The Liverside *e*-Letter

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

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The 2007 & 2008 decisions to flat-line premium rates did not mean the system is not at risk

Readers of **The Liversidge *e*-Letter** will recall that when the 2008 premium rates were first announced (no rate hikes), I suggested that it would be wrong to interpret that as a signal there were no prevailing financial risks at the WSIB.

Earlier this summer, the WSIB acknowledged there are ongoing serious risks

In fact, as I reported in the June 18, 2007 issue of **The Liversidge *e*-Letter**, "***Preliminary 2008 WSIB Premiums***", in the Q&A document released with the 2008 (then proposed, now confirmed) premiums, the ongoing risks and pressures were acknowledged by the Board. This is an excerpt from the WSIB's Q&A:

> ***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?***
>
> The Funding Framework set a maximum annual rate increase corridor (if required) of 3 to 5 per cent in the average premium rate. **If less than 3 per cent is required, the funding framework provides the flexibility of holding the average premium rate unchanged**. 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, **the average cost 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 *some* of the average claim cost increase, *but only to the point of being able to keep the average rate unchanged*.
>
> The WSIB has introduced a number of measures to improve its fiscal situation. ***These measures are helping to alleviate some financial pressures on the system, but they cannot address all of them***. 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.

The WSIB set the stage: *breakthrough improvements* are required

The WSIB Q&A continued with a fairly vague expectation that linked the elimination of the unfunded liability ["UFL"] by 2014 to certain "*breakthroughs*":

> 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.

The WSIB advanced a very similar theme in the 2006 Annual Report

The Board advanced a similar theme in the **WSIB 2006 Annual Report**, again linking the 2008 premium rate decision to future improvements (at p. 23):

> **The decision to hold the line on the average premium rates *assumes that significant progress will continue* in Ontario workplaces in the areas of workplace health and safety and positive return to work outcomes for injured workers.**

The decision to toe the line on premiums for 2008 was linked to future improvements

This means that the decisions (for 2007 and 2008) to toe the line on premium rates were based less on actual improvements delivered and in place, and more on future expectations. And remember, these decisions were taken before any costs have been attributed to the *Budget Reforms*. The hill to climb is now much steeper.

This is what I said in the June 18, 2007 issue of **The Liversidge *e*-Letter, "Preliminary 2008 WSIB Premiums"**:

> **Here's the bottom line:** It may well be the case that a premium rate increase for 2008 was actually warranted, *or at least justifiable*. 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, but rather, because it was *permissible* not to raise rates 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 the ***Budget Reforms***, and well, the likelihood for premium hikes for 2009 and beyond goes up.

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The *Funding Framework* gives the Board leeway to hold the line on rate hikes of less than 3%

Under the *Funding Framework*, even though performance indicators justify a rate hike of 3% or less, the Board can exercise discretion not to increase rates.

Actually, the *Funding Framework* says "defer"

The recent WSIB Q&A does not tell the entire story. This is what the *Funding Framework* actually says:

> Calculated increases in the aggregate premium rate of less that 3% may be *deferred* to a future year. **[*Funding Framework*, July 20, 2005, page 9, emphasis added]**

On June 18th I cautioned employers:

> While "policy" may have allowed the decision (to toe the line on 2008 premiums), 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. **[The Liversidge *e*-Letter, June 18, 2007]**

Senior WSIB official confirmed a 2008 rate hike was "*technically justifiable*"

At a WSIB premium rate meeting this summer I posed this question to a senior Board official: "***Based on actual performance, could the WSIB have justified a premium rate increase for 2008?***. The response: "**Technically, Yes**".

There you have it. And, that was before the *Budget Reforms* are factored in. (I tried but could not get an answer to whether this is because of mitigating assumptions or the discretionary "less than 3%" *Funding Framework* policy.)

I have no principled quarrel with rate hike deferrals

Mind you, in principle there is nothing inherently wrong with deferrals in potential rate hikes. I have advocated for deferrals in increases before (see for example the August 24, 2004 issue of **The Liversidge *e*-Letter, "*2005 WSIB Premium Rate Consultation*"**).

To be an effective management mechanism to spur change, deferral decisions must be widely understood

But a decision to defer a rate hike premium loses its ability to influence future performance unless: a) it is clearly understood that it is just that – a deferral; and, b) the expected performance requirements needed to stave off future hikes are precisely set out and generally understood. Otherwise, the deferral decision allows only for a short term transient impact, and at the end of the day, adds little.

***The Board's not kidding*: *Breakthrough* improvements are needed to hold the line on premium levels**

As I have noted in previous issues of **The Liversidge *e*-Letter**, in an earlier meeting with employer stakeholders, the Board's Chair advised that premium rates can be flat-lined to 2014 even with the *Budget Reforms* providing: i) at least a 7% return on investment; ii) lost time injuries decline; iii) health care costs ease; and, iv) time on claim decreases.

WSIB has not precisely defined needed improvements

No specifics on the precise performance standards needed to meet the Board's expectations have been made public. ***This is a mistake***. The Board should declare the performance standards needed to: a) keep rates the same; b) to lower rates. In the August 1, 2006 issue of **The Liversidge *e*-Letter** (on the 2007 rates), "*Rather than parade out that old adage that lower accident rates equal lower premium rates, the Board's accountability would be immeasurably enhanced with some specifics*".

WSIB expectations and the *Budget Reforms* conflict – a paradox is apparent

Frankly, the *Budget Reforms* and the Board's defined challenges are a paradox. They conflict.

The *Budget Reforms* will increase long-duration claims

As reported in the March 26, 2007 issue of **The Liversidge *e*-Letter**, "***Ontario Budget Introduces Significant Workplace Safety & Insurance Reforms***", besides the indexing elements, claims beyond 72 months are more easily reopened **[WSIA, s. 44(2.1) to (2.12)]**, and deeming is expunged **[WSIA, s. 43(4)]**. Offering no comment on the merits or equity of the changes, the net effect of these two initiatives will be to increase, not decrease, time on claim, even as the Board already frets about 12 month$^+$ case durations.

Before the *Budget Reforms*, the WSIB attributed increases in benefits to long-term cases

Even before the *Budget Reforms*, the Board attributed a 11.5% increase in benefits (2006 over 2005) to "*persistency of claims over 12 months old, natural growth of locked-in claims each year, and indexing*" **[WSIB 2006 Annual Report, p. 26]**.

The *Budget Reforms* will add a lot of pressure to this. Before the *Budget Reforms* are even taken into account, the Board predicted that "*total benefit payments in 2007 are expected to increase by approximately five percent*" **[WSIB 2006 Annual Report, p. 26]**.

The *Budget Reforms* add to an already stressed system

Without question, the *Budget Reforms* add to an already stressed workplace safety and insurance ["WSI"] system and will render the elimination of the UFL by 2014 with no increases in employer premiums a most difficult task.

The Board's goals are possible but unlikely

The Board just might pull it off:

- *if* there are mainly financially "fair weather days" for the next seven years (certainly *possible* but likely?);
- *if* the equity markets don't falter and continue to deliver phenomenal returns (*possible* but likely?);
- *if* there are not continued major job losses Ontario's manufacturing and particularly the automotive sector (*unlikely*) [As recently as September 8, 2007 the Toronto Star reported that Ontario has lost 200,000 manufacturing jobs over the last three years, and the Ontario jobless rate exceeds the national average for the first time in history];
- *if* injuries continue to decline (*likely*);
- and, *if* time on claim is substantially reduced (*unlikely*).

In my opinion the WSIB is playing a long shot

These are a lot of "ifs". The Board just might pull it off. *I hope they do*. Frankly, in my estimate, the Board is playing a long shot. I hope they beat the odds.

Next Monday: "My concern with the *Budget Reforms* is about accountability, not expenditures"