

MANITOBA) Order No. 2/05
)
THE PUBLIC UTILITIES BOARD ACT) January 5, 2005

BEFORE: Graham F. J. Lane, C.A., Chairman
E. Jorgensen, Member
D. Côté, Member

**APPLICATION BY THE COALITION OF MANITOBA
MOTORCYCLE GROUP FOR AN AWARD OF COSTS,
FOR INTERVENING IN THE APPLICATION OF MANITOBA
PUBLIC INSURANCE CORPORATION FOR APPROVAL OF
2005 INSURANCE RATES**

The Public Utilities Board (the "Board") held a public hearing of an application by Manitoba Public Insurance ("MPI") for approval of driver and motor vehicle insurance rates, to be effective March 1, 2005. The hearing was held at the Board's offices in Winnipeg, and concluded on November 1, 2004.

Pursuant to Section 56 of The Public Utilities Board Act, the Board has jurisdiction to award costs of, and incidental to, any proceeding. Cost awards facilitate the participation in the Board's hearing of intervenors. The Board's Draft Rules of Practice and Procedure ("Draft Rules") stipulate four main criteria for determining whether costs should be awarded to intervenors, and the Notice of Public Hearing relative to MPI's application advised prospective intervenors as to those guidelines.

Pursuant to its participation as an intervenor in the hearing, and the Board's Draft Rules, the Coalition of Manitoba Motorcycle Groups (CMMG) applied to the Board for an award of costs in the amount of \$62,212.33, comprising:

Legal Fees	\$26,163.00
Disbursements	\$ 1,909.59
Consultant Fees (IAO Actuarial Consulting Services Inc.)	\$10,700.00
Disbursements	\$ 1,014.99
Consultant Fees (Satyatas Consulting)	\$22,389.75
Disbursements	\$ 35.00
Total Claim	<u>\$62,212.33</u>

CMMG supported its application in a letter dated November 24, 2004. CMMG noted that motorcycle rates were a major issue in the hearing, and this required CMMG to engage and expend considerable preparation time with their consultant and expert witness.

On December 8, 2004, MPI provided the Board with its views on CMMG's request. MPI opined that while CMMG met the Board's criteria for an award of costs, the quantum sought was excessive. MPI indicated that its 2005 Application proposed no changes to the Corporation's approach to calculating motorcycle rates warranting a substantial increase in the cost award to CMMG, compared to previous awards related to prior year proceedings.

With respect to legal fees and the fees of Satyatas Consulting, MPI recommended that the Board reduce CMMG's claim by 20%, suggesting that the reduction would take into account its apprehension of a duplication of work.

With respect to IAO Consulting, MPI opined that IAO's evidence fell far short of the standard to be expected of an impartial expert witness, and noted the Board's commentary in Order No. 148/04 related to this matter. MPI suggested that the majority of IAO's evidence was identical to the evidence of Mr. Joe Cheng, as filed in evidence at the 1998 hearings. Accordingly, MPI recommended that the Board reject CMMG's request for fees and disbursements related to IAO Consulting.

CMMG replied to MPI's comments in a letter to the Board dated December 9, 2004. CMMG claimed no duplication of work, and that it is a requirement that CMMG's Counsel to prepare thoroughly for the proceedings. CMMG considered it necessary for its Counsel to meet and discuss issues with CMMG's consultant in advance of the hearing, so as to provide for an efficient hearing. With respect to the level of work performed, CMMG suggested that the level of complexity and detail involved, and the thoroughness of the required intervention, had all increased, partially because MPI filed a substantial motorcycle report (for CMMG, an extraordinary event). Concerning IAO Consulting, CMMG advised that, due to time constraints, some short cuts were taken. Nonetheless, CMMG claimed the resultant evidence was not "tainted". CMMG further advised that IAO Consulting's strenuous support for a loss transfer methodology was not unusual, given the lack of fairness of MPI's approach. CMMG observed that IAO Consulting's evidence was examined at the hearing for three hours.

CMMG requested that the Board recall the intensive nature of CMMG's efforts in the proceeding, required because of the number of issues surveyed and given the large rate increases sought by MPI for motorcycles.

Board Findings

The Board agrees with MPI that IAO's contribution to the hearing was flawed due to the presentation of a report containing claims and supporting information identical to that provided by Mr. J. Cheng in 1998. As well, the Board concurs with MPI's assessment that the witness from IAO acted more in the nature of an advocate than as an independent expert. The Board's overall view on the presentation of and evidence provided by IAO may be found in Order 148/04.

Notwithstanding this, the Board found merit in CMMG's overall conduct at the hearing, and, other than discounting its application for costs with respect to IAO, will award costs to CMMG as requested.

IT IS THEREFORE ORDERED THAT:

1. The Coalition of Manitoba Motorcycle Groups be awarded \$60,000 with respect to its intervention at the Manitoba Public Insurance 2005 Insurance Rates Hearing. The reduction of \$2,212.33 is entirely due to the Board's concerns with respect to the presentation and evidence of the witness from IAO.
2. Costs shall be payable by the Manitoba Public Insurance within 30 days of the date of this Order.

THE PUBLIC UTILITIES BOARD

"GRAHAM F. J. LANE, C.A."
Chairman

"G. O. BARRON"
Secretary

Certified a true copy of Order
No. 2/05 issued by The Public
Utilities Board

Secretary