

**Massachusetts Workers' Compensation  
Advisory Council Minutes**

April 9, 2008

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:* William Corley; Tony Frias (Ines Leonardo); John Regan; Stephen Joyce;

Stephen P. Falvey; David P. Powell; Kenneth J. Paradis, Jr.; Peter A. Cook, Sr.; Department of Labor (Tom Jones).

*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; Yvonne Vieira-Cardoza, Director WCTF/Office of Investigations; Ellen Keefe, WCRIB; Paul Meagher, WCRIB; Robert McCarthy, WCRIB; Fred Uehlein, Attorney; John Keefe, Attorney; Jennifer Mercandante, Joint Committee on Labor and Workforce Development; Michael Kelley, AIM Mutual.

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

*Absent:* CM: John A. Pulgini; John D. Boyle; Dennis Hines; Department of Business Development.

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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

#### Action Items

- Minutes - March 12, 2008

WCRIB Rate Filing (2.3% Increase to Avg. WC Rates) - Paul F. Meagher, President

Second Injury Fund Overview - Yvonne Vieira-Cardoza, Trust Fund Manager

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 Senior Judge Carroll and asked her to provide the monthly judicial update.

### **DIA UPDATE**

#### Judicial Update

Senior Judge Carroll informed Council Members that Cheryl A. Jacques has started and is in her second week of training. The Senior Judge stated that Judge Jacques has been sitting in with the more experienced judges as part of her training. The Senior Judge noted that Judge Jacques appears to be learning quickly and beginning next week she will be eased into a conference schedule.

The Senior Judge reported that the DIA currently has an Acting Manager in the Impartial Unit. Senior Judge Carroll stated that she anticipates having the position filled within the next few weeks. The Senior Judge also noted that there are now 255 Impartial Medical Examiners on the list, an increase from the last few months.

Senior Judge Carroll updated the Council on the list of judges with decision that are overdue. She reported that there were seven judges on the list, with cases ranging from three to twenty-eight that are awaiting decisions. The Senior Judge explained that there are many different reasons for delayed decisions. She stated that in many cases a delayed decision is beyond the control of the judges due to requested extensions, complexity, and other miscellaneous factors.

Chairman Edmund Corcoran reminded the new Council Members that this update by the Senior Judge ensures that the judges are providing the quickest relief for both employees and the employers. He explained that this report is a form of checks and balances ensuring that all judges remain current in their decision writing.

Mr. Bill Taupier updated Advisory Council Members on the information contained within the DIA's vital statistic report for April 2008 (see attached). Conference Queue: 511; Hearing Queue: 1,107; Reviewing Board Inventory: 162; 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 March 2008 (see attached). Total compliance investigations initiated: 862; total investigations for FY'08: 10,629; total SWOs issued: 177; total SWOs issued for FY'08: 479; total fines collected in March: \$76,150; total fines collected in FY'08: \$312,868; total fines collected in FY'07: \$400,753.

Commissioner Paul V. Buckley reported that there was a marked increase in the total number of stop work orders issued primarily due to a change in protocol. He explained that the DIA has begun reorganizing the Investigation Unit. Commissioner Buckley noted that the investigators are now holding monthly meetings to map out strategies to become more effective at their job.

Commissioner Buckley stated that one of the strategies implemented was to perform concentrated sweeps in targeted locations and industries. He explained that a team of two investigators will be traveling together to perform these sweeps. The Commissioner informed the Council Members that he was uncomfortable with the past definition of an investigation that included sending a letter confirming businesses had insurance.

**Vice-Chairman Mickey Long requested that it be reflected somewhere in the record that the increase in SWOs and decrease in investigations is due to the new direction of the administration.**

Commissioner Buckley stated that he would ask Patrick Allosso to add an explanation of new definitions on his monthly update.

Mr. Taupier continued the update of the monthly vital statistics. Total number of cases filed for March 2008: 1,240; total number of cases filed for FY'08 (to date): 10,807; total number of cases filed for FY'07: 15,149; total number of First Report of Injury Forms (FRI) filed: 2,668; total number of FRI filed online: 771 (28%); total number of FRI filed for FY'08 (to date): 24,993; 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): 133; total amount of §65 claims paid by the Trust Fund for FY'08 (to date): \$4,692,494; 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): \$14,380,472; total amount paid on these claims in FY'07: \$26,575,359; total monies recovered by the Trust Fund in FY'08 (to date): \$972,415; total monies recovered in FY'07: \$1,167,465; total COLA reimbursements to insurers in FY'08 (to date): \$2,604,690; total COLA reimbursements to insurers in FY'07: \$9.1 million.

Mr. Taupier noted that in the past month the Legal Unit has been instrumental in bringing in over \$350,000. He recognized the good work that both Attorney Tom Wielgus and Attorney Roger Grossman, who had brought in the bulk of this money.

#### Budget/Personnel Issues

Mr. Taupier reported that as of March 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): 2,069; total referrals to OEVR in FY'07: 2,839; total mandatory meetings in FY'08 (to date): 1,662; total mandatory meetings in FY'07: 2,282; total referrals to insurers in FY'08 (to date): 478; total referrals to insurers in FY'07: 706; total Individual Written Rehabilitation Plans (IWRP) approved in FY'08 (to date): 313; total IWRPs approved in FY'07: 428; total number of Return to Work (RTW) in FY'08 (to date): 130; total number of RTW in FY'07: 176; total number of IWRPs completed with no RTW in FY'08 (to date): 108; total number of IWRPs completed with no RTW in FY'07: 152.

## **UNDERGROUND ECONOMY TASK FORCE**

Chairman Corcoran introduced Michael Bradley, Director of the Underground Economy Task Force. Chairman Corcoran explained that Mr. Bradley would be providing an update of the Task Force's activities on a monthly basis.

Mr. Bradley reported that in the last month he has met with every agency on the Task Force as well as other agencies that are not on the Task Force. He explained that this was done in an effort to open the channels of communication. He believes that the meetings have been successful.

Mr. Bradley informed the Council Members that there is now a new telephone Tip Line. The phone number is 1-877-96-LABOR. Mr. Bradley stated that they have also created a web page, but no URL has been created yet.

Mr. Bradley reported that since the last meeting he has created two new subgroups. The first subcommittee is a Research and Targeting Team. Their primary responsibility will be to develop universal investigation methods for all the agencies to follow, including universal questions. Mr. Bradley explained that the second group is a Communications Subcommittee. The subcommittee consists of Public Relations personnel, as well as IT personnel.

Mr. Bradley stated that the Task Force is moving forward and that they currently have two specific targets they are investigating.

## **ACTION ITEMS**

Chairman Corcoran asked for a motion to accept the Minutes for March 12, 2008.

Motion made to accept the Minutes for March 12, 2008.

MMS - Passed.

## **WCRIB RATE FILING (2.3% INCREASE TO AVG. WC RATES)**

Chairman Corcoran introduced Mr. Paul F. Meagher, President of the Workers' Compensation Rating and Inspection Bureau (WCRIB). Mr. Meagher provided the Council Members with a brief background of his experience.

Mr. Meagher introduced Mr. Robert McCarthy, Vice President and Actuary and Attorney Ellen Keefe, Vice President and General Counsel. Mr. Meagher explained that Attorney Keefe would continue coming to the Advisory Council meetings as the representative for the WCRIB.

Mr. Meagher informed the Council Members that the WCRIB had filed for a 2.3% increase to average workers' compensation rates. He noted that even with their proposed increase, workers' compensation rates are approximately 65% lower than they were a decade ago.

Mr. Meagher reported that the rate request is driven by increases to both medical costs and claim severity. Mr. Meagher stated that he did not expect any major change in the rates. He noted that Massachusetts is very stable as far as rates are concerned and that any change made would be effective on September 1, 2008.

Mr. Meagher stated that the current trend of increased medical fees is not unique to Massachusetts. Mr. Meagher explained that medical costs are up by nature across the country, but he believes that Massachusetts has it under control. Mr. Meagher explained that according to the Workers' Compensation Research Institute, Massachusetts workers' compensation system is working well. He stated that there is an offset to the rising medical expenses from the decrease in claim frequency.

Vice-Chairman Mickey Long asked Mr. Meagher if it would be difficult to benchmark if there is an increase in more policies or premiums from the tightening of the audit guidelines for independent contractors or from the increased enforcement efforts of the Investigation Unit. Mr. Meagher stated that he believed this would be difficult to measure.

Council Member Stephen Falvey stated that every employer must file a First Report of Hire with the Division of Unemployment Assistance. He noted that this is a mandatory form that is not enforced. Mr. Falvey suggested that the Underground Economy Task Force look into this matter.

## **SECOND INJURY FUND OVERVIEW**

Chairman Corcoran introduced Attorney Yvonne Vieira-Cardoza, Trust Fund Manager.

Attorney Vieira-Cardoza began the presentation by explaining what the Second Injury Fund is and how the process works. She stated that in order to qualify for Section 37 reimbursement, the employee must meet 5 elements. Attorney Vieira-Cardoza gave an example of a "perfect" Section 37 claim. Attorney Vieira-Cardoza stated that only about 10% of the claims filed are "perfect," another 10% should be withdrawn, and the remainder fall in between.

Attorney Vieira-Cardoza reviewed the three acts related to Section 37. She stated that the claims against the "Old Act" have decreased significantly (4-5 claims per year). Attorney Vieira-Cardoza noted that there is presently no statute of limitations on the "Mid-Act" cases which account for approximately 25% (112 of 400 this fiscal year) of all claims received. She explained that the "New Act" has a two year statute of limitations but there is no cap on medical payments which has been extremely costly for the Trust Fund.

Attorney Vieira-Cardoza updated the Council Members on the Kim Oakes/Steven Alves Case. The issue surrounding these joined cases is whether there should be a statute of limitations for "Mid-Act" cases. She noted that the Trust Fund has lost this case at every level of the lower courts but it is currently with the Massachusetts Supreme Judicial Court awaiting a decision. She explained that the Trust Fund has received notice by the SJC stating that they need more time to review the case and make a decision. Attorney Vieira-Cardoza indicated that a decision could be made by the end of the summer.

Attorney Vieira-Cardoza reviewed the financial history of the Second Injury Fund. She stated that 74% of the total DIA budget goes to the Trust Fund. From the Trust Fund's budget, 50% of expenditures are primarily attributed to the Second Injury Fund (approximately \$30 million of \$59 million). She reported that just 10 years ago, the Second Injury Fund was only 25% of the Trust Fund Budget.

Attorney Vieira-Cardoza informed the Council that the number of claims filed against the Trust Fund under the "New-Act" is growing. The Trust Fund has settled 196 claims this year with 50% of the claims having ongoing quarterly reimbursements. She noted that this far exceeds previous years. Attorney Vieira-Cardoza stated that under the "New Act," the insurer pays the employee into the future. The insurer then files on a quarterly basis for reimbursement. The "New Act" is much more expensive because the Trust Fund is paying ongoing medicals, which keep rising. She stated that previously the quarterly payments were \$2-3 million but they are now approximately \$10 million and growing.

The Department of Labor's General Counsel, Tom Jones, explained that the Secretary of Labor & Workforce Development is interested in learning more about what is driving this trend of increased costs and whether the fund is meeting its intended purpose. He noted that Secretary Bump is looking to the Advisory Council for input on the impact that the Second Injury Fund has on both the injured worker and employer communities. Mr. Jones suggested that a working group be put together to review why Second Injuries Funds are closing on a national level, how the American with Disabilities Act affects the SIF process, and whether or not employers are receiving a benefit by having their experience rating adjusted.

Council Member Long made a motion that the Advisory Council create a Second Injury Fund Subcommittee, which includes participation from the Department of Labor and the Department of Industrial Accidents, to further investigate the Second Injury Fund.

MMS - Passed.

### **EXECUTIVE DIRECTOR UPDATE**

Executive Director Andrew Burton reported that the House Ways and Means Committee has requested the Advisory Council's opinion regarding House Bill 1816 (Widow's Benefits). The Executive Director stated that the bill was filed in response to a 2003 Supreme Judicial Court decision in which the court concluded that a widow of a former employee, who had died as a result of past asbestos exposure, was not entitled to wage

replacement benefits because the deceased had voluntarily retired and was not earning wages at the time of death. Mr. Burton explained that House Bill 1816 would change the benefit calculation for latent death benefits by tying the benefit to the earnings of last full time employment or based on the earnings associated with a voluntary retirement package.

Executive Director Burton stated that the Council has opposed this bill during past legislative sessions. He noted that the opposition was centered on the fact that workers' compensation was not designed as a life insurance policy, but rather it was designed as a wage replacement system. Mr. Burton stated that the DIA has advised the Council on numerous occasions that the wording of this legislation could potentially expose the Trust Fund to employees not even subject to chapter 152.

Council Member Stephen Joyce expressed his concern for workers who receive latent occupational diseases. He noted from personal experience that workers are sometimes forced to retire from the workforce after the onset of the illness. Mr. Joyce stated that there is a good argument that the widows of workers who "voluntarily" retire and die from an occupational disease should receive wage replacement death benefits.

Chairman Corcoran asked for a motion to either support or oppose House Bill 1816.

Motion made to oppose House Bill 1816.

MMS.

Motion did not pass.

It was agreed that Executive Director Burton would draft a letter to the House Ways and Means Committee informing them that the Advisory Council could not reach a consensus on House Bill 1816.

### **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, May 14, 2008, at 9:00 AM, at the Division of Industrial Accidents, 600 Washington Street, 7th Floor Conference Room, Boston, MA 02111.**