

**Massachusetts Workers' Compensation  
Advisory Council Minutes**

December 9, 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; John Regan; Teri McHugh; Antonio Frias (Ines Leonardo); George Noel, Director of Labor.*

*Also Present: Commissioner Paul Buckley; William Tattan, Deputy Commissioner and Chief Legal Counsel; William Taupier, First Deputy Director of Administration; Jack Defina, Chief Financial Officer; Ray Marchand, Director of Investigations; Karen Grippen, Stenographer Manager; Tom Jones, Department of Labor; Paul Meagher, WCRIB; Ellen Keefe, WCRIB; Michael Kelley, AIM Mutual Insurance Company; William Monnin-Browder, JCLWD; Kate Flanagan, JCLWD; John Keefe, Esq.; Paul C. Kelly, Esq.; Bernie Mulholland, Esq.; Deborah G. Kohl, Esq.*

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

*Absent: CM: David Powell; Antonio Frias (Ines Leonardo); William T. Corley; Dennis Hines; John Pulgini; Kenneth J. Paradis, Jr.; Peter A. Cook, Sr.; Department of Business Development.*

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Agenda:

Chairman's Welcome

DIA Update

- Vital Statistics - William Taupier, Deputy Director of Administration

DIA Budget Update

Digital Recording Project - Karen Grippen, Stenographer Manager

Action Items

- Minutes - October 14, 2009

Classification Request Form

FY'09 Annual Report - Discussion and Vote

Executive Director Update

Miscellaneous

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## **CHAIRMAN'S WELCOME**

Chairman Mickey Long began today's meeting at 9:00 a.m.

The Chairman requested that Mr. William Taupier provide the DIA update.

## **DIA UPDATE**

### Judicial Update

Mr. William Taupier updated Advisory Council Members on the information contained within the DIA's vital statistic report for December 2009 (see attached). Conference Queue: 78; Hearing Queue: 588; Reviewing Board Inventory: 80; Impartial Exams for FY'10 (to date): 2,286 (19 waivers); Exam Fees Collected for FY'10: \$759,525. In fiscal year 2009 there were 5,069 Impartial Medical Examinations (64 waivers); Exam Fees Collected in FY'09: \$1,789,076.

### 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 262

SWOs in November (30 SWOs were reissued as the result of defaults of previous orders); total SWOs issued in FY'10 (to date): 1,506. Fine collection for November 2010: \$62,200; total fines in FY'10: \$405,200; SWOs issued in FY'09: 3,484; total fines collected in FY'09: \$885,980; compliance checks for November 2009: 4,047; estimated number of workers now covered by workers' compensation insurance as the result of a SWO: 3,762 (FY'10).

Vice-Chairman Corcoran asked whether the Underground Economy Task Force initiative is taking time away from DIA investigators from conducting stop work order investigations.

Ray Marchand stated that he does not believe that is the case. Mr. Marchand stated that although the majority of the Task Force's complaints are wage & hour cases, his investigators conduct a workers' compensation compliance investigation on every case.

Commissioner Paul Buckley stated that the agency is focusing its attention on the Office of Investigations to ensure that all personnel are dedicating their time to DIA objectives and functions.

Mr. Taupier continued the update of the monthly vital statistics. Total number of cases filed in November 2009: 896; total number of cases filed in FY'10 (to date): 5,322; total number of cases filed in FY'09: 13,806; total number of First Report of Injury Forms (FRI) filed in November 2009: 2,131; total number of FRI filed online in November 2009: 610 (29%); total number of FRI filed in FY'10 (to date): 12,673 (3,681 online); total number of FRI filed in FY'09: 31,216 (8,048 online). Mr. Taupier proceeded with his update on uninsured claims (§65). Total number of §65 claims processed in FY'10 (to date): 53; total amount of §65 claims paid by the Trust Fund in FY'10 (to date): \$2,194,988; 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.

Chairman Mickey Long requested that the DIA identify the number of serious injuries the Trust Fund receives that result in lifetime payouts. The Chairman suggested that this information could be persuasive when discussing the cost of Trust Fund claims with the legislature.

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): \$4,752,811; total amount paid on these claims in FY'09: \$24,078,327; total monies recovered by the Trust Fund in FY'10 (to date): \$245,644; total monies recovered in FY'09: \$1,410,782; total COLA reimbursements to insurers in FY'10 (to date): \$3,885,843; 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 278 (227 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): 979; total referrals to OEVR in FY'09: 2,334; total mandatory meetings in FY'10 (to date): 753; total mandatory meetings in FY'09: 1,913; total Determinations of Suitability (DOS) in FY'10 (to date): 509; total DOS in FY'09: 1,286; total referrals to insurers in FY'10 (to date): 246; total referrals to insurers in FY'09: 627; total Individual Written Rehabilitation Plans (IWRP) approved in FY'10 (to date): 137; total IWRPs approved in FY'09: 404; total number of Return to Work (RTW) in FY'10 (to date): 44; total number of RTW in FY'09: 106; total number of IWRPs completed with no RTW in FY'10 (to date): 44; 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): \$1,703,814; total referral fees collected in FY'09: \$4,122,040; total first report fines in FY'10 (to date): \$55,700; total first report fines in FY'09: \$234,770; total assessment collections in FY'10 (to date): \$35,909,677; total assessment collections in FY'09: \$73,767,639; total SWO fines in FY'10 (to date): \$632,066; total SWO fines in FY'09: \$1,369,954.

### Judicial Update

Senior Judge Carroll reported that the Impartial Unit has made great strides in recruiting Impartial Physicians. The Senior Judge attributed this to the hard work done by the Impartial Unit's manager, Sandra Gildea. The Senior Judge stated that there are approximately 250 physicians currently on the list, representing 33 specialties. The Senior Judge explained that the Impartial Unit is continually working to increase the Impartial Physician Roster, especially in the Western part of the state.

Senior Judge Carroll stated that the DIA would soon begin advertising for the 2010 judicial vacancies. The Senior Judge indicated that the notices would be placed on the DIA's website and in Lawyers Weekly. The Senior Judge stated that applications would be due in January and that interviews would begin in February or March.

Vice-Chairman Corcoran acknowledged the hard work that Senior Judge Carroll has provided to the DIA and thanked her for being so forthright with the Advisory Council on addressing judicial issues.

### DIA Budget Update

Executive Director Andrew Burton updated the Council Members on the budget. The Executive Director stated that since the signing of the 2010 General Appropriations Act, the DIA's budget has been reduced by nearly \$1 million by vetoes and section 9C cuts. The Executive Director

explained that the cuts were made as a result of a projected \$600 million shortfall in General Fund revenues. Mr. Burton stated that there continues to be a misunderstanding on how the DIA is funded.

Council Members voiced concern about the recent budget cuts and the prospect for deeper cuts in the near future. Council Member John Regan asked whether employers will receive a reduction to their assessments as a result of the mid-year reductions.

The Executive Director explained that all unspent monies collected from assessments on employers are retained in the DIA's accounts and are not reverted to the General Fund. However, Mr. Burton stated that it does not necessarily mean that employers will see an immediate impact to their assessment rates. The Executive Director explained that fund balances are only used to reduce the assessment rate when they contain amounts that are greater than 35% of the previous year's expenditures. He noted that during the FY'10 assessment process, the funds did not exceed this threshold and therefore were not used in determining the assessment on employers.

Council Members stated that it was imprudent to cut the budget without providing relief to employers who fund the agency. The Advisory Council members suggested that a letter be drafted to inform parties of the DIA's unique funding mechanism.

Motion made to authorize the Executive Director to draft a letter to the Governor and the Secretary of Administration & Finance to express the Council's deep concern on how the DIA's line-item is treated during the Commonwealth's budget process. Motion Seconded and Passed.

The Executive Director stated that he would send all council members a copy of the draft letter for comments and approval before its distribution.

#### Digital Recording Project

Ms. Karen Grippen, Stenographer Manager, provided a brief overview of the digital recording project. She noted that during the last year, the DIA has been looking at new technologies to determine whether stenographic services could be enhanced and streamlined. At the conclusion of an RFR process, the agency awarded a contract to a local company, Dictronics, to conduct testing in DIA courtrooms. The vendor has provided training on multiple occasions to the stenographers and judges in both Boston and the regional offices. Although testing has been conducted, Ms. Grippen noted that the equipment has not yet been used to record the official record of an actual hearing.

Ms. Grippen stated that the agency has been practicing with the equipment to determine the proper microphone placement to ensure a quality record can be produced. She noted that the equipment is a stand-alone unit that is networked onto the DIA servers. She explained that each unit comes with 8 microphones that record on four distinct channels. Ms. Grippen noted that the channels allow a stenographer the ability to isolate the voices of an individual speaker when multiple parties are talking at the same time.

Council Member Teri McHugh asked what the turnaround time would be for a transcript and whether DIA employees would be conducting the transcription.

Ms. Grippen stated that the transcription process would still be conducted in-house and that she does not anticipate it taking any longer than the present process.

Chairman Long asked whether the audio record would be a public document and subject to the public records law.

Ms. Grippen stated that one her recommendations to the agency is that there needs to be a determination made on whether the audio files are subject to the public records law. Releasing this file to the public would be very easy to accomplish as the files can be compressed so that 22 hours of audio can be placed on a compact disk.

Commissioner Buckley stated that he believes the audio files would be subject to the public records law upon the rendering of a decision by an Administrative Judge.

Chairman Long stated that he had been advised of several concerns regarding digital transcription from former Council Member Alan Pierce. The Chairman shared one of these concerns regarding the potential for additional courtroom costs.

Ms. Grippen stated that beyond the initial purchase of equipment, she does not anticipate any additional courtroom costs because the current stenographers will be running the equipment.

### **ACTION ITEMS**

Chairman Long asked for a motion to approve the minutes for October 14, 2009.

Motion made to approve the minutes for October 14, 2009. Motion Seconded and Passed.

### **CLASSIFICATION REQUEST FORM**

Chairman Mickey Long reported on the current status on the Classification Request Form that the Advisory Council recommended be implemented by the DIA and the WCRIB. The Chairman stated that the DIA had expressed concern about hosting this form due to possible budget cuts and the fact that DIA investigators do not currently conduct misclassification investigations. Chairman Long noted that during recent discussions with the WCRIB, a solution was devised to place the form on the WCRIB's website.

WCRIB President, Paul Meagher, stated that the WCRIB would cooperate with the DIA in combating employer fraud and place the Classification Request Form on their website upon receiving a written request from the agency.

### **FY'09 ANNUAL REPORT - DISCUSSION & VOTE**

Executive Director Burton stated that Council Members should have received in the mail a draft of the Fiscal Year 2009 Annual Report. He explained that one of the most important pieces in the report was the "Concerns and Recommendations" section. Executive Director Burton read out loud two suggested revisions in this section proposed by Council Member John Regan.

Council Member Stephen Joyce stated that he would also like to provide a revision to the Executive Director to ensure that readers are aware of the public/private partnership between the DIA and the WCRIB in developing the online Proof of Coverage tool to fight employer fraud.

Motion made to accept the Fiscal Year 2009 Annual Report with the proposed revisions made by Council Members Regan and Joyce. Motion Seconded and Passed.

Executive Director Burton stated that his goal is to have the Annual Report ready for distribution at the January 13, 2010 Advisory Council meeting.

### **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, January 13, 2010, at 9:00 AM, at the Department of Industrial Accidents, 600 Washington Street, 7<sup>th</sup> Floor Conference**