

**Massachusetts Workers' Compensation
Advisory Council Minutes**

June 9, 2010

Department of Industrial Accidents

1 Congress Street, Suite 100

Boston, MA 02114-2017

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

CM: Stephen Joyce; Stephen Falvey; Teri McHugh; Antonio Frias (Ines Leonardo); Dennis Hines; John Pulgini; Bernard Mulholland.

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; Yvonne Vieira-Cardoza, Deputy General Counsel; Yvette Smith, Assessment Manager; Jim Wright, Division of Insurance; Walter Horn, Division of Insurance; 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; John Regan; David Powell; Peter A. Cook, Sr.; Department of Labor; 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 - May 12, 2010

State Regulation of Self Insurance Groups - Jim Wright, Division of Insurance

Vocational Rehabilitation Subcommittee

Executive Director Update

Miscellaneous

CHAIRMAN'S WELCOME

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

Judicial Update

Senior Judge William McCarthy briefly reviewed the decisions outstanding report which depicts judges with at least one open case more than 100 days old. The Senior Judge reported that 13 Administrative Judges fall into this category (48 total cases). Senior Judge McCarthy stated that he would provide the Advisory Council with a more in-depth analysis of these cases at the August meeting.

Mr. Bill Taupier updated Advisory Council Members on the information contained within the DIA's vital statistic report for June 2010 (see attached). Conference Queue: 785; Hearing Queue: 783; Reviewing Board Inventory: 83; Impartial Exams for FY'10 (to date): 4,857 (50 waivers); Exam Fees Collected for FY'10: \$1,476,700. In fiscal year 2009 there were 5,069 Impartial Medical Examinations (64 waivers); Exam Fees Collected in FY'09: \$1,789,076.

Chairman Mickey Long requested that Mr. Taupier provide the Advisory Council with a historical snapshot of the conference and hearing queues. The Chairman stated that he is concerned with the recent trend of increasing queue reports.

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 May (29 SWOs were reissued as the result of defaults of previous orders); total SWOs issued in FY'10 (to date): 3,234. Fine collection for May 2010: \$90,450; total fines in FY'10: \$1,007,675; SWOs issued in FY'09: 3,484; total fines collected in FY'09: \$885,980; compliance checks for May 2010: 3,528; estimated number of workers now covered by workers' compensation insurance as the result of a SWO: 8,455 (FY'10).

Mr. Taupier continued the update of the monthly vital statistics. Total number of cases filed in May 2010: 1,030; total number of cases filed in FY'10 (to date): 11,623; total number of cases filed in FY'09: 13,806; total number of First Report of Injury Forms (FRI) filed in May 2010: 2,390; total number of FRI filed online in April 2010: 750 (31%); total number of FRI filed in FY'10 (to date): 27,503 (8,076 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): 123; total amount of §65 claims paid by the Trust Fund in FY'10 (to date): \$5,768,704; 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): \$18,912,298; total amount paid on these claims in FY'09: \$24,078,327; total monies recovered by the Trust Fund in FY'10 (to date): \$674,471; total monies recovered in FY'09: \$1,410,782; total COLA reimbursements to insurers in FY'10 (to date): \$11,526,680; total COLA reimbursements to insurers in FY'09: \$34 million.

General Counsel William Tattan stated that he was consulting with Trust Fund Manager Yvonne Vieira-Cardoza to determine why recoveries are trending so low in fiscal year 2010. Mr. Tattan stated that he would generate a report comparing money owed to money collected.

Chairman Long requested that the General Counsel also include in this report the amount in fines that has gone uncollected as the result of a stop work order.

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).

Vice-Chairman Ed Corcoran expressed concern regarding the statewide furlough program, which did not take into account how the agency is funded. The Vice-Chairman requested that the administration provide to the Advisory Council the exact amount of money saved by the Commonwealth's employers as a direct result from the furloughs. Vice-Chairman Corcoran stressed the importance that employers receive a reduction to their assessment whenever the agency's budget is reduced.

Chairman Mickey Long echoed the Vice-Chairman's concern and added that DIA budget cuts have no impact on the state's General Fund. The Chairman stated that he would like to see language reflecting this concern in the Advisory Council's next Annual Report.

Office of Accounting & Finance Update

Mr. Taupier presented the accounting and finance statistics. Total referral fees collected in FY'10 (to date): \$3,548,312; total referral fees collected in FY'09: \$4,122,040; total first report fines in FY'10 (to date): \$55,317; total first report fines in FY'09: \$234,770; total assessment collections in FY'10 (to date): \$74,921,956; total assessment collections in FY'09: \$73,767,639; total SWO fines in FY'10 (to date): \$1,465,964; total SWO fines in FY'09: \$1,369,954.

ACTION ITEMS

Chairman Long asked for a motion to approve the minutes for May 12, 2010.

Motion made to approve the minutes for May 12, 2010. Motion Seconded and Passed.

STATE REGULATION OF SELF INSURANCE GROUPS

Executive Director Andrew Burton introduced Mr. Jim Wright from the Division of Insurance. Mr. Burton stated that Mr. Wright would be discussing the regulatory and financial controls that are in place to protect the solvency of Self Insurance Groups (SIGs).

Mr. Jim Wright distributed a list of the approved SIGs in Massachusetts. Mr. Wright noted that the last time a group was approved was in 2004. He explained that each member of a SIG shares unlimited "joint and several liability" between each member of their own group. Mr. Wright stated if one member has an adverse loss experience or declares bankruptcy, the collective group must absorb these costs. This shared financial responsibility encourages each SIG to be very careful in choosing its members. He stated that SIGs also tend to promote strong safety programs and are aggressive with claims management to assist in controlling costs.

Mr. Wright gave a brief overview of the eligibility requirements to form a SIG. He explained that SIGs must prove to the Commonwealth that they can guarantee funding of their workers' compensation liabilities. The Division of Insurance ensures that each SIG can meet substantial net worth, bonding and catastrophe reinsurance requirements. Mr. Wright noted that at least 70% of the members of a group shall be experience rated pursuant to the uniform experience rating plan filed with and approved by the Commissioner. He explained that no group may have less than \$250,000 of annual gross premium or a combined provable net worth of all its members of less than \$1,000,000. Mr. Wright stated that each SIG has to also provide a written description of their safety and loss prevention programs.

Council members voiced concern that every effort must be made to ensure SIG solvency so that Massachusetts can avoid the type of crisis that recently occurred in New York where 13 SIGs were forced to close because of the unfunded liabilities of one defaulted SIG.

Mr. Wright explained that SIGs in Massachusetts are much more closely regulated than their counterparts in New York. He stated that New York's crisis could not occur in Massachusetts because members of SIGs are only financially responsible for their own SIG members and not the liabilities of other SIGs.

Chairman Mickey Long noted that joining a SIG may seem like an attractive option in a down economy but wondered if businesses fully understand the inherent risks of joining a SIG under joint and several liability.

Mr. Wright stated that the Division of Insurance makes every effort to educate both the SIGs and their member companies on the risks associated with SIGs. He also noted that a SIG is not eligible for downward deviations until after at least two years of experience.

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

VOCATIONAL REHABILITATION SUBCOMMITTEE

Vice-Chairman Corcoran stated that he and the Executive Director had recently been invited to meet with the new Vocational Rehabilitation Director to review the primary operating procedures of the Unit. The Vice-Chairman suggested that the Advisory Council form an OEVR subcommittee in the fall to ensure the vocational rehabilitation process is being utilized to its fullest.

The Executive Director stated that he would reach out to the membership for volunteers.

EXECUTIVE DIRECTOR UPDATE

Executive Director Andrew Burton updated Council members on the Senate-Passed Budget (Senate 2470). The Executive Director reported that the DIA's line-item was decreased by \$140,834 from both the Governor's and House-Passed budget. The amount allotted to the DIA in Senate 2470 was \$19,906,544.

Mr. Burton stated that the Senate had adopted several outside sections in the budget that could potentially impact the operations of the DIA. The Executive Director reviewed Outside Sections #26 and #27 which would allow the Governor to appoint fewer than the statutory number of judges. He also addressed Outside Section #9 which would allow each Secretariat to identify common administrative processing functions that could be performed by the Executive Office or by one or more agencies. The last Outside Section addressed was #247 which authorizes the Comptroller to transfer to the General Fund the unexpended balance of a fund, trust fund or other account - provided the balance has been deemed not necessary for the purposes it was made available.

The Executive Director explained that the Senate budget now goes to the Conference Committee for review. Mr. Burton stated that he would write a letter to the members of the Conference Committee outlining the concerns of the

Advisory Council. The Executive Director stated that he would forward a draft of the letter to all Council members for review.

Executive Director Burton reminded Council members that there would be no meeting in July and that the August meeting would be held at the DIA's new location at 1 Congress Street. Mr. Burton stated that a tour of the new building would immediately follow the meeting.

MISCELLANEOUS

Council Member Stephen Joyce suggested that the Advisory Council also form a Legislative Subcommittee in the fall to organize the Council's legislative priorities for the 2011-2012 Legislative Session.

Council members agreed.

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, August 11, 2010, at 9:00 AM, at the Department of Industrial Accidents, 1 Congress Street, 10th Floor Conference Room, Boston, MA 02114.