

**Massachusetts Workers' Compensation
Advisory Council Minutes**

October 14, 2009

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; David Powell; Teri McHugh; Antonio Frias (Ines Leonardo); John Pulgini; George Noel, Director of Labor.
Also Present: Commissioner Paul Buckley; Tim McMahon, Deputy Commissioner of Administration; William Taupier, First Deputy Director of Administration; Jack Defina, Chief Financial Officer; Ray Marchand, Director of Investigations; Tom Jones, Department of Labor; Anthony DiPaolo, Insurance Fraud Bureau; Michael Byrnes, Division of Labor Relations; Paul Meagher, WCRIB; Michael Kelley, AIM Mutual Insurance Company; William Monnin-Browder, JCLWD; Kate Flanagan, JCLWD.

Advisory Council Staff: Andrew Burton; Evelyn Flanagan.

Absent: CM: John Regan; William T. Corley; Dennis Hines; Kenneth J. Paradis, Jr.; Peter A. Cook, Sr.; Department of Business Development.

Agenda:

Chairman's Welcome

DIA Update

- Vital Statistics - William Taupier, Deputy Director of Administration

Underground Economy Task Force Update - George Noel, DOL

Assessment Audit Quarterly Update - Jack Defina, CFO

Action Items

- Minutes - September 9, 2009

Employee Misclassification Subcommittee Update

Executive Director Update

Miscellaneous

CHAIRMAN'S WELCOME

Chairman Mickey Long began today's meeting at 9:00 a.m. Chairman Long asked Senior Judge Martine Carroll to provide the judicial update.

DIA UPDATE

Judicial Update

Senior Judge Carroll updated Advisory Council Members on the information contained within the DIA's vital statistic report for October 2009 (see attached). Conference Queue: 135; Hearing Queue: 587; Reviewing Board Inventory: 155; Impartial Exams for FY'10 (to date): 1,346 (14 waivers); Exam Fees Collected for FY'10: \$427,850. In fiscal year 2009 there were 5,069 Impartial Medical Examinations (64 waivers); Exam Fees Collected in FY'09: \$1,789,076.

Senior Judge Carroll reported that the Impartial Unit has made great strides in recruiting Impartial Physicians. The Senior Judge stated that the Impartial Physician Roster currently has 253 physicians on board, representing 33 specialties. The Senior Judge explained that the Impartial Unit is in the process of resigning physicians previously on the Impartial Physician Roster.

Senior Judge Carroll reported that the new Case Management System (CMS) went live a couple months ago. The Senior Judge stated that the system appears to be working remarkably well. She explained that the DIA is providing literature to the users of the system to keep everyone abreast of how the system operates.

Senior Judge Carroll informed the Council Members that there would be a Workers' Compensation Centennial Celebration in Massachusetts in April 2011. The Senior Judge reported that the DIA is working with the American Bar Association to have their annual meeting at the DIA for this big event.

Senior Judge Carroll stated that the DIA would begin the judicial application process in December. The Senior Judge reminded Council Members there are 13 positions up for reappointment (eight Administrative Judges and five Administrative Law Judges). The Senior Judge stated that there are only two active applicants in the Nomination Pool from the prior appointment process.

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 309 SWOs in September (19 SWOs were reissued as the result of defaults of previous orders); total SWOs issued in FY'10 (to date): 918. Fine collection for September 2010: \$90,200; total fines in FY'10: \$248,650; SWOs issued in FY'09: 3,484; total fines collected in FY'09: \$885,980; compliance checks for July 2009: 3,298; estimated number of workers now covered by workers' compensation insurance as the result of a SWO: 2,344 (FY'10).

Mr. Taupier continued the update of the monthly vital statistics. Total number of cases filed in September 2009: 1,149; total number of cases filed in FY'10 (to date): 3,380; total number of cases filed in FY'09: 13,806; total number of First Report of Injury Forms (FRI) filed in September 2009: 2,800; total number of FRI filed online in September 2009: 842 (30%); total number of FRI filed in FY'10 (to date): 8,079 (2,365 on-line); total number of FRI filed in FY'09: 31,216 (8,048 on-line). Mr. Taupier proceeded with his update on uninsured claims (§65). Total number of §65 claims processed in FY'10 (to date): 30; total amount of §65 claims paid by the Trust Fund in FY'10 (to date): \$1,068,702; 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): \$2,030,262; total amount paid on these claims in FY'09: \$24,078,327; total monies recovered by the Trust Fund in FY'10 (to date): \$170,660; total monies recovered in FY'09: \$1,410,782; total COLA reimbursements to insurers in FY'10 (to date): \$195,930; total COLA reimbursements to insurers in FY'09: \$34 million.

Budget/Personnel Issues

Mr. Taupier reported that as of September 2009, the number of employees whose salary is paid by either the Special Fund or the Trust Fund was 281 (230 DIA employees, 51 WCTF employees). The DIA is approved to have 285.2 payroll positions (including all full and part-time positions).

Office of Education and Vocational Rehabilitation (OEVR) Update

Mr. Taupier presented the OEVR statistics. Total referrals to OEVR in FY'10 (to date): 615; total referrals to OEVR in FY'09: 2,334; total mandatory meetings in FY'10 (to date): 464; total mandatory meetings in FY'09: 1,913; total Determinations of Suitability (DOS) in FY'10 (to date): 329; total DOS in FY'09: 1,286; total referrals to insurers in FY'10 (to date): 135; total referrals to insurers in FY'09: 627; total Individual Written Rehabilitation Plans (IWRP) approved in FY'10 (to date): 97; total IWRPs approved in FY'09: 404; total number of Return to Work (RTW) in FY'10 (to date): 19; total number of RTW in FY'09: 106; total number of IWRPs completed with no RTW in FY'10 (to date): 29; total number of IWRPs completed with no RTW in FY'09: 107.

Office of Accounting & Finance Update

Mr. Taupier presented the accounting and finance statistics. Total referral fees collected in FY'10 (to date): \$1,043,139; total referral fees collected in FY'09: \$4,122,040; total first report fines in FY'10 (to date): \$34,200; total first report fines in FY'09: \$234,770; total assessment collections in FY'10 (to date): \$17,331,007; total assessment collections in FY'09: \$73,767,639; total SWO fines in FY'10 (to date): 393,866; total SWO fines in FY'09: \$1,369,954.

Underground Economy Task Force Update

Director George Noel updated the Council Members on the recent activities of the Joint Task Force on the Underground Economy. Director Noel highlighted the agenda of the North East Summit on the Underground Economy which had taken place on October 2, 2009, at Holyoke Community College. Director Noel noted that all six New England states had attended the summit, as well as New York, New Jersey, Maryland, and Pennsylvania. He explained that summit had been co-hosted by New York State and focused on data sharing. Director Noel stated that Hilda Solis, U.S. Secretary of Labor, kicked off the event by providing a two-minute video discussing the impact of the underground economy in the United States.

Director George Noel informed the Council Members that the summit had exceeded his expectations. Director Noel gave special thanks to the Underground Economy Subcommittee and recognized Ms. Linnea Walsh, who had been the lead organizer of this successful event.

Assessment Audit Quarterly Update

Chief Financial Officer Jack Defina reported that in FY'09 the DIA assessment audit collected \$111,421. In FY'10 (to date) the agency has collected \$120,625. Mr. Defina stated that the DIA has become proactive in their assessment collection efforts. He stated that the DIA has contracted with two new audit companies (bringing the total to three companies conducting assessment reviews). Mr. Defina stated that for every dollar the agency collects, it pays the auditing firms 26 cents.

ACTION ITEMS

Chairman Long asked for a motion to approve the minutes for September 9, 2009.

Motion made to approve the minutes for September 9, 2009. Motion Seconded and Passed.

EMPLOYEE MISCLASSIFICATION SUBCOMMITTEE UPDATE

Executive Director Andrew Burton updated Council Members on the second meeting of the Employee Misclassification Subcommittee. Mr. Burton stated that the subcommittee was formed in September to address the problem of premium evasion fraud in Massachusetts. The Executive Director stated that the subcommittee was comprised of a diverse representation of stakeholders in the workers' compensation system which included the business and labor community, the Workers' Compensation Rating & Inspection Bureau (WCRIB), the Department of Labor, the Insurance Fraud Bureau of Massachusetts, and the DIA.

Executive Director Burton stated that one of the early goals of the subcommittee was to develop a non-legislative alternative to House Bill 1838. This bill would require the DIA to publish all classification codes for every insured employer within the recently launched Online Proof of Coverage Application. The Executive Director explained that the subcommittee was in agreement that the DIA should implement an online Classification Request Form to allow the public to request a specific employer's classification statement. Such a statement would detail all of the classification codes listed on an employer's workers' compensation insurance policy and the percentage of payroll by classification code for the current and prior two policy years. Executive Director Burton referred to a sample Classification Request Form that contained agreed upon language by the subcommittee and the WCRIB (see attached).

Executive Director Burton read the Subcommittee's proposed motion to address premium evasion fraud:

"Motion to recommend that the Department of Industrial Accidents implement an online Classification Request Form that will allow the public to receive a classification statement that details all of the requested employer's classification codes listed on their workers' compensation insurance policy and the percentage of payroll by classification code for the current and prior two policy years."

Chairman Long asked for a motion to accept the Subcommittee's recommendation.

Motion made to accept the Subcommittee's recommendation. Motion Seconded and Unanimously Passed.

Executive Director Burton informed the Council Members that he would draft a formal recommendation to Commissioner Buckley.

Chairman Long requested that the DIA provide the Advisory Council with an update on any actions taken on this recommendation at the November Advisory Council meeting.

Council Member Stephen Joyce took a moment to thank the WCRIB's Paul Meagher and Ellen Keefe for their hard work on the subcommittee.

EXECUTIVE DIRECTOR UPDATE

Executive Director Andrew Burton reported that on September 30, 2009, the Joint Committee on Labor & Workforce Development held a public hearing on all workers' compensation legislation before the committee. Mr. Burton stated that Chairman Mickey Long and Council Member John Regan had testified on behalf of the Advisory Council at this hearing expressing support for the passage of eight workers' compensation bills.

The Executive Director reported that the hearing was dominated by testimony in support for two bills: **House Bill 1870** - Private Right of Action and **House Bill 1853** - Insurance Rates (Loss Cost). The Executive Director stated that he believed the loss cost legislation received a great deal of attention due to the recent success of the auto industry's implementation of competitive rating.

Executive Director Burton stated that he was working with Deputy Commissioner Tim McMahon to have a speaker at the next Advisory Council meeting to review the COLA process at the DIA.

In closing, Executive Director Burton reminded the Advisory Council that next month's meeting was scheduled for Wednesday, November 18, 2009 at 9:00 a.m.

MISCELLANEOUS

Chairman Long thanked everyone for attending today's meeting.

Motion made to adjourn the meeting. Motion Seconded and Passed.

The next regular meeting of the Advisory Council is scheduled for Wednesday, November 18, 2009, at 9:00 AM, at the Department of Industrial Accidents, 600 Washington Street, 7th Floor Conference Room, Boston, MA 02111.