

**Massachusetts Workers' Compensation
Advisory Council Minutes**

May 13, 2009

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

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

CM: Stephen Joyce; Stephen Falvey; John Regan (Brad MacDougal); John Pulgini; Antonio Frias (Inez Leonardo); David Powell (Kevin Hurstak); Peter A. Cook, Sr. (Melody Barlow); John Boyle (Teri McHugh); George Noel (Department of Labor); Tom Jones (Department of Labor).

Also Present: DIA: Commissioner Paul Buckley; Tim McMahon, Deputy Commissioner of Administration; William Tattan, Deputy Commissioner and General Counsel; Martine Carroll, Senior Judge; William Taupier, First Deputy Director of Administration; Ray Marchand, Director of Investigations; Kathy Manson, Director of Safety; Ellen Keefe, WCRIB; Michael Kelley, AIM Mutual Insurance Company.

Advisory Council Staff: Andrew Burton; Evelyn Flanagan.

Absent: CM: William T. Corley; Dennis Hines; Kenneth J. Paradis, Jr.; Department of Business Development.

Agenda:

Chairman's Welcome

DIA Update

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

FY'10 Safety Grant Awards - Kathy Manson, Director of Safety

Information Technology Consolidation Plan - Tom Jones, DOL

Action Items

- Minutes - April 8, 2009

Executive Director Update

Miscellaneous

Executive Session - Judicial Interviews

CHAIRMAN'S WELCOME

Chairman Mickey Long began today's meeting at 9:00 a.m. Chairman Long introduced Senior Judge Martine Carroll and asked her to provide the Judicial Update.

DIA UPDATE

Judicial Update

Senior Judge Martine Carroll updated Advisory Council Members on the information contained within the DIA's vital statistic report for May 2009 (see attached). Conference Queue: 251; Hearing Queue: 635; Reviewing Board Inventory: 130; Impartial Exams for FY'09 (to date): 4,207 (50 waivers); Exam Fees Collected for FY'09: \$1,473,951. 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 reported that both the hearing and conference queues are very low. The Senior Judge noted that she has received several complaints that cases are moving from conciliation to conference too rapidly. She stated that in many instances, the parties are requesting to reschedule their conference dates to allow for additional time to receive the needed medical reports. The Senior Judge stated that the DIA is currently addressing this issue.

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 358 SWOs in April 2009 (27 SWOs were reissued as the result of defaults of previous orders); total SWOs issued in FY'09 (to date): 2,822. Fine collection for April 2009: \$103,900; total fines in FY'09: \$691,780; SWOs issued in FY'08: 1,929; total fines collected in FY'08: \$437,900; compliance checks for April 2009: 3,629; estimated number of workers now covered by WC insurance as the result of a SWO: 67,831 (FY'09).

Mr. Taupier continued the update of the monthly vital statistics. Total number of cases filed in April 2009: 1,378; total number of cases filed in FY'09 (to date): 11,656; total number of cases filed in FY'08: 14,464; total number of First Report of Injury Forms (FRI) filed in April 2009: 2,815; total number of FRI filed online in April 2009: 886 (31%); total number of FRI filed in FY'09 (to date): 26,556; 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): 136; total amount of §65 claims paid by the Trust Fund in FY'09 (to date): \$5,518,219; 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.

Council Member Stephen Falvey requested that the DIA provide the Advisory Council with a list identifying the 136 employers that have had an uninsured injury resulting in a §65 claim in fiscal year 2009.

A discussion followed concerning the penalties assessed against repeat offenders. It was asked if repeat offenders were treated and penalized any differently than first time offenders.

Investigations Director, Ray Marchand, stated that repeat offenders are issued a stop work order and are additionally cited for criminal penalties.

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): \$19,188,361; total amount paid on these claims in FY'08: \$20,725,671; total monies recovered by the Trust Fund in FY'09 (to date): \$1,212,301; total monies recovered in FY'08: \$1,202,747; total COLA reimbursements to insurers in FY'09 (to date): \$21,683,611; total COLA reimbursements to insurers in FY'08: \$4.0 million.

Budget/Personnel Issues

Mr. Taupier reported that as of April 2009, the number of employees whose salary is paid by either the Special Fund or the Trust Fund was 281 (231 DIA employees, 50 WCTF employees). There are no contract employees currently working at the DIA.

Chairman Long asked the DIA to provide an update on how the agency would be impacted by the furlough requirement and to explain if and how savings would be generated by this program.

Deputy Commissioner Tim McMahan stated that the mandatory furlough program would affect approximately 35 managers and 15 judges at the DIA. The Deputy Commissioner explained that savings from the furloughs would be used to reduce next year's employer assessment rate.

Commissioner Buckley stated that all state agencies were affected by the mandatory furlough program regardless of their funding source. The Commissioner noted that there were eight other agencies with similar funding mechanisms to the DIA that were also required to participate in the furlough program. The Commissioner assured the Council Members that the judges would use their furlough days during writing weeks to lessen the impact on scheduled conciliations and hearings.

Office of Education and Vocational Rehabilitation (OEVR) Update

Mr. Taupier presented the OEVR statistics. Total referrals to OEVR in FY'09 (to date): 1,895; total referrals to OEVR in FY'08: 2,828; total mandatory meetings in FY'09 (to date): 1,559; total mandatory meetings in FY'08: 2,281; total Determinations of Suitability (DOS) in FY'09: 1,013; total DOS in FY'08: 1,634; total referrals to insurers in FY'09 (to date): 546; total referrals to insurers in FY'08: 647; total Individual Written Rehabilitation Plans (IWRP) approved in FY'09 (to date): 354; total IWRPs approved in FY'08: 417; total number of Return to Work (RTW) in FY'09 (to date): 95; total number of RTW in FY'08: 163; total number of IWRPs completed with no RTW in FY'09 (to date): 86; total number of IWRPs completed with no RTW in FY'08: 134.

FY'10 Safety Grant Awards

Ms. Kathy Manson, Director of the Office of Safety, updated Council Members on the recipients of the FY'10 Safety Grant Awards. Ms. Manson provided an overview of the companies that took part in the process, as well as a matrix of the grant recipients.

Ms. Manson informed the Council Members that the Office of Safety received double the number of applications for funding from a few years ago, many of which were first-time applicants. She attributed the increase to the outreach program developed by the Office of Safety which includes two workshops in the western part of Massachusetts.

Ms. Manson stated that one entity taking advantage of the safety grant funding is a residential construction company. She explained that a third of all the deaths occur in this field. Ms. Manson noted that another new development for this year is that training would be provided in 3 different languages other than English.

Ms. Manson stated that the Office of Safety measures the success of these programs by reviewing year end mandatory reports. She explained that the reports provide a comparison of the company's injuries before and after their safety training session. Another way to measure the success of a program is to perform client audits where staff members go out and view the trainings to ensure that they are in compliance.

Chairman Long thanked Ms. Manson for her update.

Information Technology Consolidation Plan

Mr. Tom Jones, Deputy Director and Legal Counsel at the Department of Labor, reviewed Executive Order No. 510 - Enhancing the Efficiency and Effectiveness of the Executive Department's Information Technology (IT) Systems.

Mr. Jones explained that the Governor's Executive Order was in response to the discovery that many agencies IT divisions were performing duplicative work. Mr. Jones noted that with the budget problems now taking place, the consolidation of each agency's IT units is an attractive solution that could both increase services and reduce costs. Mr. Jones stated that it was too premature to determine what the cost-savings would be as a result of the consolidation plan.

Vice-Chairman Ed Corcoran expressed concern regarding the Executive Order. Mr. Corcoran stated that he would not like to see the DIA lose its independence in making IT decisions. Mr. Corcoran noted that the agency has made great strides in their IT initiatives and that the advancements have been made possible due to the unique funding mechanism of the agency.

Mr. Jones stated that he has asked the Executive Office's CIO, John Glennon, to explain in further detail how the consolidation will affect the DIA at the next Advisory Council meeting. He noted that Mr. Glennon, a former IT Director for the DIA, is very familiar with how the agency is funded.

Chairman Mickey Long thanked Mr. Jones and asked Ms. Ellen Keefe to give a brief overview of what would be discussed at tomorrow's Governing Committee meeting in regards to the online Proof of Coverage application.

Attorney Keefe stated that the WCRIB's Governing Committee would be meeting tomorrow morning to discuss the Advisory Council's recommendation of including each employer's Governing Class Code as a field within the online Proof of Coverage application. She stated that some members of the Governing Committee have already expressed concern that the Governing Class Code, by itself, is not a good indicator of employer fraud and could be potentially misleading.

Chairman Long thanked Attorney Keefe for his update.

ACTION ITEMS

Chairman Long asked for a motion to accept the minutes for April 8, 2009.

Motion made to accept the minutes for April 8, 2009.

MMS - Passed.

EXECUTIVE DIRECTOR UPDATE

Executive Director Andrew Burton reported that the Senate Ways & Means Committee would be releasing their FY'10 Budget Recommendations later this morning. Mr. Burton informed the Council Members that letters had been forwarded to the Senate Ways & Means Committee stating that the Advisory Council has endorsed both the Governor's Budget and House Budget recommendations of \$20,758,502 for the operations of the DIA.

Executive Director Burton referred to an article in The Standard that highlighted how the Governing Class Code of an employer can be manipulated to achieve lower premiums. He noted that the May 1 st article discussed a fraud case where an employer had misclassified his employees as carpenters, when in reality, they were roofers.

Executive Director Burton reported that the next Council Meeting would include a discussion of workers' compensation legislation before the Joint Committee on Labor & Workforce Development. The Executive Director stated that the next meeting would take place on Wednesday, June 24 th at 9:00 a.m. and that there would be no meeting scheduled for July.

MISCELLANEOUS

Chairman Long thanked everyone for attending today's meeting and asked for a motion to adjourn into Executive Session for the purpose of interviewing judicial candidates.

Motion made to adjourn into Executive Session.

MMS - Passed.

The next regular meeting of the Advisory Council is scheduled for Wednesday, June 24, 2009, at 9:00 AM, at the Department of Industrial Accidents, 600 Washington Street, 7 th Floor Conference Room, Boston, MA 02111.