

**Massachusetts Workers' Compensation
Advisory Council Minutes**

June 24, 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; David Powell (Kevin Hurstak); Peter A. Cook, Sr. (Melody Barlow); John Boyle (Teri McHugh); Tom Jones (Department of Labor).

Also Present: DIA: Commissioner Paul Buckley; Tim McMahon, Deputy Commissioner of Administration; William Tattan, Deputy Commissioner and General Counsel; William McCarthy, Administrative Law Judge; Jack Defina, CFO; William Taupier, First Deputy Director of Administration; Ray Marchand, Director of Investigations; Ellen Keefe, WCRIB; Michael Kelley, AIM Mutual Insurance Company; Will Monnin-Browder, JCLWD; Kate Flanagan, JCLWD; John Glennon, SCIO; Michael Bradley, Director of the Underground Economy Task Force; Steve Williams; William J. Hurley.

Advisory Council Staff: Andrew Burton; Evelyn Flanagan.

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

Agenda:

Chairman's Welcome

Underground Economy Task Force Update - Michael Bradley

DIA Update

- Judicial Update - Administrative Law Judge William McCarthy

- Vital Statistics - William Taupier, Deputy Director of Administration

Action Items

- Minutes - May 13, 2009

Information Technology Consolidation Plan - John Glennon, SCIO

Workers' Compensation Legislative Discussion

Executive Director Update

Miscellaneous

CHAIRMAN'S WELCOME

Vice-Chairman Edmund C. Corcoran, Jr., began today's meeting at 9:00 a.m. Vice-Chairman Corcoran introduced Mr. Michael Bradley, Executive Director of the Underground Economy Task Force, and asked him to provide an update on recent activities of the Task Force.

UNDERGROUND ECONOMY TASK FORCE UPDATE

Mr. Michael Bradley reported that the Task Force had just released their first Annual Report. The Executive Director informed the Council Members that one of the highlights of the report was the recovery of funds in excess of \$1 million. He noted that the successful recoveries were a result of the collaborative work of all 17 state agencies participating on the Task Force. Mr. Bradley stated that he expects these recoveries will continue to rise in the future.

Mr. Bradley stated that he would answer any questions at the next meeting after Council Members have had sufficient time to read the Annual Report. He informed the Council Members that there was an Executive Summary at the beginning of the Annual Report. Mr. Bradley noted that the report is accessible on the Internet on the EOLWD website.

DIA UPDATE

Judicial Update

Administrative Law Judge William McCarthy updated Advisory Council Members on the recent judicial activity. Judge McCarthy stated that the judges had just completed a three-day training, which was held at the Middlesex School in Concord. Judge McCarthy noted that the judges had also met with their Rhode Island counterparts to exchange ideas and discuss common problems.

Judge McCarthy informed the Council Members that Ms. Karen Grippen, Stenographer Manager, had been invited to speak to the judges regarding digital recording in the courtroom. He noted that the administration was examining new technologies to enhance the official record at hearings. The Judge stated that such a transition might ultimately require modification to the statute.

Judge McCarthy informed the Advisory Council that Judge Richard Heffernan's name had been forwarded to the Governor's Council for his confirmation for reappointment.

Mr. William Taupier provided an update of the information contained within the DIA's vital statistic report for June 2009 (see attached). Conference Queue: 259; Hearing Queue: 655; Reviewing Board Inventory: 132; Impartial Exams for FY'09 (to date): 4,572 (54 waivers); Exam Fees Collected for FY'09: \$1,677,851. In fiscal year 2008 there were 5,187 Impartial Medical Examinations (86 waivers); Exam Fees Collected in FY'08: \$1,620,458.

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 356 SWOs in May (40 SWOs were reissued as the result of defaults of previous orders); total SWOs issued in FY'09 (to date): 3,178. Fine collection for May 2009: \$106,300; total fines in FY'09: \$798,080; 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).

Ray Marchand, Investigations Director, stated that his office has a 90-day rule that requires the investigator to re-check previous violators to ensure they remain in compliance. He noted that they make their best effort to capture the number of employees at each business that is issued a stop work order. However, under the current law, Mr. Marchand stated that the DIA does not have the authority to examine payroll records.

Chairman Mickey Long expressed frustration that the DIA has no recourse when an employer obstructs the agency's ability to enforce the law by lying to investigators.

Ray Marchand stated that his staff needs more investigative powers, as proposed in House Bill 17, to sufficiently deter dishonest employers from lying.

Mr. Taupier continued the update of the monthly vital statistics. Total number of cases filed in May 2009: 1,023; total number of cases filed in FY'09 (to date): 18,679; total number of cases filed in FY'08: 14,464; total number of First Report of Injury Forms (FRI) filed in May 2009: 2,227; total number of FRI filed online in May 2009: 605 (27%); total number of FRI filed in FY'09 (to date): 28,783; 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): 152; total amount of §65 claims paid by the Trust Fund in FY'09 (to date): \$5,924,335; 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): \$21,281,868; total amount paid on these claims in FY'08: \$20,725,671; total monies recovered by the Trust Fund in FY'09 (to date): \$1,275,564; total monies recovered in FY'08: \$1,202,747; total COLA reimbursements to insurers in FY'09 (to date): \$24,430,927; total COLA reimbursements to insurers in FY'08: \$4.0 million.

Vice-Chairman Corcoran requested that the DIA provide the Advisory Council with a repeat offender list for Section 65 Claims at the next meeting.

Budget/Personnel Issues

Mr. Taupier reported that as of May 2009, the number of employees whose salary is paid by either the Special Fund or the Trust Fund was 282 (231 DIA employees, 51 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): 2,138; total referrals to OEVR in FY'08: 2,828; total mandatory meetings in FY'09 (to date): 1,756; total mandatory meetings in FY'08: 2,281; total Determinations of Suitability (DOS) in FY'09: 1,164; total DOS in FY'08: 1,634; total referrals to insurers in FY'09 (to date): 592; total referrals to insurers in FY'08: 647; total Individual Written Rehabilitation Plans (IWRP) approved in FY'09 (to date): 374; total IWRPs approved in FY'08: 417; total number of Return to Work (RTW) in FY'09 (to date): 101; total number of RTW in FY'08: 163; total number of IWRPs completed with no RTW in FY'09 (to date): 101; total number of IWRPs completed with no RTW in FY'08: 134.

ACTION ITEMS

Chairman Long asked for a motion to approve the minutes for May 13, 2009.

Motion made to approve the minutes for May 13, 2009. Motion Seconded and Passed.

INFORMATION TECHNOLOGY CONSOLIDATION PLAN

Mr. John Glennon, SCIO, reviewed Executive Order No. 510 - Enhancing the Efficiency and Effectiveness of the Executive Department's Information Technology (IT) Systems.

Mr. Glennon informed the Council Members that the Governor's transition team discovered that there was overlapping IT services and management throughout the various agencies within each Secretariat. Using an Executive Order, the Governor recently directed each Executive Office to go through a planning process to consolidate and reduce any IT redundancy.

Mr. Glennon explained that at the agency level, applications specific to the DIA (such as CMS) would continue to be managed by the DIA. He stated that the Executive Order will transfer management to the Secretariat level for Help Desk Services, LAN, Desktop Support, Website Application Support, and any other applications designated by the Secretariat.

Mr. Glennon stated that there are over 150 data centers, 15 separate networks and 24 e-mail systems within the Commonwealth. He explained that an IT environment should not contain so much redundancy. Mr. Glennon also noted that the main data center for the Commonwealth was located in Chelsea and that the Commonwealth was in the process of building a second data center in Springfield for disaster recovery.

Mr. Glennon stated that he would provide Council Members with a link to the IT plan which articulates the consolidation of Information Technology. He noted that the plan calls for a virtualized support network which can respond to any agency within the Secretariat. Mr. Glennon informed the Council Members that no money would be used this fiscal year from the DIA. The Secretariat and CIO would be responsible for consolidating staff and planning each agency's IT budgets.

Mr. Glennon recognized the unique funding mechanism of the DIA in which employers pay for 100% of the DIA's operations. He assured Council Members that each dollar provided by the employer community would go specifically towards the operations of the DIA. He stated that consolidated services at the Secretariat level would be offset by a chargeback to each agency for the amount of services received.

Vice-Chairman Corcoran expressed concern. He stated that the Advisory Council has budgetary oversight responsibilities and that it would be very difficult to monitor whether or not agency-specific funds are being used for agency-specific projects. The Vice-Chairman referred to several Interdepartmental Service Agreements that had been conducted by the DIA in the past. Mr. Corcoran stated that he did not want to see the DIA become a supplemental budget for other agencies.

Mr. Glennon noted that any staff transferred to the Executive Office would have their salaries and benefits paid by the Executive Office. The DIA would only be billed for services used.

Chairman Mickey Long thanked Mr. Glennon for his brief overview and stated that the Advisory Council should monitor this consolidation closely.

WORKERS' COMPENSATION LEGISLATIVE DISCUSSION

Executive Director Andrew Burton reviewed the following four bills previously endorsed by the Council during the 2007-2008 Legislative Session: House Bill 1865 - Burial Expenses; Senate Bill 681 - Scar-Based Disfigurement; Senate Bill 729 - Criminal Penalties; and House Bill 1870 & Senate Bill 682 - Private Right of Action. Executive Director Burton reminded the Advisory Council that all four of these bills had been reported favorably last year by the Joint Committee on Labor and Workforce Development.

Motion made to support the passage of House Bill 1865, Senate Bill 681, Senate Bill 729, and House Bill 1870 & Senate Bill 682. Motion Seconded and Passed.

Executive Director Andrew Burton stated that a new bill, House Bill 1863, had been filed on behalf of the Advisory Council. Mr. Burton explained that the new bill would increase the penalties against companies that fail to timely report workplace injuries. Mr. Burton stated that the bill creates an escalating fine structure that is dependent on how late an employer reports an injury to the DIA.

Discussion followed.

Motion made to support the passage of House Bill 1863. Motion Seconded and Passed.

Mr. Tom Jones discussed House Bill 17, filed on behalf of the Executive Office of Labor and Workforce Development. Mr. Jones explained that the new bill would give expanded investigative powers to DIA. The new powers would allow investigators to review payroll records and refer cases to the proper agencies when there is suspected fraud. In addition, the bill would increase the civil fines associated with stop work orders which have not been updated since 1986.

Discussion followed.

Motion made to support the passage of House Bill 17. Motion Seconded and Passed.

Council Member Stephen Joyce discussed House Bill 1838 with the Advisory Council. CM Joyce stated that this bill is similar to the online Proof of Coverage application that is currently being developed by WCRIB and the DIA. CM Joyce noted that this bill would require the WCRIB to include all classification codes for each policy in the POC results.

Attorney Ellen Keefe explained that the WCRIB has worked very hard on the development of this application with the DIA. She noted that there had already been an agreement between the WCRIB and the DIA as to which fields would be included in the application. Attorney Keefe stated that the WCRIB plans to provide the Advisory Council with a demonstration of the application at the next Advisory Council meeting.

Vice-Chair Corcoran suggested that any endorsement of House Bill 1838 be made at a later date. The Vice-Chairman reminded the members that there was no urgency and that more time was needed to review this matter.

Motion made to table a vote on House Bill 1838 until the next Advisory Council meeting. Motion Seconded and Passed.

Council Member Stephen Joyce discussed House Bill 1839, which would impose a civil penalty on employers that do not post a printed notice about coverage or cancellation of a workers' compensation insurance policy.

Discussion followed.

Motion made to support the passage of House Bill 1839. Motion Seconded and Passed.

Attorney Teri McHugh alerted Council Members to House Bill 1836. Attorney McHugh stated that this bill would require any unresolved conciliation to be heard by a judge on the same day for a conference. Attorney McHugh stated that the passage of such a bill would create havoc for scheduling and could potentially hurt an injured worker's case.

EXECUTIVE DIRECTOR UPDATE

Executive Director Andrew Burton stated that there would be no meeting in July and that the Council would resume its regular meeting schedule on August 12, 2009. Mr. Burton reminded Council Members that the WCRIB would be providing a demonstration of the Proof of Coverage Application at the next Advisory Council meeting.

MISCELLANEOUS

Chairman Long thanked everyone for attending today's meeting.

Motion made to adjourn the meeting. Motion Seconded and Passed.

The next regular meeting of the Advisory Council is scheduled for Wednesday, August 12, 2009, at 9:00 AM, at the Department of Industrial Accidents, 600 Washington Street, 7th Floor Conference Room, Boston, MA 02111.