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March 17, 2014
File No.: 298298.00001/14797

BY E-MAIL

British Columbia Utilities Commission
6th floor, 900 Howe Street
Vancouver, BC V6Z 2N3

Attention: Erica Hamilton
Commission Secretary

Dear Sirs/Mesdames:

**Re: An Application by Insurance Corporation of British Columbia for Approval
of the Revenue Requirements for Universal Compulsory Automobile
Insurance Effective November 1, 2013 and Approval of a New Basic
Insurance Capital Management Plan**

We enclose for filing in the above proceeding the Reply Submission of the Insurance Corporation of British Columbia dated March 17, 2014.

A hard copy of the Reply Submission will follow by courier.

Yours truly,

FASKEN MARTINEAU DuMOULIN LLP

[original signed by Matthew Ghikas]

Matthew Ghikas

MTG/fxm
Enc

**BRITISH COLUMBIA UTILITIES COMMISSION
IN THE MATTER OF THE UTILITIES COMMISSION ACT**

R.S.B.C. 1996, CHAPTER 473

and the

INSURANCE CORPORATION ACT

R.S.B.C. 1996, Chapter 228, as amended

**AN APPLICATION BY THE INSURANCE CORPORATION OF BRITISH COLUMBIA (“ICBC”) FOR
APPROVAL OF THE REVENUE REQUIREMENTS FOR UNIVERSAL COMPULSORY AUTOMOBILE
INSURANCE EFFECTIVE NOVEMBER 1, 2013**

and

FOR APPROVAL OF A NEW BASIC INSURANCE CAPITAL MANAGEMENT PLAN

**REPLY SUBMISSION OF
THE INSURANCE CORPORATION OF BRITISH COLUMBIA (ICBC)**

March 17, 2014

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PART ONE: INTRODUCTION

1. ICBC's Final Submission of February 25, 2014 anticipated and addressed many of the issues that have been raised by intervenors in their submissions. In this Reply Submission, ICBC is focussing on the more material issues raised, and those that require further elaboration. ICBC's silence on a particular matter should not be interpreted as agreement.
2. ICBC has used defined terms from the February 25, 2014 Final Submission.

PART TWO: ICBC'S RESPONSE BY ISSUE

A. THE LEGISLATIVE FRAMEWORK

(a) Response to BCPSO and CDI Submissions on Affordability, Stability and Predictability

3. BCPSO states that ICBC's general rate increases must take into account affordability considerations.¹ BCPSO refers to the combined effect of the present rate increase and the potential for a 6% rate increase next year, as "rate shock". CDI similarly maintains that "the proposed rate increase of 4.9% for PY 2013 taken with the rate increase of 11.2% for PY 2012 exceeds the allowable rate fluctuation warranted under the concept recognized by all parties of relative rate stability and predictability."² ICBC recognizes that consecutive rate increases pose challenges for Basic policyholders; however, the proposed rate increase is appropriate and consistent with the legislative framework.

4. Basic insurance is subject to inflation and other cost pressures. Basic insurance rates must cover costs (subject to the rate smoothing exclusions) in order for Basic insurance to remain on a stable financial footing. The legislative framework properly recognizes that (a) policyholders benefit from the long-term sustainability of Basic insurance, and (b) sustainability requires that Basic insurance rates cover the costs of providing Basic insurance over the long-term, accounting for rate stability to the extent possible. The Commission has also recognized

¹ BCPSO Submission, para. 60.

² CDI Submission, para. 8.

that “the primary concern for ICBC’s policyholders should be the financial health and solvency of the Basic Insurance business...”³

5. Regarding CDI’s submission that the rate increase violates the “relatively stable and predictable” requirement in *Special Direction IC2 to the BC Utilities Commission, BC Regulation 307/204, as amended (Special Direction IC2)*, the Commission has already made clear that those principles must be viewed in the context of cost pressures faced by ICBC. The August 2012 Decision on the Revenue Requirements Application for the 2012 Policy Year states, for instance on page 49: “The Panel finds that the 11.2 percent rate increase, while unusually large, does meet the test of being relatively stable and predictable, **in the context of ICBC’s current circumstances.**” [Emphasis added.] ICBC has outlined the current cost pressures facing Basic insurance. It has also described the numerous initiatives designed to manage claims costs and reduce operating expenses. In that context, the proposed rate change is appropriate.

6. BCPSO quotes from prior rate design applications⁴ that expressed a desire to avoid rate changes in excess of 10%. It is a generally accepted objective of rate regulation to strive for relative stability and predictability of rates.⁵ This is often characterized in the negative of “avoiding rate shock”. However, there is no universally accepted quantitative threshold of what constitutes rate shock, and there is no regulatory principle that prohibits rate shock in all circumstances at the expense of other legitimate objectives. It is recognized that there is a tension among the criteria of a sound rate structure, and they must be considered in context.⁶ ICBC has, in the past, sought to limit changes in Basic insurance rates to 10% per year. ICBC continues to believe that this is a desirable objective, but is not one that can or should be enforced as a cap on rate changes where increases are required for other valid reasons. The Commission approved the 11.2% increase in the last revenue requirements process in recognition of other considerations. The overriding requirement in the context of this

³ August 2012 Decision on the Revenue Requirements Application for the 2012 Policy Year, discussed in paragraph 108 of ICBC’s Final Submission.

⁴ BCPSO Submission, para. 59.

⁵ Bonbright, James C., Albert L. Danielson and David R. Kamerschen (1988) *Principles of Public Utilities Ratemaking*, 2nd ed., Public Utilities Reports, page 383.

⁶ *Ibid.*, pages 383 to 388.

proceeding is that rates must be set on the basis of accepted actuarial practice, which requires rates set to cover costs subject to legislated exclusions.⁷

7. In paragraphs 73 and 74, BCPSO cites and relies upon the Government directive of November 25, 2011 with respect to Basic Rate Stability and Capitalization approved by Order in Council 560/11, November 30, 2011 (the 2011 Government Directive regarding Basic Rate Stability and Capitalization) as authority justifying the Commission accounting for affordability in Basic rate-setting and “that the government intends the legislation to prioritise MCT>100 first, rate stability and predictability second, and progress toward the higher MCT target third.” ICBC disagrees. The 2010 and 2011 Government Directives⁸ have actually been repealed by the Government directive of March 19, 2013 with respect to Rate Smoothing approved by Order in Council 153/13, March 18, 2013 (the 2013 Government Directive regarding Rate Smoothing), although the latter does stipulate that ICBC should adhere to its existing Capital Management Plan. The existing Capital Management Plan stipulates how capital provisions are to be determined this year, and those provisions are augmented by the requirement to exclude the loss cost forecast variance. ICBC has complied with those requirements.⁹ Going forward, the legislative framework contemplates that rate smoothing will be implemented without undermining the financial strength and stability of the Basic insurance business, meaning that both objectives are a priority.¹⁰

⁷ This is not dissimilar to utility regulation (although ICBC is not a “public utility” under the *Utilities Commission Act*) in that sense that principles of stability and predictability, while important, cannot derogate from a utility’s statutory right to recover prudently incurred costs and to have an opportunity to earn a fair return. The objective of rate stability and predictability thus only affects when and how fast costs are recovered by the utility, not if they will be recovered. The rate smoothing framework applicable to ICBC addresses rate stability and predictability, but otherwise Basic rates must cover costs according to accepted actuarial practice.

⁸ The 2010 and 2011 Government Directives refer to the Government directive of May 18, 2010 with respect to Basic Excess Capital approved by Order in Council 287/10, May 27, 2010 and the 2011 Government Directive regarding Basic Rate Stability and Capitalization.

⁹ The 2013 Government Directive regarding Rate Smoothing rescinds and replaces the 2010 and 2011 Government Directives, but directs ICBC to base the 2013 Revenue Requirements Application on the existing Commission-approved Capital Management Plan, as modified to comply with the 2010 and 2011 Government Directives. *Special Direction IC2* specifies the exclusion of the loss cost forecast variance from the rate change for the 2013 Revenue Requirements Application.

¹⁰ 2013.1 RR BCUC.56.1 and 2013.1 RR BCUC.57.2.

B. THE USE OF UPDATED INFORMATION

8. BCPSO states¹¹ “Regarding the notion of ‘chasing data’, where significant real rate increases will flow from the approval of a revenue requirement application, ICBC should expect intervenor interest in any recent information *supporting* the directional changes associated with the filed figures.” [Emphasis in original.] ICBC has acknowledged in its Final Submissions why the Commission is seeking this information in this circumstance. ICBC also explained its rationale for requiring confidentiality, and the efficiency concerns associated with requests of this nature in future years.¹²

9. At the hearing, intervenors were understandably focussed on updating data that might lead to a favourable impact on Basic insurance rates (e.g., equity returns). As Ms. Prior indicated at the hearing¹³, however, “...if we were to look at all of the assumptions and redo them all, I’m pretty sure some would be up favourably and some would be down.” Updating the data in the middle of a proceeding is not necessarily going to produce a lower rate indication. In the present case, for instance, the sensitivity analysis undertaken by ICBC based on updated information suggests that the rate change required to cover costs would most likely increase if a new rate indication were prepared today. This, in turn, would result in a slightly larger Basic insurance rate increase.¹⁴

10. TREAD implies that ICBC’s willingness to consider “the late breaking” amendment to *Special Direction IC2* to change the next filing date is difficult to reconcile with ICBC’s stance on the importance of considering assumptions holistically.¹⁵ In fact there is nothing to reconcile. ICBC does not have the option of disregarding new amendments to *Special Direction IC2*. Likewise, ICBC is required to bring forward a rate indication that is consistent with accepted actuarial practice. Accepted actuarial practice recognizes that ICBC

¹¹ BCPSO Submission, para. 54.

¹² ICBC Final Submission, para. 15.

¹³ T6: 861, ll. 6-10.

¹⁴ 2013 RR BCUC.UT.14C. The undertaking has been filed on a non-confidential basis because it is presenting a sensitivity analysis rather than financial information.

¹⁵ TREAD Submission, p.11.

must comply with the law. It also requires a holistic view of assumptions to ensure that they are both individually reasonable and appropriate in the aggregate.¹⁶

C. ACTUARIAL ANALYSIS

(a) Response to CDI's Submission Regarding Forecast Accuracy

11. CDI says that "ICBC seems to have difficulty in forecasting its claims experience for the following policy year."¹⁷ CDI's submission is not borne out by the evidence:

- The evidence is that ICBC is experiencing variability in the bodily injury (BI) claim frequency trend that is due to external and unusual factors,¹⁸ which has been a large part of the forecast variance in each of the latest three policy years.¹⁹ ICBC explains in the response to 2013.1 RR CDI.3.1 that of the 10 components making up the forecast variance (frequency and severity for five different coverages), five had favourable forecast variance and five unfavourable, as might be expected with an unbiased best estimate; however, the unfavourable emergence of BI claim frequency has a larger impact due to the high relative cost of BI claims.
- ICBC's historic variances have each been less than 10%, even during the recent period of variability in BI claim frequency. This compares favourably to the publicly available forecasts for Alberta, a reasonably comparable tort jurisdiction, where the majority of years since 2005 have shown variances greater than 10%.²⁰
- In paragraph 11, CDI suggests that ICBC ought to have anticipated the increase in Accident Benefit payments and thus avoided a loss cost forecast variance in that regard. In fact, the evidence provided at the hearing makes it clear that this

¹⁶ T4: 648, ll.17-25.

¹⁷ CDI Submission, para. 10.

¹⁸ T4: 613, ll.4-7.

¹⁹ 2013.1 RR BCPSO.15.2.

²⁰ 2013.1 RR BCUC.29.1.

initiative was not in play until after the 2012 Revenue Requirements Application.²¹

(b) Response to CDI Regarding Forecast for PY 2013

12. In paragraph 12, CDI suggests that “there is no indication that ICBC has taken the expected reduction in BI severity [associated with making Accident Benefits available sooner] into account in its projections.” In fact, ICBC’s response to 2013.1 RR BCUC.7.1 explains how claims initiatives, including faster access to treatment are captured in the BI trends. They are reflected in the forecast, and giving them less weight in the forecast would have resulted in a higher rate indication.²²

13. In paragraph 13, CDI discusses the updated forecast of BI frequency as at the end of 2013. It references the chart at page 2 of 4 of 2013 RR BCUC.UT.1, and concludes that the data indicates “that the correct figure should be 1.35%. However, we note that both of these figures are significantly below the ‘BI Basic Frequency’ figures used in Figure 3.6 of Chapter 3 and Exhibit D.0, page. 13 which show the projected frequency at 1.50%.” CDI is comparing “apples to oranges”. The 1.35% number represents the (properly adjusted) frequency of BI claims based on accidents occurring in 2013, and reported by December 31, 2013. The projected frequency for 2013, which is near the 1.50% level cited by CDI, includes BI claims for all accidents occurring in 2013. A portion of those claims would not normally be reported until after the end of the year. This difference is represented by the baseline development factor, which is discussed in the response to undertaking 2013 RR BCUC.UT.3. It provides the corresponding estimate of incurred BI frequency for accident year 2013 as 1.49% - only marginally lower than the estimate for 2013 shown in Figure 3.5 of the Application. (CDI appears to have overlooked the cross-reference in the response to 2013 RR BCUC.UT.1.)

²¹ T4: 471, l.24 to 472, l.17.

²² 2013.2 RR BCUC.160.1; 2013.2 RR BCUC.160.1.1.

(c) Response to CDI's Submission Regarding Causes of Loss Cost Forecast Variance

14. CDI devotes five pages of its submissions to whether the flattening of BI frequency trend is associated with the mass adoption of smartphones, fewer new vehicles, and the fact that vehicles per household are no longer increasing. The crux of CDI's submission is in paragraph 23 where it states "Given ICBC's focus on accepted actuarial practice, CDI questions how such speculation in paragraph 26 of the ICBC submission can qualify as an unbiased best estimate to accord with accepted actuarial practice." It goes on to say at paragraphs 51 and 52 that the 4.9% rate indication can be reduced for this reason.

15. CDI's argument misses a fundamental point: the actuarial analysis relies on the observed BI frequency data, which had been declining prior to the recession and in recent years has flattened.²³ Mr. Loach discussed how an actuary following accepted actuarial practice "would see that feature in the data and should investigate to understand what are the factors that may be contributing to that, in order to make sure that when selecting a forecast trend the actuary considers the relevant factors that could impact that trend line."²⁴ ICBC has appropriately investigated events occurring since the start of the recession in 2008 that are relevant to the occurrence of BI claims. ICBC has already addressed in its Final Submissions the evidence that led ICBC to conclude that the flattening of BI frequency trend is associated with the mass adoption of smartphones, fewer new vehicles, and the fact that vehicles per household are no longer increasing.²⁵ ICBC will not repeat that evidence here.

16. There are, however, three points raised by CDI that should be corrected:

- CDI has suggested in paragraph 22 that evidence from police statistics does not support ICBC's statement that distracted driving continues to make a significant contribution to crashes on BC roads. CDI refers to Table 11 in Exhibit C2-5. ICBC observes that Figure 17 on the same page of Exhibit C2-5 provides support to

²³ 2013.2 RR BCUC.164.1.

²⁴ T4: 611, ll.20-25.

²⁵ See ICBC Final Submission, para. 21. Also Application, paragraph 32 in Chapter 3.

ICBC's position on this subject, showing that over one quarter (and an increasing proportion) of fatal victims are a result of crashes involving distraction.

- CDI has suggested in paragraph 32 that ICBC's understanding of "flattening" BI frequency levels is "questionable" because one would "expect that claims frequency will continue to decline" as vehicle owners in BC become safer drivers. In fact, ICBC has noted in the evidence that the growing proportion of drivers in their safest driving years continues to be a favourable influence on the BI frequency trend.²⁶ ICBC has forecasted a downward trend in BI claim frequency to resume, in part, for this reason. However, the flattening of BI frequency levels in accident years 2010 through 2012 has been clearly observed and demonstrated in the evidence and affects the current level of claims costs.²⁷
- In paragraph 27, CDI appears to be questioning ICBC's statement that there is no longer an increasing trend for fewer vehicles per household on the basis that "the total number of policies issued in 2013 increased by 45,000 vehicles over 2012. Similarly, in 2012 there were 40,000 more insured vehicles than in 2011." CDI is correct that the number of policies and vehicles increased. However, there is still a trend of a lower number of vehicles per household because the increase in policies is lower than the increase in the number of households.²⁸

D. CLAIMS COST MANAGEMENT

(a) Response to AIC's View of the Causes of Legal Representation

17. AIC suggests that "ICBC may not have put an appropriate level of information before the BCUC"²⁹ with respect to legal representation and proposes that "ICBC should perhaps investigate and provide the BCUC with information as to why claimants are seeking

²⁶ See ICBC Final Submission, para. 21.

²⁷ Application, Chapter 3, Exhibit D.O.

²⁸ 2013.1 RR BCUC.17.1.

²⁹ AIC Submission, p.10.

increased legal representation.”³⁰ As ICBC indicated in the written evidence, at the hearing, and in the Final Submission, the study is already underway. In the meantime, there is ample evidence on the record for the Commission to conclude that there are a variety of factors contributing to the legal representation rate and that ICBC is doing what it can to address known factors within its control or capable of being influenced.

18. Although AIC is asserting that the evidentiary record is inadequate, AIC nonetheless makes the rather definitive statement that historically, “ICBC’s claims management policies have been a driving force behind increased claims costs, representation rates, and corresponding settlement amounts and judgments...”³¹ AIC put forward no evidence to support this suggestion, and it is without merit. The evidence is that claims costs increase over time, first and foremost, because Basic insurance is an inflationary product; Mr. Weiland noted that this is true across the industry.³² Frequency trends are also flattening, and frequency has nothing to do with ICBC’s claims management practices. In terms of legal representation, just as parties have argued that one should not “blame the lawyers”, it is equally true that AIC should not point the finger exclusively at ICBC and absolve the lawyers. Rather than supporting AIC’s theory, the evidence shows that ICBC’s claims management policies are one factor among many that can affect legal representation.³³

(b) Response to AIC on Claims Initiatives Generally

19. Another one of AIC’s theories is that the changes in ICBC’s claims management processes are having the unintended effect of driving up claims costs. AIC’s view is encapsulated in its analogy to the Low Velocity Impact (LVI) program that was recently eliminated by ICBC: “The current claims cost management policies bear a striking resemblance to those in place during the LVI program: reduced authority and autonomy for adjusters, increased management and committee involvement in decision making, and increased friction

³⁰ AIC Submission, p.10.

³¹ AIC Submission, p.2.

³² T2: 239, ll.17-25.

³³ 2013.1 RR BCUC.154.4.

between adjusters and customers.”³⁴ The evidence does not support AIC’s conjecture or its analogy comparing the current initiatives to LVI. While the LVI program was fair and effective in its time,³⁵ “the new approach will better utilize resources, reduce additional process and associated costs, and is intended to address escalating claims costs associated with legal representation...”³⁶ ICBC addressed the claims management initiatives and LVI in its Final Submission,³⁷ and much of that discussion is relevant to refuting AIC’s theory.

20. ICBC also underscores the following points:

- ***Authority levels appropriate for each segment of claims:*** The reductions in the authority levels referenced by AIC anecdotally are a logical outcome of the segmentation of claims, not a policy of reducing authority levels generally. Whereas there had previously been two levels of BI adjusters handling all types of claims, there are now four levels. The authority level of adjusters within each segment now align to the particular type of file, and that level will be lower for less complex claims.³⁸ The same re-alignment has occurred among management.³⁹ While changes in oversight can affect how employees might respond to engagement surveys, it is one of a number of potential factors.⁴⁰ Authority limits that match the type of file are important “to ensure that we are judiciously managing our BI claims costs.”⁴¹
- ***Adjusters have the necessary autonomy:*** Ms. Taylor specifically rejected the suggestion that the new functional model takes decisions out of the hand of

³⁴ AIC Submission, p.11.

³⁵ 2013.2 RR BCUC.200.1; T2: 236, l.24 to 237, l.26.

³⁶ 2013.2 RR BCUC.200.2.

³⁷ See ICBC Final Submission, paras. 71 to 74, with reference to T2: 213, l.6 to 215, l.9. ICBC also notes that its willingness to re-examine LVI and discontinue it when the “cons” began outweighing the “pros” is actually demonstrative of ICBC’s commitment to continuous improvement: 2013.2 RR BCUC.200.1.

³⁸ T2: 172, l.19 to 174, l.15; T2: 226, ll.4-12.

³⁹ T2: 175, ll.20-26.

⁴⁰ T2: 219, l.10 to 220, l.13.

⁴¹ T2: 250, ll.24-25.

adjusters and causes undue delay that generates friction with claimants. She confirmed:

- On low complexity and unrepresented claims, ICBC has *increased* the autonomy of claims adjusters at first notice of loss and claims adjuster interactions with customers. An example of this is the ability of adjusters to provide early access to benefits.⁴²
- The adjuster “by far does the bulk of their settlement and negotiations within their authority...”⁴³
- The adjuster is directly involved in the determination of whether a particular claim requires an increase in authority level.⁴⁴
- There is value in having a “second set of eyes on some files”,⁴⁵ and in particular for the more complex files. In any event, the type of delay that AIC is suggesting occurs with adjusters seeking managerial review does not occur in the day-to-day operations.⁴⁶
- ***There is an appropriate level of customer contact:*** ICBC’s approach of using more efficient forms of communication, such as the greater use of telephone and e-mail communications is an industry best practice. This type of model will make it easier for many policyholders to interact with ICBC. ICBC has been employing centralized telephone communication since 2002 with significant success. It stands to reason that there will be some people who want face to face contact, but Ms. Taylor indicated:

There’s always the ability for a customer, if they wish to have a face-to-face interaction with an adjuster, to do so, but what we have found is that the customer was most interested in getting

⁴² ICBC Final Submission, para. 73, with reference to T2: 213, 1.6 to 215, 1.9.

⁴³ T2: 179, ll.4-8.

⁴⁴ T2: 176, l.6 to 177, l.2.

⁴⁵ T2: 178, ll.1-18.

⁴⁶ T2: 178, l.24 to 179, l.2; see also: T2: 214 to 216.

their issues and needs resolved, and the physical face to face certainly was not a limitation for this department that was in Surrey that have been very very successful in managing the needs of our customers.⁴⁷

21. The evidence demonstrates that ICBC's claims handling strategy and related initiatives support its goal of resolving claims in a fair and reasonable manner, through effective and efficient interactions between claimants and ICBC.⁴⁸ In fact, ICBC's Claims Services Satisfaction scores have remained consistent for a number of years, including during the period of acceleration in the rate of legal representation.⁴⁹

(c) Response to AIC's Suggestion that ICBC is Pushing Litigants to Trial

22. Another one of AIC's overarching and related theories is that ICBC is increasing claims costs by virtue of being inflexible during the litigation process, not using alternative dispute resolution, and forcing claimants to trial.⁵⁰ The evidence does not support that theory either. In fact, there is evidence to refute each of the specific arguments advanced by AIC:

- ***Mediation is still an important tool, but there are better ways sometimes:*** Mr. Wilson confirmed that ICBC continues to use mediation as a tool, but mediation still has a cost associated with it. The reduction in the number of mediations reflects the fact that ICBC has identified new and more cost-effective ways (efficient from the perspective of both ICBC and claimant's counsel) to negotiate claims. Ms. Taylor discussed, for example, "where we would meet with counsel and we would go through 20 files on one day versus one file in a mediation settlement. And so that has really been our focus, as to how to best utilize our resources, and at all times make the offer at the earliest opportunity when we have enough information to evaluate the claim."⁵¹ ICBC has increased the

⁴⁷ T2: 160, ll.18-25; See also T5: 720, l.5 to 721, l.23.

⁴⁸ Application, Chapter 6, p.6-5.

⁴⁹ ICBC Final Submission, para. 85, with reference to 2013.1 RR BCUC.144.1.

⁵⁰ AIC Submission, p. 9.

⁵¹ T3: 438, ll.8-22.

number of settlements this year with claimant's counsel and more are able to be settled by agreement without mediation.⁵²

- ***Adjusters do have flexibility:*** Ms. Taylor and Mr. Wilson confirmed that AIC is misinformed about there being rigid internal constraints as to how adjusters deal with matters such as the timing of formal offers to settle.⁵³ The guiding principle for adjusters is to make a fair and reasonable settlement offer as soon as practicable, when the information is available, and to resolve claims early without the expense and delay of litigation.⁵⁴
- ***Number of trials is very small in relation to total claims:*** AIC's theory that ICBC is driving more people to trial appears to be premised on the fact that the number of trial judgments increased between 2011 and 2013. There are several answers to this.
 - First, the trend, if anything, is flat. Over the last few years, the number of trials with judgments each year ranged between 165 and 306, and the variance in the number of trials each year is not statistically significant.⁵⁵ Variances of this nature should be expected.
 - Second, the number of trials must be viewed in context of the more than 45,000 BI claims that ICBC processes each year. ICBC continues to settle approximately 99% of its claims annually without a trial.⁵⁶ While AIC suggests that ICBC is not using alternate dispute resolutions well, the very low number of BI claims that proceed to trial and the increase in the number of settlements is, in itself, evidence to the contrary. Further,

⁵² T2: 183, l.14 to 184, l.8.

⁵³ T2: 170, l.21 to 171, l.5.

⁵⁴ T2: 169, ll.13-21; T2: 171, l.20 to 172, l.2.

⁵⁵ 2013.1 RR AIC.1.1. The Commission Panel accepted this evidence in its ruling on the disclosure of additional information on settlement offers.

⁵⁶ 2013.1 RR BCUC 105.3; T2: 184, l.13 to 185, l.23; T2: 208, l.23 to 209, l.14.

ICBC's evidence demonstrates that ICBC does consider how it can best manage and negotiate claims.⁵⁷

- Third, although the remaining trials could be avoided if ICBC's response to claims was always to pay the claimant what they ask for, that is not an appropriate way to manage claims costs, manage ratepayers' monies, or fulfil ICBC's duty to defend. AIC's submissions pay little heed to these considerations.

23. The objective evidence supports a finding that ICBC is pursuing its policy to pay claimants who have a compensable injury claim a fair and reasonable settlement as soon as practicable. In doing so, ICBC is balancing the need to be fair to the injured claimant with the need to defend the insured and be fair to other policyholders from a rate perspective.⁵⁸ Defending claims properly means that "there is an obligation on all of us in the Claims Division to make sure the evidence is there, because we are protecting the defendant and we are concerned about the outcome for our policy holders".⁵⁹ It also means that a claimant may not always be offered what he or she wants in the way of compensation. Sometimes that means that the claimant will go to a lawyer, as is the claimant's right. However, by fairly evaluating claims, ICBC balances the objective of not overpaying to the detriment of all policyholders against the desire not to unnecessarily drive claimants to obtain legal representation when it could be avoided.⁶⁰

(d) Response to BCPSO Submissions on Legal Representation Rate

24. BCPSO makes several statements about the legal representation rate that require correction:

⁵⁷ T2: 183, l.14 to 185, l.23.

⁵⁸ 2013.1 RR BCUC.105.5.

⁵⁹ T2: 245, l.24 to 246, l.11.

⁶⁰ 2013.1 RR BCUC.154.4, Attachment A, p.2; 2013.1 RR BCUC.104.4 and 2013.1 RR BCUC.105.5; T3: 431, l.4 to 432, l.10.

- In paragraph 35, BCPSO incorrectly states (without citation) that ICBC “says customer expectations probably are not a factor in the increased use of legal representation”. In 2013.1 RR BCPSO.63.2, ICBC explains that the legal representation rate is “just one indicator of service satisfaction”. In the responses to information requests 2013.1 RR BCPSO.20.1 and 2013.1 RR BCUC.154.4, ICBC elaborated on statements in Chapter 6 acknowledging that the claim experience can be a factor in claimants seeking legal representation. It just isn’t the *only* factor.
- In paragraph 36, BCPSO suggests that there is an inconsistency in ICBC’s evidence. It will be noted that the first sentence quoted by BCPSO is a reference to *frequency*, not *severity*. It is true that the legal representation rate does not affect *frequency*. It is also true that claims initiatives will help to address increasing *severity* associated with the accelerating representation rate.
- In paragraph 38, even on BCPSO’s theory of the real overall satisfaction rate, the calculation would yield 68% satisfaction, not 51%. However, it should be noted that the claims satisfaction rate includes claimants with all types of claims, of which those with bodily injury claims (for whom the representation rate is relevant) represent only a small minority.

25. In paragraph 42, BCPSO asks ICBC to explain in Reply the source or significance of the 4% and 6% figures in ICBC’s statement at paragraph 41 of its Final Submission: “(i)t would be unreasonable based on the information currently known to assume that the initiatives are capable of producing a constant (i.e. flat) legal representation rate that would produce a lower severity figure (4%) than it has been for many years (6%).”⁶¹ BI severity has been increasing at a steady rate of 6% each year, as can be seen on the figure on slide 12 of Ms. Minogue’s opening presentation. In its response to the information request 2013.2 RR BCUC.160.2 ICBC made the point that “if the legal representation rate were to remain constant, ICBC would expect a theoretical BI severity trend of about 4%.” The source of the 4% is based on an internal

⁶¹ ICBC’s Final Submission, para. 41.

actuarial analysis of the impact of the growing rate of represented claims on the severity trend rate. The response explains why ICBC believes the scenario of a constant legal representation rate is “quite optimistic”. The significance of the 4% and 6% figures is that it reveals that two percentage points of the 6% severity trend rate is due to the increasing rate of representation and the attendant higher claims costs.

(e) Response to BCPSO and IBC on Data Collection

26. BCPSO “encourages ICBC to start applying for production of these [Personal Electronic Device] records wherever possible, as this may assist in sending a message to drivers that the corporation is taking distracted driving seriously.”⁶² BCPSO appears to have misunderstood the evidence. ICBC already does obtain data in circumstances where it is relevant to the claim, and has no ability to compel the production of this data where it is not legally relevant.⁶³

27. A central point of IBC’s submission is that, with the limitations of the Traffic Accident System (TAS), ICBC should be collecting data that it can use to better measure and evaluate road safety programs. IBC says that “There may very well be issues regarding the reliability of the data collected, including from an actuarial perspective. However, ICBC has not explored the possibility of collecting such data, let alone its reliability.”⁶⁴ This is not an accurate characterization of ICBC’s evidence. ICBC agrees with IBC that collecting obtainable and objective evidence to support data analysis would be beneficial, and outlines at length in the Measurement and Evaluation framework its efforts to collect quality data and the limitations associated with collecting various forms of data. ICBC has developed the framework in an attempt to overcome the challenges of evaluating its road safety programs as accurately as possible, and remains committed to exploring the possibilities of developing reliable data through the continued refinement of this framework.

⁶² BCPSO Submission, para. 45.

⁶³ 2013.1 RR BCPSO.9.1; 2013.2 RR TREAD.10.1; 2013.2 RR TREAD.10.4.

⁶⁴ IBC Submission, para. 16.

(f) Response to BCPSO’s “Defeatism” Argument

28. BCPSO states “Ms. Minogue, speaking about claims costs, said that ‘to actually reverse some of these trends is something that is not easy to do, and unlikely.’ This sounds what may best be characterised as defeatist. ICBC personnel are well paid by the standards of the public service, and we would hope they would not be deterred by problems that are ‘not easy to do.’” This is an inaccurate characterization of Ms. Minogue’s evidence. Ms. Minogue was simply making the point that, even with ICBC’s best efforts to control claims costs, there are still many factors outside of ICBC’s control and reversing the trends is unlikely. Insurance is an inflationary product because external costs reflected in claims costs are subject to inflation and other pressures. A significant portion of claims costs represent costs associated with these external factors (it is not just medical costs, as BCPSO implies in paragraphs 9 and 24).

29. Over the longer term, Basic rates have tracked general measures of inflation quite closely.⁶⁵ Today, there are different factors putting increasing pressure on total claims costs. The evidence contains many examples of how ICBC is seeking new ways to manage costs over which it has some influence. These include the claims initiatives, fraud detection, Road Safety initiatives, and operating expense reductions.⁶⁶ ICBC’s actuarial analysis reflects an expectation that ICBC’s claims initiatives will have a favourable impact on claims cost trends, and reflects reduced operating expenses.

(g) Ongoing Steps to Address Fraud

30. BCPSO suggests “In a managerial sense, simply not having an estimate of the cost of fraud, which ICBC admits could be a substantial driver of loss costs, seems inconsistent with having made every effort to get fraud under control.”⁶⁷ There are two points in response:

- First, the extent of fraud cannot be accurately assessed because it is criminal activity where the perpetrators are seeking to avoid detection. If the

⁶⁵ Exhibit B-12, Figure 1.

⁶⁶ See Application, Chapter 6, Section C; 2013.1 RR BCUC.116.2; Chapter 7, page 7-5; 2013.1 RR BCUC.111.4; 2013.2 RR BCUC.195.6.

⁶⁷ BCPSO Submission, paras. 20.

perpetrators of fraud are successful, they have not been caught. Hence, it is impossible to know the extent of their fraud.⁶⁸ ICBC cited industry sources of information regarding the estimated extent of fraud.⁶⁹

- Second, a more precise estimate is not going to change ICBC's desire to control fraud. Mr. Wilson's evidence was that, irrespective of the difficulty in quantifying fraud, ICBC has zero tolerance for fraud. He outlined a number of initiatives already being undertaken and he explained how the department is refining its approach.⁷⁰ ICBC submits that the evidence demonstrates ICBC's commitment to fraud detection and prevention, and ICBC needs no encouragement in that regard.

31. In paragraph 19 BCPSO says "it is not clear how ICBC determines the appropriate expenditure ... [regarding] fraud". This specific question was canvassed during the hearing.⁷¹

E. OPERATING EXPENSES AND ALLOCATION

(a) Response to TREAD's Submission Regarding Presentation of Operating Expense Information

32. TREAD advocates that "the Commission Panel should direct ICBC to present operating costs, both in public communications related to Revenue requirements for Basic insurance and in the Application materials, as the amount that applies to Basic only."⁷² ICBC strongly disagrees with that approach. ICBC operates its business on an integrated basis; the division between Basic and Optional lines of business is a regulatory construct only. The allocation methodology is in place to allocate costs between the lines of business.

33. ICBC has always reported on this basis. It just so happens that TREAD has become involved in ICBC proceedings in a year where cost savings have been achieved, and so

⁶⁸ 2013.2 RR BCUC.195.2; 2013.2 RR BCUC.195.3; 2013.2 RR BCPSO.6.1; 2013.2 RR BCPSO.6.2.

⁶⁹ T2: 286, ll.6-17; T3: 304, ll.16-26; 2013.1 RR BCUC.111.3.

⁷⁰ T2: 289, l.10 to 292, l.16; 2013.2 RR BCUC.195.6.

⁷¹ T2: 291 l.18 to 292, l.12.

⁷² TREAD Submission, p.12.

it perceives that ICBC is over-reporting its savings. In a different year, when operating costs are increasing and there are no savings, it is easy to see consumers suggesting that ICBC would be misleading the public by focussing on only a portion of the increase in its operating costs. The important point is that ICBC is presenting its operating expenses on a consistent basis, i.e., ICBC has included in this Application, and in past revenue requirements applications, information on both corporate operating expenses and the Basic portion of those costs. ICBC always endeavours to ensure that the financial information in the Application is as accurate as possible based on the information known.

34. TREAD says that the expense ratio is skewed “in its favor” due to ICBC’s unique corporate structure which “combines an unregulated Optional business and a compulsory Basic business”. TREAD does not elaborate on how it came to that conclusion. The reason for the expense ratio being lower than the industry benchmark is explained in the 2012 ICBC Annual Report, page 23 (provided in the Application, Appendix 10 C). It is due to ICBC’s ability to achieve economies of scale, the benefits of integrated operations, and lower marketing, underwriting, acquisition and general administration costs.

(b) Response to IBC’s Arguments Regarding Allocation

35. As in past years, IBC has devoted much of its attention to cost allocation. It has essentially raised the same arguments this year as it has in past applications, i.e., another comprehensive review of allocation is required, and ICBC is not complying with the approved methodology. As in past years, ICBC has provided compelling answers to both of IBC’s arguments. The Commission should reject IBC’s submissions.

Review of Cost Allocation Should Await Completion of Business Transformation

36. IBC maintains that it is time to have a comprehensive look at cost allocation.⁷³ There are two responses to this:

- First, the way in which IBC has discussed cost allocation would leave the casual reader with the mistaken impression that allocation has not been addressed

⁷³ IBC Submission, para. 50.

since 2005. The Commission has revisited the allocation methodology on several occasions since then. The allocation of large portions of ICBC's operating expenses has been assessed in recent years.⁷⁴ In the April 2010 Decision on the Streamlined Regulatory Process the Commission stated:

The Commission Panel notes that ICBC has had its financial allocation methodology, functions and factors reviewed and approved by the Commission in previous proceedings. The Commission Panel considers that those previous findings, in the absence of significant changes to either the Basic or Optional components of ICBC's insurance business, are likely to continue to provide appropriate cost allocations between those business components in all material respects. IBC's concerns about cross subsidization accordingly seem unwarranted, and the Commission Panel sees no reason to make any changes to the Application arising from the expressed concern.⁷⁵

- Second, ICBC has acknowledged that the methodology will have to be revisited due to business changes, which is consistent with the above quoted passage from the April 2010 Decision on the Streamlined Regulatory Process. ICBC would be unable to complete a full allocation review by early 2015 as suggested by IBC. Moreover, reviewing allocation while ICBC is still in the midst of transformational change makes no sense.⁷⁶ It is in the best interests of policyholders to avoid the redundant regulatory processes that would result from addressing allocation prematurely.

37. In support of its push to have another allocation proceeding, IBC points to the mandatory language in the *Insurance Corporation Act* (ICA) regarding avoidance of subsidy, and says "It is not a matter of getting close or almost right. It is also not relevant that an improper

⁷⁴ After the Commission's approval of the allocation methodology in 2005, additional allocation functions and allocators were addressed in the 2006 Revenue Requirements proceeding, 2007 Revenue Requirements proceeding, and 2010 Revenue Requirements proceeding. In addition, the allocation of Customer and Injury Services Operations (formerly Regional Claims Centres allocation), which constitutes the largest "bucket" of costs to be allocated, has been subject to numerous proceedings, including two independent third party (ITP) reviews. These proceedings were a 2007 updated work effort study, 2008 ITP proposal plan and 2009 ITP review (this review included four additional functional cost centres), 2011 detailed work effort study, and 2013 informational compliance filing. Another detailed work effort study will be filed by December 31, 2014.

⁷⁵ Exhibit B-27.

⁷⁶ 2013.2 RR BCUC.220.1. ICBC Final Submission, para. 61.

allocation results in only a .0009% change to the rate increase. Each small subsidy is still a subsidy and small amounts add up.”⁷⁷ The level of granularity implied by IBC’s legal argument (i.e., allocating dollar by dollar) is wholly impractical, and ICBC submits that this impractical approach is not mandated by the ICA. The Commission itself has rejected the level of granularity implied in IBC’s argument by considering practicality and materiality in determining whether to make changes to allocators.⁷⁸ ICBC has been using the same Commission-approved methodology since 2005. ICBC submits that the ICA imposes a requirement to adopt and maintain a reasonable allocation approach that is justifiable based on principles of cost causality. ICBC’s approved approach does that.

38. IBC expresses concern about its ability to understand the allocations.⁷⁹ There is no question that the allocation methodology is unwieldy and hard to follow (Ms. Prior noted the manual exercise required to maintain the allocation in a series of ledgers). It has always been that way. The allocation methodology is unwieldy because of the degree of granularity that it pursues. So long as that level of granularity is involved, the challenges associated with having to track costs due to organizational changes will remain. The answer to the fact that the process is somewhat unwieldy and hard to follow is not - as IBC appears to advocate - to make it more unwieldy by (a) requiring an even greater level of granularity in the analysis, and (b) imposing upon ICBC an obligation to come into the Commission every time cost centres shift within the organization. The answer is to simplify the allocation process once the “dust has settled” with business transformation. In the intervening period, ICBC will commit to provide in its revenue requirements applications more detailed explanatory notes regarding any blending of allocators or additions or removals of functional cost centres from the allocation tables.

⁷⁷ IBC Submission, para. 28.

⁷⁸ For example, the Commission has considered the impact on rates and significance in relation to total revenues and expenses in rejecting additional layers of complexity in order to gain a more precise allocation of costs (the January 2008 Decision on Revenue Requirements, page 23). It has also previously noted that the materiality of any change would be a consideration in support of proposed allocator changes (the July 2006 Decision, page 55).

⁷⁹ IBC Submission, paras. 28 to 29.

Responses to IBC's Specific Arguments on Allocation

39. IBC has asserted in paragraph 44: "There needs to be a clarification of what the allocation methodology involves. ICBC now takes the position that changes to the allocation methodology need not be approved." IBC has mischaracterized ICBC's position. ICBC agrees that changes to the methodology would have to be approved. The point is that ICBC has continued to apply the approved allocation methodology, and thus has not needed to propose any changes to the Commission.

40. As IBC is aware from past proceedings when this same issue has come up, ICBC has applied the Commission-approved allocator to the same set of functional costs when those costs are moved within the organization. For example, when Out of Province BI was merged with Ongoing Claims Services (not Out of Province Aligned Claims as indicated at paragraph 46 of IBC's argument), no approval was sought or required because the original Commission-approved allocators continued to be applied to the same costs. Although 'Net Claims Cost – OOP' is referenced in the allocation tables as being the allocator, the handling of lower severity BI claims continues to be allocated directly to Basic insurance as had been the case before the functional cost centres were merged. ICBC's inadvertent change to the Claims Administrative Support function has now been reversed, and ICBC's review of the allocators during the hearing confirmed that there are no other errors of that nature.⁸⁰

41. This boils down to ICBC trying to make the tables easier to follow in the upcoming revenue requirements application; it is not a substantive issue about ICBC's compliance with the approved methodology. As indicated above, the Commission can expect improved explanatory notes on the allocation tables in the next revenue requirements application. The ultimate solution, however, will be to simplify the allocation process itself once business transformation is complete.

⁸⁰ T7: 1091, ll.9-26.

Road Safety Education and Awareness Tied to Enforceable Consequences

42. IBC discusses at paragraphs 67 to 71 of its submissions ICBC's commitment in 2008 that it would "only invest in road safety education and awareness tactics in support of programs where a driver will experience enforceable consequences for behaving unsafely." IBC says:

In Redirect during the current Application, ICBC emphasized that a tactic is a subcomponent of a program. Thus a tactic itself need not have a measurable outcome if the overall program has a measurable outcome. This appears to be an attempt to circumvent the Commission's ruling and allow ICBC to incur expenditures that are not effective by justifying them as tactics within a program. The 2005 Decision makes no such distinction. The key is measurable outcomes.

Although it is not obvious on the face of IBC's submission, this issue is actually about cost allocation. Qualifying Road Safety programs are allocated to Basic insurance pursuant to *Special Direction IC2*, rather than the Optional business. IBC would prefer that more costs be allocated to Optional insurance. The issue that IBC is raising about what education and awareness tactics qualify as a Road Safety program and be allocated to Basic insurance is not new. This same difference of opinion has manifested itself in prior proceedings. ICBC's view is supported by simple logic. For instance, an education and awareness tactic about speeding can never *itself* have an "enforceable consequence" (you cannot enforce a commercial) - it is only the program (anti-speeding) that can have an enforceable outcome (a ticket for speeding). Education and awareness tactics referenced by IBC at the hearing, such as the 180 Video contest or attendance at the Vancouver International Auto Show to raise awareness of speed or distracted driving, do support enforceable consequences. They fall within the definition of Road Safety as previously approved by the Commission and are thus properly allocated to Basic insurance pursuant to *Special Direction IC2*.

43. It would be helpful to have the Commission reconfirm this matter to avoid continually re-hashing it in each revenue requirements proceeding.

(c) Response to Pemberton’s Argument about “Subrogation Conduit”

44. Part four of Pemberton’s submissions are devoted to a discussion of subrogation and Pemberton’s theory about how it affects allocation and the treatment of policyholders. It says that the Commission should expand the review of allocation to include “standardization of rules, regulations, standards, and procedures for all subrogated claims, regardless of internal or external origin, and immediately request ICBC to make application to the Commission.”⁸¹ None of this discussion, or Pemberton’s theories, is backed by evidence in this proceeding. Pemberton’s argument is based on factual errors and meritless innuendo, which Pemberton - tellingly - did not present as evidence so as to be tested under cross-examination. There is no basis for the Commission to make the direction sought by Pemberton.

F. CAPITAL MANAGEMENT PLAN

(a) Response on Capital Management Target and Rate Smoothing Margin

45. Although BCPSO is satisfied with a capital management target of 150%, TREAD and CDI advocate a capital management target of 140%.⁸² The basis for these arguments is largely focussed on the rate impact of building capital.

46. In paragraph 83, BCPSO appears to be confusing the capital *maintenance* provision (where ICBC is proposing to change the transition period to the capital management target from 20 years in the current Capital Management Plan to 10 years) with a capital *build* provision. The capital build provision in the current Capital Management plan is that 1/5 of the shortfall to the management target is built into rates each year. ICBC’s proposal for the new Capital Management Plan is that the same 1/5 build per year be used up to the solvency target (130%), and then a 1/10 build per year up to the proposed 150% capital management target.

47. The “\$65 increase per Basic insurance customer per year” cited in paragraph 82 of the BCPSO final submission overstates the rate impact associated with the 20 point rate smoothing margin. The total cost per customer of building capital from 130% to 150% of MCT

⁸¹ Pemberton Submission, p. 6.

⁸² BCPSO Submission, para. 82; TREAD Submission, p.15; CDI Submission, para. 41.

is approximately \$80 based on the average premium after the 4.9% rate increase proposed for the 2013 policy year.⁸³ The 20 point MCT margin will gradually be collected from rates over time, according to the capital build formula which is subject to the capping provision (Requirement (B) of *Special Direction IC2*). Once the 150% MCT target level is attained, the capital build provision is removed from the rates. The *cumulative* cost to the customers over that period of building would be about \$80 (in today's dollars),⁸⁴ not \$65 per year.

48. BCPSO at paragraph 78 of its Submission asks ICBC to comment on the likelihood that the investment outcome would reduce MCT by 15 percentage points during policy year 2013. As explained in the Application, page 4-26, 15 percentage points of MCT represents normal volatility in investment returns. Since the 2013 policy year extends to October 31, 2014 it is quite possible that investment outcomes could reduce the MCT by 15 percentage points between now and then.

(b) Customer Renewal Credit (CRC)

49. BCPSO and TREAD addressed the CRC. ICBC's Final Submissions anticipated the intervenor submissions on the CRC. ICBC is content to rely on its Final Submissions. ICBC will be filing with its 2014 Revenue Requirements Application the Basic Insurance Tariff amendments to implement future CRCs. ICBC will also provide an update to the Commission on the status of the CRC system.

G. OTHER MATTERS RAISED

(a) Response to TREAD's Submissions Regarding Customer Communications

50. TREAD has provided a lengthy discussion on ICBC's communication with customers relating to this Application, the thrust of which is that ICBC's communications have been inadequate. ICBC understands the importance of good customer communications, and submits that it has taken appropriate steps to raise awareness about this Application and its implications for policyholders.

⁸³ 2013.2 RR BCUC.161.1.

⁸⁴ Based on the "rule of thumb" cited in the BCPSO Submission, para. 82.

51. The crux of TREAD's argument is that ICBC's normal approach to communications "stopped being appropriate when the legislative framework entirely changed how Basic insurance rates are set". There are several points in response:

- First, for all of TREAD's criticisms of ICBC's communication plan and the content of Mr. Blucher's op/ed piece for the Vancouver Sun, ICBC's communication plan ensured that the Vancouver Sun front page headline and story relayed that ICBC was proposing a 4.9% Basic insurance rate increase. It ensured that a similar story was picked up by most BC news outlets. In fact 197 stories appeared in the media, including stories in the Vancouver Province and the Victoria Times-Colonist.⁸⁵
- Second, as TREAD suggests (and as Mr. Blucher acknowledged in his op/ed piece for the Vancouver Sun), ICBC's policyholders are concerned about what they pay for insurance. It stands to reason that the intricacies of the legislative framework that determines how the rate is calculated is of secondary importance to the resulting rate change. There are practical limitations to what can be conveyed and explained in the confines of a press release and there are further space limitations imposed by the media.
- Third, the new legislative framework is not the cause of the rate increases customers are experiencing, which is a fundamental point that TREAD has glossed over. Basic insurance rates are increasing because the cost of providing Basic insurance is increasing. The legislative framework is the reason that the PY2013 rate increase is 6.6% **lower** than it otherwise would have been but for the rate smoothing framework. It is the reason that rates will likely be capped next year as well.
- Fourth, it would not be appropriate for ICBC to include in press releases a "statement of the minimum and maximum ranges of all rate increases that will

⁸⁵ T7: 1193, l.21.

or may result from the rate increase in the current year, if approved.”⁸⁶ As TREAD has noted, the range of potential outcomes under rate smoothing quickly becomes very large. ICBC’s actuaries have explained that there is a very significant margin of uncertainty with projections extending out several years.⁸⁷ It would be no more meaningful to include a multiple year projection of worst/best case rate scenarios under rate smoothing than it would have been in past years to provide such a projection. It isn’t difficult to see how customers might perceive that ICBC has misled them when projections turn out to be different than forecast. This is not in the public interest.

(b) Response to TREAD on Timing of the New Amendment to *Special Direction IC2*

52. TREAD expressed concern about the fact that Government released the February 18, 2014 changes to *Special Direction IC2* very shortly after the oral hearing concluded. TREAD urged ICBC to address in its Reply the timing of the amendment “including an assurance that ICBC in its discussions with government did not influence the timing of the issuance of the amendment.”⁸⁸ ICBC did not influence the release date. ICBC was not informed of the final decision to make the change until the day that the amendment was enacted. Further, regardless of whether ICBC is aware of any potential cabinet deliberations or not, it is not at liberty to discuss those at any time, including at a Commission hearing.

(c) Response on Future Rate Design

53. TREAD and BCPSO urge the Commission to order ICBC to file a rate design application within the next 12 months.⁸⁹ At the hearing, Ms. Prior explained why rate design was put on hold and why it makes most sense to undertake rate design after 2015. She stated:⁹⁰

⁸⁶ TREAD Submission, p.9.

⁸⁷ 2013.2 RR TREAD.6.4-7.

⁸⁸ TREAD Submission, p.10.

⁸⁹ BCPSO Submission, para. 103.

⁹⁰ T7: 1102, l.14 to 1103, l.4.

So we made a choice of what we moved ahead first. We moved ahead with the system. It's well underway right now. It's a significant piece of work of, I'm going to say, close to \$100 million. So that is -- we brought our expertise on. That's what we are going full force with right now.

So it only makes sense that this would come together once we have the systems in place. We couldn't implement anything today. That system will be -- is expected to be complete around the end of 2015, and I think once we've stabilized that it would make sense to then build in, number one, the application and any rate design work we were going to do, because the system could then accommodate the changes.

So this work has been put on hold based on that history of what we've done.

There is sound logic to focussing on the systems changes first.

(d) Response to Pemberton's Arguments Regarding Autoplan Agency

54. Section 5 of Pemberton's submissions discusses his views on the Autoplan Agency arrangements with brokers, and advocates change to it. The Commission should disregard those submissions. The broker system is embedded in legislation.⁹¹ Wholly apart from that fact, a number of Pemberton's factual assumptions are incorrect and it has conflated different concepts. Also, key aspects of Pemberton's position are based on information and allegations that Pemberton never sought to support with evidence, despite having ample opportunity to do so. For instance:

- Pemberton has not characterized the distribution system correctly. It has confused the term Autoplan Agency Agreement, and has used it interchangeably with the terms "agency appointment" and "appointed agent." The differences among these concepts are explained in Appendix 7 F of the Application.⁹²

⁹¹ Pemberton appears to acknowledge this in its information requests. See 2013.1 RR PI.1.12.1.

⁹² Application, pp. 7F-1 and 7F-5, and also footnotes 1 and 7.

- Pemberton has not provided any evidence to support the estimate of the value of Autoplan Agency Agreements⁹³ or to support an estimate of “the cost to the consumer” that arises from the value of an Autoplan Agency Agreement.
- Pemberton is incorrect in suggesting that ICBC creates “sub-agents” under the Autoplan Agency Agreement. This appears to be in reference to the login IDs that ICBC provides to individual staff from Autoplan broker offices who have access to ICBC’s Broker systems.⁹⁴

55. The evidence is that the availability, convenience, and service provided by ICBC’s broker distribution channel, whether in urban or rural communities, is very good overall and that communities throughout the province are well served.⁹⁵ Customer feedback about ICBC’s insurance services and broker service delivery has been very positive over the years and the results of insurance service satisfaction survey have consistently been over 95% satisfied.⁹⁶

(e) Response to Mr. Landale’s Views About ICBC’s Witnesses

56. Mr. Landale expressed in a variety of places his views on ICBC’s witnesses and how they responded to questions during the hearing. He goes so far as to say that they “avoided candid and complete answers during cross-examination”.⁹⁷ ICBC submits that it should be apparent to the Commission that each witness was doing his or her best to be helpful and informative during the proceeding. The fact that Mr. Landale does not like the answer, or was hoping for a different answer, is an entirely separate matter from candour. The example that Mr. Landale cites - where counsel for TREAD asked a variety of questions suggesting that the press releases were misleading - is a good illustration of this. Ms. Prior gave the same answer each time - to the effect that she did not agree with TREAD’s characterization. It was within Ms. Prior’s right to disagree (and keep disagreeing). Ms. Prior’s view that the public was

⁹³ 2013.1 RR PI.1.12.6a.

⁹⁴ 2013.1 RR PI.1.12.1.

⁹⁵ Application, Appendix 7 F, para. 6.

⁹⁶ Application, Appendix 7 F, paras. 36 and 37.

⁹⁷ Landale Submission, p.4.

properly informed about the Application was ultimately confirmed by the large headline on the front page of the Vancouver Sun newspaper.⁹⁸

57. Mr. Landale is also critical of ICBC's actuaries. Mr. Landale says, for instance, "Based on the outrageous "Accepted Actuarial Practice" code, ICBC actuaries have developed a hypothesis of "Scare Tactic" by being biased and exaggeratory (sic) in the Loss Cost Forecast Variance...[etc. etc.]".⁹⁹ ICBC's actuaries are professionals and there is every reason to believe that they will conduct themselves as such. They have indicated that the selection of models and assumptions is an exercise of informed judgment. By selecting modelling that accords with accepted actuarial practice and best accounts for the available information, ICBC's actuaries are doing exactly what they are mandated to do both by their professional standards of conduct and by *Special Direction IC2*.

H. MATTERS OUTSIDE THE SCOPE OF THIS PROCEEDING

58. A number of intervenor submissions have strayed at times beyond the scope of this proceeding and should be rejected. Pemberton was the "worst offender" and thus requires separate responses:

- ***Pemberton's Rate Design Arguments:*** The first section of Pemberton's submission is focussed in the rates paid by what it refers to as the "low risk business segment". Specifically, Pemberton is asking the Commission to reject ICBC's application to "impose a rate increase upon this identifiable, standard, low risk business segment". Changing rates for one segment of customers based on the costs that they are driving is the epitome of a rate design issue. The Commission has explicitly excluded rate design issues.
- ***Pemberton's Objection to How ICBC Influences Provincial Accounts:*** Section 2 of Pemberton's submission focusses on how the finances of ICBC affect the

⁹⁸ Exhibit B-28.

⁹⁹ Landale Submission, p.11.

Provincial Government. The Commission's jurisdiction is over Basic insurance rate setting, not Provincial government accounts.

- ***Pemberton's Argument that Capital Management Plan is Unconstitutional:***
Pemberton's third section is devoted to a constitutional argument that the Province is engaged in "unconstitutional taxation". Leaving aside procedural objections to constitutional matters being raised at this juncture, there is no need for the Commission to consider the substance of this submission because it is irrelevant to Basic rate setting. Pemberton isn't really challenging the Basic insurance Capital Management Plan; rather, Pemberton is actually objecting to how the Province obtains funds from ICBC's Optional business. Basic insurance is regulated separately from Optional insurance and Basic insurance is a closed system.

PART THREE: CONCLUSION

59. Although intervenors have commented on a wide variety of topics, very few of their arguments have direct implications for the determination of the PY2013 rate indication. ICBC has provided compelling responses to the arguments that ostensibly could affect the rate indication (e.g., BCPSO's re-interpretation of legislation relies on repealed legislation; CDI's arguments on the causes of flattened BI frequency overlook the fact that the flattening of BI frequency is based on observed claims data; updated information, if used as basis for updated rate indication, appears to suggest a very similar but slightly larger increase). ICBC submits that the proposed Basic insurance rate increase of 4.9% should be approved.

60. ICBC's claims management initiatives, including those initiatives directed at managing the legal representation rate, are going to be of critical importance in future years. ICBC believes that much of the debate around these matters was valuable. That said, many of the intervenor submissions give insufficient recognition to the steps that ICBC is already taking in the areas of fraud management (BCPSO) and claims initiatives (AIC). They oversimplify issues that are inherently very complex. And, in AIC's case, their arguments are based to a material

degree on inaccuracies and speculation rather than the evidence. ICBC has demonstrated a commitment to understand and respond to changes in the BI claims cost environment.

61. Significant elements of the proposed Capital Management Plan flow directly from legislative requirements. Within those parameters, the Commission will have to exercise its discretion in the design of components of the Basic Capital Management Plan. However, the Commission's analysis must be informed by the overriding intent of the rate smoothing framework: building enough additional capital to compensate for the additional risk of not taking the full rate requirement, and to smooth out expected volatility. ICBC submits that its proposal accomplishes that objective in a manner that will serve the longer term interests of policyholders.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

Dated:

March 17, 2014

[original signed by Matthew Ghikas]

Matthew Ghikas

Legal Counsel to ICBC