

**Massachusetts Workers' Compensation
Advisory Council Minutes**

April 14, 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; Antonio Frias (Ines Leonardo); John Pulgini; David Powell; 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; Drew Cahill, Director of the Joint Task Force on the Underground Economy; Commissioner Laura Marlin, Division of Occupational Safety; Heather Rowe, Deputy Commissioner, Division of Occupational Safety; Michael Kelley, AIM Mutual Insurance Company; Paul Meagher, Workers' Compensation Rating & Inspection Bureau of Massachusetts; Robert McCarthy, Workers' Compensation Rating & Inspection Bureau of Massachusetts.

Advisory Council Staff: Andrew Burton; Evelyn Flanagan.

Absent: CM: John Regan; William Corley; 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 10, 2010

Workers' Compensation Insurance Rate Filing, Robert McCarthy, VP and Chief Actuary

Annual Survey of Occupational Injuries and Illnesses

Executive Director Update

Miscellaneous

CHAIRMAN'S WELCOME

Chairman Mickey Long began today's meeting at 9:00 a.m. Chairman Long asked for a slight change to today's agenda so that the meeting could begin with an overview of the Annual Survey of Occupational Injuries and Illnesses. The Chairman introduced Commissioner Laura Marlin and Deputy Commissioner Heather Rowe, both from the Division of Occupational Safety.

ANNUAL SURVEY OF OCCUPATIONAL INJURIES AND ILLNESSES

Commissioner Laura Marlin stated that the Division of Occupational Safety annually performs a Survey of Occupational Injuries and Illnesses. She explained that the survey is conducted in partnership with the Bureau of Labor Statistics (BLS) with each contributing 50% of the costs (approximately \$117,000 each). Commissioner Marlin turned the discussion over to Deputy Commissioner Rowe who provided an overview of the survey.

Deputy Commissioner Heather Rowe stated that the BLS was federally mandated to track demographic information on occupational injuries. She explained that the private sector employers have been participating in the survey for over thirty years and that in 2008 the survey was expanded to include the public sector.

Deputy Commissioner Rowe explained that the survey responses can easily be submitted online by employers. The collected data, which is gathered from existing OSHA 300A Logs, is used to identify high risk industries, assess safety programs, measure the health of workers, and to identify methods to reduce injuries and illnesses. She noted that the DIA's Office of Safety utilizes this data to target their safety grant program towards high risk industries.

Commissioner Marlin stated that DOS would not be able to participate in the survey this year due to a lack of funding in the FY'10 budget. The Commissioner noted that funding amounts proposed thus far in the FY'11 budget process would once again prevent Massachusetts from participating in the survey. Commissioner Marlin asked the Advisory Council members for suggestions on alternative funding mechanisms to continue this valuable survey.

Council Members suggested that DOS reach out to the Workers' Compensation Rating & Inspection Bureau to see if there would be any interest in fostering a public/private partnership in funding the survey. It was suggested that the survey's data could be very valuable to insurers - just as it is to policymakers. Council Members also suggested that

the DIA's Safety Grant Program, which benefits from the survey, might be able to provide DOS with funding through a safety grant.

Commissioner Paul Buckley stated that he had two serious concerns with funding the survey through a safety grant. The first concern involved the legality of transferring funds to another agency due to the unique funding mechanism of the DIA. The second concern expressed by the Commissioner was in regards to the tight budget constraints the DIA is currently under. He noted that the FY'11 budget process has not been finalized and that the agency could be forced to eliminate positions depending on the funding.

Chairman Mickey Long suggested that Commissioner Marlin follow up with WCRIB President Paul Meagher and with the Executive Director of the Advisory Council on exploring alternative funding sources for the survey.

DIA UPDATE

Judicial Update

Senior Judge William McCarthy updated the Council Members on the status of the judicial appointments. The Senior Judge reported that two sitting Administrative Judges' (AJs) had not been selected for reappointment during the interview process. He stated that both judges are located at the regional office in Springfield. The Senior Judge stated that there has been no movement from the Governor's Office on the reappointment or appointment of any of the judicial candidates.

Senior Judge McCarthy addressed a recent spike in the conference queue. He indicated that he would review this matter with the manager of the Conciliation Unit to see if there was a specific reason for this increase. Senior Judge McCarthy noted that the queue numbers can fluctuate quickly because they are only a snapshot of a point in time. He suggested that the spike could be the result of many judges in the same conference cycle or an increase in lump sum events. The Senior Judge offered to provide the Advisory Council a breakdown of all lump sums conducted by the conciliators, AJs and ALJs.

Senior Judge McCarthy updated Advisory Council Members on the information contained within the DIA's vital statistic report for April 2010 (see attached). Conference Queue: 538; Hearing Queue: 631; Reviewing Board Inventory: 109; Impartial Exams for FY'10 (to date): 4,085 (40 waivers); Exam Fees Collected for FY'10: \$1,287,900. 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 274 SWOs in March (36 SWOs were reissued as the result of defaults of previous orders); total SWOs issued in FY'10 (to date): 2,668. Fine collection for March 2010: \$110,750; total fines in FY'10:

\$820,025; SWOs issued in FY'09: 3,484; total fines collected in FY'09: \$885,980; compliance checks for March 2010: 6,083; estimated number of workers now covered by workers' compensation insurance as the result of a SWO: 7,253 (FY'10).

The Director of Investigations, Mr. Ray Marchand, explained to the Council Members that the high number of compliance checks was due to a concentration of investigations in high-rise buildings in Boston. Mr. Marchand stressed that although there has been an increase in employers purchasing policies, he is concerned that they are purchasing minimal policies that are not covering all of their employees. The Director of Investigations stated that his investigators are only allowed to check if an employer is in compliance with the workers' compensation statute and are not allowed to check the classification codes listed in the policies.

Mr. Taupier continued the update of the monthly vital statistics. Total number of cases filed in March 2010: 1,349; total number of cases filed in FY'10 (to date): 9,621; total number of cases filed in FY'09: 13,806; total number of First Report of Injury Forms (FRI) filed in March 2010: 2,977; total number of FRI filed online in March 2010: 870 (29%); total number of FRI filed in FY'10 (to date): 22,975 (6,020 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): 94; total amount of §65 claims paid by the Trust Fund in FY'10 (to date): \$4,553,455; 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.

Chairman Mickey Long voiced concern regarding the low percentage of FRI filings that are submitted online. He indicated that he would like to see mandatory online filing by all attorneys as required in the Federal Courts. The Chairman stated that the DIA has invested a tremendous amount of resources in technology and there is no reason that online filing shouldn't be mandatory.

Mr. Taupier explained that the DIA does not require online filings at this time but that it would probably be a requirement in the future. Mr. Taupier stated that he will further discuss this matter to see if the DIA can mandate that all attorneys file online.

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): \$14,189,602; total amount paid on these claims in FY'09: \$24,078,327; total monies recovered by the Trust Fund in FY'10 (to date): \$464,900; total monies recovered in FY'09: \$1,410,782; total COLA reimbursements to insurers in FY'10 (to date): \$9,655,221; total COLA reimbursements to insurers in FY'09: \$34 million.

Council Member Stephen Falvey requested that the DIA provide a list identifying all employers with multiple Trust Fund cases for uninsured injuries. Chairman Long added that he would like to see this repeat offender list placed online.

Commissioner Buckley stated that he would look into having this list placed online and would provide it to Council Members at the next meeting.

Budget/Personnel Issues

Mr. Taupier reported that as of March 2010, the number of employees whose salary is paid by either the Special Fund or the Trust Fund was 269 (218 DIA employees, 51 WCTF employees). The DIA is authorized to have 285.2 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'10 (to date): \$3,025,357; total referral fees collected in FY'09: \$4,122,040; total first report fines in FY'10 (to date): \$74,945; total first report fines in FY'09: \$234,770; total assessment collections in FY'10 (to date): \$53,842,323; total assessment collections in FY'09: \$73,767,639; total SWO fines in FY'10 (to date): \$1,207,478; total SWO fines in FY'09: \$1,369,954.

ACTION ITEMS

Chairman Long asked for a motion to approve the minutes for February 10, 2010.

Motion made to approve the minutes for February 10, 2010. Motion Seconded and Passed.

WORKERS' COMPENSATION INSURANCE RATE FILING

Executive Director Andrew Burton referred to a chart that had been included in each packet that compares past rate filings to actual rate decisions. The Executive Director noted that during the last three filings there has been a narrowing of the gap between filings and each ultimate rate decision. Mr. Burton briefly reviewed the Council's statutory role in the rate filing process. He suggested that the Advisory Council refrain from obtaining a consultant to perform an actuarial analysis of the rate filing due to the modest request for 4.5% increase coupled with the fact that no new methodologies were introduced to the core rate setting issues.

Chairman Mickey Long introduced Robert McCarthy, Vice President and Chief Actuary for the Workers' Compensation Rating and Inspection Bureau (WCRIB).

Mr. Robert McCarthy presented a brief overview of the rate filing. Mr. McCarthy explained that during the last three filings, the WCRIB has adopted a prescriptive approach to simplify the rate making process. He noted that there has been conscious effort to eliminate "actuarial judgment" to enable the WCRIB to reach an unbiased indication.

Mr. McCarthy addressed the three main components of the filing - Loss Development, Trend, and Profit. He explained that Loss Development is affected by increases to the State Average Weekly Wage and recent changes to the Workers' Compensation Fee Schedule. Mr. McCarthy noted that the WCRIB placed very little weight on fee schedule changes because many rates were previously negotiated.

In regards to trend, Mr. McCarthy stated that Massachusetts' policy data portrays an increase in claim severity and a decrease in claim frequency. He noted that this trend is reflected throughout the country. Mr. McCarthy suggested that frequency could increase rapidly should the economy recover quickly. He stated that the WCRIB uses 2006/2007 policy data as a base for the rate indication.

Mr. McCarthy explained that the real driver in this year's filing is from Profit Load because the net return on invested assets has been so low. He stated that regulators have rightly demanded that insurers recognize investment income when establishing a rate. Mr. McCarthy stated that due to the fact that workers' compensation claims can have such long tails, an insurer could write at a loss as long as their investments did well. He noted that insurer's invest mainly in fixed income assets, which pay a fixed rate of interest.

Mr. McCarthy stated that the Profit Load is typically a negative number indicating an underwriting loss. This year the WCRIB filed for a 5.5% Profit Load. Mr. McCarthy explained that although a positive Profit Load is uncommon, the National Council on Compensation Insurance recently had a 6% Profit Load in a filing in Florida. He noted that without the Profit Load increase, the WCRIB's rate indication would be close to zero.

Mr. McCarthy reminded Council Members that the WCRIB's proposed rate filing of 4.5% is reflective of average rates. He briefly reviewed how rates in the main industry sectors in the Commonwealth would be impacted: Manufacturing (+15%), Construction (+3.9%), Office and Clerical (-10%), Goods and Services (+2.7%), Miscellaneous (+14.5%).

Chairman Mickey Long thanked Mr. McCarthy for his informative presentation.

Executive Director Burton stated that he would draft testimony for the April 30th Rate Hearing at the Division of Insurance. The testimony would offer the Advisory Council's assistance to the Commissioner of Insurance in resolving any issues which may arise. The Executive Director stated that he would forward the draft testimony to each member for review and comment.

The Director of Labor, Mr. George Noel, introduced the new Director of the Joint Task Force on the Underground Economy, Mr. Drew Cahill.

Mr. Drew Cahill provided the Council with a brief biography. He stated that he had previously worked at the Attorney General's Office on policy matters in the Fair Labor Division. Mr. Cahill noted that he was up for the challenge and that he plans on being aggressive in his duties.

EXECUTIVE DIRECTOR UPDATE

Executive Director Andrew Burton informed the Council Members that the House Ways and Means Committee will be releasing their FY'11 Budget Recommendations sometime this afternoon. The Executive Director thanked Mr. Paul Meagher (WCRIB) and Mr. Michael Kelly (AIM Mutual Insurance) for sending letters to the members of the House Ways and Means Committee echoing the Advisory Council's concern with respect to Outside Section #9 in the Governor's FY'11 Budget.

Executive Director Burton updated the Council on pending legislation. He stated that there are currently two Advisory Council supported bills which are moving through the legislative process - Scar Based Disfigurement (Senate 681) and Private Right of Action (Senate 2375). Mr. Burton noted that the Senate is scheduled to vote on both bills for engrossment during tomorrow's session. He stated that upon Senate passage, the bills would move to the House Chamber for discussion and vote.

Executive Director Burton reported that there was still no official word on the Boston lease for the DIA. The Executive Director stated that he has been informed that office space for the Advisory Council will be greatly reduced. As a result, Mr. Burton stated that there has been a major effort to scan documents and discard unnecessary paper files. The Executive Director announced that all studies conducted by the Advisory Council have been placed online in addition to Annual Reports dating back to 1987.

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, May 12, 2010, at 9:00 AM, at the Department of Industrial Accidents, 600 Washington Street, 7th Floor Conference Room, Boston, MA 02111.