

**Massachusetts Workers' Compensation  
Advisory Council Minutes**

February 9, 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:* John Regan; David Powell (Kevin Hurstack); Antonio Frias (Ines Leonardo); Bernard Mulholland; Stephen Joyce; Stephen Falvey; John Pulgini; William Corley.

*Also Present:* Commissioner Paul Buckley; 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; Ellen Keefe, Workers' Compensation Rating & Inspection Bureau of Massachusetts (WCRIB); Michael Kelley, AIM Mutual Insurance Company; Jake Stone, Esq., Stone & Stone; Channing Migner, Esq., Law Office of Channing Migner, P.C.; William Monin-Browder, Joint Committee on Labor & Workforce Development.

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

*Absent:* CM: Teri McHugh; 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
- Judicial Update - Senior Judge William McCarthy
- Assessment Audit Update - Yvette Smith, Office of Assessment & Compliance Action Items
- Minutes - January 12, 2011

Judicial Appointment Letter/Outside Section #17

Massachusetts Bar Survey - Funding Discussion

- Jake W. Stone, Esq. - Stone & Stone
- Channing Migner, Esq. - Law Office of Channing Migner, P.C.

Executive Director Update

Miscellaneous

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### **CHAIRMAN'S WELCOME**

Chairman Mickey Long began today's meeting at 9:00 a.m. The Chairman asked Mr. Bill Taupier to provide the Advisory Council members with an update on the Vital Statistics.

### **DIA UPDATE**

#### Vital Statistics

Mr. Bill Taupier updated Advisory Council members on the information contained within the DIA's vital statistic report for February 2011 (see attached). Conference Queue: 346; Hearing Queue: 417; Reviewing Board Inventory: 66; Impartial Exams for FY'11 (to date): 2,203 (42 waivers); Exam Fees Collected for FY'11: \$831,225. 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. The DIA issued 261 SWOs in January (24 SWOs were reissued as the result of defaults of previous orders); total SWOs issued in FY'11 (to date): 1,646. Fine collection for January 2011: \$84,460; total fines in FY'11 (to date): \$638,475; SWOs issued in FY'10: 3,421; total fines collected in FY'10: \$1,110,125; compliance checks for January 2011: 4,059; estimated number of workers now covered by workers' compensation insurance as the result of a SWO: 3,700 (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 January 2011: 893; total number of cases filed in FY'11 (to date): 7,068; total number of cases filed in FY'10: 12,940; total number of First Report of Injury Forms (FRI) filed in January 2011: 2,398; total number of FRI filed online in January 2011: 777 (32%); total number of FRI filed in FY'11 (to date): 17,646 (5,365 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): 64; total amount of §65 claims paid by the Trust Fund in FY'11 (to date): \$3,802,743; 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; total recovery efforts against uninsured employers FY'11: \$1,059,460; total recovery efforts against uninsured employers FY'10: \$709,946.

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): \$10,534,609; 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 in FY'11: \$15,648,834; Trust Fund payments in FY'11: \$8,963,090; total liability reduced in FY'11: \$6,685,744; Section 37 total amount demanded in FY'10: \$32,124,496; Trust Fund payment in FY'10: \$22,696,126; total liability reduced in FY'10: \$9,428,370; total COLA reimbursements to insurers in FY'11 (to date): \$4,321,138; total COLA reimbursements to insurers in FY'10: \$11,767,228.

Mr. Taupier reported that as of January 2011, 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): \$2,137,269; total referral fees collected in FY'10: \$3,863,852; total first report fines in FY'11 (to date): \$82,305; total first report fines in FY'10: \$109,700; total assessment collections in FY'11 (to date): \$39,267,091; total assessment collections in FY'10: \$75,002,051; total SWO fines in FY'11 (to date): \$983,428; total SWO fines in FY'10: \$1,597,919.

### **Judicial Update**

Senior Judge William McCarthy explained that he is in the process of conducting an annual review of the Administrative Judges and Administrative Law Judges. The Senior Judge informed the Council members that the Massachusetts Appeals Court is now providing the DIA with electronic copies of decisions. Senior Judge McCarthy thanked Commissioner Buckley for his support and wished him all the best in his retirement.

### **Assessment Audit Update**

Ms. Yvette Smith provided the Council members with the assessment audit update. Ms. Smith stated that collection rates continue to be positive when compared to expenses. She stated that over the last four years collections have been relatively flat due to the fact that the auditors have been overwhelmed by the number of insurers under their review. Going forward, Ms. Smith stated that her goal was to not overwhelm the auditors with as many reviews as were done in the past.

Ms. Smith reported that the bulk of the projected \$2.6 million the agency will receive in fiscal year 2011 will come from the audits of Liberty Mutual and their subsidiaries. She noted that Liberty Mutual is presently reviewing the auditor's report to see if they agree with the findings.

Ms. Smith is now in the process of selecting new companies to be reviewed. She stated that her goal is to bring all company reviews current to 2007 and to begin reviews on companies that have yet to be selected. Ms. Smith stated that the DIA was looking to perform additional audits on AIG and most of the larger companies.

Chairman Mickey Long noted that these projections should lead to a substantial reduction to employer assessments.

### **ACTION ITEMS**

Chairman Long asked for a motion to approve the January 19, 2011 minutes.

Motion made to approve the minutes for January 19, 2011. Motion Seconded and Passed.

### **JUDICIAL APPOINTMENT LETTER / OUTSIDE SECTION #17**

Executive Director Andrew Burton reminded the Council members that at the last meeting he was directed to draft a letter to Governor Deval Patrick drawing attention to the judicial appointment process. Mr. Burton stated that after the letter was sent to Council members for review, the Governor's Fiscal Year 2012 Budget Recommendations (House 1) were released. The Executive Director explained that a proposed outside section contained in House 1 would allow the Governor to reduce the number of judges serving at the DIA following the expiration of judge's term. In light of this new information that was not available to Council members prior to drafting the letter, Mr. Burton explained that he was directed to delay sending the correspondence to allow Council members the opportunity to revisit the letter's wording at today's meeting.

Council Member Stephen Joyce voiced concern with respect to the last sentence in the third paragraph of the draft letter which advises the Governor that personnel decisions be determined by judicial performance and not based upon the timing of the reappointment schedule. Council Member Joyce noted that this sentence is unclear as to what the Advisory Council is suggesting. He stated that the statute allows the Governor to make either new appointments or reappointments at the expiration date of a judge's term. Mr. Joyce suggested that the sentence be removed.

Vice-Chairman Edmund Corcoran suggested that this sentence may just need rephrasing. The Vice-Chairman stated that he is concerned that the DIA could lose some good judges and drift back into a system that had underperforming Judges. He stated that the intent of this letter is to advise the Governor not to remove good performers from the system.

Council Member John Pulgini asked whether it was the Administrations intention to lower the number of judges at the DIA.

Director of Labor George Noel stated that the outside section was more about having flexibility.

Chairman Mickey Long stated that the Executive Director would edit the letter and send it out to Council members for final approval.

Council Member Stephen Falvey asked if the language in outside section #17, which allows the Commissioner to authorize a three month extension, would have any effect on whether cases would have to be retried if a sitting judge is not reappointed.

Council Member Bernard Mulholland stated that based on past experience, he did not believe a three month extension would help judges in finishing up their caseloads. Mr. Mulholland noted that historically some judges were unable to clean up their caseloads even when taken offline many months before their term's expired. Council Member Mulholland stated that the big concern of the Bar is that policymakers may not recognize the fact that the DIA has no reliance on the state's General Fund and may fall victim of budget that never needed to be cut. He noted that the agency is already operating well below authorized staffing levels.

Chairman Mickey Long suggested that the Advisory Council discuss the outside section in further detail at a future meeting.

Commissioner Buckley brought to the Advisory Council's attention a recent meeting held at the DIA by a group of workers' compensation attorneys. The Commissioner stated that the purpose of the meeting was to discuss the procedure of appointing Judges with the judicial branch of the DIA and the Governor's Chief Legal Counsel. At this meeting, Commissioner Buckley advised Council members that he had recommended that the attorneys bring these legislative issues before the Massachusetts Workers' Compensation Advisory Council.

#### **MASSACHUSETTS BAR ASSOCIATION - JUDICIAL SURVEY DISCUSSION**

Executive Director Andrew Burton introduced Attorney Jake Stone and Attorney Channing Migner.

Attorney Jake Stone stated that following last month's Advisory Council meeting, he had spoken with the Massachusetts Bar Association (MBA) in regards to funding future judicial surveys. Attorney Stone reported that for fiscal year 2012, the MBA would consider funding a portion of the survey. Attorney Stone noted that the MBA could not make any guarantees, but would consider a contribution of \$3,500. Using \$11,500 as a target cost, Attorney Stone stated that they are now looking for two additional funding sources to cover the remainder of the costs.

Chairman Long asked if any Council members would like to make a motion for an action.

Hearing none, Chairman Long asked Mr. Burton to provide the Executive Director Update.

#### **EXECUTIVE DIRECTOR UPDATE**

Executive Director Andrew Burton referred to the FY'12 House 1 Budget Memorandum. Mr. Burton stated that the Governor has proposed a FY'12 budget for the DIA that is \$800,000 less than the final appropriation allocated last year. Specifically, Mr. Burton explained that the DIA's line-item calls for a Special Fund budget of \$19,106,544.

Executive Director Burton informed the Council members that a Budget Subcommittee would be scheduled for either late February or early March. Mr. Burton requested that any member interested in being on this subcommittee contact him.

#### **MISCELLANEOUS**

Chairman Long congratulated Commissioner Paul Buckley on his retirement and wished him the best.

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

**The next meeting of the Advisory Council is scheduled for Wednesday, March 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**