

**Massachusetts Workers' Compensation
Advisory Council Minutes**

October 8, 2008

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; David P. Powell; John D. Boyle (Teri McHugh); Peter A. Cook, Sr. (Karen Shanley); Antonio Frias (Inez Leonardo); Dennis Hines; Department of Labor (Tom Jones).

Also Present: DIA: Commissioner Paul V. Buckley; Timothy J. McMahon, Deputy Commissioner of Administration; Marine Carroll, Senior Judge; William Taupier, First Deputy Director of Administration; Jack Defina, Director of Accounting & Finance; Yvette Smith, Assessment Manager; Roody Herold, Director of Information Technology; Michael Bradley, Director of the Underground Economy; Ray Marchand, Director of Investigations; Ellen Keefe, WCRIB; Anna Lucey, Joint Committee on Labor and Workforce Development; Jennifer Mercandante, Joint Committee on Labor and Workforce Development.

Advisory Council Staff: Andrew Burton; Evelyn Flanagan.

Absent: CM: David Powell; John Regan; Kenneth J. Paradis, Jr.; William Corley; John Pulgini; Department of Business Development.

Agenda:

Chairman's Welcome

DIA Update

- Underground Economy Task Force Update - Michael Bradley
- Judicial Update - Martine Carroll, Senior Judge

- Vital Statistics - William Taupier, Deputy Director of Administration
- Quarterly Assessment Audit Update - Yvette Smith

Action Items

- Minutes - September 10, 2008

Injury Reporting Subcommittee Update - Stephen P. Falvey

Executive Director Update

Miscellaneous

CHAIRMAN'S WELCOME

Chairman Edmund C. Corcoran, Jr., began today's meeting at 9:00 a.m. The Chairman introduced the Underground Economy Task Force Executive Director, Michael Bradley.

Underground Economy Task Force Update

Mr. Michael Bradley provided a brief update of the Underground Economy Task Force. Mr. Bradley stated that the DIA has received 302 complaints from their telephone referral line. Mr. Bradley explained that not every complaint leads to an investigation. He reported that there are currently between 40 and 50 joint investigations taking place at this time. Mr. Bradley noted that joint investigations consist of two or more agencies that have a stake in the outcome.

Mr. Bradley stated that three new agencies have been added to the Underground Economy Task Force: Division of Capital Asset Management (DCAM); Office of Housing and Community Development; and the State Office of Minority and Woman Business Assistance (SOMBA). Mr. Bradley explained it was necessary to include these agencies on the Task Force since they certify companies that wish to work on publicly funded jobs for the Commonwealth. Mr. Bradley informed the Council Members that the purpose of this morning's Task Force meeting concerned the relationship between Stop Work Orders (SWOs) and decertification.

Mr. Bradley reported that the Task Force is waiting for 67 indictments to be handed down from the Attorney Generals Office. He also stated that as a result of a recent investigation, an employer had taken a voluntary disbarment and paid a \$180,000 settlement with \$20,000 in fees and fines and \$160,000 for prevailing wages.

Mr. Bradley stated that the Task Force was in the process of developing legislative recommendations. He explained that they are looking at several different areas, including: Information Technology Data Sharing Agreements; providing stop work order authority to the Division of Unemployment Assistance; withholding funds from companies that owe the Commonwealth money; allowing the Task Force to look back one year on an employer to recapture revenue; and finally giving DIA investigators the ability to examine insurance policies for employee misclassification violations.

In closing, Mr. Bradley stated that the Task Force would be holding a series of Town Hall style meetings within the next two months. Mr. Bradley noted that Council Members could find invitations for these meetings in their packets.

DIA UPDATE

Judicial Update

Senior Judge Carroll updated Advisory Council Members on the information contained within the DIA's vital statistic report for October 2008 (see attached). Conference Queue: 191; Hearing Queue: 945; Reviewing Board Inventory: 148; Impartial Exams for FY'09 (to date): 1,237 (14 waivers); Exam Fees Collected for FY'09: \$451,100. 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 DIA is now operating with a full compliment of judges.

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 261 SWOs in September 2008 making the total for FY'09 to date at 753. Fine collection for September 2008: \$54,150; total fines FY'09: \$184,550; SWOs issued FY'08: 1,929; total fines collected FY'08: \$437,900; compliance checks for September 2008: 2,154; estimated number of workers now covered by WC insurance as the result of a SWO: 1,929 (FY'09).

Mr. Taupier continued the update of the monthly vital statistics. Total number of cases filed in September 2008: 983; total number of cases filed in FY'09 (to date): 3,335; total number of cases filed in FY'08: 14,464; total number of First Report of Injury Forms (FRI) filed in September 2008: 2,464; total number of FRI filed online in September 2008: 656 (27%); total number of FRI filed in FY'09 (to date): 8,076; 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): 45; total amount of §65 claims paid by the Trust Fund in FY'09 (to date): \$957,426; 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): \$2,797,646; total amount paid on these claims in FY'08: \$20,725,671; total monies recovered by the Trust Fund in FY'09 (to date): \$486,475; total monies recovered in FY'08: \$1,202,747; total COLA reimbursements to insurers in FY'09 (to date): \$6,646,620; total COLA reimbursements to insurers in FY'08: \$4.0 million.

Budget/Personnel Issues

Mr. Taupier reported that as of August 2008, the number of employees whose salary is paid by either the Special Fund or the Trust Fund was 280 (235 DIA employees, 45 WCTF employees).

Commissioner Buckley informed the Council Members that the DIA is creating a Task Force to review the entire agency's operations and to make recommendations on where savings can be made. The Commissioner stated that he has asked Mr. Andrew Burton to participate on the Task Force as an advisor.

Council Member Stephen Joyce suggested that the Advisory Council consider sending a message to the Governor regarding the DIA's unique funding mechanism. CM Joyce stated that he has observed great improvements in the operations of the DIA which have been instrumental in bringing employers into compliance with the workers' compensation mandate. CM Joyce also stated that many of the changes made have generated additional revenue for the agency from increased collections in fines.

Office of Education and Vocational Rehabilitation (OEVR) Update

Mr. Taupier presented the OEVR statistics. Total referrals to OEVR in FY'09 (to date): 692; total referrals to OEVR in FY'08: 2,828; total mandatory meetings in FY'09 (to date): 596; total mandatory meetings in FY'08: 2,281; total referrals to insurers in FY'09 (to date): 170; total referrals to insurers in FY'08: 647; total Individual Written Rehabilitation Plans (IWRP) approved in FY'09 (to date): 126; total IWRPs approved in FY'08: 417; total number of Return to Work (RTW) in FY'09 (to date): 34; total number of RTW in FY'08: 163; total number of IWRPs completed with no RTW in FY'09 (to date): 23; total number of IWRPs completed with no RTW in FY'08: 134.

Deputy Commissioner Tim McMahon introduced the new Information Technology Manager, Mr. Roody Herold. The Deputy Commissioner stated that Mr. Herold had an impressive resume and was extremely qualified to lead the Information Technology Unit.

Quarterly Assessment Audit Update

Ms. Yvette Smith updated the Council Members on the three phase of the assessment audit. She explained that the first phase began in 1999 and ran from 7/1/96 to 6/30/98. Approximately \$7.6 Million was collected during this phase. Ms. Smith stated that Phase II of the audit was currently ongoing. She explained that the audit began with 25 companies and there were approximately 8 companies left to audit. To date, \$1.9 Million has been collected during Phase II. Ms. Smith stated that the DIA has initiated Phase III of the audit which consists of 34 companies to be audited.

Ms. Smith provided a brief history on the audits origins. In 1999, the DIA set out to ensure that accurate and complete assessments were collected from policyholders and then properly remitted to the DIA. She noted that although there was some initial resistance by insurance companies in providing the necessary information, it appears this resistance has subsided and they are now working closely with the DIA. Ms. Smith noted that prior to 2007 there was no oversight in the return of invoices which led to companies either paying late or not at all. This practice resulted in a significant revenue loss which changed the way the DIA collected assessments.

Ms. Smith highlighted two current initiatives in the department. First, she discussed the modification of the Quarterly Assessment Invoices. Ms. Smith explained that every invoice is now provided with a due date. Another initiative was the development and implementation of the premium template reporting which must be filed with each quarterly invoice. Ms. Smith reported that these initiatives have resulted in the timely return of invoices 93% of the time. Ms. Smith stated that the DIA has also imposed a 5% penalty for late filing or for filing without the supporting documents. Ms. Smith noted that the DIA has collected approximately \$100,000 in fines to date.

Ms. Smith informed the Council Members that a future initiative of the DIA is to provide online payment of assessments. The department has also begun the enhancement of internal reporting and the tracking of invoices through CMS.

Chairman Corcoran thanked Ms. Smith and requested that she provided a quarterly update going forward.

ACTION ITEMS

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

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

MMS - Passed.

INJURY REPORTING SUBCOMMITTEE UPDATE

Council Member Stephen Falvey updated the Advisory Council Members on the Injury Reporting Subcommittee. CM Falvey reported that the subcommittee met on September 29, 2008 to discuss ways to improve injury reporting compliance in the Commonwealth. He explained that the subcommittee reviewed Massachusetts penalties and compared them to the penalties being applied in other U.S. jurisdictions. CM Falvey noted that penalties ranged from \$25 (NC and TN) to \$5,000 (VA).

CM Falvey stated that Massachusetts was the only state to have a "three strikes" policy that allows two violations in any year before fines are assessed on the third violation. He also noted that DIA has historically capped annual fines on an employer at \$500, even though this is not specified in the statute. CM Falvey explained that the subcommittee will be looking at all options including both legislative and non-legislative solutions.

Executive Director Andrew Burton stated that the subcommittee was also informed that the current computer system that monitors First Report of Injury violations may have a programmed "grace period" that stretches beyond the grace period provided in the statute. The Executive Director noted that the subcommittee was in agreement that all penalties should be triggered in accordance to the mandated time periods. Executive Director Burton stated that the subcommittee will be drafting legislation that creates an escalating fine structure when multiple violations occur in any given year.

It was agreed that Mr. Burton would contact subcommittee members to set a date for the next meeting.

EXECUTIVE DIRECTOR UPDATE

Executive Director Burton referred to a document that was included in Council Member's packets which listed the FY'07 Concerns and Recommendations. The Executive Director requested that the Council Members review the document during the next month so that a full discussion on the FY'08 Concerns and Recommendations could be addressed at the November Advisory Council meeting.

MISCELLANEOUS

Chairman Corcoran asked for a motion to adjourn the meeting.

Motion made to adjourn the meeting.

MMS - Passed.

The next regular meeting of the Advisory Council is scheduled for Wednesday, November 12, 2008, at 9:00 AM, at the Division of Industrial Accidents, 600 Washington Street, 7th Floor Conference Room, Boston, MA 02111.