

**Massachusetts Workers' Compensation
Advisory Council Minutes**

February 13, 2008
Department of Industrial Accidents
600 Washington Street, 7th Floor
Boston, MA 02111

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

CM: William Corley; John D. Boyle (Teri McHugh); Stephen Joyce; Kenneth Paradis; Dennis M. Hines; Peter A. Cook (Karen Shanley); Department of Labor (Tom Jones); Department of Business & Technology (George Ramirez).

Also Present: DIA: Commissioner Paul V. Buckley; 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; John Zimini, Investigations Manager; Gayann Wilkinson, Manager of Safety; Kenneth T. Corbett, Manager of Safety Education Compliance; Maria Pesantes, Safety Program Coordinator; Karen Fabiszewski, Legal Counsel; Yvette Smith, Assessment Compliance Manager. Greg Shah, AIM Mutual.

Advisory Council Staff: Andrew Burton; Evelyn Flanagan.

Absent: CM: John Regan; John Pulgini; Tony Frias; David Powell; Stephen P. Falvey.

Agenda:

Chairman's Welcome

DIA Update

- Judicial Update - Martine Carroll, Senior Judge
- Vital Statistics - William Taupier, Deputy Director of Administration
- Underground Economy Task Force - Tom Jones, Deputy Director/Legal Counsel

- Office of Safety Update - FY'09 Safety Grants - Gayann Wilkinson

Action Items

- Minutes - December 12, 2007

Quarterly Assessment Audit Update

- Recap of Phase I and Phase II - Karen Fabiszewski
- Summary of Phase III - Yvette Smith

Executive Director Update

Miscellaneous

Executive Session

CHAIRMAN'S WELCOME

Chairman Edmund C. Corcoran, Jr., began today's meeting at 9:00 a.m. The Chairman introduced two new Council Members: Stephen Joyce, Labor Representative for the New England Carpenters Labor Management Program and Dennis M. Hines, Director of Occupational Health and International Travel Health at South Shore Hospital. Chairman Corcoran then congratulated Mickey Long on his appointment as Vice-Chairman of the Advisory Council, as well as his reappointment to the Council. Chairman Corcoran also congratulated Bill Corley on his appointment and further noted that two new Members were scheduled to attend the next meeting in March. Chairman Corcoran requested that Senior Judge Martine Carroll proceed with the judicial update.

DIA UPDATE

Judicial Update

Senior Judge Carroll reported that she has begun a performance review for Judge Catherine Koziol, which is required under the new guidelines as amended by Chapter 324 of the Acts of 2004. She noted that Judge Koziol is the first judge to be reviewed under the new law. Judge Carroll mentioned that she had used the same criteria to review Judge Koziol's performance as she used for reviewing other judges for reappointment.

Chairman Corcoran provided background to the new members regarding the law. He explained that the Council was instrumental in pushing through the legislation, which allowed the Senior Judge to conduct a performance review on all new judges after their first two years of service. The review process was put in place to catch and correct problems early since a judge's performance can drastically affect the system for both the employee and the employer.

Senior Judge Carroll informed the Council that she had noticed that there were 117 Review Board Pre-trial Conferences (PTCs) waiting to be heard. The Senior Judge explained that she enlisted the help of Judge McCarthy and Deborah Keefe to set up a schedule to hear PTCs in the regional offices. Senior Judge Carroll stated that this change has helped to reduce the PTC caseload down to 60.

Chairman Corcoran explained that periodically the Council requests that a list of judges with late decisions be provided. He noted that in the past, cases had to be retried when a judge did not keep up with their decision writing. The Chairman asked the Senior Judge if she felt that the criteria used for the late decision list needed to be redefined.

Senior Judge Carroll reported that there were many different reasons why a decision could be late. She suggested that perhaps it would be better to use the 'close date' to begin the count. She explained that tracking late decisions can at times be misleading because each case is unique.

Senior Judge Carroll informed the Council that the ALJ case appeals would now be heard by a panel of judges rather than one judge. She stated that if the parties are unhappy with a decision, they still have the option of appealing the case to the SJC.

Senior Judge Carroll reported that with respect to judicial appointments, she has not been forwarded any names from the Governor's Office.

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 January 2008 (see attached). Total compliance investigations initiated: 1,199; total investigations for FY'08: 8,690; total SWOs issued: 50; total SWOs issued for FY'08: 234; total fines collected in January: \$31,580; total fines collected in FY'08: \$217,456; total fines collected in FY'07: \$400,753.

With respect to the new report provided by the Investigations Unit, Vice-Chairman Mickey Long requested that Mr. Zimini provide further breakdown of the report, which would gage how many companies that were not in compliance came into compliance once they were contacted. Mr. Long suggested that a disposition category of "brought into compliance" be added to the investigation statistics.

Mr. Taupier continued the update of the monthly vital statistics. Total number of cases filed for January 2008: 1,325; total number of cases filed for FY'08 (to date): 8,547; total number of cases filed for FY'07: 15,149; total number of First Report of Injury Forms (FRI) filed for January: 3,142; total

number of FRI filed online: 869 (28%); total number of FRI filed for FY'08 (to date): 19,740; 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): 115; total amount of §65 claims paid by the Trust Fund for FY'08 (to date): \$3,366,892; 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): \$10,761,643; total amount paid on these claims in FY'07: \$26,575,359; total monies recovered by the Trust Fund in FY'08 (to date): \$643,754; total monies recovered in FY'07: \$1,167,465; total COLA reimbursements to insurers in FY'08 (to date): \$1,242,132; total COLA reimbursements to insurers in FY'07: \$9.1 million.

Budget/Personnel Issues

Mr. Taupier reported that as of January 2008, the number of employees whose salary is paid by either the Special Fund or the Trust Fund was 269 (234 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): 1,594; total referrals to OEVR in FY'07: 2,839; total mandatory meetings in FY'08 (to date): 1,278; total mandatory meetings in FY'07: 2,282; total referrals to insurers in FY'08 (to date): 363; total referrals to insurers in FY'07: 706; total Individual Written Rehabilitation Plans (IWRP) approved in FY'08 (to date): 247; total IWRPs approved in FY'07: 428; total number of Return to Work (RTW) in FY'08 (to date): 102; total number of RTW in FY'07: 176; total number of IWRPs completed with no RTW in FY'08 (to date): 91; total number of IWRPs completed with no RTW in FY'07: 152. Mr. Taupier reported to the Council Members that the DIA is currently examining the operations of OEVR in an effort to improve the unit. Mr. Taupier stated that he would keep the Advisory Council Members updated of the DIA's findings.

At this time, Chairman Corcoran invited staff members from the Governor's Office to join the meeting to swear-in the new Advisory Council Members.

Underground Economy Task Force

Chairman Corcoran introduced Tom Jones, Deputy Director and Legal Counsel for the Department of Labor.

Mr. Jones briefed the Council regarding the Governor's initiative to put in place a new Task Force to address the issue of the underground economy and to find effective ways to respond to this problem. Mr. Jones stated that one of the concerns and recommendations mentioned in the Advisory Council's FY'07 Annual Report was that there was no regulatory organization that could "exclusively place resources towards enforcing fraud associated with employee misclassification."

Mr. Jones reported that the Task Force would be headed by an Executive Director who would work with all agencies that are affected by the underground economy to ensure there is adequate communication and data sharing. The Task Force would be based at the DIA since they have a more sophisticated Investigative and Legal Unit. He also noted that this would be an operational position with the Executive Director reporting to the stakeholder community.

Council Member Steve Joyce added that he believed this Task Force would be instrumental in bringing uninsured companies into compliance, as well as reducing the cost of workers' compensation for the vast majority of employers who purchase insurance.

Vice-Chairman Long reminded the Council that the Private Right of Action legislation (S.1066) had been unanimously voted on by the Council and that a letter had been forwarded shortly afterwards to the Legislature indicating the urgency of passing the bill as soon as possible. Vice-Chairman Long stated that companies cheating would not be afraid of the Task Force, but would be more worried about a Private Right of Action where private litigants have discovery rights.

Office of Safety Update

Chairman Ed Corcoran introduced Gayann Wilkinson, Manager of the Office of Safety. Ms. Wilkinson introduced her staff: Kenneth T. Corbett, Compliance Officer and Maria Pesantes, Program Coordinator.

Ms. Wilkinson updated Council Members on the DIA Safety Training Grants. She emphasized outreach efforts by the Office that have targeted many of the protected classes ensuring they are educated. Ms. Wilkinson stated that they have begun an Advocate Program using American Sign Language which teaches the deaf to train the deaf.

Ms. Wilkinson informed the Council that another initiative is to promote Teen Safety Programs. She stated that they are in contact with Vocational Education teachers and are attempting to start a Teen Task Force. She stated that the Office of Safety has been working with the Department of Public Health and OSHA on this initiative.

Ms. Wilkinson stated that in order to benchmark the success of the Safety Grants they require vendors submit final reports one year after the completion of training. She stated that the success of the grant's initial investment is evident with the Town of Westfield, where they were paying \$354,000 in insurance before they received a grant and \$20,000 afterwards.

Ms. Wilkinson reported that they are performing outreach to cities and towns due to their aging workforce. Most have an aging workforce. She noted that the average age for the Department of Public Works is now 48 years old. She explained that they are finding with different ages they are seeing different types of injuries.

Council Member Ken Paradis suggested that the Office of Safety consider an Ergonomics Studies Certification Program. CM Paradis recommended that they develop a rigorous process whereby the ergonomic trainers would have to perform three or four training sessions for the Office before becoming certified. He indicated that this would allow the Office of Safety to stretch their dollars and benefit from having free training as well.

Ms. Wilkinson stated that the only state that certifies Ergonomic Studies is Colorado. Although it was an interesting concept, Ms. Wilkinson indicated that she was cautious when delivering grants for ergonomics. She explained that after training, most of the vendor companies do not invest in ergonomics equipment.

ACTION ITEMS

Chairman Corcoran asked for a motion to accept the Minutes for December 12, 2007.

Motion made to accept the Minutes for December 12, 2007.

MMS - Passed.

QUARTERLY ASSESSMENT AUDIT UPDATE

Chairman Corcoran introduced Karen Fabiszewski, Legal Counsel for the DIA.

Attorney Fabiszewski provided background information regarding the assessments. She noted that pursuant to c. 152, §65, both the Workers' Compensation Special Fund and the Workers' Compensation Trust Fund were established. Attorney Fabiszewski stated that both the Trust Fund and the Special Fund are funded by revenue that is generated from assessments that are levied on all employers.

Attorney Fabiszewski explained that the project was initiated in 1999 to ensure that accurate assessments were collected and then properly remitted to the DIA. She stated that the insurance companies calculate the assessment owed by the employer, collect the amount owed and then remit the money to the DIA. She reported that Phase I consisted of 77 individual companies and covered the period from July 1, 1996 to June 30, 1998. Upon completion of the audits, the DIA collected \$7.1 million as a result of underpaid assessments.

Attorney Fabiszewski reported that Phase II encompassed a review period from January 1, 1999 to December 31, 2003. Attorney Fabiszewski stated that Phase II consisted of 25 insurance carriers and their subsidiaries whereas Phase I did not include the subsidiaries. Attorney Fabiszewski noted that, at this time, approximately 10 reviews have been completed and the DIA has collected approximately \$800,000.

Attorney Fabiszewski indicated that these amounts collected should continue to decrease for a couple of reasons. The first reason was the problem with the definition of standard premium. She noted that this issue has been resolved and companies are now using the proper definition. The second reason was that the DIA has improved communication with the insurance companies. She stated that the DIA is now available for questions regarding calculations and remittance of assessments.

Attorney Fabiszewski reported that the DIA has also collected approximately \$1.9 million from conducting internal reviews, which totals \$9.5 million collected in both Phase I and Phase II of the project. Attorney Fabiszewski introduced Ms. Yvette Smith, Assessment Compliance Manager.

Ms. Yvette Smith stated that Phase III had just begun and will focus on assessments calculated and remitted during the review period January 1, 2004 to December 31, 2006. She noted that Phase III consists of five (5) insurers and 34 subsidiaries.

Chairman Corcoran thanked both Attorney Fabiszewski and Ms. Smith for the update. The Chairman also acknowledged former Council Member, Robert Banks (Local 7), who helped bring this issue to light.

EXECUTIVE DIRECTOR UPDATE

Executive Director Andrew Burton stated that the voting members would find a permanent proxy in their packets. Mr. Burton explained that the permanent proxy would secure their vote during any meetings they cannot attend.

The Executive Director stated that new legislative booklets had been placed in Council Members' packets. Mr. Burton stated that all bills endorsed by the Advisory Council had been highlighted on the first page. He informed the Council Members that they should contact Chairman Corcoran, Vice-Chairman Long, or himself if they would like to see any of the proposed legislation on the agenda.

Mr. Burton reported that Governor Patrick had released his FY'09 House 2 Budget Recommendations. He explained that contained in the Governor's budget was a line-item for the DIA that appropriated \$21,196,452 for operating expenses (a 2.2% increase from last year's final appropriation.) The Executive Director also noted that \$800,000 had been reserved in the budget for Occupational Safety Training Grants.

The Executive Director explained that the Advisory Council is empowered to evaluate both the DIA's annual operating budget and Trust Fund budget. Mr. Burton stated that the Advisory Council has the ability to recommend their own operating budget with an affirmative vote of seven Council Members. He stated that historically the Advisory Council has evaluated the budget by forming a Budget Subcommittee to sit down with the Accounting & Finance Director to review the previous year's collections and expenditures and compare it to the Governor's recommendation. Mr. Burton asked the three or four members volunteer to serve on the Budget Subcommittee.

Mr. Burton referred to a memo in the packets regarding transportation reimbursement for injured workers who seek medical treatment. He reported that the DIA's mileage reimbursement rate is currently 30 cents. He stated there is no statutory language that determines how the reimbursement rate be set in Massachusetts, but noted that it has historically been determined by the Commissioner of the DIA. The Executive Director further explained that all other New England States currently base their reimbursement rate on either one of two specific Federal indexes set by either the Internal Revenue Service (50.5 cents per mile) or the General Services Administration (48.5 cents per mile).

Commissioner Paul Buckley indicated that this issue was brought to the attention to the DIA through a Senate Ways and Means staff member. Commissioner Buckley had many staff members researching this issue to determine the proper amount. He stated that Mr. Bill Taupier had discovered a 2005 Circular Letter that had last increased the mileage reimbursement rates. Commissioner Buckley noted that the DIA is considering holding a Public Hearing on this topic.

MISCELLANEOUS

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

Motion made to adjourn.

MMS - Passed.

Meeting adjourned at 11:15 a.m.

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