

Feature June 1, 2011 12:00AM

# WSIB wars

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MISSISSAUGA, Ont. – Taking on the Workplace Safety and Insurance Board (WSIB) of Ontario is the classic David and Goliath scenario. However, they do make mistakes and when they do, they are beatable.

That was the message from lawyers Cezanne Charlebois and Paul Harris of Charlebois Associates during a recent Driving for Profit seminar.

“Many employers are not aware they have a great deal of power to deal with incorrectly adjudicated decisions at WSIB,” Charlebois, whose firm is an employer advocate of sorts when dealing with unfair WSIB decisions. “There’s always much more that can be done than you could imagine.”

Harris echoed that point, noting “There’s often a sense in the employer community that you’re helpless; that you can’t fight City Hall. The reality is, this group can be fought. When WSIB tells you no, it’s not necessarily no.”

Of course, the best way to take on WSIB is to avoid conflict with the massive, debt-laden government bureaucracy to begin with. And Charlebois and Harris showed up at Driving for Profit with several tips on how to do that.

## **O/Os: Know your coverage**

One way independent owner/operators and employers can run afoul of WSIB is to be unclear or not proactive about their insurance coverage in the event of injury.

Ontario owner/operators can opt-out of WSIB coverage in favour of private insurance from a provider such as Driving for Profit sponsor NAL Insurance. Doing so has its advantages, including coverage for injuries that occur off the job.

However too often, Harris said drivers who get injured and seek medical attention will have a workers comp claim opened on their behalf because the assumption in the medical community is that anyone injured on the job is covered by their home province's workers' compensation board.

"The problem is where an independent driver, who everyone agrees is an independent driver, purchased his own insurance coverage and is injured in another province. So he seeks out medical care and for whatever reason, the physicians that treat him send it off to a local compensation board and that compensation board sets up a claim," Harris explained. "All hell breaks loose."

When it's discovered the owner/operator's employer hasn't been paying insurance premiums on his behalf, the employer is likely to receive a hefty bill. Because it comes on scary looking workers' comp letterhead, Charlebois said the natural reaction for fleets is to pay the bill so as to not ruffle any feathers.

"That's not always the smartest thing to do," Charlebois said, noting her firm is currently representing a company that paid the fees and is now in the process of trying to recover them from WSIB. "Never pay premiums for an independent owner/operator who has their own private disability coverage."

Drivers, Harris warned, should be advised to tell any attending physician in the event of an injury that they have their own private insurance coverage. Doctors may not ask.

"Make sure they're educated to know that if they're hurt and have to go see a doctor, that they tell these people 'I don't have WSIB, I have my own coverage'," Harris suggested.

Company drivers who do fall under the WSIB umbrella may also be surprised to learn they can file a workers' comp claim in either their home province or in the province where the injury occurred. Most injured drivers will file the claim with their home province's

compensation board, but some savvy victims have learned to file in the province with the more generous compensation payouts. (For the record, Newfoundland provides the most generous compensation, Harris noted).

### **Joint Health and Safety Committees**

Another employer law issue that's simmering is whether or not employers must have a Joint Health and Safety Committee when they employ mostly independent owner/operators.

A recent court decision found that a Woodbridge, Ont.-based load broker with a small office staff of 11 and anywhere from 30-140 independent owner/operators at any given time was in the wrong because it didn't have a Joint Health and Safety Committee.

The OHS threshold is 20 employees, but Charlebois warned the recent case suggests independent operators must be included in that tally.

As a result, trucking companies with a small office staff and a roster of independent O/Os numbering more than 20 in total must have a Joint Health and Safety Committee, conduct quarterly meetings and have at least one manager and one employee certified.

For companies that currently don't comply with this requirement, the time to act is now, Charlebois warned.

Currently, about three days of certification training is required by a manager and employee. However, that training is being transferred from the WSIB to the Ministry of Labour in July, and the Ministry of Labour is expected to make the training requirements more onerous.

"By July, there are going to be new standards for Joint Health and Safety certification training," Charlebois warned, adding the training will be extended to five days. "Three to five days of training for most employers is absurd. Get your training done by July so you're not dealing with the new standards. Get your Joint Health and Safety Committee in place and get the training done before July."

For larger employers, this may mean taking a fresh look at the benefits of creating an in-house training program, Charlebois added.

"It's an interesting way for you to save money and not have to pay the exorbitant costs of having an outside provider do the training for you," she suggested.

She said her firm is in the process of helping a large retailer set up an in-house training certification program that will save it \$1-\$2 million a year in training costs.

“Having your own internal trainers will save you buckets of money. The process of getting approved is a long process, but it should be a long-term goal (for large companies).”

### **WSIAT appeals**

Charlebois also had some helpful advice for employers who are in the unenviable position of losing a Workplace Safety and Insurance Appeals Tribunal (WSIAT) Section 31 hearing decision.

The WSIAT represents the highest level of appeals under WSIB’s umbrella, Charlebois noted, however according to an often overlooked line of fine print, employers have just 40 days to appeal any decisions rendered by the tribunal. Past experience shows the Tribunal will not budge on that deadline, she added.

“Usually, companies are in a state of shock for at least that amount of time,” upon receiving an unfavourable judgment, Charlebois said. “Nobody knows about this 40-day deadline. It’s a brutal deadline. You usually have six months to a year to file an appeal with other Boards.”

Dealing with faulty WSIB decisions is a complicated and onerous process that in many cases requires the assistance of a specialist in employer law. Harris said mistakes do happen and employers should not accept them without a fight.

“WSIB is based on legislation with clear rules but also an awful lot of gray,” he said. “WSIB and every other compensation board writes policies to interpret what that gray is supposed to mean and how well they apply those policies depends on the skill level of the handler of that claim.”

Skill level can be inconsistent when you consider WSIB employs about 5,000 people, Harris pointed out.

Worse, the agency has little interest in the implications some of its rulings can have on an employer, he added.

“Each and every one of those Boards is a sleeping tiger. They don’t mean to be difficult. They believe they’re there to provide a benefit and mostly they do, but having said that, they’re a bureaucracy and because of that they don’t always do the things you think are sensible and they don’t care about your bottom line – that’s the last thing on their mind,” Harris said. “All they care about is ensuring this (injured employee) is taken care of medically and financially and if that is going to put your company in financial distress, they don’t care. They don’t care if it’s going to put your company out of business.”

If you need help in fighting your WSIB battles, you can contact Charlebois Associates.

Their Web site can be found at [www.charleboislaw.com](http://www.charleboislaw.com). For more information on Driving for Profit, visit [www.drivingforprofit.com](http://www.drivingforprofit.com).