

**Massachusetts Workers' Compensation
Advisory Council Minutes**

February 11, 2009
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 Regan; John Pulgini; John D. Boyle (Teri McHugh); Peter A. Cook, Sr. (Melody Barlow); William Corley; Antonio Frias (Inez Leonardo); George Noel, Department of Labor.

Also Present: DIA: William Tattan, Deputy Commissioner and General Counsel; Martine Carroll, Senior Judge; William Taupier, First Deputy Director of Administration; Jack Defina, Director of Accounting & Finance; Ray Marchand, Director of Investigations; Kathy Manson, Director of Safety; Aalana Feaster, Manager, Office of Insurance; Ellen Keefe, WCRIB; Michael Kelley, AIM Mutual Insurance Company.

Advisory Council Staff: Andrew Burton; Evelyn Flanagan.

Absent: CM: Peter A. Cook, Sr.; David Powell; Dennis Hines; Kenneth J. Paradis, Jr.; Department of Business Development.

Agenda:

Chairman's Welcome

DIA Update

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

Action Items

- Minutes - January 14, 2009

Self Insured Bond Requirements - Revised Calculation

- Aalana Feaster, Manager - Office of Insurance

Information Exchange Subcommittee Update - Vice-Chairman, Mickey Long

Executive Director Update

Miscellaneous

CHAIRMAN'S WELCOME

Chairman Edmund C. Corcoran, Jr., began today's meeting at 9:00 a.m. 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 February 2009 (see attached). Conference Queue: 352; Hearing Queue: 767; Reviewing Board Inventory: 143; Impartial Exams for FY'09 (to date): 3,003 (34 waivers); Exam Fees Collected for FY'09: \$1,078,300. 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 average waiting period for a conference is between six and eight weeks. The Senior Judge stated that several attorneys have expressed concern that the time period between conciliation and conference is too quick. The Senior Judge noted that if conferences occur too quickly, there may not be adequate time for the employee's medical reports to be completed.

Senior Judge Carroll reported that in September of 2009, Judge Heffernan's term will expire. The Senior Judge informed the Council Members that they would be addressing this matter in the spring. She reminded Council Members that in 2010 there would be 13 judges up for reappointment.

The Senior Judge stated that one of the indications of the difficult economic times is that the DIA is beginning to see employee applications to authorize and approve the transfer of workers' compensation lump sum structured settlement payments in exchange for immediate cash payments. The Senior Judge referred to one of her recent findings in relation to a particular application that was denied. The Senior Judge stated that she would provide a copy of this decision to the Advisory Council.

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 248 SWOs in January 2009 (5 SWOs were reissued as the result of defaults of previous orders); total SWOs issued in FY'09 (to date): 1,749. Fine collection for January 2009: \$47,580; total fines in FY'09: \$382,230; SWOs issued in FY'08: 1,929; total fines collected in FY'08: \$437,900; compliance checks for December 2008: 3,194; estimated number of workers now covered by WC insurance as the result of a SWO: 4,788 (FY'09).

Chairman Corcoran referred to a newspaper article that described how California had recently targeted restaurants in a workers' compensation coverage sweep. The Chairman reported that 29 investigators had targeted over 200 restaurants and found that 129 were without proper coverage. Chairman Corcoran suggested that DIA investigators may want to take a close look at the restaurant industry in Massachusetts.

Director of Labor, George Noel, referred to California's Joint Task Force that was created in the early nineties and has evolved into ten major anti-fraud divisions. The Director noted that one of the divisions focuses directly on the restaurant industry. Director Noel explained that the California's Task Force was examined closely when developing the Joint Task Force in Massachusetts.

Mr. Taupier continued the update of the monthly vital statistics. Total number of cases filed in January 2009: 1,087; total number of cases filed in FY'09 (to date): 7,965; total number of cases filed in FY'08: 14,464; total number of First Report of Injury Forms (FRI) filed in January 2009: 2,790; total number of FRI filed online in January 2009: 787; total number of FRI filed in FY'09 (to date): 16,300 (4,576 filed online - 28%); total number of FRI filed in FY'08: 32,794; total number of FRI filed online in FY'08: 9,199 (28%).

Council Member Stephen Joyce expressed caution that DIA may see a short-term spike in claims as a result of the difficult economic times. He stated that as employers look for ways to tighten their budgets and do more with fewer resources, there tends to be less emphasis placed on workplace safety.

Mr. Taupier proceeded with his update on uninsured claims (§65). Total number of §65 claims processed in FY'09 (to date): 90; total amount of §65 claims paid by the Trust Fund in FY'09 (to date): \$3,426,891; 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): \$12,034,014; total amount paid on these claims in FY'08: \$20,725,671; total monies recovered by the Trust Fund in FY'09 (to date): \$795,064; total monies recovered in FY'08: \$1,202,747; total COLA reimbursements to insurers in FY'09 (to date): \$16,617,107; total COLA reimbursements to insurers in FY'08: \$4.0 million.

Deputy Commissioner and General Counsel, William Tattan, stated that he anticipates the DIA will see an increase in COLA reimbursements for fiscal year 2009. Mr. Tattan indicated that a new manager was recently hired to work exclusively on COLA reimbursements.

Budget/Personnel Issues

Mr. Taupier reported that as of January 2009, the number of employees whose salary is paid by either the Special Fund or the Trust Fund was 285 (236 DIA employees, 49 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): 1,319; total referrals to OEVR in FY'08: 2,828; total mandatory meetings in FY'09 (to date): 1,077; total mandatory meetings in FY'08: 2,281; total Determinations of Suitability (DOS) in FY'09: 692; total DOS in FY'08: 1,634; total referrals to insurers in FY'09 (to date): 385; total referrals to insurers in FY'08: 647; total Individual Written Rehabilitation Plans (IWRP) approved in FY'09 (to date): 254; total IWRPs approved in FY'08: 417; total number of Return to Work (RTW) in FY'09 (to date): 78; total number of RTW in FY'08: 163; total number of IWRPs completed with no RTW in FY'09 (to date): 53; total number of IWRPs completed with no RTW in FY'08: 134.

Vice-Chairman Mickey Long expressed frustration over the practice of some unscrupulous employers in the construction industry that will offer modified or light duty work to an injured employee and then lay them off several weeks later. Mr. Long stated that he believes there needs to be more incentives for employers to retain injured workers and to provide modified work duties.

Chairman Corcoran stressed that he would like to see OEVR facilitate the return to work sooner with all the parties even if the employee is still in rehabilitation.

Office of Safety Update

Chairman Corcoran introduced Ms. Kathy Manson, the newly hired Director of the Office of Safety.

Ms. Manson stated that one of her first initiatives was to review the Safety Grant application process to make it less cumbersome and more user-friendly. Ms. Manson noted that the grant application has been streamlined and is now only five pages long. She indicated that she has set a goal to have all grant applications submitted electronically by 2011.

Ms. Manson informed the Council that the Office of Safety is in the process of creating a Youth Safety video with Plymouth Rock Studios to educate young students about their workplace rights and responsibilities before they enter the workforce. She stated that the Office of Safety is also working with at-risk students in alternative school settings by offering OSHA-10 and OSHA-11 trainings.

Ms. Manson displayed three safety pamphlets which are being developed by the Office of Safety. She indicated that the pamphlets focus on the most common workplace injuries and will be distributed to cities and towns. Director Manson stated that the pamphlets will be available in four different languages.

Ms. Manson stated that the Office of Safety would be conducting their first annual safety grant workshop for first time applicants on February 19, 2009 from 10:00 a.m. to 12:30 p.m. She stated that the workshop was developed to both educate and guide the applicants through the Safety Grant process. Ms. Manson noted that the Office of Safety has already received approximately 30 responses from groups planning to attend.

Ms. Manson stated that the Office of Safety continues to reach out to employers in high-risk industries. She noted that First Report of Injury statistics are analyzed to determine which occupations are considered "high risk." Ms. Manson stated that she is in the planning process of developing a future program whereby grant money can be targeted towards small businesses in Massachusetts.

Ms. Manson stated that the Office of Safety has recently had all of their training materials cataloged. For the future, she indicated that she would like to create an online safety library to provide the public with safety materials.

Vice-Chairman Mickey Long stated that he was pleased to see a number of Joint Apprenticeship Committees (JACs) receiving funds from the Safety Grant program. The Vice-Chairman stated that JACs often apply for grants on behalf of hundreds of small employers that can vary from year to year. Vice-Chairman Long asked the Office of Safety to keep this in mind when determining whether a JAC can apply for a safety grant during consecutive years.

Chairman Corcoran informed Ms. Manson that Liberty Mutual has a Research Institute for Safety in Hopkinton, Massachusetts. The Chairman noted that their research studies could be a great resource for the Office of Safety.

ACTION ITEMS

Chairman Corcoran asked for a motion to accept the Minutes for January 14, 2009.

Motion made to accept the Minutes for January 14, 2009.

MMS - Passed.

SELF INSURED BOND REQUIREMENTS - REVISED CALCULATIONS

Ms. Aalana Feaster, Manager of the Office of Insurance, updated the Council on the development of a revised calculation method for self insured bond requirements. Ms. Feaster gave a brief history of the self insurer program and reviewed the present requirements to self insure in Massachusetts. She stated that there are presently 120 parent self-insurance companies with over 500 subsidiaries that fall under them. Ms. Feaster explained that the statute requires the DIA to review the liabilities of each self insurer on an annual basis.

Ms. Feaster explained that for an employer to qualify to self insure, the employer must post a surety bond or negotiable securities to cover any losses that may occur. In order to calculate the bond amount, the DIA analyzes a company's previous incurred losses and the projected losses to be incurred. Ms. Feaster explained that the Office of Insurance will request that a company submit their most recent annual report which is used in determining the bond amount.

Ms. Feaster stated that the DIA hired Deloitte Consulting to develop a non-subjective method for determining self insured bond requirements using the most up to date actuarial tools and analysis. She noted that the agency is taking this step to insure a fair, equitable, and determinable process that self insured companies can rely on for accurate scientific methodology. Ms. Feaster stated that the DIA will conduct semi-annual reviews of a self insured's liabilities and will make adjustments to bond amounts when applicable.

Deputy Commissioner Bill Tattan spoke on behalf of Commissioner Paul V. Buckley who was unable to attend today's meeting. The Deputy Commissioner stated that it was important to the administration to introduce fairness into the calculation process for self insured bond amounts. He noted that after studying the current calculation process, they were unable to determine the reasoning behind the \$1 million threshold that had been used in the past. Mr. Tattan stated that under the revised calculation method, some companies may see an increased bond amount, while others may experience a decrease.

Vice-Chairman Mickey Long asked if self insurance groups in Massachusetts would be subject to the same bond calculation process as those companies that self insure.

Ms. Feaster stated that the Division of Insurance regulates the licensing procedures for self insurance groups and therefore would not be subject to the same calculation process.

INFORMATION EXCHANGE SUBCOMMITTEE UPDATE

Vice-Chairman Mickey Long gave a brief update on the Information Exchange Subcommittee's first meeting. The Vice-Chairman stated that the subcommittee would be working to improve the flow of information between the WCRIB and the DIA, as well as improving information sharing with the general public.

Vice-Chairman Long referred to a letter from Commissioner Buckley which was addressed to President Paul Meagher from the WCRIB. The letter summarized the present agreement between the DIA and the WCRIB to work together in developing an online proof of coverage application that would be available to the public. Vice-Chairman Long stated that the subcommittee is still discussing the appropriate level of policy detail that will be shared online. He noted that the subcommittee has plans to meet again on February 19, 2009.

Attorney Ellen Keefe stated that the WCRIB's Governing Committee has agreed to cooperate with the DIA in building an online Proof of Coverage application. She stated that the information that would be shared with the public would include: employer name and address, carrier name and address, policy effective date, policy expiration date, and policy number. Attorney Keefe noted that the Governing Committee did have concerns with sharing additional policy information such as: number of employees, payroll amounts, classification codes, and producer information.

Executive Director Andrew Burton stated that the key to the online proof of coverage application would be the referral link which would enable the public to refer suspected cases of fraud to the Office of Investigations, the Insurance Fraud Bureau, or the Joint Task Force on the Underground Economy. The Executive Director noted that the online application will generate a higher quality of referrals.

EXECUTIVE DIRECTOR UPDATE

Executive Director Burton stated that he had testified on behalf of the Advisory Council at yesterday's public hearing on proposed amendments to the workers' compensation medical fee schedule. The Executive Director reported that 15 individuals had testified at the hearing and that there was overwhelming support for the proposed increases. The Executive Director stated that the Division of Health Care Finance & Policy will be closing

the hearing record on February 20, 2009. Any Advisory Council members interested in obtaining copies of the submitted testimony should contact him.

Executive Director Burton stated that Governor Patrick had released his Fiscal Year 2010 House 1 Budget on January 28, 2009. The Executive Director reported that the House 1 line-item for the DIA was \$20,758,502, representing a 2.1% decrease from last year's General Appropriations Act. Mr. Burton stated that the Advisory Council's Budget Subcommittee will meet on Thursday, March 5, 2009 at 3:00 p.m.

Executive Director Burton updated Advisory Council members on legislative matters. He stated that although the 2009-2010 Legislative Session is five weeks old, there still have been no committee appointments. The Executive Director also reported that filed legislation has not been made available to the public due to a technical problem with the legislature's website.

Executive Director Burton referred to a recent article in The Standard that highlighted the Advisory Council's recommendations in the Fiscal Year 2008 Annual Report. Specifically, the article focused on the Advisory Council's recommendations towards combating employer fraud.

MISCELLANEOUS

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, March 11, 2009, at 9:00 AM, at the Division of Industrial Accidents, 600 Washington Street, 7th Floor Conference Room, Boston, MA 02111.