

**Massachusetts Workers' Compensation  
Advisory Council Minutes**

November 10, 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 (Brad McDougal); Antonio Frias (Ines Leonardo); John Pulgini; George Noel, Department of Labor.

*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; Ray Marchand, Director of Investigations; Jack Defina, CFO; Ellen Keefe, Workers' Compensation Rating & Inspection Bureau of Massachusetts (WCRIB); Tara O'Donnell, Donoghue Barrett & Singal; Michael Kelley, AIM Mutual Insurance Company.

*Advisory Council Staff:* Andrew Burton; Evelyn Flanagan.

*Absent:* *CM:* Chairman Mickey Long; Teri McHugh; William Corley; David Powell; Bernard Mulholland; Dennis Hines; Peter A. Cook, Sr.; Dept. of Business Development.

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Agenda:

Chairman's Welcome

A. Judicial Update - Senior Judge William McCarthy

- Conference/Hearing/Reviewing Board Queue
- Impartial Medical Exams/Physicians
- Judicial Appointment/Reappointment Update
- Decisions Outstanding Report

B. DIA Vital Statistics - William Taupier, Deputy Director of Administration

- Cases Filed with the DIA

- Workers' Compensation Trust Fund
- Personnel Update
- Enforcement and Compliance

C. Verification of WC Coverage for Out-of-State Employers - Ray Marchand

Action Items

- Minutes - September 8, 2010

PEO/POC Subcommittee Update - Stephen Joyce

Concerns & Recommendations Discussion

Executive Director Update

Miscellaneous

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**CHAIRMAN'S WELCOME**

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

Senior Judge McCarthy addressed the Decisions Outstanding Report. The Senior Judge explained that there are currently 17 cases in this category divided between seven judges. Senior Judge McCarthy stated that he had spoken with each Administrative Judge on this list and that they have provided him with a satisfactory explanation for any delays.

The Senior Judge informed the Council members that two new Administrative Judges have been appointed by the Governor - Christina Poulter and Kalina Vendetti. He stated that both of these judges were currently being trained by the more seasoned judges and appear to be performing very well. The Senior Judge stated that there are still three judges in limbo who are awaiting word on their reappointment. The Senior Judge recognized the hard work of Steven Rose who continues to be a big producer.

Vice-Chairman Corcoran thanked the Senior Judge for his update and commended the agency on the overall quality of the judges. Vice-Chairman Corcoran requested that the Senior Judge continue to provide the Advisory Council with a Decision Outstanding Report every six months.

### Judicial Update

Mr. Bill Taupier updated Advisory Council members on the information contained within the DIA's vital statistic report for November 2010 (see attached). Conference Queue: 768; Hearing Queue: 492; Reviewing Board Inventory: 106; Impartial Exams for FY'11 (to date): 358 (26 waivers); Exam Fees Collected for FY'11: \$449,625. 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 268 SWOs in October (35 SWOs were reissued as the result of defaults of previous orders); total SWOs issued in FY'11 (to date): 974. Fine collection for October 2010: \$105,650; total fines in FY'11 (to date): \$356,315; SWOs issued in FY'10: 3,421; total fines collected in FY'10: \$1,110,125; compliance checks for October 2010: 4,203; estimated number of workers now covered by workers' compensation insurance as the result of a SWO: 2,100 (FY'11). SWO fines from Civil Litigation in FY'11: \$54,873 / FY'10: 93,535; Value of SWO Pay Agreements in FY'11: \$42,100 / FY'10: \$77,610; Amount paid via SWO Agreements FY'11: \$29,715 / FY'10: \$57,140.

Mr. Taupier continued the update of the monthly vital statistics. Total number of cases filed in October 2010: 971; total number of cases filed in FY'11 (to date): 4,109; total number of cases filed in FY'10: 12,940; total number of First Report of Injury Forms (FRI) filed in October 2010: 2,442; total number of FRI filed online in October 2010: 670 (27%); total number of FRI filed in FY'11 (to date): 10,103 (2,978 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): 36; total amount of §65 claims paid by the Trust Fund in FY'11 (to date): \$1,855,775; 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: \$2,677,877; Paid by WCTF FY'11: \$1,855,775; Paid by Others FY'11: \$822,102; 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): \$5,194,945; total amount paid on these claims in FY'10: \$22,877,653; total monies recovered by the Trust Fund in FY'11 (to date): \$424,470; total monies recovered in FY'10: \$709,946; Section 37 total amount demanded FY'11: \$9,331,236; Trust Fund payment FY'11: \$5,194,945; total liability reduced FY'11: \$4,136,291; 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): \$1,085,683; total COLA reimbursements to insurers in FY'10: \$11,767,228.

### Budget/Personnel Issues

Mr. Taupier reported that as of October 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 283.2 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): \$1,144,286; total referral fees collected in FY'10: \$3,863,852; total first report fines in FY'11 (to date): \$40,605; total first report fines in FY'10: \$109,700; total assessment collections in FY'11 (to date): \$20,521,045; total assessment collections in FY'10: \$75,002,051; total SWO fines in FY'11 (to date): \$571,417; total SWO fines in FY'10: \$1,597,919.

### Out of State Workers' Compensation Coverage Update

Mr. Ray Marchand, Director of Investigations, provided an update on the new coverage verification form (Form 154) to be used by employers located in other states but conducting business and employing workers in Massachusetts. Mr. Marchand explained that on October 28, 2010, the DIA issued an amended circular letter (#335) that clarifies the procedures for completing Form 154. He stated that the coverage verification form must be completed by the insurance carrier only upon request of the DIA. Mr. Marchand noted that the original circular letter had made the completion of Form 154 mandatory for out-of-state employers.

Mr. Marchand stated that out-of-state employers are required to cover all employees working in Massachusetts. Mr. Marchand noted that some of the confusion came from the requirements in Sections 3A and 3C of the workers' compensation policy. He explained there is no need to buy a policy strictly for Massachusetts if your existing workers' compensation policy has Massachusetts listed in Section 3A of the policy's information page. In these cases, compliance is satisfied without verification.

Mr. Marchand stated that Form 154 will be used in cases where an out-of-state employer has Massachusetts listed only under Section 3C of the workers' compensation policy. Typically, 3C of the insurance policy is used when businesses have no physical location in Massachusetts. The Director of Investigations explained that Form 154 will help protect the Workers' Compensation Trust Fund by ensuring that employees of out-of-state employers are adequately covered in Massachusetts.

Mr. Marchand reported that the insurance industry had two major concerns with the prior procedures for Form 154. First, there was concern that the original form included a 10-day advanced notice of cancellation. Mr. Marchand stated that insurers were upset because there were no formal procedures in place for this type of scenario. Secondly, there was concern that the signature line contained language that could subject an insurer to perjury charges. Mr. Marchand explained that after further review, both items of concern have been removed from the form.

## **ACTION ITEMS**

Vice-Chairman Corcoran asked for a motion to approve the minutes for September 8, 2010.

Motion made to approve the minutes for September 8, 2010.

Council Member Stephen Joyce asked for additional time to review the minutes. Council Members agreed to delay a vote on the minutes of September 8, 2010 until December.

## **PEO/POC SUBCOMMITTEE UPDATE**

Council Member Stephen Joyce provided an update from the PEO/POC Subcommittee Meeting held on September 29, 2010. Mr. Joyce explained that the subcommittee had been created to assist the Advisory Council members in developing recommendations on whether certain changes should be made to the online Proof of Coverage (POC) tool.

Mr. Joyce addressed the concern brought to the attention of the DIA by Genesis Consolidated Services. Mr. Joyce explained that when entering the name of Professional Employer Organization (PEO) into the POC, the names of every client company are listed within the search results. Mr. Joyce stated that the PEO industry believes that client lists are proprietary and should not be shared online with competing companies in the human resources outsourcing industry.

Mr. Joyce explained that the Governing Committee of the Workers' Compensation Rating and Inspection Bureau (WCRIB) has already voted to implement changes to the POC to prevent the disclosure of PEO client lists. However, if a search is conducted on a particular client-company, both the client and the PEO will continue to be displayed with their policy information attached.

Council Member Joyce explained that as a result of the subcommittee discussions, he was forwarding a three-part recommendation to the Advisory Council for consideration:

1) Presently, the subcommittee recommends no opposition to the revision made to the POC tool which prevents the disclosure of a PEO's client-company addresses when the "name of PEO" is entered with a "city or town." The subcommittee further recommends that the Advisory Council and the DIA continue to reserve their right to both reconsider and propose future changes to the POC tool when deemed necessary.

2) The subcommittee recommends that the DIA, in partnership with the WCRIB, remove the "city or town" requirement from the POC search fields. The subcommittee believes that removing this requirement (as is the case in other states with POC tools) will greatly improve the accuracy of the search results when the location of an employer is unknown.

3) Finally, the subcommittee is recommending that the DIA's Office of Investigations conduct testing on the POC tool to determine whether client-companies are consistently being named on policies secured by PEOs. The subcommittee recommends that the results of such testing be shared with Advisory Council members at a future meeting.

Council members agreed that a vote on the proposed recommendations should be tabled until the December meeting.

### **CONCERNS AND RECOMMENDATIONS DISCUSSION**

Executive Director Andrew Burton referred to an outline of fiscal year 2010 concerns and recommendations that had been included in Council members' packets. The Executive Director explained that during the fiscal year, there had been eight major areas of concern brought to the attention of the Governor, Legislature, and DIA. The eight areas of concern included, the DIA funding structure, the statutory number of DIA judges, measuring occupational injuries and illnesses, the second injury fund, employer fraud, employee benefits, employer responsibilities, and medical reimbursement rates.

Mr. Burton briefly reviewed each proposed concern and recommendation with Council members. The Executive Director stated that over the next few weeks he would be drafting this section and would email it to each Council member for review.

### **EXECUTIVE DIRECTOR UPDATE**

Executive Director Burton stated that he would be organizing a Legislative Subcommittee to prioritize legislation that should be filed for the 2011-2010 Legislative Session. Mr. Burton stated that he would be reaching out to Council members for volunteers.

### **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, December 8, 2010, at 9:00 AM, at the Department of Industrial Accidents, 1 Congress Street, Suite 100, Conference Room #10-140, Boston, MA 02114 -2017**