

**Massachusetts Workers' Compensation  
Advisory Council Minutes**

October 10, 2007

Department of Industrial Accidents  
600 Washington Street, 7<sup>th</sup> Floor  
Boston, MA 02111

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

CM: Robert Banks (William Corley); Tony Frias (Ines Leonardo); John D. Boyle (Teri McHugh); Peter A. Cook (Karen Shanley); Kenneth Paradis (Andrea Keyo); Tom Jones (Department of Labor); George Ramirez (Department of Business & Technology).

*Also Present:* DIA: Commissioner Paul V. Buckley; Timothy McMahon, Deputy Commissioner of Administration; William C. Tattan, Deputy Commissioner/General Counsel; Martine Carroll, Senior Judge; William Taupier, Deputy Director of Administration; Jack Defina, Chief Financial Officer; John Glennon, Chief Information Officer; Yvonne Vieira-Cardoza, Deputy General Counsel; Thomas Wielgus, Manager of Civil Litigation; Robert Kenney, Accounting & Finance Manager; Yvette Smith, Assessment Manager; Mike Kelley, AIM Mutual Insurance Company; Ellen Keefe, WCRIB; Jennifer Mercandante, Joint Committee on Labor & Workforce Development; Anna Lucey, Joint Committee on Labor & Workforce Development.

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

*Absent:* CM: John Regan; Jeanne-Marie Boylan; John Pulgini; Jill Brown.

*Agenda:*

Chairman's Welcome

DIA Update

- Judicial Update - Martine Carroll, Senior Judge
- Vital Statistics - William Taupier, Deputy Director of Administration
- Information Technology Update - John Glennon, Chief Information Officer

## Action Items

- Minutes - September 12, 2007
- Premium Audit Guidelines - Sole Proprietors/Partnerships

## Statute of Limitations - Second Injury Fund Cases

- Thomas M. Wielgus, Manager of Civil Litigation

## Executive Director Update

## Miscellaneous

## **CHAIRMAN'S WELCOME**

Chairman Edmund C. Corcoran, Jr., began today's meeting at 9:00 a.m. The Chairman acknowledged Mr. Jack Defina who introduced two new employees in his unit. Mr. Defina introduced Mr. Robert Kenney, who will serving as the DIA's new Accounting & Finance Manager. Mr. Defina then proceeded to introduce Ms. Yvette Smith, who will be serving as the DIA's new Assessment Manager. Chairman Corcoran also introduced Ms. Anna Lucey, Legal Counsel for the Joint Committee on Labor and Workforce Development. The Chairman requested that Senior Judge Martine Carroll proceed with the judicial update.

## **DIA UPDATE**

### Judicial Update

Senior Judge Martine Carroll updated Advisory Council Members on the information contained within the DIA's vital statistic report for October 2007 (see attached). Conference Queue: 250; Hearing Queue: 1,537; Reviewing Board Inventory: 205; Impartial Exams for FY'08 (to date): 1,275 (17 waivers). In fiscal year 2007 there were 5,246 Impartial Medical Examinations (202 waivers).

Senior Judge Carroll gave a progress update on the judicial nomination process. The Senior Judge stated that her office had received approximately 30 applications for two judicial vacancies. Senior Judge Carroll explained that the Nominating Panel would be meeting within the next few weeks to review their judicial packets and to schedule interviews. The Senior Judge reported that as soon as the Nominating Panel has completed the interview process, they would forward the selected applicants to the Advisory Council for review.

Senior Judge Carroll reported to the Advisory Council Members that the DIA held a public hearing on Friday, September 28<sup>th</sup> to discuss proposed amendments and additions to the Department of Industrial Accidents Adjudicatory Rules, 452 C.M.R. 1.00 et seq. The Senior Judge stated that public testimony addressed the payment of interpreters, notice of Section 8(1) penalties, and defining interest calculations.

#### Stop Work Orders/Caseload Statistics

Mr. Bill Taupier updated Advisory Council Members on the Stop Work Order (SWO) and Caseload Statistics for the month of September (see attached). Total compliance investigations initiated in September 2007: 1,320; total investigations for FY'08: 3,941; total SWOs issued in September 2007: 23; total SWOs issued for FY'08: 103; total fines collected in September 2007: \$20,072; total fines collected in FY'08: \$98,666; total fines collected in FY'07: \$400,753.

Commissioner Paul V. Buckley reported that the Investigation Unit has hired one new investigator. The Commissioner stated that the Investigation Unit is assisting the Trust Fund with the investigation of Section 65 claims. He explained that investigators from both units will be cross-trained to handle various types of investigations. The Commissioner indicated that he is looking to hire two additional investigators to assist in bringing more employers into compliance with the Workers' Compensation Act.

Mr. Taupier continued the update of the monthly vital statistics. Total number of cases filed for September 2007: 1,043; total number of cases filed for FY'08 (to date): 3,697; total number of cases filed for FY'07: 15,149; total number of First Report of Injury Forms (FRI) filed for September 2007: 2,610; total number of FRI filed online for September 2007: 694 (27%); total number of FRI filed for FY'08 (to date): 8,259; total number of FRI filed for FY'07: 33,476; total number of FRI filed online in FY'07: 8,910.

Mr. Taupier explained that the number of First Report of Injury Forms filed online will eventually increase once insurance companies and HRD begin submitting files in batches.

**Council Member George Ramirez requested that a report be created which isolates the number of new cases filed by employees.**

Mr. Taupier proceeded with his update on uninsured claims (§65). Total number of §65 claims processed for FY'08 (to date): 54; total amount of §65 claims paid by the Trust Fund for FY'08 (to date): \$1,258,450; total number of §65 claims filed for FY'07: 192; total amount of §65 claims paid by the Trust Fund for FY'07: \$6,831,832.

Mr. Taupier proceeded with the vital statistics for the Second Injury Fund (§37/37A). Total number of §37/37A petitions approved for payment in FY'08 (to date): \$1,503,352; total amount paid on these claims in FY'07: \$26,575,359; total monies recovered by the Trust Fund in FY'08 (to date): \$351,305; total monies recovered in FY'07: \$1,167,465; total COLA reimbursements to insurers in FY'08 (to date): \$187,152; total COLA reimbursements to insurers in FY'07: \$9.1 million.

### Budget/Personnel Issues

Mr. Taupier reported that as of September 2007, the number of employees whose salary is paid by either the Special Fund or the Trust Fund was 259 (224 DIA employees, 35 WCTF employees). The DIA has no contract employees at this time. Eleven (11) temporary employees; and two (2) interns are being utilized within the DIA as of this report.

### Office of Education and Vocational Rehabilitation (OEVR) Update

Mr. Taupier presented the OEVR statistics. Total referrals to OEVR in FY'08 (to date): 666; total referrals to OEVR in FY'07: 2,839; total mandatory meetings in FY'08 (to date): 533; total mandatory meetings in FY'07: 2,282; total referrals to insurers in FY'08 (to date): 153; total referrals to insurers in FY'07: 706; total Individual Written Rehabilitation Plans (IWRP) approved in FY'08 (to date): 114; total IWRPs approved in FY'07: 428; total number of Return to Work (RTW) in FY'08 (to date): 47; total number of RTW in FY'07: 176; total number of IWRPs completed with no RTW in FY'08 (to date): 29; total number of IWRPs completed with no RTW in FY'07: 152.

### Information Technology Update

Mr. John Glennon, Chief Information Officer, updated the Advisory Council Members with respect to ongoing technology projects (see attached presentation).

Mr. Glennon advised the Council Members that the DIA was still in the process of automating high volume batch claim submissions. He anticipates that batch claim submissions will be completed by February of 2008.

Mr. Glennon reported that the Document Management System is on schedule and should be operating in both Dispute Resolution and Accounting & Finance by January of 2008.

Mr. Glennon stated that the agency is developing a system whereby the Office of Investigations will be able to utilize the Time Matters application instead of relying on the old Access database

system. He noted that the agency is in the process of obtaining additional Time Matters licenses and upgrading the application.

Mr. Glennon informed the Council that the Accounting & Finance Unit will begin their Financial Integration Project now that all vacant positions have been filled.

Mr. Glennon stated that 20 types of email notices are currently available to all users of the system. He explained that the ability to receive email notices is optional and that users may still receive notices through regular mail if they choose.

Mr. Glennon reported that the Oracle Environment Upgrade from 9i to 10g had been completed but had taken substantially more time than the agency had anticipated.

Mr. Glennon informed the Council that the Trust Fund Exposure Reporting Project, Online Assessment Project, and Debit Card Processing Project have not commenced at this time. Mr. Glennon explained that the DIA is currently updating their website portal to give it the same look and feel as the Department of Labor's website.

Mr. Glennon reported that the DIA's Business Continuity Planning (BCP) is ongoing. At this time, the agency does not have a disaster recovery plan in place. Mr. Glennon stated that such a plan would involve a redundant set of servers in different locations to ensure continuity in the event of a disaster. Mr. Glennon anticipates this plan will be complete by early 2008, but may not be executed until 2009.

### **ACTION ITEMS**

Chairman Corcoran asked for a motion to accept the Minutes for September 12, 2007.

Motion made to accept the Minutes for September 12, 2007.

MMS - Passed.

Chairman Corcoran asked Mr. Burton to read the following proposed motion to be considered by the voting members:

**"Motion to recommend that the DIA & DOI work with the WCRIB's subcommittee of the Bureau/Producer Advisory Group to finalize premium audit guidelines for sole proprietors and partnerships to ensure that as many workers can be covered under the**

**workers' compensation system and to assist insurers in better understanding their exposure when writing and collecting premiums."**

MMS - Passed.

Mr. Burton stated that he would send a letter to the Commissioner of the DIA and the Commissioner of Insurance encouraging their agencies to work with the Bureau/Producer Advisory Group in finalizing premium guidelines.

### **STATUTE OF LIMITATIONS - SECOND INJURY FUND CASES**

Mr. Thomas Wielgus, Manager of Civil Litigation, reported that a case has been scheduled before the Massachusetts Supreme Judicial Court that could determine whether pre-12/23/91 Section 37 Petitions are subject to any statute of limitations (Kim Oake's Case/Steven Alves Case, see attached handout).

Attorney Wielgus explained that prior to 1991, Section 37 did not contain an express statute of limitations. He stated that the legislature added a two-year statute of limitations with the passage of the 1991 Reform Act, which to this point in time, has been interpreted by the courts as a prospective change and not applying to "Mid-Act" cases. As a consequence to this judicial interpretation, Mr. Wielgus noted that the Trust Fund has been flooded with pre-1991 cases.

Attorney Wielgus expressed the Trust Fund's belief that a two-year statute of limitations should apply or that the three-year statute of limitations for claims against the Commonwealth should apply. Attorney Wielgus stated that there is no cause of action that does not have a statute of limitations. Attorney Wielgus explained that case law on this matter presumes that when a statute is silent on a limitations period, that some sort of statute of limitations applies.

Attorney Wielgus stated that there has and will continue to be significant financial consequences to the Trust Fund if the Massachusetts Supreme Judicial Court determines there is no statute of limitations. He noted that from FY'04 through FY'07 there have been over 500 pre-1991 cases. In FY'07 alone, there were 99 pre-1991 cases. Attorney Wielgus reported that the cost to the Trust Fund for these cases in FY'07 was \$5.9M.

Attorney Wielgus explained that should Trust Fund receive a favorable opinion from the Massachusetts Supreme Judicial Court, it would go a long way in preserving the financial integrity of the Trust Fund.

Council Members requested that Attorney Wielgus inform them when a date for oral arguments has been set. Attorney Wielgus stated that he would contact Mr. Burton as soon as the date is finalized.

### **EXECUTIVE DIRECTOR UPDATE**

Executive Director Burton stated that there had been a major setback in the Scar-Based Disfigurement Study. Mr. Burton explained that Deloitte Consulting was unable to locate any relevant data in either the DIA or WCRIB databases. As a result, Mr. Burton stated that he has closed out the contract with Deloitte Consulting. The Executive Director stated that he would send a courtesy letter to the Joint Committee on Labor & Workforce Development informing them that there was no relevant data available to conduct a study.

Council Members requested that the letter reiterate the Council's continued support for the passage of Senate Bill 2289.

Mr. Burton informed the Council Members that he would provide a draft of the Advisory Council's Fiscal Year 2007 Annual Report at December's meeting. Mr. Burton stated that he had reviewed the minutes from the last year and has outlined the various concerns and recommendations the Council has made. Included in these concerns and recommendations are: Increasing Burial Expenses, Expanding Scar-Based Disfigurement Benefits, Private Right of Action Legislation, Premium Audit Guidelines for Sole-Proprietors and Partnerships, Supporting Additional Staffing for the Office of Investigations, Developing a Medical Fee Schedule Task Force.

Tim McMahon, Deputy Commissioner of Administration, reported that he has met with Kevin Flynn from the Division of Health Care Finance & Policy in regards to the feasibility of establishing a Medical Fee Schedule Task Force. Commissioner McMahon noted that although talks are in their infancy stage, he is optimistic that a group similar to Rhode Island's Task Force can be established in Massachusetts.

Mr. Burton concluded his update by stating that the next Advisory Council meeting is scheduled for November 14, 2007. Council Members agreed that this date should remain flexible to allow for judicial interviews to take place at this meeting.

### **MISCELLANEOUS**

Chairman Corcoran thanked all parties for attending today's meeting.

Motion made to adjourn.

MMS - Passed. Meeting adjourned at 10:45 a.m.

**The next regular meeting of the Advisory Council is scheduled for Wednesday, November 14, 2007, at 9:00 AM, at the Division of Industrial Accidents, 600 Washington Street, 7<sup>th</sup> Floor Conference Room, Boston, MA 02111.**