

Order No. 19/23

**AWARD OF COSTS: INSURANCE BROKERS ASSOCIATION OF MANITOBA –
INTERVENTION IN MANITOBA PUBLIC INSURANCE CORPORATION’S GENERAL
RATE APPLICATION FOR THE 2023/24 INSURANCE YEAR**

February 10, 2023

BEFORE: Irene A. Hamilton, K.C., Panel Chair
Robert Gabor, K.C., Chair
George Bass, K.C., ICD. D., Member
Susan Nemec, FCPA, FCA, Member
Susan Boulter, Member

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1. INTRODUCTION

By this Order, the Public Utilities Board (Board) hereby awards the Insurance Brokers Association of Manitoba (IBAM) costs of \$19,748.56, for its intervention in the General Rate Application (GRA) of Manitoba Public Insurance (MPI or the Corporation) with respect to compulsory driver and vehicle insurance premiums for the 2023/24 insurance year.

The Board has declined to award IBAM the full amount sought in its Application for an Award of Costs, for the reasons as set out below.

2. BACKGROUND

On July 22, 2022, IBAM filed an application for Intervener status in the GRA. In its application, IBAM submitted that its participation could assist the Board on the issues of brokers, broker commissions, and/or the MPI-IBAM Future Services Agreement (Broker Agreement).

In Procedural Order 85/22, the Board approved IBAM's application on a limited basis, in respect of broker commission expenses and the Broker Agreement. The Board stated in Order 85/22:

IBAM's intervention will assist in the Board's examination of broker commission expenses; however, at this time the Board does not require broader information about the nature and quality of the services provided by brokers in order to fulfill its mandate. Accordingly, IBAM is granted approval to intervene only on the issues of broker commissions and the Broker Agreement. The Board expects that, given its limited grant of intervention, IBAM will organize its attendance at the public hearings in accordance with days on which broker commissions and the Broker Agreement are to be reviewed, and that IBAM's proposed budget will reflect this limited attendance.

On August 15, 2022, IBAM filed a projected budget of \$32,754.12 with the Board (Projected Budget).

3. APPLICATION

On January 13, 2023, IBAM filed with the Board an Application for an Award of Costs in its intervention at the Manitoba Public Insurance 2023/24 GRA (Cost Application). The fees and disbursements claimed in the Cost Application were set out as follows:

Description	Tariff Rate	Hours	Total
<u>Discovery:</u>			
M. Weinstein	\$209	24	\$5,016.00
J. Sokal	\$110	52	\$5,720.00
<u>Preparation of Evidence:</u>			
M. Weinstein	\$209	0	\$0.00
J. Sokal	\$110	0	\$0.00
<u>Prepare/Attend Oral Hearing:</u>			
M. Weinstein	\$209	57	\$11,913.00
J. Sokal	\$110	80	\$8,800.00
<u>Prepare Written/Oral Argument:</u>			
M. Weinstein	\$209	7	\$1,463.00
J. Sokal	\$110	20	\$2,200.00
Sub-Total:		204	\$35,112.00
Disbursements:			\$81.75
GST:			\$1,759.69
PST:			\$2,457.84
Total:			\$39,411.28

IBAM's Cost Application was supported by detailed invoices and a written submission by counsel for IBAM. IBAM provided an explanation for the Cost Application, stating that

while the Projected Budget was for \$32,754.12, being \$6,657.16 less than the amount sought in the Cost Application, IBAM had incurred unanticipated fees related to a procedural motion it brought for certain disclosure, which the Board granted in Order 105/22. IBAM calculated that just under thirty hours of legal counsel's time was incurred with respect to IBAM's procedural motion for disclosure, which additional hours were included in the "discovery" section of the Cost Application.

IBAM submits that it participated responsibly and in a restrained manner in the public hearings, noting that its questions were not repetitive of questions posed by other Interveners and that it made only six information requests. IBAM further submits that its participation contributed significantly to the Board's understanding of expenses related to brokers and the Broker Agreement.

4. MANITOBA PUBLIC INSURANCE'S COMMENTS

On January 23, 2023, wrote to the Board and advised that it did not take a position regarding the Cost Application filed by IBAM.

5. BOARD FINDINGS

Pursuant to Section 56 of *The Public Utilities Board Act*, the Board has jurisdiction to award costs of, and incidental to, any proceeding before the Board.

The Board's Intervener Costs Policy (the Policy) applies to this GRA. The Policy sets out Interveners' eligibility for costs awards and the principles applied by the Board in determining whether to grant an award of costs:

3.1 In any proceeding the Board may award costs to be paid to any Intervener 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;

- (b) participated in the hearing in a responsible manner and cooperated with other Interveners who have common objectives in the outcome of the proceedings in order to avoid a duplication of intervention;
- (c) represented interests beyond their sole business interest; and
- (d) a substantial interest in the outcome of the proceeding and represents the interests of a substantial number of ratepayers.

3.2 In determining whether the Intervener should receive the amount of costs sought in a costs application, the Board may consider whether the Intervener did one or more of the following:

- (a) made reasonable efforts to ensure that the intervener's evidence was not unduly repetitive of evidence presented by another intervener;
- (b) made reasonable efforts to cooperate with other interveners to reduce the duplication of evidence and questions or to combine the intervener's submission with that of similarly interested interveners; and
- (c) needed legal or technical assistance to take part in the proceeding; and
- (d) a substantial interest in the outcome of the proceeding and represents the interests of a substantial number of ratepayers.

3.2 In determining whether the Intervener should receive the amount of costs sought in a costs application, the Board may consider whether the Intervener did one or more of the following:

- a) made reasonable efforts to ensure that the intervener's evidence was not unduly repetitive of evidence presented by another intervener;
- b) made reasonable efforts to cooperate with other interveners to reduce the duplication of evidence and questions to combine the intervener's submission with that of similarly interested interveners;
and
- c) needed legal or technical assistance to take part in a proceeding.

3.3 The Board may award an amount of costs that is less than the amount sought in a costs application, including an award of no costs, where the Board determines that the Intervener did one or more of the following:

- a) asked questions on cross-examination that were unduly repetitive of questions previously asked by another intervener;
- b) presented in oral evidence significant new evidence, not previously provided in the proceeding, that was available to the intervener at the time that the intervener pre-filed its written evidence;
- c) failed to comply with a direction of the Board, including a direction on the filing of the evidence;
- d) submitted evidence and argument on issues that were not relevant to the proceeding;
- e) engaged in conduct that unnecessarily lengthened the duration of the proceeding or resulted in unnecessary costs;
- f) incurred costs that did not assist in the Board's consideration and adjudication of the issues in the proceeding and/or did not contribute to an advancement of the Board's understanding of the issues;

- g) the Intervener failed to provide notification of a material difference in the amount of the Intervener's cost estimate or the scope of the Intervener's participation at the time the material difference should reasonably have been anticipated; or
- h) such other factor(s) as the Board considers relevant.

IBAM contributed, in part, to the Board's understanding of broker commission expenses and the Broker Agreement. However, IBAM also spent a substantial amount of time in cross-examination and closing submissions on issues clearly outside the scope of its intervention. Much of IBAM's cross-examination was focused on presenting the benefits of working with a broker, and questions on this issue were posed to witnesses who were not suited to answer them. This line of questioning was not of assistance to the Board, and IBAM would have been aware of this given that the Board specifically stated in Order 85/22 that it did not require information about the nature and quality of the services provided by brokers in order to fulfill its mandate.

Further, given IBAM's limited scope of intervention, the Board finds that only one legal counsel was necessary to represent IBAM's interests in the public hearings.

Section 3.3 of the Policy provides that the Board may reduce the amount of costs sought by an Intervener where, among other things, the Intervener submitted evidence and argument on issues that were not relevant to the proceeding, unduly lengthened the proceeding, or incurred costs that did not assist in the Board's consideration and adjudication of the issues in the proceeding. The Board finds that Section 3.3 applies to part of IBAM's intervention.

For all of these reasons, while the Board will grant an award of costs to IBAM, it is not prepared to award IBAM the full amount in the Cost Application. The Board will reduce the allowable costs for legal counsel by 50%.

Accordingly, the Board awards costs to IBAM as follows:

Description	Tariff Rate	Hours	Total
<u>Discovery:</u>			
M. Weinstein	\$209	12	\$2,508.00
J. Sokal	\$110	26	\$2,860.00
<u>Preparation of Evidence:</u>			
M. Weinstein	\$209	0	\$0.00
J. Sokal	\$110	0	\$0.00
<u>Prepare/Attend Oral Hearing:</u>			
M. Weinstein	\$209	28.5	\$5,956.50
J. Sokal	\$110	40	\$4,400.00
<u>Prepare Written/Oral Argument:</u>			
M. Weinstein	\$209	3.5	\$731.50
J. Sokal	\$110	10	\$1,100.00
Sub-Total:			
		120	\$17,556.00
Disbursements:			
			\$81.75
GST:			\$881.89
PST:			\$1,228.92
Total:			
			\$19,748.56

6. IT IS THEREFORE ORDERED THAT:

1. An award of costs to Insurance Brokers Association of Manitoba in the total amount of \$19,748.56 BE AND IS HEREBY ORDERED.
2. Manitoba Public Insurance shall pay Insurance Brokers Association of Manitoba the costs awarded herein within 15 days of the date of this Order.


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, K.C."
Panel Chair

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

Certified a true copy of Order 19/23
issued by the Public Utilities Board


Secretary