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CC:

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Subject: Ibec Submission on the operation and implementation of the Personal Injuries Assessment Board Acts, 2003 and 2007

Dear Minister,

Ibec welcomes the opportunity presented by the Minister to openly comment on the Personal Injuries Board Acts. However, we feel the efficacy of these provisions cannot be reviewed in isolation and the overall area of personal injury claims, settlements and costs must be taken into account.

There is a demonstrable continual rise in the number of personal injury claims. This is during a period where there is a noticeable decline in the number of accidents within workplaces, even when measured against the numbers in employment. The ratio of personal injuries claims and the estimated €1bn per year costs associated with them is harming Ireland's reputation as a place to do business; this has the potential to be a significant problem if the issue of rising claims is allowed to proceed unchecked and unsupervised before the proportion of claims once again reaches unsustainable levels.

While we feel there has been significant success in the process of personal injuries claims, particularly with the work of the Injuries Board, it is a concern that, based on available data, only 15% of personal injuries claims are settled via the Injuries Board.

Based upon the Central Bank's Themed Inspection of 2011 and our own survey of members, currently just 2% of personal injuries claims are settled following a court award. Of the 7121 claims lodged with the insurance industry in 2011

39% were settled without referral to the Injuries Board.

9% which were referred to the Injuries Board settled during the interim period prior to an assessment being completed by the Injuries Board.

15% were assessed by the InjuriesBoard.ie and the assessment award was accepted by both insurers and claimants.

7% were settled after rejection of the InjuriesBoard.ie assessment but before the initiation of litigation.

22% were settled following initiation of legal proceedings.

6% were settled on the steps of the court.

2% were settled following a court award.

This means that 85% of personal injury claims remain private unsupervised

settlements most of which will involve some form of legal expense. The Central Bank estimates the total cost of all third party personal injury claims closed in the defined period attributable to legal costs as 24%. However, there is no data to show how this figure is arrived at and at what stage the legal costs are incurred.

There is no agreed standard metric to measure the costs of claims and litigation. In their Annual Review 2013, the Injuries Board estimates that their services have saved approximately €1bn in litigation costs based upon an estimated litigation cost of 46%. It is undoubtedly a significant saving and one that rightly reflects well on the Injuries Board and the efficiency and efficacy of their service if it is an accurate one.

However, by all measurement of personal injury claims, the Injuries Board are the administrators of a small percentage of personal injuries claims. Based on the Central Bank's Themed Inspection of 2011, a reasonable estimate is that the Injuries Board handles 15% of personal injury claims. On that basis, the €1bn savings over 10 years represents just 15% of claims lodged and therefore means that litigation in total has cost approximately €10bn over the last 10 years, almost €1bn per year. The majority of which is administered through the insurance industry.

Assessing the degree to which Ireland's personal injury litigation regime is affecting employers and the economy remains a complex task. Firstly, the polemic nature of the debate creates an environment in which issues are contested. Compensation for injuries suffered through the negligence of another is an important aspect of Ireland's common law system and Ibec is supportive of both an individual's right to seek compensation and for an efficient and expedient system for them to receive compensation at no cost.

However, despite the polemic nature, there are critical questions that must be asked and answered with regards to the current regime.

While the proportion of claims appears to be considerably below the reported peak claims of 2001, the steady rise in the proportion of claims over the last five years is a concern and employers are expressing their concern at the noticeable rise in claims.

An additional concern is that there is a significant gap in the information available to analyse both the type of claim as well as the costs of settlement as despite the introduction of the Injuries Board, the majority of these claims are settled as private settlements through the insurance industry.

With this gap in information, there can be no analysis of the impact compensation costs are having on the competitiveness of Irish business and indeed the national economy itself. Early settlement and a system of low cost settlement is essential where both parties agree or where there are admissions of liability. However, national accident data would cast doubt on there being a significant issue with deficiencies in standards of safety or legal constructions of liability, yet claims are rising and it would appear that most claims will result in some form of settlement.

We feel that this consultation presents an opportunity to again look at the critical aspects that are affecting business in relation to the continual increase in the number and proportion of claims. Ibec feels that as part of this review, the following issues must be addressed:

#### 1. Central Bank review of claims settled through Insurance Industry

Despite the introduction of the Injuries Board, the majority of claims are still private settlements where the main two parties involved are the legal profession and the insurance industry. Ultimately, the costs of this system are passed onto the insurance policy holder and without a detailed breakdown of these claims, it is impossible to estimate the impact this private settlement industry has on the Irish economy, more importantly the impact it will have if claims continue to rise.

In order to substantiate the economic impact of this area, we feel that reviews must be conducted of the available data and practices of the two main parties involved to ascertain a more accurate analysis of claims. Of particular concern is the unsupervised nature of most claims and whether there is scope for a system where the Injuries Board needs to at least monitor, or possibly supervise, compensation offers made as part of the early resolution process.

#### 2. Introduction of Fixed Fees for Personal Injury Claims

We feel it would serve the cause of reform to the benefit of both plaintiff and defendant to open the scope of debate on legal costs and the process for personal injury claims. It has to be acknowledged that despite the Injuries Board process not requiring legal representation, the public have demonstrated a preference for the involvement of legal professionals in the claims process. Therefore, we feel that the Government should consider reformation of legal fees to introduce a policy of providing for legal consultation on a scaled fixed fee basis, particularly for claims settled outside of court.

#### 3. Reform of personal injury claims process

Review of the personal injuries claims process must also address the motivations against employers defending accusations against them. Achieving justice should not come at a cost for either plaintiff or defendant, if this cost is a necessary feature of the court system, then it should be analysed as to whether the fault-based system is the right system for both parties for analysis of whether or not a risk management strategy was sufficient and where liability may lie. Currently, it is demonstrably prohibitive to defend a personal injury claim given the costs involved. Even where claims are successfully defended, in many cases employers are unable to recover costs from the plaintiff and face significant legal costs.

We feel that there has to be a meaningful review and analysis of the establishment of a specific low cost tribunal/personal injury court with a remit to make determinations on sufficiency and efficacy of risk management procedures for accusations of personal injury through negligence.

Thank you again for this opportunity, we are available to meet to discuss any aspect of our submission at your convenience.

Kind Regards

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