

**Massachusetts Workers' Compensation
Advisory Council Minutes**

January 12, 2011

Department of Industrial Accidents

1 Congress Street, Suite 100

Boston, MA 02114-2017

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

CM: Bernard Mulholland; Stephen Joyce; Stephen Falvey; Teri McHugh; John Pulgini; William Corley.

Also Present: Senior Judge William McCarthy; Reuben Kantor, Director of Operations; William Tattan, Deputy Commissioner and Chief Legal Counsel; William Taupier, First Deputy Director of Administration; Jack Defina, CFO; Judge Mark Horan, ALJ; Ellen Keefe, Workers' Compensation Rating & Inspection Bureau of Massachusetts (WCRIB); Michael Kelley, AIM Mutual Insurance Company; Jake Stone, Esq. Stone & Stone.

Advisory Council Staff: Andrew Burton; Evelyn Flanagan; Rachel Ostrander.

Absent: *CM:* David Powell; Antonio Frias (Ines Leonardo); John Regan; Dennis Hines; Peter A. Cook, Sr.; Department of Business Development; Department of Labor.

Agenda:

Chairman's Welcome

DIA Update

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

Action Items

- Minutes - December 8, 2010

Massachusetts Bar Association - Judicial Survey Discussion

- Jake W. Stone, Esq. - Stone & Stone

- Judge Mark Horan - Administrative Law Judge, DIA

Executive Director Update

Miscellaneous

CHAIRMAN'S WELCOME

Chairman Mickey Long began today's meeting at 9:00 a.m. The Chairman asked Senior Judge William McCarthy to provide the Advisory Council members with the Judicial Update.

DIA UPDATE

Judicial Update

Senior Judge William McCarthy updated the Council Members on the judicial appointment process. The Senior Judge stated that there has been no action taken on five judges who continue to serve. Judge McCarthy recognized the work of Deborah Keefe who is managing the caseloads and ensuring that cases move forward. The Senior Judge expressed his frustration with the lackadaisical approach to the appointment process and suggested that it would be nice to push the appointing authority on this issue.

Vice-Chairman Edmund Corcoran asked the Senior Judge if there was anything in the annual performance reviews that would raise any concerns about their reappointment.

The Senior Judge stated that there was not.

Vice-Chairman Corcoran echoed an Advisory Council concern brought up at a prior meeting regarding the number of Judges. The Vice-Chairman stated that if there is going to be a reconsideration on the number of judges at the DIA, shouldn't just arbitrarily base cuts on the timing of the reappointment process. Instead, Vice-Chairman Corcoran recommended that focus be placed on unproductive judges to ensure that the DIA is able to maintain a roster of high quality judges.

Chairman Long asked whether the Advisory Council should send a letter to the appointing authority.

Executive Director Andrew Burton explained that the Advisory Council has sent letters to the Governor in the past to encourage a timely reappointment process.

Chairman Long stated that as a representative of the AFL-CIO, he was concerned that reduction to the number of Judges at the DIA would result in longer time periods to resolve cases for both employers and employees.

Council Member Bernard Mulholland expressed his concern for the parties who presently have cases before the judges who are awaiting word on their reappointment status. Attorney Mulholland stated that whole cases will have to be retried if, halfway through a hearing, it is determined that a particular judge will not be reappointed.

Chairman Long asked Council Members whether there was a motion to have the Executive Director draft a letter to Governor Deval Patrick expressing the concerns raised by the Advisory Council regarding the appointment process and to have said draft letter emailed to Council Members for final approval.

Motion made to have the Executive Director draft a letter to Governor Deval Patrick expressing the concerns raised by the Advisory Council regarding the appointment process and to have said draft letter emailed to Council Members for final approval. Motion Seconded and Passed.

Vital Statistics

Mr. Bill Taupier updated Advisory Council members on the information contained within the DIA's vital statistic report for January 2011 (see attached). Conference Queue: 231; Hearing Queue: 347; Reviewing Board Inventory: 82; Impartial Exams for FY'11 (to date): 1,831 (32 waivers); Exam Fees Collected for FY'11: \$756,730. In fiscal year 2010 there were 5,069 Impartial Medical Examinations (64 waivers); Exam Fees Collected in FY'10: \$1,792,626.

Mr. Bill Taupier updated Advisory Council members on the Stop Work Order (SWO) and Caseload Statistics (see attached). The DIA issued 176 SWOs in December (24 SWOs were reissued as the result of defaults of previous orders); total SWOs issued in FY'11 (to date): 1,385. Fine collection for December 2010: \$90,300; total fines in FY'11 (to date): \$553,915; SWOs issued in FY'10: 3,421; total fines collected in FY'10: \$1,110,125; compliance checks for December 2010: 4,001; estimated number of workers now covered by workers' compensation insurance as the result of a SWO: 3,062 (FY'11). SWO fines from Civil Litigation in FY'11: \$61,493 / FY'10: 93,535; Value of SWO Pay Agreements in FY'11: \$63,100 / FY'10: \$77,610; Amount paid via SWO Agreements FY'11: \$49,715 / FY'10: \$57,140.

Mr. Taupier continued the update of the monthly vital statistics. Total number of cases filed in December 2010: 1,116; total number of cases filed in FY'11 (to date): 6,175; total number of cases filed in FY'10: 12,940; total number of First Report of Injury Forms (FRI) filed in December 2010: 3,034; total number of FRI filed online in December 2010: 925 (30%); total number of FRI filed in FY'11 (to date): 15,248 (4,588 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): 50; total amount of §65 claims paid by the Trust Fund in FY'11 (to date): \$3,143,265; 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. Recovery

Efforts: Total Liability FY'11: \$4,289,057; Paid by WCTF FY'11: \$3,143,265; Paid by Others FY'11: \$1,145,792; Total Liability FY'10: \$7,781,028; Paid by WCTF FY'10: \$6,226,155; Paid by Others FY'10: \$1,192,809.

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): \$6,220,536; total amount paid on these claims in FY'10: \$22,877,653; total monies recovered by the Trust Fund in FY'11 (to date): \$990,733; total monies recovered in FY'10: \$709,946; Section 37 total amount demanded FY'11: \$15,648,834; Trust Fund payment FY'11: \$8,963,090; total liability reduced FY'11: \$6,685,744; Section 37 total amount demanded FY'10: \$32,124,496; Trust Fund payment FY'10: \$22,696,126; total liability reduced FY'10: \$9,428,370; total COLA reimbursements to insurers in FY'11 (to date): \$2,575,713; total COLA reimbursements to insurers in FY'10: \$11,767,228.

Mr. Taupier reported that as of December 2010, the number of employees whose salary is paid by either the Special Fund or the Trust Fund was 252 (202 DIA employees, 50 WCTF employees). The DIA is authorized to have 283.2 payroll positions (including all full and part-time positions).

Mr. Taupier presented the accounting and finance statistics. Total referral fees collected in FY'11 (to date): \$1,812,304; total referral fees collected in FY'10: \$3,863,852; total first report fines in FY'11 (to date): \$65,405; total first report fines in FY'10: \$109,700; total assessment collections in FY'11 (to date): \$37,759,547; total assessment collections in FY'10: \$75,002,051; total SWO fines in FY'11 (to date): \$860,821; total SWO fines in FY'10: \$1,597,919.

ACTION ITEMS

Chairman Long asked for a motion to approve the December 8, 2010 minutes.

Motion made to approve the minutes for December 8, 2010. Motion Seconded and Passed.

MASSACHUSETTS BAR ASSOCIATION - JUDICIAL SURVEY DISCUSSION

Council Member Bernie Mulholland provided a brief overview of the judicial survey performed by the Massachusetts Bar Association (MBA). Attorney Mulholland then introduced Administrative Law Judge Mark Horan and Attorney Jake Stone who had both worked on the survey in past years.

Attorney Stone stated that the first survey conducted had been successful because they had adequate user participation. He explained that the most recent survey had failed to generate enough respondents primarily due to concerns of confidentiality. Attorney Stone stated that he had gathered cost estimates to determine the expense of having a professional survey company contract with the MBA. He noted that the preliminary estimates ranged from \$10,000-\$12,000.

Administrative Law Judge Mark Horan provided a brief history of the judicial survey. He stated that the original survey was conducted in response to concerns of potential judicial bias at the DIA. In developing the initial survey, Judge Horan noted that a subcommittee of the MBA developed questions and compiled a list of employee and employer attorneys practicing at the DIA. Judge Horan stressed the importance of having the original survey done on paper, as opposed to electronic media, to ensure the confidentiality of the respondents.

Chairman Long asked if the MBA was looking for outside funding to conduct the survey.

Vice-Chairman Edmund Corcoran explained that the survey has been very valuable to Council Members during the reappointment process. The Vice-Chairman stressed the importance of maintaining the confidentiality of the survey to ensure participation by attorneys.

Judge Horan expressed his belief that the survey should be conducted and funded by the MBA.

Attorney Mulholland stated that the judicial survey is a valuable supplement to the Senior Judge's evaluation of judicial candidates.

Chairman Long suggested that the Advisory Council further discuss the survey's funding at the next meeting.

EXECUTIVE DIRECTOR UPDATE

Executive Director Andrew Burton referred to a memorandum regarding a recent settlement agreement between American International Group (AIG) and state regulators. Mr. Burton explained that the settlement agreement had been the result of a two-year multistate workers' compensation market conduct examination that had determined AIG had wrongfully misreported \$2.1 billion worth of workers' compensation premiums between 1985 and 1996. The Executive Director stated the settlement agreement requires AIG to pay \$100 million in fines and penalties to be divided amongst all 50 states. Mr. Burton stated that Massachusetts is designated to receive \$3.4 million in fines from AIG, but has not been included in the schedule of payments for back premium taxes and assessments.

Ellen Keefe, Legal Counsel at the Workers' Compensation Rating and Inspection Bureau (WCRIB), stated that there remains unanswered question regarding what is defined as "premium taxes and assessments." Attorney Keefe stated that she has received communication from Examiner-in-Charge, David Lesley, that the definition of premium based assessments did not include residual market assessments. She further stated that Attorney Leslie did not acknowledge whether the definition included DIA assessments. Attorney Keefe noted that many legal issues must be resolved before the settlement agreement can be finalized.

Executive Director Burton stated that it was very important that any settlement agreement with Massachusetts not interfere with the DIA's present assessment audit process.

MISCELLANEOUS

Executive Director Burton informed the Council Members that the Governor's FY'12 Budget Recommendations would be released on Wednesday, January 26th. The Executive Director stated that he would be contacting Council Members for volunteers to serve on a budget subcommittee.

The Executive Director also stated that he was reaching out to various legislators in an effort to have the Advisory Council's endorsed legislation re-filed in the 2011-2012 Legislative Session. Mr. Burton stated that he had spoken with the Director of Labor, George Noel, about the possibility of amending House Bill 17 with the Advisory Council's proposed language.

Executive Director Burton introduced Rachel Rose Ostrander who will be serving as the Advisory Council's legal intern over the next four months. The Executive Director stated that Ms. Ostrander is a law student at the New England School of Law.

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

The next meeting of the Advisory Council is scheduled for Wednesday, February 9, 2011, at 9:00 AM, at the Department of Industrial Accidents, 1 Congress Street, Suite 100, Conference Room #10-140, Boston, MA 02114-2017