

**Massachusetts Workers' Compensation
Advisory Council Minutes**

March 9, 2011

Department of Industrial Accidents

1 Congress Street, Suite 100

Boston, MA 02114-2017

CM Present: Vice-Chairman Edmund C. Corcoran, Jr.; Stephen Joyce; Stephen Falvey; Antonio Frias (Ines Leonardo); Bernard Mulholland; William Corley.

Also Present: Senior Judge William McCarthy; William Tattan, Deputy Commissioner and Chief Legal Counsel; Reuben Kantor, Director of Operations; William Taupier, First Deputy Director of Administration; Jack Defina, CFO; Ray Marchand, Director of Investigations; Ellen Keefe, Workers' Compensation Rating & Inspection Bureau of Massachusetts (WCRIB); Michael Kelley, AIM Mutual Insurance Company; Peter DiNardo, Provider Insurance Group.

Advisory Council Staff: Andrew Burton; Evelyn Flanagan.

Absent: *CM:* Chairman Mickey Long; John Regan; Teri McHugh; Dave Powell; John Pulgini; Dennis Hines; Peter A. Cook, Sr.; Department of Business Development.

Agenda:

Chairman's Welcome

DIA Update

- Judicial Update - Senior Judge William McCarthy
- Vital Statistics - William Taupier, Deputy Director of Administration Action Items
- Minutes - February 9, 2011

WC Insurance Rate Filing / Proposed Agreement

Fiscal Year 2012 Budget Subcommittee Update

Executive Director Update

Miscellaneous

CHAIRMAN'S WELCOME

Vice-Chairman Edmund Corcoran began today's meeting at 9:00 a.m. The Vice-Chairman recognized Ray Marchand, Director of Investigations.

Mr. Ray Marchand informed the Advisory Council of the unexpected passing of Mark E. Moschella, who served as his Chief Investigator of Special Operations. Mr. Marchand stated that Mr. Moschella had worked in the Office of Investigations for the last 25 years. Mr. Marchand requested a moment of silence in Mr. Moschella's memory.

Vice-Chairman Corcoran expressed the Advisory Council's deepest sympathies to the DIA and its extended family over this terrible loss.

Vice-Chairman Corcoran asked that Senior Judge Bill McCarthy provide the Advisory Council members with an update on the Vital Statistics.

DIA UPDATE

Judicial Update

Senior Judge William McCarthy informed the Council members that the Reviewing Board had completely reduced the backlog of cases awaiting assignment.

Senior Judge McCarthy stated that preparations were being made for the annual judicial training sessions that are required by statute. The Senior Judges noted that he had assigned Judge Koziol and Judge Lewenberg as co-chairs to the Judicial Training Committee.

Vital Statistics

Mr. Bill Taupier updated Advisory Council members on the information contained within the DIA's vital statistic report for March 2011 (see attached). Conference Queue: 256; Hearing Queue: 406; Reviewing Board Inventory: 78; Impartial Exams for FY'11 (to date): 2,586 (42 waivers); Exam Fees Collected for FY'11: \$991,625. 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 310 SWOs in February (43 SWOs were reissued as the result of defaults of previous orders); total SWOs issued in FY'11 (to date): 1,956. Fine collection for February 2011: \$131,700; 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 February 2011: 4,946; estimated number of workers now covered by workers' compensation insurance as the result of a SWO: 4,958 (FY'11).

Mr. Taupier continued the update of the monthly vital statistics. Total number of cases filed in February 2011: 968; total number of cases filed in FY'11 (to date): 8,036; total number of cases filed in FY'10: 12,940; total number of First Report of Injury Forms (FRI) filed in February 2011: 2,714; total number of FRI filed online in February 2011: 900 (33%); total number of FRI filed in FY'11 (to date): 20,360 (6,265 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): 72; total amount of §65 claims paid by the Trust Fund in FY'11 (to date): \$4,197,659; 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: \$1,122,723; 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): \$12,313,016; 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; total COLA reimbursements to insurers in FY'11 (to date): \$5,818,339; 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 251 (201 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): \$2,437,632; total referral fees collected in FY'10: \$3,863,852; total first report fines in FY'11 (to date): \$99,805; total first report fines in FY'10: \$109,700; total assessment collections in FY'11 (to date): \$54,831,699; total assessment collections in FY'10: \$75,002,051; total SWO fines in FY'11 (to date): \$1,187,908; total SWO fines in FY'10: \$1,597,919.

ACTION ITEMS

Vice-Chairman Corcoran asked for a motion to approve the February 9, 2011 minutes.

Motion made to approve the minutes for February 9, 2011. Motion Seconded and Passed.

WC INSURANCE RATE FILING / PROPOSED AGREEMENT

Executive Director Andrew Burton informed the Council members that the Workers' Compensation Rating & Inspection Bureau of Massachusetts (WCRIB) has reached an agreement with the State Rating Bureau and the Attorney General's Office to keep workers' compensation rates at current levels through August 31, 2012. Mr. Burton noted that the WCRIB had originally filed for a 6.6% increase to average workers' compensation rates.

The Executive Director indicated that a rate stipulation is not unusual. He noted that during the last twenty years there have been only three instances where the Commissioner of Insurance has issued a rate decision to determine the final rates. The Executive Director referred to a chart in the Advisory Council packets that displays the narrowing of the gap between WCRIB rate filings and the ultimate rate decisions or stipulations.

Executive Director Burton stated that the proposed stipulation must still be approved by the Commissioner of Insurance. The Executive Director noted that a hearing has been scheduled for March 30, 2011 and will be held at the Division of Insurance. Mr. Burton explained that the statute allows the Advisory Council to gather loss data from "any insurance company or rating organization" and to "present a written statement and oral testimony relating to any issues which may arise during the course of the hearing." In light of the proposed stipulation, the Executive Director suggested that he could draft testimony offering the Advisory Council's assistance to the Commissioner of Insurance in resolving any issues pertaining to the filing that may arise.

Council members agreed.

Vice-Chairman Corcoran reported that many other states are also keeping rates level in light of the economic conditions.

Executive Director Burton referred to a national trend of declining claim frequency that is being offset by increases to medical and indemnity payments.

FISCAL YEAR 2012 BUDGET SUBCOMMITTEE UPDATE

Executive Director Burton stated that the Advisory Council's Budget Subcommittee met on March 3, 2011. Mr. Burton explained that the Governor's FY'12 Budget Recommendation (House 1) proposed a \$19,106,544 operating budget for the DIA. The Executive Director stated that this amount represented a 4% decrease from the FY'11 General Appropriations Act and was \$1.2 million less than the DIA's FY'12 budget request.

Executive Director Burton stated that the subcommittee reviewed the projected expenditures for each of the DIA's main budget subsidiaries. He noted that the subcommittee was advised that personnel cuts would have to be made if

the Governor's House 1 appropriation for the DIA remained the same amount in the final budget. The Executive Director also explained that the DIA would consider adding personnel to areas that could generate revenue.

Mr. Burton referred to Outside Section #17 contained in House 1. The Executive Director explained that this outside section would allow the Governor to reduce the number of Administrative Judges (AJs) and Administrative Law Judges (ALJs) below the current statutory levels following the expiration of a judge's term. Mr. Burton stated that this outside section prohibits an AJ or ALJ from serving beyond the expiration date of their term unless the Commissioner authorizes a 90-day extension to complete work on pending cases.

Vice-Chairman Corcoran voiced concern with respect to whether the 90-day extension would be an adequate time period to allow a judge to complete unresolved cases. The Vice-Chairman suggested that the Senior Judge provide the Advisory Council with a decisions-outstanding report at a future meeting.

Mr. Burton then referred to Outside Section #7 regarding consolidation. The Executive Director explained that this outside section allows each Secretariat to identify common administrative and financial functions among state agencies and have these functions performed by either the Executive Office or a designated state agency. He noted that agencies would be allowed to charge a reasonable fee for any services being performed.

Executive Director Burton reported that Governor Patrick, in conjunction with the House 1 Budget, filed an Article 87 Reorganization Plan to streamline the operations of the Executive Office of Labor & Workforce Development (EOLWD). Mr. Burton explained that the reorganization plan would eliminate the Department of Labor and the Department of Workforce Development and their functions would be absorbed by EOLWD. He also noted that the Division of Occupational Safety would be renamed the Department of Labor Standards (DLS) and that the functions of the former Department of Apprenticeship Training would be transferred to DLS. Mr. Burton explained that all "Divisions" would be renamed "Departments" and that all "Commissioners" would become "Directors."

Mr. Burton referred to Section 160 of the proposed reorganization plan. The Executive Director explained that this section requires several departments to transfer employees, proceedings, rules and regulations, property, and legal obligations to EOLWD. He explained that this language was inserted at the urging of the State Comptroller to maintain consistency among reporting agencies for the Massachusetts Management Accounting & Reporting System (MMARS). Mr. Burton stated that the subcommittee was assured that there would be no sweeping of DIA funds or changes in the operation of the agency.

Mr. Burton stated that the members of the Budget Subcommittee had agreed to not forward any recommendations to the Advisory Council members at this time. Mr. Burton explained that the Budget Subcommittee would continue to monitor the FY'12 budget process and would reserve its right to make future recommendations.

Vice-Chairman Corcoran suggested that in light of potential staffing reductions, the DIA should consider the feasibility of leasing out some of the unused space within the Boston headquarters to other state entities.

Council Member Stephen Joyce suggested that next year the Advisory Council may want to consider forming a budget subcommittee before the Governor releases the House 1 Budget.

Executive Director Burton stated that Chapter 23E, section 17, allows the Advisory Council to review the DIA's budget request and submit their own recommended operating budget to the Secretary of EOLWD.

Council Member Stephen Falvey requested that more information be provided to Council members with respect to the proposed AIG multi-state settlement agreement over the misreporting of workers' compensation premiums. Mr. Falvey stated that he would like to know why some states are entitled to both fines and back premium taxes and assessments. Mr. Falvey reminded Council Members that under the proposed settlement agreement, Massachusetts would only receive money from fines.

Executive Director Burton stated that the proposed settlement agreement is unclear as to what is defined as "premium taxes" and "assessments." The Executive Director explained that DIA's Office of Assessments has conducted audits on AIG companies to ensure that they were paying the proper assessment amounts. Mr. Burton stated that he would attempt to have someone with close ties to the settlement agreement attend a future Advisory Council meeting.

EXECUTIVE DIRECTOR UPDATE

Executive Director Andrew Burton informed the Council members that the staff is currently identifying and reviewing the proposed workers' compensation bills filed in the 2011-2012 Legislative Session. Mr. Burton indicated that he is in the process of scheduling a meeting with Senator Wolf and Representative Coakley-Rivera to discuss the Advisory Council's legislative priorities. The Executive Director noted that the Joint Committee on Labor and Workforce Development has not yet scheduled a hearing for workers' compensation related legislation.

Council Member Stephen Joyce noted that recent changes to the Legislature's website have made it very difficult to identify and track bills.

Executive Director Burton stated that he is in the process of evaluating the services of a private vendor that provides online legislative tracking tools.

MISCELLANEOUS

Council Member Stephen Joyce distributed a news article from the Metro Daily News. Mr. Joyce explained that the article highlights abuse taking place in the Professional Employer Organization (PEO) industry. Council Member

Joyce stated that the article refers to a specific PEO that illegally treated employees as independent contractors. He also noted that the owner has been involved in similar schemes in Connecticut for failing to pay overtime wages to employees. Mr. Joyce stated that he would like to bring up this issue again at a future meeting.

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

The next meeting of the Advisory Council is scheduled for Wednesday, April 13, 2011, at 9:00 AM, at the Department of Industrial Accidents, 1 Congress Street, Suite 100, Conference Room #10-140, Boston, MA 02114-2017