

**Massachusetts Workers' Compensation
Advisory Council Minutes**

December 10, 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; John Pulgini; John D. Boyle (Teri McHugh); Peter A. Cook, Sr. (Karen Shanley).

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; Peter Treadway, IT Manager; Linnea Walsh, Department of Labor; Ellen Keefe, WCRIB; Anna Lucey, Joint Committee on Labor and Workforce Development; Jennifer Mercandante, Joint Committee on Labor and Workforce Development; Michael Kelley, AIM; Melody Barlow, Cook & Company; Walter Horn, Division of Insurance.

Advisory Council Staff: Andrew Burton; Evelyn Flanagan.

Absent: CM: William Corley; David Powell; John Regan; Antonio Frias; Dennis Hines; Kenneth J. Paradis, Jr.; Department of Labor; Department of Business Development.

Agenda:

Chairman's Welcome

DIA Update

- Judicial Update - Martine Carroll, Senior Judge
- Vital Statistics - William Taupier, Deputy Director of Administration

Action Items

- Minutes - November 12, 2008

WCAC/WCRIB/DIA Information Exchange Subcommittee

FY'08 Annual Report - Discussion & Vote

Executive Director Update

Miscellaneous

CHAIRMAN'S WELCOME

Chairman Edmund C. Corcoran began today's meeting at 10:00 a.m. Chairman Corcoran thanked the members of the Advisory Council and the DIA Administration for their active participation and commitment during the year. The Chairman 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 December 2008 (see attached). Conference Queue: 335; Hearing Queue: 767; Reviewing Board Inventory: 77; Impartial Exams for FY'09 (to date): 2,155 (26 waivers); Exam Fees Collected for FY'09: \$767,250. 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 all seven of the newest judges are now fully trained and are doing a very professional job. Senior Judge Carroll also noted that Judge Hernandez would be transferred to the Worcester Regional Office this month. The Senior Judge stated that this move will allow for a full compliment of judges in Worcester.

Senior Judge Carroll informed the Council Members that there has been an increase in Section 15 settlements (liability of a person other than the insured). The Senior Judge stated that historically there has been an increase in these settlements at this time of year.

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 233 SWOs in November 2008 (6 SWOs were reissued as the result of defaults on previous orders); total SWOs issued in FY'09 (to date): 1,264. Fine collection for November 2008: \$53,100; total fines FY'09: \$291,150; SWOs issued FY'08: 1,929; total fines collected FY'08: \$437,900; compliance checks for November 2008: 1,802; estimated number of workers now covered by WC insurance as the result of a SWO: 3,437 (FY'09).

Mr. Taupier continued the update of the monthly vital statistics. Total number of cases filed in November 2008: 1,133; total number of cases filed in FY'09 (to date): 5,786; total number of cases filed in FY'08: 14,464; total number of First Report of Injury Forms (FRI) filed in November 2008: 2,249; total number of FRI filed online in November 2008: 602 (27%); total number of FRI filed in FY'09 (to date): 11,240 (3,140 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): 64; total amount of §65 claims paid by the Trust Fund in FY'09 (to date): \$1,885,472; 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): \$6,431,069; total amount paid on these claims in FY'08: \$20,725,671; total monies recovered by the Trust Fund in FY'09 (to date): \$678,295; total monies recovered in FY'08: \$1,202,747; total COLA reimbursements to insurers in FY'09 (to date): \$13,121,643; total COLA reimbursements to insurers in FY'08: \$4.0 million.

Budget/Personnel Issues

Mr. Taupier reported that as of November 2008, the number of employees whose salary is paid by either the Special Fund or the Trust Fund was 278 (233 DIA employees, 45 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): 872; total referrals to OEVR in FY'08: 2,828; total mandatory meetings in FY'09 (to date): 727; total mandatory meetings in FY'08: 2,281; total Determinations of Suitability (DOS) in FY'09: 513; total DOS in FY'08: 1,634; total referrals to insurers in FY'09 (to date): 214; total referrals to insurers in FY'08: 647; total Individual Written Rehabilitation Plans (IWRP) approved in FY'09 (to date): 164; total IWRPs approved in FY'08: 417; total number of Return to Work (RTW) in FY'09 (to date): 46; total number of RTW in FY'08: 163; total number of IWRPs completed with no RTW in FY'09 (to date): 29; total number of IWRPs completed with no RTW in FY'08: 134.

Executive Director Andrew Burton stated that he had recently spent a workday with two DIA investigators as they conducted random compliance checks on Blue Hill Avenue in Dorchester. The Executive Director participated in the compliance checks to gain first hand knowledge of the challenges that investigators face when verifying if an employer is properly insured. Mr. Burton stated that of the eight businesses inspected, only one employer had a valid workers' compensation policy. The Executive Director expressed interest in participating in future investigations in other communities to better understand the extent of uninsured employers in Massachusetts.

Chairman Corcoran stated that the problem of uninsured employers is a national issue. The Chairman referred to Colorado where it is speculated that 30% of the employers operate with workers' compensation insurance. The Chairman also referred to Vermont where as many as 15%-18% may go uncovered. Chairman Corcoran stated that he would like the Underground Economy Task Force to continue to provide updates on a monthly basis.

Council Member Stephen Joyce stated that according to section 25C(10) of the workers' compensation statute an employer who fails to provide workers' compensation insurance coverage should be immediately debarred from bidding or participating in any state or municipal funded contracts for a period of three years. CM Joyce voiced concern that names of the companies on the monthly stop work order list are not placed on the Secretary of State's Central Register.

ACTION ITEMS

Chairman Corcoran asked for a motion to accept the Minutes for November 12, 2008.

Motion made to accept the Minutes for November 12, 2008.

MMS - Passed.

WCAC/WCRIB/DIA INFORMATION EXCHANGE SUBCOMMITTEE

Vice-Chairman Mickey Long stated that during the last few meetings there has been a great deal of discussion regarding the information that is exchanged between the WCRIB and the DIA for anti-fraud efforts. The Vice-Chairman suggested that the Advisory Council form a subcommittee to work with the insurance community and DIA to further enhance the information sharing agreement between the WCRIB and the DIA for the purpose of investigating fraud associated with uninsured employers and misclassification. Vice-Chairman Long stated that a working group could review the statutory requirements and determine what information could be made available to the public.

Chairman Corcoran asked for a motion to establish an Information Exchange Subcommittee.

Motion made to accept the establishment of an Information Exchange Subcommittee.

MMS - Passed.

Vice-Chairman Long requested that the Executive Director organize the first meeting to be held on either 1/14/09 or 1/15/09. The Vice-Chairman stated that he could share the subcommittee's concerns and ideas at the WCRIB's next Governing Committee meeting on January 18th.

FY'08 ANNUAL REPORT - DISCUSSION & VOTE

Executive Director Andrew Burton presented Council Members with a handout that highlighted various statistical benchmarks in the Fiscal Year 2008 Annual Report (see attached). The charts consisted of the following categories: Injury and Illness Incidence Rates; Workplace Fatalities; Cases Filed at the DIA; Cases Scheduled for Conciliation, Cases Scheduled for Conference; Cases Scheduled for Hearings; Conference and Hearing Queues; Hearing Decisions Appealed to the Reviewing Board; Impact of Rate Changes; and Workers' Compensation Rate Deviations.

Mr. Burton reported that Massachusetts has historically maintained an injury and illness incidence rate below both the national and New England average. He noted that this remained the case in 2006 when Massachusetts had an incidence rate of 3.9 injuries and illnesses per 100 full-time workers. The Executive Director stated that the construction industry in Massachusetts continues to be the most dangerous industry with 6.4 injuries and illnesses per 100 full-time workers.

Mr. Burton reported that Massachusetts had 74 workplace fatalities in 2007, an increase of 12% from 2006. Transportation incidents continue to be the leading cause of workplace death in the Commonwealth with 27 fatalities in 2007. He noted that on the national level, workplace fatalities decreased in 2007 to their lowest level since 1992 when tracking first began.

Executive Director Burton reported that in fiscal year 2008, the DIA experienced a 5% decline in total cases filed. Since fiscal year 1991, the total cases filed at the DIA have decreased by 69%. He noted that this mirrors a national trend in which injuries have declined whereas medical expenses have increased.

Mr. Burton reported that in fiscal year 2008, the DIA experienced a 4% decline in scheduled conciliations. Scheduled conciliations have declined by 61% since fiscal year 1991. The Executive Director noted that approximately 46% of all conciliations are resolved whereas 54% go to a conference.

Executive Director Burton reported that in fiscal year 2008, the DIA experienced a 17% decline in scheduled conferences. Although scheduled conferences have declined by 54% since 1991, the volume has remained relatively stable since fiscal year 1999. The Executive Director stated that 87% of all conference orders are appealed.

Mr. Burton reported that in fiscal year 2008, the DIA experienced a 12% decline in scheduled hearings. As with scheduled conferences, the volume of scheduled hearings has remained relatively stable since fiscal year 1999.

Senior Judge Martine Carroll noted that prior to 1999, the DIA employed significantly more Judges to deal with the tremendous backlog of cases that hampered the workers' compensation system. The Senior Judge explained that during that time period with added personnel, more cases could be scheduled in a year than ever previously possible.

The Executive Director referred to a graph that depicted the conference and hearing queues from fiscal year 1991 to fiscal year 2008. He noted the tremendous conference queue of 9,227 cases that existed in June of 1991. Mr. Burton explained that previous Senior Judges have informed the Advisory Council that the conference and hearing queue becomes problematic for scheduling purposes when it increases over 1,500 cases. The Executive Director stated that at the close of fiscal year 2008, the conference queue had 536 cases and the hearing queue was at 1,207 cases.

Mr. Burton reported that in fiscal year 2008, 325 hearing decisions were appealed to the Reviewing Board. During the fiscal year, 240 appeals were resolved by the Reviewing Board.

The Executive Director spoke briefly about the insurance market in Massachusetts. He noted that all signs show that the insurance market continued to be competitive in fiscal year 2008. As of June of 2008, the Assigned Risk Pool accounted for 13.2% of the market share. Mr. Burton stated that this percentage has trended downward the last four years. In contrast he noted that the Assigned Risk Pool accounted for 64.7% of market share in 1992. Mr. Burton reported that in 2007, 60 insurance companies were offering workers' compensation rate deviations to their customers. He also noted that Massachusetts had 24 Self Insurance Groups in fiscal year 2008 with 5,453 member companies. At the close of fiscal year 2008, 108 Self Insurance licenses were in existence in the Commonwealth.

In conclusion, Mr. Burton requested that if Council Members had any additions or changes to the Annual Report they should contact him before the end of the week. The Executive Director stated that he hoped to have the completed report ready for the January 14, 2009 meeting.

EXECUTIVE DIRECTOR UPDATE

Executive Director Burton stated that it had been another great year working with the Advisory Council. He noted that several new sections were added to the Annual Report and that many sections had additional statistics. The Executive Director recognized Evelyn Flanagan for the hard work she contributed to the Annual Report.

MISCELLANEOUS

Council Member Karen Shanley informed the Advisory Council that she would be leaving Cook & Company Insurance Agency to pursue a new career. She thanked the Advisory Council members and staff for providing such interesting and informative discussions on the workers' compensation system in Massachusetts. Ms. Shanley introduced Ms. Melody Barlow who would be taking over her seat on the Advisory Council.

Chairman Corcoran thanked Ms. Shanley for her participation and dedication to the Advisory Council.

Chairman Corcoran reminded the Council Members that a holiday luncheon would take place immediately following the meeting.

In closing, Chairman Corcoran stated that he would like to have a representative from the Health Care Services Board to appear at a future meeting. The Chairman expressed interest in the proposed changes to the UR guidelines and the application of those who conduct Utilization Review.

Deputy Commissioner Tim McMahon suggested that the Advisory Council consider inviting Mr. Roody Herold to the next meeting so he can update Council Members on Information Technology initiatives at the DIA.

Chairman Corcoran asked for a motion to accept the FY'08 Annual Report in its entirety.

Motion made to accept the FY'08 Annual Report in its entirety.

MMS - Passed.

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, January 14, 2009, at 9:00 AM, at the Division of Industrial Accidents, 600 Washington Street, 7th Floor Conference Room, Boston, MA 02111.