The Liverside *e*-Letter

An *<u>Executive Briefing</u>* on Emerging Workplace Safety and Insurance Issues

June 18, 2007 An *Electronic Letter* for the Clients of L.A. Liversidge, LL.B. 2 pages

"Preliminary" 2008 WSIB Premiums

No increase over 2007 rates

WSIB still commits to pay-off unfunded liability by 2014

But, there is a catch – the Board expects "*prevention and return-to-work outcomes will continue to improve*"

<u>As expected, the WSIB holds the line on premiums</u>

As I reported in the **April 4, 2007 issue of The Liversidge *e*-Letter**, I did not expect the Board to increase premiums for 2008 even though the ***Budget Reforms*** (which received Royal Assent May 17, 2007), will add at least $750 million in increased costs**.** ***The Board did not disappoint***. In a June 8, 2007 statement, the Board announced:

> For the second year running, measures introduced in recent years to improve the WSIB's situation have contributed to the WSIB Board of Directors' flexibility **<u>to keep the preliminary average premium rate unchanged for 2008 at $2.26</u>** per $100 of insurable earnings. The WSIB Board of Directors is committed to setting premium rates at levels that meet the overall needs of Ontario's workplace safety and insurance system. When making its decision, the board must ensure that rates are financially responsible and fair **[WSIB June 8, 2007 News Release]**

So far, so good. But, that really is not the core of the statement. Further down, the June 8th release said this:

> We are pleased to see a continuing decline in lost-time injuries. However, the average of a claim is still increasing, and all of us must do more. For 2007, and again for 2008, ***we have been able to mitigate <u>some</u> of the average claim cost increase***, but only to the point of being able to keep the average rate unchanged.

Ok, now we are getting closer to the underlying message. The key in that excerpt is "*some*". Some financial pressures are still *increasing* <u>in spite of</u> a decline in lost time injury ["LTI"] rates. And, yet the Board was still able to hold the line on premium rates.

How could that be, especially since less than two years ago the Board painstakingly made the long-term case for higher premiums? Well, the "answer" may well be found in an interpretation and application of the **WSIB's Funding Framework** which was approved in 2005 (Remember that? Refer back to the June 23, 2005 issue of **The Liversidge *e*-Letter, "*2006 Premium Rates:* There is a *<u>Responsible</u>* Alternative to Premium rate Hikes"**).

Released with the June 8th announcements was a 7 page Q&A document. On page 3 of this document, the following question was posed (by the Board itself):

> ***1.6 According to the WSIB's Funding Framework, the WSIB is facing significant financial pressures. Why wasn't the average premium rate increased to address these pressures?***

And, the answer is:

> The Funding Framework set a maximum annual rate increase corridor (if required) of 3 to 5 per cent in the average premium rate. **<u>If less than 3 per cent is required, the funding framework provides the flexibility of holding the average premium rate unchanged</u>**. The Funding Framework was designed to minimize premium rate volatility, and provide greater stability and predictability of rates for employers.
>
> We are pleased to see a continuing decline in lost-time injuries. However, **<u>the average cost of a claim is still increasing, and all of us must do more</u>**. For 2007, and again for 2008, <u>we have been able to mitigate *some* of the average claim cost increase, *but only to the point of being able to keep the average rate unchanged*</u>.
>
> The WSIB has introduced a number of measures to improve its fiscal situation. ***<u>These measures are helping to alleviate some financial pressures on the system, but they cannot address all of them</u>***. It is only by working together to improve health and safety and return-to-work outcomes in Ontario's workplaces that we can deal with the biggest financial pressures on the workplace safety and insurance system.
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> <u>If all partners in Ontario's workplace safety and insurance system continue to achieve breakthroughs in health and safety and return to work, our goal of eliminating the unfunded liability by 2014 is still achievable</u>.

<u>Here's the bottom line</u>: It may well be the case that a premium rate increase for 2008 was actually warranted, *<u>or at least justifiable</u>*. Remember, the Board's 2005 (and 2004) funding analysis painstakingly made the case for premium rate hikes. And now we have the *Budget Reforms* adding another $750 million to the system. So, it very well could be that the Board held off on a 2008 premium rate hike, not because a rate hike was not justifiable, <u>but rather, because it was *permissible* not to raise rates</u> under the flexible terms of the **Funding Framework**. In other words, if "the numbers" actually made a case for a rate hike of 3% or less, under WSIB funding policy, the Board would be permitted not to raise rates, and still adhere to the principles of the **Funding Framework**. Add an additional $750 million arising from

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the ***Budget Reforms***, and well, the likelihood for premium hikes for 2009 and beyond goes up.

So, my word to employers is simply this – there is no long-term solace to be gleaned from the Board's decision not to increase 2008 premium rates. While "policy" may have allowed the decision, the performance numbers may not have fully supported it, absent some very liberal assumptions. I may be wrong (and hopefully I am), but this may in fact be proved to be nothing but a rate-hike deferral. (It would not be the first time toeing the line on rates was later described to me by a senior WSIB official as a deferral of an inevitable rate hike – that discussion happened in 2005).

In the same Q&A document, the Board posed this very relevant question to itself:

> **1.7 Does this mean that future premium rates will be larger to make up for no increase in 2008? Will there be an increase in the average premium rate in 2009?**

And, here is the very telling "non-answer":

> The Board of Directors determines premium rates on an annual basis according to the principles contained in the Funding Framework. The 2009 premium rate setting process will begin in the Spring of 2008.
>
> While claims for lost time injuries have been declining over recent years (currently at approximately 90,000), the average cost of each claim has in fact gone up significantly. Some of the pressures include: claims staying in the system longer; injured workers living longer; and health care costs rising in recent years. ***Investment returns and reductions in claim numbers are not enough to translate into lower rates, but have contributed significantly to allow the Board to keep the rate the same for 2006, 2007 and 2008***.

The Board did not say this: "*There is not likely to be an increase for 2009*". Last year at around this same time when the Board announced no rate hikes for 2007, strong hints (but no commitments) were being planted that there likely would be no rate hike for 2008. ***This time around? No similar hints***.

Take what you will from that. I interpret the Board's "non-answer" this way: *The likelihood of a rate hike for 2009 and/or 2010 is substantial*. As I said, I may wrong, but if the Board's 2005 analysis was accurate, all signs point to higher rates in the future.

The WSIB should quantify and publicly disclose its expectations and assumptions

I have always encouraged the Board to be a much more specific in its performance expectations. The Board is being rather loose and free with its expectation "*that prevention and return-to-work outcomes (must) continue to improve*". If employers do not perform "as expected", well, the Board grants itself a free-hand to increase employer premiums. **But, at the same time, *the Board has not quantified its expectations*!** Some specifics are really called for.

Last year, I raised that very point in the August 1, 2006 issue of **The Liversidge *e*-Letter, "*WSIB Releases Preliminary 2007 Premium Rates*"**:

> Rather than continue to parade out that old adage that lower accident rates equal lower premium rates . . . ., ***the Board's accountability would be immeasurably enhanced with some specifics***. With no targets, it is simply too easy for the Board to displace the impact of real reductions in accident rates.
>
> To improve its credibility and to really push increased motivation to reduce injuries even further, ***the Board would be wise to announce that an (X%) decrease in accident rates WILL reduce premiums by (Y%), and that a reduction in time on claim by (X) days WILL reduce premiums by (Y%)***. In a recent stakeholder meeting, senior Board officials confirmed that such predictions can be made. So, why haven't they?

The question remains: *Why haven't they*? I have no quarrel with the Board banking up front on expected *doable* performance enhancements. In fact, I encourage this approach. But, to give this method integrity and credibility, the underlying expected performance improvement assumptions must be publicly set out. **If the Board's projections are not reasonable, and are *unlikely* to be realized, then frankly, they are simply not reliable.**

For instance, it is clear that the Board is banking on reductions in "time on claim". Yet, it is also clear that the Board has observed increases over the past several years in this key performance index. The question which naturally arises is this: *Is it likely that the trend will be reversed, and if so, by how much must time on claim decline for the Board to responsibly toe the line on premiums*?

If, for example, the Board has "built in" an assumption of a reduction in average claim duration, but there is no objective basis to conclude that such a reduction is likely, then the decision to hold the line on premium rates may well cross the line from prudent public administration to political management (it wouldn't be the first time).

I am not at all suggesting that this is what has happened here – in fact, I remain of an open mind, and presume that the Board's projections hold together.

But, without publicly setting out explicit, clear and unequivocal targets and assumptions, advertently or not, the Board gets the best of both worlds – the capacity for holding the line on rates (and no employer ever complains when rates stay the same), and the luxury to, at some future point, announce to employers, "*well, you did not meet expectations*", as a justification for future rate hikes.

In his **January 1996 Discussion Paper, "*New Directions for Workers' Compensation Reform*"**, the Progressive Conservative Minister Responsible for Workers' Compensation Reform, the Hon. Cam Jackson, said this, which remains relevant today. In speaking to the enhancements to worker benefits in the late 1980s and early 1990s, Minister Jackson noted:

> **However, the costs of these improvements were not balanced by measures to guarantee adequate reserves to meet current and future financial obligations. Understandably, expansion and enrichment in the name of improved equity have proved popular. However, governments in the past have chosen not to address the critical but difficult problem of how to finance these benefit changes.**

So, let's hope we are not back to the mind-set recognized by Minister Jackson. If we are, it is not only employer premiums that are at risk – future worker benefits may be placed at risk as well. **Let's not go "*back to the past*."**