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June 17, 2014

Workers Compensation Board of Manitoba
333 Broadway
Winnipeg, MB R3C 4W3

Attention: Alice Sayant, Vice-President, Strategy and Assessment Services

Dear Ms. Sayant:

Re: WCB Assessment Rate Model Review - Submission of the Construction Association of Rural Manitoba (CARM)

Please find attached CARM's submission in response to the WCB's request for employer input on its assessment rate model, which was drafted by our legal counsel in consultation with our Board and membership.

The attached submission reflects the position of CARM. As our objective is to add to the dialogue on the current rate setting model and offer our recommendations, our submission will also be distributed to other employer organizations with similar interests, for their consideration and comment.

We would be pleased to meet further with the WCB, on any point raised in our submission.

Yours truly,

CONSTRUCTION ASSOCIATION OF RURAL MANITOBA

per:

**Chris Johnston,
President of the Board of Directors, CARM**

*Cc. Winston Maharaj, President and CEO, WCB
Michael Werier, Chairperson, Board of Directors, WCB
Heather Dodds, General Manager, Construction Association of Rural Manitoba*



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June 18, 2014

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Darla L. Rettie
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File No. 50090-1

Attention: Alice Sayant, Vice-President, Strategy and Assessment Services

Dear Ms. Sayant:

Re: WCB Assessment Rate Model Review - Submission of the Construction Association of Rural Manitoba

We represent the Construction Association of Rural Manitoba. This Submission is in response to the WCB's request for employer input on the method it uses to calculate assessment premiums owing by each employer ("**Assessment Rate Model**").

The Workers Compensation Board ("**WCB**") provided stakeholders with a letter dated May 5, 2014 ("**Letter**"), which stated that feedback from consultations will be used to gauge the relative strengths and limitations of the current rate setting model including its impact on employers and workers. Feedback on the Assessment Rate Model is requested by June 30, 2014.ⁱ We understand the WCB has also hired the firm of Moreau Shepell to review its current Assessment Rate Model, engage in consultations with both employers and labour groups, explore options for change, and make recommendations for consideration of the WCB's Board of Directors.ⁱⁱ

The Construction Association of Rural Manitoba ("**CARM**") was established in 1913. The association provides representation and services to promote the sustainability and integrity of the rural construction industry. CARM is the voice of the construction industry in south west Manitoba, representing its members interests to industry, governments and the community at large. The organization represents approximately 170 companies from all construction sectors; residential, ICI (industrial, commercial, institutional) and heavy/civil, as well as businesses that support the construction industry.

CARM is pleased that the WCB is reviewing the Assessment Rate Model it currently has in place, but CARM takes the position this review represents only half the job required.

The actual assessment premiums employers in Manitoba pay, to fund all the costs of operating the WCB insurance scheme, depend on a series of relevant factors that work in

concert with the Assessment Rate Model. Reviewing the Assessment Rate Model *in isolation* from a review of any of these other factors is no more logical than building a structure from blueprints, but with no concern for the materials that will be used in that construction.

CARM's position is that reviewing the Assessment Rate Model in isolation from these other relevant factors is not transparent and does the employers in this province a disservice, as it isolates from view the other variables that feed into the model. As suggested in the recent report prepared for the Minister of Family Services and Labour, *Fair Compensation Review* (January 30, 2013) ("**Petrie Report**"), the WCB ought to undertake a comprehensive review of the rate assessment model used to calculate employer premiums.ⁱⁱⁱ

This Submission will set out CARM's position on the following *additional relevant factors* that significantly impact the resulting assessment rates, because they represent the "raw materials" that the Assessment Rate Model uses (in the rate calculation process):

1. Industry Classifications
2. Claims Assigned
3. Maximum Assessable Earnings

By addressing these additional relevant factors CARM is hopeful that the WCB will appropriately expand its review in order to be fair and transparent to the employers in Manitoba that fund 100% of the workers compensation system. To that end, CARM suggests that the overarching purpose of the WCB's review should be to review the impact of the WCB's assessment rate model and related policies and practices on fair compensation for workers and equitable assessments for employers.

OVERARCHING POINTS ON FAIRNESS

CARM begins its Submission with two overarching points on fairness. It is critical that the results of the WCB's review be both procedurally fair and substantively fair. In order to add to the dialogue on what "fairness" includes, CARM makes the following two points:

1. Procedural "fairness" means *complete* transparency

- CARM believes it is part of the WCB's mandate to ensure all employers in Manitoba are aware that the Assessment Rate Model is not the whole story - it is not the *only* factor that influences the yearly premiums employers pay to the WCB, their assessment rates, and how those rates increase or decrease over time.
- The fact is, the Assessment Rate Model is *part* of a collection of WCB policies and administrative practices that together impact the way that WCB claim costs are

calculated, reported, and used to calculate employers' annual WCB rates and amounts payable.

- A comprehensive review would require the WCB to disclose and review the full range of WCB policies and practices that impact the Assessment Rate Model, so that all relative factors can be transparently discussed.

2. Substantive "fairness" requires attention to *parity* across jurisdictions

- The WCB's current Assessment Rate Model and the related WCB policies and administrative practices (collectively, the "**Assessment Calculation System**") rely on aggressive premium calculation criteria that are out of line with those used in other Canadian provinces. This fact was acknowledged in the Petrie Report and by Morneau Shepell, in a presentation to employers on May 27, 2014, where it was noted that the effects of the WCB's Assessment Rate Model is considered to be the most aggressive amongst Canadian jurisdictions and that rate consequences are particularly disproportionate with respect to small and medium sized employers, in relation to the actual costs of claims incurred by those sized firms.^{iv}
- Manitoba's construction firms routinely bid against firms from other jurisdictions on large commercial projects. CARM members typically carry higher WCB costs, and claim statistics than competitors from outside Manitoba. This impacts Manitoba construction firms in two ways: first, in their ability to secure work in the first place; and secondly, in the comparative costs of doing business in Manitoba.
- CARM suggests substantive "fairness" requires the WCB to work to implement an Assessment Rate Model (and an Assessment Calculation System) that does *not* put Manitoba firms at a competitive disadvantage to those firms immediately outside our boundaries; as such a result is counter-productive for Manitoba's economy as a whole.

ADDITIONAL RELEVANT FACTORS

A. Industry Classifications

Inside the eight broad industry classifications the WCB uses to classify employers, the WCB sub-classifies each employer into one of 230 different industry classifications. Each of these sub-group classifications has its own starting rate and assessment rate range - depending on risk levels associated with that *particular* industry and *specific* sub-group.

For example, in the construction industry alone there are 31 different industry sub-group classifications that the WCB can assign to an employer engaged in construction. The current starting point for the calculation of any new construction firm's assessment rate is

somewhere between 120% and 500% of the WCB's average rate in any given year, depending on the construction sub-group classification that particular employer is assigned into.

As such, the determination of the correct industry classification is the critical starting point for the determination of what any employer's assessment rate will be. If an employer is assigned into the wrong industry classification sub-group it may be paying substantially less or more than it should be. Often the WCB will assign employers into industry classification sub-groups based on the information provided by an accountant at the start of a business, who may have little or no knowledge of the actual scope of work that will be done by the employer, or how it may have changed over time.

Even though industry sub-group classifications affect all employers in Manitoba, not just construction firms, there is no transparent way to determine if the WCB "got it wrong" when it classifies an employer. The details related to classification sub-groups are not publically available online or otherwise, so there is no way for an employer to efficiently review whether it may be improperly classified.

This is contrary to what is available in other provinces. For example, in Alberta, an employer can access the Workers' Compensation Board of Alberta's Rate and Industry Description Manual online and review the detailed industry code descriptions to make sure their business fits within the operational details of the industry code the Alberta WCB has assigned.

Making it very difficult for an employer to determine whether it was classified correctly in the first place, or is still classified correctly, is the opposite of transparent. And, if the objective is to create a fair and transparent Assessment Rate Model going forward, it must begin with a fair and transparent method of determining whether the correct industry sub-group classification has been assigned to an employer. As noted, this determination provides the starting point for all assessment rate calculations, and rate range determinations, and will likely continue to be so in the future, under any new model.

Recommendation: In order to model fairness and transparency, the WCB should publish its internal "Industry Classification Descriptions" online and provide an efficient methodology by which employers can understand and better participate in determining whether they have been accurately classified. This is necessary as industry classification is integrally tied to the Assessment Rate Model, and addressing one without regard to the other would not be logical.

B. Claims Assigned

CARM agrees that workplace injuries should generally be compensable under the WCB system; however it takes the position it is unfair to assign the costs of particular types of claims to specific employers in Manitoba. It notes the WCB should administratively have a list

of certain types of claims that are borne by the general pool, not any particular employer, or factored into the claim statistics of any particular employer.

The WCB's practice is to assign the costs associated with all claims to specific employers - even for claims that are ultimately disallowed or dropped. Similarly, the WCB adds these claims to the statistical claim count for those employers. This can have dramatic consequences for employers engaged in bidding on contracts, where the total number of WCB claims is often a relevant consideration. The construction industry routinely faces pre-qualification processes on large commercial contracts, where the number of claims reported by the WCB can disqualify an employer from the bidding process.

Additionally, as the WCB assigns the costs for all disallowed or dropped claims to specific employers, an employer's assessment rate can increase based solely on a rejected WCB claim. There is no logical reason why any employer's WCB assessment rate should go up as a result of an improperly filed or disallowed WCB claim. These administrative decisions are patently unfair to employers, and are excessively punitive for no reason to the employers of Manitoba.

Recommendation: *the WCB should immediately stop attributing disallowed and dropped claims to any one particular employer, and should allocate these claim costs and claim statistics to the general pool.*

C. Maximum Assessable Earnings

Currently, Manitoba employers pay assessment premiums to the WCB based on their payroll - to a maximum of \$119,000 per worker. CARM understands the WCB is looking to remove this cap completely so that Manitoba employers will pay assessment premiums to the WCB based on their total worker payroll, without any capped amount per worker.

The planned complete removal of the payroll cap for *assessment purposes* has the "backdoor" effect of *increasing* the amount of total assessment premiums any one employer pays to the WCB in Manitoba. No other jurisdiction in Canada has removed the cap on "assessable" payroll. The average maximum assessable payroll per worker in Canada is \$67,275 - the lowest is P.E.I. at \$49,300.

Even now, at \$119,000 per worker, this has the effect of significantly inflating the assessment premiums paid by Manitoba employers that have a *higher* collective payroll, regardless of risk.

This has a negative effect on CARM's members, as typically their workers collectively earn more than workers in other industries. For example, many construction firms have on staff a number of high earning engineers and other professionals that provide management oversight to construction projects. The amount of assessment premiums payable by these

construction firms has steadily increased, not because of increased risk but because the WCB has continued to *increase* the maximum assessable payroll that employers are required to report. This increase in assessment premiums payable *without* any evidence of a corresponding increase in risk is patently unfair. Manitoba's construction firms should not be "penalized" by the WCB for paying their workers collectively higher wages, as compared to other industries in Manitoba.

CARM also notes that the planned removal of the payroll cap for assessment purposes puts Manitoba construction firms at a competitive disadvantage to construction firms from other provinces that bid on work in this province, that have lower overall assessment premiums. Firms outside Manitoba are only required to report a portion of their actual payroll to the WCB of Manitoba (those workers who are physically in the province for specific periods of time).

Up until 2005, a worker's insurable earnings were capped, although the capped amount was indexed annually. In 2005, the maximum insurable earnings were \$58,260. A Legislative Review Committee, tasked with reviewing *The Workers Compensation Act*, made a recommendation in 2005 that the cap on insurable earnings should be removed, so that workers who earned in excess of the cap would be paid wage loss amounts based on their actual earnings.

The WCB made this change in 2006,^v and at the same time started to *increase* the maximum assessable payroll amounts that employers are required to report, as part of the Assessment Calculation System. CARM understands the decision to remove the assessable payroll cap was an administrative decision of the WCB. This change to the amount of reportable payroll was made without transparent consultation with the employers of Manitoba, which CARM submits was unfair.^{vi}

Recommendation: The WCB should implement a maximum reportable payroll, per worker, at the national average of \$67,275, or as determined through transparent consultation with the employers of Manitoba.

ASSESSMENT RATE MODEL COMMENTS

A. Max-Min Assessment Rate Ranges

The Assessment Rate Model is a very aggressive rate calculation system when compared to the assessment calculation methods used in other provinces. In Manitoba, any particular employer's assessment rate can go as high as 200% above their *industry* average. This is on top of the fact the highest industry average can be up to 800% above the WCB's *basic* assessment rate.

In addition to these high rate ceilings, the current Assessment Rate Model is designed to generate explosive rate increases very quickly. Rate increases of 10%, 20%, 30%, 40% or 50% over an employer's previous rate can be based on one or relatively few claims, if an employer's payroll is relatively low. The reality is that a couple of claims can have up to a six-year drag on an employer's ability to effect any positive change to its WCB assessment rate. As such, particularly for employers with lower payroll levels and one or two costly claims, the Assessment Rate Model is unreasonable in its long-term punitive effects.

CARM notes this assessment rate calculation model is completely out of sync with the vast majority of models used in other Canadian jurisdictions which top out at a maximum assessment rate of no more than 100% above the *industry average* in that jurisdiction. By comparison, in other provinces, an employer's assessment rates can only increase to a maximum of 40% to 100% above their respective industry averages.

As a result of these aggressive rate calculation parameters, the model interferes with some of CARM members' abilities to be competitive in and do business in Manitoba. In some cases, rates can get so high that construction firms are no longer able to compete for large commercial contracts in this jurisdiction.

CARM's position is that the Assessment Rate Model's explosive rate change effect is:

- contrary to the over-arching principle of collective liability that is a foundation of workers compensation legislation in North America and beyond;
- contrary to the principle of fairness; and
- non-competitive to practices in other Canadian jurisdictions.

Recommendation: *The WCB should immediately reduce the maximum assessment rate for all industry classifications to 100% above and 50% below the industry average rate, which would provide a fair balance between collective and individual firm liability, and the comparable assessment ranges applicable in most other Canadian jurisdictions.*

B. Claim Costs - when do costs start affecting an employer's rate?

Currently, the clock starts ticking for assessment rate setting purposes the day after an accident, if there are wage loss costs or medical costs associated with a claim.

Because of the system design, an employer's assessment rates may increase if an employer cannot find alternate work for injured workers quickly after an accident. In some industries, such as construction, employers may not have the same flexibility to offer modified duties to injured workers.

CARM's position is that the Assessment Rate Model should not be designed in a manner that benefits some industries and larger employers to the detriment of other industries and smaller employers that may not have the structural ability to implement safe "light duties" for injured workers.

Other jurisdictions have up to a two (2) week window where claim costs are not borne by any particular employer, to create a fairer playing field for those employers in industries where bringing a worker immediately back for safe alternate work is difficult or impossible. Additionally, in other jurisdictions, a "time loss" claim is not registered against a particular employer, during this same period.

Recommendation: *The Assessment Rate Model should not include claim costs incurred in the first two (2) weeks after an accident. Those costs should be charged to the general fund, as some industry groups and small employers do not have the ability to immediately implement safe return to work options for injured workers. Additionally, the WCB should revisit when it identifies a claim as a "time loss" claim, for statistical purposes, in light of practices in other Canadian jurisdictions.*

C. Claim Costs - end date?

Currently, employers must bear the cost consequences of a claim for five (5) years, which has huge consequences for employers. As noted above, under the current Assessment Rate Model, it may be impossible to positively impact an assessment rate for the six (6) years following even one claim.

CARM notes that other jurisdictions use a three (3) year claim cost window for rate setting purposes. This shorter window reflects a more equitable balancing of particular vs. general liability principles.

Additionally, other jurisdictions offer employers the ability to appeal their assessment rate based on economic hardship, but this is not an option currently available in Manitoba. This lack of flexibility is contrary to the larger interests of the Manitoba economy and principles of fairness.

By way of example, a mid-sized construction firm in rural Manitoba recently saw its rate increase from \$4.19 to \$14.57, over a five year period as a result of one significant claim arising from an automobile accident, which was not the fault of the worker or the employer. During the same time, the employer's assessment premiums rose from \$10,746 per year to \$46,890. As a result of the quick upward trajectory of this employer's assessment rate and its increasing payroll, the employer experienced significant financial hardships, with no recourse available as per the WCB.

Recommendation: *The Assessment Rate Model should only consider claim costs incurred in the first three (3) years after an accident.*

Additionally, employers in Manitoba should have the right by WCB policy to make a hardship claim, where a particular claim has rate setting consequences that will impact the employer's ability to carry on business in Manitoba.

D. Time Loss Claims - should be fairly assessed

Currently, claims are coded as "time loss" claims by the WCB, even if a worker returns to work but leaves work an hour early to see his or her doctor for a follow up. This is true even if there is no actual loss in wages related to attendance at the medical appointment. The classification of such claims as "time loss" claims has consequences for employers for statistical claim reporting purposes, and compliance with "time loss" reporting obligations.

CARM understands that in cases where the WCB hears that a worker has left work early to attend a medical appointment, the WCB will issue the employer an unsolicited "reimbursement" cheque to cover the worker's wage loss for the appointment time, and will then convert the claim from a "no-time loss" to a "time loss" claim.

This administrative decision is excessively punitive for employers that have acted diligently to accommodate injured workers, by giving them time off during working hours to attend medical appointments. If this administrative practice is not amended, it may create unwanted consequences for workers who may be required to attend all medical appointments outside scheduled working hours so that the WCB does not convert the claim to a "time loss" claim.

Recommendation: *The WCB should immediately stop classifying a claim as a "time-loss" claim, if the only time loss is related to attendances at medical appointments related to the compensable injury, and there is no wage loss.*

E. Assessment Rate Model Affects Manitoba's Competitiveness

Construction is not a "local" industry. Employers face international and inter-jurisdictional bidding pressures for large contracts. Some of CARM's members are being shut out of contract bidding processes by WCB's Assessment Calculation System, which leads to rates and injury statistics that are not in keeping with rates and injury statistic calculation procedures in other jurisdictions. Safety rating has become an important contracting consideration and WCB is not alive or sufficiently responsive to this development.

Safety rating firms, like ISNetworld, and internal risk management departments of others, provide safety evaluations on firms as a preliminary step in the contract bidding process for a significant portion of commercial construction work in Manitoba. The safety rating process is often complex, contract specific, and requires statistical information from the WCB related to

the number of claims experienced by a firm, as well as claim costs, and assessment rate particulars. In short, the manner in which the WCB codes and reports claim totals for its own statistical purposes has a deleterious effect on the safety rating qualifications firms receive from these external safety rating bodies.

CARM would be pleased to meet with the WCB to explain in detail where its statistical practices impact the construction industry in particular.

Recommendation: *The WCB should immediately work with CARM and the construction industry to educate itself on how its statistical reporting practices negatively impact the construction industry of Manitoba, and implement a statistical reporting process that does not impair the competitiveness of our construction industry in Manitoba.*

SUMMARY

The current Assessment Rate Model and Assessment Calculation System fail to deliver fair assessment rate results to the construction industry. CARM has proposed a series of nine (9) suggestions that it believes would deal with the deficiencies in the systems the WCB currently uses. CARM is willing to discuss its proposals with the WCB and other interested parties, as part of the WCB's current review process and beyond.

Yours truly,

PITBLADO LLP

per:



Darla L. Rettie

DLR/jr

Cc. *Winston Maharaj, President and CEO, WCB*
Michael Werier, Chairperson, Board of Directors, WCB
Heather Dodds, General Manager, Construction Association of Rural Manitoba

ⁱ Letter from Alice Sayant of the WCB to Construction Association of Rural Manitoba, dated May 2, 2014.

ⁱⁱ Ibid., which references a preliminary Discussion Paper on the Rate Setting Model prepared by Douglas C. Stanley, April 2014. The WCB has not done a comprehensive review of its Assessment

Rate Model since 2004-5, when it released its report, *Working for Manitoba: Workers Compensation for the Twenty-First Century*.

ⁱⁱⁱ Paul Petrie, *Fair Compensation Review* (January 30, 2013) (unpublished report to the Minister of Family Services and Labour, the Honourable Jennifer Howard) ("**Petrie Report**"). The Petrie Report provided an external review on the current WCB assessment rate model and recommended a comprehensive rate model review. The genesis of the Petrie Report was the direction of the Minister of Family Services and Labour, the Honourable Jennifer Howard, to review the WCB process for setting employer premiums.

^{iv} Manitoba Employers Council Meeting, May 27, 2014 (Winnipeg, Manitoba), based on statements made by and prepared by Douglas Stanley, Conrad Ferguson and Mark Simpson.

^v *The Workers Compensation Act* was amended to remove the previous section 80(4) which capped the maximum assessable earnings that any employer was required to report.

^{vi} *Working for Manitoba Workers Compensation for the Twenty-First Century*, Report of the Legislative Review Committee on the Workers Compensation Act (February, 2005), delivered to The Honourable Nancy Allan, Minister Responsible for *The Workers Compensation Act.*, p. 27.