

**Massachusetts Workers' Compensation
Advisory Council Minutes**

March 12, 2008

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

Present: Chairman Edmund C. Corcoran, Jr.

CM: John A. Pulgini; Tony Frias (Ines Leonardo); John Regan (Bradley A. Macdougall); Stephen Joyce; Stephen P. Falvey; David P. Powell; Kenneth J. Paradis, Jr.; Dennis M. Hines; Department of Labor (Stephanie Noguera).

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; Jack Defina, CFO; Michael Bradley, Executive Director of Underground Task Force; Diane Neelon, Director HCSB; Ellen Keefe, WCRIB; Laura Parsons, AIM Mutual Insurance Company.

Advisory Council Staff: Andrew Burton; Evelyn Flanagan.

Absent: CM: Vice-Chairman Mickey Long; William Corley; John D. Boyle; Peter A. Cook; Department of Business Development.

Agenda:

Chairman's Welcome

DIA Update

- Judicial Update - Martine Carroll, Senior Judge
- Vital Statistics - William Taupier, Deputy Director of Administration
- Underground Economy Task Force - Michael Bradley, Director

- Office of Health Policy Update - Diane Neelon, Director

Action Items

- Minutes - February 13, 2008

FY'09 Budget Subcommittee Update

Executive Director Update

Miscellaneous

CHAIRMAN'S WELCOME

Chairman Edmund C. Corcoran, Jr., began today's meeting at 9:00 a.m. The Chairman introduced Mr. Michael Bradley who serves as the Executive Director of the newly formed Task Force on the Underground Economy and Employee Misclassification.

Mr. Michael Bradley reported that the purpose of the Task Force was to develop policies and procedures which would help to eliminate unfair labor practices in the underground economy. Mr. Bradley noted that the underground economy is made up of individuals and businesses that willfully avoid labor, licensing and tax laws. Mr. Bradley briefly reviewed several deceptive business practices such as, the misclassification of employees, dealing in cash, and other "off-the-book" schemes.

Mr. Bradley informed the Council that the Task Force would consist of various state agencies, such as the Department of Industrial Accidents, the Department of Revenue, the Attorney General's Office, the Division of Occupational Safety, the Division of Unemployment Assistance, and other agencies affected by the underground economy. Mr. Bradley noted that the Director of Labor would be heading the Task Force and that his responsibility would be to serve as liaison between all the agencies.

Commissioner Paul V. Buckley stated that Mr. Bradley would have approximately 90 investigators from all participating state agencies at his disposal. The Commissioner informed the Council that the Task Force would be similar to the Task Force created in New York State. Commissioner Buckley mentioned that he and Mr. Bradley had recently participated in a conference call with the New York Task Force and they have agreed to assist Massachusetts whenever possible.

Commissioner Buckley informed the Council that the DIA had begun to make changes in the stop work order (SWO) investigation process. The Commissioner noted that DIA investigators had recently been sent out in teams which resulted in the successful issuance of 77 SWOs in a three day period.

Chairman Corcoran introduced two new members of the Advisory Council: Mr. David P. Powell, representing the interests of business and Mr. Stephen P. Falvey, representing the interests of labor.

Chairman Corcoran asked Senior Judge Carroll to begin her Judicial Update.

DIA UPDATE

Judicial Update

Senior Judge Carroll informed Council Members that Cheryl A. Jacques had been interviewed by the Governor's Council and that they would vote on her nomination in a week. The Senior Judge explained that Administrative Judge Herbert Dike's judicial term would end on July 5, 2008 and that Judge Dike would be seeking reappointment. The Senior Judge stated that the DIA will be advertising for both an Administrative Judge and Administrative Law Judge position in Lawyers Weekly. She stated that applications must be submitted by April 11, 2008.

Senior Judge Carroll reported that all Judges would be participating in a Judicial Training Session on June 19 and June 20. She explained that this was a great forum for all the judges to exchange ideas.

The Senior Judge informed the Council that they are close to hiring a manager to oversee the Impartial Medical Unit. She explained that in the interim, Sandy Gildea (Stenographer Manager) and Douglas Sears (Deputy Director, Division of Dispute Resolution) had done a great job.

Tim McMahon, Deputy Commissioner of Administration, updated the Council Members on the Fall River regional office. Mr. McMahon stated they had been actively pursuing another location due to extensive water damage. The Deputy Commissioner explained that the DIA had expedited this process and will be moving to a new office location in Fall River on April 1, 2008.

Mr. Bill Taupier updated Advisory Council Members on the information contained within the DIA's vital statistic report for March 2008 (see attached). Conference Queue: 676; Hearing Queue: 1,213; Reviewing Board Inventory: 172; Impartial Exams for FY'08 (to date): 3,306 (67 waivers). In fiscal year 2007 there were 5,246 Impartial Medical Examinations (202 waivers).

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 February 2008 (see

attached). Total compliance investigations initiated: 1,077; total investigations for FY'08: 9,767; total SWOs issued: 68; total SWOs issued for FY'08: 302; total fines collected in February: \$19,262; total fines collected in FY'08: \$236,718; total fines collected in FY'07: \$400,753.

Mr. Taupier continued the update of the monthly vital statistics. Total number of cases filed for February 2008: 1,020; total number of cases filed for FY'08 (to date): 9,567; total number of cases filed for FY'07: 15,149; total number of First Report of Injury Forms (FRI) filed for February: 2,525; total number of FRI filed online: 665 (26%); total number of FRI filed for FY'08 (to date): 22,265; 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): 124; total amount of §65 claims paid by the Trust Fund for FY'08 (to date): \$3,913,678; 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): \$11,945,484; total amount paid on these claims in FY'07: \$26,575,359; total monies recovered by the Trust Fund in FY'08 (to date): \$729,342; total monies recovered in FY'07: \$1,167,465; total COLA reimbursements to insurers in FY'08 (to date): \$1,320,011; 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 271 (236 DIA employees, 35 WCTF employees). The DIA has no contract employees at this time. Two (2) temporary employees 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): 1,842; total referrals to OEVR in FY'07: 2,839; total mandatory meetings in FY'08 (to date): 1,484; total mandatory meetings in FY'07: 2,282; total referrals to insurers in FY'08 (to date): 429; total referrals to insurers in FY'07: 706; total Individual Written Rehabilitation Plans (IWRP) approved in FY'08 (to date): 275; total IWRPs approved in FY'07: 428; total number of Return to Work (RTW) in FY'08 (to date): 114; total number of RTW in FY'07: 176; total number of IWRPs completed with no RTW in FY'08 (to date): 99; total number of IWRPs completed with no RTW in FY'07: 152.

OFFICE OF HEALTH POLICY UPDATE

Chairman Corcoran introduced Diane Neelon, Director of the Office of Health Care Policy. Chairman Corcoran noted that Ms. Neelon is fairly new to the Department and that she would be providing an update of her unit's activities.

Ms. Neelon informed the Council that in 1993, the Office of Health Policy was created to approve and monitor the utilization review (UR) programs to ensure they complied with the requirements of the law. Ms. Neelon mentioned that the office has approximately 38 agents with approximately half operating in Massachusetts. She reported that she has made 14 site visits, including to UR agents located in other states. Ms. Neelon stated that site visits are necessary because they are finding that agents are not performing the work promised on their applications.

Ms. Neelon explained that some agents were not following the UR guidelines. She noted that this is not fair to the injured worker or the insurance company who is paying for these services. Ms. Neelon informed the Council that she has put two companies on probationary status. She will follow up with these companies with audit reviews to ensure they are complying with the guidelines.

Ms. Neelon stated that another problem they are seeing is that some agents are not providing criteria and rationale on their decisions. She explained that this is problematic because when it comes time for a judge to make a decision, the judge has nothing to base their determination on.

Ms. Neelon stated that another part of her responsibility is to respond to complaints. In 2007, Ms. Neelon received 23 complaints. Ms. Neelon noted that most complaints are from chiropractors that are not getting paid.

Ms. Neelon reported that insurance companies are still submitting data for the Compensation Review System (CRS). She indicated that the data needs to be analyzed to determine its usefulness.

Ms. Neelon informed the Council Members that the UR guidelines need to be updated. She reported that when the Office of Health Policy audits UR Agents, they are reminding them that the UR guidelines are flexible when there is specific clinical data to substantiate their rationale.

ACTION ITEMS

Chairman Corcoran asked for a motion to accept the Minutes for February 13, 2008.

Motion made to accept the Minutes for February 13, 2008.

MMS - Passed.

FY'09 BUDGET SUBCOMMITTEE UPDATE

Chairman Corcoran reported that on March 6, 2008, the Advisory Council's Budget Subcommittee had met to review the DIA's FY'09 budget as proposed in the Governor's House 2 Budget Recommendation. The Chairman noted that the subcommittee reviewed with the DIA Administration the anticipated expenditures for FY'09. Chairman Corcoran summarized the subcommittee's recommendation that the Advisory Council support the Governor's FY'09 Budget of \$21,196,452 which would fairly and adequately fund the operations of the DIA.

Chairman Corcoran asked for a motion to endorse the Governor's FY'09 Budget Recommendation of \$21,196,452 for the DIA.

Motion made to endorse the Governor's FY'09 Budget Recommendation for the DIA.

MMS - Passed.

Mr. Burton informed the Council Members that he would inform the House Ways & Means Committee, Senate Ways & Means Committee, and Conference Committee of the Advisory Council's endorsement of the Governor's FY'09 Budget Recommendation.

EXECUTIVE DIRECTOR UPDATE

Executive Director Andrew Burton stated that at the end of February the Workers' Compensation Rating and Inspection Bureau of Massachusetts (WCRIB) had submitted a rate filing on behalf of insurers to increase average workers' compensation rates by 2.3%. If approved by the Commissioner of Insurance, this rate would become effective September 1, 2008.

Mr. Burton explained that the Advisory Council's role in the rate setting process is limited by statute but allows the Council to request loss data from insurers and provide oral testimony relating to any issues which may arise during the course of the hearing. The Executive Director explained that historically the Advisory Council has contracted with an actuary to look for errors in the filing and to identify key elements that appear to be based on unreasonable analysis or assumptions. Mr. Burton stated that the Advisory Council would spend anywhere from \$25,000 to \$35,000 on a study that may or may not be useful to Commissioner of Insurance.

Mr. Burton stated that he had recently spoken to the First Deputy Commissioner at the Division of Insurance to see how the Council could be more helpful in the rate setting process. As a result of this conversation, the Executive Director recommended that the Advisory Council hold off on a study but provide testimony that offers the Commissioner of Insurance assistance in resolving any issues that may come up.

CM Stephen Joyce discussed the importance of the rate filing and being allowed to request data from the WCRIB. He indicated that he was interested in knowing the effects of the increase and why the WCRIB determined it was necessary.

CM David Powell suggested that the Advisory Council consider inviting Paul Meagher to an upcoming Advisory Council Meeting to discuss the rate filing.

Council Members agreed.

Mr. Burton continued by stating that on March 2, 2008, the Joint Committee on Labor and Workforce Development reported favorably on four workers' compensation bills: **House Bill 1840** (Insurance Rates - Loss Cost); **House Bill 1839** (Premium Auditing); **Senate Bill 1061** (Widow's Benefits); and **Senate Bill 2529** (Protection of Social Workers).

CM Stephen Falvey suggested that the Council look at ways to strengthen the system without legislation. He mentioned that deterrents should be considered for not reporting First Reports of Injuries, as well as not carrying Workers' Compensation Insurance. He noted that with the cooperation of the WCRIB, an online proof of coverage tool could serve an effective deterrent.

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, April 9, 2008, at 9:00 AM, at the Division of Industrial Accidents, 600 Washington Street, 7th Floor Conference Room, Boston, MA 02111.