

**Massachusetts Workers' Compensation  
Advisory Council Minutes**

February 10, 2010

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

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

*CM:* Stephen Joyce; Stephen Falvey; Teri McHugh; William T. Corley; Bernard Mulholland; George Noel, Director of Labor.

Also Present: Commissioner Paul Buckley; Senior Judge William McCarthy; William Taupier, First Deputy Director of Administration; Jack Defina, Chief Financial Officer; Ray Marchand, Director of Investigations; Kathy Manson, Office of Safety; Yvette Smith, Office of Assessments & Compliance; Michael Kelley, AIM Mutual Insurance Company; Paul Meagher, Workers' Compensation Rating & Inspection Bureau of Massachusetts; Walter Horn, State Rating Bureau.

*Advisory Council Staff:* Andrew Burton.

*Absent:* CM: John Regan; Antonio Frias; John Pulgini; David Powell; Dennis Hines; Peter A. Cook, Sr.; Department of Business Development.

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**Agenda:**

Chairman's Welcome

DIA Update

- Vital Statistics - William Taupier, Deputy Director of Administration

Assessment Audit Update - Yvette Smith, Manager of Assessments & Compliance

Action Items

- Minutes - January 13, 2010

FY'11 Safety Grant Program, Kathy Manson, Director of Safety

FY'11 Budget Subcommittee Update

Executive Director Update

Miscellaneous

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### **CHAIRMAN'S WELCOME**

Chairman Mickey Long began today's meeting at 9:00 a.m. Chairman Long introduced Senior Judge William McCarthy and asked that he report on the judicial update.

### **DIA UPDATE**

#### Judicial Update

Senior Judge William McCarthy began his update by addressing an outside section that appeared in the Governor's FY'11 Budget Recommendations. This outside section would allow for the appointment of fewer judges than the statute currently permits. The Senior Judge expressed concern with this outside section and stated that the appointment of fewer judges could harm the dispute resolution system by creating delays. Senior Judge McCarthy explained that the dispute resolution system is currently running at its most efficient levels he has ever witnessed.

Commissioner Paul Buckley stated that he had asked the Senior Judge for a formal report on what impact fewer judges would have on the dispute resolution system. The report (February 8, 2010 - Memorandum) was distributed to Council Members and reflects the official position of senior management at the DIA.

Council Members thanked the Commissioner and the Senior Judge for providing a report that attempts to measure the impact that fewer judges would have on the workers' compensation system.

Council Member Bernard Mulholland stated that he has been practicing workers' compensation for over 26 years and believes that this is the best group of Judges the agency has ever had. Mr. Mulholland warned that you can't just look at a decrease in claims and assume that it warrants a decrease in judges. He noted that when the quantity of cases for a particular judge increases, the quality of each decision can be negatively impacted.

Council Member Teri McHugh further added that cases today are much more time consuming and complex, often involving multiple witnesses and parties. Ms. McHugh expressed concern that hearings could become significantly delayed with fewer judges.

Commissioner Paul Buckley stated that he recently spoke with the Massachusetts Bar Association (MBA) regarding the judicial survey. He noted that the MBA plans to have the results of the survey distributed to the Nominating Panel by February 26, 2010.

Senior Judge McCarthy updated Advisory Council Members on the information contained within the DIA's vital statistic report for February 2010 (see attached). Conference Queue: 248; Hearing Queue: 653; Reviewing Board Inventory: 116; Impartial Exams for FY'10 (to date): 3,186 (31 waivers); Exam Fees Collected for FY'10: \$996,975. 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 294 SWOs in January (31 SWOs were reissued as the result of defaults of previous orders); total SWOs issued in FY'10 (to date): 2,108. Fine collection for January 2010: \$94,600; total fines in FY'10: \$600,500; SWOs issued in FY'09: 3,484; total fines collected in FY'09: \$885,980; compliance checks for January 2010: 3,706; estimated number of workers now covered by workers' compensation insurance as the result of a SWO: 5,729 (FY'10).

Mr. Taupier continued the update of the monthly vital statistics. Total number of cases filed in January 2010: 917; total number of cases filed in FY'10 (to date): 7,373; total number of cases filed in FY'09: 13,806; total number of First Report of Injury Forms (FRI) filed in January 2010: 2,645; total number of FRI filed online in January 2010: 740 (28%); total number of FRI filed in FY'10 (to date): 17,785 (5,150 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): 70; total amount of §65 claims paid by the Trust Fund in FY'10 (to date): \$3,308,644; 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): \$9,801,921; total amount paid on these claims in FY'09: \$24,078,327; total monies recovered by the Trust Fund in FY'10 (to date): \$357,787; total monies recovered in FY'09: \$1,410,782; total COLA reimbursements to insurers in FY'10 (to date): \$6,659,110; total COLA reimbursements to insurers in FY'09: \$34 million.

#### Budget/Personnel Issues

Mr. Taupier reported that as of January 2010, the number of employees whose salary is paid by either the Special Fund or the Trust Fund was 271 (220 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): 1,393; total referrals to OEVR in FY'09: 2,334; total mandatory meetings in FY'10 (to date): 1,087; total mandatory meetings in FY'09: 1,913; total Determinations of Suitability (DOS) in FY'10 (to date): 736; total DOS in FY'09: 1,286; total referrals to insurers in FY'10 (to date): 351; total referrals to insurers in FY'09: 627; total Individual Written Rehabilitation Plans (IWRP) approved in FY'10 (to date): 210; total IWRPs approved in FY'09: 404; total number of Return to Work (RTW) in FY'10 (to date): 65; total number of RTW in FY'09: 106; total number of IWRPs completed with no RTW in FY'10 (to date): 100; 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): \$2,366,404; total referral fees collected in FY'09: \$4,122,040; total first report fines in FY'10 (to date): \$72,950; total first report fines in FY'09: \$234,770; total assessment collections in FY'10 (to date): \$8,131,486; total assessment collections in FY'09: \$73,767,639; total SWO fines in FY'10 (to date): \$897,707; total SWO fines in FY'09: \$1,369,954.

#### Assessment Audit Update

Ms. Yvette Smith, Manager of the Office of Assessments & Compliance, provided an assessment audit update. Ms. Smith stated that in FY'10 the DIA has added two new external audit firms to help with the audit process. This brings to the total of external audit firms to three. She stated that it is eventually her goal to perform audit reviews in-house on the smaller insurance companies.

Ms. Smith reported that the audit firms have to-date collected \$120,000 in FY'10. She noted that there continues to be a very good return on investment with 73% of the collected dollars retained by the agency and 27% of the dollars going to the outside audit firms. Ms. Smith projected that the agency will be able to collect approximately \$1.8M in the remainder of FY'10. She stated that for the last two years she has been conducting an analysis of certain insurance companies to ensure that payments remain consistent.

Ms. Smith reported that the DIA implemented online filing and payment of assessments on December 30<sup>th</sup>, 2009. Currently this is a voluntary program for insurers that will become mandatory on September 30, 2010. Presently there are 85 insurance companies utilizing this online service.

#### **ACTION ITEMS**

Chairman Long asked for a motion to approve the minutes for January 13, 2010.

Motion made to approve the minutes for January 13, 2010. Motion Seconded and Passed.

## **FY'11 SAFETY GRANT PROGRAM**

Ms. Kathy Manson, Director of Safety, provided an update of the Safety Grant Program to Council Members. Ms. Manson reported that there have been significant changes to the program over the past two years. She explained that the grant itself is administered entirely online and was reduced from 35 pages to five. She stated that a matrix of the demographics from the FY'10 Safety Grant Program had been placed in each member's packet.

Ms. Manson stated that her office is working closely with Administration & Finance to cross reference invoices with attendance sheets to ensure that a vendor is training the same number of people they were contracted to train. She stated that her unit currently consists of two full-time staff members. Ms. Manson reported that the Office of Safety has set up an auto-response system whereby vendors can email any questions they have and a response will be returned to them on the same day.

Ms. Manson stated that several changes were made to strengthen the contract language. Under the new language, the Office of Safety has the final determination in assessing appropriate costs based on industry standards. The office has also strengthened the Letter of Commitment to ensure that employers are ultimately responsible for the training that is provided to their employees. She also noted that grant recipients will be prohibited from charging fees for any safety training provided.

Ms. Manson stated that one of her goals was to improve the Year-End Report which is used to determine the effectiveness of the Safety Grants. Many revisions were made to this report which will now paint a clearer picture of the types of injuries before and after safety training. Ms. Manson touched briefly on outreach efforts. The Office of Safety is now targeting Bristol County, Cape Cod, and Worcester. She explained that future initiatives will focus on small and medium size businesses.

Ms. Manson stated that in response to Executive Order #511, the agency has established an internal Employee Safety and Health Committee. This committee, which consists of employees and management, will strive to improve safety within the DIA.

Council Member Stephen Joyce referred to the "Annual Survey of Occupational Injuries and Illnesses," that is funded jointly by the Department of Labor and the Massachusetts Division of Occupational Safety (DOS). Mr. Joyce reported that this study did not receive funding in FY'10 and appears it will go unfunded in FY'11. In the absence of this report, Mr. Joyce asked how the Office of Safety would be able to identify hazardous industries for the Safety Grant Program.

Ms. Manson stated that each week her office receives a detailed report on First Report of Injuries that captures workplace injuries in Massachusetts by type, industry, and age. She noted that the Office of Safety has used this

report in the past to target the Safety Grant Program. Ms. Manson also noted that they participate in statistical information sharing with other state agencies, such as the Department of Public Health.

Mr. George Noel, Director of Labor, suggested that the Council could invite DOS Commissioner Laura Marlin to the next Advisory Council meeting to discuss the survey and its importance to Massachusetts.

Council Member Stephen Joyce requested that a future agenda topic also include the government oversight of Self Insurance Groups. Mr. Joyce stated that New York has experienced recent SIG insolvencies because the groups were not properly bonded.

### **FY'11 BUDGET SUBCOMMITTEE UPDATE**

Vice-Chairman Ed Corcoran reported that there had been a Budget Subcommittee meeting last week in which members of the Advisory Council met with the DIA's Finance & Accounting Unit to review the DIA's projected spending for FY'10 and FY'11. The Vice-Chairman noted that the FY'11 House 2 Budget figure for the DIA represents a 2.5% decrease from the FY'10 General Appropriations Act.

Vice-Chairman Corcoran stated that the DIA is forecasting a 3.4% decrease in payroll spending in FY'11. While some of this decrease will be from the elimination of unnecessary positions, the Vice-Chairman speculated that it could also reflect the possibility of a reduction in judges. He stated that the FY'11 subsidiaries that will increase in FY'11 (Administrative, Equipment, IT, Operational, Infrastructure, and Consultant) are related to the potential move or reconfiguration of the agency. The Vice-Chairman explained that the DIA's Boston lease expires on July 27, 2010.

Vice-Chairman Corcoran stated that the Budget Subcommittee concluded that the Governor's FY'11 Budget of \$20,047,378 would fairly and adequately fund the operations of the DIA. The Vice-Chairman noted that the subcommittee has additionally recommended that in light of these difficult and uncertain economic times, the DIA give careful consideration and judgment on all expenses associated with moving or renovating the agency and that every effort is made to utilize existing state resources and equipment when applicable.

Vice-Chairman Corcoran also alerted council members to four outside sections contained in the House 2 Budget that could impact the operations of the DIA. First, the Vice-Chairman addressed Outside Section #9 that would allow the Governor to appoint fewer than the statutory number of Administrative Judges and Administrative Law Judges. Vice-Chairman Corcoran echoed the concerns brought up at today's meeting that you cannot assume that a decrease in claims necessarily correlates to the need for fewer judges. He suggested that instead of a narrow focus on one unit, the agency should conduct a comprehensive review of the entire operations to look for efficiencies and savings. The Vice-Chairman noted that if it is determined that a reduction in judges is merited, that personnel decisions be determined by judicial performance and not based upon the timing of the reappointment schedule.

The Vice-Chairman also addressed three outside sections which are directed toward all state agencies that would allow for the consolidation of core administrative functions within a secretariat (Outside Section #5), authorize line-item transferability within the same executive office (Outside Section #29), and authorize the transfer of certain trust and account balances to the General Fund (Outside Section #32). Vice-Chairman Corcoran stated that these outside sections do not take into account that the DIA is funded by annual assessments on the Commonwealth's employer community. The Vice-Chairman noted that these outside sections could prove beneficial to other state agencies that are funded by the General Fund by allowing for additional flexibility in moving personnel and funds between organizations.

Chairman Long asked for a motion to support the recommendations of the Budget Subcommittee and to additionally support the concerns raised over the four outside sections that could affect the operations of the DIA.

Motion made to support the Budget Subcommittee's recommendations as amended. Motion Seconded and Passed.

Mr. Michael Kelly, Vice President of AIM Mutual Insurance Company, informed the council members that he would offer the resources of AIM Mutual if data is needed to conduct a study on the appropriate number of judges. Mr. Kelly stated that it was his personal opinion that this would not be a good time to reduce the number of judges at the DIA. Mr. Kelly stated that we need to do everything we can to keep this system stable, viable, and successful.

Mr. Paul Meagher, President of the Workers' Compensation Rating & Inspection Bureau (WCRIB), stated that he would bring this issue before the Governing Committee. He noted that if there was no opposition to the Advisory Council's letter to the House Ways & Means Committee, he would ask for the Governing Committee's support.

Mr. Paul Meagher updated the Council on the utilization of the newly launched Classification Request Form. He reported that to-date there have been 63 requests for class code information from a total of 7 requesters. Mr. Meagher noted that when the WCRIB follows up on a request they contact the carriers and/or the Insurance Fraud Bureau if the information appears suspicious of potential fraud.

#### **EXECUTIVE DIRECTOR UPDATE**

Executive Director Andrew Burton informed the Council Members that on the same day the Governor's FY'11 Budget was released, the Governor also filed a FY'10 Supplemental Budget (House Bill 4444). Within this budget, the Executive Director stated there was an outside section (Outside Section #24) that would phase out "Old-Act" and "Mid-Act" second injury fund cases. He noted that this proposed legislation has received the support of the Advisory Council during the last two years.

Executive Director Burton explained that the Trust Fund expends approximately \$60M per year on mandated benefits. He informed the Council that approximately half of these benefits are for second injury cases. Approximately one-third of the second injury cases are either "Mid-Act" or "Old-Act" cases. Mr. Burton stated that these cases are now stale and no longer serve the purposes they were intended for.

Executive Director Burton stated that the next Advisory Council meeting is scheduled for March 10, 2010 and will focus on judicial interviews. Mr. Burton noted that the Advisory Council may have to meet twice in March to accommodate interviews for both existing judges and outside applicants.

#### **MISCELLANEOUS**

Chairman Long 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, March 10, 2010, at 9:00 AM, at the Department of Industrial Accidents, 600 Washington Street, 7<sup>th</sup> Floor Conference Room, Boston, MA 02111.**