

BRITISH COLUMBIA UTILITIES COMMISSION
IN THE MATTER OF THE UTILITIES COMMISSION ACT
R.S.B.C. 1996, CHAPTER 473

And

Re: Insurance Corporation of British Columbia
2013 Revenue Requirements Application

SUBMISSIONS BY
CANADIAN BAR ASSOCIATION- BC BRANCH
AUTOMOBILE INSURANCE COMMITTEE (AIC)

Re: ICBC Undertaking to Provide Claims Data

BEFORE:

Bernard Magnan, Panel Chair/Commissioner

Liisa O'Hara, Commissioner

Richard Revel, Commissioner

BACKGROUND

ICBC applies for an increase in the basic insurance rates. One assertion by ICBC is that the need for this increase relates to increased bodily injury severities.

ICBC points to increasing rates of legal representation as one of the causes of increased claims costs. Thus, the reason underlying any increased rate of legal representation is an important factor in assessing this position

During cross examination of ICBC panel 1 it became apparent that ICBC maintains data that will allow the commission panel to compare ICBC's last offer to settle a claim and the amount awarded at trial.

In the hearing on February 6, 2014, Mr. Rob Wilson confirmed that "we do track offers and we do track demands. We do track final judgments".

ICBC is also able to provide data relating to ICBC's initial offer but after hearing from ICBC on this point, it was determined by the commission panel that it would be costly and onerous for ICBC to provide that data. Instead, it directed ICBC to provide the data setting out ICBC's last offer (before trial and judgment) and the amount awarded at trial.

ICBC objects to this claims data being disclosed to the interveners.

SUBMISSION

ICBC sets out five reasons that form the basis of their submission arguing against disclosure.

The AIC will deal with each point individually.

1. Confidentiality of information tied to particular individuals

It would be extremely challenging if not impossible, without the names and details of a particular case, to compare simple data to actual judgments for the purpose of identifying the individuals involved in a particular case. It would require a search and review of every judgment rendered by the BC Supreme Court as well as the BC Provincial Court for the last several years and comparison to the data. This task would be virtually impossible.

2. Settlement Communications

The premise and policy reason behind a "without prejudice" settlement offer is that neither party is bound or prejudiced by an offer which could be construed as an admission. It also serves the public interest when it fosters settlement of cases without the need for trial.

In the current case, what is requested to be produced is raw data and it is submitted that it is in the public interest that this be disclosed to the intervenors as well as the commission panel in this hearing. More is said regarding the public interest later in these submissions.

ICBC does not set out how publication of the requested data would have an adverse affect on future settlement discussions or early and fair settlement of claims without trial. Indeed, ICBC itself referred to this data in an interview with a Vancouver Sun reporter which was referred to in an article published on September 4, 2013 (Exhibit "C8-3").

It appears that ICBC will use data and statistics when for their benefit as opposed to disclosing data or statistics that may not support their position.

3. Harmful Disclosure of Negotiation Strategies

Firstly, the data that has been ordered to be produced does not disclose a negotiation strategy. Clearly, this data relates to the last step before trial as it is ICBC's last offer. At this point, there is no strategy left unless it is to force an injured person to proceed to trial.

Secondly, if this is indeed a strategy of ICBC, then this strategy, in the public's interest, ought to be disclosed to this panel and to the public. Any strategy by ICBC that has the effect of driving up costs and places injured individuals in the position of being forced to go to trial with all its attendant risks should be disclosed to the public.

ICBC simply makes a bald assertion (disclosure would be harmful) without explaining how this data would be harmful or how it could "inadvertently disclose information about tactics of particular plaintiff counsel etc.". This statement is without any foundation.

4. The data could be taken out of context

ICBC is concerned that because the data has been redacted to remove plaintiff demands before trial, the data could be taken out of context. In fact, ICBC has already referred to that data and I reference my previous comment with regard to the Vancouver Sun article. ICBC had no compunction about releasing that information when it suited them and when it appeared to support their argument.

It is submitted that this data will have context. The data that it is being provided will be reviewed in conjunction with the evidence as a whole including the application, written submissions, information requests and responses as well as the oral evidence presented throughout this hearing. ICBC has been ably represented by counsel and has several panelists present who have given evidence and there is no danger that the data would be analysed without the requisite "context".

5. Probative Value

ICBC points the finger at increasing bodily severities and increasingly higher representation rates. While having data relating to ICBC's first or initial offers would provide even greater probative evidence with regard to the reason that people may be obtaining legal representation (i.e. low offers), the data that is now available provides some evidence and a far more accurate picture of what is actually occurring between ICBC and injured people at the moment they have to decide whether to proceed to trial or accept the last offer.

When considered along with all the evidence as well as the evidence regarding ICBC's claims management policies it provides probative evidence with regard to the adequacy of the adjusters' claims assessments.

As mentioned earlier in these submissions, if ICBC is maintaining a strategy of making offers that are too low and unreasonable, it will very likely have the effect of forcing a number of injured people to either obtain representation or to proceed to a trial.

This data provides very useful information in relation to this issue and ought to be disclosed to the interveners as well as the panel.

CONCLUSION

The CBA (BC Branch) – Auto Insurance Committee respectfully urges the panel to direct that this data be released to the interveners to allow for a thorough analysis of ICBC's RR application.

Clarity, truth and transparency are principles that should, in our respectful submission, guide the commission panel in rendering their decision. This is so particularly when ICBC, a monopoly Crown Corporation, makes allegations and has the only access to the information and data necessary to allow a proper assessment and analysis of their allegations.

In the event that this panel rules in favour of ICBC's on this point, it is the position of the AIC that a negative inference ought to be drawn with regard to ICBC's claims handling strategies.

All of which is respectfully submitted this 12th day of February, 2014.


Barbara J. Flewelling,
Chair, Canadian Bar Association (BC Branch)
Automobile Insurance Committee