

**Massachusetts Workers' Compensation
Advisory Council Minutes**

December 12, 2007

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

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

CM: John Regan; John Pulgini; Robert Banks (William Corley); John D. Boyle (Teri McHugh); Peter A. Cook (Karen Shanley); Tom Jones (Department of Labor).

Also Present: DIA: William C. Tattan, Deputy Commissioner/General Counsel; Timothy J. McMahon, Deputy Commissioner of Administration; Martine Carroll, Senior Judge; William Taupier, First Deputy Director of Administration & EDP; Jack Defina, CFO; Stephanie Noguera, Department of Labor; Anna Lucey, JCLWD; Jennifer Mercandate, JCLWD; Carol Falcone, Falcone Associates; Nancy Segreve, VR Provider, Deborah Quinn, VR Provider; Sarah Bee, VR Provider.

Advisory Council Staff: Andrew Burton; Evelyn Flanagan.

Absent: CM: Tony Frias (Ines Leonardo); Jeanne-Marie Boylan; Kenneth Paradis; Jill Brown; Department of Business & Technology.

Agenda:

Chairman's Welcome

DIA Update

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

Action Items

- Minutes - October 10, 2007
- Minutes - November 19, 2007

Draft Annual Report - Concerns & Recommendations

Executive Director Update

Miscellaneous

Executive Session

CHAIRMAN'S WELCOME

Chairman Edmund C. Corcoran, Jr., began today's meeting at 10:00 a.m. 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 December 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 reported that she has begun reviewing Chapter 324 of the Acts of 2004 regarding performance reviews for newly appointed members of the Industrial Accident Board. The Senior Judge explained that she is currently in the process of developing criteria to be used for all applicable reviews. Senior Judge Carroll noted that she would use existing statutory criteria as a base for developing the review process. The Senior Judge stated that Judge Catherine Koziol would be the first Judge subject to the performance review.

Senior Judge Carroll reported that the Massachusetts Bar Association would be meeting on Friday to discuss the continuation of the Industrial Accident Board Survey that evaluates judges on several factors. The Senior Judge noted that the Massachusetts Bar Association has expressed interest in conducting this survey online.

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 November (see attached). Total compliance investigations initiated in November 2007: 1,123; total investigations for FY'08: 6,353; total SWOs issued in

November: 31; total SWOs issued for FY'08: 130; total fines collected in November 2007: \$22,994; total fines collected in FY'08: \$163,615; total fines collected in FY'07: \$400,753.

General Counsel William Tattan explained that the numbers in the Investigations Unit are down due to recent structural changes in the unit. The General Counsel stated that they are still in the process of cross-training the investigators from both the Trust Fund and Investigations Unit. General Counsel Tattan stated that they have hired one new investigator and have a second investigator that they have selected and are attempting to hire. He also noted that the DIA is considering adding more investigators in the future.

Mr. Taupier continued the update of the monthly vital statistics. Total number of cases filed for November 2007: 997; total number of cases filed for FY'08 (to date): 6,140; total number of cases filed for FY'07: 15,149; total number of First Report of Injury Forms (FRI) filed for November 2007: 2,365; total number of FRI filed online for November 2007: 682 (29%); total number of FRI filed for FY'08 (to date): 14,061; total number of FRI filed for FY'07: 33,476; total number of FRI filed online in FY'07: 8,910.

Mr. Taupier proceeded with his update on uninsured claims (§65). Total number of §65 claims processed for FY'08 (to date): 82; total amount of §65 claims paid by the Trust Fund for FY'08 (to date): \$2,350,106; 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): \$6,907,544; total amount paid on these claims in FY'07: \$26,575,359; total monies recovered by the Trust Fund in FY'08 (to date): \$512,058; total monies recovered in FY'07: \$1,167,465; total COLA reimbursements to insurers in FY'08 (to date): \$301,794; total COLA reimbursements to insurers in FY'07: \$9.1 million.

Budget/Personnel Issues

Mr. Taupier reported that as of November 2007, the number of employees whose salary is paid by either the Special Fund or the Trust Fund was 266 (231 DIA employees, 35 WCTF employees). The DIA has no contract employees at this time. Two (2) 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): 1,138; total referrals to OEVR in FY'07: 2,839; total mandatory meetings in FY'08 (to date): 922; total mandatory meetings in FY'07: 2,282; total referrals to insurers in FY'08 (to date): 275; total referrals to insurers in FY'07: 706; total Individual Written Rehabilitation Plans (IWRP) approved in FY'08 (to date): 179; total IWRPs approved in FY'07: 428; total number of Return to Work (RTW) in FY'08 (to date): 73; total number of RTW in FY'07: 176; total number of IWRPs completed with no RTW in FY'08 (to date): 58; total number of IWRPs completed with no RTW in FY'07: 152.

Chairman Corcoran recognized former Council Member, Carol Falcone, who requested to speak on behalf of the vocational rehabilitation (VR) providers.

Ms. Falcone stated that she was attending today's meeting with several of her colleagues to offer their guidance and expertise to the administration. Ms. Falcone explained that several years ago the VR community had met on a regular basis with the administration to improve and enhance the relationship between the Office of Education and Vocational Rehabilitation (OEVR) and the provider community. Ms. Falcone stated that this OEVR Advisory Group reviewed the VR system and provided several recommendations to enhance the delivery of services. Ms. Falcone noted that the prior administration prematurely disbanded the Advisory Group before recommendations could be fully implemented.

Ms. Falcone stated that one of the problems providers are currently having is that OEVR is setting up meetings for the injured worker either too early or too late and as a result the employee is being rejected by the insurer for vocational rehabilitation. Ms. Falcone suggested that a new subcommittee be created to address past recommendations that were never implemented and to identify new issues that need to be addressed. She explained that Massachusetts is a wage replacement state and vocational rehabilitation is a good way to motivate the employee and get them back in the job market.

Chairman Corcoran concurred that OEVR was a worthwhile program and stated that dialogue between experts in the field would be a great way of improving the VR system.

ACTION ITEMS

Chairman Corcoran asked for a motion to accept the Minutes for October 10, 2007.

Motion made to accept the Minutes for October 10, 2007.

MMS - Passed.

Chairman Corcoran asked for a motion to accept the Minutes for November 19, 2007.

Motion made to accept the Minutes for November 19, 2007.

MMS - Passed.

FISCAL YEAR 2007 CONCERNS & RECOMMENDATIONS

Executive Director Andrew Burton explained that Council Members should have received in the mail a draft copy of the Fiscal Year 2007 Annual Report. The Executive Director stated that included in the report was a draft of the Fiscal Year 2007 Concerns & Recommendations. Mr. Burton explained that the concerns and recommendations should highlight areas in the workers' compensation system that are in need of attention and set the agenda for the Advisory Council for the coming year. The Executive Director reviewed each concern and recommendation with Council Members.

Employee Misclassification - Private Right of Action

The first concern and recommendation discussed was in regards to employee misclassification and the Private Right of Action legislation. Mr. Burton stated that during the 2007-2008 Legislative Session, the Advisory Council testified in support for the passage of **Senate Bill 1066**, filed by Senator Jack Hart. This bill would provide a vehicle for both private citizens and insurers to bring forth a civil action against employers who illegally fail to carry workers' compensation insurance or misclassify their workers for the purpose of avoiding premiums. The Executive Director noted that in fiscal year 2007 alone, the Trust Fund paid approximately \$6.9 million in workers' compensation benefits to uninsured claimants. Mr. Burton suggested to the Advisory Council that a recommendation could support the continued push for passage of **Senate Bill 1066**.

Council Member Mickey Long suggested that there needs to be a sentence in the first paragraph that expresses the urgent need to address this issue even though the overwhelming majority of employers purchase workers' compensation insurance and properly classify their employers.

Council Members agreed.

Uninsured Employers - Criminal Penalties

The next concern and recommendation discussed was in regards to uninsured employers in Massachusetts. The Executive Director explained that the Advisory Council had testified in support for the passage of **Senate Bill 1111** during the 2007-2008 Legislative Session. Executive Director Burton explained that this legislation would significantly increase the severity of criminal penalties for employers who fail to provide mandatory workers' compensation insurance for their employees. Mr. Burton noted that Advisory Council testimony further recommended that the Legislature consider amending this bill with a penalty provision that subjects repeat offenders to both minimum mandatory fines and imprisonment.

Chairman Corcoran suggested that language be added to point out that criminal penalties in Massachusetts are deficient when compared to most criminal statutes throughout the country.

Council Member John Regan also suggested that we thank the appropriate committee's who have acted on these bills and aim these legislative recommendations at the committee's where these bills are presently before.

Council Members agreed.

Increase DIA Trust Fund/Investigative Staffing

The next concern and recommendation discussed was in regards to assessing the benefits of increasing the investigative staff in both the Office of Investigations and the Trust Fund. The Executive Director described the uphill battle faced by both units in combating employer fraud due to the sheer nature of the underground economy. Executive Director Burton reviewed this recommendation with Council Members and noted that the Advisory Council would closely monitor the fiscal year 2009 budget process to ensure that adequate funding is available.

Scar-Based Disfigurement Benefits

The next concern and recommendation discussed was in regards to supporting **Senate Bill 2289** which would provide compensation for scar-based disfigurement benefits appearing on any part of the body, subject to a \$15,000 maximum benefit. The Executive Director noted that the Advisory Council had previously testified in support for similar legislation during the 2007-2008 Legislative Session. Executive Director Burton reviewed the two studies the Advisory Council commissioned in an attempt to measure the cost associated with restoring this benefit. Mr. Burton noted that although past studies have been unsuccessful at measuring the precise

costs associated with scar-based disfigurement benefits, the Council could continue to advocate for the passage of **Senate Bill 2289**.

Council Members agreed.

Maximum Burial Allowance

The next concern and recommendation discussed was in regards to the Advisory Council's past support for increasing the maximum burial allowance from \$4,000 to eight times the State Average Weekly Wage. The Executive Director explained that shortly after the May 15, 2007, legislative hearing on workers' compensation legislation, the Joint Committee on Labor & Workforce Development reported out favorably **House Bill 4170** which would require an insurer to pay for burial expenses when a worker has died, not to exceed \$8,000. Executive Director Burton suggested that the Council could recommend the passage of **House Bill 4170** to ensure that there is sufficient compensation available to the families of those workers killed on the job so that they may be honored with a respectful burial.

Council Members agreed.

Medical Fee Schedule Task Force

The next concern and recommendation discussed was in regards to creating a Medical Fee Schedule Task Force similar to the one created in Rhode Island. The Executive Director explained how various interests were able to come together in Rhode Island to produce a fee schedule that accurately reflects the costs incurred by health care providers. Executive Director Burton stated that the recommendation could state that the Department of Industrial Accidents work with the Division of Health Care Finance and Policy on establishing 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.

Chairman Corcoran reminded the Council Members that this recommendation was very important as Massachusetts has the second lowest fee schedule in the country. He stated that many physicians no longer want to treat injured workers because the fee schedule is too low.

Chairman Corcoran asked for a motion to approve the draft annual report with the proposed changes made at today's meeting.

Motion made to accept the draft annual report with the proposed changes made at today's meeting.

MMS - Passed.

EXECUTIVE DIRECTOR UPDATE

The Executive Director stated that in each package Council Members would find WCRIB's Circular Letter No. 2071 - *Audit Guidelines for Sole Proprietor and Partnership Certificates of Insurance*. Mr. Burton reported that the DIA had provided input to the Division of Insurance and the WCRIB to establish finalized guidelines. Mr. Burton noted that the Circular Letter also thanked the Advisory Council for encouraging these parties to work together in establishing finalized guidelines that would ensure as many workers as possible would be covered under the workers' compensation system.

Mr. Burton noted that an article from the Workers' Compensation Report had been included in each package that discussed the status of Second Injury Funds throughout the country. The Executive Director reviewed the article with Council Members and suggested that the Advisory Council consider reviewing the financial condition of the DIA's Second Injury Fund as an agenda item in 2008.

Chairman Corcoran requested that Senior Judge Carroll begin providing the Advisory Council Members with a quarterly list of outstanding judicial decisions that exceed the six (6) month period.

Chairman Corcoran informed the Department that he was very glad that they had again joined the IAIABC as it is a great organization to network with.

Chairman Corcoran congratulated the new administration on their completion of their first full year and stated that he believed that they were doing a great job.

Chairman Corcoran noted that the Advisory Council would be going into Executive Session at this time.

MISCELLANEOUS

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

Motion made to move into Executive Session.

MMS - Passed.

Meeting adjourned at 11:15 a.m.

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