

December 17, 2021

VIA EMAIL

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Attention: Kathleen McCandless

Dear Madam:

Re: Public Utilities Board News Release Dated December 15, 2021
MLT Aikins File No: 0135108-00005

We are counsel for the Insurance Brokers Association of Manitoba (“**IBAM**”). We are in receipt of the News Release dated December 15, 2021 (the “**News Release**”), released by the Public Utilities Board (“**PUB**”) following the 2022/2023 Manitoba Public Insurance (“**MPI**”) General Rate Application (“**GRA**”) hearing and respecting Board Order No. 134/21 (the “**Order**”).

The News Release and Order Contain Factual Inaccuracies

IBAM is shocked and seriously concerned about the contents of the News Release as it relates to brokers, their commissions and the service delivery model for MPI insurance products. There are material and consequential inaccuracies contained in the News Release (and in section 8.6 of the Order), including:

1. The News Release states that brokers will be paid the same rates for online transactions and in person transactions for the 2021/22 and 2022/23 years. The PUB is aware that online transactions will not be implemented until the 2023/2024 year at the earliest (see, for example, preamble I of the MPI-IBAM Agreement). As such, this statement is incorrect and misleading to the public; and
2. The News Release states that brokers will play no role in online transactions. The details of the process by which brokers will be involved in the transactions is 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. By having independent, trained, licensed and regulated brokers review the transactions to ensure that the insurance coverage selected is appropriate and reach out to the customers when necessary, brokers are playing a key role in consumer protection. Brokers certainly will play a role in online transactions.

The Manner By Which the PUB has Proceeded is Unfair and Contrary to the Public Interest

Moreover, IBAM is deeply troubled by the manner by which the PUB came to these unsupported conclusions and the manner in which the News Release was framed.

Non-Intervention Based on History and Assurances

You will recall that IBAM intervened and participated extensively in the 2020/2021 General Rate Application. 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 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. As set out at pages 11 and 12 of Board Order No. 88/20, IBAM requested intervener status in order to provide the PUB with information respecting broker commissions, fees and/or direct sales in order to ensure that the issues are fully and properly before the PUB. At page 21 of Board Order No. 88/20, the PUB 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 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 an informal meeting amongst counsel for the PUB 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. IBAM made it clear at this meeting that it 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 MPI-IBAM Agreement to be issues of focus at the GRA. All counsel, including counsel for the PUB, advised that they did not expect brokers to be a central area for their submissions or intervention, though counsel for the Consumers Association of Canada did state that broker commissions may come up 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 PUB, MPI and the other prospective interveners were in attendance and each spoke to their proposed focuses and interventions, if applicable. The transcript from this Pre-Hearing Workshop is enclosed for your convenience. Of note is that Ms. Sokal of our office specifically advised that she was there to determine “if brokers or broker 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 MPI-IBAM 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 MPI-IBAM Agreement.

On the basis of the Order respecting the PUB’s jurisdiction over the service delivery model, the PUB’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 PUB’s past determination as to their lack of jurisdiction respecting the service delivery model, the PUB apparently accepted and considered incomplete and inaccurate submissions in the GRA respecting service delivery and, in particular, as to the involvement of brokers in online transactions. The PUB 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 PUB notified IBAM as to its change in position as to jurisdiction, IBAM would have gladly provided the PUB with the requisite information to ensure that this issue was fully and properly before the PUB. As the PUB 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 PUB’s Findings

The Order is a 133-page document and the only section addressing “Broker Commissions” (section 8.6) is one page long. By contrast, the News Release is approximately a page and a half long in total yet the PUB 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 MPI-IBAM 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. We are advised by our client that such a decrease – a reduced rate for

online transactions – and the MPI-IBAM 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 (which information is inaccurate) while omitting any information that speaks to the benefits of brokers and the costs savings derived from the MPI-IBAM Agreement.

IBAM Requests a Retraction of the News Release

It is clearly not in the public interest for inaccurate information to be contained in the News Release, given that such information will serve to misinform and mislead the public. IBAM therefore requests and strongly urges the PUB to retract the News Release and issue a revised news release in its place. If the entire section of the News Release relating to brokers is not removed, at minimum, IBAM asks that the decrease in commission for Extension be added and the following highlighted content from the News Release be removed:

1. “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
2. “Under the Broker Agreement, once the information technology modernization project, called 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 the transaction, that broker will receive a commission.”

We look forward to your prompt attention to this urgent matter that impacts upon Manitobans generally and brokerages across this province.

Yours truly

MLT AIKINS LLP

Per:



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