

January 14, 2022

**VIA EMAIL**

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Attention: Kathleen McCandless

Dear Madam:

**Re: Application for Review of and Variance of Board Order No. 134/21  
(the "Order")**  
**MLT Aikins File No: 0135108-00005**

We are counsel for the Insurance Brokers Association of Manitoba ("**IBAM**"). Please accept this letter as an application by IBAM, pursuant to section 36 of the Public Utilities Board (the "**Board**") Rules of Practice and Procedure (the "**Rules**"), for the Board to review and vary the Order. Given that the Rules require that this application be filed with the Board, we have copied your client, to the attention of Ms Schubert and Dr. Christle, for the filing of this application.

Section 36(2) of the Rules requires that an application for review under s. 36(1) contain:

1. a clear and concise statement of facts relevant to the application;
2. the grounds on which the application is made;
3. a brief explanation as to the nature of the prejudice or damage that has resulted or will result from the order, decision or direction;
4. a brief description of the remedy sought; and
5. the applicant's name, address in Manitoba, telephone number, fax number and, if available, email address.

**Statement of Facts Relevant to the Application**

**Commission Rates for the 2021/22 and 2022/23 Years**

The Order, and the related News Release issued by the Board on December 15, 2021 (the "**News Release**"), state that brokers will be paid the same rates for online transactions and in-person transactions for the 2021/22 and 2022/23 years. The Board is aware, through evidence at this

General Rate Application (the “GRA”)<sup>1</sup> and in other General Rate Applications, that online transactions will not be implemented until the 2023/2024 year at the earliest.

As such brokers will not be paid the same rate for online and in-person transactions for the years 2021/22 and 2022/23 as there has not been, nor will there be, online transactions in those years.

These portions of the Order and News Release are therefore incorrect, contrary to the evidence before the Board, and misleading to the public.

### **Broker Roles In Online Transactions**

Section 8.6 of the Order states:

*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.*

The details of the process by which brokers will be involved in the transactions are still being fully developed with MPI. However, the goal is to have brokers involved in the review of online transactions by assigning a broker of record to each customer, to ensure that Manitobans effecting online transactions are protected. Brokers certainly will play a role in online transactions.

Moreover, the Board heard little to no evidence in this regard. The majority of the questions respecting the broker role in online transactions is found at pages 505 to 510 in the October 13, 2021 transcript during the cross-examination of Mr. Michael Gandhi by Ms. Dilay on behalf of the Consumers’ Association of Canada. At 509:10, Ms. Dilay asks Mr. Gandhi to confirm that “MPI believes that there is value in paying brokers for transactions where customers are transacting online directly with MPI and in which brokers pay no role.” Mr. Gandhi deferred responding to this question to Mr. Giesbrecht. Counsel for CAC never asked this question to another person during the GRA and the question was therefore unanswered.

In fact, this question was not asked again by any party and the Board therefore did not have evidence before it that would support a finding that brokers would play no role. At most, the Board heard from Mr. Gandhi that it is a “possibility” that “someone who may be characterized as a sophisticated customer and who will renew online will likely never need to go see a broker”.<sup>2</sup> That

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<sup>1</sup> Please see preamble I of the Broker Agreement [as the agreement is referred to in the Order] and Mr. Michael Gandhi’s testimony at 506:07 – 507:08 in the October 13, 2021 transcript.

<sup>2</sup> Please see Mr. Gandhi’s testimony at 507:15 – 507:20 in the October 13, 2021 transcript.

evidence does not establish that brokers will not play a role in online transactions. One of the benefits of working in the online environment is that parties do not have to “go and see” one another to interact, including for interactions between customers and MPI. As such, the Board’s finding that brokers may play no role in some online transactions is spurious, inaccurate and was made without proper foundation. This finding was then repeated in the News Release.

Despite the fact that counsel for CAC did not ask this question again and therefore did not receive a response to same, it argued in its closing submissions that MPI apparently “appears to believe that there is value in paying brokers for transactions where customers are transacting online directly with MPI in which brokers play no role”.<sup>3</sup> The Board may have relied upon these submissions as fact when, as can be clearly seen, these submissions are not supported by the evidence.

### **The Manner By Which the Board has Proceeded is Unfair and Contrary to the Public Interest**

#### *Non-Intervention Based on History and Assurances*

You will recall that IBAM intervened and participated extensively in the 2020/2021 General Rate Application (the “**2020/21 GRA**”). Following this extensive intervention, the Board held that it does not have the jurisdiction to direct MPI as to the terms and conditions of any agreements it enters into with IBAM (see pages 13 and 102-103 of Board Order No. 176/19). While the Board determined that it would review a new service agreement between IBAM and MPI, based on its decision that it lacks jurisdiction as to the manner by which MPI delivers its products, such a review would necessarily need to be limited to the cost consequences of the agreement. The comments in the Order and News Release regarding IBAM and brokers generally go far beyond speaking to cost consequences and, as emphasized previously, are simply untrue.

Following this determination, IBAM sought intervener status at the 2021/2022 General Rate Application (the “**2021/22 GRA**”). As set out at pages 11 and 12 of Board Order No. 88/20, IBAM requested intervener status in order to provide the Board with information respecting broker commissions, fees and/or direct sales in order to ensure that the issues are fully and properly before the Board. At page 21 of Board Order No. 88/20, the Board dismissed IBAM’s application on the following basis:

“The Board finds that the intervention as proposed by IBAM would not assist it in determining whether the rate applied for by MPI is just and reasonable. The issue of broker commissions was extensively reviewed in the 2020 GRA and the Board has made clear the extent of its jurisdiction in that regard. The Board does not understand how IBAM’s participation, without witnesses or evidence, would provide any assistance to it when counsel for the Board and other Interveners will

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<sup>3</sup> See the submissions of counsel for the Consumers’ Association of Canada at 2709:14-2709:17 in the October 27, 2021 transcript.

be cross-examining MPI on cost containment. **The Board does not require IBAM's intervention in order to assess the reasonableness or prudence of MPI's expenditures with respect to broker commissions.**" [emphasis added].

Prior to the GRA, IBAM again considered whether it would seek to intervene. In doing so, it reviewed the Application itself, reviewed the intervener requests as they were submitted and, significantly, attended a meeting amongst counsel for the Board and the proposed interveners on June 29, 2021 (counsel for MPI were not in attendance). The purpose of this meeting was for counsel to discuss what issues may be of import to their respective clients. Counsel for IBAM made it clear at this meeting that IBAM had not yet determined whether it would be seeking to intervene in the GRA and sought clarity about whether the other parties expected brokers, IBAM and/or the Broker Agreement to be issues of focus at the GRA. All counsel, including counsel for the Board, advised that they did not expect brokers to be a central area for their submissions or intervention. Counsel for the Consumers' Association of Canada stated that broker commissions may come up, but only in the normal course when enquiring about costs of operation generally.

Counsel for IBAM subsequently attended the Pre-Hearing Workshop held on July 5, 2021 respecting the Preliminary Issues List. Counsel for the Board, MPI and the other prospective interveners were in attendance and each spoke to their proposed focuses and interventions, if applicable. Of note is that counsel for IBAM specifically advised that she was there to determine "if brokers or brokers' [*sic*] commissions or IBAM will be the focus of any of the questions of the other Interveners or the focus of the GRA in general with MPI." None of the counsel on the call indicated that the issues of the service delivery model, brokers in general, broker commissions or the Broker Agreement should be added as issues to the GRA, nor did any counsel indicate that brokers or broker commissions would be a focus of their lines of questioning.

In keeping with the representations by counsel described above, the Final Issues List for the GRA did not include issues relating to brokers, IBAM and/or the Broker Agreement.

On the basis of the prior Order respecting the Board's jurisdiction over the service delivery model, the Board's rejection of IBAM's intervener application for the 2021/2022 GRA as it relates to broker commissions, the assurances of counsel that it was not expected that brokers would be a focus of the GRA, and the contents of the Final Issues List, IBAM chose not to intervene in the GRA.

Despite these assurances and the Board's past determination as to their lack of jurisdiction respecting the service delivery model, the Board apparently accepted and considered incomplete and inaccurate submissions in the GRA respecting service delivery (which submissions were not supported by evidence) and, in particular, as to the involvement of brokers in online transactions. The Board proceeded to make a determination about same, without notifying IBAM that it no longer considered itself bound by its decision regarding jurisdiction and without notifying IBAM that it intended to make a finding of fact in this regard.

Had the Board notified IBAM as to its change in position as to jurisdiction, IBAM would have gladly provided the Board with the requisite information to ensure that this issue was fully and properly before the Board. As the Board did not do so, it lacked relevant information and came to conclusions that were simply incorrect.

***The Information Contained in the News Release Unfairly Presents the Board's Findings***

The Order is a 133-page document and the only section addressing “Broker Commissions” (section 8.6) is one page long (in addition to two other paragraphs in the Order that refer to brokers). By contrast, the News Release is approximately a page and a half long in total yet the Board has dedicated about a third of the News Release to the issue of brokers. Given the limited discussion on this issue in the Order and the fact that the information contained in this portion of the Order is not even discussed in the analysis of the Board (see section 8.10), it is unclear as to why this *obiter* information warranted such a focus in the News Release.

On top of the fact that the information regarding brokers in the News Release contains inaccuracies, the summary contained in the News Release is also not fully representative of the information contained in the Order. The News Release is written in a manner that excludes important information about the cost savings obtained through the Broker Agreement. Specifically, while the News Release identifies an increase in Basic commissions, it ignores the fact that commission rates for Extension products have been substantially decreased, even though that fact is included in the Order. IBAM advises that such a decrease – a reduced rate for online transactions – and the Broker Agreement as a whole, result in forecasted costs savings for Manitobans from the previous commission agreement.

As a result, the News Release draws to Manitobans' attention only negative information respecting brokers (the majority of such information being inaccurate or incorrect) while omitting any information that speaks to the benefits of brokers and the costs savings derived from the Broker Agreement. It is contrary to the public interest for the Board to issue an unbalanced News Release that misrepresents its own findings.

**Grounds On Which the Application is Made**

1. The Order and corresponding News Release contain errors of fact which are not supported by the evidence before the Board or respecting matters regarding which the Board heard little or no evidence. Specifically, Section 8.6 of the Order, under the heading Broker Commissions, states:

*“Following the conclusion of the 2021 GRA hearings, MPI advised the Board that a new agreement with IBAM had been concluded. The new Broker Agreement entered into between MPI and IBAM is effective for the period from April 1, 2021, to March 31, 2026. Generally, the agreement resulted in an increase in commission expenses for Basic and a reduction in commission expenses for Extension. MPI is now forecasting Basic's commission expense as \$4.6 million higher in 2022/23, and*

*\$7.6 million higher in 2023/24, than the 2021 GRA forecast. Actual Basic commissions paid in 2020/21 totalled \$43.4 million.*

*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 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**" [emphasis added];*

2. The Order states that brokers will be paid the same rates for online transactions and in-person transactions for the 2021/22 and 2022/23 years. However, the Board is aware that online transactions will not be implemented until the 2023/2024 year at the earliest. As such, this statement is incorrect and misleading to the public;
3. The Order states that brokers provide no service in online transactions. This is inaccurate, as detailed above. Moreover, the Board heard little to no evidence in this regard. As such, this spurious and inaccurate finding was made without proper foundation; and
4. The manner by which the Board has proceeded has been procedurally unfair (including by its release of an unbalanced News Release) and is contrary to the public interest. If the Board had proceeded in a procedurally fair manner, it would have had all of the necessary evidence before it to accurately consider and make findings of facts respecting issues such as broker compensation.

### **Nature of the Prejudice or Damage That Has or Will Result From the Order**

As the Board heard in the 2020/21 GRA, brokers have been the customer-facing part of MPI's business model since 1971. Professional brokers provide service to Manitobans in over 300 locations in more than 120 communities in Manitoba. Over 2,600 people are employed by brokerages in Manitoba.

Manitobans enjoy attractive rates for vehicular insurance, often shown to be the lowest in Canada. The low commission rates paid to brokers in Manitoba is a major driver of those low rates for vehicular insurance.

The findings of the Board with respect to brokers, if not corrected, are likely to cause significant reputational damage to brokerages in Manitoba. The allegations that brokers will not play a role in online transactions could impact brokers' relationships with their clients as a whole by causing Manitobans to draw harmful inferences about brokers and the industry generally. Given that

brokers are MPI's face for service delivery, it can be assumed that the brunt of any consumer anger over these incorrect findings will be directed at brokerages and their employees.

Brokerages serve Manitobans beyond the work performed for MPI, including in other insurance sectors. As part of the services they provide, brokers give customers options by making available to the public Extension products from companies other than MPI. Brokers also play a key role in consumer protection by assisting consumers with making informed choices about their coverage levels in order to ensure that Manitobans are not under-insured. As the Board heard at the 2020/21 GRA, the effect of inadequate insurance can be devastating to individuals.

The harmful inferences that may be drawn from the Board's findings could undermine Manitobans' confidence in the brokerage industry. This, in turn, could have a chilling effect on the relationship between brokers and customers, thereby driving Manitobans away from brokerages. This would not only have a negative impact on the businesses themselves and those they employ, but would also have a negative impact on consumers with respect to consumer protection and choice.

Lastly, Manitobans should be able to expect that the Board's findings are based on evidence and on all relevant circumstances and that the Board proceeds in a balanced manner. Manitobans should also be able to expect that the Board will correct errors when brought to its attention, so as to ensure that accurate information is contained in its Orders available for public consumption.

### **Remedy Sought**

IBAM respectfully requests the following relief:

1. The Board determine that this matter should be reviewed, pursuant to Rule 36(4);
2. The Board grant the application;
3. The following statements be struck from page 101 of the Order:
  - a. "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";and
  - b. "...and even though the broker has played no role in the transactions, that broker will receive a commission";
4. Should IBAM's application be granted, it also requests that the Board retract certain statements made in the News Release respecting the Order;
5. The News Release be retracted and a correction issued. The corrected version of the News Release would not contain the following statements:

- a. "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"; and
- b. "... and even though the broker may have played no role in the transaction, that broker will receive a commission;"

The corrected version of the News Release would also contain reference to the corresponding decrease in negotiated Extension commissions as set out at page 33 of the Order so as to ensure that the News Release is balanced; and

6. Costs, to be dealt with in a similar manner to standard intervener costs.

### **Applicant Information**

Correspondence respecting this matter is kindly requested to be directed to the writer. The writer's contact information is included in the letterhead of this letter. In addition, IBAM can be reached, with attention to Mr. Grant Wainikka (CEO), at 1445 Portage Ave #600, Winnipeg, MB R3G 3P4. Its telephone number is (204) 488-1857, and its fax number is (204) 489-0316. Mr. Wainikka's email is Grant@ibam.mb.ca.

### **Conclusion**

Service of this Application on the parties to the 2022/2023 Manitoba Public Insurance General Rate Application is being effected concurrently.

We look forward to hearing from you.

Yours truly,

**MLT AIKINS LLP**

Per: 

Michael J. Weinstein

MJW:ace

cc: Public Utilities Board, *Attention: Kristen Schubert and Dr. Darren Christle*

cc: Pitblado LLP, *Attention: Robert Watchman and Kara Moore, counsel for the Public Utilities Board*

cc: Manitoba Public Insurance Corporation, *Attention: Steve Scarfone and Anthony Guerra*

cc: Public Interest Law Centre, *Attention: Katrine Dilay and Christopher Klassen, counsel for the Consumers' Association of Canada (Manitoba) Inc.*

cc: BD Oakes, *Attention: Charlotte Meek, Counsel for the Coalition of Manitoba Motorcycles Groups*

cc: Thompson Dorfman Sweatman LLP, *Attention: Antoine Hacault, counsel for Taxi Coalition*