The Liversidge *e*-Letter

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

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Mechanical Contractors Association Toronto

The Leading Workplace Safety and Insurance Issues

The Top Three Issues

Issue No 1: WSIB Premium Rates

Mechanical and Sheet Metal Work, WSIB Rate Group ["RG"] 707 experienced a stark 9.5% premium rate hike in 2006 [from $3.67 to $4.02] even though accident rates remain at historic low levels. Construction rate groups generally significantly outpaced the average premium rate hike of 3.2% [for a more complete overview of the 2006 premium rate impacts, see the July 26, 2005 issue of **The Liversidge *e*-Letter, *WSIB Releases 2006 Preliminary Premium Rates*]**.

Construction is hit hardest

The Council of Ontario Construction Associations ["COCA"] reports that the construction industry with a payroll exceeding $11.5 billion, will receive an average premium rate hike of 5.3%.

Premium rate hikes follow WSIB/Employer dialogue

The rate hikes, made official last month by the WSIB Board of Directors, followed an extensive series of high levels discussions with the Board and employer representatives earlier in the year from January to May, 2005. While the Board is to be commended for this senior dialogue, it should be noted that employers had been demanding this dialogue since the Fall of 2002. Better late than never – and hopefully – this new "openness" is a signal of a new way.

Employers complain WSIB pre-empted the outcome

However, while appreciative of the opportunity to address serious funding and other systemic issues with top level WSIB officials, many employers formed the view that the WSIB CEO pre-empted the outcome when it was announced in October, 2004, several months before the discussions began, that it was the Board's "*strong belief that a rate increase will be required in 2006*" [October 15, 2004 letter from Ms. J. Hutcheon].

Employers argued rate hikes not needed

In fact, of course, there was a rate hike in spite of employers unanimously advising the Board that a premium rate hike was not necessary and that there were responsible alternatives.

The Board argued rate hikes are need to retire UFL by 2014

The Board argued that cost and economic pressures required a rate hike ***if*** the UFL is to be retired, on plan, by 2014. There really is no point to quarrel with the Board's analysis. Little is gained through quibbling over the Board's financial projections. There are serious cost pressures facing the system (medical costs, increasing costs of average claim, etc.) and the Board is quite right to address those challenges head-on.

But, employers are willing to see UFL extended a few years

However, using the Board's own data, employers argued that instead of raising rates, all the Board had to do was push out the terminal date for the retirement of the Unfunded Liability from 2014 to 2017.

Instead, the Board approved a renewed funding strategy that will likely drive future premium rate hikes, perhaps as much as 3% per year for the next five (5) years. The average premium is expected to peak at $2.59 in 2010 (18+% increase over 2005 premiums), and the UFL is expected to be retired, as planned, by 2014

The Link Between Accident Rates and WSI Premiums

Historically, the Board has always "sold" the reasonably sounding argument that the best way to reduce premium rates is to reduce injuries. In the **1998 WSIB Annual Report** it is noted: "*The WSIB's increased emphasis on injury and illness prevention . . . expected to reduce LTIs . . . resulting in decrease in benefit costs*" (page 29), in the **1999 WSIB Annual Report**: "*Largest decrease in premiums were in industries where accident performance has improved*" (page 17) and in the **2000 WSIB Annual Report**: "*Steady reduction in premium rate due to increased focus on prevention*" (page 21)

Did the promise hold true – was there a demonstrated link between reduced LTIs and premium rates? For RG 707, from 1994 to 2001, the premium rate declined 29.5% [from $5.52 to $3.89] while the LTI rate fell 40% [from 4.39 to 2.63]. So, for that period the promise held true – lower accident rates resulted in lower premium rates.

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But, from 2001 to 2006, premiums actually rose 3.3% [from $3.89 to $4.02[1]] while accident rates declined 20% [from 2.63 to 2.09].

The new reality

No longer can employers be assured that a continued trend in lower injuries will yield lower WSIB premium rates. In fact, it is clear now that the WSIB is back-peddling off that old reprise and is no longer advancing the thesis that lower accident will equal lower premiums, and instead, is simply upping the cost exposures.

Issue No. 2: Experience Rating – CAD-7

On this theme, the WSIB is in the midst of revamping the construction industry's experience rating program (along with the NEER ER program) [see June 2, 2005 issue of **The Liversidge *e*-Letter, *Construction Industry Criticizes ER Changes***]. The new reality is that contractors will have to work harder just to stay in the same place – rebates will likely be lower and surcharges will likely be higher.

Rebates down – Surcharges up

The WSIB Board of Directors last month approved the recommendations of the Board's administration to radically revamp the CAD-7 ER program (approving what has come to be known as "Option 3"). Option 3 will: i) change the expected costs and expected frequency to reflect actual figures rather than a weighting of the years under review; ii) change the weighting more towards costs and less towards frequency; iii) and will increase the maximum surcharge from the current two (2) times the maximum rebate to four (4) times the maximum rebate.

WSIB developed example cases

To assist in understanding the potential impacts of these changes, the WSIB developed several "example profiles".

A firm with a premium of $105,613 that previously received a surcharge of $8,148 [7.7% of the premiums paid], will see an increase in the surcharge to $23,528 [22.3% of the premiums paid], a 189% hike.

For a large firm ($2.3 million in premiums) with a poor accident frequency index, there is a benefit of a reduced surcharge because of the decreased "weighting" of accidents in the formula. The surcharge decreases from $419,612 to $261,342.

For a large firm with $1.2 million in premiums and with a very good accident frequency index and cost index, the rebate actually decreases from $290,244 to $243,267.

CAD-7 changes will increase premiums by $9 million

At the plan level for the construction industry, there will be a significant drop in net rebates of $5 million, and an increase in surcharges of $4 million, which in effect means that the CAD-7 changes will have the effect of increasing construction premiums (over and above the 2006 premium rate hikes) of another $9.0 million.

[1] RG 707 Premium Rates: 2001 $3.89; 2002 $4.11; 2003 $3.96; 2004 $3.83; 2005 $3.67; 2006 $4.02

COCA has decried these changes as going in precisely the wrong direction [see June 2, 2005 issue of **The Liversidge *e*-Letter**] suggesting that decreasing rebates while increasing surcharges sends precisely the wrong message vis-à-vis accident prevention. On May 3rd, COCA released a news bulletin which noted that the WSIB has presented COCA "***with a series of options that are designed to eliminate much of the difference between surcharges and rebates paid out in CAD-7***" COCA presented the observation that, "***We are convinced that higher assessment premiums and reduced experience rating awards will signal to employers that prevention is not a priority and performance is no longer valued by the WSIB***". I agree entirely.

Issue No. 3: Prepare for WSIB Compliance Audits

The WSIB has given notice it will take action to uncover evidence of undesirable employer behaviours and has announced "***a new era that calls for action to be taken to address growing concerns with ER***" **[Slide 9, February 11, 2005 ER Session]**. The Board is eager to uncover "***evidence of undesirable behaviours that are motivated by experience rating incentives***" **[Slide 34, February 11, 2005 ER Session]**.

In the March 21, 2005 ER Session [Slide 30], the Board tips its hand and outlines that it is planning on "**Workplace Performance Monitoring and Control**", to audit employer reporting and return to work obligations. Of note, the WSIB presentation to labour groups included eleven slides under the heading "**Major Activities Aimed at Addressing Employer Non-Compliance**"[2].

This idea of monitoring employer return to work and claims management practices is not new – the last time we saw this introduced was with the "template of best practices" introduced by the NDP in 1995. While never rendered operational, the clear intent was to require a "compliance audit". Employer opposition is long-standing. In August 1994, the employer coalition ECWC, in its submissions on NDP Bill 165 stressed that "best practices" undermined the integrity of ER.

Under the *Workplace Safety and Insurance Act* ["WSIA"], the Board has the capacity to levy penalties for non-cooperation [WSIA, s. 86] of an amount equal to the cost to the Board of providing benefits while non-compliance continues. Under s. 40 of the WSIA, workers and employers are required to cooperate [WSIA, ss. 40(1) & (2)], although construction employers are exempt [WSIA, s. 40(3)] except as in accordance with "such requirements as may be prescribed". Right now, the Board is working on regulations which the industry considers to be ill-advised and unworkable [see September, 2005 COCA Newsletter: "WSIB to Consider Imposing an Unworkable Return to Work Regulation"]. **The bottom line:** The new focus of the Board is without question *employer compliance*.

[2] [Slides 31 – 42 of the February 14th Worker Funding Presentation, "Major Activities Aimed at Addressing Employer Non-Compliance"]