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January 30, 2020

Ms. Janine Dyck, Vice President,
Employer Account Services
Workplace Safety & Insurance Board
200 Front Street West
Toronto ON M5V 3J1

Dear Ms. Dyck:

Re: Final Experience Rating Adjustment 2020: The unfair "double-surcharge transition impact" of a pre-Rate-Framework high cost record

A. Introduction

1. This was an issue that was introduced to you during a CAC December 18, 2019 meeting arranged to discuss Rate Framework "(RF") transition calculations.

2. I introduced that under RF there will be circumstances where the same cost record will drive an experience rating ("ER") surcharge in 2019, a higher than average RF premium for 2020, and a final ER surcharge in 2020. This means that the same record will drive both a higher than average premium (the prospective equivalent of a surcharge) and an ER surcharge in calendar year 2020. This is a RF transition issue only and limited to 2020, and in my view, is fundamentally unfair. The same record should not drive two defacto surcharges in 2020 (one prospective and the other retrospective).

3. I propose that the Board implement an immediate remedy which, in my view, is entirely consistent with your over-arching RF transition principles articulated in late-2018. **I propose that in every instance where the pre-RF record drives a higher than average 2020 RF premium rate, no ER surcharge will be issued in 2020**. In other words, the same record will not drive both a higher premium and an ER surcharge in 2020.

4. At the December 18, 2019 meeting (RF calculations) you acknowledged that this is an issue that the WSIB is aware of (and I presume considering or addressing). I am writing at this time to formally introduce this issue and formally suggest a remedy. I further propose that a policy decision on this issue be rendered quickly.

5. In the December 18, 2019 meeting, I further opined that this transition impact will serve to significantly undermine public acceptance of the RF model. That prophesized push-back will not be triggered until the issuance of ER surcharges later this year, a problem easily rectified with my proposed remedy.

6. Please consider the following situation:

   a. Historically, Company A experiences an average or "as-expected" record, such that it normally receives neither a rebate or surcharge. Company A is assessed under the CAD-7 ER program.[1] (For the purposes of the example which follows, the fluctuation in the aggregate yearly premium reflects actual reductions in the year-to-year premium rate).

   b. For 2016, Company A experiences an anomalous very serious injury (caused by the negligence of the worker and no-fault of the employer – fault however is not a factor in determining employer cost accountability). This serious injury drives significant claims costs throughout 2016 to 2018.

      i. For 2017, the claim drives a 2016 CAD-7 surcharge of $50,000. Base 2017 premiums are $243,000. Total 2017 premiums are: $243,000 plus $50,000 = $293,000.

      ii. For 2018, another CAD-7 surcharge is issued ($75,000) driven by the 2016 claim. Base 2018 premiums are $230,000 (premium rates declined). Total 2018 premiums are: $230,000 plus $75,000 = $305,000.

      iii. For 2019, another CAD-7 surcharge is issued ($100,000) driven by the 2016 claim. Base 2018 premiums are $154,000 (premium rates declined again). Total 2019 premiums are: $154,000 plus $100,000 = $254,000.

   c. These surcharges represent the normal functioning of ER, and are "fair."

   d. The cost record for transitioning into RF includes the 2016 claim costs for 2016, 2017 and 2018, and results in a premium higher than average. For this sector, an "average" 2020 premium rate would drive a $113,000 premium for Company A. However, due to the impact of the 2016 claim, Company A's actual 2020 premium is $200,000 (an increase of $87,000 due to the high cost record). I posit that this is "fair" and in accordance with the WSIB "net-to-net" transition rules.

   e. In addition, in Q3 2020, Company A is hit with another and final CAD-7 surcharge of $50,000, on top of the $200,000 premium already charged (of which $87,000 is already a feature of the anomalous 2016 claim). I posit that this final CAD-7 surcharge based on the same historic cost record as the 2020 RF transition rate is unfair and represents a double-counting of the same record to the detriment of the premium paying employer.

7. While the WSIB promotes RF as a model ". . . *boosting fairness* . . .",[2] this is not fair.

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[1] Note: The same anomalies will also apply under the NEER plan, with different mathematical triggers. However, the problem in principle is the same and the proposed solution should apply to CAD-7 and NEER employers.
[2] (https://www.wsib.ca/en/rate-framework-our-new-model)

8. I suspect that the full implications of this double-counting transition are not yet known. However, ensuring a smooth transition is a clear policy goal of the WSIB as evidenced by the November 2018 policy decision to mitigate the classification impacts of RF transition. A similar remedy of the performance based impacts is also called for for the same over-arching policy concerns.

9. I look forward to hearing from you to meet and discuss theses issues. I can be reached at 416-986-1166 or lal@laliversidge.com.

Yours truly,

L.A. Liversidge

Copy: Diane Weber, Director, Chair's Office & Corporate Secretary