

**Massachusetts Workers' Compensation
Advisory Council Minutes**

January 13, 2010

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

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

CM: Stephen Joyce; Stephen Falvey; John Regan; Teri McHugh; Antonio Frias (Ines Leonardo); John Pulgini; William T. Corley; Bernard Mulholland; George Noel, Director of Labor; George Ramirez, Department of Business Development.

Also Present: Commissioner Paul Buckley; William Tattan, Deputy Commissioner and Chief Legal Counsel; Senior Judge William McCarthy; William Taupier, First Deputy Director of Administration; Jack Defina, Chief Financial Officer; Ray Marchand, Director of Investigations; Yvonne Vieira-Cardoza, Deputy General Counsel; Tom Jones, Department of Labor; Ellen Keefe; WCRIB; Michael Kelley, AIM Mutual Insurance Company; Matthew Miller, Stablebase USA, LLC; Pete DiNardo, Appleby & Wyman.

Advisory Council Staff: Andrew Burton; Evelyn Flanagan.

Absent: Chairman Mickey Long; *CM:* David Powell; Dennis Hines; Peter A. Cook, Sr.

Agenda:

Chairman's Welcome

DIA Update

- Vital Statistics - William Taupier, Deputy Director of Administration

DIA Budget Update

Classification Request Form Update

Action Items

- Minutes - December 9, 2009

COLA Reimbursements - Overview

Executive Director Update

Miscellaneous

CHAIRMAN'S WELCOME

Vice-Chairman Edmund C. Corcoran began today's meeting at 9:00 a.m. Vice-Chairman Corcoran thanked Council Members for another productive year. The Vice-Chairman announced that Governor Patrick has appointed attorney Joanne Goldstein as the Secretary of the Executive Office of Labor & Workforce Development. The Chairman noted that Secretary Goldstein will begin her official duties on January 20, 2010.

Vice-Chairman Corcoran introduced new Council Member, Bernard Mulholland, who will be representing the workers' compensation claimant's bar in a non-voting capacity. Council Member Mulholland is a principal in the firm of Ford, Mulholland & Moran.

Vice-Chairman Corcoran congratulated William McCarthy on his recent appointment to the position of Senior Judge and requested that he provide the Advisory Council with the judicial update.

DIA UPDATE

Judicial Update

Senior Judge William McCarthy reported that the agency has received 42 judicial applications. The Senior Judge stated that 8 Administrative Judges and 3 Administrative Law Judges were seeking reappointment. He informed Council Members that the Nominating Panel will be scheduling interviews at the end of January and the beginning of February. Senior Judge McCarthy stated that he anticipates the Nominating Panel will forward candidates to the Advisory Council before their next scheduled meeting in February.

Senior Judge McCarthy updated Advisory Council Members on the information contained within the DIA's vital statistic report for January 2010 (see attached). Conference Queue: 84; Hearing Queue: 607; Reviewing Board Inventory: 111; Impartial Exams for FY'10 (to date): 2,736 (24 waivers); Exam Fees Collected for FY'10: \$846,925. In fiscal year 2009 there were 5,069 Impartial Medical Examinations (64 waivers); Exam Fees Collected in FY'09: \$1,789,076.

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 308 SWOs in December (52 SWOs were reissued as the result of defaults of previous orders); total SWOs issued in FY'10 (to date): 1,814. Fine collection for December 2010: \$99,700; total fines in FY'10: \$505,900; SWOs issued in FY'09: 3,484; total fines collected in FY'09: \$885,980; compliance checks for December 2009: 3,794; estimated number of workers now covered by workers' compensation insurance as the result of a SWO: 4,566 (FY'10).

Mr. Taupier continued the update of the monthly vital statistics. Total number of cases filed in December 2009: 1,134; total number of cases filed in FY'10 (to date): 6,456; total number of cases filed in FY'09: 13,806; total number of First Report of Injury Forms (FRI) filed in December 2009: 2,467; total number of FRI filed online in November 2009: 729 (30%); total number of FRI filed in FY'10 (to date): 15,140 (4,410 online); total number of FRI filed in FY'09: 31,216 (8,048 online). Mr. Taupier proceeded with his update on uninsured claims (§65). Total number of §65 claims reported in FY'10 (to date): 66; total amount of §65 claims paid by the Trust Fund in FY'10 (to date): \$2,894,571; total number of §65 claims filed in FY'09: 162; total amount of §65 claims paid by the Trust Fund in FY'09: \$6,800,322.

Mr. Taupier proceeded with the vital statistics for the Second Injury Fund (§37/37A). Total amount of §37/37A petitions paid in FY'10 (to date): \$8,089,065; total amount paid on these claims in FY'09: \$24,078,327; total monies recovered by the Trust Fund in FY'10 (to date): \$328,296; total monies recovered in FY'09: \$1,410,782; total COLA reimbursements to insurers in FY'10 (to date): \$6,032,784; total COLA reimbursements to insurers in FY'09: \$34 million.

Budget/Personnel Issues

Mr. Taupier reported that as of December 2009, the number of employees whose salary is paid by either the Special Fund or the Trust Fund was 276 (225 DIA employees, 51 WCTF employees). The DIA is authorized to have 285.2 payroll positions (including all full and part-time positions).

Office of Education and Vocational Rehabilitation (OEVR) Update

Mr. Taupier presented the OEVR statistics. Total referrals to OEVR in FY'10 (to date): 1,173; total referrals to OEVR in FY'09: 2,334; total mandatory meetings in FY'10 (to date): 902; total mandatory meetings in FY'09: 1,913; total Determinations of Suitability (DOS) in FY'10 (to date): 611; total DOS in FY'09: 1,286; total referrals to insurers in FY'10 (to date): 291; total referrals to insurers in FY'09: 627; total Individual Written Rehabilitation Plans (IWRP) approved in FY'10 (to date): 169; total IWRPs approved in FY'09: 404; total number of Return to Work (RTW) in FY'10 (to date): 52; total number of RTW in FY'09: 106; total number of IWRPs completed with no RTW in FY'10 (to date): 84; total number of IWRPs completed with no RTW in FY'09: 107.

Office of Accounting & Finance Update

Mr. Taupier presented the accounting and finance statistics. Total referral fees collected in FY'10 (to date):

\$2,046,439; total referral fees collected in FY'09: \$4,122,040; total first report fines in FY'10 (to date): \$61,350; total first report fines in FY'09: \$234,770; total assessment collections in FY'10 (to date): \$36,129,977; total assessment collections in FY'09: \$73,767,639; total SWO fines in FY'10 (to date): \$753,434; total SWO fines in FY'09: \$1,369,954.

CLASSIFICATION REQUEST FORM UPDATE

Vice-Chairman Corcoran introduced Ellen Keefe, Vice President and General Counsel at the Workers' Compensation Rating and Inspection Bureau (WCRIB).

Attorney Keefe reviewed with Council Members how the public will use the Classification Request Form. She stated that the form was placed online on December 22, 2009 and is linked to the DIA's Proof of Coverage tool. To date, only one request for classification information has been processed by the WCRIB.

Attorney Keefe explained that a disclaimer was added to the Classification Request Form to ensure that it is being used for the identification of fraud and not for marketing purposes. She stated that upon receiving a request, the WCRIB will provide the requestor with a response within two to three business days by either e-mail or regular mail.

Attorney Keefe reviewed a sample Response Form. The Response Form will detail an employer's classification codes listed on their workers' compensation insurance policy and the percentage of payroll by classification code for the current and prior two policy years. Attorney Keefe explained that the policy terms would be based on either the estimated payroll, preliminary audit or the formal audit. She noted that payroll would most likely be from estimated payroll since the policy is not usually audited until it expires.

ACTION ITEMS

Vice-Chairman Corcoran asked for a motion to approve the minutes for December 9, 2009.

Motion made to approve the minutes for December 9, 2009. Motion Seconded and Passed.

COLA REIMBURSEMENTS - OVERVIEW

Yvonne Vieira-Cardoza, Deputy General Counsel of the Workers' Compensation Trust Fund, provided Council Members with an overview of the Trust Fund's requirements to reimburse insurers for Cost of Living Adjustments (COLA). Attorney Vieira-Cardoza explained that COLA adjustments were established as part of the 1985 Reform Act and provides for the adjustment of weekly benefits for dependants receiving death benefits (§31) and permanent and totally disabled employees (§34A).

Attorney Vieira-Cardoza explained that the recent spike in COLA expenditures was the result of a backlog of cases that grew during fiscal year 2007 and fiscal year 2008. She noted that during this time period the Trust Fund was short on COLA staff. Attorney Vieira-Cardoza stated that there is always some form of backlog because insurers have two years to file for reimbursement. She stated that the largest number of claim requests for reimbursement comes from Liberty Mutual and Travelers Insurance Company.

Attorney Vieira-Cardoza reported that she has provided training sessions for all Trust Fund employees on the proper method to process COLAs. She stated that she had also conducted training for Liberty Mutual employees to educate them on the correct documents to provide when submitting a request for reimbursement to the Trust Fund.

Attorney Vieira-Cardoza noted that the computer program, "Time Matters," has been very useful at expediting the COLA calculation process. The program allows the Trust Fund to predict the approximate completion date for claims. She noted that the Trust Fund has plans to develop a website that will allow insurers to file for reimbursement online.

Attorney Vieira-Cardoza spoke briefly about the future of COLA payments. She stated that the "Old Act" cases should be exhausted in approximately 10-20 years since 90% of beneficiaries are at age 60 and above. She explained that the "Mid Act" cases would last much longer, possibly 30 or more years, due to a much younger demographic. Attorney Vieira-Cardoza stated that the post-1991 COLAs are currently being litigated. These cases are §35C cases where the date of injury is pre-1991 but the filing of the claims are post 1991. These post-1991 cases are currently in litigation and could pose a financial burden to the DIA if the Trust Fund is found liable.

Vice-Chairman Corcoran asked if there was adequate knowledge of the COLA payment process in the Trust Fund in the event of Attorney Vieira-Cardoza's absence. The Vice-Chairman suggested that the agency should prepare a contingency plan to ensure a smooth transition should vital Trust Fund staff leave the workforce.

Vice-Chairman Corcoran thanked Attorney Vieira-Cardoza for her review of the COLA reimbursement process.

EXECUTIVE DIRECTOR UPDATE

Executive Director Andrew Burton thanked Council Members for their participation in the drafting of a letter to Governor Patrick regarding the Advisory Council's budget concerns. The Executive Director stated that the budget letter was mailed to the Governor on December 15, 2009. He further noted that the Governor's Budget Recommendations are tentatively scheduled to be released on January 27, 2010. Executive Director Burton asked for volunteers to serve on a Budget Subcommittee that would meet in early February to review the proposed fiscal year 2011 budget.

Executive Director Burton briefly reviewed the judicial interview process with Council Members. He explained that the Advisory Council could perform paper reviews on all sitting judges, as well as those applicants who were still in the nominating pool. Mr. Burton suggested that the Advisory Council may have to schedule two meetings in February to allow for adequate time to interview all candidates forwarded by the Nominating Panel. The Executive Director noted that the Massachusetts Bar Association may possibly extend the DIA Judicial Survey to gain a larger sample of responses.

Executive Director Burton informed the Council Members that the Annual Report was in their packages and would be mailed to the Governor and members of the legislature. The Executive Director thanked Evelyn Flanagan for the hard work she contributed in producing a quality report. Mr. Burton stated that there are future plans to develop an online library of all Advisory Council studies.

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, February 10, 2010, at 9:00 AM, at the Department of Industrial Accidents, 600 Washington Street, 7th Floor Conference Room, Boston, MA 02111.