

**Massachusetts Workers' Compensation  
Advisory Council Minutes**

May 12, 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 Regan; David Powell; Bernard Mulholland; George Noel, Director of Labor.

*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, Chief Financial Officer; Ray Marchand, Director of Investigations; Thomas Wielgus, Manager of Civil Litigation; Michael Kelley, AIM Mutual Insurance Company; Ellen Keefe, Workers' Compensation Rating & Inspection Bureau of Massachusetts; Peter DiNardo, Provider Insurance Group.

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

*Absent:* CM: William Corley; Dennis Hines; Peter A. Cook, Sr.; Department of Business Development.

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Agenda:

Chairman's Welcome

DIA Update

- Judicial Update - Senior Judge William McCarthy
- Vital Statistics - William Taupier, Deputy Director of Administration
- DIA Move - Boston/Lawrence - Reuben Kantor, Director of Operations

Action Items

- Minutes - April 14, 2010

Funding for Annual Survey of Occupational Injuries and Illnesses

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 Reuben Kantor, who serves as the DIA's new Director of Operations. The Chairman then requested that Senior Judge William McCarthy report on the judicial update.

#### **Judicial Update**

Senior Judge William McCarthy updated the Council Members on the status of the judicial appointments. The Senior Judge stated that the Governor has yet to reappoint or appoint any of the judicial candidates.

Senior Judge McCarthy distributed a handout to Council members that contained statutory language regarding public officers appointed by the Governor (M.G.L. c.30 §8). The Senior Judge explained that this law allows sitting industrial accident judges to serve beyond their term's expiration date until they are replaced or removed in accordance with the law.

Senior Judge McCarthy updated Advisory Council Members on the information contained within the DIA's vital statistic report for May 2010 (see attached). Conference Queue: 733; Hearing Queue: 795; Reviewing Board Inventory: 114; Impartial Exams for FY'10 (to date): 4,556 (45 waivers); Exam Fees Collected for FY'10: \$1,385,269. 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 292 SWOs in April (33 SWOs were reissued as the result of defaults of previous orders); total SWOs issued in FY'10 (to date): 2,960. Fine collection for April 2010: \$97,150; total fines in FY'10: \$917,175; SWOs issued in FY'09: 3,484; total fines collected in FY'09: \$885,980; compliance checks for April 2010: 4,125; estimated number of workers now covered by workers' compensation insurance as the result of a SWO: 7,909 (FY'10).

Mr. Taupier continued the update of the monthly vital statistics. Total number of cases filed in April 2010: 972; total number of cases filed in FY'10 (to date): 10,593; total number of cases filed in FY'09: 13,806; total number of First Report of Injury Forms (FRI) filed in April 2010: 2,138; total number of FRI filed online in April 2010: 646 (30%);

total number of FRI filed in FY'10 (to date): 25,113 (7,326 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): 110; total amount of §65 claims paid by the Trust Fund in FY'10 (to date): \$5,364,912; 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): \$16,784,443; total amount paid on these claims in FY'09: \$24,078,327; total monies recovered by the Trust Fund in FY'10 (to date): \$529,446; total monies recovered in FY'09: \$1,410,782; total COLA reimbursements to insurers in FY'10 (to date): \$9,924,312; total COLA reimbursements to insurers in FY'09: \$34 million.

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

Deputy Commissioner William Tattan stated that he has prepared a list of all employers with Trust Fund claims dating back to fiscal year 2006. The Deputy Commissioner explained that he is currently reviewing the accuracy of this list and would provide it to Council members at next month's meeting.

#### Budget/Personnel Issues

Mr. Taupier reported that as of May 2010, the number of employees whose salary is paid by either the Special Fund or the Trust Fund was 268 (217 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): \$3,190,707; total referral fees collected in FY'09: \$4,122,040; total first report fines in FY'10 (to date): \$66,730; total first report fines in FY'09: \$234,770; total assessment collections in FY'10 (to date): \$55,859,937; total assessment collections in FY'09: \$73,767,639; total SWO fines in FY'10 (to date): \$1,348,680; total SWO fines in FY'09: \$1,369,954.

#### DIA Move - Boston/Lawrence

Reuben Kantor, Director of Operations, provided an update on the upcoming DIA office moves in Lawrence and Boston. Mr. Kantor stated that the Boston lease has been signed and that the agency will be moving to the tenth floor of One Congress Street in mid-July.

Vice-Chairman Ed Corcoran asked whether there would be a seamless transition in regards to the scheduling of conferences and hearings at the new location.

Commissioner Paul Buckley stated that the agency anticipates closing on Friday, July 16<sup>th</sup> and opening its operations at One Congress Street on Monday, July 19<sup>th</sup>. The Commissioner noted that the Lawrence move would also take place over a weekend in the beginning of June. Commissioner Buckley recognized the great job that Jean Faletra is doing behind the scenes with the planning and implementation of the move.

Council Member Teri McHugh asked whether the agency would be installing digital recording equipment in all of the courtrooms at the new location in Boston.

Commissioner Paul Buckley stated that there is presently no plan to implement digital recording equipment throughout the agency's courtrooms. However, the Commissioner did note that digital recording can be a great asset to courtrooms with ensuring the accuracy of the record.

### **ACTION ITEMS**

Executive Director Andrew Burton noted that there had been one correction made to the draft minutes to accurately reflect the attendance at the April 14, 2010 meeting.

Chairman Long asked for a motion to approve the amended minutes for April 14, 2010.

Motion made to approve the amended minutes for April 14, 2010. Motion Seconded and Passed.

### **FUNDING FOR THE SURVEY OF OCCUPATIONAL INJURIES & ILLNESSES**

Executive Director Andrew Burton updated Council members on the funding status for the Annual Occupational Injury & Illness Survey. Mr. Burton reported that the recently passed House Budget had reduced the Division of Occupational Safety's (DOS) line-item by \$38,349 which would leave the survey unfunded for fiscal year 2011.

The Executive Director stated that he had recently spoken to DOS Deputy Commissioner Heather Rowe about the survey's funding. Mr. Burton was informed that DOS would need between \$80,000 and \$90,000 in funding (matched by the Bureau of Labor Statistics) to adequately cover the administrative costs. He stated that the reason for the reduction in costs was due to the fact that the survey could be performed more efficiently within DOS.

Executive Director Burton suggested that the Advisory Council could send a letter to the Senate Ways & Means Committee recommending that DOS receive sufficient funding to conduct the survey. Mr. Burton stated that another alternative for consideration would be to make a formal recommendation that the DIA's Safety Grant program fund the survey as a one-time expense. The Executive Director reminded Council Members that Commissioner Buckley

had concerns with funding the survey through the DIA Safety Grant program because of the agency's unique funding mechanism.

The Director of Labor, George Noel, stated that the survey was very beneficial to the DIA and the Safety Grant program. The Director believed that because of this direct benefit, there would be justification for funding the survey with safety grant monies.

Council member Stephen Joyce suggested that the Advisory Council support the survey through the budget process before considering alternative ways to fund the survey.

Chairman Long asked for a motion.

Motion made to send a letter to the Senate Ways & Means Committee advising them of the importance of the survey and its need for adequate funding. In addition, the Advisory Council would advise DOS Commissioner Laura Marlin of the Council's actions and suggest that DOS consider applying for a future safety grant to help fund the survey.

Motion Seconded and Passed.

#### **EXECUTIVE DIRECTOR UPDATE**

Executive Director Andrew Burton updated Council members on the House-Passed Budget. The Executive Director reported that the DIA's line-item was funded at the same level as proposed in the Governor's Budget. This amount was endorsed by the Advisory Council in February.

Mr. Burton stated that the House had adopted an amendment to the budget that could potentially impact the operations of the DIA. The Executive Director reviewed House Amendment #591. This amendment would allow each Secretariat to identify common information technology functions that could be performed by the Executive Office or by one or more designated state agencies. Mr. Burton stated that similar language was adopted through an Executive Order last February. He noted that specific DIA help-desk services have already been centralized at the Executive Office of Labor and Workforce Development.

The Executive Director addressed pending legislation. Mr. Burton reported that on April 15, 2010, the Senate engrossed scar-based disfigurement legislation (Senate 681) and private right of action legislation (Senate 2375) both of which have been previously endorsed by the Advisory Council. The Executive Director stated that both bills now move to the House for discussion and vote.

Executive Director Burton stated that he had testified on behalf of the Advisory Council at the Division of Insurance rate hearing on April 30, 2010. Mr. Burton explained that late yesterday afternoon, the WCRIB, the State Rating Bureau, and the Attorney General's Office had all reached an agreement to reduce average rates by 2.4%. The

WCRIB had initially requested an average rate increase of 4.5%. The Executive Director anticipates that the Commissioner of Insurance will approve this rate reduction later in the week.

Executive Director Burton addressed a memorandum on Self Insurance Groups (SIGs) that had been included in each member's packet. Mr. Burton stated that the New York Supreme Court recently ruled that the state's Workers' Compensation Board (WCB) was unconstitutionally taxing healthy SIGs to cover the unfunded liabilities of defaulted SIGs. Mr. Burton informed the Council that 13 SIGs had sued the WCB after their annual assessments rose from \$104,000 in 2007 to \$11.1 million in 2008. He stated that the WCB is appealing this decision.

Executive Director Burton stated that he had been in contact with the Division of Insurance to see if a speaker could address the Advisory Council on the regulatory and financial controls in place for SIGs in Massachusetts.

Chairman Mickey Long suggested that the Council form a subcommittee to further investigate this matter.

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