



WSIB Funding Review Consultation

*Construction Industry WSIB Task Force
Submission to the Workplace Safety &
Insurance Board Funding Review*

Presented to:
Workplace Safety & Insurance Board Funding Review

April 11, 2011

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WSIB Funding Review Consultation
***Construction Industry WSIB Task Force Submission to the
Workplace Safety & Insurance Board Funding Review***

**PART I: Introduction, Funding Review Terms of Reference, Expenditures,
Governance**

A. Construction Industry WSIB Task Force – Who We Are:

The **Construction Industry WSIB Task Force** [“CITF”] is a coalition of Ontario construction associations formed in 2008 to initiate positive reform of Ontario’s workers’ compensation and prevention systems to better meet the needs of the province’s construction industry. We represent 1,400 employers employing 70,000 employees. Ontario’s construction industry is responsible for close to 25 percent (\$900 Million) of the WSIB’s \$3.6 billion annual premiums. Members include:

Mechanical Contractors’ Association of Ontario (MCA Ontario)

MCA Ontario is a major Labour Intensive Provincial Construction Employer Trade Association (Management) that represents approximately 350 Construction Companies across Ontario – involved in the Mechanical Contracting field and is the “Designated Employer Bargaining Agency” under the Ontario Labour Relations Act for mechanical work performed in the Industrial, Commercial, Institutional and Extended Power Sectors of the province. Our Member Firms employ approximately 14,000 Construction Tradesmen across Ontario.

Ontario General Contractors Association (OGCA)

The Ontario General Contractors Association (OGCA) was formed over 70 years ago to bridge the gap between national and regional associations. OGCA advocates for the construction industry at all levels of government. Strong alliances with aligned groups and associations has resulted in successfully influencing changes in legislation and the development of programs that impact our members.

Ontario Road Builders association (ORBA)

The Ontario Road Builders' Association (ORBA) is the voice of over 100 road building contractors who build and maintain the majority of the provincial highway system and Ontario's municipal roads and bridges. The Association also represents almost 80 Associate Members who manufacture, distribute and/or supply products, equipment and services to the road building industry.

Ontario Refrigeration and Air conditioning Contractors Association (ORAC)

ORAC represents Ontario's largest single organized body of contractor practitioners in the Commercial, and Professional, Refrigeration and Air Conditioning Trade. ORAC has been called upon to play an important role in representing the Industry to numerous Provincial and Federal Ministries.

Ontario Sewer and Watermain Contractors Association (OSWCA)

The Ontario Sewer and Watermain Construction Association (OSWCA) has been representing sewer and watermain construction contractors across the province for more than 35 years, and currently serves over 700 member companies. OSWCA concerns include water system management, the environment, safety, contract terms, engineering, and many other issues relevant to the sewer and watermain construction industry.

Residential Construction Council of Central Ontario (RESCON)

RESCON is an employer association which represents the construction interests of both low rise and high rise residential builders exclusively. RESCON is the voice of residential builders on issues such as: WSIB, Health and Safety, Labour Supply and Training, Labour Relations, Building Code, housing supply and market affordability.

Sarnia Construction Association (SCA)

The Sarnia Construction Association fosters and advances the interest of those who are engaged in the erection of construction of buildings in Sarnia and Lambton County. The SCA represents members in any matters pertaining to the building and construction industry in Sarnia and Lambton County.

CITF has a formal operating alliance with the **Employers’ Council of Ontario** [“ECO”]. While ECO and CITF are presenting a coordinated response to the Funding Review consultation, and while each presentation is similar in format, style and content, there are distinctions. Each submission is to be read as a stand alone submission. Both the ECO and CITF recommended the creation of the Funding Review through submissions to the WSIB Chair during his 2009 outreach.

B. The Funding Review Terms of Reference

1. The CITF has been raising issue with changes to the **Funding Review Terms of Reference** [“TOR”] since first observing changes to the TOR in late 2010. A comparison between the original (September 30, 2010) TOR and the December, 2010 TOR are set out at **Appendix B** (at p. 40).
2. Concerns have been raised with the WSIB Chair and WSIB President, the Funding Review Chair and the Minister of Labour. Our concerns continue. To assist, we have presented a brief chronology (at **Appendix C**, at p. 48).
3. While we expected that the **Funding Review Green Paper** would address our concerns and reflect the initial terms of the **Funding Review**, unfortunately, it did not. The **Green Paper** was released mid-January, 2011 and advises (at page 4):

Issues the Funding Review won't address

The Funding Review will be limited to the six specific issues set out above. It does not have broad authority to examine other issues confronting the WSIB, such as its administrative practices and costs.

4. The **Funding Review Terms of Reference** set by the Board (after consulting) were altered by the **Funding Review** with no consultation. Notably, the following points were removed:

Funding Review Vision: A fully sustainable system that will eliminate the UFL and protect the long-term integrity of the workplace safety and insurance system in Ontario.

Funding Review Mission: To give WSIB stakeholders an opportunity to review the current pressures on the workplace safety and insurance system and provide input on issues related to the fiscal health of the WSIB.

Funding: What should the WSIB set as its funding target? What can the WSIB do to manage costs more effectively?

5. We understand fully that the impetus for the **Funding Review** flows from the **2009 Annual Report of Ontario's Auditor General**. It is therefore helpful to return to the Auditor General's comments. With respect to the primary “levers” driving the unfunded liability, the Auditor General said this:

Eliminating or reducing the unfunded liability requires the interaction of four key levers—legislated benefits, coverage, premium rates, and investments—to work effectively in tandem. The inability to eliminate the WSIB's unfunded liability over the last two decades has been owing in part to the desire to satisfy all the stakeholders. Both the WSIB and the government may have to commit to a different strategy with respect to the setting of premium rates and benefits if the WSIB is to be able to eliminate the unfunded liability within a reasonable period. (2009 Auditor General Annual Report, p. 315).

And, in commenting on the likely effect of contemporary WSIB administrative initiatives:

Although it is hoped that these initiatives will help reduce claims duration, fundamental legislative changes may also be needed before any significant progress can be made in reducing claims duration. (2009 Auditor General Annual Report, p. 331; ed., commenting on the Board's new service delivery model)

6. It remains our position that the original (September 30, 2010) **Funding Review Terms of Reference** permitted the type of analysis urged by the Auditor General and requested by the WSIB. The current terms do not. We ask that the Funding Review affirm the original terms to ensure the appropriate analysis is undertaken.

Recommendation No. 1: That the September 30, 2010 Funding Review Terms of Reference be restored.

C. Costs are a serious issue and require serious analysis through the Funding Review

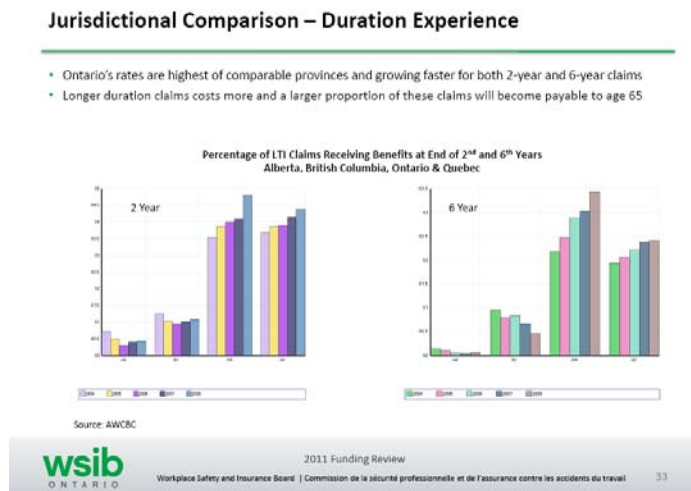
1. It is almost trite to note that the Ontario WSI system is under-funded because costs are outpacing revenues. Increasing costs *must* be addressed. The **Auditor General** clearly made this point (see above) as did the “non-aligned experts” during the January 25-26, 2011 **Funding Review Technical Session**. In the “**Funding Review Technical Reports from Non-aligned Experts**” [“Experts’ Report”], the need to understand increasing costs as part of the Funding Review was made clear:

The main source of losses seems to be the claim duration, which has increased significantly since the implementation of Bill 99. This increase should be analyzed in conjunction with the decrease in claim frequency (e.g. how the number of LOE claims after 6 years, adjusted for the increased workforce, compares over this period). (**Experts’ Report, p. 3**)

Improve understanding of trends in claims duration. Ensure benchmarks from other jurisdictions are reliable and given appropriate interpretation. (**Experts’ Report, p. 6**)

The percentage of claims reaching the 6 year lock-in is increasing and is a long term cost concern, especially for Schedule 1. (**Experts’ Report, p. 10**)

2. The problem of costs is most aptly and succinctly set out in a single slide presented by the WSIB at the **January 25-26, 2011 Technical Sessions**. The primary driver of premium rate increases is not increasing accident rates, but increasing claim durations. See **Slide 33**¹ (below), which was described by John Tory, Funding Review Advisory Committee Member as “*a four alarm fire*” (at the January 26, 2011 FR Technical Session).



¹ January, 2011 “Premium Rate Setting” Deck, presented to Funding Review Technical Session

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3. An understanding of increasing claims duration is fundamental to any resulting Funding Strategy.
4. The problem of expenditures exceeding revenues, has been long recognized. While certainly not eased by contemporary fiscal pressures, more than seven years ago, the **May 28, 2004 Third Party Audit of the Workplace Safety & Insurance Board on behalf of the Minister of Labour** ["MOL 2004 Audit"], had this to say:

Addressing the unfunded liability is fundamental to achieving financial stability of the WSIB. With a forecasted deficiency of revenue over expenditures increasing the unfunded liability for a third year in a row, there are continued pressures to maintain or reduce the cost of doing business.

5. At the same time the Board was celebrating it may be "*starting to turn the financial corner*" (**WSIB 2006 Annual Report, p. 5**), the Board attributed an 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**].
6. At the moment, the Board's "official" strategic plan is the "**Five Year Strategic Plan, 2008 – 2012, Road to Zero**" which affirms the Board's commitment to "financial stability." This is what the Board's Strategic Plan sets out (at page 27):

In 2005, the WSIB developed a comprehensive funding framework that has allowed us to bring stability and predictability to the average premium rate in recent years while still making progress towards elimination of the Unfunded Liability. The WSIB remains committed to a planned and disciplined approach to eliminating the Unfunded Liability and achieving full funding by 2014.

The WSIB's funding framework is reviewed every three years, with the next review to be undertaken in 2008. By 2012, we will have made significant progress in reducing the Unfunded Liability and be well positioned to achieve our goal of full funding.

7. In a Question and Answer document released with the 2008 premiums (in mid-2007), 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.

8. Yet, contemporaneously, loss of earnings ["LOE"] benefits were up almost \$100 million, an increase of 12.3% (from \$807 million in 2006 to \$906 million in 2007) [**WSIB 2007 Annual Report, p. 23**] even though injury rates continued a steady decline, in spite of more money being "invested" in labour market re-entry ["LMR"] programs. LMR costs increased 14.1% to \$283 million [**WSIB 2007 Annual Report, p. 24**]. Health care costs

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jumped 6.7% to \$527 million. Benefit liabilities increased \$702 million due to the net growth in LOE claims inventory [WSIB 2007 Annual Report, p. 24].

9. It is clear that increasing expenditures, particularly time on claim, is an entrenched structural problem. In response to a request for additional information with respect to a statement from the Board that its finances will be positively impacted as “*claims are dealt with better and faster*”² the WSIB responded as follows:³

- The new approach to service delivery began late in 2008 and is providing streamlined case management, more timely decision making, and specialized teams to manage long-term cases.
- As a result of the 2009 Value for Money Audit on return to work and labour market re-entry programs, the WSIB is implementing a new work re-integration model which involves high worker and employer engagement in return to work efforts facilitated by the WSIB to speed workers’ rehabilitation and recovery. The model more effectively implements re-employment obligations in legislation and aligns experience rating programs to maximize return to work with the injury employer. Where retraining is needed, the focus will first be on retraining with the injury employer. Retraining programs will be practical and followed by work placement services. Workers will be given more input and choice, including enhanced options for older workers.
- In addition, the WSIB is implementing improvements to its new health care delivery based on the principle that return to work fosters return to health.
- As a result, claims are being dealt with better and faster. For example, early indications show that claim durations at the 3 and 6 month, and 1 year marks have reduced. As claim durations reduce, the need for benefit liabilities at those durations also reduces and so does the unfunded liability.
- A Value for Money Audit is underway in 2011 and will assess the efficiency and effectiveness of the WSIB’s claims administration and adjudication processes, and possibly find further areas for improvement.

10. We wish to be clear - there is no doubt of the sincerity and integrity of the WSIB effort to effect better results through administrative enhancements. However, with respect, this has been the approach for the Board for almost thirty (30) years. The past three decades have been witness to this repeating history: increasing financial pressures culminate in a renewed commitment for administrative change to reduce time on claim; change is designed and implemented; a short period of improving performance follows; financial pressures increase; and the process repeats. The summary chart below shows repeating reaction (a more detailed history is found at **Appendix D, p. 49**):

Year	Administrative Action and Comments
1983	1983 was the first time the Board articulated a recurring theme, linking the reduction of workplace injuries to system cost reductions noting: “Perhaps the best way to moderate these economic pressures is to reduce the cost of the system. <i>This can be done by reducing the number of workplace injuries and the length of time injured workers are on compensation</i> ” [WCB 1983 Annual Report, p. 14].
1985	By 1985 the funding ratio dipped to 31.6%. The Board cited one of the key reasons for the increase in the UFL as “ <i>rising persistency rates</i> ” (i.e., time on claim) [WCB 1985 Annual Report, p. 9].
1986	Board commenced the first of many major administrative restructurings and reorganizations to “ <i>transform the Board into a more efficient, accessible and fiscally responsible service agency in the years ahead</i> ” [WCB 1986 Annual Report, p. 3].
1987	In 1987, Board heralded the benefits of its new reorganization committing that it will “ <i>improve services to its clients and to streamline the way it does business</i> ” [WCB 1987 Annual Report, p. 14].
1988	In 1988 the Board heralded a new “ <i>Vocational Rehabilitation Strategy</i> ” designed to “ <i>mitigate the effects of an</i>

² Slide 23, “**Funding Deck**” provided by WSIB to Funding Review Technical Sessions

³ WSIB responses to information requests from L.A. Liversidge, presented March 15, 2011

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Year	Administrative Action and Comments
	<i>injury on a worker's employment capabilities"</i> [WCB 1988 Annual Report, p. 3] and introduced " <i>Integrated Service Units</i> " to " <i>provide more personal, prompt, coordinated and efficient service</i> " [WCB 1988 Annual Report, p. 10].
1988	The Board noted that the introduction of new medical and vocational rehabilitation strategies " <i>must be viewed as investments and a more effective workers' compensation system which are expected to be offset by injured workers' more rapid recovery and earlier return to employment</i> " [WCB 1988 Annual Report, p. 15]. The funding ratio sat at 38% at the end of 1988.
1988	In a 1988 Year End Review [" Workers' Compensation Board, 1988 Year End Review and 1989 Agenda "] it was noted that 1988 " <i>saw the completion of a three year effort at the workers' compensation board devoted to the restructuring and revitalization of the organization</i> " [p. 1], with a " <i>focus on service delivery, financial soundness, public understanding and responsive administration</i> " [p. 2]. The Board suggested that there had been a " <i>significant change in the organizational culture of the WCB</i> " related to a " <i>new management style and new operating principles</i> ", which over " <i>the next few years will see the application of the reorganized WCB to meet emerging needs</i> " [p. 3].
1989	In a Claims Adjudication Strategy Report May 8, 1989, to ensure more effective reemployment outcomes it was expected that " <i>the Board would develop case specific informed plans so that alternative solutions and approaches are sought and built around a comprehensive cyclical case review mechanism</i> " [pp. 79-82].
1989	By 1989, the Vocational Rehabilitation Strategy " <i>designed to reintegrate injured workers into the workforce earlier and more successfully</i> " was considered a success and was implemented province-wide January 1, 1990 [WCB 1989 Annual Report, p. 16].
1990	In 1990 " <i>the Board undertook a number of organizational changes with a view to enhancing the consistency and efficiency of claims decision-making and to better facilitate rehabilitation and reemployment of injured workers</i> " [WCB 1990 Annual Report, p. 15].
1991	In 1991 the Board reported that the past vocational rehabilitation initiative didn't deliver and " <i>does not appear to be meeting workers' expectations</i> " [WCB 1991 Annual Report, p. 14]. Another reorganization " <i>aimed for a steady improvement in service delivery</i> " [WCB 1991 Annual Report, p. 14].
1992	In 1992 in a " Report on the Chairman's Task Force on Service Delivery and Vocational Rehabilitation, July 1992 ", another new approach was suggested " <i>for streaming claims on the basis of complexity, nature of the injury, and anticipated duration</i> " [Report, p. 30].
1992	A 1992 funding discussion paper noted " <i>the WCB is currently developing a comprehensive package of employment equity initiatives in the area of vocational rehabilitation with the aim of enhancing post injury employment opportunities for injured workers</i> " [Discussion Paper, p. 15], which could result in " <i>major savings to the system</i> " [Discussion Paper, p. 27].
1992	In 1992, the Board again readjusted its " <i>business and service delivery practices to improve the system in its current form</i> " [WCB 1992 Annual Report, p. 9].
1993	In 1993 the Board reported that it was " <i>seeing the payoff in better case management which in turn has contributed to early return to work on average, thereby reducing benefit expenditures and slowing the growth of the unfunded liability</i> " [WCB 1993 Annual Report, p. 4].
1994	In 1994, the Board readjusted its organization yet again and developed an " Integrated Case Management Model " to " <i>. . . to return injured workers back to meaningful and sustainable work earlier. This will reduce the duration of the life of a claim and the benefits expense.</i> " [WCB 1994 Annual Report, p. 2]
1995	By 1995, the funding ratio was back to the 40% level with the unfunded liability then at \$10.9 billion.
1996	In 1996 the UFL was at \$10.5 billion with a funding ratio of 43%. During 1996 the Board reorganized again to improve the efficiency, effectiveness and consistency of claims adjudication and claims handling through " <i>a more effective and efficient organization</i> ". [WCB 1996 Annual Report, p. 2]
1996	A newly appointed Minister for Workers' Compensation Reform reported in January, 1996 (" New Directions for Workers' Compensation: A Discussion Paper ") that " <i>the WCB has devoted a great deal of attention and money to vocational rehabilitation over the past seven years</i> " [p. 36], " <i>yet the unemployment rate of injured workers remains a persistent problem</i> " [p. 37].
1997	In the WSIB 1997 Annual Report , the Board noted, " <i>Better service and a streamlined, fiscally responsible administration will also contribute to reduce the level of the liability</i> ". [WCB 1997 Annual Report, p. 17].
1998	In 1998 the Board reported that it was again restructuring to " <i>deliver a new service and prevention mandates</i> " [1998 WSIB Annual Report, p. 4], with the hallmark being another " <i>new service delivery model</i> " which calls for " <i>integrated teams tailored to serve the unique needs of workplaces, communities and injured workers</i> " [1998 WSIB Annual Report, p. 4].
1998	1998 began with a focus on service improvement, with the Board noting that " <i>bureaucratic processes and legacy</i>

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Year	Administrative Action and Comments
	<i>systems, some as old as workers' compensation itself, had the WSIB processing claims and employer assessments, rather than serving employers and workers with injuries" [WSIB 1998 Annual Report, p. 13].</i>
1998	The Board noted that as the result of " <i>listening and learning</i> " it reorganized " <i>front line teams to serve workplaces according to business size and industry</i> " [1998 WSIB Annual Report, p. 13]. The Board in 1998 heralded yet another renewed new focus on early and safe return to work [WSIB 1998 Annual Report, p. 15]. At the end of 1998, the UFL had dropped to \$7.98 billion with the funding ratio sitting at 56.8%.
1999	By 1999 the UFL dropped to \$10.5 billion with the funding ratio at 62% with the Board noting that " <i>we have laid a solid foundation for yet another five years of significant improvements in many areas throughout the WSIB</i> " [WSIB 1999 Annual Report, p. 2].
1999	Commenting on the effects of yet another reorganization, it was noted that " <i>without question, our new service delivery model – which includes account managers, customer service representatives, consolidated adjudicators and nurse case managers – has improved service levels</i> " [WSIB 1999 Annual Report, p. 2].
2000	The Board commented that " <i>the service delivery strategy initiative integrated a "new business model" into the organization that "the work we are doing is paying off"</i> [WSIB 2000 Annual Report, p. 15].
2001	The Board reported that " <i>the WSIB has become a forward thinking, outcome based organization and gets results for the people it serves</i> " [WSIB 2001 Annual Report, p. 15] and the Board " <i>renewed (its) focus on return to work</i> " [WSIB 2001 Annual Report, p. 14].
2002	In its 2002 Annual Report , the Board set out several priorities, including to " <i>become more efficient and productive</i> " [WSIB 2002 Annual Report, pp. 2-3].
2003	In 2003, the Board announced another " <i>new direction for early and safe return to work</i> " that calls for " <i>increased support to the workplace parties in the return to work process</i> " [WSIB 2003 Annual Report, p. 15].
2005	In 2005 the WSIB Acting Chair announced [WSIB 2005 Annual Report, p. 5] that " <i>there are fewer injuries in total, there is an increase in the complex nature of some of them, requiring longer periods of care and recovery</i> ".
2006	In 2006, the Board reported that it was " <i>starting to turn the financial corner</i> " and was again revamping its return to work processes advising that " <i>the WSIB continues to develop an integrated case management model to support and enhance return to work outcomes</i> " [WSIB 2006 Annual Report, p. 10].
2007	The WSIB reported in the 2007 Annual Report [at p. 32]: <i>The WSIB is in the process of implementing a new service delivery model.</i>

11. While not one of the Board's initiatives was apparently deficient on its face, and while each was implemented with much promise, none delivered results over time and each was simply the catalyst for the next. There is no objective basis to expect the recent initiatives to experience a distinctive future.
12. History suggests it is probable that the drivers of claims duration are structural and more likely than not linked to the legislative design of the Ontario wage loss scheme in place since 1990 (Bill 162) and adjusted slightly in 1997 (Bill 99). The Auditor General hinted at this in his 2009 Annual Report:

Although it is hoped that these initiatives will help reduce claims duration, fundamental legislative changes may also be needed before any significant progress can be made in reducing claims duration. (2009 Auditor General Annual Report, p. 331; ed., commenting on the Board's new service delivery model)

13. It is this element that requires as much focus of the Funding Review as the direct revenue and funding issues. ***Any commentary and recommendations that flow from this submission are advanced with an overriding caveat – that the Funding Review must be part of a complete process that has regard for the full perspectives advanced by the Auditor General.*** In short, the recommendations, commentary and point of view expressed in this submission are advanced contingent on a full comprehensive review of the revenue *and expenditure* side of the ledger. Our ongoing support for the Funding Review process is linked to this requirement.

Recommendation No. 2: The Funding Review must be part of a complete process consistent with the original Terms of Reference that has regard for the full perspectives advanced by the Auditor General.

D. The expectation that the WSIB will identify legislative reform – the “lock-in” provisions require reform

1. One area that requires a very sophisticated analysis is the increase in time on claim (the “four alarm fire”). Notwithstanding the Auditor General’s 2009 observation that “*fundamental legislative changes may also be needed before any significant progress can be made in reducing claims duration,*”⁴ we are concerned with a general reticence to address structural issues requiring legislative adjustment. Yet, such a review remains essential to the future viability of the Ontario WSI system.
2. Even at the **January 25-26, 2011 Technical Session**, Board officials accepted the current statutory framework as if written in stone and thus out of reach. We reject that notion. We submit that the Board is *required* to evaluate the consequences of changes in benefits.⁵ More to the point, the WSIB Board of Directors is empowered to “*to review this Act and the regulations and recommend amendments or revisions to them.*”⁶ It is our submission that these express powers are included with an expectation that the Board will exercise them as circumstances warrant. In short, the Board has a duty to assess the efficacy of all core elements of the WSIA and recommend legislative reform the government.⁷
3. One example crying out for this type of evaluation and intervention is the benefit “lock-in” provisions in the WSIA.⁸ While benefit lock-in has been a feature of the wage loss scheme in place since 1990, the Board has never evaluated the legal and administrative efficacy of the lock-in provisions.
4. The 1990 amendments (Bill 162) and the 1997 amendments (Bill 99) redefined the terms of the “insurance contract” prescribing benefits based on actual wage loss. The premise was based on sound policy – an individual’s earning capacity is influenced as much, or more, by socio-economic elements as it is by degrees of actual impairment.
5. Coupled with these giant reform steps was a structural shift towards improving individual earning capacity through early rehabilitation intervention, with the expectation that even

⁴ **2009 Auditor General Annual Report**, p. 331

⁵ *Workplace Safety & Insurance Act*, S.O.1997, c. 16, Sch. A., as amended [“WSIA”], s. 161. (2) The Board shall evaluate the consequences of any proposed change in benefits, services, programs and policies to ensure that the purposes of this Act are achieved.

⁶ WSIA, s. 159 (2)(b)

⁷ So that WSIB advice of this nature contributes to the public policy discourse, the *Freedom of Information and Protection of Privacy Act* should be amended so that funding plans fall within a prescribed exemption to the “advice to government” non-access provision. *Freedom of Information and Protection of Privacy Act*, s. 13. (1) reads, “A head may refuse to disclose a record where the disclosure would reveal advice or recommendations of a public servant, any other person employed in the service of an institution or a consultant retained by an institution”. S. 13 (2) sets out prescribed exemptions to that provision. It is proposed that the FOIPPA s. 13(2) be amended to present an express exemption for WSIB advice to the government to ensure public disclosure. As a matter of practice, such advice should appear on the WSIB’s website for easy public access.

⁸ WSIA, s. 44. (2) Subject to subsection (2.1), the Board shall not review the payments more than 72 months after the date of the worker’s injury.

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the seriously injured individual would be able to return to gainful employment and re-establish an earnings profile, which overall should result in lower aggregate claims costs.

6. The initial wage loss model was slightly modified in the 1997 amendments but the essential features remained.
7. “Locking in” benefits by the end of the 6th year post-injury was introduced as a mechanism to curtail unnecessary administrative activity on established cases predicated on the presumption that within 72 months the injured worker would have achieved maximum earnings potential. At least that was the (unproven) theory and the single reason for this policy.
8. Arguably (and ironically) the “lock-in” feature diminishes the capacity of the Board to affect the desired outcome in the most serious of cases. For the seriously injured, after a period of protracted medical rehabilitation which may consume much of the initial several years in the lifespan of the claim, the focus would turn towards vocational rehabilitation, another lengthy process. Often, by the time of the lock-in a worker may not have achieved maximum earnings capacity. Worker motivation may understandably abate in the few years leading up to the “lock-in.” *Why trade certainty for uncertainty?*
9. Moreover, workers who improve their post-injury earnings profile after the “lock-in” will be over-compensated, albeit quite legally and while consistent with the statutory provisions, this is clearly not the intended result. Consider this simple example:

A 30 year old worker, earning \$65,000 per year, seriously injured, required two years of extensive medical treatment, followed by a three year retraining program in a new vocation, which enhanced the worker’s employability. The worker’s WSIB benefits are \$41,400 per annum.⁹

As the worker is not employed at the time of the “lock-in” (the worker is now 36 years old), the \$41,400 benefit is “locked-in.”

The worker returns to employment in the worker’s new vocation a year later (7 years post-injury), and earns the same wage as earned pre-injury, \$65,000 per year.

As a result, the worker receives a “locked-in” WSIB benefit of \$41,400 *plus* his new earnings of \$65,000 for the next 28 years.
10. It should be noted that the reverse corollary is not possible. Should a worker’s post-lock in earnings profile deteriorate as a result of the injury, the WSIA allows for post-lock-in review.¹⁰ That the current WSIA likely leads to over-compensation is reflected by **Slide 12** in the “Indexation Deck” presented by the WSIB at the Technical Sessions. The Board reports on an **Institute for Work & Health** study which shows that for injured workers, wage replacement of pre-injury earnings is 105%, whereas replacement compared to a control group of non-injured workers is 99%.

Recommendation No. 3: It is respectfully submitted that to effect a full and complete review, the Funding Review must address expenditures, including an assessment of the 72 month benefit lock-in provisions of the WSIA. The Funding Review is encouraged to comment on the Board’s role as contemplated by WSIA s. 159(2)(b), and express an opinion as to the Board’s adherence to those statutory expectations.

⁹ Based on net earnings of \$48,750 net earnings. WSIB benefits are 85% of a worker’s net average earnings.

¹⁰ WSIA, s. 44 (2.1)

E. The question of governance

1. Based on the history of WSIB (and WCB) finances over a full generation, an informed observer may reasonably question the governance structures. When assessed against the expectations of any governing board, and the express instructions provided by the WSIA,¹¹ the very need of the 2009 Auditor General involvement and commentary raises serious questions. As the WSIB Board of Directors [“BOD”] is expressly charged, among other things, to “*act in a financially responsible and accountable manner in exercising its powers and performing its duties*” it must be concluded that the observations of the Auditor General were necessary only because the WSIB BOD did not fulfill its statutory mandate. The reason for this must be of concern to the Funding Review.

2. A very recent history is instructive. The 2009 Auditor General Annual Report was not the first alert of the long-term implications of the UFL. The **May 28, 2004 Third Party Audit of the Workplace Safety & Insurance Board on behalf of the Minister of Labour** [“MOL 2004 Audit”], said:

Addressing the unfunded liability is fundamental to achieving financial stability of the WSIB.
[MOL 2004 Audit, at page 3]

3. Yet, just two years later, in its 2006 Annual Report, even while announcing that the UFL “*remains high at slightly less than \$6 billion*” (as at the end of 2006), it was reduced by “*about half a billion dollars*”¹² prompting the Board to triumphantly announce (albeit prematurely) that “*this result indicates we are starting to turn the financial corner*” [2006 Annual Report, p. 5].

4. In a June 16, 2009 speech to the Economic Club of Canada, the WSIB Chair said:

“I want to make it clear that our ability to fund the current obligations of the workplace safety and insurance system remains secure”.

In speaking to the overall implications of the UFL, this was said:

“It’s like looking at the balance on your home equity loan and determining whether you’d have enough money to pay off the loan if it was called today”.

5. At the same time, the **Minister of Labour** was also confident. In a November 9, 2009 letter to an employer association, the Minister of Labour noted, “. . . *the WSIB confirms that its ability to fund the ongoing obligations of the workplace safety and insurance system remains secure.*”¹³

6. The **Auditor General** has a different take. In his 2009 report, the **Auditor General** responds to the argument that “*because the workers’ compensation system is a perpetually ongoing operation, the unfunded liability is meaningless*”:

We do not agree with this argument and are concerned that the trend of selling off the WSIB’s investments to fund current operations and benefit payments is not financially sustainable. (**AG 2009 Annual Report, p. 322**)

¹¹ As set out in **Part XIII of the WSIA**, the relevant portions of which are excerpted at **Appendix E**, at p. 53.

¹² Due to investment gains, not performance gains. The Board was still experiencing an operating deficit in 2006.

¹³ go to: <http://www.cfib-fcei.ca/> for a copy of the letter

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7. On the challenge of paying down the UFL, the AG notes:
- . . . the WSIB's lack of success in eliminating the unfunded liability has been more directly the result of benefit expenses not being adequately funded by the premium-revenue and investment revenue streams (*supra*, p. 326).
8. We submit that the very design and structure of the WSIB BOD is largely culpable for the current state of WSIB finances and the absence (until the involvement of the Auditor General) of a concerted effort to fulfill the Board's statutory mandate. The WSIA places as a priority a "representative" BOD.¹⁴
9. While there is no single model of good corporate governance,¹⁵ the board key functions include "reviewing and guiding corporate strategy, major plans of action, risk policy, annual budgets and business plans; setting performance objectives; monitoring implementation and corporate performance".¹⁶
10. Directors must therefore bring a "range of experience, knowledge and judgement" and "not represent the interests of particular constituencies"¹⁷ to exercise "vigorous and diligent oversight."¹⁸ Directors must have "relevant business and industry experience."¹⁹ In short, we are advocating a skills based BOD for the WSIB.
11. In their report, the Technical Experts opined that:
- . . . that the provincial government is very possibly culpable for at least some of the existence and growth of the unfunded liability through actively ignoring the advice of WSIB management".
- "There is very clearly a disconnect between premium setting and the actual pricing of workers' compensation by virtue of the charged political environment in which workers' compensation exists". (**Experts' Report, at p. 15**)
12. We concur with these observations. With the introduction of *Bill 160*²⁰ and the removal of the prevention elements within the WSIB to the Ministry of Labour, in view of the long-term driving forces behind the UFL, it is timely to assess the broader reporting relationships as well as restructuring the WSIB BOD.
13. With the focus of the WSIB now principally and chiefly workplace insurance, reporting to the **Ministry of Finance** through the **Financial Services Commission of Ontario** ["FSCO"] is worthy of serious consideration.

The **Financial Services Commission of Ontario** (FSCO) was created on July 1, 1998, as an arms-length agency of the Ministry of Finance. FSCO integrates the operations of the former Ontario Insurance Commission, Pension Commission of Ontario, and Deposit Institutions Division of the

¹⁴ The WSIA calls for, under s. 162. (1): A board of directors shall be constituted to govern the Board and to exercise the powers and perform the duties of the Board under this or any other Act. It shall be composed of, (a) a chair appointed by the Lieutenant Governor in Council; (b) the president of the Board appointed by the Lieutenant Governor in Council; and (c) a minimum of seven and a maximum of nine members who are representative of workers, employers and such others as the Lieutenant Governor in Council considers appropriate, appointed by the Lieutenant Governor in Council.

¹⁵ Organisation for Economic Co-operation and Development (OECD), Principles of Corporate Governance, 2004, at p. 13.

¹⁶ *Ibid.*, at p. 60.

¹⁷ **The Business Roundtable, An Association of Chief Executive Officers Committed to Improving Public Policy (BRT), principles of Corporate Governance**, May 2002, at p. 3.

¹⁸ *Ibid.*, at p. 4.

¹⁹ *Ibid.*, at p. 10.

²⁰ *An Act to amend the Occupational Health and Safety Act and the Workplace Safety and Insurance Act, 1997 with respect to occupational health and safety and other matters*

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Ministry of Finance. FSCO comprises three key parts: the Commission; the Financial Services Tribunal (Tribunal); and the Superintendent and Staff.

As of March 31, 2010, FSCO regulated or registered 360 insurance companies, 7,908 pension plans, 188 credit unions and caisses populaires, 56 loan and trust companies, 1,120 mortgage brokerages, 2,419 mortgage brokers, 6,796 mortgage agents, 83 mortgage administrators, 1,634 co-operative corporations, as well as approximately 43,296 insurance agents, 4,271 corporate insurance agencies and 1,417 insurance adjusters.

FSCO's Mandate, Vision and Values

To provide regulatory services that protect the public interest and enhance public confidence in the regulated sectors.

To be a progressive and fair regulator working with its stakeholders to support a strong financial services sector.²¹

14. Broad accountability, an endless demand for it and an earnest commitment to it, is essential. We believe that the regulatory oversight of FSCO will add needed accountability.
15. One of the long-standing and we submit still relevant shortfalls of the current governance regime, including the cooperative engagement of the government and the WSIB, is the disconnect between benefit enhancement and ensuring adequate reserves. In his **January 1996 Discussion Paper, "New Directions for Workers' Compensation Reform,"** the **Minister Responsible for Workers' Compensation Reform**, said this (which remains relevant today and which was referenced by the **Auditor General** in his 2009 Annual Report²²). In speaking to the enhancements to worker benefits in the late 1980s and early 1990s, the Minister 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.

16. While the earlier introduction of *Bill 135*²³ will add discipline, we believe that reporting to the **Ministry of Finance** with regulation by **FSCO** will alleviate any future allure to increase benefits without adequate funding, and will create a sound supervisory regulatory structure. FSCO's "*Statement of Priorities*" (**June 2010**)²⁴ and in particular the FSCO "**Strategic Map**" (a copy of which is excerpted at **Appendix F**, at p. 54), will fit exceedingly well with a new WSIB governance structure.

Recommendation No. 4: We recommend that the Funding Review propose the striking of a high level Task Force comprised of the leadership of the Ministries of Finance and Labour (at the Deputy Minister level), the WSIB CEO, the WSIB Chair, the FSCO CEO and FSCO Chair to explore, develop and recommend a new WSIB regulatory framework governed through the Ministry of Finance and FSCO.

²¹ See: <http://www.fSCO.gov.on.ca/english/about/> (last accessed March 16, 2011)

²² 2009 Annual Report of the Office of the Auditor General of Ontario, at p. 330.

²³ *Bill 135, An Act respecting financial and Budget measures and other matters*, Schedule 21 amending the *Workplace Safety And Insurance Act, 1997*

²⁴ Found at: <http://www.fSCO.gov.on.ca/english/pubs/priorities/SOP-June2010.pdf> (last accessed March 16, 2011)

F. Transparent transfer payments

1. As prescribed by the *Occupational Health and Safety Act*²⁵ [“OHS Act”], s. 22. (1)²⁶ employer premiums flow through WSIB and then the Ministry of Finance to the Ministry of Labour to fund the administration of the OHS Act [hereinafter “transfer payments”]. With the introduction of *Bill 160* the transfer payments will substantially increase.
2. Presently, as direct funder, the WSIB enjoys a significant array of controls over **Safe Workplace Associations** [“SWA”] funding and performance from initial designation (WSIA, s. 6(1)), including the establishment “*of standards respecting governance, objectives, functions and operations*” (WSIA, s. 6(2)), to directing “*an entity to take such actions as the Board considers appropriate*” (WSIA, s. 7(4)), to reducing or suspending the SWA’s financial assistance, to assuming control of the SWA revoking designation and cease financial assistance (WSIA, s. 7(5)). *Bill 160* removes all of these controls from the Board, yet the Board directly (and indirectly employers) remains responsible to provide the transfer payments.
3. Flowing from an analysis facilitated by the (then named) **Ontario Provincial Auditor in 1997 on the Ministry of Community and Social Services** entitled, “*Transfer Payment Agency Accountability and Governance*”²⁷ the **Provincial Auditor** presented a series of observations and recommendations which remain relevant:²⁸

In our view, the Ministry needs to significantly improve transfer payment agency accountability and encourage effective agency governance by adopting the principles identified in our detailed audit observations. For example, the Ministry ought to strengthen both the accountability framework between itself and its agencies and the governance of agencies by ensuring that it systematically:

- establishes measurable and meaningful expectations for service outcomes for each pro-gram that it funds. In those instances, where establishing measurable and meaningful service outcomes is not practical, the Ministry should define and communicate minimum or acceptable levels of care necessary to meet desired outcomes;
- periodically evaluates service outcomes or the quality of services provided;
- identifies the type of operating and financial information it requires to effectively monitor agency service delivery and financial performance. In particular, the Ministry needs to assess the reasonableness of funding in light of the outcomes or services actually received by clients to ensure that it obtains value for money spent;
- critically assesses agency service delivery costs to ensure funding is reasonable and equitable, preferably at the time of the funding decision or subsequently through its annual financial settlement process; and
- defines and communicates expectations for agency governance and requirements for acceptable operating policies and procedures to be followed by individual agencies.

4. Since, the government has developed the “**Transfer Payment Accountability Directive**” of August 31, 2007 (attached at **Tab 1**) which sets out specific approval and governance requirements.

²⁵ *Occupational Health and Safety Act*, R.S.O. 1990, CHAPTER O.1

²⁶ 22. (1) The Workplace Safety and Insurance Board shall require Schedule 1 and Schedule 2 employers under the Workplace Safety and Insurance Act, 1997 to make payments to defray the cost of administering this Act and the regulations. The Lieutenant Governor in Council may fix the total payment to be made by all employers for that purpose.

(2) The Workplace Safety and Insurance Board shall remit the money collected from employers under this section to the Minister of Finance. 1997, c. 16, s. 2 (11).

²⁷ 1997 Annual Report, Office of the Provincial Auditor, pp. 64 - 76

²⁸ *Ibid.*, at p. 66-67

5. In the case of increasing transfer payments under the OHSA, it is preferred that the Ontario WSIB (and indirectly Ontario employers) be more than a silent partner, and play an active and dynamic role in the approval and performance monitoring process. In short, the Board as represented by its most senior management must “*be at the table.*”

Recommendation No. 5: We recommend that the Funding Review advocate for the development of a strategic governance regime to regulate transfer payments between the WSIB and the Ministry of Labour. Specifically, we suggest the striking of an intra-ministerial task force chaired by the WSIB President and involving senior officials of the Ministry of Finance and the Ministry of Labour.

PART II: Funding, Premium Rates, Classification, Incentives, Occupational Disease, Indexation

From the Funding Review Green Paper [“GP”]:

Funding: What is full funding? What should the WSIB set as its funding target? What is a reasonable time frame for the WSIB to reach its funding target? (GP, p. 4). What level of funding . . . should be regarded as sufficient by the Government, the WSIB, reviewing auditors or actuaries and the Auditor General? (GP, p. 11)

Premium rates: Is the current WSIB premium rate setting methodology appropriate? What changes would improve it to ensure that premium revenue covers costs? Should premium rates increase until the WSIB’s funding target is reached? (GP, p. 4) Is premium rate setting a purely technical exercise driven by the WSIB’s revenue requirements? Or does it involve elements of discretion? To what extent is rate setting influenced, positively or negatively, by the present statutory requirement that the WSIB “*not...burden unduly or unfairly any class of ... employers*”? What changes might have to be made in the rate setting methodology in light of statutory amendments requiring the WSIB to adopt and implement a “sufficiency” plan? (GP, p. 14)

Rate groups: Is WSIB’s rate group structure appropriate, given the principle of collective, no fault liability? What opportunities exist to simplify the rate group structure? (GP, p. 4) Arguably, Ontario’s rate group structure should be simplified. British Columbia, for example, has just 65 rate groups — approximately 40% of Ontario’s. Consolidation of rate groups into a more manageable number, improvement of the methodology for assigning employers to one or the other, and associating each rate group more explicitly with levels of risk, rather than grouping industries based on similar business activities, might lead to more consistent adherence to the principle of collective liability, easier administration for employers and the WSIB, and greater transparency. On the other hand, fewer and larger rate groups might entail a higher degree of cross-subsidization among member firms, and lead to pressures by firms with good safety records for some form of individualized experience rating. (GP, p. 16)

Employer incentives: Is the present design and operation of these programs appropriate? What alternatives exist to promote increased safety in the workplace, fairness in insurance costs to the employer, and incentives to employ injured workers? (GP, p. 4)

Occupational disease claims: How should the insurance fund treat occupational disease claims? Should they be a collective liability or charged back to specific employers? Should the WSIB establish a special fund for occupational disease claims? (GP, p. 4) The uncertainties surrounding occupational diseases: New diseases? Connections to the workplace? Future costs? How to fund? — create potential long-term financial risks for Ontario’s workplace insurance system. (GP, p. 20)

Benefits indexation: What level of inflation protection is fair for partially disabled workers? (GP, p. 4) Ontario’s WSIA is the only workers’ compensation statute in Canada that authorizes a provincial Government to increase indexing to a level that exceeds the standard set in the underlying legislation. It is

also the only statute to establish different rates of indexing for fully and partially disabled workers, though some provinces provide full indexation for both, while others provide only partial indexation. Changes in the indexation rate have a significant impact on the benefits received by injured workers, on the premiums paid by employers, and therefore ultimately on the UFL. (GP p. 21)

A. WSIB Funding – Some Essential Background:

1. WSI benefits are provided as a matter of right. When assessing any major structural adjustment of the WSI system it is always helpful to start the analysis at “first principles.” And, the very first WSI principle is that compensation for workplace personal injury or disease is made available as a matter of right, regardless of fault.
2. The objective of full funding is tied to worker equity. Even fundamental design questions such as full funding (providing reserves to pay for tomorrow’s projected costs arising from current claims) versus “pay as you go” (no reserves), flow significantly from worker equity considerations. Full funding ensures secure benefits for workers seriously disabled and likely dependent upon the WSI system for the long-term. Those benefits “will be there” no matter the financial health of their employer, their industry or the state of the Ontario economy generally. Very simply, a fully funded WSI system guarantees worker benefits. That is a core reason why retiring the UFL is such a policy and operational priority.
3. WSIB funding considerations cannot ignore linkages to the broader economic system. Such linkages were front and center almost 30 years ago when the 2014 funding plan was first devised, and articulated in the **Board’s 1983 Annual Report**:

In 1983 . . . it was hoped that, together, the Board and employers could determine the most appropriate methods of reducing the unfunded liability without, in any way, hampering the ability of Ontario’s employers to carry on business. After all, the ultimate health of the workers’ compensation system depends on the continued strength of the province’s economy. (**WCB 1983 Annual Report, p. 13**)

4. In 2005 the **Auditor General** also linked premium rates to employment impacts. In his **2005 Annual Report**, the **Auditor General** explained the reluctance to increase premium rates:

A reluctance to increase premium rates . . . has also contributed to the rise in the unfunded liability. We understand that this reluctance was driven by the potential impact on employers and employment, and by the fact that Ontario’s premium rates are already among the highest in Canada, because of the unfunded liability component. (**Auditor General 2005 Annual Report, pp. 362-363**).

5. The **May 28, 2004 Third Party Audit of the Workplace Safety & Insurance Board** on behalf of the **Minister of Labour**, affirmed that “*addressing the unfunded liability is fundamental to achieving financial stability of the WSIB.*”²⁹
6. The recent high-profile interest in the UFL was triggered by the **Auditor General’s 2009 Annual Report**. The accompanying press release plainly makes the point that the UFL is the mutual problem of employers and workers. Under the headline, “**WSIB’s Unfunded Liability Could Threaten Future Benefits**”, Auditor General McCarter stresses “*there is a risk that the WSIB may not be able to meet its obligations*”. “*The time to start addressing this problem is now.*”

²⁹ MOL 2004 Audit, at page 3

7. But, the Board's UFL was a recognized threat 28 years ago. The UFL was recognized as a serious problem requiring immediate action in 1983. In the **Board's 1983 Annual Report** the Board noted the UFL "*has been rising steadily over the last few years.*" 1983 is a pivotal year with historical significance. That was the year the "30 year funding plan" (zero UFL by 2014) was developed.
8. The presence of the UFL remains a significant impediment to the development of a labour/management consensus on most issues. It is difficult, as but one example, to explore new means to fund compensation for occupational disease so long as approximately one-third of all employer premiums goes towards the UFL. Employers, since they pay the bills, implicitly understand the power and constraining effect of the UFL. For the foreseeable future, change must be assessed through a financial prism clouded by the ubiquitous UFL.
9. Therefore, from a perspective of pure principle, labour should be as supportive of the efforts to wrestle the UFL to the ground as management. Moreover, simply raising premiums to fuel the decline of the UFL is counter-productive if premiums rise to the point of impacting business investment and job creation decisions, an always delicate balance.
10. Unless there is a strong and mutual labour/management commitment towards the UFL policy, it will be difficult to promote "big picture" agreement.
11. We are hopeful that the **Funding Review** will assist labour and management to form a united approach to the long-term WSI funding strategy. It is in labour's interests as much as management's that the system is reasonably priced, is sustainable in the long-term and is debt free. Once the albatross of the UFL is lifted, the system can be far more creative and focused on addressing pressing issues. Until then however, progressive movement will be forever stalled, with the UFL acting as a deadweight on the legitimate expectations of all stakeholders.
12. Even though the UFL has been the purported focus of the WSI system, the 1984 Plan was not successful. *Why?* We canvass our analysis for the reasons for this failure at **Appendix G** at page 55 and encourage the **Funding Review** to be guided by this analysis. The mistakes inherent in the Board's funding strategy over the past 30 years must be structurally corrected.

Recommendation No. 6: The **Funding Review** must place the future financial security of the system as a top priority that will survive regime change, political realignment and competing administrative priorities. In short, the **Funding Review** must identify, isolate and correct the reasons why similarly founded initiatives were not successful.

B. Funding Policy – Funding Target

1. With respect to the funding "target", during the January 25/26, 2011 Technical Sessions, the unanimous view of the non-aligned experts was that a 100% funding target is essential.

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There seems to be a consensus that the financing of WSIB costs should be done using the full funding method. This is the basis used by all Canadian boards. It limits inter-generational transfers between employers and provides reasonable assurance to claimants that the benefits they are entitled to will be paid. This implies the premiums in any given year provide for the projected costs of injuries occurring during the year, including benefit payments in the year of accident and a provision for payments in subsequent years. Also as a consequence of this full funding basis, a target funding ratio of 100 % is established and, when the Board's financial situation is different, subject to a possible no action zone around the target funding ratio, actions are taken to correct the situation. Corrective actions include premium adjustments, as it has been the case for several years at the WSIB.³⁰

and

Full-funding or pay-as-you-go. Desirability of the full-funding approach is not questioned, but the question of the appropriate assets/liabilities ratio (100% or more for prudence) is still open, as with the period to reach the target. A practical objective is 100% at least for a few years. It could be considered ambitious or unrealistic to set a target above 100%. In North America, a funding approach that would significantly depart from full-funding, and be close to pay-as-you-go for example, could raise issues given the prominence of the private sector as employment injury insurance service provider. The private sector has no choice but to be fully-funded so a loose funding system could be perceived as an indirect way to subsidize industries.³¹

and

Workers' Compensation Plans in Canada have an established practice of aiming for full funding. The approach to funding depends on whether the workers' compensation system is viewed as an insurance plan or as a social program.³²

2. One aligned expert (employer) described 100% itself as “the compromise” (in other words, 100% is a compromise from a perhaps preferred target of greater than 100%).
3. A lower than 100% target risks fuelling a false sense of achievement which could (likely) lead to pressure to increase benefits without sufficient funding (the very observations of the **Auditor General** in 2009 and the **Minister of Workers' Compensation Reform** in 1996). The 2006 experience is instructive. Even though the funding ratio was increasing (as a result of investment performance only) when it hit 73%, that triggered significant benefit enhancement (indexation increases set out in the 2007 *Budget*).
4. A report with recommendations from our consultant actuary Mr. J. Edward Nixon, FSA, FCIA, “*Financing the Ontario Workers' Compensation System; Going Concern Basis vs. Audited Financial on GAAP*” is attached at **Tab 2** (hereinafter “Nixon Report No. 1”)
5. A further report, with recommendations from Mr. Nixon, “*A Funding Policy for the Workplace Safety & Insurance Board of Ontario*” (hereinafter “Nixon Report No. 2”) is attached at **Tab 3**.
6. We accept, adopt and advance Mr. Nixon's analyses.
7. As Mr. Nixon notes (at **Tab 2, p. 1**):

It has been agreed that the Ontario workers' compensation system is an insurance system similar to other systems in North America. Accordingly the premiums will be structured to meet 100% of the

³⁰ Experts' Report, page 2

³¹ Experts' Report, page 7

³² Experts' Report, page 11

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current and future costs flowing from new injuries and the financial target is to have invested assets matching or slightly exceeding 100% of benefit liabilities.

Recommendation No. 7: A “sufficient”³³ level of funding must be interpreted to be 100% as an ultimate goal. Only 100% can be construed as “full funding.” This recommendation is contingent on the timeline recommendation set out in **Section D**.

C. Funding Policy: Nominal Discount Rate

1. It is generally recognized that the current discount rate of 7% is too high. The non-aligned experts advise:

Another crucial assumption is the discount rate that should be used. Concerns were expressed about the possibility of the current nominal rate of 7% (net rate of 4.5% for fully-indexed benefits) to be too high. This rate reflects the expectations of investment managers, and includes a provision for added value from active management. The net discount rate is the highest among Canadian boards (it stands between 3% and 4% in other boards). The discount rate assumption should be carefully reviewed, as it also affects the interest costs to carry the unfunded liability. (**Experts Report, p. 3**)

2. Mr. Nixon (in **Nixon Report No. 1, Tab 2**) notes:

Regardless of how or when the accounting standards may change the liability valuation basis, workers' compensation systems need to use a long term best estimate, going concern approach to selecting the key economic assumptions. Ontario has a large deficit so the focus must be on a stable approach to liquidating it. In the technical sessions for the Funding Review there was a strong feeling from the actuaries present that Ontario should lower the long term going concern interest rate from 7%, which is considered too high. A rate in the 6% range would be more appropriate, recognizing the asset mix strategy, active management and the need for some margin for adverse contingencies. It is realized that this will increase the unfunded liability by about \$1.6 billion at December 31, 2010. It may also be appropriate to consider recognizing unrealized gains and losses over a period such as five years to remove some volatility from the investment results and hence the impact on premium rates.

Recommendation No. 8: That the seven percent (7%) long-term going concern interest rate be reduced to six percent (6%).

D. Funding Policy: The timeline to reach a 100% funding target

1. With respect to the timeframe to reach the target, we refer to **Chart 33** in the WSIB “**Funding Deck**”³⁴ (duplicated at **Appendix H, at p. 58**) which sets out the timeline for four “base cases.” (The outline of each base case (**Slide 30**) is also at **Appendix H**.) Additional details are found in the **Funding Deck, Slides 31-32**.

³³ The funding level requirement introduced in *Bill 135*.

³⁴ All of the technical WSIB “decks” referenced are found at:
<http://www.wsib.on.ca/en/community/WSIB/230/ArticleDetail/24338?vgnextoid=93d81f55502fd210VgnVCM100000469c710aRCRD&vgnnextchannel=50227de3827d6210VgnVCM1000000e18120aRCRD>

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2. With respect to year-to-year deficits, **Slide 14** of the Funding Deck (at **Appendix H, p. 59**) outlines the history of the annual deficits 1999 – 2010. Policies with respect to year to year “gains and losses” will be a determinative policy initiative that will flow from the **Funding Review**. There are two sources of “losses” – operating gains/losses (the difference between revenues and expenditures) and investment gains/losses (the year-to-year variance in investment value – the Board’s plans currently call for a net annual return of 7%). The treatment of gains and losses will be a key Funding Review recommendation.
3. Setting a 100% funding target is an easy objective. The real issue is how to get there.
4. The treatment of gains and losses is integrally tied to the amortization issue. The non-aligned experts commented as follows:

Given that the current unfunded liability is large and has developed over many years, it seems appropriate to adopt a long amortization period. Any amortization program that is adopted should be monitored closely, and corrective action taken if target funding levels are not being reached.

A formal funding policy is needed, to address all funding issues, including the amortization of the legacy unfunded liability and the treatment of new gains and losses arising in future years. The funding policy may treat new gains and losses differently from the legacy unfunded liability, and the treatment may vary depending on the source of the gain or loss (e.g. investment experience, claims experience, amendment to the Act, etc).

In future years premiums should be set at levels that are expected to be sufficient to cover the cost of new claims (before any unfunded liability charges are included), to reduce the number and magnitude of future losses and avoid the build up of another significant unfunded liability.

To be successful, the funding approach must be accepted by the stakeholders, diligently monitored and enforced, and free of political interference.

Addressing the unfunded liability issues in Ontario may be challenging, due to the limited workforce coverage in the province. (**Experts Report, p. 11**)

5. Our consultant actuary has analyzed the funding needs and presents (at **Tab 3**) several funding scenarios, predicated on a need for sound management (see earlier discussion on the WSIB governance structure). It is clear that drastic increases in the Average Premium Rate [“APR”] are not required, and the current rate of \$2.35 rests within reasonable tolerances. Mr. Nixon summarizes his conclusions as follows:

The conclusion is that, with sound management, it should be possible to amortize the unfunded liability over 15 years and fully fund the cost of new injuries for a premium rate in the \$2.35 to \$2.40 range. It does not appear that a rate approaching \$3.00 is necessary. Of course, if the mix of industries and new claim risk changes in future, then the cost of new injuries will also change as will the total premium rate. The focus needs to be on the principles of the funding policy and not on the absolute total rate. (**Tab 3, p. 2**)

Recommendation No. 9: A new Funding Plan must be amortized over a sufficient period of time to ensure premium rate increases (where necessary) are controlled, but a short enough period of time to reflect a strong commitment to full funding (100%). It is likely that a 15-20 year amortization period with a range in the APR of \$2.35 to \$2.40 is reasonable.

Recommendation No. 10: To ensure ongoing discipline the (new) Funding Plan must set five year incremental targets by industry sector with detailed progress reported annually in the WSIB's Annual Report, with an ongoing "organic" report continuously reported through the Board's website.

Recommendation No. 11: In the event that the target is not realized, or in the event that performance circumstances lead to a conclusion the target will not likely be met, a special consultation will be triggered with the respective sector, and a targeted action plan devised at the earliest possible juncture.

Recommendation No. 12: With respect to gains and losses, investment gains and losses will be treated distinctively from operational gains and losses. Investment gains and losses will be addressed within the context of target long-term returns. Operational losses will be adjusted within a shorter term, such as within five (5) years.

E. Industry specific targets and a vibrant continuing dialogue at the class level:

1. A "one-size-fits-all" approach to funding, including the establishment and attainment of targets, need not be addressed primarily at the system level and then filter down to the class and rate group level. A renewed dialogue with stakeholders at least at the class level is encouraged.
2. Yet, since 1999, the WSIB has been determining the UFL only at the system (Schedule 1) level. In the WSIB Funding Presentation (at Slide 12 reproduced at Appendix H, p. 59), the Board provided data on the value and change in the UFL from 1995 to 1998. It was explained that the Board changed its method of UFL attribution as at 1999, determining the UFL at the system level and allocating at the rate group level using new claim usage as a proxy for allocation.
3. A request for additional information for a breakout of the UFL at the class level was advanced on February 9, 2011 and earlier on January 4, 2011 (see Tab 4³⁵ and Tab 6³⁶). From the January 4, 2011 request the following was asked:

According to current unfunded liability ["UFL"] allocation rules, the UFL is calculated at the system level and allocated to individual Rate Groups ["RG"] on the basis of pro-rata new claims cost usage. Prior to 1993 the UFL was calculated and allocated at the RG level. From 1993 to (approximately) 1998/1999 the UFL was calculated at the Class level and allocated at the RG level. Since 1999 (approximately) the current rules have applied. The allocation of the UFL is relevant to the mandate of the Funding Review. As part of the FR information disclosure, I request the following:

- a. That WSIB Actuarial Services reconstruct the UFL at the Class level from the time the UFL was last calculated at the Class level (approximately 1999). Mr. Hinrichs has advised that this is possible and the Board is able to fulfill this request.
- b. That the WSIB disclose the value of the UFL by Class from 1993 to 1999, the last time it was calculated at that level. This is a simple matter of reviewing and disclosing past records.

³⁵ Tab 4: WSIB Funding Review, Request for Additional Information and Analysis, at p. 6.

³⁶ Tab 6: January 4, 2011 letter to WSIB Funding Review Chair

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- c. That the WSIB disclose the reasons for the change to the contemporary allocation rules (1999 approximately) along with the actual policy documents as set out in Board of Director and WSIB Administration Minutes, Board Orders, Executive or Administrative Orders, or other related memoranda.
4. We are still awaiting a response.

Recommendation No. 13: While we are not advocating allocation of the UFL at the Class level, we are not at this time in opposition of the concept. We do promote full and complete disclosure and ask that this element be addressed by the Funding Review. The first step is to determine the current UFL at the Class level, and assess the viability of Class level accountability on a go forward basis. Once this information is released, it is proposed that a dialogue focused on this single element be introduced through a special **Funding Review Supplementary Technical Session** to be facilitated no later than June, 2011.

F. Premium Rates: The need for “two sets of books”:

1. We refer to the **Nixon Report No. 1 (at Tab 2)** and adopt the analysis. Reducing volatility for the purposes of premium rate setting is a desired outcome. Mr. Nixon notes (at **p. 1**):

The key feature of this wind-up approach for pension plans is the “mark to market” concept for the valuation of invested assets and benefit liabilities. Invested assets are reported at market value. Liabilities which are a discounted flow of future expected payments use AA Cdn. corporate bond rates at the valuation date as the key parameter to measure their value. The result of using market value creates volatility in the surplus/deficit or funded position of the program. *This volatility is unacceptable for premium setting or funding purposes when the plan is ongoing.*

2. We endorse the “separate set of books” proposition (at **p. 1**):

Pension plans address this volatility by using a “separate set of books” for funding and regulatory compliance with FSCO. The funding basis represents the long term or going nature of the plan. Investment gains and losses can be recognized over a period such as 5 years. Interest rates for valuing liabilities represent a conservative expected long term rate of return on a balanced portfolio rather than today’s corporate bond rate.

Recommendation No. 14: That the Funding Review investigate the efficacy of the need for “two sets of books” for the distinctive purposes of: i) generating audited financial statements; and, ii) premium rate setting purposes.

G. Premium Rates: The need for caps and a discussion of rate group subsidization

1. A detailed outline of WSIB premium rate policy is set out in the **WSIB 2011 Premium Rate Manual**.³⁷ The essentials are summarized in the WSIB “**Premium Deck**”, **Slide 15 (Appendix H, p. 60)**.
2. Since 2010, no Rate Groups [“RG”] have experienced premium rate declines as a matter of WSIB policy (regardless of performance). This increases RG subsidization and arguably diminishes accountability, a principle the Board purports to honour.
3. It must therefore be concluded that the Board’s 2010 and 2011 decision to refuse earned premium declines was a thoughtful reaction to immediate funding pressures, rather than any reflection of a disorderly funding policy. Inherent in the Board’s 2010 and 2011 policy is acceptance, to some degree, of rate group subsidization, even if the Board’s policy has been neither fully conceived or fully articulated.
4. With that said, the Board’s 2010 and 2011 acceptance of rate group subsidization must be viewed as an interim measure. The challenge is to now place some coordinated discipline to that policy, to ensure that rate group subsidization is not a perpetual structural facet of the Board’s funding strategy.
5. The non-aligned experts addressed the issue of subsidization:

Limits to rate increase/decrease. Cross-subsidization of rate-groups resulting from the non-application of rate decreases has started in the 2010 rate setting. Two questions for consideration are as follows: To what extent can this approach be maintained without harming the credibility of the rate setting process and/or negatively influence the employers’ behaviour? Is there a need to develop a strategy about the return to a more traditional approach? (**Experts Report, p. 5**)
6. We support the need to develop a strategy to “*return to a more traditional approach*” yet, at the same time we see some ongoing need for a degree of rate group subsidization, at least transitionally. We propose the following as a bridging policy to achieve, over time, full Rate Group accountability.

Recommendation No. 15: Premium rates will reflect the actual performance of the RG. The 2010 and 2011 policy of denying earned premium decreases will be proscribed from 2012 onwards.

Recommendation No. 16: The WSIB will publish target rates for each Rate Group.

Recommendation No. 17: Movement towards the target rate will be capped to no more than *plus* or *minus* an as yet-to-be-determined percentage (perhaps 5% per year), with the cap negotiated with the respective RG, and adjusted as circumstances warrant. In extreme cases, increase (or decreases) greater than 5% will be permissible if endorsed by the respective sector.

³⁷ <http://www.wsib.on.ca/en/community/WSIB/ArticleDetail?vnextoid=2c68da985f8bd210VgnVCM100000469c710aRCRD>

H. Premium Rates: Class centric policies will be permissible

1. Once the new funding targets are set for each rate group, it is expected that a new vibrant dialogue will commence. No longer should premium rates be consigned to a once a year hurried discussion to introduce the policy of the day and set out the next year's premiums.
2. Instead, as earlier introduced, we envision that the dialogue will be vibrant and "organic" with ongoing performance reports for each rate group continuously reported (no less frequently than quarterly) through the Board's website.
3. In the event that performance is not on target, rather than simply report this information once a year to be used as rationale for the next year's premiums, a special ongoing consultation will be triggered, with a targeted action plan devised at the earliest possible juncture. The targeted action plan will permit class centric policies as circumstances warrant.

Recommendation No. 18: The WSIB will vigorously report RG performance and engage in a vibrant ongoing dialogue at the RG level. Class centric variable policies will be permissible.

I. Premium Rates: the reliance on the Average Premium Rate as a year-to-year comparator

1. Reference is made to the report, "*An Analysis and Commentary on the rate of change of the WSIB Average Premium Rate 2010 to 2011*", January 19, 2011, attached at **Tab 7**. We accept and endorse the analysis set out in that report and recommend changes to the reporting of the APR by the WSIB.
2. There are two regularly reported primary indicators of the financial state of the WSI system – the UFL and the year-to-year fluctuation in the APR.
3. Generally, if the APR decreases from **Year 1** to **Year 2**, it is interpreted that on average, premium rates have decreased. And the reverse. If the APR increases **Year 2** to **Year 3**, it is interpreted that on average, premium rates have risen. This is usually, but not always, the case.
4. It must first be understood that the APR is a derived number. On its own, it means little. The APR is not the average of the RG premium rates. It is derived by calculating the actual projected premiums for each RG, totalling the payroll and the premiums for all of the RGs and then calculating the (projected) aggregate average premium rate. The steps are as follows:
 - Step 1:* For each RG, apply the premium rate against the projected payroll to calculate the projected premium for the RG.
 - Step 2:* Total the premiums for each RG and total the payroll for each RG.
 - Step 3:* Calculate the APR.
5. As such, the APR is influenced by factors other than changes in RG premium rates themselves. In fact, even if premiums rates do not move at all and stay the same for each RG **Year 1** to **Year 2** (and therefore there is no increase or decrease in premium rates for

any employers), the APR may still fluctuate if the payroll itself fluctuates in some RGs. For example, if premium rates stay constant, but several higher risk RGs experience job loss, the APR will actually decline **Year 1** to **Year 2**, even though premium rates remain the same for every employer **Year 1** to **Year 2**.

6. *What does this mean?* This means that when the economy is in recession and jobs are lost in higher risk industries (for example, manufacturing), the loss of jobs will mask the actual effect of changes in premium rates. This is exactly what happened 2010 to 2011.

Recommendation No. 19: When communicating the rate of change in the APR Year 1 to Year 2, the WSIB should restate the Year 1 APR based on the Year 1 revised payroll, and then compare the Year 2 APR with the restated Year 1 APR. Finding: With this method, for the 2010 to 2011 premium rate exercise, the rate of change was 4.9% (\$2.24 to \$2.35).

Recommendation No. 20: In the WSIB Annual Report for Year 1 (usually published mid-year Year 2), the WSIB should again restate the Year 1 APR based on actual payroll and collected premiums (both known by that point). Thereafter, the APR for the respective year should be reported as the collected (actual) APR.

Recommendation No. 21: When communicating the effect of premium rate adjustments Year 1 to Year 2, the Year 1 and the Year 2 premium rates should be run against the Year 2 projected payroll. This ensures an “apples to apples” comparison and more reasonably explains the actual effect of premium rate adjustments. Finding: With this method, for the 2010 to 2011 premium rate exercise, the rate of change was 5.8% (\$2.22 to \$2.35).

J. The question of rate groups and employer classification:

1. WSIB sees the current employer classification and RG system as problematic, and thus employer classification has been added to the issue agenda of the **Funding Review**.
2. The current classification scheme arises from a major review (1988 – 1993) which culminated in a new classification system based on the principle of similarity of business activity. This principle is codified in **O. Reg. 175/98**, the key elements of which are:

“business activity” means an operation that relates to the production of a product or the provision of a service

9. If an employer has more than one business activity, the employer’s premiums shall be calculated using the highest of the premium rates for the employer’s business activities subject to the following rules: 1) If a business activity of an employer is properly segregated from the employer’s other operations, the premiums with respect to that segregated business activity shall be calculated separately. . . .
3. The **Classification Deck, Slide 5** summarizes the 1992 (and prior) system, the 1993 changes and the current system (**Appendix H, at p. 60**).
4. We respectfully submit that the WSIB has not objectively identified deficiencies in the current classification system. The Ontario Board seems to lean towards the British

Columbia model on the presumption B.C.'s system is fairer and less resource intensive, propositions not borne out by independent research. Research shows employer classification disputes culminating in appeal action abound in B.C. as much or not more than in Ontario.

5. The non-aligned experts at the **Funding Review Technical Sessions** affirmed that fair employer classification is an essential ingredient, with at least one non-aligned expert suggesting that the B.C. model is fraught with problems. Most significantly, the non-aligned experts have disassociated the urgency of assessing the classification system from the primary objective of the **Funding Review**. We concur.

Classification of employers in rate groups for rate setting purposes has been put on the table in the funding consultation process in order to examine any potential improvement that could lead to cost decrease and improvement in the funding position. *It has no direct link with the funding situation.* (**Experts Report, p. 6**)

The meeting participants agreed that the rate group structure and classification system is not a fundamental problem with the financing of Workers' Compensation in Ontario, but that the system could be simplified and improved, and administration costs significantly reduced. (**Experts Report, p. 12**).

In the context of the funding revision, the discussions (on classification) held in the session have not identified a key issue that could have a significant short-term financial impact. Classification of employers in rate groups is an important component of the rate setting process and there is a vague feeling that improvements are possible. This would be expected as any classification system must be dynamic and continuously monitored. Though there seems to be an appetite to have a look at other systems that could rely on principles that are different from those of the current Ontario system and possibly improve the situation. *It would be reasonable to postpone a Rate Group structure review because the expected impact of this kind of review would have on the funding status is low. Any review of a classification system should be made in close collaboration with employers.* Such operation is costly and takes time. (**Experts Report, p. 6**)

6. Any change in a classification system is a major undertaking on its own, requiring an extensive resource commitment. It took the WSIB five (5) years of concentrated activity to revamp the classification grid 1988 – 1993. The process commenced with a pre-consultation dialogue with Ontario trade associations in 1988, which preceded the release of the consultation document, "*Revenue Strategy, A Framework for the 1990s and Beyond, 1989*", followed by "*Revenue Strategy, The New Classification and Pricing Strategy, 1990*", which after extensive employer dialogue culminated with "*Revenue Strategy, Final Policy Recommendations, Board Minute No. 5, October 29, 1991, page 5479*".
7. *The point is clear* – any adjustment to the classification system requires an extensive, full and vibrant consultation engaging the full attention of employers and the Board. As the non-aligned experts note, such a consultation "is costly and takes time" (**Experts Report, p. 6**).
8. It seems that the WSIB is vaguely seeking some administrative efficiencies as its primary objective. This is odd noting the current scheme is designed to promote a higher standard of employer fairness *even if* the administration is more complex. The **1989 Revenue Strategy** notes:

Grouping employers in this way may make administration of the compensation system more complex. *However, it is fairer to employers . . .* (**Revenue Strategy, 1989, at p. 9, emphasis added**)

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9. We support placing employer fairness at a higher priority than WSIB administrative ease.
10. While the WSIB appears leaning towards the B.C. model of classification (for reasons not fully made clear or disclosed), the non-aligned experts cautioned against borrowing from other jurisdictions:

There is no single best answer and it is agreed that a system may be considered appropriate for a certain jurisdiction while not fit as well in another because of differences in industry mix or other factors. (**Experts' Report, p. 6**)

11. A "made in Ontario" approach is preferable.
12. With that said, it seems quite uncertain if the B.C. model offers any advantages over the current Ontario classification system. A summary of the WorkSafeBC system follows:

Industrial activities ["IA"] are organized into a structure consisting of three levels: sectors, sub-sectors, and classification units ["CU"]. Each CU has its own base rate. However, to ensure that rates are stable, rates are set at the RG level rather than at the CU level (an employer can receive a further discount (rebate) or surcharge depending on their performance when compared to other firms in the RG (experience rating ["ER"])).

An industry group ["IG"] is made up of one or more CU that has similar industrial activities and a reasonable expectation of similar cost rates. It can be one or a group of industries that together have 200 or more non-health care claims over five years with at least 25 non-health care only claims in each of the last two years.

Rates are set at the rate group level as they provide a large enough payroll base to be statistically credible and to absorb short-term fluctuations in claims activity. A rate group is made up of one or more industry groups. Employers are classified based on their primary industrial activities, not the occupations within a business. Typically, each firm is assigned to the one CU that best describes its primary business activity. If a firm is engaged in two or more separate and distinct activities, it may be assigned to two or more CUs.

WorkSafeBC has 11 Sectors, 66 rate groups, 257 rates in 573 industries. Ontario has 9 sectors, 154 RGs with 154 rates in 850 industries.

13. The B.C. scheme, on its face, is no simpler than Ontario's. In fact, the B.C. system tends to generate the same appeal activity as does Ontario's (even though the Ontario system is larger).
 - a. There were a total of 280 decisions rendered by the British Columbia Workers' Compensation Appeals Tribunal in December, 2010, three (3) of which were employer appeals dealing with the issue of classifications. (**See Chart 1 at Appendix I, p. 63**).
 - b. The Ontario Workplace Safety & Insurance Appeals Tribunal rendered 268 decision in December, 2010, three (3) of which were employer appeals dealing with the issue of classification (**See Chart 2 at Appendix I, p. 63**).
14. A review of the actual decisions reflect pretty much the same type of issues in both jurisdictions. Clearly, importing the B.C. system into Ontario will not reduce the administrative activity associated with employer classification.
15. Not only is a sound classification scheme an essential precursor to experience rating, equitable employer classification is an essential strategic component to injury prevention. While some presenters to the Funding Review have advanced support for fewer Rate Groups, and in at least one instance, proposed the collapsing of all Construction (Class G) Rate Groups into a single band, we respectfully reject such a proposition.

16. Rate classification is a valued requirement as: i) it is a prerequisite to experience rating; ii) it may be justifiable with respect to resource allocation in the long run and has an influence on prevention, and; iii) it is justifiable on the basis of employer equity.³⁸
17. A single rate approach would simply not be equitable, especially for smaller employers, who would be required to contribute at the average set rate and would lack the relative power to secure meaningful rate rebates, whereas the larger employer would be able to acquire strong experience rating gains. The long term result of a single or limited rate system would be increasing rates for small employers and decreasing rates for larger employers.³⁹
18. Experience rating as a premium modifier is most effective as the size of the assessed payroll base increases (this point is made in the following section). It is not possible for small or even medium sized employers to benefit in any material way from experience rating.
19. A reduction of the number of Rate Groups risks both adverse selection⁴⁰ and increased moral hazard.⁴¹ Such a policy would pit smaller employers against larger employers and either promote small employers to be insurance free-riders or crush them under oppressive premium rates. While we are not averse to a review of employer classification, such a review it must be done thoughtfully, slowly and on a principled basis. We continue to support the principles advanced in the Board's papers, "**Revenue Strategy, A Framework for the 1990s and Beyond, 1989**" and "**Revenue Strategy, The New Classification and Pricing Strategy, 1990.**"
20. One element we are not at all averse to investigate is a separate Rate Group for clerical or administrative exposures. In fact, the Board has provided support for that concept to the Construction Sector in the context of mandatory coverage for Executive Officers arising from *Bill 119*.

Recommendation No. 22: A change in the classification system is neither supported or opposed, however, before proceeding the following must be established: a) an objective need for change; b) a plan to change similar to the 1988 – 1993 process; c) a full outline of various design options and reasons for same; d) a clear outline of the objectives to be realized.

Recommendation No. 23: The prevailing guiding principle is employer fairness, not WSIB resource allocation.

³⁸ P.S. Atiyah, "Accident Prevention and Variable Premium Rates for Work-Connected Accident" Parts I & II (1974) 3 Ind. L.J. 1 & 89 at 1.

³⁹ Ian B. Campbell, "Experience Rating for Accident Compensation: A Necessity or Wishful Thinking" (1989) Department of Management Systems, Business Studies Faculty, Massey University, Occasional Papers: 1989 Number 4 at 18.

⁴⁰ Adverse selection refers to the greater tendency of high-risk individuals to seek insurance, particularly if the premium they would pay is less than their expected loss. Workers' Compensation Insurance In North America: Lessons For Victoria?, Upjohn Institute Technical Report No. 96-010, H. Allan Hunt, Assistant Executive Director, W.E. Upjohn Institute for Employment Research, Robert W. Klein, Director, Center for Risk Management and Insurance Research, Georgia State University, November 1, 1996, at p. 12-13. Found at: <http://www.upjohninst.org/publications/tr/tr96-010.pdf>

⁴¹ Moral hazard occurs when insurance diminished an insured's incentive to prevent or contain losses, *ibid*.

K. The question of employer incentives:

1. The WSIB case for change is not compelling. The case for urgency is non-existent.⁴² The primary reason offered is that rebates have significantly outpaced surcharges (**Incentives Deck, Slide 21, Appendix H, p. 61**). Yet those off-balances have been addressed.⁴³ The largest experience rating [“ER”] program (NEER) is in a net surcharge position. The construction CAD-7 program is also in a net surcharge position. Significant off-balances either way (surcharge/rebate) are unlikely to repeat. The other WSIB reasons (**Incentives Deck, Slides 23 – 26**) are “soft” all of which would be addressed in a system with higher administrative maintenance.
2. In the context of WSIB funding, ER reform is not a priority. Moreover, little evidence of the need for reform has been advanced. The non-aligned experts make it clear – ER reform has no linkage to the WSIB UFL:

Issues discussed above are interesting areas of research and several technical aspects of the design of incentive programs could be analyzed. However, in my humble opinion, this is a bit out of the scope of funding the UFL. The off-balance of those programs, which has been discussed previously in Section 1.1, is the main financial element that may have an immediate impact on the design of a funding policy that would eliminate the UFL.

In the context of the consultation on funding, no material impact on the UFL and its amortization can be expected in the short term from changes in the employers’ incentive programs. The consultation is an excellent opportunity to hear what stakeholders have to say on those programs but this may divert the attention from the major issue. (**Experts Report, p. 9**)

3. ER was born out of a cooperative process in the early 1980s – in effect, a powerful WSIB/employer partnership. It took a decade to design, perfect and introduce ER on a broad scale (from 1982 to 1992). ER received wide-spread employer support as a means to establish a higher degree of employer accountability.⁴⁴
4. Experience rating deals with the management of “moral hazard” in workers’ compensation insurance, which is the *“resulting tendency of an insured to under-allocate to loss prevention after purchasing insurance.”*⁴⁵
5. The underlying economic theory under-pinning experience rating is straight forward – higher costs internalized by employers for injuries should translate into workplace safety

⁴² We are unable to appreciate the contemporary sense of urgency to ER reform. Eleven years ago, in March, 2000, the WSIB released a paper, “**A Review of WSIB’s NEER and CAD-7 Experience Rating Programs**” to “examine steps that might be taken to improve the effectiveness and responsiveness of current programs” (Executive Summary, p. i). The areas explored in the paper were “cost vs. frequency based model”, “retrospective vs. prospective model”, “experience rating and rate setting”, and the “Second Injury and Enhancement Fund.” Each and every one of these issue are again “under review”. That the Board did not push the reform agenda on these issues for 11 years absolutely shows the true sense of institutional urgency. There is none. There is no reason for a hurried process and an abundance of rational for a calm, well-structured and focused process, spread over a realistic time-frame of 3-4 or more years. As noted, we are not at all opposed to a review. We do oppose one with a false urgency.

⁴³ See **Tab 5**, WSIB responses to information requests, p. 7, response to “Request No. 3”

⁴⁴ For a more detailed history, see “**Chronology and History of WSIB’s Incentive Programs**”, January 2011, posted on the WSIB website at <http://www.wsib.on.ca/files/Content/FundingReviewFRChronologyHistory/ExperienceRatingChronologyHistory.pdf>

⁴⁵ Kenneth S. Abraham, “Distributional Risk: Insurance, Legal Theory, and Public Policy, (Yale University Press, New Haven and London) 1986 at 14.

expenditures to the point where “*the marginal cost of reducing injuries equals the expected marginal benefits.*”⁴⁶

6. Employers have generally supported the following principles: a) The primary principle of ER is insurance equity; b) ER must be cost based; c) Sector specific options and design variations should be permissible. We support those principles.
7. The recent ER “debate” was triggered from long-standing opposition to the very idea of ER. Ongoing opposition to ER seems firmly entrenched and fuelled more by ingrained beliefs than by evidence or principles. On a principled basis, the case for ER is, we respectfully submit, undeniable. It has been proven to be an effective workers’ compensation insurance mechanism yet the controversy continues. At this juncture in the debate it must be concluded that the disparagers of ER rest beyond the boundaries of persuasion. They cannot be persuaded and will not be convinced no matter the evidence or arguments presented. Over time, this intransigence exposes a fatal defect to the critique, no matter how impassioned, one that cannot overcome reason and convincing contrary objective evidence.
8. The most energetic denigration of ER centers around allegations of improper employer conduct motivated by ER itself. To address this, we refer to an article attached at **Tab 9**.⁴⁷ While this article addresses the issue through reference to the NEER plan, we submit that the principles articulated are applicable to the CAD-7 experience rating plan.
9. ER critics allege that ER promotes rogue employer behaviour. In other words, the business decision-maker is making an untoward but nonetheless rational business decision to promote its business self-interest. Essentially the argument is this - employers will either hide claims or make up phoney jobs to save money. The article proves that the very employer the critics are concerned about - the rational self-interested employer interested only in saving money - will be the last person to behave in this fashion.
10. With that said, we reject outright the allegations that Ontario’s employers are cold-hearted, self-interested financial maximizing ogres who will engage in immoral and illegal behaviour to save money. Frankly, these allegations debase what we know are well intentioned motives of those today criticising ER, who as much as anyone, seek to promote workplace safety and effective return to work. While every successful employer keeps an eye to the bottom line, by no stretch can this be transformed into a licence to rationalize immoral or illegal behaviours. By even suggesting this, the critics expose a lack of understanding of the workings of the very programs they are attacking. In short, the critics are not well informed.
11. As the article notes, it is in the technical details that the allegations are proved false. That though has been the problem with this debate from the get-go. The disparaging allegations are easy and can be summed in a sentence or two. The counter-argument though takes knowledge, time and ink.
12. The very economic theories that the critics worry will motivate untoward behaviour actually will encourage the opposite – the provision of sustainable and economically vibrant suitable employment. The critics cannot base ER policy development on a silly assumption that Ontario business will make unsustainable business decisions.

⁴⁶Barry T. Hirsch, David A. Macpherson, J. Michael Dumond, “Workers’ Compensation Reciprocity in Union and Nonunion Workplaces”, (1997) 50 Indus. & Lab. Rel. Rev. 213 at p.6 of 73 (Westlaw).

⁴⁷ **Tab 9:** May 12, 2008 issue of **The Liversidge e-Letter**

13. The WSIB was not concerned before media reports surfaced (in 2008). In fact, in the mid-2000s, at its most senior levels, the WSIB affirmed ER as an essential program as minor program adjustments were designed and implemented.
14. Importantly, the systemic benefits of ER were heralded in a well received report from the **Institute of Work and Health**, “*Assessing the Effect of Experience Rating in Ontario: Case Studies in Three Economic Centers*”, (June 2005): “*Our research indicates that NEER functions well, encourages prevention and contributes to positive workplace health and safety practices.*”
15. It was not until the Spring of 2008 when a very critical front page series started appearing in the Toronto Star that the Board reacted.
16. It has been a long while, almost a generation in fact, since the fundamentals of ER have been addressed. On that basis alone, a full scale assessment is worthwhile. While a WSIB sponsored 3rd party review was released just over a year ago, it was fairly general and did not recommend new design alternatives. In fact, the report (correctly) suggested that a new “world class” system would take years to develop.
17. Major program design requires thoughtful analysis and the assessment of competing design considerations, brought together with a process that ensures stakeholder support.
18. Recognizing that a design misstep will be unrecoverable, the Board must proceed cautiously. There is no urgency. There is no crisis. There are no deep-seated design flaws in the current programs. That said, the administrative support provided to ER over the years, has weakened from a strong start (in the 1980s) and since overall has been sporadic and at times non-existent.
19. While the B.C. model may have certain merits, so do the Ontario programs. An overview of the B.C. WorkSafeBC program is outlined at **Appendix J**, at **page 64**. It should be noted that the B.C. ER system is presently under review as it applies to that province’s construction sector. The B.C. construction industry is resisting those changes and in a March 1, 2011 communication voiced this concern:⁴⁸

The COCA Directors strongly believe that the 33/33 levels should be made permanent. Our industry has a highly transient workforce that moves from project to project; soft tissue injuries are very difficult to diagnose and to manage; the recent recession has dramatically increased the duration of claims and created major financial challenges. We are in a fragile recovery stage; this is not the time to make a major change to serve the convenience of the WorkSafeBC administrative process.

The COCA Board of Directors has unanimously passed the following resolution at its January 26, 2011 meeting:

Motion: That COCA continues to support the Experience Rating system for the Construction Industry that is based on a maximum 33% merit and a maximum 33% demerit.

20. Whatever the design arithmetic for an ER program, smaller employers must receive appropriate and special consideration. The “problem of small employers” is aptly addressed in a May 1998 report to the **British Columbia Royal Commission on Workers’ Compensation**.⁴⁹

⁴⁸ COCA Update on WorkSafeBC Activities #503 March 1, 2011, found at:

<http://www.bccasn.com/coca/documents/COCAUpdate503.pdf> (last accessed April 8, 2011)

⁴⁹ May 1998, Evidence on the Efficacy of Experience Rating in British Columbia, A Report to The Royal Commission on Workers’ Compensation in BC, Hyatt & Thomason, found at

<http://www.wsibfundingreview.ca/resources.php> and <http://www.iwh.on.ca/wsib/resource-documents-on-experience-rating> [hereinafter “Hyatt”] (last accessed April 8, 2011), at pp. 5-6. Professor Hyatt was a non-aligned technical expert participant at the Funding Review January 25/26, 2011 Technical Sessions.

Problem of Small Employers

It is generally acknowledged that the employer's ability to control the frequency or severity of workplace accidents is limited, so that a particular accident may or may not reflect the underlying risks of injury in the workplace. If the employer's workforce is large, then rate-makers can rely on the statistical "law of large numbers" to ensure that the accident rate accurately reflects underlying risks. However, if the firm is small, then the accident rate may or may not accurately represent workplace safety. Consider a firm with a single employee who experiences an accident unrelated to "controllable" workplace risks. For example, while making a delivery, the firm's only worker is killed by a drunk driver. This accident would identify the employer as a high-risk employer when, in fact, underlying workplace risks may be considerably less than average for the rate group. A practical consequence of this problem is that such an accident, in the context of an experience-rating program that charges firms for all incurred accident costs, could easily bankrupt the small employer. In addition, it is questionable whether extending experience rating to small employers is, in fact, equitable. Equity is not synonymous with equality. While equity implies that similarly situated firms should be treated similarly, it also implies that firms that are different may be treated differently. Experience rating is designed to adjust a firm's compensation costs so that they reflect the underlying risks inherent in the individual workplace. However, as noted, the individual firm's accident experience is not a good measure of underlying risks for small employers, so that, an experience rating program that is optimal for large firms is likely to be less effective for small ones and vice-versa. It is questionable whether a rate adjustment that is largely based on random events outside the employer's control offers small employers any real incentive to increase workplace safety.

21. In Ontario, a significant number of employers are quite small. 98,000 employers fall under the "**Merit Adjusted Premium**" ["MAP"] plan, compared to 16,500 under the **NEER** plan and 6,000 under **CAD-7**.⁵⁰ The **MAP** plan appears to be a compromise ER program, ensuring some level of simple ER participation with smaller employers (up to \$25,000 in premiums), and is relatively uncontroversial. Serious consideration should be given to increasing the ceiling for MAP, which presently applies to \$560 million in premiums (approx. 18% of the total Schedule 1 premium).
22. A fundamental ER design choice is whether the program is retrospective or prospective. Some industries may prefer one *over* the other or some elective approach (by the assessed employer) for one *or* the other. The CITF strongly endorses a retrospective plan and will strenuously resist any movement towards a prospective ER plan, regardless of the (eventual) design arithmetic (if the CAD-7 program is eventually adjusted). With that said, we are not at all opposed to other industries adopting a different program. These are our reasons:
 - a. *First*, the principal advantage of retrospective rating is a more direct and immediate link between claims experience and compensation costs.⁵¹
 - b. *Second*, a retrospective scheme assists in middle management empowerment, proved to be a strong link between positive managerial action and senior management support and engagement.
 - c. *Third*, a retrospective system promotes a higher standard of WSIB accountability through the need for the Board to assume ongoing "ownership" of the premium rates, thus ensuring effective and dynamic pricing. Under a prospective system, the Board will own the formulae only, and will have an opportunity to defer responsibility for actual rates to each assessed employer. While arguably impeccable prospective formulae development and a credible rate setting scheme

⁵⁰ WSIB January 2011 "Employer Incentives" Deck, Slide 6.

⁵¹ Hyatt, at p. 11-12.

deliver one to the same place, we believe that a retrospective system delivers higher Board accountability.

Recommendation No. 24: Cost based ER founded on a principle of “revenue neutrality” (no off-balance – surcharge or rebate) must continue. Subjective audit based systems are not supported as a replacement vehicle for ER, although they (Safety Groups, etc.) may work as stand-alone complementary initiatives. A retrospective system is endorsed and a prospective system is rejected.

Recommendation No. 25: While an ER review is not opposed, the Funding Review is not the appropriate forum through which to explore alternative design features. As the fundamentals of ER have not been effectively addressed within a generation, all WSIB ER programs are ripe for review. The WSIB should commit to a comprehensive process akin to the process and protocols employed during the inaugural design period of the early 1980s.

L. Second Injury and Enhancement Fund

1. As part of the ER review, the Board is reviewing **Second Injury and Enhancement Fund** [“SIEF”] and seems eager to eliminate or severely curtail SIEF. The Board opines that SIEF increases system costs while in fact SIEF is purely redistributive, a point emphasized by the non-aligned experts in the January 25/26, 2011 Technical Sessions. SIEF however is an essential insurance element that respects the competing intersection between *controllable* costs and the “thin-skull” legal paradigm governing entitlements.
2. It should be noted that the current policy discussion initiated by the WSIB is virtually identical to a policy dialogue commenced more than twenty (20) years ago. Reference is made to the **WCB Discussion Paper, *The Application of the Second Injury and Enhancement Fund, January 5, 1990***. After an extensive consultation exercise (a more involved process than currently being addressed by the Board, triggered with the release of a detailed and comprehensive policy options paper), the Board shelved plans to adjust SIEF. It is also of interest to note that the Board again attempted to seriously alter SIEF ten (10) years later in 2000.⁵² Similarly, those plans did not proceed. From these failed past policy initiatives it can be concluded that Ontario employers support SIEF, and resist change, for clear and objective reasons. It is an ineffectual and arguably disrespectful policy tactic to raise the same (rejected) policy reform idea every 10 years. The principles remained unaltered.
3. Our policy discussion of SIEF is set out at **Appendix K at page 66**. For the reasons carefully set out, we are of the view that SIEF remains a valid and necessary program. We draw the Funding Review to

⁵² See “A Review of WSIB’s NEER and CAD-7 Experience Rating Programs: Executive Summary”, March, 2000, p. (v)

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4. With that said, as canvassed earlier in this submission, we do not oppose sector or class specific policies. SIEF in fact, may not fit all industries equally and some industries may prefer no SIEF. Such should be permissible.
5. The non-aligned experts clearly advocate that the issue of SIEF should be left to the stakeholders.

Employers feel comfortable with the current situation while workers are not vocal on the topic. This is a policy issue that should be discussed with stakeholders. (**Experts Report, p. 8**)

Recommendation No. 26: SIEF must continue. The current design of SIEF is fair. SIEF is purely redistributive and does not add to system costs. Class variables are to be permitted. If the Board is eager to proceed with an SIEF review, the development and release of a policy options paper akin to the paper released in January 1990 must be a precursor to any reform initiative. Focused stakeholder engagement outside the scope of a large review project such as the Funding Review is essential.

M. Occupational disease claims:

1. Occupational Disease ["OD"] claims have doubled over the past decade with the trend expected to continue. See **WSIB Occupational Disease Deck, Slides 4 & 5 (Appendix H, pp. 61 & 62)**.
2. The WSIB currently expects OD claims costs to rise 5% every year into the future. The **Canadian Institute of Actuaries** ["CIOA"] may require an OD provision (for known diseases). The WSIB estimates that full valuation of OD costs would add \$300-\$400 million to the UFL. Currently accepted OD claims are presently funded within the scope of the existing system.
3. The non-aligned experts are of the view that funding OD cases "*is an interesting issue, but is not really material in addressing the UFL*":

The cost of occupational diseases must be considered in the rate setting process whether or not there is a liability for long-latency claims. The real issue with long latency occupational diseases is the distribution of costs among generations of employers and the industries, but the problem exists with or without the liability for long-term latency claims. This is an interesting issue, but is not really material in addressing the UFL. (**Experts' Report, p. 8**)

4. The non-aligned experts generally held to the proposition that: a) existing claims are presently funded; b) an OD fund for known diseases should be developed if required by CIOA, but not before; c) funding "not yet known" OD risks should be taken off the table until the UFL is reduced to zero. We accept and support these opinions.
5. What is of increasing concern though is the larger policy question. There is a false presumption inherent in the contemporary funding dialogue. All of the funding considerations accept as a given that the current entitlement paradigm has integrity, notwithstanding high level reports (from Weiler's 1980 Report onwards) that the system cannot fairly allocate OD claims costs as the system cannot fairly establish causal links.

6. There have been several inquiries and reports addressing the issue of OD, including **Paul C. Weiler: *Reshaping Workers' Compensation for Ontario: November 1980*** ["Weiler I"]; **Paul C. Weiler: *Protecting the Worker from Disability: Challenges for the Eighties: April, 1983*** ["Weiler II"]; **Terence G. Ison: *Compensation for Industrial Disease Under the Workers' Compensation Act of Ontario: September, 1989*** ["the 1989 Ison Report"]; and, **Minister of Labour: *Report of the Occupational Disease Task Force: March, 1993*** ["the 1993 Task Force Report"]. The most recent were ***Final Report of the Chair of the Occupational Disease Advisory Panel (ODAP), February, 2005*** and the ***ODAP Chair's Response to ODAP 2004 Public Consultation (February, 2005)***.
7. In that latter report (**attached at Tab 8**), the ODAP Chair offered these comments, introducing what remains to be, unfinished policy business (at **pp. 10 – 11**):

This leads to the last point to be dealt with in this section. This is the broad concern expressed by some labour and employer representatives that the current system, which treats the financing of occupational disease costs no differently than it does for other workplace injuries, may not be sustainable in the long run because it cannot achieve fairness to both workers and employers. Mr. Liversidge summarized this view:

Compensating occupational disease is not a debate about creating cost. The costs exist. [It is] a debate about who absorbs those costs, employers directly or collectively, workers directly or collectively or society at large ... Almost a quarter of a century ago Professor Weiler released his first very influential report which as most people know set out the policy for some of the most influential changes and reforms of the Ontario workplace safety and insurance scheme since [its] inception ... He addressed every leading issue facing the system at the time including the then and now perpetual dilemma of compensation for occupational disease ... He observed that the Ontario workers' compensation system was essentially established for compensation for injury arising from traumatic injury.

A system funded 100 per cent by employers for injury arising out of employment made sense, was internally consistent and workable. [In the case of occupational disease] the system no longer maintained the same internal consistency. The need to establish an employment causal link, essential in a 100 per cent employer funded regime, was recognized by Weiler to be an impossible task ...

The ODAP terms of reference did not include funding. I bring it up here because it is a long-standing issue and it was raised a number of times in both labour and employer submissions. My own view is that the search for a new funding formula that somehow spreads the occupational disease costs across a broader base and is therefore accepted as fair by all stakeholders, particularly employers, may be just as elusive as other aspects of occupational disease policy have proven to be.

Nonetheless I do recommend that the Board take thought on the issue of funding formulas and consider asking WSIB staff to prepare a paper on the subject, which could be circulated, for public comment.

8. We encourage the **Funding Review** to re-spark this debate, and recognize that eventually, and better sooner than later, the broader policy dialogue of compensating and funding OD which commenced more than 30 years ago, must restart.
9. The principles behind excluding long-latency claims from ER remain valid – i.e., holding employers to account (through ER) for diseases that do not respond to contemporary management action seems redundant and out of step of the policy objectives of ER.

Recommendation No. 27: OD claims costs should be collectivised at the RG or Class level (i.e., not subject to ER).

Recommendation No. 28: The WSIB should not establish a special OD fund unless required to do so by the Actuarial Standards Board.

Recommendation No. 29: The WSIB should not create a speculative OD fund for “unknown OD”, i.e., where a cause and effect has not been scientifically established.

Recommendation No. 30: The WSIB must assume a leadership role in continuing the broader public policy debate triggered by “Weiler 1” in 1980, and as recommended by ODAP Chair in February, 2005. The debate is long overdue and remains stalled. The OD challenge will not be met with a new funding model unless worker contributions are included.

N. Benefits Indexation:

1. The relevant history pertaining to benefit indexing is set out in the chart below (from **WSIB Indexation Deck, Slides 4 – 5**):

Prior to 1986	No automatic annual indexing <ul style="list-style-type: none"> • <i>Workers’ Compensation Act</i> provided for ad hoc indexing for each year –usually on the basis of lost wages but later on the basis of lost purchasing power
1987 –1994	<ul style="list-style-type: none"> • Bill 81 (effective January 1, 1987)introduced automatic indexing to the Consumer Price Index for Canada (CPI) and provided that all benefits would be indexed by 100% CPI
1995 –1997	<p>Bill 165 (effective January 1, 1995) split indexing of benefits into two groups: a)for fully disabled injured workers and survivors: 100% CPI; b)for partially disabled injured workers: Friedland formula which was 75% of CPI, less 1%, with a floor of no less than 0% and a cap of no more than 4%</p> <ul style="list-style-type: none"> • 100% CPI applied to those individuals receiving 100% worker pensions (pre-1990 workplace injuries), \$200 monthly old-age supplement paid to the most financially vulnerable, 100% wage loss under Future Economic Loss (1990-97) (FEL), and survivor benefits • Friedland formula applied to most injured workers –those receiving less than 100% worker pensions (pre-1990) and partially disabled partially disabled injured workers under the FEL plan (1990-97)
1998 –2007	<p>Bill 99 introduced a revision to the indexing formula for most workers, known as the Modified Friedland Formula</p> <ul style="list-style-type: none"> • Modified Friedland Formula was $(1/2 \times \text{CPI}) - 1\%$, with a cap of 4%. For example, if CPI were 3%, then $[(0.5 \times 3\%) - 1\%]$ would mean indexing at 0.5% • 100% CPI continued to apply to individuals receiving 100% worker pension (pre-1990), FEL recipients experiencing 100% wage loss, and survivor benefits • However, the pre-1990 \$200 recipients no longer had full CPI protection, but were subject to the Modified Friedland formula
2007 –09	<ul style="list-style-type: none"> • Based on Modified Friedland, approximately 155,000 workers received an indexation increase on January 1, 2007 of 0.1% • Bill 187 (effective 2007)created a regulation which introduced three

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	<p>temporary increases of 2.5% each to benefits payable to partially disabled injured workers on July 1, 2007, and each of January 1 2008 and 2009</p> <ul style="list-style-type: none"> • The impact of Bill 187 was an increase to the benefits liability (and UFL) in 2007 of \$570 million. Indexation after 2009 was assumed to be the long-term assumption of 0.5% per year
2010	<ul style="list-style-type: none"> • Under the regulation the Government (effective 2009) extended 0.5% indexing for 2010 benefits payable to partially disabled injured workers
2011 –12	<ul style="list-style-type: none"> • Under the regulation, the Government (effective 2010) extended 0.5% indexing for each of 2011 and 2012 for benefits payable to partially disabled injured workers

2. With respect to benefit indexing, the policy contest is between full and partial indexation. Currently, 100% benefits are fully indexed (to CPI). Less than 100% benefits receive partial indexing (the current *Modified Friedland*) buttressed by *ad hoc* **Order-In-Council** decrees. (See above chart.).
3. Whatever the overall and eventual recommendation of the Funding Review with respect to benefit indexing, **WSIA s. 52.1**⁵³ must be repealed. The very act of even potential *ad hoc* benefit adjustments by Cabinet decree is a stark antithesis to system funding integrity. This is an archetypical example of volatile and overt political leverage over benefit expenditures that must be brought to permanent closure.
4. It is generally accepted that pension benefits (of whatever form or source) should be indexed (to prices or average wages) to insure pension recipients against an erosion of purchasing power.
5. The prevailing presumption operating in the Ontario WSI scheme appears to be this: that pensioners within the same class (currently there are two classes – those receiving 100% benefits and those receiving less than 100% benefits) occupy analogous circumstances *vis-à-vis* income replacement.
6. Full indexation is most supportable when the benefit recipient is fully dependent on the benefit. This principle is presently enshrined in the WSIA – 100% benefits receive 100% indexation.
7. However, the issue of indexation becomes less clear for those not fully dependent on the benefit, i.e., those receiving less than 100% benefits. The Ontario circumstances are complicated by a historical “hodgepodge” of benefits, further complicated by massive and often retroactive structural changes to benefits over the years.
8. For example, prior to 1990, pension benefits were not linked to wage loss. In fact, the majority of WSIB pre-1990 partial pensions (some estimate 80%) overcompensate as there was either no or little wage loss. Pre-1990 pensions are payable for life. Since 1990 benefits have been based on wage loss but “locked-in” after six (6) years. Post-1990 pensions are payable to age 65. A post-1990 pensioner may return to a pre-injury earnings profile (post lock-in) and still (lawfully) receive the loss of earnings benefit, even if no wage loss persists.

⁵³ **Regulations re temporary indexing factor and additional adjustment:** 52.1 (1) The Lieutenant Governor in Council may, by regulation, (a) prescribe a temporary indexing factor to replace the general indexing factor described in subsection 49 (1) for the purposes of subsections 51 (5) and 52 (1.3), and specify the calendar year for which the temporary indexing factor shall be applied . . .

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9. This is the policy dilemma – should all partial pensioners be treated alike (current) or should those pensioners in need (i.e., dependent on the benefit) receive full indexation while others receive partial or no indexing?
10. Fundamentally, the issue becomes one of policy priority. In a fully funded WSI system, the issue becomes less significant and likely all pensions would be fully indexed absent any policy angst. The question arises in the context of a large and growing UFL. Providing universally fully indexed pensions triggers additional financial pressures on an already financially stressed system. This appears to be the initiating rationale for limiting benefit indexing (by the NDP it must be remembered).
11. The difficult to rebut argument initially advanced is one based on equity. After all, injured workers receiving partial benefits are not at all responsible for the development or current state of the UFL, but seem to be an integral element to its management. Injured workers in receipt of partial benefits it would appear are being asked to assume a sacrifice (eroding purchasing power) without any prevailing interest at stake. Or, so it would seem.
12. At first blush, this is a seemingly persuasive point. However, equity must be assessed in a broader context. We submit that a direct injured worker interest is at stake – benefit sustainability and system viability.
13. However, even if that point promotes some concession, it still may seem unfair for a certain class of workers to be required to make this sacrifice with no complementary sacrifice from an analogous class of employers. Except there is an ever growing analogous class of employers making a similar if not more substantial sacrifice. Any new employer entering the Ontario WSI system afresh, notwithstanding having “clean-hands” with respect to the creation and development of the UFL, immediately assumes a large funding commitment equal to, on average, about 1/3rd of the premiums paid.
14. The responsibility for the UFL therefore is a shared one even for parties that bear no direct culpability in its creation or growth. However, as *all* parties have an interest in the perpetual viability of the Ontario WSI system, be it workers, injured workers, employers of long-duration or new employers, some level of joint participation in the management of the UFL seems supportable as a legitimate policy expectation, so long as that participation itself is fairly and reasonably designed and calibrated.
15. Since employers legally assume the role of funder, employer participation most certainly should be significantly disproportionate to any injured worker participation through forgoing full benefit indexing.
16. We are of the view that the current statutory design (absent *ad hoc* increases by decree) effectively and fairly meters that participatory balance. The current statutory framework (i.e., the so called “Modified Friedland” formula) is a rough mechanism that calibrates the policy tensions set out above.
17. However, should the Funding Review conclude otherwise, we caution against proposing full indexation for all benefit recipients. It is inappropriate for benefit recipients not experiencing actual wage loss to receive benefit enhancement through indexation. We respectfully submit that while such a universal policy may seem equitable, it is equitable only in its simplicity.

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18. Providing protection for (pre-injury) purchasing power erosion when there is none (since there is no wage loss) is unsupportable, and in effect expands a dividend to an already over-compensated class of workers.
19. We present an alternative proposal still consistent with the aforementioned principles but also consistent with the principle of eroding purchasing power.
20. If a legitimate distinction can be made between 100% benefit recipients and less than 100% benefit recipients, a more persuasive distinction can be made between partial benefit recipients experiencing an ongoing wage loss and partial benefit recipients not experiencing an ongoing wage loss (as determined by a comparison of pre-injury and current earnings). The former group clearly enjoys a more legitimate claim for indexation than the latter.
21. Developing a “needs test” (for want of a better descriptor, i.e., indexing only those pensions representing an actual wage loss) may be the fairest and most internally consistent approach when faced with today’s funding pressures.

Recommendation No. 31: Whatever the overall and eventual recommendation of the Funding Review with respect to benefit indexing, WSIA s. 52.1 must be repealed.

Recommendation No. 32: So long as there remains an UFL that itself is materially influencing the financial direction of the WSI system, the current curb on inflation’s effect on partial pensions should continue.

Recommendation No. 33: Ideally, as the rationale for indexation is linked to purchasing power erosion, indexation should be limited to instances of wage loss, thus removing inflation protection for pensioners not experiencing a wage loss. The Funding Review is encouraged to explore this policy alternative.

Concluding comments:

We respect the enormity of the mandate and tasks before the **Funding Review**. Our presentation is guided by these final thoughts: The work of the Funding Review will set the direction of the Ontario WSI system for the next 20 – 30 years. Changing the financial direction of the WSI system has been tried before. It did not succeed. The tolerance for failure has been brought to an end.

Construction Industry WSIB Task Force
April 11, 2011

Appendix A: Construction Industry WSIB Task Force Members

Mechanical Contractors' Association of Ontario (MCA Ontario)

For purposes of introduction, MCA Ontario is a major Labour Intensive Provincial Construction Employer Trade Association (Management) that represents approximately 350 Construction Companies across Ontario – involved in the Mechanical Contracting field (Industrial, Commercial and Institutional, i.e. HVAC, Plumbing, Steamfitting & Gas Piping Systems, Sheet Metal Installations, Fire Protection and Refrigeration Systems); and is the “Designated Employer Bargaining Agency” under the Ontario Labour Relations Act for mechanical work performed in the Industrial, Commercial, Institutional and Extended Power Sectors of the province. Our Member Firms employ approximately 14,000 Construction Tradesmen across Ontario. For further information go to: http://www.mcao.org/about_mcao.php

Ontario General Contractors Association (OGCA)

The Ontario General Contractors Association (OGCA) was formed over 70 years ago from a desire to bridge the gap between national and regional associations. OGCA continues to ensure that the interests of general contractors and the construction industry are advanced. The OGCA advocates for the construction industry at all levels of government. Strong alliances with aligned groups and associations has resulted in successfully influencing changes in legislation and the development of programs that impact our members. For further information, go to: <http://www.ogca.ca/our-association/organizational-highlights/>

Ontario Road Builders association (ORBA)

The Ontario Road Builders' Association (ORBA) is the voice of over 100 road building contractors who build and maintain the majority of the provincial highway system and Ontario's municipal roads and bridges. The Association also represents almost 80 Associate Members who manufacture, distribute and/or supply products, equipment and services to the road building industry. For further information go to: <http://www.orba.org/introducing/index.asp>

Ontario Refrigeration and Air conditioning Contractors Association (ORAC)

ORAC represents Ontario's largest single organized body of contractor practitioners in the Commercial, and Professional, Refrigeration and Air Conditioning Trade. ORAC has actively and responsibly participated in making Ontario's trade contractors one of the most advanced and efficient in North America. ORAC has been called upon to play an important role in representing the Industry to numerous Provincial and Federal Ministries when consultation and legislation has been contemplated. <http://www.orac.ca/>

Ontario Sewer and Watermain Contractors Association (OSWCA)

The Ontario Sewer and Watermain Construction Association (OSWCA) has been representing sewer and watermain construction contractors across the province for more than 35 years, and currently serves over 700 member companies. OSWCA concerns include water system management, the environment, safety, contract terms, engineering, and many other issues relevant to the sewer and watermain construction industry. For further information go to: https://www.oswca.org/public/about_us/about_oswca/



Residential Construction Council of Central Ontario (RESCON)

RESCON is an employer association which represents the construction interests of both low rise and high rise residential builders exclusively. RESCON is the voice of residential builders on issues such as: WSIB, Health and Safety, Labour Supply and Training, Labour Relations, Building Code, housing supply and market affordability. For more information go to <http://www.rescon.ws/profile/2.asp>



Sarnia Construction Association (SCA)

The Sarnia Construction Association fosters and advances the interest of those who are engaged in the erection of construction of buildings in Sarnia and Lambton County. The SCA represents members in any matters pertaining to the building and construction industry in Sarnia and Lambton County. For further information go to: <http://www.sarniaconstructionassociation.ca/>



Appendix B: Comparison of Terms of Reference

 <p>Funding Review Terms of Reference as Posted September 30, 2010</p>	 <p>Funding Review Terms of Reference as Posted late December, 2010</p>	<p>Comments</p>
<p><u>WSIB FUNDING REVIEW TERMS OF REFERENCE: SUSTAINABLE FUNDING TO PROTECT ONTARIO'S INJURED WORKERS</u> [Note: Wording slightly different in December 2010 version]</p> <p>WHAT'S THE PROBLEM?</p> <p>Workplace injuries cost us all.</p> <p>Individual workers who have been hurt on the job know about the costs to their health, their finances, and their prospects for the future. Employers know about the costs to their workforce, their productivity and their bottom line.</p> <p>As a province, we share these costs and the toll that workplace injuries take on Ontario's labour productivity, workers' quality of life, and on corporate earnings. <u>The work needed to secure our ability to meet these costs – as the labour market, workforce demographics, and our economy changes – is the focus of this Funding Review.</u> [Note: Omitted from December 2010 version]</p>	<p>Terms of the Funding Review</p> <p>WHAT'S THE PROBLEM?</p> <p>Workplace injuries cost us all.</p> <p>Individual workers who have been hurt on the job know about the costs to their health, their finances, and their prospects for the future. Employers know about the costs to their workforce, their productivity and their bottom line. As a province, we share these costs and the toll that workplace injuries take on workers' quality of life, Ontario's labour productivity and on corporate earnings.</p> <p><u>The Funding Review will recommend to the WSIB how it can improve its funding policies to ensure its financial sustainability for the future.</u> [Note: New in December, 2010 version]</p>	<p>The scope has been altered leaving out “<i>the work needed to secure our ability to meet these costs . . .</i>”</p>
<p>The Unfunded Liability</p> <p>Ontario's Workplace Safety and Insurance Board (WSIB) is funded by the employers of Ontario. Employers pay premiums for no-fault collective liability workplace insurance – <u>coverage for their workers and insurance against unforeseen and potentially catastrophic loss.</u> [Note: Omitted from December 2010 version]</p> <p>Ideally, revenue from employer premiums along with investment revenue should form a fund that is equal to or greater than the costs of the system. However, over the last 25 [Note: Omitted from December 2010 version] years, revenues have fallen short of costs. The amount of money collected from employers and the income from the WSIB's investments has been less than the cost of worker benefits and administering the WSIB.</p> <p>This has created an unfunded liability (UFL) – a situation where the WSIB doesn't have sufficient funds to cover the full future cost of claims that are currently in the system. In 1984 a plan was developed to retire the UFL – to reach 100% funding by 2014. However, a combination of benefit increases, rising health care and claim costs, <u>artificially</u> [Note:</p>	<p>The Unfunded Liability</p> <p>Ontario's Workplace Safety and Insurance Board (WSIB) is funded by the employers of Ontario. Employers pay premiums for no-fault collective liability for workplace injuries and illnesses.</p> <p>Ideally, revenue from employer premiums along with investment revenue should form a fund that is equal to or greater than the costs of the system. However, over the [last 25 omitted] years, revenues have fallen short of costs. The amount of money collected from employers and the income from the WSIB's investments has been less than the cost of worker benefits and administering the WSIB.</p> <p>This has created an unfunded liability (UFL) – a situation where the WSIB doesn't have sufficient funds to cover the full future cost of claims that are currently in the system. In 1984, a plan was developed to retire the UFL – to reach 100% funding by 2014. However, a combination of benefit increases, rising health care and claim costs, [Note: “artificially deleted] low premiums and financial market downturns has kept the goal of full funding out of the WSIB's reach.</p> <p>At the end of 2009, the UFL stood at \$11.7</p>	<p>The projections for the UFL have been deleted</p>



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 <p>Funding Review Terms of Reference as Posted September 30, 2010</p>	 <p>Funding Review Terms of Reference as Posted late December, 2010</p>	<p>Comments</p>
<p>Omitted from December 2010 version] low premiums and financial market downturns has kept the goal of full funding out of the WSIB’s reach.</p> <p>At the end of 2009, the UFL stood at \$11.7 billion. <u><i>It is projected to rise to \$14 billion over the next three years.</i></u> [Note: Omitted from December 2010 version]</p>	<p>billion.</p>	
<p><u><i>Why Full Funding? Why Now?</i></u> [Note: Title reworded in December 2010 version]</p> <p>The WSIB needs to improve its financial position <u><i>by eliminating the unfunded liability and moving towards a fully funded system.</i></u> [Note: Omitted from December 2010 version]</p> <p>This is the standard for most other Canadian workers’ compensation systems. <u><i>With a fully funded system, future benefits are secure and employer premiums are lower.</i></u> [Note: Omitted from December 2010 version]</p> <p>Right now, the WSIB insurance fund is only large enough to cover about half of the future costs of claims that are currently in the system. Under the <i>Workplace Safety and Insurance Act</i>, “The Board has a duty to maintain the insurance fund so as not to burden unduly or unfairly any class of Schedule I employers in future years with payments under the insurance plan in respect of accidents in previous years.” WSIA s. 96(3)</p> <p><u><i>But unfortunately, the WSIB depends on future premiums to pay for current liabilities. It has also had to draw on its long-term investment fund to cover shortfalls in current costs.</i></u> [Note: Omitted from December 2010 version]</p> <p>The WSIB has attempted to keep premium rates stable while maintaining worker benefit levels and paying down the UFL. In a strong economy, it was possible to make up premium revenue shortfalls with investment returns. Since 2001, however, investment returns have been insufficient to make up the shortfall in premiums to cover administration and benefit costs. The global economic crisis amplified this problem and highlighted the need for a more realistic approach to managing the WSIB’s insurance fund. [Note: The order of this paragraph and the following paragraph have been reversed in the December 2010 version]</p> <p>In his 2009 Annual Report, the Auditor</p>	<p><u><i>Why is the Funding Level a concern now? What should the WSIB set as its funding target?</i></u> [Note: Differently worded]</p> <p>The WSIB needs to improve its financial position. <u><i>Full funding</i></u> [wording changed] is the standard for most other Canadian workers’ compensation systems. <u><i>This review will investigate questions of funding; what should the funding target and level be for the WSIB – full or sufficient - and what is a reasonable time to reach its funding target?</i></u> [Note: New in December, 2010 version]</p> <p>Right now, the WSIB insurance fund is only large enough to cover about half of the future costs of claims that are currently in the system. Under the <i>Workplace Safety & Insurance Act</i>, “the Board has a duty to maintain the insurance fund so as not to burden unduly or unfairly any class of Schedule I employers in future years with payments under the insurance plan in respect of accidents in previous years” WSIA s96 (3).</p> <p>In his 2009 Annual Report, the Auditor General of Ontario commented on the challenges of matching employer premiums to benefit costs, the role of government, pressures created by changes to benefits, and the WSIB’s investment strategy. The report also raised concerns about the size of the UFL and its impact on the future viability of the workplace safety and insurance system. This has highlighted the need for immediate action and a plan to address the UFL. [Note: The order of this paragraph and the following paragraph have been reversed from the September 2010 version]</p> <p>The WSIB has attempted to keep premium rates stable while maintaining worker benefit levels and paying down the UFL. In a strong economy, it was possible to make up premium revenue shortfalls with investment returns. Since 2001, however, investment returns have been insufficient to make up the</p>	<p>Retrenchment from focus of “full funding”</p>

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<p>General of Ontario commented on the challenges of matching employer premiums to benefit costs, the role of government, pressures created by changes to benefits, and the WSIB's investment strategy. The report also raised concerns about the size of the UFL and its impact on the future viability of the workplace safety and insurance system. This has highlighted the need for immediate action and a plan to address the UFL. [Note: The order of this paragraph and the preceding paragraph have been reversed in the December 2010 version]</p>	<p>shortfall in premiums to cover administration and benefit costs. The global economic crisis amplified this problem and highlighted the need for a more realistic approach to managing the WSIB's insurance fund. [Note: The order of this paragraph and the preceding have been reversed from the September 2010 version]</p> <p><u><i>In December of 2010, the government passed legislation that requires the WSIB to have sufficient funds to pay for current benefits as they become due and to provide for future benefits. The recommendations from the Chair of the Funding Review will help inform the government on the issue of an appropriate funding level and associated timeline.</i></u> [Note: New in December, 2010 version]</p>	
<p>Mandate</p> <p><u><i>The WSIB has established an independent third party year-long Funding Review.</i></u> [Note: Omitted from December 2010 version] <u><i>It will</i></u> consult broadly with workers, employers, representative organizations and knowledgeable experts in public meetings across Ontario, and online, to gather views on a number of specific public policy issues relating to the WSIB's financial future.</p> <p><u><i>The Chair of the Funding Review will seek a consensus on the best approach to addressing the UFL and related issues. However, with or without consensus,</i></u> [Note: Omitted from December 2010 version] the Chair of the Funding Review will produce a report on the consultation results and make recommendations to the WSIB in order to guide it towards a more stable financial future.</p> <p><u><i>To establish the scope of the Funding Review, the WSIB has set out its long-term vision for Ontario's workplace safety and insurance system, defined the mission of the Review, established the scope of the Review and the principles that will guide it, identified a number of specific issues that the Review must examine and procedural guidelines for the conduct of the consultation process.</i></u> [Note: Omitted from December 2010 version]</p> <p><u><i>Funding Review Vision: A fully sustainable system that will eliminate the UFL and protect the long-term integrity of the workplace safety and insurance system in</i></u></p>	<p><u><i>HOW TO SOLVE THE PROBLEM: UNDERSTANDING THE FACTS, CONSULTING THE STAKEHOLDERS, GETTING INDEPENDENT ADVICE</i></u> [Note: New in December, 2010 version]</p> <p>Mandate</p> <p>Mr. Harry Arthurs [Note: New in December, 2010 version], Chair of the Funding Review, is conducting an independent third party review of the WSIB's financial situation. The Chair of the Review [Note: New in December, 2010 version] will consult broadly with workers, employers, representative organizations and knowledgeable experts in public meetings across Ontario to gather views on a number of specific public policy issues relating to the WSIB's financial future.</p> <p>Mr. Arthurs will produce a report on the consultation results and make recommendations to the WSIB in order to guide it towards a more stable financial future. [Note: Position changed from September 2010 version] <u><i>Mr. Arthurs will provide periodic briefings to the President/CEO of the WSIB who in turn will provide status updates and report on the review's progress to the WSIB Board of Directors on a regular basis. Mr. Arthurs will also provide periodic briefs to the Ministry of Labour and to the government labour critics on the early learnings and the status of the review.</i></u> [Note: New in December, 2010 version]</p> <p><u><i>The WSIB has established the mandate, vision, mission and guiding principles for the Funding Review. Please see the WSIB</i></u></p>	<p>Funding Review no longer characterized as "independent"</p> <p>Funding Review no longer seeking consensus</p> <p>Mission and Vision deleted – Extremely significant and counter to our</p>

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<p><u>Ontario.</u> [Note: Omitted from December 2010 version]</p> <p><u>Funding Review Mission: To give WSIB stakeholders an opportunity to review the current pressures on the workplace safety and insurance system and provide input on issues related to the fiscal health of the WSIB.</u> [Note: Omitted from December 2010 version]</p>	<p><u>website for details.</u> [Note: New in December, 2010 version]</p>	<p>expectations.</p>
<p><u>Guiding Principles</u></p> <p><u>The following principles will guide the work of the Funding Review:</u></p> <ul style="list-style-type: none"> <u>Improving the funding position of the WSIB is important for building a financially sustainable and affordable workplace safety and insurance system.</u> <u>All employers covered by the WSIB must contribute to the full cost of running the system. Workers must co-operate with the WSIB, their health professional and their employer to help them recover and – when medically advisable – return to safe and sustainable work.</u> <u>The Funding Review will consult broadly on a range of public policy issues related to the WSIB's financial future.</u> <u>The Funding Review will share as much information as possible with the public, stakeholders and experts to ensure full understanding of the issues before it.</u> <p><u>The WSIB will respect the independence of the Chair of the Funding Review in organizing the consultation process and in formulating his recommendations. The Chair of the Funding Review will conduct the review in accordance with these guiding principles and within the scope of issues set out in this document.</u> [Note: Omitted from December 2010 version]</p>		<p>Guiding principles removed. Very significant that the following bullet has been removed:</p> <p><i>The Funding Review will consult broadly on a range of public policy issues related to the WSIB's financial future.</i></p> <p>The removal limits the ability of the Funding Review to address costs, a critical and essential element to the original Terms of Reference</p>
<p>Scope</p> <p><u>The Funding Review is designed to provide the WSIB with stakeholder input on a range of issues, including:</u> [Note: Language significantly altered in the December 2010 version]</p> <ul style="list-style-type: none"> <u>Funding: What should the WSIB</u> 	<p>Scope</p> <p><u>The key subject areas for the Funding Review include:</u> [Note: New in December, 2010 version]</p> <ul style="list-style-type: none"> <u>Funding: What is full funding?</u> [Note: New in December, 2010 version] 	<p>The Scope has been dramatically altered. We expected full adherence to the original scope which included:</p>

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<p><u><i>set as its funding target?</i></u> [Note: Omitted from December 2010 version] What is a reasonable time frame for the WSIB to reach its funding target, having due regard to the impact on employers? <u><i>What can the WSIB do to manage costs more effectively?</i></u> [Note: Omitted from December 2010 version. Very significant.]</p> <ul style="list-style-type: none"> • Premium rates: Is the current WSIB premium rate setting methodology appropriate? Should premium rates increase until the WSIB’s funding target is reached? • Rate Groups: Is WSIB’s Rate Group structure appropriate, given the principle of collective, no fault liability? What opportunities exist to simplify the Rate Group structure? • Employer incentives: Is the present design and operation of these programs appropriate? What alternatives exist to promote increased safety in the workplace, fairness in insurance costs to the employer, and incentives to employ injured workers? • Occupational disease claims: How should occupational disease claims be compensated and funded? Should they be a collective liability or charged back to specific employers? Should the WSIB establish a special fund for occupational disease claims • Benefits Indexation: <u><i>What form of indexation would be fair for partially disabled workers?</i></u> [Note: Omitted from December 2010 version. Very significant.] 	<p>What should the WSIB set as its funding target? What is a reasonable time frame for the WSIB to reach its funding target.</p> <ul style="list-style-type: none"> • Premium Rates: Is the current WSIB premium rate setting methodology appropriate? What changes would improve it to ensure that premium revenue covers costs? Should premium rates increase until the WSIB funding target is reached. • Rate Groups: Is WSIB’s Rate Group structure appropriate, given the principle of collective, no fault liability? What opportunities exist to simplify the Rate Group structure? • Employer Incentives: Is the present design and operation of these programs appropriate? What alternatives exist to promote increased safety in the workplace, fairness in insurance costs to the employer, and incentives to employ injured workers? • Occupational Disease Claims: How should the insurance fund treat occupational disease claims? Should they be a collective liability or charged back to specific employers? Should the WSIB establish a special fund for occupational disease claims? • Benefits Indexation: <u><i>How should the present Modified Friedland formula - that provides limited inflation protection - be replaced to ensure a fair level of indexation for partially disabled workers?'</i></u> [Note: New in December, 2010 version. Very significant change and contrary to commitment provided to ECO & CITF] 	<p><i>What can the WSIB do to manage costs more effectively?</i></p> <p>And:</p> <p><i>What form of indexation would be fair for partially disabled workers?</i></p> <p>With respect to the cost element, we assert this is an essential component, without which the Funding Review cannot seriously address its mandate.</p>
<p><u><i>Governance and Accountability</i></u> <u><i>The Chair of the Funding Review will provide periodic briefings to the President/CEO of the WSIB who will provide status updates and report on the review’s progress to the WSIB Board of Directors on a regular basis.</i></u> [Note: Inserted in a different section in the December 2010 version with an</p>		



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<p>addition of the Minister of Labour]</p> <p>Consultation Process <u><i>The Chair of the Funding Review will lead a year-long consultation to meet with workers, employers and their representatives in locations across Ontario.</i></u> [Note: Reworded in the December 2010 version] <u><i>An advisory group of four (4) distinguished individuals will support the Chair of the Funding Review, providing guidance and advice during the Review process. The Chair of the Funding Review will be responsible for producing a final report on the Funding Review.</i></u> [Note: Omitted from December 2010 version] <u><i>The Funding Review will also be supported by expert resources as needed. The WSIB will support the Review through financial analyses of claims and benefits history and projections, and alternative scenario building. Outside expertise will also be retained to model various alternatives and to research comparisons with other jurisdictions.</i></u> [Note: Omitted from December 2010 version] <u><i>Members of the WSIB executive team may be requested to attend some sessions in order to provide context for various issues and answer questions.</i></u> [Note: Omitted from December 2010 version] <u><i>Consultation sessions will be organized so as to ensure balanced exposure to the views of worker, employer and other stakeholders.</i></u>[Note: Omitted from December 2010 version] <u><i>Detailed notes on stakeholder feedback will be taken at each consultation session.</i></u> [Note: Omitted from December 2010 version] Written submissions addressing the questions raised in the Funding Review consultation paper can be submitted in hard copy to: WSIB Funding Review 200 Front Street West, Toronto, Ontario M5V 3J1 [Note: Reworded in the December 2010 version] Electronic responses to the questions can be submitted using the “Submit your comments” links within this electronic consultation document or via e-mail to questions@wsibfundingreview.ca Written hard copy and electronic submissions</p>	<p>Consultation Process As Chair of this independent review, Harry Arthurs will consult with injured workers, employer and all interested parties across the province. [Note: preceding sentence reworded] <u><i>To begin this discussion, Mr. Arthurs will be releasing a Green Paper to provide the context and background information on key issues within the scope of the Review, and will invite discussion by suggesting key questions for consideration.</i></u> [Note: New in December, 2010 version] <u><i>The Green Paper will be posted on this site in January 2011. Public consultations are being planned for the Spring of 2011. Please watch local newspapers and this website for calls of interest to participate in the public hearings.</i></u> <u><i>In addition to the public consultations, interested parties who prefer not to make a public presentation or are unable to attend a session will be able to submit their ideas in writing for improving the WSIBs financial position. Watch this website for further details.</i></u> [Note: New in December, 2010 version – spelling errors in WSIB original]</p>	<p>The deletion of these paragraphs: <i>The Funding Review will also be supported by expert resources as needed. The WSIB will support the Review through financial analyses of claims and benefits history and projections, and alternative scenario building. Outside expertise will also be retained to model various alternatives and to research comparisons with other jurisdictions.</i> <i>Members of the WSIB executive team may be requested to attend some sessions in order to provide context for various issues and answer questions.</i> suggests a very different role by the Board and a severe restriction on the information and data that will be presented.</p>

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<p>will be accepted until two weeks before the date of the consultation where they are to be submitted, or if not submitted at a consultation, until August 31, 2011.</p>		
<p><u><i>Consultation Schedule</i></u> [Note: Heading omitted from December 2010 version]</p> <p><u><i>In order to reach key stakeholders face to face, consultation sessions will be specifically aimed at employer and workers in key locations (to be determined) across the province.</i></u></p> <p><u><i>An interactive website www.wsibfundingreview.ca will provide stakeholders who cannot attend a consultation session with the opportunity to submit questions and comments.</i></u> [Note: Omitted from December 2010 version]</p>		
<p>The Funding Review will take place in five phases: [Note: Reworded in the December 2010 version]</p> <p>Phase One – October to December 2010</p> <ul style="list-style-type: none"> Chair of Review holds introductory meetings with key stakeholders, <u><i>their professional advisors and other experts.</i></u> [Note: Omitted from December 2010 version] <u><i>Posting of background papers on the WSIB website.</i></u> [Note: Omitted from December 2010 version] <p>Phase Two – January 2011 to April 2011</p> <ul style="list-style-type: none"> Release of a Green Paper for consultation <u><i>outlining key issues and providing data and analysis for various options and scenarios for discussion.</i></u> [Note: Omitted from December 2010 version] Public consultation sessions across Ontario. <u><i>Chair of Review meets with large employers, small and medium enterprise employers and employer advocacy organizations/associations.</i></u> [Note: Omitted from December 2010 version] <u><i>Chair of Review meets with workers, worker representatives, and labour advocacy organizations/associations.</i></u> [Note: Omitted from December 2010 version] 	<p>The Funding Review has five phases:</p> <p>Phase One – October to December 2010</p> <ul style="list-style-type: none"> Chair of the Review holds introductory meetings with key stakeholders <p>Phase Two – January 2011 to April 2011</p> <ul style="list-style-type: none"> Release of the Green Paper <u><i>in support of public hearings outlining key issues.</i></u> [Note: New in December, 2010 version] Technical consultation with expert representatives and <u><i>non-aligned experts.</i></u> [Note: New in December, 2010 version] Public consultation sessions across Ontario. <u><i>Ongoing research.</i></u> [Note: New in December, 2010 version] <p>Phase Three – May 2011 to October 2011</p> <ul style="list-style-type: none"> <u><i>Chair of Review to meet with worker and employer stakeholders to validate what was heard and ensure common understanding of the issues.</i></u> <u><i>Chair of Review to meet with WSIB, Ministry of Labour and labour critics</i></u> <u><i>Ongoing research</i></u> [Note: New in December, 2010 version] <p>Phase Four – November 2011 to December 2011</p>	

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<p>Phase Three – June 2011 [May] to September [October] 2011 [Note: Dates changed in December 2010 version]</p> <ul style="list-style-type: none"> • <u>Chair of Review meets with key stakeholders to share preliminary consultation results.</u> [Note: Omitted from December 2010 version] • Phase Four – September 2011 to November 2011 <p>Chair of Review reviews consultation findings.</p> <ul style="list-style-type: none"> • Chair of Review discusses options and recommendations with key stakeholders. <p>Phase Five- January 2012 Chair of Review provides report to WSIB</p>	<ul style="list-style-type: none"> • <u>Chair of Review to meet with employer and worker stakeholders to discuss options and possible recommendations.</u> • <u>Chair of Review to meet with WSIB, Ministry of Labour and labour critics.</u> • <u>Reports are finalized.</u> [Note: New in December, 2010 version] <p>Phase Five – January 2012</p> <ul style="list-style-type: none"> • Chair of Review to provide reports to WSIB <u>and the Ministry of Labour</u> [Note: New in December, 2010 version] <p>Please check this site regularly for updates on this Review.</p>	
<p><u>Deliverables</u></p> <ol style="list-style-type: none"> 1. <u>A report by the Chair of the Funding Review will be provided to the WSIB by the beginning of 2012.</u> 2. <u>A report summarizing stakeholder submissions and responses to the consultation questions will be published on the WSIB website as soon as it is available.</u> 3. <u>A separate summary of stakeholder comments on benefit indexing, along with recommendations from the Chair of the Funding Review will be provided directly to the government.</u> <p><u>The Funding Review report itself, together with a response to the report from the WSIB, will be published as soon as possible following receipt of the report.</u> [Note: Omitted from December 2010 version]</p>		

Appendix C: A chronology of relevant events pertaining to the Funding Review TOR

1. **September, 2010:** In the **Construction and General Business Advisory Committee** meetings held in September, senior WSIB officials very satisfactorily responded to requests that the (then proposed) **Funding Review Terms of Reference** include a focus on expenditures. This commitment was observed in the **Terms of Reference** released September 30, 2010.
2. **December 26, 2010:** It was observed that the WSIB Funding Review ["FR"] Terms of Reference ["TOR"] were altered from the September 30, 2010 original deleting any focus on expenditures.
3. **January 04, 2011:** A joint ECO/CITF letter was released to the WSIB Chair, WSIB President, and Funding Review Chair fully illustrating the scope of change in the TOR and demanding that the original TOR be restored. The position advanced:

In the strongest possible terms, ECO/CITF wish to express concern that the **Funding Review Terms of Reference** were changed without notice or our input. Consequently, we are reviewing our support. These changes erode our confidence that the **Funding Review** will be permitted to present a comprehensive analysis of the challenges facing the Ontario workplace safety and insurance system. *To be especially clear, the employers of Ontario will not stand idly by to acquiesce to the imposition of higher levels of payroll taxation without addressing the core sustainability issues facing the workplace safety and insurance system.* We ask that the December version of the **Terms of Reference** be vacated and the September 30, 2010 Terms restored.

4. **January 5, 2011:** WSIB CEO (separately) spoke to ECO/CITF Chairs. WSIB CEO was not aware of any changes to the TOR until advised by the CITF/ECO; Committed to investigate and advise.
5. **January 11, 2011:** WSIB CEO responds to ECO/CITF Chairs; advises that the ECO/CITF concerns will be satisfactorily addressed in the FR Green Paper, about to be released.
6. **January 12, 2011:** CITF/ECO Chairs respond to DM, the text of which is excerpted in full.

January 12, 2011

Dear Mr. Marshall:

Revised Terms of Reference of WSIB Funding Review

Thank you for your prompt response of January 11, 2011 and your commitment that our concerns will be addressed in soon to be released Green Paper by Dr. Arthurs.

Our concern that the Funding Review continue under the original Terms of Reference is confirmed by your statement that *"we can assure unequivocally, that there has been no substantive change in the focus of the Funding Review."* In fact you reiterate in your conclusion *"that there has been no change to the substance, purpose and conduct of the independent Funding Review."*

ECO and CITF will continue to participate fully in the Funding Review and agree that for this review to be successful all parties must move forward in the spirit of trust and goodwill. To ensure that this happens the lines of communications must remain open to provide for a frank dialogue on all the issues. In short the best discussion and debate on all related issues makes the best policy and reform.

Thank you again for your prompt response and look forward to more dialogue as the review continues.

- January 14, 2011:** FR Green Paper is released. TOR do not include any references to costs, and expressly sets out that this will not be addressed.

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Appendix D: History of WSIB Administrative efforts to address time on claim

Year	Administrative Action and Comments
1983	1983 was the first year that the UFL received special mention in the WCB Annual Report, with the funding ratio dipping to a then low of 49%. The Board responded as a first step “to make Ontario’s employers fully aware of the problem which confronts the province’s workers’ compensation system.” 1983 also saw the first time the Board articulated a recurring theme, linking the reduction of workplace injuries to system cost reductions noting: “Perhaps the best way to moderate these economic pressures is to reduce the cost of the system. <i>This can be done by reducing the number of workplace injuries and the length of time injured workers are on compensation – through increased accident prevention and improved vocational rehabilitation measures</i> ” [WCB 1983 Annual Report, p. 14].
1985	By 1985 the funding ratio dipped to 31.6% and the average premium rate increased to \$2.31. The Board cited one of the key reasons for the increase in the UFL as “ <i>rising persistency rates</i> ” (i.e., time on claim) [WCB 1985 Annual Report, p. 9]. The Board maintained its confidence that the UFL will still be zero by the year 2014 if, among other presumptions: “ <i>persistency rates go no higher than 1985 levels and injury rates go no higher than 1985 levels.</i> ”
1986	In 1986 the average premium rate was \$2.65. The WSIB commenced the first of many major administrative restructurings and reorganizations to “ <i>transform the Board into a more efficient, accessible and fiscally responsible service agency in the years ahead</i> ” [WCB 1986 Annual Report, p. 3].
1987	In 1987, the Board heralded the benefits of its new reorganization committing that it will “ <i>improve services to its clients and to streamline the way it does business</i> ” [WCB 1987 Annual Report, p. 14]. 1987 also saw the beginning of a renewed approach to reemployment of injured workers with the Board providing “ <i>consultative services on modified work programs</i> ” to employers. The Board commented positively on the effect of the funding strategy noting that it “ <i>has already had a positive effect on the “funding ratio” for schedule 1 employers</i> ”, reaffirming the commitment that the UFL will be zero by 2014 noting that it will peak in constant dollar terms in 1988-1989 and “ <i>decline gradually to zero within the next twenty-five years</i> ” [WCB 1987 Annual Report, p. 11]. In 1987 the UFL was \$6.7 billion with the funding ratio rising slightly to 35.6%.
1988	In 1988 the Board heralded a new “ <i>Vocational Rehabilitation Strategy</i> ” designed to “ <i>mitigate the effects of an injury on a worker’s employment capabilities</i> ” [WCB 1988 Annual Report, p. 3]. The same year, the Board lauded the introduction of “ <i>Integrated Service Units</i> ” which will “ <i>provide more personal, prompt, coordinated and efficient service</i> ” [WCB 1988 Annual Report, p. 10]. While the UFL increased to \$7.35 billion in 1988, the Board said this was, “ <i>well within the projections of the Board’s financial strategy and it is expected that the unfunded liability will begin to decline in real terms after next year</i> ” [WCB 1988 Annual Report, p. 15].
1988	The Board noted that the introduction of new medical and vocational rehabilitation strategies “ <i>must be viewed as investments and a more effective workers’ compensation system which are expected to be offset by injured workers’ more rapid recovery and earlier return to employment</i> ” [WCB 1988 Annual Report, p. 15]. The funding ratio sat at 38% at the end of 1988.
1988	In a 1988 Year End Review [“ Workers’ Compensation Board, 1988 Year End Review and 1989 Agenda ”] it was noted that 1988 “ <i>saw the completion of a three year effort at the workers’ compensation board devoted to the restructuring and revitalization of the organization</i> ” [p. 1], with a “ <i>focus on service delivery, financial soundness, public understanding and responsive administration</i> ” [p. 2]. The Board suggested that there had been a “ <i>significant change in the organizational culture of the WCB</i> ” related to a “ <i>new management style and new operating principles</i> ”, which over “ <i>the next few years will see the application of the reorganized WCB to meet emerging needs</i> ” [p. 3]. The Board established a new commitment to earlier intervention and a “ <i>structured goal oriented vocational rehabilitation plan</i> ” approach to worker reinstatement [p. 10].
1989	In a Claims Adjudication Strategy Report published May 8, 1989, to ensure more effective reemployment outcomes, Claims Adjudicators were required to review a case at six weeks benefit duration “ <i>to estimate whether the worker is likely to have difficulty returning to work, and thus likely to be on compensation for a protracted period of time</i> ”. It was expected that “ <i>the Board would develop case specific informed plans so that alternative solutions and approaches are sought and built around a comprehensive cyclical case review mechanism</i> ” [pp. 79-82].
1989	By 1989, the Vocational Rehabilitation Strategy “ <i>designed to reintegrate injured workers into the workforce earlier and more successfully</i> ” was considered a success and was implemented province-wide January 1, 1990 [WCB 1989 Annual Report, p. 16]. The Rehabilitation Strategy’s primary goal, “ <i>is to re-establish workers’ pre-accident earnings profiles by getting them back into their pre-injury jobs or finding them comparable work with the accident employer</i> ”.

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Year	Administrative Action and Comments
1989	In 1989 the Board optimistically projected that the UFL would be wrestled to the ground to zero not by 2014, but now a full seven (7) years earlier - by 2007 . At the end of 1989 the UFL sat at \$8.5 billion with the funding ratio receding to 38.7%.
1990	By 1990 the UFL jumped up to \$9.1 billion but the funding ratio calmed slightly to 40.1% [WCB 1990 Annual Report, p. 34]. Notwithstanding the reorganizations that took place from 1985 to 1990, in 1990 “ <i>the Board undertook a number of organizational changes with a view to enhancing the consistency and efficiency of claims decision-making and to better facilitate rehabilitation and reemployment of injured workers</i> ” [WCB 1990 Annual Report, p. 15]. One of the goals of yet another new Claims Adjudication process was described as “ <i>early restoration of earnings and early return to full activity for injured workers</i> ” [<i>ibid.</i>].
1991	By 1991, the funding ratio hovered around the 40 percentile range resting at 39%, while the Board reported that the past vocational rehabilitation initiative didn’t seem to deliver at all . The Board reported that, “ <i>client surveys conducted by the Board revealed that vocational rehabilitation does not appear to be meeting workers’ expectations</i> ” [WCB 1991 Annual Report, p. 14]. This time the reorganization “ <i>aimed for a steady improvement in service delivery</i> ” [WCB 1991 Annual Report, p. 14]. Notwithstanding the commitment to yet another reorganization, the then Chair of the Board reported in the 1991 Annual Report that “ <i>the pace of change over the past few years had generated significant problems</i> ” with staff “ <i>still reeling</i> ” from a variety of changes with the Chair identifying “ <i>a need to rebuild and stabilize</i> ” [WCB 1991 Annual Report, p. 4, Chair’s Message]. The Board was re-committed to “ <i>promoting return to work for injured workers</i> ”.
1992	In 1992 in a “ Report on the Chairman’s Task Force on Service Delivery and Vocational Rehabilitation, July 1992 ”, yet another new approach was suggested “ <i>for streaming claims on the basis of complexity, nature of the injury, and anticipated duration</i> ” [Report, p. 30]. In 1992, the Board found itself embroiled in “ <i>a severe recession, which has a strong negative impact on assessment income and benefit expenditures</i> ” which may place “ <i>the WCB’s long term funding strategy in jeopardy</i> ” [WCB Funding Strategy, Discussion Paper, February 1992, p. (i)]. The Board noted that, “ <i>while the revenue side of the WCB’s operations is adversely affected in a downturn, there is typically no corresponding offsetting effect on expenditures</i> ” [Discussion Paper, p. 10] and that “ <i>particularly severe impact of the current recession may be partly due to structural changes in the provincial economy</i> ” [Discussion Paper, p. 11].
1992	The 1992 funding discussion paper noted “ <i>the WCB is currently developing a comprehensive package of employment equity initiatives in the area of vocational rehabilitation with the aim of enhancing post injury employment opportunities for injured workers</i> ” [Discussion Paper, p. 15], which could result in “ <i>major savings to the system</i> ” [Discussion Paper, p. 27].
1992	At the end of 1992, the funding ratio dipped to 37.4%, with the unfunded liability hitting (what was then) a high water mark of \$11.03 billion [WCB 1992 Annual Report, p. 29]. In spite of this, the Chair of the Board reported “ <i>the Workers’ Compensation Board made progress on all fronts – operational, financial and in our relationships with stakeholders</i> ” [WCB 1992 Annual Report, p. 4].
1992	In 1992, the Board again readjusted its “ <i>business and service delivery practices to improve the system in its current form</i> ” [WCB 1992 Annual Report, p. 9].
1993	In 1993 the Board reported that it was “ <i>seeing the payoff in better case management which in turn has contributed to early return to work on average, thereby reducing benefit expenditures and slowing the growth of the unfunded liability</i> ” [WCB 1993 Annual Report, p. 4] even though the UFL at that moment sat at \$11.53 billion with the funding ratio at 36.6%.
1994	In 1994, the Board readjusted its organization yet again and developed an “ Integrated Case Management Model ”. “The integrated case management model emphasizes timely intervention and the active participation of workers, employers and health-care practitioners to return injured workers back to meaningful and sustainable work earlier. <i>This will reduce the duration of the life of a claim and the benefits expense.</i> ” [WCB 1994 Annual Report, p. 2] The UFL dipped to \$11.4 billion, with funding at 37.4%.
1995	By 1995, the funding ratio was back to the 40% level with the unfunded liability then at \$10.9 billion.
1996	In 1996 the UFL was at \$10.5 billion with a funding ratio now at 43%. During 1996 the Board reorganized yet again with “ <i>the Board’s most fundamental challenge</i> ” being “ <i>to re-tool Ontario workers’ compensation system to renew economic and social priorities</i> ” [WCB 1996 Annual Report, p. 2]. The Board committed to continue to reduce the frequency of workplace injuries and to improve the efficiency, effectiveness and consistency of claims adjudication and claims handling through “ <i>a more effective and efficient organization</i> ” [<i>ibid.</i>].
1996	A newly appointed Minister for Workers’ Compensation Reform reported in January, 1996 in the report “ New Directions for Workers’ Compensation: A Discussion Paper ” that “ <i>the WCB has devoted a great of attention and money to vocational rehabilitation over the past seven years</i> ” [p. 36], “ <i>yet the unemployment rate of injured</i>

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Year	Administrative Action and Comments
	<i>workers remains a persistent problem” [p. 37].</i>
1997	1997 ended with the UFL at \$8.06 billion, and the funding ratio increasing to 52%. In the WSIB 1997 Annual Report , the Board heralded this improvement noting: “ <i>Our new direction, together with new legislation, sets the course for elimination of the unfunded liability and financial soundness. Better service and a streamlined, fiscally responsible administration will also contribute to reduce the level of the liability. Our objective is to have a fully funded system by 2014, while maintaining fair benefits for injured and ill workers” [WCB 1997 Annual Report, p. 17]. The Board committed that, “<i>customer service will be provided by professional staff who are knowledgeable about the industry sector, the workplace, and its needs in terms of prevention and return to work” [WSIB 1997 Annual Report, p. 23].</i></i>
1998	In 1998 the Board reported that it was again restructuring to “ <i>deliver a new service and prevention mandates” [1998 WSIB Annual Report, p. 4], with the hallmark being another “new service delivery model” which calls for “integrated teams tailored to serve the unique needs of workplaces, communities and injured workers” [1998 WSIB Annual Report, p. 4].</i>
1998	1998 began with a focus on service improvement, with the Board noting that “ <i>bureaucratic processes and legacy systems, some as old as workers’ compensation itself, had the WSIB processing claims and employer assessments, rather than serving employers and workers with injuries” [WSIB 1998 Annual Report, p. 13].</i>
1998	The Board noted that as the result of “ <i>listening and learning” it reorganized “front line teams to serve workplaces according to business size and industry” [1998 WSIB Annual Report, p. 13]. The Board in 1998 heralded yet another renewed new focus on early and safe return to work [WSIB 1998 Annual Report, p. 15]. At the end of 1998, the UFL had dropped to \$7.98 billion with the funding ratio sitting at 56.8%.</i>
1999	By 1999 the UFL dropped to \$10.5 billion with the funding ratio at 62% with the Board noting that “ <i>we have laid a solid foundation for yet another five years of significant improvements in many areas throughout the WSIB” [WSIB 1999 Annual Report, p. 2].</i>
1999	Commenting on the effects of yet another reorganization, it was noted that “ <i>without question, our new service delivery model – which includes account managers, customer service representatives, consolidated adjudicators and nurse case managers – has improved service levels” [WSIB 1999 Annual Report, p. 2]. The Board noted that: “<i>The WSIB has set its course upon an ambitious business transformation and is firmly committed to making the fundamental changes that are necessary to ensure that its focus is on its customers and clients, that its processes are cost effective and efficient, and that it is a financially secure organization providing the comprehensive range of products and services needed by Ontario workers and employers to achieve the healthiest and safest workplaces in the world” [WSIB 1999 Annual Report, p. 24].</i></i>
2000	In 2000, the Board’s Chair noted that “ <i>for the sixth consecutive year, the unfunded liability was reduced” and now stood at under \$6 billion, “approaching a 50% reduction since 1995”. The unfunded liability was \$5.7 billion with the funding ratio at 66.8%. The Board commented that “the service delivery strategy initiative integrated a “new business model” into the organization that “the work we are doing is paying off” [WSIB 2000 Annual Report, p. 15].</i>
2001	In 2001 the Board reported that “ <i>the WSIB has become a forward thinking, outcome based organization and gets results for the people it serves” [WSIB 2001 Annual Report, p. 15] and the Board “renewed (its) focus on return to work” [WSIB 2001 Annual Report, p. 14]. The UFL was \$5.66 billion with the funding ratio coming in at 67% at the end of 2001.</i>
2002	In its 2002 Annual Report , the Acting Chair noted that employer premium rates had to increase as “ <i>the WSIB faces some of its most difficult problems in recent years”</i> . The Board set out several priorities, the first of which was to “ <i>continue the steady decline in workplace injuries”</i> , the second to ensure the Board “ <i>remains financially stable”</i> , the third committing the Board to “ <i>become more efficient and productive”</i> and the fourth to make “ <i>prudent investments and improving our business processes” [WSIB 2002 Annual Report, pp. 2-3]. At the end of 2002 the UFL was \$6.6 billion and the funding ratio was 64%.</i>
2003	In 2003, the Board announced another “ <i>new direction for early and safe return to work” that calls for “increased support to the workplace parties in the return to work process” [WSIB 2003 Annual Report, p. 15]. At the end of 2003, the UFL stood at \$7.135 billion with the funding ratio sitting at 62.4%.</i>
2005	In 2005 the WSIB Acting Chair (a different one) announced that the Board’s “ <i>most daunting challenge is economic” [WSIB 2005 Annual Report, p. 5] and that the Board faces “financial pressures from the growing persistency of some claims” noting that while “there are fewer injuries in total, there is an increase in the complex nature of some of them, requiring longer periods of care and recovery”.</i>
2006	In 2006, the Board reported that the unfunded liability came in at slightly less than \$6 billion (\$5.997 billion – the funding ratio was 73%) and that this “ <i>result indicates we are starting to turn the financial corner”</i> . The Board

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Year	Administrative Action and Comments
	was again revamping its return to work processes advising that “ <i>the WSIB continues to develop an integrated case management model to support and enhance return to work outcomes</i> ” [WSIB 2006 Annual Report, p. 10].
2007	<p>The WSIB reported in the 2007 Annual Report [at p. 32]:</p> <p><i>The WSIB is in the process of implementing a new service delivery model</i>, which will begin in 2008, involving a more coordinated and aligned approach to delivering service. Implementation includes three major projects:</p> <ul style="list-style-type: none"> • the redesign of roles on the service delivery teams for improved quality of service and efficiency • the new evidence-based case management approaches, designed to optimize the restoration of injured workers to health, employment and earnings, and to address increasing persistency rates • the implementation of enabling technology needed to coordinate, align and improve service delivery.

Appendix E: Excerpts from *Workplace Safety & Insurance Act* re WSIB Board of Directors

Workplace Safety and Insurance Act, 1997

S.O. 1997, CHAPTER 16

Schedule A

PART XIII

ADMINISTRATION OF THE ACT

WORKPLACE SAFETY AND INSURANCE BOARD

Board: continued, powers, etc.

159. (1) The body corporate known as the Workers' Compensation Board is continued under the name Workplace Safety and Insurance Board in English and Commission de la sécurité professionnelle et de l'assurance contre les accidents du travail in French and is composed of the members of its board of directors. 1997, c. 16, Sched. A, s. 159 (1).

Powers of the Board

- (2) Subject to this Act, the Board has the powers of a natural person including the power,
- (a) to establish policies concerning the premiums payable by employers under the insurance plan;
 - (b) to review this Act and the regulations and recommend amendments or revisions to them;
 - (c) to consider and approve annual operating and capital budgets;
 - (d) to review and approve its investment policies;
 - (e) to review and approve major changes in its programs;
 - (f) to enact by-laws and pass resolutions for the adoption of a seal and the conduct of business and affairs;
 - (g) to establish, maintain and regulate advisory councils or committees, their composition and their functions;
 - (h) to provide, on such terms as it sees fit, financial assistance to an employer who will modify the work or workplace so that an injured worker or the spouse of a deceased worker may re-enter the labour force;
 - (i) to establish a program to designate return to work and labour market re-entry service providers, to monitor the service providers' performance and to charge them a fee for the cost of the program. 1997, c. 16, Sched. A, s. 159 (2); 1999, c. 6, s. 67 (42); 2005, c. 5, s. 73 (41).

Duties of the Board

161. (1) The Board shall perform the functions assigned to it under Part II in respect of workplace safety and the prevention of injury and disease, shall administer the insurance plan and shall perform such other duties as it is assigned under this Act and any other Act.

Board of directors

162. (1) A board of directors shall be constituted to govern the Board and to exercise the powers and perform the duties of the Board under this or any other Act. It shall be composed of,

- (a) a chair appointed by the Lieutenant Governor in Council;
- (b) the president of the Board appointed by the Lieutenant Governor in Council; and
- (c) a minimum of seven and a maximum of nine members who are representative of workers, employers and such others as the Lieutenant Governor in Council considers appropriate, appointed by the Lieutenant Governor in Council. 1997, c. 16, Sched. A, s. 162 (1); 2007, c. 7, Sched. 41, s. 10 (1).

(1.1) For greater certainty, the positions of chair and president shall be held by different persons. 2007, c. 7, Sched. 41, s. 10 (2).

(2) The Lieutenant Governor in Council shall consult with the chair and the members described in clause (1) (c) before appointing the president of the Board. 1997, c. 16, Sched. A, s. 162 (2).

(4) The board of directors shall meet at the call of the chair and in no case shall more than two months elapse between meetings of the board of directors. 1997, c. 16, Sched. A, s. 162 (4).

(5) A majority of members of the board of directors holding office constitutes a quorum and a decision of a majority of the members constituting the quorum is the decision of the board of directors. 1997, c. 16, Sched. A, s. 162 (5).

(6) The board of directors may act despite a vacancy in its membership. 1997, c. 16, Sched. A, s. 162 (6).

(7) The chair shall decide which member of the board of directors is to act as chair in his or her absence. If the chair does not do so, the board of directors may decide which member is to act in the chair's absence. 1997, c. 16, Sched. A, s. 162 (7).

Duties of the board of directors

163. (1) The board of directors shall act in a financially responsible and accountable manner in exercising its powers and performing its duties.

(2) Members of the board of directors shall act in good faith with a view to the best interests of the Board and shall exercise the care, diligence and skill of a reasonably prudent person. 1997, c. 16, Sched. A, s. 163.

Appendix A - Strategic Map

VISION	To be a progressive and fair regulator working with its stakeholders to support a strong financial services sector.		
PRIORITIES	<i>Conduct</i> FSCO's activities in accordance with risk-based principles <i>Continuous</i> improvement in the delivery of our services <i>Foster</i> a coordinated national approach to regulatory issues		
STRATEGIES	Review and recommend changes to better control or mitigate risk	Identify opportunities for improved efficiency, effectiveness and transparency in the provision of information and services to stakeholders	Continue to coordinate with other Canadian regulators in the financial services industry at a national level
INITIATIVES	<ul style="list-style-type: none"> Work with GISA to confirm data requirements to assist with market monitoring, rate analysis and policy analysis. Review profit provisions for auto insurance to ensure rates for Ontario automobile insurance are fair. Review Continuing Education needs for life insurance agents and mortgage agents and brokers. Promote industry compliance with the Mortgage Brokerages, Lenders and Administrators Act, 2006 and associated regulations. Update computer technology to integrate licensing and risk assessment systems. Modernize FSCO's market conduct policies and procedures to provide a more consolidated and consistent approach. Develop a more comprehensive approach to risk-based regulation of pension plans. Develop, under the direction of Canadian Association of Pension Supervisory Authorities (CAPSA), guidelines related to the "prudent person" rule and its application to assets and liabilities of pension plans. 	<ul style="list-style-type: none"> Expand the Minor Injury Guideline to provide a continuum of care for those injured in auto accidents. Conduct a study of closed automobile insurance claims to understand the factors contributing to cost changes. Implement the government's package of automobile insurance reforms. Recommend changes to the Statutory Accident Benefits Schedule (SABS) definition of catastrophic impairment. Review all automobile accident claims forms with the aim of simplifying forms. Develop industry-wide standards for third party medical examinations and qualifications for assessors. Improve the auto insurance rate filing approval process. Improve automated dispute resolution case management systems. Ensure consumers understand the government's auto insurance reforms. Issue a Request for Proposal to procure the services of administrators for pension plans of insolvent employers. Host information sessions for pension plan administrators to raise awareness of legislative requirements and promote compliance. Develop a service portal to allow online submission of filings and other information from pension administrators and other parties. Develop electronic records management for electronic storage and retrieval of pension documentation. Publish an Inquiries and Complaints report, summarizing the inquiries received by FSCO and response times. Enhance outreach to pension stakeholders via the FSCO website. Ensure compliance with the OPS Service Directive and the Accessibility for Ontarians with Disabilities Act. Upgrade MVACF's case management system. Work with MOF, co-operative sector to streamline current regulatory regime. Work with MOF, DICO, credit unions and caisses populaires to support their transition to new regulations. 	<p>Support the development of harmonized regulatory solutions by participating in the Joint Forum, CAPSA, CARR, CCI, CISRO, GISA, CMBRG and meetings to discuss national issues affecting credit unions and cooperative corporations.</p> <p>Joint Forum:</p> <ul style="list-style-type: none"> Examine the responsibilities of investment product manufacturers, intermediaries and consumers to ensure effective product disclosure and regulation. Develop regulatory mechanisms with other regulators pertaining to risk and enforcement issues. <p>CAPSA:</p> <ul style="list-style-type: none"> Develop plans for implementation of a new proposed agreement for the administration and regulation of multi-jurisdictional pension plans. Examine issues, related to the application of the "prudent person" rule, giving consideration to both the assets and liabilities of pension plans. <p>CCIR:</p> <ul style="list-style-type: none"> Review with CISRO, the regulation of managing general agencies, wholesale agencies and insurance adjusters. Review and examine the issues and options around the use of credit scoring models in underwriting and other ways insurers use data from credit rating agencies. <p>CARR:</p> <ul style="list-style-type: none"> Finalize implementation of harmonized rate profiles in filings submitted by insurers to regulators.

Appendix G: Why the 30 year funding plan failed

Why the 1984 thirty year plan failed

The “1984 thirty year funding plan” [“1984 Plan”] was not an outright failure. It succeeded in creating an awareness of the funding frailties of the Ontario WSI system for a generation. Other than that, it never came close to achieving a policy objective of full funding. *Why?*

Reason No. 1: The plan was not a serious commitment – the founding objective was not funding

The 1984 Plan never represented a serious commitment to retire the UFL by 2014. The 1984 Plan was more crisis management (curtailing premium hikes) than funding policy. The Board was clumsy in its lead-up to the 1984 Plan, and instead of embarking on a pre-emptive thoughtful consultation with Ontario’s employers; it responded to a looming funding crisis (miniscule by today’s standards) and reacted with proposed rate hikes in excess of 20-30%.

This triggered an explosive employer backlash politicizing the issue. *The “crisis” solved by the 1984 Plan was not funding but rather employer discontent.* Once employer discontent was effectively managed through a longer term vision reinforced and with acceptance of six years of premium rate hikes, urgency cooled. From 1984’s vista, 2014 was far enough out to be a problem deferred to another generation and close enough not to be ruled irresponsible.

Reason No. 2: Competing priorities

From the early 1970s (Aird Task Force) to the early 1990s (post-Weiler), the primary policy worry of the WSI system was worker equity not funding or system costs. *This policy focus was reasonable and objectively based.* Prior to the 1985 (Bill 101: Representative Board of Directors; independent Appeals Tribunal) and 1990 (Bill 162: Wage loss and reemployment obligations/rights) reforms, which congregated on a myriad of worker equity issues, the system *was* systemically unfair to workers (“Meat chart” pensions; an insensitive administration; inadequate benefits; lack of reemployment opportunity and rights; etc.).

As most clearly delineated by Prof. Weiler in his seminal 1980 report (**Ontario, Reshaping Workers’ Compensation for Ontario, November, 1980**) the system of the late 1970s and early 1980s was not responsive to contemporary worker needs. *Change was demanded, required and delivered.*

The early 1980 funding considerations were little more than a transitory distraction, resolved with the 1984 Plan. After that, until the mid-1990s, design and administrative focus was almost exclusively set towards establishing a higher standard of worker equity.

That the Board’s funding ratio immediately dipped from its 1983 level of 49% to a floating 30-40% range until 1996 ought to be no surprise. *While a higher level of funding was no doubt desired, it was not sought.*

The system was not responsive to the efficacy of the 2014 Plan until the introduction of the Friedland formula (1994) and modified Friedland (1997). Yet, even at these two junctures, a strong commitment to full funding never materialized. With the introduction of Friedland, retroactive increases to worker benefits were implemented. In 1997, premium rates commenced a decline.

In short, a full funding policy was supplanted in the 1980s and early 1990s by a policy preference towards increased benefits and in the late 1990s by a policy preference

towards lower premiums. Achieving 100% funding has itself never been a policy priority.

Reason No. 3: A design flaw – a serious policy realignment was not possible

The 1984 Plan was defeated in part by its simplicity that full funding was to be achieved over a thirty year period with the combined power of serial and cumulative achievements: injury reduction; persistency reduction; cumulated investment performance; and a stable or increasing economy (See **WSIB Funding Framework, May 2008**, pp. 7-8 for a summary of the most current presumptions.)

While in recent years the Board developed multi-year funding strategies, the fundamentals of the 1984 Plan (100% funding level by 2014) was always accepted as the target (“*The target full funding date is 2014, which is the original 30-year funding target date established in 1984*”, **WSIB Funding Framework, May 2008**, p. 6. “*The WSIB is committed to a planned and disciplined approach to achieving full funding by the target full funding date*”, p.7)

There was never any real serious capacity to objectively move off that target. *Yet, the target itself was not taken seriously.* One need look no further than the WSIB’s Q&A informational document which accompanied the announcement on 2008 premium rates, released in mid-2007, for evidence that supports the proposition that *the target was driving the presumptions rather than the presumptions driving the target.*

That year’s announcement followed the government’s amendments increasing worker benefits beyond the legislative prescribed levels, triggering close to \$1 billion in unanticipated cash outflows. *Yet, premiums did not increase.* The reason behind stable premiums was not founded on objective evidence of past and actual performance, but rather on the “hopes” that “*all partners in Ontario’s workplace safety and insurance system continue to achieve breakthroughs in health and safety and return to work.*”

Absent from the plan was a serious incremental review and assessment mechanism, other than the yearly premium rate setting process. In response to the inevitable attraction of “*toe-the-line*” on yearly premiums, the presumptions tended to become rather “*rose coloured*” over time.

To avoid the “*tail wagging the dog*” the policy choice of low premiums was achieved not by an honest recalibration of the 1984 Plan, but instead by an overly optimistic and over time unrealistic and unattainable series of presumptions.

That the Board still held to the expectation that the WSIB would “*reduce the number of workers still on benefits at various claim durations by 10 to 20 per cent by 2012*” (**WSIB Funding Framework, May 2008**, p. 7) when all objective evidence showed a systemic trend in the opposite direction, colours the true depth of commitment to the 1984 Plan. Even *before* the significant increases arising from the amendments introduced in the 2007 Budget, 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).

So, what seemed to have evolved is simply this – a priority of full funding was usurped by a priority of premium stability.

Reason No. 4: The spectre of unintended consequences

The 1990 amendments (Bill 162) and the 1997 amendments (Bill 99) redefined the terms of the “*insurance contract*” prescribing benefits based on actual wage loss. *The premise was based on sound policy* – an individual’s earning capacity is influenced as much, or more, by socio-economic elements as it is by degrees of actual impairment.

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Coupled with these giant reform steps was a structural shift towards improving individual earning capacity through early rehabilitation intervention, with the expectation that even the seriously injured individual would be able to return to gainful employment and re-establish an earnings profile, which overall should result in lower aggregate claims costs.

The initial wage loss model was slightly modified in the 1997 amendments but the essential features remained.

“*Locking in*” benefits by the end of the 6th year post-injury was introduced as a mechanism to curtail unnecessary administrative activity on established cases predicated on the presumption that within 72 months the injured worker would have achieved maximum earnings potential. At least that was the (unproven) theory.

Concurrent with these initiatives was the introduction of experience rating [“ER”], a program designed, in part, to encourage employers to re-employ disabled workers early in the course of the claim.

Ironically, the “lock-in” feature and certain elements of ER policy (“three year window”) diminished the capacity of the Board to affect the desired outcome in the most serious of cases. For the seriously injured, after a period of protracted medical rehabilitation which may consume the initial several years in the lifespan of the claim, the focus would turn towards vocational rehabilitation, another lengthy process. Often, by the time of the lock-in a worker may not have achieved maximum earnings capacity.

In addition, in the serious case with no return to work within the first three years, an employer lost financial motivation to permanently rehire workers.

Moreover, adding to this, worker motivation would understandably abate in the few years leading up to the “lock-in”. *Why trade certainty for uncertainty?*

In short, critical system design elements are at odds with system objectives and expectations.

Reason No. 5: A lack of policy discipline – the tarnishing of an objective

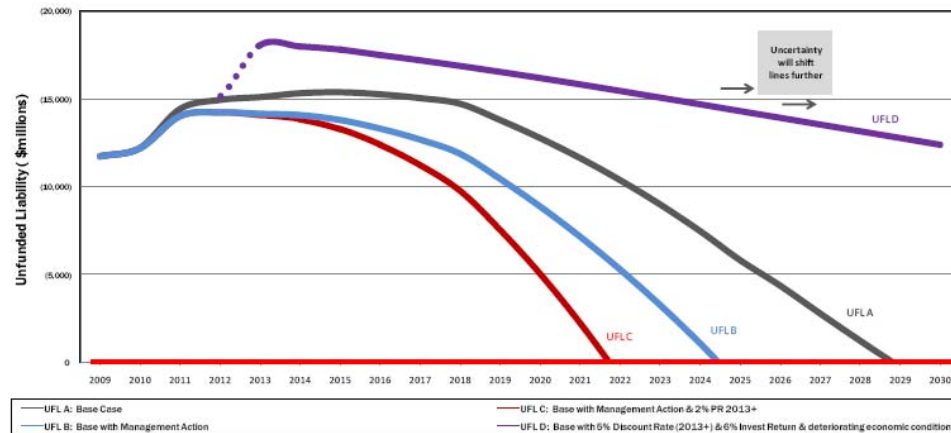
In an unprecedented move, just as the funding fortunes of the Board were improving (as a result of investment gains, not performance gains), the **2007 Ontario Budget** included amendments to the *Workplace Safety & Insurance Act* to increase worker benefits beyond the prescribed statutory inflation adjustments, adding \$750 million in immediate expenditures.

In the Spring of 2009, the Board announced that the 1984 Plan was dead. Yet, in December 2009 a further \$200-\$300 million was expended by similar legislative amendments at a time concurrent with the Board’s public declaration that it was facing an unprecedented financial crisis.

Appendix H: Relevant charts from the Funding Review Technical Sessions

2011 Funding Outlook

Based on 2010 Forecast



	Funding Ratio			
	2013	2020	2025	2030
UFL A	51%	64%	84%	>100%
UFL B	53%	73%	>100%	>100%
UFL C	54%	85%	>100%	>100%
UFL D	46%	53%	59%	65%

Scenarios (cont'd)

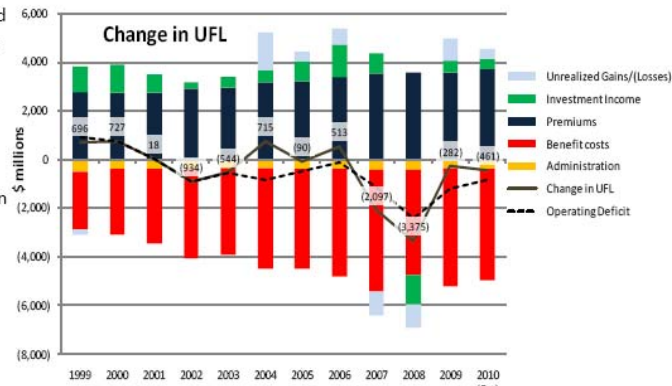
- All scenarios are based on September 30, 2010 forecast of financial results (assumption details appear on next two slides)

Scenario	Description	Projected Maximum UFL	Full Funding By
UFL A	Base case	\$15.5 billion in 2015	2029
UFL B	Base case, with impact of UFL management actions	\$14.3 billion in 2012	2025
UFL C	Base case, with impact of UFL management actions and average premium rates increasing by 2% per year after 2012	\$14.3 billion in 2012	2022
UFL D	Base case, without impact of UFL management actions, and with discount rate reducing to 6.75% (2011), 6.5% (2012) and 5% (2013 and beyond), investment returns of 6%, and worsening economic conditions	\$18 billion in 2013	?

Financial Information (cont'd)

Analysis of Changes in Unfunded Liability – Operating Income Perspective

- While both premium revenues and benefit costs have increased since 1999, benefit cost increases have outpaced premium revenue increases by about 5% each year
- Since 2002, investment and premium revenues have been insufficient to cover administration and benefit costs (operating deficits)
- For 2004 and 2006, unrealized investment gains offset operating deficits for net reduction in UFL
- For 2007 and 2008, unrealized investment losses exacerbated operating deficits, and added to the increase in UFL which totalled \$5.5 billion for the 2 years



Year	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010 (Fct.)
Deficit	904	727	18	(934)	(544)	(843)	(494)	(142)	(1,130)	(2,416)	(1,189)	(848)
UFL Change	696	727	18	(934)	(544)	715	(90)	513	(2,097)	(3,375)	(282)	(461)
UFL	(6,402)	(5,675)	(5,657)	(6,591)	(7,135)	(6,420)	(6,510)	(5,997)	(8,094)	(11,469)	(11,751)	(12,212)

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Financial Information (cont'd)
History of Class-level UFLs, 1995-98

Class (\$ million)	1995	1996	1997	1998	% Distribution (1995-98)
A – Forest Products	523	486	378	358	5%
B - Mining and Related Industries	574	524	434	387	5%
C – Other Primary Industries	143	141	94	66	1%
D - Manufacturing	3,909	3,646	2,645	2,257	34%
E - Transportation and Storage	576	533	331	260	5%
F - Retail and Wholesale Trades	1,041	1,019	761	650	10%
G - Construction	3,058	3,043	2,685	2,592	31%
H - Government and Related Services	544	549	393	297	5%
I - Other Services	524	519	336	231	4%
Schedule 1	10,892	10,460	8,057	7,098	100%

- As a result of funding consultations and changes to the Act in 1998, the UFLs by Class were consolidated into a single collective unfunded liability

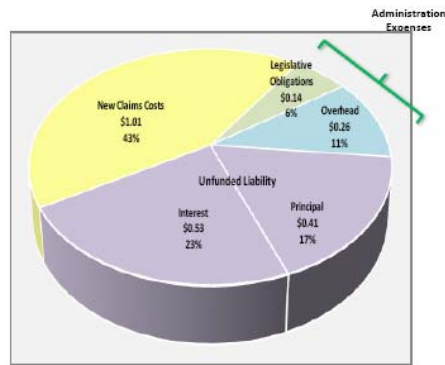
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2011 Premium Rates (cont'd)

■ 2011 premium rates methodology similar to 2010

■ Premium rate components include

- New Claims Costs (NCC)
 - based on previous six years (new for 2011) of claims experience of total claim incidence rates (new for 2011) and full cost of expected claims
- Administration Expenses
 - WSIB administration of *Workplace Safety & Insurance Act (WSIA)*
 - MoL administration of the *Occupational Health & Safety Act (OHSA)*
 - Health and Safety Association (HSA) realignment (new for 2011)
 - other legislative obligations, including financial support for offices of the employer and worker advisors, appeals tribunal, and research primarily through the Institute for Work & Health
- Past Claims Costs
 - unfunded liability (UFL), including interest to carry UFL
 - gains and losses, based on previous six years of premium rate setting experience by rate group
 - bad debts expense component (new for 2011) determined based on the expected 2011 bad debts provision allocated by industry class
 - WSIB has implemented several measures to improve premium revenue collection, which includes fostering compliance in a fair, consistent and financially sustainable way
 - WSIB is also making a number of internal administrative changes that will address the UFL while improving customer service and operational efficiency. These include a Value for Money Audit of the claims administration and adjudication process, as well as strategies to address health care costs and claims duration. These actions, along with the 2% average premium rate increase, will assist in balancing annual revenue with claim costs



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Background

Up to 1992 (Old Structure)	1993 Structure	Today
<p>Structure:</p> <ul style="list-style-type: none"> • 27 Classes • 109 Rate Groups <p>Criteria: End-product</p> <p>Why the change?</p> <ul style="list-style-type: none"> • Criticized by employers as <ul style="list-style-type: none"> - not risk-sensitive - insufficient homogeneity within rate groups - subjective • No sub-categories on which to base analysis 	<p>Structure:</p> <ul style="list-style-type: none"> • 9 Classes • 219 Rate Groups • 839 Sub groups • Developed between 1989 and 1992 – implemented in 1993 <p>Criteria: based on 1980 Standard Industrial Classification (SIC) with some modifications with no distinctions for small/large business, region or rural/urban</p> <p>Objective/result</p> <ul style="list-style-type: none"> • Provided increased number of rate groups in response to stakeholder concerns about fairness • Enhanced risk sensitivity in respect of health & safety • Greater degree of homogeneity within rate groups • Greater representation of business activities in distinguishable categories • Created sub-categories to analyze injury frequency & cost performance • Increased flexibility – capacity to monitor changes in injury frequency & cost performance within Rate Groups over time and to modify as needed 	<p>Structure:</p> <ul style="list-style-type: none"> • 9 Classes • 154 Rate Groups – from rate mergers based on credibility criteria -- most of the changes occurred between 1998 - 2002 • 828 Classification Units • Data can be rolled up into 16 Sectors



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Employer Incentives 1994-2010

- While \$45.1 billion of premiums has been collected from employers from 1994 – 2009, \$2.5 billion in net rebates has been paid back through employer incentive programs, and this has added to the UFL

	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	Total
Schedule 1 (\$ millions)																	
Premium Revenue (before Employer Incentives)	\$2,455	\$2,634	\$2,684	\$2,712	\$2,450	\$2,610	\$2,577	\$2,451	\$2,694	\$2,825	\$2,976	\$3,020	\$3,182	\$3,304	\$3,351	\$3,206	\$45,131
Employer Incentives - Rebates net of Surcharges	\$359	\$247	\$297	\$350	\$125	\$89	\$109	\$4	\$57	\$169	\$115	\$124	\$114	\$118	\$144	\$37	\$2,458
per \$100 of Insurable Payroll																	
Average Premium Rate	\$3.00	\$3.00	\$3.00	\$2.85	\$2.59	\$2.42	\$2.29	\$2.13	\$2.13	\$2.19	\$2.19	\$2.19	\$2.26	\$2.26	\$2.26	\$2.26	\$2.26
Average Premium Rate, net of Employer Incentives	\$2.56	\$2.72	\$2.67	\$2.48	\$2.46	\$2.34	\$2.19	\$2.13	\$2.08	\$2.06	\$2.11	\$2.10	\$2.18	\$2.18	\$2.16	\$2.23	\$2.23

- Details by program from 2005 to 2010 (forecast)

Experience Rating or Incentive Program	Net (Expense)/Revenue (\$ million)					
	2005	2006	2007	2008	2009	2010 (Sept forecast)
CAD-7	24	(22)	(23)	(26)	(28)	(21)
NEER	(124)	(71)	(49)	(72)	24	38
WORKWELL	0	1	1	0	1	2
SAFE COMM INCENTIVE PROGRAM	(2)	(1)	(3)	(1)	(1)	(2)
SAFETY GROUP PROGRAM	(22)	(21)	(44)	(45)	(33)	(37)
TOTAL	(124)	(115)	(118)	(144)	(37)	(20)

Note: MAP net balance is not reported separately as it directly impacts premium revenue



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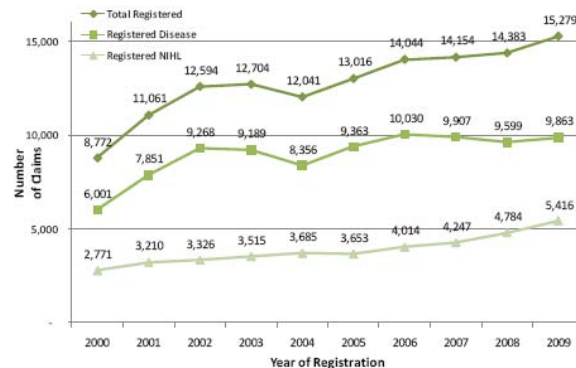
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Overview

Occupational Disease Claims Registered*

- Over the last decade, the number of registered occupational disease claims has almost doubled. An increase was noted in many diseases – for example, asbestosis, asthma, work-related cancers, chronic obstructive pulmonary disease (COPD) and hand arm vibration syndrome (HAVS)
- However, the most notable increase was in claims for Noise Induced Hearing Loss (NIHL)



* excludes fatal injury claims and surveillance claims; data as of December 1, 2010



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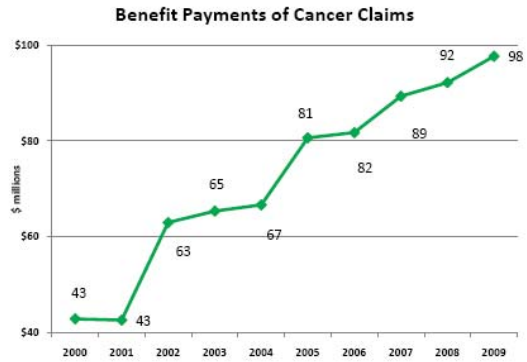
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Overview (cont'd)

Occupational Disease Cost Drivers

■ **The increase in occupational disease cases is expected to continue**

- Diseases diagnosed today are the result of workplace exposures to hazardous substances in past decades
- An occupational disease claim must be filed within six months of the worker learning of the disease; the Board may extend or waive this requirement
- Medical and scientific studies are discovering new connections between disease development and agents found in the work place
- Treating physicians and workplace parties are becoming increasingly aware of potential workplace hazards and their connection to illness



■ **A key component of increasing cost relates to cancer claims**



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Appendix I: B.C. and Ontario employer classification decisions

Chart 1 - December 2010 BC WCAT decisions - Employer Classifications:

Decision #	Date	Issues	Decision
2010-03491	Dec-29-10	Employer Appeal -Reclassification retroactive effective date correct (January 1, 2006)? -Penalties for under-remitting from 2006, 2007 & 2008 appropriate?	Employer Appeal Allowed -Retroactive to January 1, 2010 -No payment of increase premiums for 2006, 2007 and 2008 warranted and no penalties applicable
2010-03399	Dec-16-10	Employer Appeal -Did the Board have the necessary jurisdiction to assign the employer to CU 761041? -If so, did the Board correctly set January 1, 2009 as the effective date of the employer's assignment	Employer Appeal Allowed, in part -Board had jurisdiction and correctly assigned employer in new CU (lower premium rate) with the correct effective date of January 1, 2009.
2010-03373	Dec-16-10	Employer Appeal -Does the employer meet the criteria for multiple classifications? -What is the correct industry classification(s) for the employer? -The employer submits that it should be classified in either CU 761044 (Travel Agency) or, alternatively, CU 763005	Employer Appeal Allowed -Classified in CU 761044

Chart 2 - December 2010 Ontario WSIAT decisions - Employer Classifications

Decision #	Date	Issues	Decision
687/10	Dec-17-10	Employer Appeals -Class of employer, best fit (construction, concrete finishing) -Employer appealed reclassification from RG 681 to 751	Employer Appeal Allowed
2136/10	Dec-14-10	Employer Appeal -Class of Employer, best fit (car washes) -Employer appeals reclassification from RG 630 to RG 570	Employer Appeal Allowed
2154/10	Dec-10-10	Employer Appeal -Assessment of employer (retroactivity) -Appeals retroactivity of classification retroactive to January 1, 1998	Employer Appeal allowed in part (retroactive to January 1999 instead of 1998)

Appendix J: An Overview of WorkSafeBC Experience Rating

Executive Summary

The Workers' Compensation Board of British Columbia ["WorkSafeBC"] offers an Experience Rating ["ER"] plan for all employers. The program is prospective in nature and adjusts future assessments (discounts/surcharges) based on past years' experience.

While the WorkSafeBC indicates that a claim cost limit is in place, a claim can continue to accrue costs for which the employer is responsible (i.e. 10% of claim costs beyond \$120,000). The "cost limit" refers to a scale of percentage costs of each claim at different increments of a claim's costs as they increase.

As the WorkSafeBC's assessment for ER is prospective based, the claims from past years (as far back as 5-15 years) are assessed⁵⁴ relative to the firm's RG claim costs and payroll to determine the ER for a firm. As such, it may take years (i.e., 10+) for a firm to reach significant (33.3% +) results (rebates and/or surcharges).

Based on the number of years that a significant rebate or surcharge takes in the WorkSafeBC system, it appears the WorkSafeBC ER model is not able to be as quickly responsive as the Ontario ER system.

Where changes in the Ontario ER system can impact a firm (in a positive or negative manner) in a shorter time frame (in as little as one year) the WorkSafeBC ER program does not seem to allow for the same type of reaction or "turnaround" that would impact a firm's ER more immediately.

Overview of the WorkSafeBC Experience Rating Program

The goal of ER is to encourage those with high injury costs to improve safety, and to encourage those with low injury costs to continue to provide safe workplaces. [**Experience Rating Discussion Paper**, http://www.worksafebc.com/employers_and_small_business/Assets/PDF/experience_rate_discuss.pdf].

Employers whose experience is better than their rate group average receive a discount. Employers whose experience is worse than their rate group average pay a surcharge [**WorkSafeBC Assessment Manual 1-42-1**].

Claim costs and payroll from the three (3) previous completed years are used to calculate the upcoming year's ER (ER for 2010 is determined by costs for 2008, 2007 and 2006).⁵⁵ The most recent year is weighted at 50%, the prior year at 33.3% and the most distant year at 16.7%.

In addition, the participation level of the employer is also calculated into the ER adjustment known as the "graduated participation". The higher the annual premiums, the more emphasis WorkSafeBC will place on the overall history. The lower the premiums, the more WorkSafeBC will rely on the employer's historical trend.

Each employer is automatically assessed annually for a surcharge or discount as long as the employer has reported assessable payroll in one of the three previous years.

WorkSafeBC's ER program provides:

The possibility of a maximum 50% discount to maximum 100% surcharge on the base assessment rate (with the exception of the construction industry).

A maximum claim costs limit on each claim: 100% of the first \$70,000, 50% of the next \$50,000 and 10% of all costs above \$120,000.

A Required Rate ["RR"] is determined if the firm qualifies for an excess cost surcharge. To determine this RR WorkSafeBC may use claim costs arising from claims commenced in a period of up to 15 years prior to the calendar year (this is the case in the first year a firm qualifies for an excess cost surcharge).

⁵⁴ In the first year a firm qualifies for an excess cost surcharge, the Board will determine the required rate using claim costs arising from claims commenced in a period of up to 15 calendar years prior to the year in which the calculation is made [**WorkSafeBC Assessment Manual Item AP1-42-1**].

⁵⁵ www.worksafebc.com/insurance/premiums/faq/default.asp

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The RR is capped at 500% of the firm's yearly established classification base rate.

A firm is provided a RR each year.

Firms with low annual assessments participate to a lesser degree than do firms with high annual assessments (who tend to reach the maximum threshold more quickly). To ensure that ER is meaningful for even the smallest firms, a minimum participation level of 10% is set for each RG.

It should be noted that the Board's administrative costs are not included in the ER calculations [**WorkSafeBC Assessment Manual 1-42-1**].

A pilot involving the construction industry has been in place since 2000. At that time WorkSafeBC agreed to hold the maximum merit/demerit (rebate/surcharge) at 33.3% (which the previous ERA plan offered) for a three year pilot. This pilot was subsequently extended until 2010. WorkSafeBC is now undertaking a review (April, 2011) to determine if the construction ER pilot should be continued or concluded it and construction firms moved into the current ER Plan as all other employees (and if so, how the transition will be implemented).⁵⁶

WorkSafeBC also offers a "Partner Program" which provides a variety of rebates (ranging from 2% to 8%) for participation in different certifications and participation in different initiatives (i.e., Occupational Health & Safety Certificate of Recognition ["ROC"]).⁵⁷

⁵⁶*Construction ER Discussion Paper*, February 25, 2011

http://www.worksafebc.com/regulation_and_policy/policy_consultation/assets/pdf/ConstructionERProgram.pdf

⁵⁷ **Summary of Experience Rating Programs in Canada**, Association of Workers' Compensation Boards of Canada – February 2008 http://awcbc.org/common/assets/assessment/experience_rating.pdf

Appendix K: Second Injury and Enhancement Fund

SIEF Plays a Vital Role

1. We see the existence of the SIEF as a vital and *increasingly* important component of today's evolving workplace safety and insurance ["WSI"] system SIEF is based predominantly on general principles of equity. Any attempts to abolish or significantly alter the present approach taken to SIEF would result in very significant, *avoidable* inequities.
2. In this discussion we wish to explore the function, purpose and usefulness of the SIEF. We have asked and answered three questions:
 - a. *What are the policy objectives of a second injury and enhancement fund?*
 - b. *Does the current policy fit with these objectives?*
 - c. *What is the best model for a second injury and enhancement fund in the Province of Ontario?*

Primary Interest Must Be One of Equity

1. The Board's primary interest, and ours, must be the same - equity. As the funders, one of our paramount objectives is to promote *equitable* employer accountability.
2. It must be clearly understood that the SIEF adds no additional costs to the system. The SIEF is simply a mechanism to pool liability, and allocate financial accountability. SIEF "expenditures" are not additional expenditures.
3. The primary policy objective of the SIEF is to promote equity.
4. The SIEF is not viewed as a cost cutting measure by employers. Employers continue to view state of the art accident prevention programs as the key ingredient to cost reductions, with reinstatement and rehabilitation actions being second. ***SIEF is about equity - not cost reduction.***
5. SIEF is very complimentary to experience rating. *In fact, in the absence of SIEF, experience rating actually becomes quite unfair.*
6. In 1988, twenty-one percent (21%) of lost time injury ["LTI"] claims were incurred by individuals older than 45 years of age, whereas by 2007, those older than age 45 represented forty percent (40%) of the total LTI claims mix.⁵⁸ This represents a doubling of the claims mix represented by older workers which intuitively, would lead to a greater involvement of pre-existing or underlying conditions, the very triggers for the application of the SIEF.
7. Moreover, from 1998 to 2007, "sprains and strains" grew from approximately forty percent (40%) of total LTIs to forty-nine percent (49%), an increase of over twenty-two percent (22%) with the most dramatic increase occurring since 2003.⁵⁹
8. This very admittedly cursory review nonetheless supports the proposition that the noted increase in the utilization of the SIEF is not only expected and consistent with the core policy objectives of the SIEF, but is a reflection of a change in the mix of claims trends over the past two decades, a proposition which attracted no attention from the consultant.

Our overall position on the Second Injury and Enhancement Fund is:

1. The SIEF remains valid - it promotes employer equity and ensures fair employer accountability.
2. The SIEF is an essential insurance component to the WSI system.

⁵⁸ **Source:** Workplace Safety & Insurance Board ["WSIB" or "Board"] Annual Report Statistical Summary, 1997, Table 4 (p.7); 2007 WSIB Annual Report Statistical Summary, Table 5 (p.11).

⁵⁹ **Source:** 2007 WSIB Annual Report Statistical Summary, Table 8, Lost Time Claims by Nature of Injury or Disease (1998-2007), p. 13

3. We strongly support the continuation of the SIEF.

Focus of Our Submission - The Policy Objectives of SIEF a Second Injury and Enhancement Fund

1. Originally the use of a "Second Fund" in Ontario appears to be premised only on the desire to encourage employers to hire disabled workers. By Board order dated December 27, 1945, the "Second Injury Fund" was formally constituted. That Board order read in part:

The Board orders that a Second Injury Fund be established. Where a workman has a second or subsequent injury which combined with a previous injury or disability causes costs in addition to the normal cost of such subsequent injury, the additional costs, on order of the Board, shall be charged to the Second Injury Fund.

2. The obvious fear or impetus to the policy was that without the establishment of a Second Injury Fund, removing a portion of the assessed costs from an individual employer's cost record, employers would be loath to hire or rehire workers with a recognized permanent disability.

Expanded Basis of SIEF - Equity

1. By the late 1960s and early 1970s the basis of the policy had implicitly expanded to include equity or fairness considerations. *It is our opinion that the theme of equity has remained as the chief policy behind SIEF since that time.*
2. In comments made by the Honourable Mr. Justice McGillivray, in his report of **The Royal Commission In The Matter of the Workmen's Compensation Act**, dated September 15, 1967, and as evidenced by a Board Order dated March 25, 1970, it was recognized that a prior condition, which had not been disabling, could precipitate a disability which was compensable, and that in this type of situation Second Injury Fund relief should be granted.
3. The Honourable Mr. Justice McGillivray stated in his report:

I recommend that in all cases where compensation may involve activation or aggravation of a pre-existing condition a portion of the compensation awarded be paid from the Second Injury Fund. (emphasis added)
4. While the genesis of this shift in approach was the policy issue of employment for the disabled, the argument and recommended solution actually was one of employer equity.

Board Recognizes Equity as Basis for SIEF Relief

1. While the general theme of employer equity for SIEF was introduced in the late 1960s and early 1970s, the foundation of this theme was revisited, confirmed and expanded in the late 1970s.
2. The equity basis for relief under the "Second Injury and Enhancement Fund" (renamed from the Second Injury Fund) was recognized by Dr. William J. McCracken, Executive Director, Medical Services Division, and Mr. William Kerr, Executive Director, Claims Services Division, in their joint Inter-divisional Communication to the Board dated June 1, 1978. That document recommended that the Board Order of March 25, 1970 be rescinded and that a new policy on the application SIEF be approved.
3. In reference to the proposed policy Dr. McCracken and Mr. Kerr stated:

The basis on which financial relief is given to the employer is clear and provides for equitable transfers to the SIEF.

The Board followed their recommendation and approved the new policy on November 3, 1978.

This policy, as opposed to its predecessor clearly indicated not only that the pre-existing condition need not be disabling, but that it need not be symptomatic.

Page six of the new policy read in part:

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The medical significance of a condition is to be assessed in terms of the extent that it makes the employee liable to develop disability of greater severity than a normal person. There need not be associated pre-existing disability...

Examples:

Asymptomatic spondylolysis demonstrated on x-ray....

4. This change clearly reflected a focus on the equity basis for SIEF relief. The primary interest of the SIEF emerged as one of equity versus employment for the disabled.
5. **Conclusion** - Clearly then, the policy objective of the SIEF is one of equity. This has been and continues to be the core focus of the SIEF. While it is our view that there are subsidiary benefits, these are not the principal reasons for the maintenance of the program. The principal reason is employer equity.

The Need for Employer Equity

1. The need for employer equity in a no fault workers' compensation scheme is self evident.
2. No fault ensures entitlement regardless of blame. "No fault" does not mean direct employer accountability for all WSI costs. The principle of collective liability certainly speaks against this.

WSI Based on Collective Liability

1. WSI is fundamentally based on the principle of collective liability. Essentially, it is an accident insurance system for both employees and employers.
2. Theoretically, there are two main criterion to be considered when setting insurance rates:
the risk factor or circumstances out of the insured's control; and,
costs of claims made against the insurance fund.

But, Ontario System Not Purely Collective Liability

1. However, if the Ontario WSI system was based on a pure model of collective liability, then all employers would be assessed the exact same rate of premium notwithstanding the nature of their industry or their individual accident experience record. Under such a model, there would be no need for SIEF since no individual case would influence the employer's record.
2. While such a model would be true to the principle of collective liability, it greatly offends any notion of employer equity. To satisfy the objective of equity while maintaining the principles of collective liability, the competing interests of employer accountability and appreciation of individual risk must be balanced.

Need For Balance of Collective Liability and Individual Risk

1. The Ontario WSI system sets an individual employer's premium through an integration of the risk of the industry in which he is engaged (the premium rate), and the risk of the specific company (experience rating).
2. Overall, this is a sensible approach to balance the requirement for a collective liability with another competing policy theme - that of employer accountability.

Employer Accountability Instils Motivation to Prevent Injuries

1. It is generally accepted that if an employer is accountable for WSI costs, then there is created a motivation to keep those costs to a minimum.
2. This motivation transcends into positive behaviour through more effective accident prevention programs and thus, lowering the claims demands on the system. The result - fewer claims and lower costs. Experience rating serves this objective.
3. But - there must be a mechanism to balance competing interests.

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4. If industry is separated into various classifications to reflect risk, and premium rates are determined by performance, then there must be some type of safety valve operating to ensure a safeguard against aberrant factors.
5. Second injury funds provide a check in the system to ensure that employers who have workers with pre-existing conditions are not unfairly burdened by costs over which they have no control.
6. **Conclusion** - Equitable employer accountability is an essential component to the WSI system. Our elaborate classification system coupled with experience rating serves this objective well. However, accountability must as well be equitable. SIEF assists in achieving this.

SIEF is compatible with and complimentary to Experience Rating

1. The safety valve provided by SIEF is most important when an employer is part of an experience rating program.
2. It is accepted that a primary objective of experience rating is to improve equity in the distribution of WSI costs.
3. While the SIEF and experience rating both promote equity among employers, the policies are inherently different. SIEF is designed to limit the effect of circumstances over which the employer has no control, while the intent of experience rating has been to motivate the employer to improve management over safety and reinstatement practices - areas where the employer is undeniably capable of more effective control in the workplace.
4. The foundation of experience rating is employer accountability, with premiums being more closely linked to employer performance. The objective is twofold - to ensure equity (those that cost more pay more), and to motivate (no accidents - no costs).
5. Inherently implied is the concept of prevention - an employer should be held accountable for the preventable injury.
6. If it is a principle of the WSIA that cost accountability promotes positive safety performance by influencing corporate behaviour, and that an employer's accident record is reflective of that employer's accident performance (positively or negatively), then it makes no policy sense to hold an employer directly accountable for costs of a claim over which the employer had no control (and alternatively, not hold the employer accountable for the costs for which the employer was responsible).

Weiler Supportive of Concept

1. In Professor Weiler's 1980 report to the Ontario Ministry of Labour, there is no mention of any incompatibility between the SIEF and experience rating. In fact, in his discussion of experience rating, Professor Weiler made the following point:

Distributing the random cost of industrial accidents from the individual firm to the industrial group - sacrifices nothing of real value in the preventive function of experience rating.
2. This statement indicates that it highly unlikely that Professor Weiler would agree with a sweeping generalization that the SIEF would somehow undermine the purpose of experience rating.
3. As the precision and power of the experience rating system increases (as in the case of the NEER and CAD-7 models), the requirement for the safety valve is enhanced.
4. It is not only false that experience rating and SIEF are not compatible; the truth is that they are inseparable.

The Appeals Tribunal has long recognized the equity basis for SIEF relief

1. In *Decision 182* the Panel recognized that fairness or equity is the basis for the current application of SIEF. It is:

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A fund for the purpose of relieving employers in a particular class from the “unfair burden” of assessment related to disabilities, the severity of which or the duration of which has been increased by the existence of a pre-existing condition. It calls this special fund the “Second Injury and Enhancement Fund” and it charges to that fund the proportion of the costs of compensation benefits or medical assistance which it believes to be fairly attributable not to the compensable industrial injury itself but to a pre-existing condition.

2. The Panel in *Decision 431/89* had the following comments concerning the principles behind SIEF.

It is clear...that the policy is driven primarily by equity and employment considerations (i.e. to relieve employers from a financial burden where a pre-existing condition enhances a compensable disability and to encourage employers to employ disabled workers).

.....

The equity considerations relate primarily to situations where the worker’s recovery period is unusually long and probably attributable to some complicating factor other than the compensable accident.

3. In the absence of SIEF, any experience rating model becomes unfair, a position aptly demonstrated in the few decisions which follow:

An employer was provided with 100% relief under the SIEF when a worker, who was a transport driver, “got dizzy and blacked out” while approaching a stop sign sustaining serious injury upon rear-ending another truck. The underlying dizziness was caused by a non-occupational disability and which led directly to the accident thus qualifying the employer for 100% SIEF. ***But for the SIEF, that particular employer would have been unfairly held to account for (in 2009) up to \$375,500 cash [WSIB Decision].***

In another case involving a transport driver, the driver went over a minor bump in the road but as a result of a serious and significant underlying condition sustained a catastrophic injury resulting in permanent total disability. The injury was deemed to have arisen out of and occurring in the course of the employment and thus was compensable. In the absence of the SIEF the employer would be held to account for costs up to \$375,500 cash. The employer was relieved of 100% of the cost of the injury, a fair and just result [***W.S.I.A.T. Decision No. 138/98***, (September 21, 1998)].

A blind worker working in a retail outlet sustained serious injury while attempting to carry product upstairs. As the blindness was the cause of the injury, notwithstanding that the injury arose out of and occurred in the course of the employment, the employer was appropriately relieved of 100% costs of the claim [***W.S.I.A.T. Decision No. 376/98*** (August 18, 1998)].

A worker with serious underlying pre-existing knee disabilities sustained a significant permanent aggravation through a minor employment-related event when he “stepped on an air hose at work”. The employer was relieved of 95% of the costs under the SIEF. [***W.S.I.A.T. Decision No. 526/08*** (April 1, 2008)].

4. Hundreds of similar examples could be elicited, however, the point demonstrated is clear and simple – in the absence of the SIEF, employers would be unfairly held to account for significant costs arising out of minor workplace events.
5. Notwithstanding that the worker would be duly entitled to full loss of earnings benefits attributable to an aggravation of an underlying condition, it would be callously inequitable to hold an employer to account for costs over which the employer did not, in any material way, contribute.
6. ***Conclusion*** - experience rating not only is compatible with SIEF, it is actually flawed without it.

The Current Model of SIEF is Essentially Fair

1. The current Second Injury and Enhancement Fund is simply an actuarial mechanism by which a share of costs assigned to individual employers, rather than to a class generally, are equitably spread among all rate groups in Schedule 1.
2. The current model of SIEF satisfies two basic requirements dictated by equity, as discussed earlier.
3. First, it recognizes that a pre-existing *condition*, as opposed to a pre-existing *disability*, can influence, i.e. prolong or enhance a period of disability resulting from an “accident”.
4. Second, it attempts to quantify the degree to which the pre-existing condition influenced that disability, and transfers from the individual accident employer to the fund that portion of the assessed costs that are adjudged to be attributable to the pre-existing condition.
5. The policy proposed by Dr. McCracken and Mr. Kerr referred to earlier, and approved by the Board on November 3, 1978, introduced a matrix to try to simplify and clarify the calculation of the appropriate cost transfer from the individual employer to the SIEF.
6. The matrix sacrifices little in the proper and equitable application of SIEF while providing an efficient administrative tool.
7. **Conclusion** -- The current model of SIEF is fair.

SIEF Compatible with “Thin Skull” Doctrine

1. The expansion of the basis of SIEF to include equity considerations was mirrored by the introduction and development of the concept of “thin skull” in the WSI system. This introduction can also be seen to be driven by considerations of equity.
2. The Honourable Mr. Justice W.D. Roach in his **Report on the Workmen’s Compensation Act** dated May 31, 1950 clearly identified the thin skull doctrine and recommended a change in Board Policy to protect the worker with a “thin skull”.
3. The Board eventually responded to Mr. Justice W.D. Roach’s concerns. Until 1964, where there were pre-existing conditions, it was the practice of the Board to make awards upon the basis of 50 per cent of the established disability. A Board order of December 2, 1964 ensured that workers with pre-existing disability would receive a full award with a portion allocated to the Second Injury Fund, clearly addressing two inequities in the system. The first, the previous policy of cutting benefits in half for a worker with a “thin skull” had been unfair. The second was to allocate a portion of the entitlement to the SIEF.
4. The introduction of the “thin skull” principle to the WSI system and the resulting application of SIEF is an example of how that system attempts to balance the interests of workers and employers.
5. As stated by the Panel in **W.C.A.T. Decision 431/89**:

It must be remembered that the compensation system in the Province of Ontario is a no fault system, fully funded by employers, with the objective of delivering equitable benefits to the worker within an equitable financial framework for the employer.

As shown in the “thin skull” situation, SIEF is an indispensable balancing mechanism. This balancing mechanism should today apply in every type of case where a pre-existing condition prolongs or enhances a disability, even where, such as in psychological condition of chronic pain cases that pre-existing condition can be more specifically described as a pre-disposition to develop a certain type of disability. (emphasis added)

Equity or Fairness Considerations Linked to Degree of Control

1. Both the WSIB and Appeals Tribunal, in recognizing the need for equitable relief to employers where a pre-existing condition has enhanced or prolonged a compensable disability, have implicitly recognized that an employer has no control over a pre-existing condition.
2. An employer, in contrast does have some control or potential control over whether a compensable injury occurs. Employers dictate what work is to be done, and have a very strong influence on how that work is eventually performed. Employers clearly have control over the safety of the work environment and workplace.
3. A pre-existing condition which enhances or prolongs a compensable disability is an aberrant factor which an employer cannot influence. SIEF is a safety valve which ensures that this aberrant factor does not bias an employer's compensation record.
4. **Conclusion** -- SIEF is clearly compatible with the thin skull doctrine.

Additional Considerations

1. In his evaluation of second injury funds (*Workers' Compensation Benefits: Adequacy, Equity and Efficiency; L.W. Larson and John F. Burton*) Larson explained:

The second-injury fund principle recognizes that the full cost of disability sustained by the previously handicapped person should be borne by the workers' compensation program, but attempts to distribute equitably the burden by spreading the extra costs incurred as a result of the prior impairment rather than let them fall on the last employer.
2. Larson also made the following recommendations:
 - all jurisdictions should have second injury funds;
 - the funds should provide broad coverage;
 - a threshold level of severity for the previous impairment should be established;
 - funds should be fully publicized in order to gain optimum effect;

The Recommended Approach

1. We restate our support for the principles behind the SIEF. It is our view that the SIEF is valid, and represents an essential feature of the WSI system. We are fully supportive of employer accountability and endorse the theoretical models for rate classification and experience rating. Accountability and equity are not mutually exclusive concepts - in fact - they are clearly linked.
2. SIEF promotes employer equity. We recommend the following:
 - a. That the SIEF continue to be supported.
 - b. SIEF should be applied where:
 - c. there exists a pre-existing condition the pre-existing condition has contributed to the causation or duration of an impairment
3. The present matrix for determining degree of accountability is continued.
4. That the SIEF be codified in *Workplace Safety and Insurance Act* with appropriate regulations.
5. That the Board automatically review every claim for potential relief under the SIEF at regular intervals. We strongly recommend that the Board take a more pro-active and interventionist role in the identification of cases requiring SIEF.

Recommended Consultative Process

1. The SIEF is an issue of considerable importance to the Ontario WSI. While we are of the view that the SIEF in its current structure effectively meets the objective of employer equity, *if* further review is contemplated by the Board, we strongly recommend additional consultation before *any* recommendations are brought forward.

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2. If further review is warranted, the following process should be adopted:
 - a. Development of a position paper by the WSIB, detailing the policy options available and selecting the preferred approach of the WSIB administrators.
 - b. Release of the position paper for additional discussion and consultation

Appendix L: Summary of Recommendations

Recommendation No. 1: That the September 30, 2010 Funding Review Terms of Reference be restored.

Recommendation No. 2: The Funding Review must be part of a complete process consistent with the original Terms of Reference that has regard for the full perspectives advanced by the Auditor General.

Recommendation No. 3: It is respectfully submitted that to effect a full and complete review, the Funding Review must address expenditures, including an assessment of the 72 month benefit lock-in provisions of the WSIA. The Funding Review is encouraged to comment on the Board's role as contemplated by WSIA s. 159(2)(b), and express an opinion as to the Board's adherence to those statutory expectations.

Recommendation No. 4: We recommend that the Funding Review propose the striking of a high level Task Force comprised of the leadership of the Ministries of Finance and Labour (at the Deputy Minister level), the WSIB CEO, the WSIB Chair, the FSCO CEO and FSCO Chair to explore, develop and recommend a new WSIB regulatory framework governed through the Ministry of Finance and FSCO.

Recommendation No. 5: We recommend that the Funding Review advocate for the development of a strategic governance regime to regulate transfer payments between the WSIB and the Ministry of Labour. Specifically, we suggest the striking of an intra-ministerial task force chaired by the WSIB President and involving senior officials of the Ministry of Finance and the Ministry of Labour.

Recommendation No. 6: The **Funding Review** must place the future financial security of the system as a top priority that will survive regime change, political realignment and competing administrative priorities. In short, the **Funding Review** must identify, isolate and correct the reasons why similarly founded initiatives were not successful.

Recommendation No. 7: A "sufficient" level of funding must be interpreted to be 100% as an ultimate goal. Only 100% can be construed as "full funding." This recommendation is contingent on the timeline recommendation set out in **Section D**.

Recommendation No. 8: That the seven percent (7%) long-term going concern interest rate be reduced to six percent (6%).

Recommendation No. 9: A new Funding Plan must be amortized over a sufficient period of time to ensure premium rate increases (where necessary) are controlled, but a short enough period of time to reflect a strong commitment to full funding (100%). It is likely that a 15-20 year amortization period with a range in the APR of \$2.35 to \$2.40 is reasonable.

Recommendation No. 10: To ensure ongoing discipline the (new) Funding Plan must set five year incremental targets by industry sector with detailed progress reported annually in the WSIB's Annual Report, with an ongoing "organic" report continuously reported through the Board's website.

Recommendation No. 11: In the event that the target is not realized, or in the event that performance circumstances lead to a conclusion the target will not likely be met, a special consultation will be triggered with the respective sector, and a targeted action plan devised at the earliest possible juncture.

Recommendation No. 12: With respect to gains and losses, investment gains and losses will be treated distinctively from operational gains and losses. Investment gains and losses will be addressed within the context of target long-term returns. Operational losses will be adjusted within a shorter term, such as within five (5) years.

Recommendation No. 13: While we are not advocating allocation of the UFL at the Class level, we are not at this time in opposition of the concept. We do promote full and complete disclosure and ask that this element be addressed by the Funding Review. The first step is to determine the current UFL at the Class level, and assess the viability of Class level accountability on a go forward basis. Once this information is released, it is proposed that a dialogue focused on this single element be introduced through a special **Funding Review Supplementary Technical Session** to be facilitated no later than June, 2011.

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Recommendation No. 14: That the Funding Review investigate the efficacy of the need for “two sets of books” for the distinctive purposes of: i) generating audited financial statements; and, ii) premium rate setting purposes.

Recommendation No. 15: Premium rates will reflect the actual performance of the RG. The 2010 and 2011 policy of denying earned premium decreases will be proscribed from 2012 onwards.

Recommendation No. 16: The WSIB will publish target rates for each Rate Group.

Recommendation No. 17: Movement towards the target rate will be capped to no more than *plus* or *minus* an as yet-to-be-determined percentage (perhaps 5% per year), with the cap negotiated with the respective RG, and adjusted as circumstances warrant. In extreme cases, increase (or decreases) greater than 5% will be permissible if endorsed by the respective sector.

Recommendation No. 18: The WSIB will vigorously report RG performance and engage in a vibrant ongoing dialogue at the RG level. Class centric variable policies will be permissible.

Recommendation No. 19: When communicating the rate of change in the APR Year 1 to Year 2, the WSIB should restate the Year 1 APR based on the Year 1 revised payroll, and then compare the Year 2 APR with the restated Year 1 APR. Finding: With this method, for the 2010 to 2011 premium rate exercise, the rate of change was 4.9% (\$2.24 to \$2.35).

Recommendation No. 20: In the WSIB Annual Report for Year 1 (usually published mid-year Year 2), the WSIB should again restate the Year 1 APR based on actual payroll and collected premiums (both known by that point). Thereafter, the APR for the respective year should be reported as the collected (actual) APR.

Recommendation No. 21: When communicating the effect of premium rate adjustments Year 1 to Year 2, the Year 1 and the Year 2 premium rates should be run against the Year 2 projected payroll. This ensures an “apples to apples” comparison and more reasonably explains the actual effect of premium rate adjustments. Finding: With this method, for the 2010 to 2011 premium rate exercise, the rate of change was 5.8% (\$2.22 to \$2.35).

Recommendation No. 22: A change in the classification system is neither supported or opposed, however, before proceeding the following must be established: a) an objective need for change; b) a plan to change similar to the 1988 – 1993 process; c) a full outline of various design options and reasons for same; d) a clear outline of the objectives to be realized.

Recommendation No. 23: The prevailing guiding principle is employer fairness, not WSIB resource allocation.

Recommendation No. 24: Cost based ER founded on a principle of “revenue neutrality” (no off-balance – surcharge or rebate) must continue. Subjective audit based systems are not supported as a replacement vehicle for ER, although they (Safety Groups, etc.) may work as stand-alone complementary initiatives. A retrospective system is endorsed and a prospective system is rejected.

Recommendation No. 25: While an ER review is not opposed, the Funding Review is not the appropriate forum through which to explore alternative design features. As the fundamentals of ER have not been effectively addressed within a generation, all WSIB ER programs are ripe for review. The WSIB should commit to a comprehensive process akin to the process and protocols employed during the inaugural design period of the early 1980s.

Recommendation No. 26: SIEF must continue. The current design of SIEF is fair. SIEF is purely redistributive and does not add to system costs. Class variables are to be permitted. If the Board is eager to proceed with an SIEF review, the development and release of a policy options paper akin to the paper released in January 1990 must be a precursor to any reform initiative. Focused stakeholder engagement outside the scope of a large review project such as the Funding Review is essential.

Recommendation No. 27: OD claims costs should be collectivised at the RG or Class level (i.e., not subject to ER).

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Recommendation No. 28: The WSIB should not establish a special OD fund unless required to do so by the Actuarial Standards Board.

Recommendation No. 29: The WSIB should not create a speculative OD fund for “unknown OD”, i.e., where a cause and effect has not been scientifically established.

Recommendation No. 30: The WSIB must assume a leadership role in continuing the broader public policy debate triggered by “Weiler 1” in 1980, and as recommended by ODAP Chair in February, 2005. The debate is long overdue and remains stalled. The OD challenge will not be met with a new funding model unless worker contributions are included.

Recommendation No. 31: Whatever the overall and eventual recommendation of the Funding Review with respect to benefit indexing, WSIA s. 52.1 must be repealed.

Recommendation No. 32: So long as there remains an UFL that itself is materially influencing the financial direction of the WSI system, the current curb on inflation’s effect on partial pensions should continue.

Recommendation No. 33: Ideally, as the rationale for indexation is linked to purchasing power erosion, indexation should be limited to instances of wage loss, thus removing inflation protection for pensioners not experiencing a wage loss. The Funding Review is encouraged to explore this policy alternative.