

**Massachusetts Workers' Compensation
Advisory Council Minutes**

September 8, 2010

Department of Industrial Accidents

1 Congress Street, Suite 100

Boston, MA 02114-2017

Present: Vice-Chairman Edmund C. Corcoran, Jr.

CM: Stephen Joyce; Stephen Falvey; John Regan; Bernard Mulholland; George Noel, Department of Labor.

Also Present: Paul Buckley, Commissioner; Senior Judge William McCarthy; Reuben Kantor, Director of Operations; William Tattan, Deputy Commissioner and Chief Legal Counsel; William Taupier, First Deputy Director of Administration; Ray Marchand, Director of Investigations; Kathy Manson, Director of Safety; Drew Cahill, Executive Director of the Underground Economy Joint Task Force; Paul Meagher, Workers' Compensation Rating & Inspection Bureau of Massachusetts (WCRIB); Dan Crowley, WCRIB; Tara O'Donnell, Donoghue Barrett & Singal; Marcy Goldstein-Gelb, MassCOSH; Michael Kelley, AIM Mutual Insurance Company.

Advisory Council Staff: Andrew Burton; Evelyn Flanagan.

Absent: *CM:* Chairman Mickey Long; Teri McHugh; William Corley; David Powell; Antonio Frias; John Pulgini; Dennis Hines; Peter A. Cook, Sr.; Department of Business Development.

Agenda:

Chairman's Welcome

DIA Update

- Judicial Update - Senior Judge William McCarthy
- Vital Statistics - William Taupier, Deputy Director of Administration
- Underground Economy Task Force Update - Drew Cahill, Executive Director

Action Items

- Minutes - August 11, 2010

Revisions to the FY'11 Safety Grant Program - Kathleen Manson, Director

Disclosure of PEO/ELC Client List on Proof of Coverage Tool

Executive Director Update

Miscellaneous

CHAIRMAN'S WELCOME

Vice-Chairman Edmund Corcoran began today's meeting at 9:00 a.m. The Vice-Chairman asked Bill Taupier to begin with the DIA Update on Vital Statistics.

Judicial Update

Mr. Bill Taupier updated Advisory Council Members on the information contained within the DIA's vital statistic report for September 2010 (see attached). Conference Queue: 802; Hearing Queue: 533; Reviewing Board Inventory: 85; Impartial Exams for FY'11 (to date): 315 (14 waivers); Exam Fees Collected for FY'11: \$196,975. In fiscal year 2010 there were 5,069 Impartial Medical Examinations (64 waivers); Exam Fees Collected in FY'10: \$1,792,626.

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 239 SWOs in August (26 SWOs were reissued as the result of defaults of previous orders); total SWOs issued in FY'11 (to date): 440. Fine collection for August 2010: \$70,050; total fines in FY'11: \$128,600; SWOs issued in FY'10: 3,421; total fines collected in FY'10: \$1,110,125; compliance checks for August 2010: 3,697; estimated number of workers now covered by workers' compensation insurance as the result of a SWO: 965 (FY'11).

Mr. Taupier continued the update of the monthly vital statistics. Total number of cases filed in August 2010: 1,017; total number of cases filed in FY'11 (to date): 1,986; total number of cases filed in FY'10: 12,940; total number of First Report of Injury Forms (FRI) filed in August 2010: 2,312; total number of FRI filed online in August 2010: 835 (36%); total number of FRI filed in FY'11 (to date): 4,443 (1,460 online); total number of FRI filed in FY'10: 30,443 (8,934 online). Mr. Taupier proceeded with his update on uninsured claims (§65). Total number of §65 claims reported in FY'11 (to date): 19; total amount of §65 claims paid by the Trust Fund in FY'11 (to date): 797,704; total number of §65 claims filed in FY'10: 137; total amount of §65 claims paid by the Trust Fund in FY'10: \$6,508,487.

Mr. Taupier proceeded with the vital statistics for the Second Injury Fund (§37/37A). Total amount of §37/37A petitions paid in FY'11 (to date): \$1,742,021; total amount paid on these claims in FY'10: \$22,877,653; total monies recovered by the Trust Fund in FY'10 (to date): \$183,328; total monies recovered in FY'10: \$709,946; total COLA reimbursements to insurers in FY'11 (to date): \$150,347; total COLA reimbursements to insurers in FY'10: \$11,767,228.

Budget/Personnel Issues

Mr. Taupier reported that as of August 2010, the number of employees whose salary is paid by either the Special Fund or the Trust Fund was 265 (215 DIA employees, 50 WCTF employees). The DIA is authorized to have 285.2 payroll positions (including all full and part-time positions).

Office of Accounting & Finance Update

Mr. Taupier presented the accounting and finance statistics. Total referral fees collected in FY'11 (to date): \$549,916; total referral fees collected in FY'10: \$3,863,852; total first report fines in FY'11 (to date): \$16,800; total first report fines in FY'10: \$109,700; total assessment collections in FY'11 (to date): \$18,710,299; total assessment collections in FY'10: \$75,002,051; total SWO fines in FY'11 (to date): \$239,605; total SWO fines in FY'10: \$1,597,919.

Senior Judge Update

Senior Judge McCarthy provided an update on the judicial appointment process. The Senior Judge reported that six judges had recently been confirmed for reappointment or appointment (Judge Fabricant - reappointed to ALJ; Judge Horan - reappointed to ALJ; Judge Sullivan - reappointed to AJ; Judge Lewenberg - reappointed to AJ; Judge McManus - reappointed to AJ; and Judge Levine - appointed to ALJ). The Senior Judge further stated that there were two non-incumbent applicants recommended by the Governor for appointment to AJ (Kalina Vendetti and Christina Poulter). He noted that both were scheduled to meet with the Governors' Council this afternoon.

Senior Judge McCarthy reminded Council members that there are two Administrative Judges in Springfield that are not eligible for reappointment. He stated that one of these judges resigned on July 31, 2010 and that the other judge will continue to serve until October 31, 2010. The Senior Judge also reported that Judge Chadinha and Judge Tirrell were still eligible for reappointment and both remain in the two-year Nomination Pool.

Vice-Chairman Edmund Corcoran requested that the Senior Judge work with the Executive Director in developing a list of Judges that have decisions outstanding and to provide the reasons for the delayed decisions.

Underground Economy Task Force Update

Vice-Chairman Edmund Corcoran introduced Mr. Drew Cahill, Executive Director of the Joint Enforcement Task Force on the Underground Economy and Employee Misclassification.

Mr. Drew Cahill thanked the DIA for their hard work and stated that their assistance has been greatly appreciated by all Task Force members. Mr. Cahill stated that the DIA's publication of the Stop Work Order Debarment List is the envy of other state task force agencies.

Mr. Cahill provided a brief update on the recent initiatives of the Task Force. He reported that the Task Force has increased the volume and impact of their investigations which will be highlighted in an upcoming Annual Report. The Executive Director reported that the Department of Revenue (DOR) has worked with the Task Force on legislation that would expand the sharing of information between agencies.

Mr. Cahill informed the Council that the Division of Unemployment Assistance (DUA) is in the process of procuring fraud detection technology that uses database-queries to identify potential coverage gaps in employer responsibilities. He noted that although the DUA would be paying for this technology, the Task Force would have direct access to it. Mr. Cahill stated that this technology will help the Task Force uncover and prosecute misclassification.

Mr. Cahill stated that the Task Force is in the process of establishing an Advisory Council. The Advisory Council will consist of five regional councils set-up in Greater Boston, Western Massachusetts, Northeastern Massachusetts, Southeastern Massachusetts and Central Massachusetts. Mr. Cahill stated that the purpose of the Advisory Council is to provide a mechanism for the public to have a voice on public policy issues, to help identify trends in the underground economy, and to assist with outreach and education.

Mr. Cahill reported that the Executive Office of Labor & Workforce Development (EOLWD) is in the process of commissioning a research study to determine the size of the underground economy in Massachusetts. Mr. Cahill recommended that the study follow a similar format as a recent study performed in Washington State. Mr. Cahill stated that such a study has not been performed since the 2004 Harvard/UMass study that measured the social and economic costs of misclassification in the construction industry.

Mr. Cahill stated that the Task Force is in the process of developing an Education and Outreach Plan. He noted that such a plan will include a list of speaking engagements and reporting initiatives. The Executive Director stated that he also plans to develop informational pamphlets about the underground economy and redesign the Task Force website.

Mr. Cahill concluded his update by recognizing the cooperation in existence between state and federal agencies. He stated that each month the Task Force participates in teleconferences with other fraud fighting organizations to exchange ideas and techniques. Mr. Cahill expressed his belief that the Task Force will one day participate in multi-state compliance activities.

Vice-Chairman Corcoran thanked Mr. Cahill for his informed presentation.

ACTION ITEMS

Vice-Chairman Corcoran asked for a motion to approve the minutes for August 11, 2010.

Motion made to approve the minutes for August 11, 2010. Motion Seconded and Passed.

REVISIONS TO THE FY'11 SAFETY GRANT PROGRAM

Vice-Chairman Corcoran introduced Kathy Manson, Director of the Office of Safety.

Ms. Kathy Manson provided a brief update on why the DIA had recently rescinded all preliminary approved grants for the FY'11 Safety Grant Program. Director Manson explained that after a comprehensive review of the grant application and multiple on-site training visits, it was clear that the grant program needed some revamping to better target those employees and employers with the most need.

Ms. Manson reviewed many of the new changes made to the FY'11 Safety Grant Application. She noted that state agencies were no longer eligible to receive funds. Director Manson also explained that funds would no longer be available for vendors who train state employees. She stated that many of the changes were made to increase accountability and to broaden the reach of the program. Ms. Manson stated that other changes to the safety training program were put in place to enhance oversight, thereby enabling the DIA to track the progress of the trainings from beginning to end.

Ms. Manson provided each Council member with a copy of the revised application and reminded them that the deadline for submission was on Monday, September 20, 2010.

DISCLOSURE OF PEO/ELC CLIENT LIST ON PROOF OF COVERAGE TOOL

Vice-Chairman Corcoran referred to last month's unfinished discussion regarding the concern raised by Genesis Consolidated Services that the online Proof of Coverage Application (POC) can disclose a Professional Employer Organization's proprietary client list when certain fields are searched. The Vice-Chairman asked Council Members if there was any interest in forming a subcommittee to help develop an advisory opinion on whether changes need to be made to the POC tool.

Mr. Paul Meagher, President of the WCRIB, stated that the bureau's Governing Committee would be meeting next Thursday to discuss this very issue.

Council members agreed that a subcommittee would be useful.

Executive Director Burton stated that he would contact all Council members to put a subcommittee together.

EXECUTIVE DIRECTOR UPDATE

Executive Director Andrew Burton updated the Advisory Council on the Vocational Rehabilitation Subcommittee. Mr. Burton stated that he was discussing available dates with Bill Harney, Manager of Vocational Rehabilitation Unit. Mr. Burton noted that the Advisory Council has one membership vacancy representing vocational rehabilitation providers in Massachusetts. The Executive Director suggested holding off on the subcommittee until a vocational rehabilitation representative can be appointed to the Advisory Council. Mr. Burton stated that he would work with Director Noel to see if this position could be filled in the near future.

Mr. Burton reminded the Council members that the next scheduled meeting would take place on October 13, 2010 at 9:00 a.m.

MISCELLANEOUS

The Executive Director introduced Ms. Marcy Goldstein-Gelb, Director for the Massachusetts Coalition for Occupational Safety and Health (MassCOSH).

Ms. Goldstein-Gelb stated that the Governor had recently signed a bill prohibiting the commercial use and sale of a highly flammable lacquer sealer used by the wood floor finishing industry. This issue came to the attention of MassCOSH five years ago after a string of deadly house fires. Ms. Goldstein-Gelb recognized the numerous people and organizations that came together to get this bill signed into law.

Ms. Goldstein-Gelb stated that MassCOSH was presently working with the Division of Occupational Safety (DOS) to develop legislation to update and streamline Employment Agency Law.

MISCELLANEOUS

Vice-Chairman Corcoran thanked everyone for attending today's meeting.

Motion made to adjourn the meeting. Motion Seconded and Passed.

The next meeting of the Advisory Council is scheduled for Wednesday, October 13, 2010, at 9:00 AM, at the Department of Industrial Accidents, 1 Congress Street, Suite 100, Conference Room #10-140, Boston, MA 02114-2017