

SCHEDULE 2 EMPLOYERS' GROUP

MEMORANDUM

To: Schedule 2 Employers' Group
From: Chris James
Subject: Highlights of Meeting on June 11, 2014

Date: June 11, 2014
Copies:

Topics

- **Introductions** – We went around the conference room at Mathews Dinsdale & Clark to introduce ourselves and do introductions with those participating over the phone.
- **Updates from the WSIB** – Daintry Davis was expected to provide updates on changes and developments at the WSIB but we learned this morning that unfortunately she was ill and could not attend. No else from the WSIB attended in her place to provide the update. Laura Russell contacted John Slinger's office to express the disappointment of the Schedule 2 Employers Group that no one attended the meeting from the WSIB today.
- **Richard Morrison** was expected to speak on WSIB's contract with CAMH assessment and treatment services. For reasons that are unclear he did not attend to deliver the presentation. Laura will be following up with the WSIB to ask that for the next scheduled meeting on September 10th that the WSIB address the topic of the contract with CAMH from three perspectives:
 1. CAMH Contract – what does it provide for by way of assessment, treatment and reporting;
 2. Adjudication – what does the WSIB do with the reports that they get from CAMH both written and verbal and how does that assist in adjudication.
 3. Medical Side – an explanation from a physician working at CAMH doing assessment and treatments to explain what is done to assess and treat injured workers and communicate with the WSIB and employers.
- **Schedule 2 Employers' Group Conference Update** – the conference is booked for October 7 & 8, 2014 at the Sheraton Parkway Hotel and Conference Centre. The agenda and speaker line-up is being finalized. Chris explained that Dr. Jennifer Christian would be the keynote presenter on Day 1 and would be talking about new ideas for your worst claims. She presented at a major US workers' compensation convention in November 2013 to rave reviews. She will be speaking for an hour and half on the first day.
- The confirmed workshop topics deal with the following:
 - a) Extreme Accommodations – Solutions that Work for Employees and Employers
 - b) Making Wellness Work – Tips and tricks for driving participation, results and ROI

SCHEDULE 2 EMPLOYERS' GROUP

-2-

- c) Untangling the Occupational/Non-Occupational Benefits Web
 - d) Organizational Mental Health – Evidence Based Psychological Health
 - e) Reading Body Language – How it can help identify and control workplace violence and harassment
 - f) Work-Related Asthma - if you can't breathe nothing else matters
 - g) Introduction to WSIB Claims
 - h) Navigating the National Standard: Psychological Health and Safety in the Workplace
 - i) Ergonomics and its role in the OHS and WSIB realm
 - j) Mental Health issues – sorting our DSM, Validity Measures and Malingering
 - k) WSIAT Case Law Update
 - l) Human Rights and employment related issues concerning disability
 - m) WSIAT – recent chronic stress claim – what does decision signal and how to respond.
 - n) Chronic Pain & Return to Work
 - o) Multi-Focused Employment Issues that come up in WSIB, LTD and Human Rights Cases.
- **WSIAT Decision # 2157/09** – Michael Zacks – provided an overview of this sad case of a nurse who was humiliated and belittled by her boss, a doctor, over a 10 year period and went on to develop depression. The panel held that the case did not meet the requirements of section 13(4) & (5) of the Workplace Safety and Insurance Act (WSIA) dealing with traumatic mental stress and the WSIB policy for traumatic mental stress. The worker's representative raised a charter issue as to whether the provisions of section 13 (4) & (5) was discriminatory in excluding compensation for a case of chronic occupational stress. The Office of the Attorney General participated as did the employer. Expert witnesses were called and in the end it was found that in this case section 13 (4) and (5) violated the injured worker's right to equal treatment guaranteed under section 15 of the Charter of Rights and Freedoms. This infringement was not justified by section 1 of the Charter.

Michael expects that this case will lead to expanded entitlement to WSIB benefits in cases of chronic workplace stress. It remains to be seen if the WSIB will amend their stress policy to include entitlement for chronic occupational stress and whether they will follow the Alberta model that requires workplace stress to be the “predominant factor” for entitlement to be allowed. At the moment the WSIB appears to be taking a wait and see approach. It is unknown if the Attorney General's Office will ask for Judicial Review of the WSIAT decision. These decisions may depend on the outcome of the Ontario election.

- **WSIB Administration Rates** – The WSIB is continuing to use the “proxy method” for determining WSIB Administration rates. WSIB rates have risen over the last few years. This is because WSIB benefit payments have gone down but expenses for running the WSIB and other government agencies supported by the WSIB have not. The WSIB is looking at ways to reduce

SCHEDULE 2 EMPLOYERS' GROUP

-3-

administrative expenses and questioning expenses funded by the WSIB such as contributions to the Ministry of Labour but it remains to be seen if that will be effective.

- **Schedule 2 Industry Sector** – interest remains in re-establishing a Schedule 2 sector or at least re-establishing more Schedule 2 teams. Daintry Davis advised Laura that every employer has an assigned Manager that can assist an employer in addition to a manager who may be responsible for an Eligibility Adjudicator or Case Manager working on an individual case. There are also two Schedule 2 teams within the Occupational Disease and Survivor Benefits area dealing with Noise Induced Hearing loss claims and one team dealing with Schedule 2 Occupational Disease claims.
- **Schedule 2 Executive Meeting with the WSIB on May 8, 2014** – At that meeting there was a good discussion about Appeals Modernization. The WSIB has agreed to correct a problem that occurred with the appeals re-organization when appeals went ahead without inviting the employer even though an employer participant form had been filed. Originally the WSIB offered employers the chance to have the same Appeals Resolution Officer re-consider his/her decision. This was totally unacceptable to employers. The WSIB has now agreed to amend their Practice and Procedures document so that if this happens again in the future the decision will be set aside and a fresh hearing will take place in front of a new Appeals Resolution Officer.

The WSIB is holding meetings with Schedule 2 Employers to explore whether the WSIB can assist Schedule 2 employers to recover monies from US asbestos trusts in claims involving mesothelioma, lung cancer and asbestosis. The WSIB has been using the US law firm, Motley Rice for years to make recoveries on behalf of Schedule 1 and we would like their assistance on behalf of Schedule 2 employers. The WSIB has been provided with details on a handful of recent asbestos related claims and is reviewing the situation with Motley Rice to determine what might be possible.

There was a discussion about section 63 agreements with the WSIB. Section 63 of the WSIA allows Schedule 2 employers to reach settlements with their worker's under certain circumstances and have them approved by the WSIB. The WSIB approves a small number of section 63 agreements each year but sometimes suggests changes to agreements that were fine in other agreements only months before. There is an interest in making the process more consistent and understandable for representatives. The WSIB has agreed to work on this with us.

- **Election forms from the WSIB when a third party is involved in an accident.** The WSIB received a legal opinion that indicated that the WSIB did not need to send out an election form to a worker to elect whether to claim WSIB benefits or sue a third party in every case. The WSIB said that they were sending out election forms in cases involving lost time. It appears that the WSIB is not sending out election forms in lots of cases involving health care and lost time. Don Doran advised that in the Ontario Public Sector they are seeing over 150 cases where

SCHEDULE 2 EMPLOYERS' GROUP

-4-

election forms were not sent out to injured workers. Don is to meet with Brenda Abrahams, the WSIB General Counsel to review the matter in more detail.

- **Schedule 2 Measures** – Brian had done quite a bit of work on how the WSIB could gauge Schedule 2 performance within the WSIB system. The WSIB is hampered because they do not have FTE data for Schedule 2 employers as a base line for measurement. The WSIB has been attempting to use data from HRDC but this is a time consuming and inaccurate alternative to actually having FTE data.
- **Regional Meetings** – There was a meeting in March in Hamilton that was lightly attended. The next meeting is scheduled for September that will hopefully be better attended. It would be nice to be able to offer the meeting via Skype so people could watch the meetings remotely.

Next Meeting – September 10, 2014 – 9am

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