

SPEECH BY
LIAM CONNELLAN, DIRECTOR GENERAL
CONFEDERATION OF IRISH INDUSTRY
AT
CII NORTH EAST REGIONAL MEETING
AT
BALLYMASCANLON HOTEL, DUNDALK
ON
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EMPLOYERS LIABILITY INSURANCE - EXCESSIVE AND
UNPREDICTABLE SETTLEMENTS IMPOSING COST BURDEN
ON INDUSTRY. SYSTEM IN NEED OF CHANGE.

The cost of Employers' Liability Insurance has risen dramatically in recent years and is now imposing a significant burden on many firms, particularly large employers. The dramatic increase in premiums, some of which have increased by more than 100% in the past year is not so much due to a major increase in accidents, but to the unpredictable and inconsistent system whereby damages are awarded, and also to an increase in the incidence of claims where such claims would not have been made in the past.

Following an increasing number of complaints, the Confederation surveyed members during August and found that the average premium paid by the 140 respondents is now 1.44% of payroll, or over £20mn per annum in total manufacturing industry. There were major sector differences however ranging from 0.27% in the Electrical and Electronics industry to 3.62% in the case of Building Materials firms. The average premium for firms in each sector is shown in Table 1.

TABLE 1

<u>Sector</u>	<u>Employers Liability Insurance As Percentage of Salaries</u>
Building Materials	3.62
Mechanical Engineering	2.10
Other Manufacturing	1.55
<u>Average of All</u>	<u>1.44</u>
Chemicals & Plastics	1.41
Food, Drink, Tobacco	1.32
Services	1.15
Clothing	1.03
Electrical, Electronic	0.27

There was also a smaller divergence in the average premium paid by small and large firms, with firms employing less than 50 paying an average premium of 1.58% of payroll, compared with just under 1.44% for the remaining categories. Outside the small firms category the average premium paid by larger employers showed no decrease, however, with medium to large employers (over 500 employees) all paying a similar average rate. It would appear, therefore, that while sector loading is a very high significant influence on the level of premium, the size of a firm's employment is not.

Dissatisfaction with Excessive Premium Rates

Attitudes to Employers Liability Insurance vary depending on the rate of premium being paid, and on the size of the firm. Exceptionally strong dissatisfaction was expressed by companies who had faced major increases in premium in the past year or who had suffered very high settlements. Companies facing major premium increases were informed that the increases were due to the increased cost of compensation awards as well as increased litigation costs. Some companies with excellent safety records and vigorous accident prevention programmes have had to pay sharply increased insurance premia, due to a level of settlements which do not necessarily reflect the cause of the accident or extent of injury.

In one case the Employers' Liability Insurance premium was doubled despite the fact that a safety record of over two million accident free man hours had been established. In another the increased premium for Employers' Liability caused this insurance to account for 70% of the firm's total insurance bill.

Dissatisfaction with the current level of premium was not spread evenly throughout industry - half the respondents did not consider their premium paid in the last year to be excessive. In the sectors paying the highest rates, however, the premium was considered excessive by a large proportion. All Building Materials firms, who face the highest average rate, considered their premiums excessive. Similarly, an above average proportion of firms in Mechanical Engineering and "other" manufacturing considered it excessive. The Clothing industry, which in fact pays the second lowest average rate expressed a high degree of dissatisfaction, presumably due to the large size of premium relative to turnover or profits in such a labour intensive sector.

Dissatisfaction was strongly related to the size of firm, with 71% of large employers, employing over 500 people, considering their premium to be excessive. High rates of Employers' Liability Insurance add to the many other burdens facing large employers and consume large amounts of finance. Insurance is based on risk spreading, and it is pertinent to question whether a large workforce, particularly when coupled with safety procedures and a successful record, should not receive an appropriate reduction. The proportion of firms considering their premium excessive is shown in Table 2 in its relationship to company size.

TABLE 2

<u>No. Of Employees</u>	<u>% Considering Premium Excessive</u>	<u>Average Premium</u>
<50	42	1.58
50-100	28	1.43
100-500	47	1.44
>500	71	1.45

Blame Placed on Present System of Settlements

The blame for the high premiums being charged and their rate of increase was placed unambiguously on the operation of the legal system in settling claims. The level of settlements was seen to bear no relationship to the seriousness of the injury sustained or whether there was contributory negligence. The "going rate" for some categories of injury is twice as high in Ireland as in Britain. The use of the jury system rather than expert assessors meant that no pattern of appropriate compensation levels had been established, greatly increasing uncertainty for both parties, as well as imposing long delays in the resolution of cases which went before the courts. The high rate of premium was caused by excessive settlement in the opinion of 52% of respondents while an additional 30% blamed the related factors of the Jury system, court awards, and the legal system. Only 2% considered the accident rate to be the cause of high premia.

Reason for the High Rate of Premia

<u>Reason</u>	<u>% of Respondents Citing this Cause</u>
Excessive Settlements	51.65
Juries	12.50
Court Awards	10.93
Legal System	6.25
Sector Loading	6.25
No. of Claims	4.68
Legal Costs	3.12
Accident Rate	1.56
Past Settlements	1.56
Other Causes	1.56

Urgent Need to Revise System

The excessive level of settlement and associated high level of legal costs is the result of the system used to assess claims. In Ireland, unlike most countries in Europe, accident compensation claims are dealt with at an extremely high level of the litigation process. This leads to high legal costs and delays. The use of juries, who are chosen as members of the general public without specialist expertise in this field, to decide compensation causes great uncertainty and inconsistencies. This departs from the normal use of a Jury to determine guilt in a serious crime, with the appropriate penalty being passed by a Judge who is fully familiar with precedents and relevant principles. Use of a jury at all appears most inappropriate to a situation which is dealt with by expert assessors and lower level magistrates in most of our European partners. High and unpredictable settlements can also give encouragement to doubtful claims. The current high level of litigation that is necessary and its incumbent delays and costs causes a tendency to settle claims irrespective of their merits.

A more consistent, efficient and equitable system could be developed using a Judge with assessors to determine levels of compensation once negligence had been established. This has major advantages. Juries deliberate in secret, give no reasons for their decision and are not aware of previous awards. A judge assisted by assessors would have to give his reasons in open court, particularly if differing from precedent, and would be fully aware of previous cases. The late President O'Dalaigh said in a

case, while a Judge of the Supreme Court, "it is.....desirable to see that particular awards in cases of injury, not presenting special features, are kept within certain outer limits so that some relationship is maintained between the several categories of seriousness of injury." A startling case occurred recently where an award of £35,000 was returned by a Jury but was appealed by both parties. A second Jury increased this award to £185,000.

Clearly an established pattern of consistent precedents would allow many sensible settlements to be quickly made without any recourse to the courts. The use of a Judge and assessors to determine damages was recommended in the John O'Connor Report on insurance ten years ago to curb excesses of the existing system.

Recommendations

I would, therefore, recommend the following measures:

1. Settlements should be decided by a Judge assisted by assessors who would determine professionally the level of compensation. The evolution of consistent principles to be applied in deciding claims and settlement levels is a fundamental prerequisite of an efficient and equitable system.
2. Firms should be given a clear indication of the reductions in insurance premia which would occur if the firm's safety record were improved. The insurance companies should indicate how various factors such as specific safety procedures, a company's record, industry loading and total employment affect the calculation of the premium.

The results of this survey indicate that there is considerable scope to reduce the rapidly escalating cost of Employers Liability Insurance to industry. This will require not only the promotion of improved safety procedures throughout industry, but also changes in the court system. The Confederation will be seeking urgent meetings with the relevant Government departments and the insurance industry in order to arrive at a satisfactory solution.

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