

**Massachusetts Workers' Compensation  
Advisory Council Minutes**

June 11, 2008

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

*Present:* Chairman Edmund C. Corcoran, Jr.

CM: Stephen Joyce; Stephen P. Falvey; David P. Powell; John D. Boyle (Teri McHugh); Peter A. Cook, Sr. (Karen Shanley); 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; William Taupier, First Deputy Director of Administration; Gayann Wilkinson, Director, Office of Safety; Ken Corbett, Office of Safety; Ellen Keefe, WCRIB; Dorothy Linsner, Insurance Recovery Group; Jennifer Mercandante, Joint Committee on Labor and Workforce Development; Michael Kelley, AIM Mutual Insurance Company.

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

*Absent:* Vice-Chairman Mickey Long; CM: William Corley; Tony Frias; John Pulgini; John Regan; Dennis Hines; Kenneth J. Paradis, Jr.; Dept. of Business Development.

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*Agenda:*

Chairman's Welcome

DIA Update

- Judicial Update - William Taupier, Deputy Director of Administration
- Vital Statistics - William Taupier, Deputy Director of Administration
- OEVR Update - Robert Demetrio

- Office of Safety - Youth Employment Safety Task Force - Gayann Wilkinson

#### Action Items

- Minutes - May 14, 2008

#### Second Injury Fund Subcommittee Update

#### Executive Director Update

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### **CHAIRMAN'S WELCOME**

Chairman Edmund C. Corcoran, Jr., began today's meeting at 9:00 a.m. Chairman Corcoran recognized former Council Member, Jeanne-Marie Boylan, for her fifteen years of service and invaluable contributions to the Massachusetts Workers' Compensation Advisory Council. Executive Director Andrew Burton presented Ms. Boylan with a letter of recognition from Secretary Suzanne Bump and a Certificate of Congressional Recognition from Senator Stephen F. Lynch.

Chairman Corcoran requested that Mr. Bill Taupier provide Council Members with June's DIA Judicial Update in the absence of Senior Judge Martine Carroll.

### **DIA UPDATE**

#### Judicial Update

Mr. Bill Taupier updated Advisory Council Members on the information contained within the DIA's vital statistic report for June 2008 (see attached). Conference Queue: 552; Hearing Queue: 976; Reviewing Board Inventory: 177; Impartial Exams for FY'08 (to date): 4,106 (81 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 May 2008 (see attached). Total compliance investigations initiated in May 2008: 678; total investigations in FY'08 (to date): 12,149; total SWOs issued in May 2008:

234; total SWOs issued in FY'08 (to date): 913; total fines collected in May 2008: \$84,250; total fines collected in FY'08 (to date): \$474,118; total fines collected in FY'07: \$400,753.

Mr. Taupier continued the update of the monthly vital statistics. Total number of cases filed in May 2008: 1,040; total number of cases filed in FY'08 (to date): 13,279; total number of cases filed in FY'07: 15,149; total number of First Report of Injury Forms (FRI) filed in May 2008: 2,410; total number of FRI filed online in May 2008: 685 (28%); total number of FRI filed in FY'08 (to date): 30,233; total number of FRI filed in FY'07: 33,476; total number of FRI filed online in FY'07: 8,910.

**Council Member Stephen Falvey requested that the DIA provide a chart that displays the number of First Report of Injuries filed on a monthly basis. CM Falvey stated this information was crucial to understanding how First Reports are handled by each industry.**

Mr. Taupier stated that he would add a First Report of Injury chart to the monthly statistics. Mr. Taupier also stated that the DIA is working to incorporate batch filing for the FRIs. The approximate target date for batch filing is set for September. Mr. Taupier explained that once this task is complete, large insurance companies will be able to submit all forms electronically.

Mr. Taupier proceeded with his update on uninsured claims (§65). Total number of §65 claims processed in FY'08 (to date): 161; total amount of §65 claims paid by the Trust Fund in FY'08 (to date): \$6,029,730; total number of §65 claims filed in FY'07: 192; total amount of §65 claims paid by the Trust Fund in FY'07: \$6,831,832.

**Chairman Corcoran requested that the DIA provide a cost analysis on the severity of uninsured claims. Specifically, the Chairman requested that the severity of the claims filed in 2007 be compared to the severity of claims filed in 2008. Chairman Corcoran noted that this information would be important in measuring how severity, not frequency, is the primary driver of costs within the Trust Fund.**

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): \$18,070,195; total amount paid on these claims in FY'07: \$26,575,359; total monies recovered by the Trust Fund in FY'08 (to date): \$1,158,034; total monies recovered in FY'07: \$1,167,465; total COLA reimbursements to insurers in FY'08 (to date): \$2,712,584; total COLA reimbursements to insurers in FY'07: \$9.1 million.

General Counsel Bill Tattan reported that the DIA is expecting an increase in recovery dollars from the previous year. Attorney Tattan explained that the DIA has taken a more aggressive approach in their collection efforts. He noted that the recovery unit has been holding strategy meetings to discuss emerging issues and to develop effective policies. Attorney Tattan stated that the DIA is now assessing when to move forward on a case

and when it would be in the DIA's best interest to write-off a claim. Attorney Tattan informed Council Members that in many instances when a company has declared bankruptcy, the presiding judge will dismiss the case.

### Budget/Personnel Issues

Mr. Taupier reported that as of May 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.

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

Mr. Taupier presented the OEVR statistics. Total referrals to OEVR in FY'08 (to date): 2,563; total referrals to OEVR in FY'07: 2,839; total mandatory meetings in FY'08 (to date): 2,070; total mandatory meetings in FY'07: 2,282; total referrals to insurers in FY'08 (to date): 594; total referrals to insurers in FY'07: 706; total Individual Written Rehabilitation Plans (IWRP) approved in FY'08 (to date): 368; total IWRPs approved in FY'07: 428; total number of Return to Work (RTW) in FY'08 (to date): 142; total number of RTW in FY'07: 176; total number of IWRPs completed with no RTW in FY'08 (to date): 124; total number of IWRPs completed with no RTW in FY'07: 152.

### OEVR UPDATE

Robert Demetrio, Director of OEVR, updated the Council Members on the operations of the Unit. Mr. Demetrio began his presentation with a detailed overview of the vocational rehabilitation (VR) process. He explained that the mission of OEVR is to assist injured workers in returning to meaningful employment. Mr. Demetrio emphasized that early intervention is one of the key elements to an effective program.

Mr. Demetrio explained that in order for a claimant to be eligible for vocational rehabilitation services, the claimant must be referred to OEVR and liability established. OEVR then determines if the claimant is suitable for rehabilitation services. Mr. Demetrio stated that suitable cases are referred to the insurer and assigned to a VR Provider, who will then meet the injured worker and develop an Individual Written Rehabilitation Program (IWRP). OEVR will then monitor the providers to ensure the IWRP is appropriate.

Council Members expressed concern about the length of time it takes an injured worker to receive VR services. Mr. Demetrio noted that a claimant is not eligible for VR services until liability is established and the worker has reached a medical end result. Council Members offered to work with the DIA to review and revise the OEVR process to ensure that employees are receiving these essential services in a timely fashion.

Chairman Corcoran noted that OEVR is a positive program that needs to be utilized more effectively. The Chairman stated that he would like to see the DIA become more aggressive earlier in the process to have the claimant retrained. Chairman Corcoran noted that the 5-year exhaustion period

in many cases is too late to get employees retrained, especially for older workers. Chairman Corcoran stated that OEVR should consider broadening their base of opportunity so that more employees can return to gainful employment.

Council Members also voiced concern regarding the lump sum process. It was noted that the employee only has two years to go back for OEVR services after the case has been settled by a lump sum. Council Members referred to an example of a young employee who receives a large lump sum and then after a few years the money is gone and they remain unemployed.

In closing, Mr. Demetrio reported that there has been a decrease in the number of referrals to OEVR. Mr. Demetrio emphasized that OEVR is continuing to streamline operations through the use of new technology.

### **OFFICE OF SAFETY**

Ms. Gayann Wilkinson, Director of the Office of Safety, informed Council Members that the DIA will be participating in the Youth Employment Safety Task Force (YES) and will be in attendance at the national conference in Newton on September 11 and 12, 2008. Ms. Wilkinson stated that as part of the event, the Office of Safety will conduct training at the Janas Training Center in Lawrence on Tuesday, August 26, 2008 for 25 young people. She noted that the young people (ages 14-18) will be trained in CPR and AED. Upon completion, they will receive the American Heart Association CPR/AED course completion card and a customized certificate of completion in a public ceremony.

Ms. Wilkinson stated that as part of the training, the Office of Safety will address issues involving employee rights and explain how the Department of Industrial Accidents serves the public. Ms. Wilkinson informed the Council Members that enclosed in their packets was a nomination form for any members that wished to suggest a young person to participate in the training.

Chairman Corcoran requested that Ms. Wilkinson provide additional packets and posters for distribution at Raytheon's Andover Office.

### **ACTION ITEMS**

Chairman Corcoran asked for a motion to accept the Minutes for May 14, 2008.

Motion made to accept the Minutes for May 14, 2008.

MMS - Passed.

### **SECOND INJURY FUND SUBCOMMITTEE UPDATE**

Mr. Tom Jones gave a brief update on the Second Injury Fund Subcommittee meeting held on June 9, 2008 (see attached).

Mr. Jones stated that representatives of the WCRIB (Ellen Keefe, Vice-President and General Counsel and Robert McCarthy, Vice-President and Actuary) provided subcommittee members with an overview of experience rating in Massachusetts and its relationship with insurer recoveries from Second Injury Fund reimbursements.

Mr. Jones explained that Mike Kelly (A.I.M. Mutual) had provided the subcommittee with an example of the time frames associated with a typical SIF claim and why the claim process is often too late to affect an employer's experience modification factor. Mr. Jones noted that much of the discussion centered on Mid-Act cases in which it appears there can be no benefit to the employers through revised experience modification factors.

Mr. Jones reported that the discussions are still ongoing on what action is necessary, if any, regarding the Second Injury Fund. He noted that in order to gain another perspective on these claims, the subcommittee has agreed to invite Attorney Fred Uehlein (Insurance Recovery Group) and Council Member John Boyle (small business representative) to discuss the Second Injury Fund at the next meeting. Mr. Jones stated that Executive Director Andrew Burton will work with subcommittee members to schedule a July meeting.

Council Member Stephen Joyce added that another problem the subcommittee has uncovered is that very few employers know that this statute exists. He noted that the law only makes sense as long as employers know the law exists and thereby make employment decisions based on the law.

Council Member David Powell informed the Council Members that until a few months ago he had not been aware of the law. He stated that he supports the idea of making employers aware of the importance and purpose of the statute.

### **EXECUTIVE DIRECTOR UPDATE**

Executive Director Andrew Burton stated that he had recently spoken to Kevin Flynn (Division of Health Care Finance & Policy) regarding the rate setting process for medical reimbursement rates. The Executive Director explained that he had been informed that a public hearing on proposed revisions to the fee schedule would be taking place in the near future. Mr. Burton agreed to testify on behalf of the Council at the hearing promoting the Advisory Council's recommendation of a Medical Fee Schedule Task Force for Massachusetts.

Mr. Burton reported that the DIA's FY'09 budget is currently before the Conference Committee. The Executive Director noted that the line-item being considered is the same amount that was endorsed by the Council in March. Mr. Burton stated that he would continue the letter writing campaign as the budget process moves forward.

Mr. Burton stated that the next meeting of the Advisory Council is scheduled for July 9, 2008. Due to summer vacation schedules, Chairman Corcoran requested that Mr. Burton contact all Council Member to ensure their availability for a July meeting.

### **MISCELLANEOUS**

Council Member Stephen Falvey discussed the importance of having employers timely report all applicable injuries using the First Report of Injury Form (FRI). Mr. Falvey stated that he would like to see the penalties increased on employers who fail to file a FRI. He noted that the under-reporting of the FRI has an effect on workplace safety statistics. Mr. Falvey requested that research be conducted on how Massachusetts penalties compare with OSHA penalties for failing to report injuries.

Council Members agreed to keep this issue on the table for future discussion.

**The next regular meeting of the Advisory Council is scheduled for Wednesday, August 13, 2008, at 9:00 AM, at the Division of Industrial Accidents, 600 Washington Street, 7<sup>th</sup> Floor Conference Room, Boston, MA 02111.**