

**Massachusetts Workers' Compensation
Advisory Council Minutes**

May 4, 2007

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

Present: Acting Chairman Mickey Long.

CM: John Pulgini (Alan S. Pierce); John D. Boyle; Robert Banks (William Corley); John Regan, AIM; Peter A. Cook (Karen Shanley); Tom Jones (Department of Labor).
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; Jack Defina, First Deputy Director of Administration and CFO; William Taupier, Deputy Director of Administration and EDP; Stephanie Noguera, Executive Office of Labor & Workforce Development; Tony Salido, WCRIB; Jennifer Mercandante, Joint Committee on Labor & Workforce Development; Paul Nolette, Joint Committee on Labor & Workforce Development; Mike Kelley, AIM Mutual.

Advisory Council Staff: Andrew Burton; Evelyn Flanagan.

Absent: CM: Edmund C. Corcoran; Jeanne-Marie Boylan; Tony Frias (Ines Leonardo); Jill Brown; Ken Paradis; Department of Business and Technology.

Agenda:

Chairman's Welcome

DIA Update

- Judicial Update - William McCarthy, Acting Senior Judge
- Vital Statistics - William Taupier, Deputy Director of Administration & EDP

Action Items

- January 10, 2007
- April 11, 2007

Workers' Compensation Legislation Discussion

Executive Director Update

Miscellaneous

CHAIRMAN'S WELCOME

Acting Chairman Mickey Long began today's meeting at 9:00 a.m. Council Member Long requested that Acting Senior Judge McCarthy 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 May 2007 (see attached). Conference Queue: 159; Hearing Queue: 1,242; Reviewing Board Inventory: 145; Impartial Exams for FY'07 (to date): 4,150 (188 waivers). In fiscal year 2006 there were 5,374 Impartial Medical Examinations (95 waivers).

The Acting Senior Judge remarked that his only concern was the time frame between conference and hearing. Acting Senior Judge McCarthy noted that it takes approximately four to five months for a case to reach a hearing. He mentioned that this was primarily due to the requirement of the section 11A exam. Acting Senior Judge McCarthy stated that most judges agree that the time frame between conciliation to conference should remain at four weeks to be effective.

Acting Senior Judge McCarthy introduced Administrative Law Judge Martine Carroll. Judge Carroll informed the Council Members that there had recently been flood damage in the Fall River Regional Office. She noted that the DIA is presently addressing this unfortunate situation and will soon be determining whether there is a need to move cases away from the Fall River office.

Stop Work Orders/Caseload Statistics

Mr. Taupier updated Council Members on the Stop Work Order (SWO) and Caseload Statistics for April 2007 (see attached). SWO compliance and fine collection remains at 100%. Total compliance investigations initiated in April 2007: 1,775; total investigations for FY'07 (to date):

19,687; total investigations for FY'06: 23,118; total SWOs issued in April 2007: 33; total SWOs issued for FY'07 (to date): 313; total number of SWOs issued for FY'06: 228; total fines collected in April 2007: \$56,822; total fines collected in FY'07 (to date): \$299,410; total fines collected in FY'06: \$230,465.

Mr. Taupier continued his update of the monthly vital statistics. Total number of cases filed for April 2007: 1,235; total number of cases filed for FY'07 (to date): 12,399; total number of cases filed for FY'06: 15,957; total number of First Report of Injury Forms (FRI) filed for April 2007: 2,530; total number of FRI filed online for April 2007: 672 (26%); total number of FRI filed for FY'07 (to date): 27,774; total number of FRI filed online for FY'07 (to date): 7,342. 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): 170; total amount of §65 claims paid by the Trust Fund for FY'07 (to date): \$5,138,500; 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: \$20,867,478; 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): \$902,924; monies recovered in FY'06: \$1,443,520; COLA reimbursements to insurers in FY'07 (to date): \$8,871,506; COLA reimbursements to insurers in FY'06: \$23.3 million.

Budget/Personnel Issues

Mr. Taupier reported that as of April 2007, the number of employees whose salary is paid by either the Special Fund or the Trust Fund was 259 (226 DIA employees, 33 WCTF employees). The DIA has no contract employees at this time. Thirteen 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): 2,376; total referrals to OEVR in FY'06: 2,932; total mandatory meetings in FY'07 (to date): 1,926; total mandatory meetings in FY'06: 2,315; total referrals to insurers in FY'07 (to date): 607; total referrals to insurers in FY'06: 747; total Individual Written Rehabilitation Plans (IWRP) approved in FY'07 (to date): 369; total IWRPs approved in FY'06: 433; total number of

Return to Work (RTW) in FY'07 (to date): 142; total number of RTW in FY'06: 202; total number of IWRPs completed with no RTW in FY'07 (to date): 136; total number of IWRPs completed with no RTW in FY'06: 186.

ACTION ITEMS

Acting Chairman Long asked for a motion to accept the Minutes for January 10, 2007.

Motion made to accept the Minutes for January 10, 2007.

MMS - Passed.

Acting Chairman Long asked for a motion to accept the Minutes for April 11, 2007.

Motion made to accept the Minutes for April 11, 2007.

MMS - Passed.

Council Member John Regan requested that the DIA provide an update on the data breach at a future meeting to discuss the effectiveness of the measures taken.

WORKERS' COMPENSATION LEGISLATION DISCUSSION

Mr. Andrew Burton began the discussion on workers' compensation legislation. The Executive Director referred to booklet that contained summaries of the proposed bills for the 2007-2008 Legislative Session. He noted that a hearing has been scheduled before the Joint Committee on Labor & Workforce Development for Tuesday, May 15, 2007, at 1:00 p.m. in Room A-2 at the State House.

Senate Bill 1066 - Private Right of Action

Acting Chairman Mickey Long gave a brief overview of Senate Bill 1066. He stated that this legislation would allow "any 10 persons" to bring a civil action against an employer if there is probable cause that the employer has not secured workers' compensation insurance. Council Member Long stated that the majority of monies recovered would be deposited into the DIA's Trust Fund to help offset payments made on uninsured claims.

Acting Chairman Long asked if there was a motion to either support or oppose this legislation.

Motion made to support the passage of Senate Bill 1066.

MMS - Passed.

House Bill 1777 / Senate Bill 1060 - Scar-Based Disfigurement

Executive Director Burton directed the Council's attention to House Bill 1777 and Senate Bill 1060. Mr. Burton stated that the language contained in both bills has been supported by the Advisory Council in past legislative sessions. The proposed legislation would eliminate the requirement that scar-based disfigurement appear only on the face, neck or hands to be compensable. He noted that both bills maintain the present \$15,000 maximum benefit.

Discussion followed. Council Members agreed that a study should be conducted over the summer that weighs the costs raising the maximum benefit for scarring.

Acting Chairman Long asked if there was a motion to either support or oppose this legislation.

Motion made to support the passage of House Bill 1777 and Senate Bill 1060 and to include a statement in the testimony that the Advisory Council will be conducting a cost-analysis study to determine an appropriate maximum benefit.

MMS - Passed.

House Bill 1862 (section 2) - Maximum Burial Expense

Executive Director Burton directed the Council's attention to section 2 of House Bill 1862. Mr. Burton explained that this bill has a provision that would increase the maximum burial expense from the current \$4,000 to an amount "not to exceed eight thousand dollars."

Discussion followed. Council Members suggested tying the maximum burial expense to an indicator, such as the State Average Weekly Wage, to keep up with inflation.

Acting Chairman Long asked if there was a motion to support section 2 of House Bill 1862 with an amendment tying it to the State Average Weekly Wage.

Motion made to make a policy statement at the Workers' Compensation Hearing recommending that the Legislature file a stand-alone bill that would increase the maximum burial expense from \$4,000 to eight times the State Average Weekly Wage.

MMS - Passed.

Attorney Alan Pierce reviewed with the Advisory Council section 3 of the House Bill 1862. Attorney Pierce explained that this bill would allow an Administrative Judge to make a determination allowing for the extension of section 35 benefits. He noted that although the current law allows for this benefit to be extended it is rarely done so due to the narrowness of the language.

Acting Chairman Long asked if there was a motion to either support or oppose section 3 of this legislation.

Motion made to support section 3 of House Bill 1862.

Due to the lack of a second, this motion did not pass.

House Bill 3195 - Public Records Exemption

Executive Director Burton directed the Council's attention to House Bill 3195. Mr. Burton explained that this bill would exempt from the Public Records Law the name and home addresses of any injured employee that has been reported to any agency of the Commonwealth. The Executive Director noted that the Advisory Council had formed a subcommittee in June of 2006 to address the solicitation practices of a select group of law firms who are using the public records law to gain clients.

Discussion followed. Council Member Long expressed concern that language in this bill could prohibit legitimate groups from reaching out to injured workers to inform them of their rights under the workers' compensation law. Mr. Long stated that he would like to see some compromise on the language to ensure that the bill is addressing the intended targets.

Acting Chairman Long asked if there was a motion to either support or oppose this legislation.

Motion made to support the passage of House Bill 3195.

MMS - Did not pass.

House Bill 1816 / Senate Bill 1061 - Widow's Benefits

Executive Director Burton directed the Council's attention to House Bill 1816 and Senate Bill 1061. Mr. Burton stated that this bill has been opposed by the Advisory Council in past legislative sessions due to language that could expose the Trust Fund to claims from employers

who are not even subject to the Workers' Compensation Act. Mr. Burton reviewed the McDonough Case which was the stimulus for this bill being filed.

Discussion followed.

Acting Chairman Long asked if there was a motion to either support or oppose this legislation.

Motion made to oppose House Bill 1816 and Senate Bill 1061.

MMS - Did not pass.

Senate Bill 1111 - Increasing Criminal Penalties for Failing to Provide WC Insurance

Executive Director Burton directed the Council's attention to Senate Bill 1111. Mr. Burton stated that this new legislation would increase the severity of criminal penalties for employers who fail to provide workers' compensation coverage for their employees. The Executive Director stated that the current penalty for a criminal conviction is a maximum fine of \$1,500 or not more than one year imprisonment. This bill proposes a maximum fine of \$10,000 with a minimum fine of \$1,000 and allows a judge to impose sentencing for up to 5 years in State Prison.

Deputy Commissioner/General Counsel Greg White suggested that the penalty provisions should include minimum mandatory fines for repeat offenders. Attorney White expressed concern that without additional language, judges could continue cases without a finding.

Acting Chairman Long asked if there was a motion to either support or oppose this legislation.

Motion made to support Senate Bill 1111 with the recommendation that the Legislature amend this bill with a penalty provision that subjects repeat offenders to both minimum mandatory fines and imprisonment.

MMS - Passed.

Mr. Tom Jones (Department of Labor) suggested that the Executive Director contact Senator Tucker's office before the legislative hearing to inform her of the Advisory Council's support for Senate Bill 1111 and to discuss the proposed amendment.

EXECUTIVE DIRECTOR UPDATE

Executive Director Burton informed the Council that on April 26, 2007, he and Commissioner Buckley attended the Workers' Memorial Day event at the State House. He stated that a booklet

was provided to each Council Member titled, "Dying for Work in Massachusetts." Mr. Burton stated that last year alone, 76 workers lost their lives in Massachusetts. Director of Labor, George Noel, spoke at the event reminding all participants of the importance of safety in the workplace.

MISCELLANEOUS

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

The next regular meeting of the Advisory Council is scheduled for Wednesday,

June 13, 2007, at 9:00 AM, at the Division of Industrial Accidents, 600 Washington Street, 7th Floor Conference Room, Boston, MA 02111.