

**Massachusetts Workers' Compensation
Advisory Council Minutes**

April 11, 2007

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

Present: Acting Chairman Edmund C. Corcoran; Acting Vice-Chairman Mickey Long. CM: John Pulgini; John D. Boyle; Jeanne-Marie Boylan; Jill Brown; Peter A. Cook (Karen Shanley); Tom Jones (Department of Labor), Greg Bialecki (Department of Business and Technology).

Also Present: DIA: Commissioner Paul V. Buckley; Timothy McMahon, Deputy Commissioner of Administration; Greg White, Deputy Commissioner/General Counsel; William McCarthy, Acting Senior Judge; Martine Carroll, ALJ; William Taupier, Deputy Director of Administration and EDP; John Glennon, Chief Information Officer; Teri A. McHugh, Boyle, Morrisey & Campo, P.C.; Jennifer Mercandante, Labor & Workforce Development Committee; Paul Nolette, Labor & Workforce Development Committee; John Myers, AIM Mutual; Mike Kelley, AIM Mutual; Fred Uehlein, Esq.

Advisory Council Staff: Andrew Burton; Evelyn Flanagan.

Absent: CM: Tony Frias (Ines Leonardo); Robert Banks (William Corley); Ken Paradis.

Agenda:

Chairman's Welcome

DIA Update

Judicial Update - William McCarthy, Acting Senior Judge

DIA Security Breach - Unauthorized Use of Claimant Data

John Glennon, Chief Information Officer

Budget Subcommittee Update

Executive Director Update

Miscellaneous

Executive Director Andrew Burton began today's meeting at 9:00 AM. The Executive Director stated that he had asked Edmund Corcoran and Mickey Long to serve as Acting Chairs for today's meeting. Executive Director Burton explained that the meeting would be informal and that no votes would be taken.

CHAIRMAN'S WELCOME

Acting Chairman Corcoran introduced Commissioner Paul V. Buckley and Deputy Commissioner Timothy J. McMahon. Commissioner Buckley informed the Council that he had previously served as a Judge in the Quincy District Court and then worked as a District Attorney. Commissioner Buckley introduced the new Senior Judge, Martine

Carroll. The Commissioner informed the Council that Judge Carroll has worked for the DIA for 14 years, first as an Administrative Judge and then as an Administrative Law Judge. Judge Carroll will officially begin her position as Senior Judge on May 7, 2007.

Acting Chairman Corcoran introduced Mr. Gregory Bialecki, who will be serving on the Advisory Council as non-voting member representing the Department of Business and Technology. After introductions were complete, Acting Chairman Corcoran requested that the Acting Senior Judge proceed with the judicial update.

DIA UPDATE

Judicial Update

Acting Senior Judge William McCarthy updated Council Members on the information contained within the DIA's vital statistic report for April 2007 (see attached). Conference Queue: 75; Hearing Queue: 1,233; Reviewing Board Inventory: 131; Impartial Exams for FY'07 (to date): 3,576 (178 waivers). In fiscal year 2006 there were 5,374 Impartial Medical Examinations (95 waivers).

The Acting Senior Judge explained that he had been informed by several Administrative Judges that the time frame between conciliation and conference needed to be increased to allow adequate time to gather the necessary information to go forward. Judge McCarthy stated that with the assistance of the Scheduling Manager, Deborah Keefe, they have begun scheduling these cases four weeks apart to allow for medicals and other information to be submitted.

The Acting Senior Judge informed the Council Members that the Reviewing Board will have two vacancies when Judge Carroll takes over as Senior Judge in May. Judge McCarthy stated that the law requires the Reviewing Board to have six Administrative Law Judges.

The Acting Senior Judge reviewed the membership status of the Industrial Accident Board. Judge McCarthy explained that the DIA currently has one Administrative Judge vacancy (Judge LaMothe) and noted that another vacancy will exist in mid-June when Judge Constantino's term expires. The Acting Senior Judge stated that Judge Constantino does not intend to apply for reappointment.

The Acting Senior Judge recognized the outstanding efforts of Scheduling Manager, Deborah Keefe, in helping him to stay on top of everything that happens in Dispute Resolution. Judge McCarthy also recognized Sandra Jutras who serves as the Director of the Impartial Unit. He noted that her unit is presently understaffed and that there is a constant struggle to enlist and maintain physicians on the Impartial Roster List.

The Acting Senior Judge stated that due to delays in receiving medical reports from Impartial Physicians, other avenues should be considered to resolve these cases before they reach the conference level. Judge McCarthy stated that the current law allows the Senior Judge to experiment with ways to decrease the caseload and resolve more claims at conciliations before they reach the conference level.

The Acting Senior Judge stated that he would support the use of judicial robes for all Administrative Judges. Judge McCarthy informed the Council Members that he had polled the judges and most preferred wearing robes. The Acting Senior Judge believes that robes would make the dispute resolution process more formal.

Acting Vice-Chairman Mickey Long suggested that a subcommittee be created to address strengthening the Impartial Physician Roster. Council Member Long suggested that Judge McCarthy participate on this subcommittee to streamline the process. Stop Work Orders/Caseload Statistics

Mr. Taupier updated Council Members on the Stop Work Order (SWO) and Caseload Statistics for March 2007 (see attached). SWO compliance and fine collection remains at 100%. Total compliance investigations initiated in March 2007: 1,864; total investigations for FY'07 (to date): 17,912; total investigations for FY'06: 23,118; total SWOs issued in March 2007: 22; total SWOs issued for FY'07 (to date): 280; total number of SWOs issued for FY'06: 228; total fines

collected in March 2007: \$20,072; total fines collected in FY'07 (to date): \$242,588; total fines collected in FY'06: \$230,465.

Council Members requested a breakdown of the Compliance Investigation dispositions by month. Specifically, Council Members want to know how many businesses were operating without insurance, the number of businesses brought into compliance, and the number of businesses that were operating legally (soleproprietors, non-profits, exempt, etc.) .

CM John Boyle suggested that the DIA consider creating new legislation that would revoke the professional licenses of employers who do not provide workers' compensation coverage for their employees. CM Boyle believes that this would be more effective than revoking an employer's driver's license.

Mr. Taupier continued his update of the monthly vital statistics. Total number of cases filed for March 2007: 1,250; total number of cases filed for FY'07 (to date): 11,164; total number of cases filed for FY'06: 15,957; total number of First Report of Injury Forms (FRI) filed for March 2007: 2,790; total number of FRI filed online for March 2007: 729 (26%); total number of FRI filed for FY'07 (to date): 25,244; total number of FRI filed online for FY'07 (to date): 6,670. For FY'06, total number of FRI filed: 36,491; total number of FRI filed online in FY'06: 9,405 (25.7%).

Mr. Taupier proceeded with his update on uninsured claims (§65). Total number of §65 claims processed for FY'07 to date: 153; total amount of §65 claims paid by the Trust Fund for FY'07 (to date): \$4,612,460; total number of §65 claims filed for FY'06: 245; total amount of §65 claims paid by the Trust Fund for FY'06: \$6,647,480.

Mr. Taupier proceeded with the vital statistics for the Second Injury Fund (§37/37A). Number of §37/37A petitions approved for payment in FY'07 (to date): 530; amount paid on these claims in FY'07: \$19,094,292; number of §37/37A petitions filed in FY'06: 490; amount paid on these claims in FY'06: \$18,539,957; monies recovered by the Trust Fund in FY'07 (to date): \$805,693; monies recovered in FY'06: \$1,443,520; COL reimbursements to insurers in FY'07 (to date): \$8,834,887; COLA reimbursements to insurers in FY'06: \$23.3 million.

Acting Chairman Corcoran made note that the majority of jurisdictions have done away with their Second Injury Funds. Mr. Corcoran stated that New York State recently took steps to eliminate their Second Injury Fund. The Acting Chairman asked the administration if they have examined the usefulness of these funds.

Deputy Commissioner McMahon stated that a subcommittee has already been established and they are looking at this issue carefully.

Budget/Personnel Issues

Mr. Taupier reported that as of March 2007, the number of employees whose salary is paid by either the Special Fund or the Trust Fund was 258 (225 DIA employees, 33 WCTF employees). The DIA has no contract employees at this time. Thirteen (13) temporary employees are being utilized within the DIA as of this report.

Office of Education and Vocational Rehabilitation (OEVR) Update

Mr. Taupier presented a new slide on OEVR statistics. Total referrals to OEVR in FY'07(to date): 2,118; total referrals to OEVR in FY'06: 2,932; total mandatory meetings in FY'07 (to date): 1,720; total mandatory meetings in FY'06: 2,315; total referrals to insurers in FY'07 (to date): 546; total referrals to insurers in FY'06: 747; total Individual Written Rehabilitation Plans (IWRP) approved in FY'07 (to date): 330; total IWRPs approved in FY'06: 433; total number of Return to Work (RTW) in FY'07 (to date): 129; total number of RTW in FY'06: 202; total number of IWRPs completed with no RTW in FY'07 (to date): 119; total number of IWRPs completed with no RTW in FY'06: 186.

DIA SECURITY BREACH - UNAUTHORIZED USE OF CLAIMANT DATA

Mr. John Glennon, Chief Information Officer, updated the Advisory Council Members regarding the recent unauthorized use of claimant data by a DIA contractor. Mr. Glennon stated that the incident, which took place on December 19, 2006, involved internet transactions on a DIA computer. He stated that law enforcement officials have charged the contractor with crimes related to credit card fraud. Mr. Glennon explained that the DIA immediately notified all of the claimants affected by this incident. He stated that to the best of the DIA's knowledge, only three people had their identities compromised.

Mr. Glennon informed the Council that the DIA is in the process of taking actions to resolve this situation and to ensure that this will not happen again. Mr. Glennon reported that the DIA has begun redacting certain information on viewable internal forms and that they are in the process of hiring a security consultant. Mr. Glennon informed the Council that the RFP team is currently in the selection process.

BUDGET SUBCOMMITTEE UPDATE

Mr. Andrew Burton, Executive Director of the Advisory Council, updated Council Members on the Budget Subcommittee that convened on March 7, 2007. Mr. Burton informed the Council that the Governor's FY'08 Budget Recommendation represented a small increase (+ 1.6%) from the FY'07 General Appropriations Act. The Executive Director reported that the two major cost-drivers for the FY'08 budget are for employee compensation (11% increase) and rental expenses (6% increase).

Mr. Burton informed the Council that the subcommittee believes that the Governor's Budget of \$20,735,488 would fairly and adequately fund the operations of the DIA. He noted that the subcommittee is recommending that the Advisory Council endorse the House 1 line-item for the DIA with the following concerns.

The first concern of the subcommittee was the DIA's reliance on temporary workers and consultants in FY'07. Mr. Burton stated that the subcommittee was recommending that these positions be replaced by cross-training existing staff or adding new full-time employees when appropriate. The Executive Director stated that the subcommittee was also recommending that the DIA administration assess the benefits of increasing investigative staff in both the Office of Investigations and the Trust Fund. Finally, Mr. Burton stated that the subcommittee fully supports the efforts of the DIA with incorporating the guidelines and administrative modifications used in the Safety Grant Pilot Project for future safety grant programs.

The Executive Director stated that he would conduct a phone poll at a later date to determine whether the Advisory Council would endorse the recommendations of the Budget Subcommittee.

EXECUTIVE DIRECTOR UPDATE

Executive Director Burton informed the Council that on April 3, 2007, the Joint Committee on Labor & Workforce Development held an informational hearing on the various agency's and organizations under the Executive Office of Labor & Workforce Development. Mr. Burton stated that he testified on behalf of the Advisory Council and presented a brief overview of the Council's activities. The Executive Director stated that both Chairman Thomas McGee and Chairman David Torrissi expressed interest with scheduling a meeting with the Council's Chairs to discuss legislative priorities.

Executive Director Burton informed the Council that on April 5, 2007, the Division of Insurance (DOI) held a Rate Hearing on the proposed 13.4% decrease to average workers' compensation

rates made by the Workers' Compensation Rating & Inspection Bureau. Mr. Burton stated that he testified on behalf of the Advisory Council and informed the Commissioner of Insurance that the Advisory Council would be willing to assist DOI in resolving any issues pertaining to the filing.

Mr. Burton informed the Council Members that a legislative booklet had been placed in each packet that summarizes all bills pertaining to workers' compensation in the 2007-2008 Legislative Session. Mr. Burton requested that each member review the legislation before the next meeting and notify him of any bills they would like to see addressed by the Council.

The Executive Director stated that the Joint Committee on Labor & Workforce Development has tentatively scheduled a workers' compensation legislative hearing for Tuesday, May 15, 2007. Mr. Burton stated that he would poll the Council Members to determine whether the next meeting could be moved to the first week in May.

MISCELLANEOUS

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

The next regular meeting of the Advisory Council is scheduled for Friday, May 4, 2007, at 9:00 AM, at the Division of Industrial Accidents, 600 Washington Street, 7th Floor Conference Room, Boston, MA 02111.