

The Liversidge e-Letter

An Executive Briefing on Emerging Workplace Safety and Insurance Issues

October 12, 2010

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

3 pages

WSIB 2011 Premiums First of many “Tough Decisions”

WSIB unleashes a flurry of announcements: *2011 Premium Rates* *Funding Review* *Adjudication Audit*

On September 30, the WSIB issued a series of major announcements (see www.wsib.on.ca). The *average premium rate is rising* just over 2% in 2011; a year long *Funding Review* will kick-off right away; and, a *Value for Money Audit* [“VFMA”] will focus on the Board’s adjudication process. Any one of those announcements is a major step on its own – *together this is nothing less than a thermonuclear explosion of WSIB news*. I will introduce these announcements today and follow-up as the news progresses.

What’s the rush? Why so much so fast?

If anything, the Board’s a little slow off the mark. As readers of **The Liversidge e-Letter** know, I have been calling for a *Funding Review* (I called it a *Funding Summit*) for two years now. I have been chronicling the fragile state of the Board’s finances since the Board declared in its **2006 Annual Report** it was doing pretty good and may well have “*turned the financial corner*.” I did not share that view. More than three years ago I suggested the Board “*was playing a long-shot*,” that the funding plan (zero unfunded liability [“UFL”] by 2014) was toast, and the system was more fragile than the Board was letting on. Almost a year ago, in the **Auditor General’s 2009 Annual Report** (November, 2009), the alarm bells were officially rung.

In the **WSIB’s 2009 Annual Report** (released late summer), recently appointed WSIB CEO, David Marshall made it clear when he said “. . . *in the end, some tough decisions will have to be made*.” He’s right. They must. And, it is clear tomorrow starts today.

My assessment of the Board’s announcements? *On the Funding Review*, a clear “A plus”. It’s pretty much right on the mark, and while not identical to what I was suggesting (see the April 19, 2010 issue of **The Liversidge e-Letter**, “*The WSIB 2014 Funding Plan – Why it Failed*”) its close enough. More on that in a later issue. *On the Adjudication VFMA*, it’s a start, and a move in the right direction. A well

earned “B plus.” I had been suggesting something targeted more towards the problem of increasing time on claim, but this should trigger a continuing focus. *On the 2011 premium rates*, well, the best I can do here is give a credit for effort – a “C minus.” While an increase of some magnitude was a given, the timing was way off, there was no pre-announcement consultation, too many industries were surprised, and in tough times, some of the increases are excessive (some as high as 20%). I will outline what I think should (and still could) have been done differently.

Adjudication VFMA – A step in the right direction

This is lifted straight out of the Board’s **Media Backgrounder**:

The *Value for Money Audit* (VFMA) will be conducted by an independent firm, to evaluate claims processing at the WSIB. This VFMA on the WSIB’s Claims Administration and Adjudication process will provide an opinion on whether the WSIB’s current adjudicative processes are being delivered in an operationally efficient and effective manner. This will include an assessment of:

- The effectiveness of WSIB operational policies and guidelines, and whether they provide adequate guidance to help ensure consistent and timely decisions.
- Improving the efficiency of the WSIB’s claims administration and adjudicative processes.
- The adequacy of resources, information and systems to support cost-effective and efficient decisions.

The VFMA will also include inter-jurisdictional comparisons to identify current practices as they relate to policy and decision making processes that achieve appropriate, timely and consistent decisions in a financially responsible and accountable manner.

While I am of the view the VFMA won’t hurt, and something positive will come out of it (like truncating the decision-making process; returning to an adjudication team approach; building back cultural mentoring; etc.), where the Board really needs help is assessing time on claim.

The Funding Review

I first raised the idea of a *Funding Summit* in the November 21, 2008 issue of **The Liversidge e-Letter**, “*WSIB Funding Crisis: Everything Old is New Again*”, when I said:

The WSIB must organize an urgent Funding Summit

By no later than mid-January, 2009, the WSIB should facilitate an urgent funding summit with Ontario's business leaders and senior government officials, to develop a new long-term funding strategy - a newly conceived 20 or 30 year plan.

In the April 19, 2010 issue of **The Liversidge e-Letter**, I expanded my suggestion, and set out four objectives and recommended a year long process. The Board's **Funding Review Vision** (a fully sustainable system) and the **Funding Review Mission** (give WSIB stakeholders an opportunity to provide input on issues related to the fiscal health of the WSIB) fits well into what I had envisioned. The Board has appointed **Professor Harry Arthurs**, one of Canada's leading labour law scholars to Chair the *Funding Review*. More on this in the next issue of **The Liversidge e-Letter**. My only worry is that the Board may be a little limited in what it can (and should) do while the review is underway.

2011 Premium Rates – Is that tough enough for you?

In its media announcement, the Board explained its decision on 2011 premium rates this way:

In order to create stable and competitive premium rates for the future, the WSIB must implement modest average premium rate increases for both 2011 and 2012 . . . an increase of 2 per cent

First, it is important to note that 2011 premium rates had no where to go but up. No doubt that was one of the "tough decisions" in WSIB President Marshall's sights when he made the comment in the 2009 Annual Report. I am sure there are more to come. The Board notes that "more than half of registered employers will see little to no increase, while other employers in high-risk industries with a history of costly injury claims may see increases of more than two per cent." While the Board has emphasized these are "modest" increases, many may beg to differ (see the chart on page 3 – 2011 increases are sorted highest to lowest). Even though the average premium is increasing by just over 2%, no doubt the Board could have actuarially justified a higher average increase for 2011, likely well north of 5-8%. With claim demands increasing, a *status quo* approach to funding a "no go," investment losses still felt, and a fragile recovery to boot, the Board was behind the proverbial "eight ball."

Actually about 60% of payroll and almost two-thirds of industries will see increases in 2011

Based on a review of the WSIB's projected payroll figures (as detailed in the Board's **2010 Premium Rate Manual** – a 2011 Premium Manual has not yet been published), my analysis shows that more than \$3 out of every \$5 of payroll will receive an increase 2010 to 2011. In other words, about 60% of the WSIB assessable payroll will be subject to premium increases. On an industry basis, almost 2/3rds (63%) of industries (by Rate Group) will receive premium increases.

Since the average increase for 2010 was *just under* 2% and the average increase for 2011 was *just over* 2%, one may presume that the 2011 and 2010 results would be comparable. *Actually, no. Not at all.*

For 2010, only two industries received 10% increases

For 2010, only two (2) Rate Groups ["RG"] experienced double digit increases, and even then, they were 10.1% (RG 338 – cardboard cartons) and 10% (RG 983 – communication industries). Only seven (7) RGs experienced increases between 5-10%; and, 41 had increases less than 5%, with many of those between 1-2%.

For 2011, 43 industries will see hikes 10% or more

But, for 2011, 43 industries will see increases greater than 10% and of those, 16 will be more than 15%. Of those receiving increases in 2011: 58 industries received no increase at all in 2010; 31 received an increase of less than 5% in 2010; and only 6 received increases greater 5% in 2010 (of which all were less than 10% but two, and none no more than 10.1%). In previous years, for 2010, 2009, 2008, 2007, 2005 and 2004 no industry received a rate increase greater than 15%. For 2006 two industries received increases greater than 15% (RG 428 – Motor Vehicle Fabrics – 17.2%; RG 553 Air Transport – 16.2%).

Several employer associations have publicly opposed the 2011 increases. "Increasing the payroll tax burden . . . will do nothing to support the recovery," said Satinder Chera, CFIB's Ontario VP. Ontario Trucking Association President David Bradley said, "This is the worst possible time . . . to be increasing payroll taxes."

So, what was the Board to do? Were there alternatives?

Were there alternatives to a 2011 premium hike? Likely not. Alternatives to rate hikes as high as 20% for 2011? In my opinion, likely yes. As far back as 1983 the effect of the Board's taxing powers on the Ontario economy has been an integral element of the Board's premium rate policy ("After all, the ultimate health of the workers' compensation system depends on the continued strength of the province's economy," WCB 1983 Annual Report). Very recently the Premier said something similar, ". . . I think we've got to be very careful about doing anything that acts as any kind of spoke in the wheels of the economy that is recovering at a very modest pace."

In past years when facing similar pressures, the Board capped increases

In 1992, when facing very comparable challenges, it was recognized by the Board that 1993 WCB premiums would have to rise for many sectors, and in some cases, dramatically so (due to funding levels and rate group reorganization). However, a very different approach was introduced. *The first step* - every industry was advised of its full funding "target rate." *The second step* - premiums were adjusted (upwards or downwards) by a maximum 3% cap for 1993. The transition continued over a few years. Eventually, all rates hit their target. *Could this have worked this year?* Perhaps, but no one has been consulted as yet. It is a flexible idea that warrants serious consideration and some number crunching. A cap respects the ever present competition between full funding targets and business viability in tough economic times. *It's a delicate balance.*

Rate Group (Increases Only)	Description	2011 Premium Rate	2010 Premium Rate	Percentage Increase
428	Motor Vehicle Fabric	4.38	3.65	20.0%
975	Linen And Laundry Services	3.94	3.29	19.8%
184	Poultry Farms	3.13	2.62	19.5%
214	Fruit And Vegetable	2.57	2.16	19.0%
560	Warehousing	3.28	2.77	18.4%
553	Air Transport Services	1.85	1.57	17.8%
577	Courier Services	2.89	2.46	17.5%
838	Natural Gas Distribution	0.67	0.57	17.5%
851	Homes For Nursing Care	3.15	2.69	17.1%
956	Legal And Financial	0.21	0.18	16.7%
606	Grocery/Convenience Stores	2.11	1.81	16.6%
338	Folding Cartons	2.54	2.19	16.0%
641	Clothing Stores	1.53	1.32	15.9%
845	Local Government Services	2.15	1.86	15.6%
301	Clothing, Fibre And Yarn	2.32	2.01	15.4%
514	Pharmaceuticals	0.92	0.80	15.0%
981	Membership Organizations	0.77	0.67	14.9%
937	Recreational Services	2.10	1.83	14.8%
036	Veneers, Plywood	5.14	4.48	14.7%
502	Glass Products	2.92	2.56	14.1%
507	Petroleum And Coal Products	1.13	0.99	14.1%
361	Non-Ferrous Metal Industries	3.44	3.03	13.5%
390	Other Stamped Metal	3.44	3.03	13.5%
419	Motor Vehicle Assembly	3.44	3.03	13.5%
421	Motor Vehicle Parts	3.44	3.03	13.5%
424	Motor Vehicle Stampings	3.44	3.03	13.5%
425	Motor Vehicle Wheels/Brakes	3.44	3.03	13.5%
039	Pulp, Newsprint, Papers	2.80	2.47	13.4%
174	Tobacco & Mushroom Farms	4.93	4.36	13.1%
238	Other Rubber Products	3.95	3.50	12.9%
258	Expanded Plastic Products	2.79	2.48	12.5%
420	Motor Vehicle Engine	1.81	1.61	12.4%
983	Communications Industries	0.37	0.33	12.1%
905	Apartment/Condominium	2.91	2.60	11.9%
181	Fishing And Misc. Farming	3.51	3.14	11.8%
962	Advertising	1.05	0.94	11.7%
638	Pharmacies	0.68	0.61	11.5%
216	Dairy Products	2.17	1.95	11.3%
570	General Trucking	6.43	5.79	11.1%
921	Hotels, Motels And Camping	2.97	2.68	10.8%
382	Metal Dies, Moulds	2.13	1.93	10.4%
580	Miscellaneous Transport	4.89	4.43	10.4%
231	Soft Drinks	3.43	3.11	10.3%
657	Automobile Dealers	0.78	0.71	9.9%
223	Biscuits, Snack Foods	2.68	2.44	9.8%
190	Landscaping	4.72	4.31	9.5%
030	Logging	12.47	11.43	9.1%
741	Masonry	12.15	11.15	9.0%
402	Major Appliances	2.23	2.05	8.8%
704	Electrical Construction	3.53	3.25	8.6%
033	Mill Products And Forestry	8.42	7.77	8.4%
911	Security Services	1.67	1.54	8.4%
853	Hospitals	1.06	0.98	8.2%
857	Nursing Services	3.17	2.93	8.2%

Rate Group (Increases Only)	Description	2011 Premium Rate	2010 Premium Rate	Percentage Increase
861	Treatment Clinics	1.06	0.98	8.2%
711	Road-building	5.06	4.68	8.1%
226	Crushed And Ground Foods	1.62	1.50	8.0%
466	Communication And Energy	2.34	2.17	7.8%
393	Wire Products	3.23	3.00	7.7%
512	Resins, Paint, Ink	1.68	1.56	7.7%
322	Upholstered Furniture	3.20	2.98	7.4%
584	School Buses	2.91	2.71	7.4%
041	Corrugated Boxes	3.10	2.89	7.3%
263	Other Plastic Products	3.09	2.89	6.9%
497	Ready-Mix Concrete	3.76	3.52	6.8%
719	Inside Finishing	7.19	6.75	6.5%
728	Roofing	14.16	13.30	6.5%
417	Aircraft Manufacturing	1.50	1.41	6.4%
261	Plastic Film And Sheeting	2.35	2.21	6.3%
732	Heavy Civil Construction	6.73	6.34	6.2%
748	Form Work And Demolition	17.51	16.50	6.1%
341	Paper Products	3.05	2.88	5.9%
681	Lumber And Builders Supply	2.88	2.72	5.9%
751	Siding And Outside Finishing	9.80	9.25	5.9%
817	Educational Facilities	0.36	0.34	5.9%
333	Printing & Binding	1.68	1.59	5.7%
403	Other Machinery	1.67	1.58	5.7%
590	Ambulance Services	6.18	5.85	5.6%
737	Millwrighting And Welding	6.60	6.25	5.6%
551	Air Transport Industries	2.00	1.90	5.3%
501	Non-Metallic Mineral Products	2.87	2.73	5.1%
524	Chemical Industries	1.88	1.79	5.0%
411	Heavy Machinery	2.76	2.63	4.9%
923	Janitorial Services	3.57	3.41	4.7%
944	Personal Services	3.12	2.98	4.7%
352	Steel And Refining Industries	2.51	2.40	4.6%
517	Soap And Toiletries	1.61	1.54	4.5%
929	Non-Clerical Labour	4.83	4.62	4.5%
207	Meat And Fish Products	4.46	4.27	4.4%
134	Aggregates	6.24	5.98	4.3%
668	Electronic Equipment Sales	0.48	0.46	4.3%
835	Oil, Power And Water	1.03	1.01	2.0%
852	Homes For Residential Care	3.16	3.10	1.9%
858	Group Homes	3.01	2.96	1.7%
875	Professional Offices	0.71	0.70	1.4%

Next issue: More on the **Funding Review**. It's a year long process, but there is no luxury of time. Input is needed right away. The agenda is a full one: **Funding:** Funding targets and timeframes; **Premiums:** Rate setting methodology; **Rate Groups:** Is the WSIB Rate Group structure appropriate? **Incentives:** Is the present design and operation of employer incentives appropriate? **Occupational Disease:** How should occupational disease claims be compensated and funded? **Benefit indexation:** What form of benefit indexing indexation would be fair for partially disabled workers? **Phase One** starts right away and concludes the end of December 2010. The Chair of the Funding Review will hold introductory meetings with key stakeholders. *Be ready.*