NOVA SCOTIA UTILITY AND REVIEW BOARD

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This publication is not a legal document. It contains general information and is provided for the convenience and guidance in applying the *Insurance Act* (Chapter 231 of the Revised Statutes of Nova Scotia, 1989) (the "Act"), and Regulations. In all circumstances reference should be made to the legislation.

Paper Hearing on the Impact of 2010 Minor Injury Cap Reform

In its decision for the generic hearing into the impact of the minor injury cap reform ("MICR"), the Nova Scotia Utility and Review Board (the "Board") stated:

> **[123] Since the participants generally appear to agree that it will take more than one year to measure the full impact of the reform, the Board finds that it is appropriate to hold a formal paper hearing where any interested parties may provide evidence and submissions for the Board's consideration in accordance with a prescribed timetable. The Board will schedule this hearing for the fall of 2012, by which time there will be more data available.**
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> **[2010 NSUARB 236]**

Because the Government announced a number of insurance reforms effective in 2012 and 2013 that were not envisioned when this decision was made, the Board questioned the continued appropriateness of having a paper hearing in the fall of 2012. The Board requested submissions from industry regarding two options for deferral of the hearing to the fall of either 2013 or 2015.

The Board received submissions from a number of insurance companies and from the Insurance Bureau of Canada ("IBC"). While the fall 2013 option received far more support than the fall 2015 option, a number of companies favoring the 2013 option expressed interest in proceeding in 2012 as scheduled.

The IBC argued for the removal of the generic approach to setting assumptions regarding MICR and allowing each company to be considered individually by the Board.

In its report to the Board on the cost of an Optional Tort product, OW indicated that its analysis of loss cost experience through June 2011, suggested that several of its selected assumptions (e.g. a 0.0% future loss cost trend for Third Party Liability-Bodily Injury, no impact on Accident Benefits coverage) should be changed. This information was unavailable to the Board when it put forward its two options to industry.

If the paper hearing were held in the fall of 2013, the Board would need to determine the assumptions companies would be permitted to use in the interim. In light of the OW observations and company comments, the Board considers that a continuation of the status quo would not be appropriate.

The Board determined it would be appropriate to allow companies to make arguments in their applications for different selections than those made by OW. If the Board decides the circumstances of a company warrants the use of different selections, the company would be allowed to use them.

Rather than scheduling a generic hearing at this time to review the MICR, the Board has determined that this approach would also be appropriate for use in the longer term. The Board will post OW loss trend reports, as published, outlining the rationale for and the selections made by OW. Companies will then be able to either accept these selections or to present evidence that, in the circumstances of the company, different selections should be used. The Board will rule on the selections as part of the review of the application. The onus remains on a company to prove that its circumstances warrant deviation from the OW selections.

Therefore, effective for filings submitted after June 1, 2012, the Board will require the use of the factors included in the most current OW loss cost trend reports (which will be posted to the Board's website and updated as they become available) unless a company is able to satisfy the Board that its circumstances warrant the use of different selections. Where a company chooses to provide evidence to support such a claim, the application must also show the indications using the OW assumptions.

Minor Injury Protocols

The reforms that become effective on April 1, 2013 include the introduction of minor injury protocols. While there is some experience with such protocols in Alberta, there is no experience with the Nova Scotia version of these protocols.

As a result, the Board believes it prudent to disallow the use of any adjustments to experience associated with these protocols until sufficient significant experience has emerged under the new protocols to warrant such inclusion. The Board will monitor the experience and will determine when the impact of minor injury protocols may be reflected in rates and indications. The Board may decide to hold a generic hearing at some future date which will be communicated to industry.