The Liversidge *e*-Letter

An *Executive Briefing* on Emerging Workplace Safety and Insurance Issues

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Special Budget Issue No. 2:

WSIB Lauds Ontario Budget WSI Reforms

And, unfunded liability still on target for 2014

But, the $750 million question: *Will premiums increase*?

WSIB Chair comes out in full support of the Government's WSI reform proposals Hon. S. Mahoney declares changes will "*not impact (WSIB) commitment to the elimination of the unfunded liability by 2014*"

As reported in the March 26, 2007 issue of **The Liversidge *e*-Letter**, in an extraordinary move, the ***Budget Measures and Interim Appropriation Act, 2007*** [the "Budget"], reforms the Ontario *Workplace Safety & Insurance Act* ["WSIA"] (and rather dramatically). I noted:

> **. . . these initiatives will be approved along with the Budget, and (with one exception) will come into force July 1, 2007. This is *most unusual* as far as WSI reform goes . . .**

WSIB Chair openly supports changes

Late last week, the Chair of the WSIB, the Hon. S. Mahoney, announced that he was "*pleased to see the amendments*" to the WSIA, noting that:

> **I welcome these proposed changes. Benefits have been eroded for far too long and injured workers will finally see the improvements they have been fighting for over the last 12 years.**

The "*big news*" story is a renewed commitment to retire the unfunded liability by 2014 *even with these changes*

Putting aside the public intertwining of the Board and the Government on a legislative reform proposal, which as far as I can recollect is unusual on its own, *the big news story* is the affirmation of the commitment to retire the unfunded liability ["UFL"] by 2014. This is what the Chair said:

> ***At the same time, we are cognizant of our stewardship responsibilities, and want to assure the employers of this province that these proposed improvements will not impact our commitment to the elimination of the unfunded liability by 2014. We must ensure that the system entrusted to us by the employers and workers of this province remains financially viable now and for future generations.***

OK, but will employer premiums increase?

For the record, ***Board officials suggest that the amendments will cost between $700 and $750 million***. What was not said was that employer premiums would not increase. ***I predict that what happens to future employer premiums will be the touchstone issue defining forthcoming business stakeholder/WSIB relations***. Not just this year or the next, but over the next three to five years.

Just a few weeks ago, in the March 12, 2007 issue of **The Liversidge *e*-Letter** in which I reported on the Board's appearance before the *Standing Committee on Government Agencies*, I continued a theme I had been discussing for quite some time – that *the tail* (2014 target date) *should not wag the dog* (premium rates):

> ***This is not to say that there will not be any future premium hikes facing employers***. There just may well be. *But, there will not be any hikes for the reasons proffered in 2005 – that because of 2014, the Board must raise rates*. ***In short, the tail will no longer be wagging the dog*** . . .

And, readers will recall that the Board agreed. In addition, we now have a definitive statement from the Board that ***the UFL will be retired by 2014, even in the wake of the proposed significant WSIA reforms***. Make no mistake, while floating out the UFL a few months or a year to alleviate transitional and unpredictable funding pressures makes sense, it would be quite another kettle of fish to apply the same approach to *predictable* statutory amendments.

Combined effect of the Government's and the Board's announcements changes the premium rate debate

The Board's UFL statement is a bold one, which combined with the Government's reform announcement, changes *the landscape*. The immediate cost of the proposals falls **somewhere between $700 and $750 million**). Not pocket change. Of course, the Board has a legal duty to ". . . *evaluate the consequences of any proposed changes in benefits, services, programs and policies to ensure the purposes of (the WSIA) are achieved*" **[WSIA, s. 161(2)]**. The purposes of the WSIA must be accomplished ". . . *in a*

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financially responsible and accountable manner" **[s. 1]** and the WSIB Board of Directors "*. . . shall act in a financially responsible and accountable manner . . .*" **[s. 163(1)]**.

This means that if expenditures go up, and the UFL is not to rise, premiums must also go up

What does all that mean*?** If the Government's proposals will significantly increase WSIB expenditures, ***and they will, the Board must ensure adequate funding by increasing premiums. But, hiking premiums is a tax hike, and as we know, the *political mantra* is there won't be any – *this year*.

Just two years ago the WSIB said that increasing claims costs will likely require *several years* of premium hikes

It was just the Spring of 2005 when the WSIB suggested that employers were likely in store for rate hikes over the next several years. As I reported in the August 1, 2006 issue of **The Liversidge *e*-Letter**, ***WSIB Releases Preliminary 2007 Premium Rates*:**

> In his first high profile move as WSIB Chair, the Hon. Steve Mahoney, P.C., has demonstrated the type of leadership the business community has been demanding – hold the line on premium rates. In a press release issued yesterday, the WSIB announced the average premium rate for 2007 will remain the same as 2006 at $2.26.

I also noted employers "*must not be complacent*":

> **This move does not mean that the funding pressures facing the Board have abated . . .**

Noting the Board's press release issued announcing the 2007 premiums, I wrote:

> Mahoney made this clear yesterday: "*The WSIB has introduced a number of measures to improve its fiscal situation. These measures are helping to alleviate some of the financial pressures on the system, but they cannot address all of them*". In an accompanying notice to employers, the Board hit this point home: "*The WSIB's decision to hold the line on the aggregate premium rate **assumes that significant progress will continue on key issues of concern to Ontario workers** – such as safer workplaces, and improved return to work outcomes…*"

What has changed?

So, the question of the hour is this – *what has changed*? We now have a commitment that the UFL plan will not be impacted by these amendments. That means that *either* the UFL will not increase (impossible), *or* the UFL will increase but the Board has changed its forecasts so that the increases will be transitory (hard to fathom), *or* premiums *will* increase (but remember, *no tax hikes*), *or* the UFL target will shift (not happening), *or* premiums will rise in *future* years (likely), *or* something else (read on).

The discussion has shifted from financial sustainability to worker inflation protection and other "equity" issues

In a remarkably short period of time, the discussion has shifted from future sustainability being linked to reducing accident rates and time on claim, to new debates on worker equity considerations. One thing is certain, ***the argument that employer performance is the culprit for future premium hikes is irreparably undermined***. After the budget announcements, that argument will be an impossible sell.

Is it remotely possible that these proposals will not result in higher employer premiums?

Nope, not unless somebody is able to pull a rabbit out of a hat. If premiums do not go up next year (they might, but the 2008 funding dialogue will be layered right on top of a provincial election – *no tax hikes*, *remember?*), the Board will have to figure how it is that expenditures can increase $750 million without increasing premiums.

That's a tough one especially since ***WSIB officials wanted to increase premiums just two years ago*** before these announcements were even on the table.

In the past, benefits increased and premiums didn't. The result? The UFL!

Those with political carriage of this file in eras long past loved to both increase benefits and hold premiums stable. That approach was expedient but it led to the creation of the UFL in the first place, and a thirty year funding plan.

If premiums do not increase for 2008, what of 2009? Or 2010 and beyond? While the indexing announced in the *Budget* is "temporary", it is only temporary in the sense that benefits will be indexed for about "*155,000 injured workers by 2.5 per cent on July 1, 2007 and on January 1 in each of 2008 and 2009*". In other words, the "enhancements" will increase benefits 7.5% over the next 21 months. ***Not only do the proposals not say there will be no increases beyond that point, a process to allow for routine Cabinet approval is set out in the Budget***. Anything less than full *ad hoc* indexing will be *political hara-kiri*. Political arguments being made today will firmly tie the hands of future political decision-makers. Full indexing adds $2.3 billion to the UFL. Immediately. But, if we have *de facto* full indexing but through annual *ad hoc* increases (just like the good old days), how can the Board be expected to project future liabilities before they are even created? Politically – maybe pretty smart. *Administrative prudence*? You judge.

Just wait a sec – maybe there is a back door out of this. *How about this* – the Board changes the terms of the entire funding strategy. After all, some were asking for this even before these announcements, *so why not agree*? **Present premiums are based on a 100% funding target to be achieved by 2014**. That formula will mean future rate hikes. *So, why not change the formula*? Not the 2014 part – that seems to have acquired some mystical significance. But, what about the 100% funding part? How about dropping that to say, 90%, or 80%, of course, with the requisite strong professional endorsement that all is still A-OK, and the Board is fulfilling its fiduciary duties etc. The system is not fully funded right now and Armageddon has been staved off.

What if the Board is then able to pay for these amendments and not increase premiums? *Will employers go along with that*? Possibly, but reluctantly. ***There just might be a rabbit in that hat after all***. Don't take these musings as support for this approach, or that it is likely to come to pass. But at least these pieces of the puzzle fit together. *Stay tuned.* The real discussion is at the Board later this year.