

**Massachusetts Workers' Compensation
Advisory Council Minutes**

November 12, 2008

Department of Industrial Accidents
600 Washington Street, 7th Floor
Boston, MA 02111

Present: Chairman Edmund C. Corcoran, Jr.; Vice-Chairman Mickey Long.

CM: Stephen Joyce; Stephen P. Falvey; John Regan; William Corley; John Pulgini; John D. Boyle (Teri McHugh); Peter A. Cook, Sr. (Karen Shanley); Antonio Frias (Inez Leonardo); Department of Labor (Tom Jones).

Also Present: DIA: Commissioner Paul V. Buckley; William Tatten, Deputy Commissioner and General Council; Timothy J. McMahon, Deputy Commissioner of Administration; Marine Carroll, Senior Judge; William Taupier, First Deputy Director of Administration; Jack Defina, Director of Accounting & Finance; Peter Treadway, Information Technology Manager; Ray Marchand, Director of Investigations; Linnea Walsh, Department of Labor; Ellen Keefe, WCRIB; Anna Lucey, Joint Committee on Labor and Workforce Development; Jennifer Mercandante, Joint Committee on Labor and Workforce Development; Michael Kelley, AIM.

Advisory Council Staff: Andrew Burton; Evelyn Flanagan.

Absent: CM: David Powell; Dennis Hines; Kenneth J. Paradis, Jr.; Department of Business Development.

Agenda:

Chairman's Welcome

DIA Update

- Judicial Update - Martine Carroll, Senior Judge
- Vital Statistics - William Taupier, Deputy Director of Administration

Action Items

- Minutes - October 8, 2008

Injury Reporting Subcommittee Update

Concerns & Recommendations Discussion - FY'08

Executive Director Update

Miscellaneous

CHAIRMAN'S WELCOME

Vice-Chairman Mickey Long began today's meeting at 9:00 a.m. The Vice-Chairman introduced Senior Judge Martine Carroll.

DIA UPDATE

Judicial Update

Senior Judge Carroll updated Advisory Council Members on the information contained within the DIA's vital statistic report for November 2008 (see attached). Conference Queue: 360; Hearing Queue: 847; Reviewing Board Inventory: 145; Impartial Exams for FY'09 (to date): 1,650 (21 waivers); Exam Fees Collected for FY'09: \$693,775. In fiscal year 2008 there were 5,187 Impartial Medical Examinations (86 waivers); Exam Fees Collected in FY'08: \$1,620,458.

Senior Judge Carroll informed the Council Members that the DIA is now operating with a full compliment of judges and the conference and hearing queues are on track.

Mr. Bill Taupier stated that he had compiled statistics in regards to the Employee Claim Form (Form 110). Mr. Taupier stated that 76% of claimants who were awaiting conference were receiving compensation; 68% of claimants awaiting hearings were receiving compensation; and 77% of claimants with discontinuances were receiving compensation.

Vice-Chairman Mickey Long requested that this information be included in the monthly Vital Statistic Report.

Stop Work Orders/Caseload Statistics

Mr. Bill Taupier updated Advisory Council Members on the Stop Work Order (SWO) and Caseload Statistics (see attached). The DIA issued 278 SWOs in October 2008 (four SWOs were reissued as the result of defaults on previous orders); total SWOs issued in FY'09 (to date): 1,031. Fine collection for October 2008: \$59,500; total fines FY'09: \$224,050; SWOs issued FY'08: 1,929; total fines collected FY'08: \$437,900; compliance checks for October 2008: 2,402; estimated number of workers now covered by WC insurance as the result of a SWO: 2,648 (FY'09).

Mr. Taupier continued the update of the monthly vital statistics. Total number of cases filed in October 2008: 1,318; total number of cases filed in FY'09 (to date): 4,653; total number of cases filed in FY'08: 14,464; total number of First Report of Injury Forms (FRI) filed in October 2008: 3,164; total number of FRI filed online in October 2008: 906 (29%); total number of FRI filed in FY'09 (to date): 11,240; total number of FRI filed in FY'08: 32,794; total number of FRI filed online in FY'08: 9,199 (28%).

Mr. Taupier proceeded with his update on uninsured claims (§65). Total number of §65 claims processed in FY'09 (to date): 58; total amount of §65 claims paid by the Trust Fund in FY'09 (to date): \$1,293,702; total number of §65 claims filed in FY'08: 172; total amount of §65 claims paid by the Trust Fund in FY'08: \$6,866,127.

Mr. Taupier proceeded with the vital statistics for the Second Injury Fund (§37/37A). Total amount of §37/37A petitions paid in FY'09 (to date): \$5,634,273; total amount paid on these claims in FY'08: \$20,725,671; total monies recovered by the Trust Fund in FY'09 (to date): \$649,114; total monies recovered in FY'08: \$1,202,747; total COLA reimbursements to insurers in FY'09 (to date): \$8,700,462; total COLA reimbursements to insurers in FY'08: \$4.0 million.

Budget/Personnel Issues

Mr. Taupier reported that as of October 2008, the number of employees whose salary is paid by either the Special Fund or the Trust Fund was 278 (233 DIA employees, 45 WCTF employees).

Office of Education and Vocational Rehabilitation (OEVR) Update

Mr. Taupier presented the OEVR statistics. Total referrals to OEVR in FY'09 (to date): 692; total referrals to OEVR in FY'08: 2,828; total mandatory meetings in FY'09 (to date): 596; total mandatory meetings in FY'08: 2,281; total Determinations of Suitability (DOS) in FY'09: 426; total DOS in FY'08: 1,634; total referrals to insurers in FY'09 (to date): 170; total referrals to insurers in FY'08: 647; total Individual Written Rehabilitation Plans (IWRP) approved in FY'09 (to date): 126; total IWRPs approved in FY'08: 417; total number of Return to Work (RTW) in FY'09 (to date): 34; total number of RTW in FY'08: 163; total number of IWRPs completed with no RTW in FY'09 (to date): 23; total number of IWRPs completed with no RTW in FY'08: 134.

ACTION ITEMS

Vice-Chairman Long asked for a motion to accept the Minutes for October 8, 2008.

Motion made to accept the Minutes for October 8, 2008.

MMS - Passed.

INJURY REPORTING SUBCOMMITTEE UPDATE

Executive Director Andrew Burton updated the Advisory Council Members on the progress made by the Injury Reporting Subcommittee. On October 28, 2008, the subcommittee met for a second time and reviewed various ways to improve injury reporting in the Commonwealth through both administrative and legislative changes.

Mr. Burton stated that the subcommittee learned that the computer system that monitors FRI violations had programmed algorithms that created "grace periods" stretching beyond the time limits provided in the statute. It was also discovered that annual FRI fines for individual employers were being capped at \$500, though the statute provides no such cap. Mr. Burton introduced Mr. Peter Treadway and asked if he would provide an update to Council Members on the Information Technology initiative to modify the DIA billing systems.

Mr. Peter Treadway stated that as a result of the subcommittee's work, the DIA has begun the process of reprogramming the parameters that are used to generate FRI violation notices and late payment demand notices in accordance to the mandated time periods. He also noted that the \$500 annual cap has also been removed.

Mr. Burton noted that the subcommittee was also pursuing legislative changes. The Executive Director stated that the subcommittee discussed drafting legislation that would remove the fine waiving provision that allows employers to have two FRI violations in any year before administrative penalties are assessed. The subcommittee also discussed creating an escalating fine structure for FRI violations to ensure that injuries are reported on a timely basis.

Discussion followed.

It was agreed that Mr. Burton would contact subcommittee members to set a date for the next subcommittee meeting to finalize legislation.

Chairman Ed Corcoran suggested that the subcommittee consider inviting someone from the Joint Committee on Labor and Workforce Development to be part of the discussions at the next meeting. Council Members agreed.

CONCERNS & RECOMMENDATIONS DISCUSSION - FY'08

Executive Director Andrew Burton reviewed a draft outline of potential Concerns & Recommendations for the FY'08 Annual Report. Mr. Burton explained that the purpose of the outline was to generate discussion amongst the Council Members on which issues should be included in the Annual Report. The Executive Director stated that the first concern in regards to uninsured employers and misclassification was broken into five individual recommendations.

1.1 Employee Misclassification - Private Right of Action

The first concern and recommendation discussed was in regards to Private Right of Action Legislation (Senate Bill 1066) that was endorsed by the Advisory Council in the 2007-2008 Legislative Session. The Executive Director noted that this bill had been favorably rated by the Joint Committee on Labor & Workforce Development but never moved out of the Senate Ways & Means Committee. Mr. Burton suggested that the Advisory Council make a recommendation asking the Legislature to refile and pass this legislation during the 2009-2010 Legislative Session.

Council Members agreed.

1.2 Uninsured Employers - Toughening Criminal Penalties

The next concern and recommendation discussed was in regards to uninsured employers in Massachusetts. The Executive Director stated that the Advisory Council had endorsed Senate Bill 1111 (later redrafted as S.2587) which would toughen criminal penalties against employers that do not carry workers' compensation insurance. Mr. Burton explained that the current penalties (\$1,500 / 1-year in prison) have not been increased since 1987. Mr. Burton suggested that the Council make a recommendation to the Legislature to refile and pass legislation to toughen criminal penalties on uninsured employers and include a penalty provision that subjects repeat offenders to both minimum mandatory fines and imprisonment.

Council Members agreed.

1.3 Maintain Appropriate Levels of DIA Trust Fund/Investigative Staff

The next concern and recommendation discussed was in regards to the importance of having the DIA maintain an appropriate level of Trust Fund and Investigative staff to adequately protect and defend the Trust Fund. Mr. Burton emphasized the need for policymakers to understand the unique funding mechanism of the DIA, especially during difficult budget times so that appropriate staffing levels can be maintained. Mr. Burton suggested

that the Council make a recommendation to the DIA to continue to monitor and assess the appropriate levels of DIA Trust Fund and Investigative Staff. The Executive Director further recommended educating policymakers on the unique funding mechanism of the DIA.

Council Members agreed.

1.4 Online Public Access to WC Insurance Coverage Database

The next concern and recommendation discussed was in regards to the recent national trend towards online coverage databases which exist in over 30 states. Mr. Burton noted that public access to such a tool would benefit homeowners, general contractors, field investigators, public agencies, medical providers, and others. Mr. Burton suggested that the Advisory Council recommend that the DIA's IT and Legal Department work with WCRIB in developing an online tool that allows the public to verify whether a specific company has a valid workers' compensation insurance policy.

Vice-Chairman Mickey Long suggested that the database also include classification codes listed in the policy. CM Long stated that this would be very beneficial in determining whether employers are misclassifying workers.

Council Member Ines Leonardo stated that the number of employees in a company can often fluctuate throughout the year. Ellen Keefe agreed with CM Leonardo's statement and noted that many times an insurer will not know the actual number of employees until after a year-end audit occurs.

Discussion Followed. Council Members agreed to include this concern and recommendation in the Annual Report.

1.5 Underground Economy Task Force

The next concern and recommendation discussed was in regards to the Underground Economy Task Force that was created by Executive Order in March of 2008. Mr. Burton reviewed accomplishments of the Task Force and the reasons behind its creation. The Executive Director suggested that the recommendation could state that the Advisory Council would continue to support the efforts of the Task Force in combating dishonest employers operating in the underground economy.

Council Members agreed.

2. Scar-Based Disfigurement Benefits

The next concern and recommendation discussed was in regards to Scar-Based Disfigurement Legislation (Senate Bill 2289) that was endorsed by the Advisory Council during the 2007-2008 Legislative Session. Mr. Burton noted that this bill had been favorably rated by the Joint Committee on

Labor & Workforce Development but never moved out of the Senate Ways & Means Committee. The Executive Director suggested to the Advisory Council that a recommendation could ask the Legislature to refile and pass this legislation during the 2009-2010 Legislative Session.

Council Members agreed.

3. Maximum Burial Allowance

The next concern and recommendation discussed was in regards to Maximum Burial Allowance Legislation (House Bill 4170) that was endorsed by the Advisory Council in the 2007-2008 Legislative Session. Mr. Burton noted this bill had been favorably rated by the Joint Committee on Labor & Workforce Development but never moved out of the House Ways & Means Committee. The Executive Director suggested to the Advisory Council that a recommendation could ask the Legislature to refile and pass this legislation during the 2009-2010 Legislative Session.

Council Members agreed.

4. Medical Fee Schedule Task Force

The next concern and recommendation discussed was in regards to creating a Medical Fee Schedule Task Force in Massachusetts. Mr. Burton explained that present rate setting process has stalled and that there needs to be a mechanism in place that can promptly react when areas of the fee schedule become unrepresentative of system costs. The Executive Director suggested that a recommendation could encourage the DIA and the Division of Health Care Finance & Policy to work together in establishing such a task force.

Council Members agreed.

5. Second Injury Fund

The next concern and recommendation discussed was in regards to the Second Injury Fund in Massachusetts. Mr. Burton explained that as a result of the Second Injury Fund Subcommittee, it was suggested that the Council recommend that the Legislature file and pass legislation to phase out Section 37 Second Injury Fund reimbursements for new and arising cases eligible for reimbursement for all injuries occurring before December 23, 1991, so called "Mid Act" and "Old Act" claims. Such legislation shall be drafted to become effective 180 days after enactment. Mr. Burton suggested that the Advisory Council further recommend preserving the Second Injury Fund in Massachusetts for all claims arising on or after December 23, 1991, so called "New Act" claims.

Council Members agreed.

6. First Report of Injury - Strengthening Employer Compliance

The next concern and recommendation discussed was in regards to strengthening employer compliance to the injury reporting requirements in Massachusetts. Mr. Burton summarized the subcommittee's suggestion that the Advisory Council recommend that the Legislature file and pass legislation to remove the fine waiving provision that allows employers to have two FRI violations in any year before administrative penalties are assessed. The Executive Director further suggested that the Advisory Council could recommend that any legislation created should include an escalating fine structure to ensure that injuries are reported on a timely basis.

Council Members agreed.

7. Paperless Document Management System - Investment in Technology

The next concern and recommendation discussed was in regards to the DIA's investment in Technology during the last decade. Mr. Burton suggested that the Council make a statement recommending that the DIA continue their investment and expansion in technology with the goal of increasing services to the workers' compensation community (batch filing, mandatory submission of online forms, etc.) and expanding efficiencies within internal business processes (paperless courtrooms, digital recordkeeping, etc.).

Council Members agreed.

8. Treatment Guidelines - Comprehensive Review

The last concern and recommendation discussed was in regards to the treatment guidelines that are developed by the Health Care Services Board (HCSB). Mr. Burton noted that many of the guidelines have not been updated and need to be revisited. The Executive Director suggested that the Advisory Council could make a recommendation that the HCSB revisit and update all of the treatment guidelines to ensure they are applicable to present day medical practices.

Council Members agreed.

Chairman Corcoran applauded the hard work of Diane Neelon who serves as Executive Director of the HCSB. The Chairman stated that an update to the guidelines will further enhance the quality control initiatives developed in 1991.

EXECUTIVE DIRECTOR UPDATE

Executive Director Burton informed the Council Members that he would be sending out a draft of the Fiscal Year 2008 Annual Report before the next meeting. Mr. Burton reminded Council Members that the next meeting is scheduled to be held on December 10, 2008. Mr. Burton stated that he would reach out to Council Members to see who would be interested in attending a holiday luncheon following the December meeting.

Chairman Corcoran thanked everyone for attending today's meeting.

MISCELLANEOUS

Chairman Corcoran asked for a motion to adjourn the meeting.

Motion made to adjourn the meeting.

MMS - Passed.

The next regular meeting of the Advisory Council is scheduled for Wednesday, December 10, 2008, at 9:00 AM, at the Division of Industrial Accidents, 600 Washington Street, 7th Floor Conference Room, Boston, MA 02111.