agreements to apply to the conduct of the conciliation process.
6. Each of the parties will identify up to three representatives as principal participants in the negotiations.
7. The time frame for the conciliation process will be established at the outset of the process. It is expected that some issues will need to be addressed on a priority basis so that actions to assist customers may be taken sooner.
8. The discussions in the conciliation process will be confidential unless the parties agree otherwise. The process will be without prejudice and any statements made by a party may not be used by the other party as evidence in any legal proceedings.
9. Conciliation process discussions shall be held in private.
10. IBAM and MPI will not make public statements about the subject matter of the negotiations during the continuation of the conciliation process.
11. MPI agrees not to institute any new on-line services during the continuation of the conciliation process except in accordance with any agreement made with IBAM.
12. At the end of the conciliation process, where requested to do so by the Minister of Crown Services, the conciliator will provide a written report to MPI, IBAM and the Minister of Crown Services setting out any non-binding recommendations on how the issues considered in the conciliation process may be addressed.