

# 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.

3 pages

## WSIB Plans to Reform Experience Rating Employer Consultation Planned for Fall, 2003

### A brief recap of recent reform initiatives

In the late 1990s the Board commenced planning for a massive overhaul of experience rating ["ER"], which experienced several false starts involving the turnover of senior WSIB actuarial resources and the development and abandonment of several distinct reform plans.

Over the last two years, the Board announced its intention to completely revamp ER, which would effectively repeal both NEER and the CAD-7 ER plans, replacing them with an entirely new model, based on very distinctive design elements when compared to existing ER plans, especially NEER. The two most profound differences focused on how costs are captured and how premiums are adjusted.

While NEER allocates costs to specific accident years and tracks these costs for approximately three years, the ER reform plan initially proposed ["Proposed ER Plan"] attributed historical costs to a contemporary premium base, a fundamental shift in cost allocation rules. With respect to the premium adjustments, NEER adjusts employer premiums retrospectively based on performance, whereas the Proposed ER Plan would have adjusted premiums prospectively.

### **Prospective ER reduces WSIB premium rate accountability.**

It is my view that while prospective premium adjustments acquire some positive cash flow attributes, it exposes some fundamental policy flaws. Most notably a prospective model reduces the reliance on both the employer classification scheme and initial premium setting. Most significantly, prospective adjustments reduces WSIB political accountability in the premium rate setting process. Presently, the Board must annually justify its employer premium setting decisions, and of course, as a result, is held accountable at the most senior levels, in a most public fashion. This process for 2004 for example, resulted in a "zero percent increase" of the average employer premium.

Under the Proposed ER Plan, individual employer performance will set an individual company's premiums. As a result, the accountability paradigm is realigned - the Board will no longer be seen as setting the rates - employers will set their own rates.

### Impacts of reform must be known

Through my participation in the EAG (now renamed the Experience Rating Working Group ["ERWG"]), I have been pressing the need for the Board to present employer associations and individual employers with comprehensive and comprehensible impact analyses before any policy decision commitments are made. In early 2003, the Board agreed to provide these impact analyses, to be distributed during a broader consultative exercise.

### **While the Board agreed, production of impact statements has been a bottleneck**

The Board experienced difficulty in producing this impact analysis and as a result, has been unable to keep to the initial development schedule which called for full implementation of the Proposed ER Plan effective January 2004.

### **The Board will refine NEER as an interim measure**

The Board reassessed its plans and announced that it will explore refinements to the current NEER plan to effectively increase its power (i.e., increase rebates and surcharges), as an interim step before the complete development of the Proposed ER Plan.

### **Calls for ER reform have not been emanating from employers**

This was a very appropriate and welcomed move on the part of the Board. Firstly, it must be well understood that calls for ER reform (other than from the construction industry which is assessed under its own plan, CAD-7), have not been emanating from the broad employer community. For the most part, it seems employers are generally satisfied with NEER. Employers understand it, at least in a general context, and operate effectively within its current design parameters.

### **ER reform began with small business concerns – now resolved**

The initiative to review ER finds its genesis in concerns advanced primarily by small business in 1997 over needless complexity of NEER in a small business environment. The appropriate and efficiently executed policy design response was the introduction of **Merit**

**Adjusted Premium Plan**, under which adjustments were made to the premiums for all employers with an annual assessment premium of \$25,000 or less.

### **A solution in search of a problem**

Rather than “close the books” on ER reform with this refinement, the process then took on a life of its own, primarily through the involvement of a fairly small group of employer representatives in the EAG. The Board has never really asked the broad employer constituency “*what problem needs to be fixed?*” It very well may be the case that ER reform, as we have witnessed it so far, is a “solution in search of a problem”.

### **NEER must be reformed**

Having noted this brief history, NEER has not benefited from any administrative maintenance for over the last decade or so. It is indeed appropriate, and necessary, to assess the current design structures of NEER. It appears to still be widely held that ER provides an essential insurance incentive to motivate employers to higher performance levels concerning accident prevention and reemployment. Therefore the erosion of NEER’s power over the years is of some concern. In addition, it may be appropriate to review the three year window since the *Workplace Safety & Insurance Act*, S.O. 1997, c. 16, Sch. A., as amended [“WSIA”] now awards loss of earnings benefits for an approximate six year window (although a change in the window is not an essential ER design adjustment and is not to be included in this first phase enhancement).

### **The Board is committed to simple refinements to NEER**

Over the last several months, the Board has been working within the ERWG to determine how to best and most simply achieve some refinements to the NEER model. The Board’s present plan is to refine the NEER design to enhance its power and to proceed with broad based employer consultation this Fall, with implementation set for January, 2004.

### **But, the Board is still committed to replacing NEER by 2006**

This is to be followed by the ongoing development of the Proposed ER Plan with its implementation set for January 2006. Current plans therefore call for a refined NEER plan to be implemented January 1, 2004 to be replaced by the Proposed ER Plan by January 1, 2006.

This rather ambitious plan introduces other important policy issues.

### **A revamped NEER may be good enough**

Firstly, it may very well be the case that the reformed NEER design, in large measure, delivers suitable enhancements that achieve all of the expected objectives of the Proposed ER Plan. It must not be forgotten that the “target audience” of ER is the rational and informed

employer. Put another way, ER is only able to provoke change in employer behaviour if an employer understands how the program works. Therefore, since NEER is now very well understood by the majority of employers, and if it is the case that a refined NEER model better achieves set objectives, then it makes little sense to scrap that model for a brand new ER program understood by no-one.

Why place all employers on the first rung of the learning curve, when positive adjustments have been made to NEER, a program for which an expertise exists in every business enterprise in Ontario? Therefore, it is my position, which has been articulated in the ERWG, that replacing NEER should only be considered if and when it is shown that the revised NEER fails to deliver expected policy objectives. Unless a problem is clearly defined after the implementation of the revised NEER plan, it would be disruptive and a wasted exercise to, within a very short time span, scrap the revised NEER plan for a brand new program.

### **Ontario business is unlikely to absorb two major reforms within two years**

It is sheer folly to expect that Ontario businesses will be able to absorb two major shifts in ER policy within 24 months. While the Board should proceed with its initiative to refine NEER, plans for the Proposed ER Plan should be held in abeyance until the effectiveness of the Revised NEER Plan is assessed.

### **NEER power will be increased**

With respect to the proposed refinements to NEER, the Board is planning on increasing the power through adjustments to the rating factor formulae and individual claim and firm limit ceilings. The proposed changes to the NEER experience rating plan are as follows:

- increasing the minimum rating factor from 25% to 40%
- changing the rating factor formula
- no reserves on health care only claims plus, no reserves on small non-health care cost claims
- increasing the claim costs limit per claim
- expected cost factor formula to change

### **No policy endorsement was provided in the ERWG**

Overall, these enhancements seem to be beneficial, however, no policy endorsement was presented by the ERWG. It has been made very clear by the ERWG that the working committee is not a consultative vehicle, but simply a “design sounding board”. The only and true consultation will occur when the Board releases its impact analysis and proposed initiatives for broad consultation within the employer community. Therefore, all employers and employer trade associations have an equal opportunity to provide meaningful input.

### **The Board will consult on two options**

Originally, it was the Board’s plan to simply consult on a single Option to be selected by the ERWG. At the

request of the ERWG, the Board will be consulting on two new NEER models, one called "Option A" and the other "Option B". While both are more powerful and sensitive than the current model, Option B is more powerful than Option A.

Additional enhancements include adjustments to the types of cases that receive no future cost reserves, the claim limits, firm limits and the insurance cost.

*With respect to the application of reserves* under the current NEER program only health care costs are not reserved. Under Option A, non-health care costs less than \$500 will not be reserved and for Option B, this will increase to \$1,000. This will ensure that short-term injuries that are resolved do not receive reserves.

*With respect to the claim limit*, presently this is set at four times the maximum insurable earnings (which for 2003 is \$65,600). The present limit is therefore \$262,400 per case. This is not changed for Option A but the formula is increased to five times the limit for option B increasing the individual claim limit to \$328,000.

*The expected insurance cost formula* is going to change notwithstanding the NEER enhancement options. In fact changes have been implemented beginning in accident year 2002. The enhancement to the insurance factors actually will serve to reduce the power of experience rating to a certain extent.

While under Option A or Option B, the *net results* are very similar to the current model, more money is returned in rebates and more money is collected in surcharges. In short, it is more sensitive. It should be noted that these changes, while significant, do not return NEER to its initial power when introduced system wide in the early 1990s, and it certainly remains significantly less powerful than when first introduced in the mid-1980s.

The Board will begin to analyze the results of the consultation immediately and will provide a summary to the WSIB Board of Directors ["BOD"] by mid-October. A final recommendation is to be prepared at December 1 and approved by the WSIB BOD on December 9.

### **An ancillary issue – Claim Type 16 claims**

An important ancillary issue was identified in the ERWG, dealing with the manner in which the Board allocates reserves on claims incurring benefits two years post injury. These have been categorized in NEER as claim type 16 ["CT16"] claims. The reserving modality for CT16 has proven to be controversial, and in my opinion, quite unfair.

### **CT16 reserves are unfair**

Reserves for CT16 cases (which apply to post 1998 claims), are significantly higher when compared to similar claim types for pre-1998 claims. Simply put, in certain circumstances, a few dollars of lost wages may result in many thousands of dollars in increased NEER costs. I have assessed the impact of CT16 and in my opinion, the results are unfair, inequitable, and undermine the program's

integrity. This must be fixed. The Board has agreed. CT16s, it should be noted, have been applied to NEER adjustments issued since 2000, which represents adjustments for accident years 1998 and onwards.

On June 26<sup>th</sup>, the Board proposed the adoption of some additional rules which should assist in more fairly pinpointing the truly more volatile claim. However, the Board's proposal calls for the complete re-running of the 2000, 2001, and 2002 issues, which would lower reserves for CT16 but increase reserves for other claims.

In effect, the Board is agreed it has allocated too high a cost to CT16 claims and as a result, has unfairly burdened certain employers who have experienced those cases. The Board's initial proposal called for retroactively *increasing* NEER reserves for non-CT16 claims. While it is appropriate for the Board to retrospectively lower employer premiums on the basis of equity, it is inappropriate to retroactively increase employer premiums. The Board later modified its proposal.

It should be noted that there are several exemptions to Claim Type 16 cases which are available to employers, albeit only upon appeal. In other words, an informed, sophisticated employer has the capacity to, on an individual case by case basis, if they are aware of the Claim Type 16 policy, to secure a better result.

### **Attend the WSIB consultation**

The WSIB has performed in an exemplary manner in its recent ER pre-consultative process. It is important that all employers participate in the planned process so that it is not simply an information process, but a true consultation

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