

**Massachusetts Workers' Compensation  
Advisory Council Minutes**

April 8, 2009

Department of Industrial Accidents  
600 Washington Street, 7<sup>th</sup> Floor  
Boston, MA 02111

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

*CM:* Stephen Joyce; John Regan; John Pulgini; Antonio Frias (Inez Leonardo); David Powell; William Corley; Peter A. Cook, Sr. (Melody Barlow); John Boyle (Teri McHugh).

*Also Present:* DIA: Commissioner Paul Buckley; Tim McMahon, Deputy Commissioner of Administration; Martine Carroll, Senior Judge; William Taupier, First Deputy Director of Administration; Jack Defina, Director of Accounting & Finance; Ray Marchand, Director of Investigations; Jeanne Sullivan, Revenue Manager; Yvette Smith, Assessment Manager; Linnea Walsh, Underground Economy Task Force; Ellen Keefe, WCRIB; Michael Kelley, AIM Mutual Insurance Company; Stephen Williams, Ironworkers Local 7; William Hurley, Ironworkers Local 7.

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

*Absent: CM:* Stephen P. Falvey; Dennis Hines; Kenneth J. Paradis, Jr.; Department of Labor; Department of Business Development.

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Agenda:

Chairman's Welcome

Underground Economy Task Force Update - Linnea Walsh

## DIA Update

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

## Revenue Update - Jeanne Sullivan

## Update on Revised Bond Calculation for Self Insurers - Jack Defina

## Assessment Audit Quarterly Update - Yvette Smith

## Action Items

- Minutes - February 11, 2009
- Minutes - March 11, 2009

## Workers' Compensation Legislative Discussion

- Burial Expenses/Scarring/Criminal Penalties (H.1865, S.681, S.729) - Andrew Burton
- Private Right of Action (H.1870 & S.682) - Mickey Long

## Executive Director Update

## Miscellaneous

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## **CHAIRMAN'S WELCOME**

Chairman Edmund C. Corcoran, Jr., began today's meeting at 9:00 a.m. The Chairman introduced Ms. Linnea Walsh from the Underground Economy Task Force.

Ms. Linnea Walsh updated the Advisory Council Members on recent activities by the Joint Task Force on the Underground Economy. Ms. Walsh reported that the Joint Task Force had completed their first year of operations and will be issuing an Annual Report in the next few months. She stated that the Joint Task Force has made substantial progress in the fight against the underground economy.

Ms. Walsh stated that the Task Force has been focusing on public outreach to business, labor, and community groups. She mentioned that later this morning she would be traveling to Rhode Island to meet with their Department of Labor to discuss their efforts with a newly established Misclassification Division. Ms. Walsh stated that other New England states have expressed interest in forming their own Task Force. This fall, the Joint Task Force will hold a regional summit to highlight the various fraud efforts taking place in New England.

Chairman Corcoran thanked Ms. Walsh for her update and recognized the outreach efforts made by the Task Force during the first year.

## **DIA UPDATE**

### **Judicial Update**

Senior Judge Martine Carroll updated Advisory Council Members on the information contained within the DIA's vital statistic report for April 2009 (see attached). Conference Queue: 85; Hearing Queue: 659; Reviewing Board Inventory: 142; Impartial Exams for FY'09 (to date): 3,332 (46 waivers); Exam Fees Collected for FY'09: \$1,313,941. 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 reminded Council Members that Judge Heffernan's term expires in September and that he will be seeking reappointment. The DIA has placed an advertisement for this judicial position that will require applications to be submitted by April 16, 2009. The Nominating Panel will schedule interviews by the end of April and will forward selected candidates to the Advisory Council for the May meeting.

Senior Judge Carroll stated that the conference queue is at a very manageable level and that the hearing queue is at its lowest historical level ever.

Both Commissioner Buckley and the Council Members commended Senior Judge Carroll on her efforts and accomplishments.

### **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 360 SWOs in March 2009 (22 SWOs were reissued as the result of defaults of previous orders); total SWOs issued in FY'09 (to date): 2,464. Fine collection for March 2009: \$99,000; total fines in FY'09: \$587,880; 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: 6,691 (FY'09).

Mr. Taupier continued the update of the monthly vital statistics. Total number of cases filed in March 2009: 1,196; total number of cases filed in FY'09 (to date): 10,278; total number of cases filed in FY'08: 14,464; total number of First Report of Injury Forms (FRI) filed in March 2009: 2,463; total number of FRI filed online in March 2009: 787; total number of FRI filed in FY'09 (to date): 23,741; total number of FRI filed in FY'08: 32,794; total number of FRI filed online in FY'08: 9,199 (28%).

Mr. Taupier proceeded with his update on uninsured claims (§65). Total number of §65 claims processed in FY'09 (to date): 118; total amount of §65 claims paid by the Trust Fund in FY'09 (to date): \$4,499,094; 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): \$16,689,295; total amount paid on these claims in FY'08: \$20,725,671; total monies recovered by the Trust Fund in FY'09 (to date): \$1,126,729; total monies recovered in FY'08: \$1,202,747; total COLA reimbursements to insurers in FY'09 (to date): \$19,396,730; total COLA reimbursements to insurers in FY'08: \$4.0 million.

#### Budget/Personnel Issues

Mr. Taupier reported that as of February 2009, the number of employees whose salary is paid by either the Special Fund or the Trust Fund was 278 (229 DIA employees, 49 WCTF employees). There are no contract employees currently working at the DIA.

#### Office of Education and Vocational Rehabilitation (OEVR) Update

Mr. Taupier presented the OEVR statistics. Total referrals to OEVR in FY'09 (to date): 1,696; total referrals to OEVR in FY'08: 2,828; total mandatory meetings in FY'09 (to date): 1,392; total mandatory meetings in FY'08: 2,281; total Determinations of Suitability (DOS) in FY'09: 903; total DOS in FY'08: 1,634; total referrals to insurers in FY'09 (to date): 489; total referrals to insurers in FY'08: 647; total Individual Written Rehabilitation Plans (IWRP) approved in FY'09 (to date): 314; total IWRPs approved in FY'08: 417; total number of Return to Work (RTW) in FY'09 (to date): 87; total number of RTW in FY'08: 163; total number of IWRPs completed with no RTW in FY'09 (to date): 71; total number of IWRPs completed with no RTW in FY'08: 134.

#### Revenue Update

Executive Director Andrew Burton introduced Ms. Jeanne Sullivan, Revenue Manager. Mr. Burton explained that Ms. Sullivan was in attendance to review a new revenue slide that will be added to the monthly DIA update.

Ms. Sullivan explained that the Revenue Department was responsible for the collection of past due referral fees, first report of injury fines, and Trust Fund and stop work order repayment agreements. She stated that in the past, the agency had contracted with an outside collection agency which

received 24% of all collected referral fees and first report of injury fines. Due to the inefficiency of using a private collections agency, Ms. Sullivan recommended last year that the DIA bring the collections in-house. She explained that after bringing the collections in-house, the department has collected \$418,000 in past due referral fees (not counting those fees that were paid on time). Ms. Sullivan noted that by the end of this year, the Revenue Department will have significantly surpassed last year's collections by 25%.

Ms. Sullivan stated that the Revenue Department has increased their staff by hiring one new employee. She reported that the new employee is responsible for the collection of monies from Trust Fund and SWO agreements. Ms. Sullivan stated that the money collected is used to offset the employer assessment rates.

#### Update on Revised Bond Calculations for Self Insurers

Chairman Corcoran introduced Jack Defina, Director of Finance and Accounting.

The Chairman stated that he has heard concern from the self insurer community regarding the process and methodology that was used to develop the new bond amounts.

Mr. Defina explained that the DIA had contracted with Deloitte Consulting to develop a new model for calculating the required bond amounts for self insured employers. He noted that the prior calculation methods, which required a \$1 million dollar minimum deposit, could not be easily defended. Under the "old" calculation methods the DIA analyzed a self insured's estimated annual premium, outstanding and current liabilities, and used a financial distress factor to rate companies based on their performance.

In determining a "new" calculation method, Deloitte Consulting reviewed self insured claims over a 20-year period and created new calculation provisions that measure the expected value of outstanding liabilities, the potential for adverse developments, and an examination of a company's financial stability. Mr. Defina stated that under the new calculation procedures, both the Commonwealth and the employees will be better protected should a self insured experience poor fiscal health.

As a result of the new calculation methods, the minimum bond requirement was lowered from \$1 million to \$100,000. To date under the new procedures, five companies have experienced a decrease in the bond amount, two have experienced a minimal increase, and one company has seen a significant increase.

Mr. Defina stated that the DIA would be holding informational meetings on April 16<sup>th</sup> and April 23<sup>rd</sup> to allow self insurers to ask questions about the methodology behind the revised bond calculations. Mr. Defina noted that approximately 30 companies had already responded to the invitation and were planning on attending.

Council Members asked if the new bond formula was flexible and whether the DIA would allow self insured companies to challenge the calculations.

Deputy Commissioner Tim McMahon stated that there was a need for a uniform and consistent formula to ensure fairness. Mr. McMahon noted that the DIA was attempting to find a balance and that they would be willing to entertain any thoughts and ideas suggested to them at the upcoming informational sessions.

Chairman Corcoran thanked Mr. Defina for his update.

### **H.R. 635**

Chairman Corcoran updated Council Members on a new federal bill (H.R. 635) that was filed by Representative Joe Baca from California. Under this legislation, a 14-member commission would be established to review the findings of the previous National Commission on State Workmen's Compensation Laws, created as part of the Occupational Safety and Health Act of 1970. The Chairman noted that the workers' compensation system in California was presently experiencing difficulties.

Chairman Corcoran stated that the Massachusetts workers' compensation system has been operating efficiently since the Reform Act of 1991. The Chairman cautioned that the creation of such a commission could destroy many of the accomplishments made by states that underwent reforms and are now operating effectively. Chairman Corcoran asked Council Members to ask their constituents about their views on H.R. 635. In addition, the Chairman asked the Executive Director to monitor the progress of this legislation.

### **ACTION ITEMS**

Chairman Corcoran asked for a motion to accept the minutes for February 11, 2009 and March 11, 2009.<sup>3</sup>

Motion made to accept the minutes for February 11, 2009 and March 11, 2009.

MMS - Passed.

### **Assessment Audit Quarterly Update**

Ms. Yvette Smith, Assessment Manager, provided the assessment audit quarterly update. Ms. Smith stated that as of April 2, 2009, all employer assessments could be paid online by using the DIA's website. Ms. Smith explained that this will allow insurance companies to provide timely

payments to the DIA. Ms. Smith stated that she expects during the next six months that insurance companies will be able to go online and see their own invoices based upon the information they submit.

Ms. Smith explained that the DIA is currently using two auditing companies. She noted that the auditing process had been going very slow. Ms. Smith reported that the DIA would like to bring the auditing process in-house in the future.

Jack Defina stated that the DIA was currently in the process of hiring another auditing firm to speed up the auditing process.

### **WORKERS' COMPENSATION LEGISLATIVE DISCUSSION**

Executive Director Andrew Burton referred to a booklet of Legislative Summaries in the Advisory Council Member's packets. The booklet summarizes 46 workers' compensation bills that have been filed in the 2009-2010 Legislative Session. Mr. Burton explained that the booklets were a work in progress and would be expanded upon as new legislation is filed. He noted that the Joint Committee on Labor & Workforce Development has not scheduled any public hearings on workers' compensation legislation.

Mr. Burton briefly reviewed the four re-filed bills that were endorsed by the Advisory Council last year - H.1865 (Burial Expenses), S.681 (Scar-Based Disfigurement), S.729 (Criminal Penalties), and H.1870 & S.682 (Private Right of Action). The Executive Director suggested that Council Members review the legislative summaries so they could be discussed at a future meeting.

### **EXECUTIVE DIRECTOR UPDATE**

Executive Director Burton reported that following the last Council meeting a letter of recommendation was forwarded to the Workers' Compensation Rating & Inspection Bureau (WCRIB) asking them to explore the benefits of adding the Governing Class Code to the Proof of Coverage application now under development. The Executive Director explained that he had received a letter from the WCRIB's President stating that the Bureau Producer Advisory Committee would review this request at their May 14<sup>th</sup> meeting and will get back to the Advisory Council with a response.

Executive Director Burton referenced a New York Times article that highlighted some of the difficulties that the New York workers' compensation is experiencing, specifically with the Impartial Medical Exams. The Executive Director stated that many of the problems in New York were addressed in Massachusetts during the 1991 Reform Act.

Executive Director Burton reminded Council Members that on May 1<sup>st</sup> Mickey Long would become the new Chairman of the Advisory Council and Ed Corcoran would become the Vice-Chairman. The Executive Director thanked Mr. Corcoran for his leadership as Chairman and for the many accomplishments that have taken place over the last two years.

Executive Director Burton stated that the next Advisory Council Meeting is scheduled to take place on Wednesday, May 13, 2009, at 9:00 a.m.

**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, May 13, 2009, at 9:00 AM, at the Department of Industrial Accidents, 600 Washington Street, 7<sup>th</sup> Floor Conference Room, Boston, MA 02111.**