

The Liversidge e-Letter

An Executive Briefing on Emerging Workplace Safety and Insurance Issues

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An Electronic Letter for the Clients of L.A. Liversidge, LL.B.

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The Leading Workplace Safety and Insurance Issues *Ontario Trucking Association 2005 Convention Issue*

The Top Four Workplace Safety & Insurance Issues:

- ◆ Premium rates hiked 2.8%
- ◆ ER rebates down – surcharges up
- ◆ WSIB to audit for employer claims compliance
- ◆ WSIB set to impose fines for not co-operating

Issue No 1: WSIB Hikes Premium Rate

The General Trucking WSIB Rate Group [“RG”] 570 experienced a 2.8% premium rate hike in 2006 [from \$5.68 to \$5.84] even though accident rates continue a declining trend. The trucking rate hike was very close to the average premium rate hike (for all employers) of 3.2% [for a more complete overview of the 2006 premium rate impacts, see the July 26, 2005 issue of *The Liversidge e-Letter, WSIB Releases 2006 Preliminary Premium Rates*].

Premium rate hikes follow WSIB/Employer dialogue

These rate hikes followed an extensive series of high level discussions between the Board and employer representatives earlier in the year from January to May, 2005. While the Board is to be commended for this senior dialogue, it should be noted that employers had been demanding this dialogue since the Fall of 2002. Better late than never – and hopefully – this new “openness” is a signal of a new way.

Employers complain WSIB pre-empted the outcome

However, while appreciative of the opportunity to address serious funding and other systemic issues with top level WSIB officials, many employers formed the view that the WSIB CEO pre-empted the outcome when it was announced in October, 2004, several months before the discussions began, that it was the Board’s “strong belief that a rate increase will be required in 2006” [October 15, 2004 letter from Ms. J. Hutcheon].

Employers argued rate hikes not needed

In fact, of course, there was a rate hike in spite of employers unanimously advising the Board that a premium rate hike was not necessary and that there were responsible alternatives.

The Board argued hikes needed to retire UFL by 2014

The Board argued that cost and economic pressures required a rate hike *if* the UFL is to be retired, on plan, by 2014. There really is no point to quarrel with the Board’s analysis. Little is gained through quibbling over the Board’s financial projections. There are serious cost pressures facing the system (medical costs, increasing costs of average claim, etc.) and the Board is quite right to address those challenges head-on.

But, employers willing to see UFL extended a few years

However, using the Board’s own data, employers argued that instead of raising rates, all the Board had to do was push out the terminal date for the retirement of the Unfunded Liability from 2014 to 2017.

Instead, the Board approved a renewed funding strategy that will likely drive future premium rate hikes, perhaps as much as 3% per year for the next five (5) years. The average premium is expected to peak at \$2.59 in 2010 (18+% increase over 2005 premiums), and the UFL is expected to be retired, as planned, by 2014.

The Link Between Accident Rates and WSI Premiums

Historically, the Board has always “sold” the reasonably sounding argument that the best way to reduce premium rates is to reduce injuries. In the **1998 WSIB Annual Report** it is noted: “*The WSIB’s increased emphasis on injury and illness prevention . . . expected to reduce LTIs . . . resulting in decrease in benefit costs*” (page 29), in the **1999 WSIB Annual Report**: “*Largest decrease in premiums were in industries where accident performance has improved*” (page 17) and in the **2000 WSIB Annual Report**: “*Steady reduction in premium rate due to increased focus on prevention*” (page 21).

Did the promise hold true – was there a demonstrated link between reduced LTIs and premium rates?

For RG 570, from 1994 to 2001, the premium rate declined 17% [from \$6.40 to \$5.31] while the LTI rate fell 52% [from 9.52 to 4.54]. So, for that period the promise held true – lower accident rates resulted in lower premium rates (marginally at any rate).

But, from 2001 to 2006, premiums actually rose 10% [from \$5.31 to \$5.84] while accident rates declined 11% [from 4.54 to 4.02].

The bottom line: *No longer can employers be assured that a continued trend in lower injury rates will yield lower WSIB premium rates.* In fact, it is clear now that the WSIB is back-peddling off that old reprise and is no longer advancing the thesis that fewer accidents will equal lower premiums, and instead, is focusing on the costs of each lost-time claim.

Issue No. 2: Experience Rating

Experience Rating ["ER"] (NEER) reforms were introduced commencing with Accident Year 2004. Trucking firms have just started receiving their experience rating reports that reflect these changes. Surcharges are up and rebates are down.

WSIB implements "administrative changes" to ER which reduce rebates and increase surcharges

WSIB "administrative changes" altered the "expected insurance", the Second Injury and Enhancement Fund ["SIEF"] allocation, and the reserve factors, which together, combined to reduce the amount of rebates and increase the surcharges. Higher minimum rating factors and higher maximum rating factors were also introduced.

ER changes may increase trucking "net" rate over previous years' experience

The impacts will not be fully known until Accident Year 2004 "closes" (with aged claim cost data as at September 30, 2007). However the Board had developed *pro-forma* data to help explain the impacts. For the trucking industry, the net effect of the implemented changes for Accident Year 2004 is estimated to result in an overall increase in the net premium of approximately 2.4 % (although the actual experience or 2004 may be quite different).

More similar changes on the way for Accident Year 2006

In August 2005, the WSIB Board of Directors approved additional reforms to be effective commencing with Accident Year 2006. While there will be more administrative changes, of significant financial impact will be the increased accountability of individual claim cost limits from four (4) times the maximum insurable earnings to five (5) times, and increasing the maximum surcharge from two (2) times the maximum rebate to three (3) times the maximum rebate.

WSIB data indicate that the ER changes will have a significant financial impact. For a small company with premiums of \$50,000 the maximum rebate as a percentage of the premium remains relatively the same. Yet, the maximum surcharge as a percentage of premium increases by 4%.

For a large company with premiums of \$5 million, the maximum rebate as a percentage of the premium remains the same, ***yet the maximum surcharge as a percentage of premium increases by 40%!***

The bottom line: *Employers will have to run faster to remain in the same place.*

Issue No. 3: Prepare for WSIB "Compliance Audits"

The WSIB has given notice it will take action to uncover evidence of undesirable employer behaviours and has announced "**a new era that calls for action to be taken to address growing concerns with ER**" [Slide 9, February 11, 2005 ER Session]. The Board is eager to uncover "**evidence of undesirable behaviours that are motivated by experience rating incentives**" [Slide 34, February 11, 2005 ER Session].

In the March 21, 2005 ER Session [Slide 30], the Board tips its hand and outlines that it is planning on "**Workplace Performance Monitoring and Control**", to audit employer reporting and return to work obligations. Of note, the WSIB presentation to labour groups included eleven slides under the heading "**Major Activities Aimed at Addressing Employer Non-Compliance**".

This idea of monitoring employer return to work and claims management practices is not new – the last time we saw this introduced was with the "template of best practices" introduced by the NDP in 1995. While never rendered operational, the clear intent was to require a "compliance audit". Employer opposition is long-standing.

The bottom line: The new focus of the Board is without question *employer compliance*.

Issue No. 4: Penalties for "Non-cooperation"

Under the *Workplace Safety and Insurance Act* ["WSIA"], the Board has the capacity to levy penalties for non-cooperation [WSIA, s. 86] of an amount equal to the cost to the Board of providing benefits while non-compliance continues. Under s. 40 of the WSIA, workers and employers are required to cooperate [WSIA, ss. 40(1) & (2)]. Up to now, the Board has not implemented operational policies to govern the imposition of employer fines.

On October 27, 2005 the WSIB introduced eight (8) draft early and safe return to work ["ESRTW"] policies, which according to the Board are designed to improve the roles and responsibilities of workers and employers. The consultation package is available on the WSIB's website at www.wsib.on.ca. These draft policies introduce the mechanism to impose these fines.

New penalties will be up to 100% of claims costs for one year (plus experience rating impacts)

A penalty will be levied up to 100% of the cost of the wage loss benefits payable to the worker, plus 100% of any costs associated with providing LMR services (LMR services can include training costs, schooling, books, upgrading, and evaluations or assessments). The penalty for the wage loss is determined on a daily basis from the worker's benefit entitlement and then multiplied by the number of days the Board finds the employer is not cooperating up to a maximum of one year.

The bottom line: *WSIB Adjudicators will have tremendous discretionary powers to impose significant fines. Can they fairly handle the responsibility?*