

**Massachusetts Workers' Compensation
Advisory Council Minutes**

January 14, 2009

Department of Industrial Accidents
600 Washington Street, 7th Floor
Boston, MA 02111

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

CM: Stephen Joyce; Stephen P. Falvey; John Pulgini; John D. Boyle (Teri McHugh); Peter A. Cook, Sr. (Melody Barlow); William Corley; David Powell (Kevin Hurstak); Antonio Frias (Inez Leonardo); Department of Labor (Tom Jones).

Also Present: DIA: Commissioner Paul V. Buckley; William Tattan, Deputy Commissioner and General Counsel; Timothy J. McMahon, Deputy Commissioner of Administration; Martine Carroll, Senior Judge; William Taupier, First Deputy Director of Administration; Jack Defina, Director of Accounting & Finance; Ray Marchand, Director of Investigations; Roody Herold, Director of Information Technology; Linnea Walsh, Department of Labor; Ellen Keefe, WCRIB; Michael Kelley, AIM Mutual.

Advisory Council Staff: Andrew Burton; Evelyn Flanagan.

Absent: CM: John Regan; Dennis Hines; Kenneth J. Paradis, Jr.; Dept of Business Dev.

Agenda:

Chairman's Welcome

DIA Update

- Judicial Update - Martine Carroll, Senior Judge
- Vital Statistics - William Taupier, Deputy Director of Administration
- Underground Economy Task Force Update - Linnea Walsh, DOL
- Information Technology Update - Roody Herold, Director of ITD

Action Items

- Minutes - December 10, 2008

Michael Seller's Case - Implications to the Trust Fund

- Tom Wielgus, Civil Litigations Manager

Executive Director Update

Miscellaneous

CHAIRMAN'S WELCOME

Chairman Edmund C. Corcoran began today's meeting at 9:00 a.m. The Chairman wished all a Happy New Year and introduced Senior Judge Martine Carroll.

DIA UPDATE

Judicial Update

Senior Judge Carroll updated Advisory Council Members on the information contained within the DIA's vital statistic report for January 2009 (see attached). Conference Queue: 287; Hearing Queue: 850; Reviewing Board Inventory: 153; Impartial Exams for FY'09 (to date): 2,582 (33 waivers); Exam Fees Collected for FY'09: \$1,006,825. In fiscal year 2008 there were 5,187 Impartial Medical Examinations (86 waivers); Exam Fees Collected in FY'08: \$1,620,458.

Senior Judge Carroll informed the Council Members that the first judicial training session will be held on February 6, 2009. She stated that this training would be for one day and focus on statutory construction. The Senior Judge stated that the second judicial training session would span three days and occur in the month of June.

Council Member John Pulgini praised Senior Judge Carroll on the speedy scheduling of conferences and hearings. CM Pulgini noted that the decreased wait-time has been beneficial to all the parties involved in litigation.

Chairman Corcoran requested that the Senior Judge provide the Decisions Outstanding Report on a quarterly basis moving forward.

Senior Judge Carroll agreed to provide the list quarterly starting in March.

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 237 SWOs in December 2008 (16 SWOs were reissued as the result of defaults of previous orders); total SWOs issued in FY'09 (to date): 1,501. Fine collection for December 2008: \$37,500; total fines in FY'09: \$334,650; SWOs issued in FY'08: 1,929; total fines collected in FY'08: \$437,900; compliance checks for December 2008: 3,194; estimated number of workers now covered by WC insurance as the result of a SWO: 3,924 (FY'09).

CM Stephen Joyce asked if the DIA had been in touch with the Secretary of State's Office in regards to the Central Register. CM Joyce explained that the Central Register is the first place people check to see if a company has been debarred. **CM Joyce requested that the DIA consider posting the names of companies that are not in compliance on the Central Register.**

Mr. Taupier continued the update of the monthly vital statistics. Total number of cases filed in December 2008: 1,092; total number of cases filed in FY'09 (to date): 6,878; total number of cases filed in FY'08: 14,464; total number of First Report of Injury Forms (FRI) filed in December 2008: 2,270; total number of FRI filed online in December 2008: 649 (29%); total number of FRI filed in FY'09 (to date): 13,510 (3,789 filed online); total number of FRI filed in FY'08: 32,794; total number of FRI filed online in FY'08: 9,199 (28%).

Mr. Taupier proceeded with his update on uninsured claims (§65). Total number of §65 claims processed in FY'09 (to date): 83; total amount of §65 claims paid by the Trust Fund in FY'09 (to date): \$2,676,105; total number of §65 claims filed in FY'08: 172; total amount of §65 claims paid by the Trust Fund in FY'08: \$6,866,127.

Mr. Taupier proceeded with the vital statistics for the Second Injury Fund (§37/37A). Total amount of §37/37A petitions paid in FY'09 (to date): \$10,219,439; total amount paid on these claims in FY'08: \$20,725,671; total monies recovered by the Trust Fund in FY'09 (to date): \$743,860; total monies recovered in FY'08: \$1,202,747; total COLA reimbursements to insurers in FY'09 (to date): \$14,420,355; total COLA reimbursements to insurers in FY'08: \$4.0 million.

Budget/Personnel Issues

Mr. Taupier reported that as of December 2008, the number of employees whose salary is paid by either the Special Fund or the Trust Fund was 281 (235 DIA employees, 46 WCTF employees).

Office of Education and Vocational Rehabilitation (OEVR) Update

Mr. Taupier presented the OEVR statistics. Total referrals to OEVR in FY'09 (to date): 1,099; total referrals to OEVR in FY'08: 2,828; total mandatory meetings in FY'09 (to date): 907; total mandatory meetings in FY'08: 2,281; total Determinations of Suitability (DOS) in FY'09: 571; total DOS in FY'08: 1,634; total referrals to insurers in FY'09 (to date): 336; total referrals to insurers in FY'08: 647; total Individual Written Rehabilitation Plans (IWRP) approved in FY'09 (to date): 204; total IWRPs approved in FY'08: 417; total number of Return to Work (RTW) in FY'09 (to date): 54; total number of RTW in FY'08: 163; total number of IWRPs completed with no RTW in FY'09 (to date): 38; total number of IWRPs completed with no RTW in FY'08: 134.

Underground Economy Task Force Update

Ms. Linnea Walsh informed the Council Members that at the end of calendar year 2008, the Joint Task Force had made great strides in their efforts to stop employer fraud and employee misclassification. Ms. Walsh updated the Council on the current Task Force statistics. Ms. Walsh noted that the Task Force had received 393 referrals on their toll-free referral call line; 13 e-mails; and an additional 11 complaints, totaling 417 referrals.

Ms. Walsh stated that the Department of Labor (DOL) has partnered with the Massachusetts Office of Small Business and Entrepreneurship to conduct small business town meetings throughout the state. She stated that the DOL is also working with Department of Revenue (DOR) to put together a public service announcement (PSA) regarding the Task Force. Ms. Walsh explained that the PSA will be placed on all participating Joint Task Force websites in the next few months.

Ms. Walsh informed the Council Members that the Task Force will continue its outreach to other New England states. She noted that open communications with neighboring states will be beneficial in the fight against fraud that often transpires between state lines.

Information Technology Update - 2009 Major Project Review

Mr. Roody Herold, Director of the Information Technology Department (ITD), provided an overview of the four major projects presently under construction in ITD: Document Management System (DMS); High Volume Batch Claim Submission/EDI; Business Systems Integration (BSI); and Network Infrastructure Upgrades.

Mr. Herold informed the Council Members that DMS is a central repository system for all claims data. He stated that DMS will decrease the needed storage space for the agency. Mr. Herold added that this system would allow the DIA to scan multiple claims to be placed in three different electronic repositories. Mr. Taupier noted that the DIA is currently in the process of scanning all documents into the DMS.

Senior Judge Carroll explained to Council Members that in late-February all judges are scheduled to start receiving case files for conferences electronically. The Senior Judge explained that the information will be made available to them through the new "On-Base" system. Judge Carroll also stated that docking stations and large screen monitors are currently being installed in all the DIA court rooms.

Mr. Herold stated that the EDI software development phase is complete for high volume batch claim submissions. He noted that the DIA is currently testing the submission of information through daily batches. Mr. Herold stated that the DIA anticipates a start-date somewhere in the first quarter of 2009.

Mr. Herold provided an overview of the BSI project. This system will provide a single point of data entry, thereby reducing processing time and error rates. Mr. Herold noted that this system will establish more accurate and timely reporting capabilities and eliminate redundancy.

Mr. Herold informed the Council Members that there will be four phases to the network infrastructure upgrade: perimeter firewall upgrade; network switches upgrade; multi-protocol label switching; and VM Ware Installation. He stated that the infrastructure will provide a higher degree of security for the sensitive data stored at the DIA. Another asset of this system is that it will allow all the regions to directly communicate with each other, rather than having to go through the Boston network. The target date for completion of this project is during the third quarter of 2009.

ACTION ITEMS

Chairman Corcoran asked for a motion to accept the Minutes for December 10, 2008.

Motion made to accept the Minutes for December 10, 2008.

MMS - Passed.

MICHAEL SELLER'S CASE - IMPLICATIONS TO THE TRUST FUND

Executive Director Andrew Burton stated that on December 19, 2008, the Massachusetts Supreme Judicial Court (SJC) affirmed the decision of the Reviewing Board in the Michael Seller's Case. Mr. Burton explained that the issue surrounding the case was whether the Reviewing Board erred in finding that an employee is entitled to compensation based on their concurrent earnings when said employee is employed with two companies - one with workers' compensation insurance and one without coverage.

Mr. Burton read to Council Members the concurrent employer provision of Chapter 152, section 1(1) that defines "Average Weekly Wages":

"In case the injured employee is employed in the concurrent service of more than one insured employer or self-insurer, his total earnings from the several insured employers and self-insurers shall be considered in determining his average weekly wages."

Executive Director Burton stated that the Trust Fund contended that because the employee had only one insured employer, the concurrent employer provision should be inapplicable. Mr. Burton explained that in its decision, the SJC found that this argument would be contrary to the purposes of the Workers' Compensation Act and ordered the Trust Fund to pay the concurrent wages.

Mr. Burton stated that when the concurrent employer provision was enacted in 1935, workers' compensation coverage was elective for employers in Massachusetts. Due to the elective nature of workers' compensation insurance during this period, there was no Workers' Compensation Trust Fund in existence and it was impossible for a business to be illegally without coverage.

Attorney Tom Wielgus discussed the legal implications of this case and how it will affect the Trust Fund moving forward. He noted that in many circumstances, the employee does not have proper tax records and may be receiving undocumented wages from their employer. Attorney Wielgus noted that in these cases, the Trust Fund may not be able to confirm the wages of the concurrent employment. He also mentioned that this decision may extend beyond the Trust Fund and have implications to other insurers.

Vice-Chairman Mickey Long suggested that the DIA consider other remedies in order to ferret out those companies that operate "underground." He informed the Council Members that the State of Illinois had just passed their own version of a "Private Right of Action" bill. Vice-Chairman Long suggested that Illinois be closely watched to see if this new law produces successful results in the fight against employer fraud.

Mr. Michael Kelley from AIM Mutual Insurance Company stated that the SJC decision may end up creating more litigation. He explained that before the decision, insurers did not have to take concurrent wages into account if they were undocumented.

EXECUTIVE DIRECTOR UPDATE

Executive Director Burton reported that the Division of Health Care Finance & Policy (DHCFP) has scheduled two public hearings on proposed increases to the Workers' Compensation Medical Fee Schedule. The two public hearings will take place on Tuesday, February 10th and Thursday, February 12th. Both public hearings will start at 10:00 a.m. at 2 Boylston Street, 5th Floor, in Boston. The Executive Director stated that he will be testifying to voice the Council's support for creating a Medical Fee Schedule Task Force to provide a mechanism that can promptly react when areas of the fee schedule become unrepresentative of system costs.

Executive Director Burton referred to the Fiscal Year 2008 Annual Reports that had been included in the packets. The report highlights the workers' compensation system in Massachusetts and the Advisory Council's concerns & recommendations. Mr. Burton stated that if any Council Member requires more copies of the Annual Report, they are to contact the Advisory Council Office. He noted that the Annual Report will also be available online.

Executive Director Burton reminded Council Members that today was the bill filing deadline for the 2009-2010 Legislative Session. Mr. Burton stated that once all of the bills have been filed and printed, the members would be provided with legislative summaries for each bill. Mr. Burton stated that a legislative meeting would be scheduled in the near future so that the Advisory Council could endorse specific bills.

Executive Director Burton reminded Council Members that immediately following today's meeting, an Information Exchange Subcommittee Meeting would take place.

MISCELLANEOUS

Chairman Corcoran thanked everyone for attending today's meeting and asked for a motion to adjourn.

Motion made to adjourn the meeting.

MMS - Passed.

The next regular meeting of the Advisory Council is scheduled for Wednesday, February 11, 2009, at 9:00 AM, at the Division of Industrial Accidents, 600 Washington Street, 7th Floor Conference Room, Boston, MA 02111.