

IJA COMMITTEE MEETING
SEPTEMBER 28, 2000

Attendees:

Greg Mac Callum, PEI
Frankie Lafayette, Alberta
Doug Mah, Alberta
Jay Rowland, BC
Terry Smith, Saskatchewan
Wayne Dale, Saskatchewan
Cynthia Medes, Ontario
Richard Tingley, New Brunswick
Donna Strong, Newfoundland
Donna Allen, Northwest Territories & Nunavut
Pascale Goulet, Quebec
Catherine Gaulton, Nova Scotia
Lori Ferguson Sain, Manitoba
Brenda Croucher, AWCBC

Regrets:

Sheila Lilles, Yukon
Pam Cohen, British Columbia

Review of Minutes -April 13 & 14, 2000

The IJA Committee minutes of April 13 &14, 2000 were accepted with amendments.

Business Arising Out of April 13 & 14, 2000 Minutes

CTA –Input Regarding Effectiveness of IJT

Correspondence prepared by the Chair to Mr. Bradley, President, Canadian Trucking Association (CTA) dated September 22, 1999 was referenced. The Chair noted that he would follow up with Mr. Bradley to obtain feedback regarding any comments and/or concerns that have come to his attention with respect to the Alternative Assessment Procedure (APP).

Action Point: Greg MacCallum

Jurisdictions -Input Regarding Effectiveness of IJT

It was noted that the British Columbia, Alberta and Manitoba Trucking Associations are satisfied and support the APP. It was noted that the APP has minimal impact in the Northwest Territories/Nunavut and that the position in Saskatchewan remains unchanged with respect to their participation in the APP. Newfoundland noted that there are not large numbers of APP claims and no indication of issues from their Trucking Association.

Action Point: The following boards/commissions will seek input from their assessment departments regarding feedback from their respective Trucking Association: Nova Scotia, Yukon, Prince Edward Island, New Brunswick, Ontario and Quebec.

It was noted that on occasion, there have been difficulties with obtaining information from the assessing board due to a confidentiality issue. As the agreement contemplates the sharing of information, it was suggested that committee members remind claims staff to maintain confidentiality where appropriate and to contact the IJA Coordinator in their jurisdiction should an issue related to the sharing of information arise.

It was suggested that an evaluation of the APP would be required prior to considering further requests from industry for a similar procedure as the APP.

Independent Operators

It was noted that the issue of “under assessment” might be addressed at the next Assessment Director’s meeting. It is anticipated that discussions will include Independent Operator coverage and the exploration of a process to achieve greater harmonization among jurisdictions.

Action Point: Catherine Gaulton to contact Stuart MacLean regarding the status of this initiative.

IJT Registration Process

The following points with respect to the IJT registration process discussed at the May 2000 Assessment Director’s meeting were referenced.

- That the deadline for registering or renewing IJT participation would follow the annual reporting deadline for employers in each jurisdiction. (last day of February in all jurisdictions except for BC and Ontario in which it would be March 15)
- That any employers registering in IJT by these dates would be assessed under the IJT effective January 1 of that year.
- Employers opening new WCB accounts during the year could opt for the IJT effective the date they open their account.
- Employers in IJT would be in for the full year and could not choose to leave the IJT and revert to the usual assessment process until the next year.
- IJT employers who close their accounts are withdrawn from the IJT, if they re-open their accounts later in the same year, they would go back into the IJT.

Action Point: Brenda Croucher to include in the procedures section of the IJA Reference Manual.

It was agreed that the effective date of application for new registrations would be the same day as the application is accepted. Individual jurisdiction would determine the exact time coverage becomes effective.

Action Point: Brenda Croucher to include in the procedure section of the IJA Reference Manual.

Dependents Benefits and Reimbursement

A case regarding the above noted topic was discussed at the April 13 & 14, 2000 IJA Coordinators meeting. Lori Ferguson Sain advised that a draft response has been prepared to assist with addressing the issues noted at that time.

Reimbursement of Third Party Claims for Appendix C

It was noted that the right of action referred to in Appendix C refers to the WCB right of action.

Survivor Dependents Benefits

Discussion took place regarding whether jurisdictions had received enquires with respect to “special payments” to Surviving Spouses (prior to April 17, 1985) and if there was relevance to Appendix C. Further discussion is required to determine how Appendix C applies to these cases.

There are some jurisdictions in which remarriage legislation remained in effect post-IJA (Appendix C). In these jurisdictions, there may well be cases in which there was remarriage and pension termination during the post-IJA period. Subsequently, there may have been reinstatement or “special payment” legislation implemented in those jurisdictions. The issues arising are:

1. Are there any reinstatement or special payments that trigger billing opportunities or reimbursement obligations under the IJA?
2. If so, is it now appropriate or fair to bill these amounts?

Action Point: Lori Ferguson Sain and Doug Mah will review issue in preparation for next meeting.

Shortfalls on Invoices

Alberta presented a briefing note on this topic. The issues include:

- How does each Board financially manage the shortfalls on IJA billings?
- Is there a need for participating Boards to adopt a “best-practices” approach to handling shortfalls?
- Do our processes ensure the employer receives a full credit when shortfalls occur thus avoiding duplicate assessment?

A question arose with respect to whether employers are being experience rated twice for the same injury and if there are some costs on the record of the adjudicating Board’s employer account when a shortfall occurs.

The procedure in which Alberta utilizes to process shortfalls on IJA recoveries received from other boards was reviewed. Committee members thanked the Alberta WCB for sharing this document, as it will assist jurisdictions with addressing this issue.

Action Point: Each Board to discuss impacts in their own jurisdiction.

Section 7

Reference was made to correspondence dated June 6, 2000 from the Chair to the WSIB regarding Ontario's position on inclusion of noise-induced hearing loss in Section 7 of the IJA. Ontario noted that this correspondence is currently under review.

Action Point: WSIB to respond to correspondence of June 6, 2000

Notification of IJA Claim for Reimbursement

Subsequent to discussion, the committee agreed that notification should be a copy of the election and a copy of the application. The Board receiving this information should initiate a claim and then suspend it. The reply to the other Boards and Commissions should give the claim number as a reference.

Action Point: It was agreed that the procedure would be enhanced by including the above mentioned process.

Interprovincial Employer Suit

New Brunswick advised the committee that the Nova Scotia Court of Appeal ruled on a case that addressed whether the intent of legislation was to access insurance of automobiles and whether the injured workers' cause of action was taken away. The tribunal ruled that there is no right of action. It was determined that this issue does relate to the IJA.

Action Point: Richard Tingley to distribute decision to IJA Coordinators.

Immunity for Employers/Workers working Extra-Provincially

The Committee was advised of the outcome of discussion, which took place at the lawyers meeting in August 2000 with respect to the above topic.

The issue relates to how could immunity from suit be made available to both employers and workers within the province/territory which has extended compensation coverage (home jurisdiction) and to employers and workers in the extra-provincial/territory where the accident occurs (accident jurisdiction). A background paper was distributed which provided details regarding several considerations:

- Interjurisdictional Agreement and Spencer v Mansour Decision (NS court of Appeal) –the Nova Scotia court of Appeal interpreted the intent of the IJA respecting signatory provinces/territories, as granting “worker status” in the accident jurisdiction to those workers of an extra-provincial employer who come into the accident jurisdiction to work thus providing immunity from suit to the home jurisdiction worker and employer and to the workers and employers in the

accident jurisdictions. The lawyers' conference noted that the decision is being appealed to the Supreme Court of Canada. In the event that Leave to Appeal is not granted, the Workers' Compensation Board of Nova Scotia will not accept it as a precedent.

- Reciprocal Immunity from Suit Agreements –General Consensus at the lawyers meeting indicated that reciprocal immunity agreements are not workable due to the vast differences in the degree of immunity among jurisdictions.
- Non-Pursuit of Third Part Actions –The lawyers agreed that entitlement to compensation does not prevent the worker bringing an action in the accident jurisdiction, however, certain Western Provinces terminate benefits whether the action is against the injured workers' own employer or against other third parties. The issue of a fiduciary responsibility on the Commission to pursue a third party action for accidents occurring extra-provincially was debated, however, no consensus on this was reached.
- General Liability Insurance –The lawyers noted that Boards/Commission offering or recommending that employers seek protection via general liability insurance is not an acceptable alternative.
- Assessment Lien Rate Shopping-The lawyers noted that the availability of immunity from suit is not an issue if a reciprocal immunity agreement does not proceed. (The Mansour v WCB Nova Scotia can be circumscribed on the facts and the law and is therefore not a precedent.)
- Employer Responsibility-The lawyers reached unanimous consensus that it was and should remain the employer's responsibility to register with the extra-provincial Compensation Board/Commission.
- Commission Responsibility-The layers reached general consensus that the Board/Commission had a responsibility to fully explain the limitation on immunity from suit to employers involving extra-provincial work.

The New Brunswick Commission distributed an Advisory Bulletin entitled "Working Outside New Brunswick" and general discussion took place regarding the contents and reaction.

Action Point: New Brunswick to update IJA Coordinators at next meeting.

Statistics

The 1999 IJA Cost Reimbursement statistics were reviewed.

Action Point: The AWCBC is to request IJA Cost Reimbursement statistics annually (March).

The 1999 IJT statistics were reviewed.

Action Point: The AWCBC is to request IJT statistics annually (March).

Brochure

General discussion took place regarding the IJA Brochure.

Action Point: Donna Strong to amend brochure to include clarification regarding coverage/immunity issue.

Action Point: AWCBC to forward Board/Commission general telephone numbers for inclusion in brochure.

IJA Workplan

The 2000 IJA Workplan was reviewed.

Action Point: Jay Rowland to evaluate statistics relevant to the IJA.

Action Point: IJA Coordinators to advise Lori Ferguson Sain if a jurisdiction has issues with participating in the IJA agreement beyond the expiry dates for Section 7, and Appendix C and E.

Action Point: Lori Ferguson Sain and Catherine Gaulton to prepare a recommendation with respect to the continuance of the IJA in preparation for review by the IJA Coordinators and approval by the Heads of Delegations at their June 2001 meeting.

Action Point: The Chair is to submit the 2000, Third Quarter IJA workplan to the AWCBC for distribution to the Executive Committee by October 4, 2000.

It was noted that the 2000 workplan will continue into 2001 and therefore a new 2001 workplan will not be required.

Other Business

Executive Sponsor

The Chair advised that Mr. Ralph McGinn has been appointed the Executive Sponsor of the IJA Committee.

IJA Meeting Frequency

It was noted that subsequent to April 2001, the IJA Coordinators would meet once a year unless issues arise which require additional discussion.

Action Point: IJA Coordinators to meet April 26 & 27, 2001 in Toronto, Ontario.

Quebec Update

The CSST representative noted that letters had been sent to Boards/Commission regarding election forms.

Saskatchewan Update

The Saskatchewan representative noted that a new policy is being prepared which restricts coverage for incidental travel outside of Saskatchewan.

Alberta Update

The Alberta representatives noted that there may be plans to streamline “benefit in kind” cases to the Millard Centre. In addition, the Alberta WCB advised of the availability of services at the Mallard Centre to other jurisdictions and that representatives from the Alberta WCB would be available to visit other jurisdictions to provide additional information regarding these services.

The Alberta representatives advised of the availability of a 2-½ day IJA course to other jurisdictions. Cost: \$695.00.

Meeting Adjourned.