

**Massachusetts Workers' Compensation
Advisory Council Minutes**

August 8, 2008

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

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

CM: Stephen Joyce; Stephen P. Falvey; David P. Powell; John D. Boyle (Teri McHugh); Peter A. Cook, Sr. (Karen Shanley); William Corley; 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; Raymond Marchand, Director of Investigations; Bob Kenney, Manager of Administration & Finance; Ellen Keefe, WCRIB; Jennifer Mercandante, Joint Committee on Labor and Workforce Development.

Advisory Council Staff: Andrew Burton; Evelyn Flanagan.

Absent: CM: Tony Frias; John Pulgini; John Regan; Dennis Hines; Kenneth J. Paradis, Jr.; Department of Business Development.

Agenda:

Chairman's Welcome

DIA Update

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

Action Items

- Minutes - June 11, 2008

Second Injury Fund Subcommittee Update

Executive Director Update

Miscellaneous

CHAIRMAN'S WELCOME

Chairman Edmund C. Corcoran, Jr., began today's meeting at 9:00 a.m. Chairman Corcoran recognized former Council Member, Bobby Banks, for his ten years of service and invaluable contributions to the Massachusetts Workers' Compensation Advisory Council. The Chairman specifically acknowledged the hard work that Mr. Banks put forth on the development of the DIA's assessment audit program which has recovered over \$10 million dollars from underpaid assessments. Executive Director Andrew Burton presented Mr. Banks with a letter of recognition from Secretary Suzanne Bump and a Certificate of Congressional Recognition from Congressman Stephen F. Lynch.

Chairman Corcoran requested that Senior Judge Martine Carroll provide Council Members with the DIA Judicial Update.

DIA UPDATE

Judicial Update

Senior Judge Carroll updated Advisory Council Members on the information contained within the DIA's vital statistic report for August 2008 (see attached). Conference Queue: 657; Hearing Queue: 964; Reviewing Board Inventory: 172; Impartial Exams for FY'09 (to date): 485 (3 waivers). In fiscal year 2008 there were 5,187 Impartial Medical Examinations (86 waivers).

Senior Judge Carroll informed the Council Members that Paul Benoit (AJ), Emily Novick (AJ), and Catherine Koziol (ALJ) have all been confirmed by the Governor's Office for judgeships and will be sworn in next week. The Senior Judge announced that she has scheduled two weeks of training for the new AJs. Upon completion of the training, the AJs will begin their first conference cycle schedule. Senior Judge Carroll stated that there was now a full compliment of judges at the DIA.

Vice-Chairman Mickey Long expressed concern about the length of time that an injured employee must wait for a conference or hearing. The Vice-Chairman noted that unnecessary delays in scheduling can lead to hardships for employees who are not receiving a weekly check. **Vice-Chairman Long requested that the DIA identify the number of employees in the queue who are not receiving checks from their employers.**

Commissioner Buckley informed Vice-Chairman Long that he will have Mr. Taupier contact the Information Technology Department to look into running this report. The Commissioner stated that he would attempt to provide a snapshot of this number for next month's Advisory Council meeting.

Senior Judge Carroll explained that in many cases it is either the attorney or the employee who is requesting an extension. She also stated that an employee may request an expedited conference if there is hardship involved.

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 July 2008 (see attached). Total investigations in FY'09 (to date): 715; total investigations in FY'08: 12,758; total SWOs issued in July 2008: 252; total SWOs issued in FY'08 (to date): 1,126; total fines collected in July 2008: \$72,800; total fines collected in FY'09 (to date): \$72,800; total fines collected in FY'08: \$437,900.

Deputy Commissioner and General Counsel Bill Tattan introduced Mr. Ray Marchand, the Director of the Office of Investigations.

Mr. Marchand explained that he is in the process of revamping the statistical report that is provided at Council Meetings because it is not reflective of the work the investigators conduct or the actual compliance rates in the field. Mr. Marchand stated that he has made several changes to the investigative work schedules to maximize productivity and efficiency. He is presently reviewing every facet of his unit and studying "best practices" in other states. The Director stated that they will also be conducting an analysis of Trust Fund cases to better target industries and geographic locations.

Mr. Marchand explained that it is difficult for the DIA to quantify how many employers actually obtain a workers' compensation policy because of their investigative activities. Specifically, he referred to the investigative sweeps in which many companies will get a policy because they know the DIA is coming to their area.

Ms. Ellen Keefe, legal counsel for the WCRIB, stated that the rating bureau has received and increase in policy requests for the Assigned Risk Pool since the Office of Investigations changed their SWO procedures. Ms. Keefe offered to assist the DIA in keeping track of new applications.

Council Member Stephen Joyce noted that many of the companies that are issued stop work orders appear to be small employers. CM Joyce suggested that the Investigations Unit may want to focus their activities on the construction industry where there is much bigger risk to the Trust Fund. CM Joyce also suggested that the Office of Investigations look into legislatively increasing the fine structure.

Mr. Taupier continued the update of the monthly vital statistics. Total number of cases filed in July 2008: 1,212; total number of cases filed in FY'09 (to date): 1,212; total number of cases filed in FY'08: 14,464; total number of First Report of Injury Forms (FRI) filed in July 2008: 3,023; total number of FRI filed online in July 2008: 885 (29%); total number of FRI filed in FY'09 (to date): 885; 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): 15; total amount of §65 claims paid by the Trust Fund in FY'09 (to date): \$134,784; 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 number of §37/37A petitions approved for payment in FY'09 (to date): 0; total amount paid on these claims in FY'08: \$20,725,671; total monies recovered by the Trust Fund in FY'09 (to date): \$194,962; total monies recovered in FY'08: \$1,202,747; total COLA reimbursements to insurers in FY'09 (to date): \$65,787; total COLA reimbursements to insurers in FY'08: \$4.0 million.

Chairman Ed Corcoran requested that the Manager of the Civil Litigation Unit take part in the September Advisory Council Meeting to explain the workings of this unit.

Council Member Steve Falvey asked how COLA payments are set and who is responsible for handling their payments.

Mr. Taupier explained that the COLA formula is developed internally and is based upon the Consumer Price Index for the Northeast Urban Region. It was noted that the manager of the Trust Fund that handled the COLA payments had left the job in March. Currently, the DIA is reorganizing the unit and plans on having a dedicated person to work exclusively on COLAs. Mr. Taupier stated that he would forward the DIAs Circular Letter regarding COLAs to the Executive Director for distribution to Council Members.

Budget/Personnel Issues

Mr. Taupier reported that as of July 2008, the number of employees whose salary is paid by either the Special Fund or the Trust Fund was 278 (242 DIA employees, 36 WCTF employees).

Office of Education and Vocational Rehabilitation (OEVR) Update

Mr. Taupier presented the OEVR statistics. Total referrals to OEVR in FY'09 (to date): 278; total referrals to OEVR in FY'08: 2,828; total mandatory meetings in FY'09 (to date): 237; total mandatory meetings in FY'08: 2,281; total referrals to insurers in FY'09 (to date): 62; total referrals to insurers in FY'08: 647; total Individual Written Rehabilitation Plans (IWRP) approved in FY'09 (to date): 62; total IWRPs approved in FY'08: 419; total number of Return to Work (RTW) in FY'09 (to date): 10; total number of RTW in FY'08: 163; total number of IWRPs completed with no RTW in FY'09 (to date): 4; total number of IWRPs completed with no RTW in FY'08: 134.

ACTION ITEMS

Chairman Corcoran asked for a motion to accept the Minutes for June 11, 2008.

Motion made to accept the Minutes for June 11, 2008.

MMS - Passed.

SECOND INJURY FUND SUBCOMMITTEE UPDATE

Executive Director Burton gave a brief history of the work conducted by the Second Injury Fund Subcommittee during the last several months. The Executive Director explained that the subcommittee held a conference call on August 12, 2008 to finalize recommendations that would be shared with the Advisory Council at today's meeting (see attached update).

Mr. Burton read the following proposed motions that were unanimously passed by the subcommittee as recommendations for the Advisory Council to adopt.

Proposed Motion #2B

"Motion to recommend that the Second Injury Fund Subcommittee endorse legislative efforts to phase out Section 37 Second Injury Fund reimbursements for new and arising cases eligible for reimbursement for all injuries occurring before December 23, 1991, so called "Mid Act" and "Old Act" claims. Such legislation shall become effective 180 days after enactment."

Proposed Motion #1A

"Motion to recommend that the Second Injury Fund Subcommittee support the preservation of the Second Injury Fund in Massachusetts for all claims arising on or after December 23, 1991, so called "New Act" claims."

Chairman Corcoran asked for a motion to accept the Subcommittee's recommendations regarding the Massachusetts Second Injury Fund.

Motion made to accept the recommendations of the subcommittee.

MMS - Passed.

Council Member Stephen Joyce thanked Mr. Burton and Ms. Flanagan for their hard work on keeping the subcommittee informed and educated on Second Injury Fund issues.

Council Member Powell offered to be part of a team to meet with the legislature to educate them about the Advisory Council's recommendations. Mr. Powell stated that he did not believe the legislature would have a problem with passing legislation that would protect the Trust Fund in the long run.

Mr. Jones suggested that the Executive Director prepare a letter to chairs of the Joint Committee on Labor & Workforce Development summarizing the reasoning behind the Advisory Council's Second Injury Fund recommendations. Mr. Jones stated that legislation could either be filed as a stand alone bill in the next legislative session or included as outside language in a supplemental budget.

EXECUTIVE DIRECTOR UPDATE

Executive Director Burton reported that Governor Patrick had signed the FY'09 General Appropriations Act in July, allotting the DIA with a \$21,196,452 operating budget. He explained that this same budget figure was endorsed by the Advisory Council in March as adequate funding for the DIA.

Executive Director Burton then referred to a memorandum that summarized the FY'09 Assessment Rate for private employers. Mr. Burton noted that Deloitte Consulting had calculated the private employer assessment rate to be 6.262% of standard premium, representing an increase of 13.1% from last year's rate. Mr. Burton stated that this increase was driven by the inclusion of an estimated \$3.8 million of indirect/fringe costs to the Special Fund projected budget. Mr. Burton introduced Mr. Bob Kenney, Accounting and Finance Manager, who was at the meeting to provide an explanation of the mandated payment of indirect/fringe costs.

Mr. Bob Kenney explained that the distinguishing feature between the Special Fund and the Trust Fund is that the Trust Fund pays out for various types of claims, while the money set aside for the Special Fund is to pay all operating expenses for the DIA. Mr. Kenney explained that the legislature appropriates money from the General Fund and the DIA must pay the money back over the course of the year with interest.

Mr. Kenney stated that while working with Deloitte Consulting, the DIA discovered that they had not been reserving funds for indirect/fringe costs when calculating past assessment rates. He explained that fringe/indirect rates include fringe benefits and payment for services provided to the DIA from other agencies. Mr. Kenney referred to M.G.L. c. 29(5)(d) which states that the Comptroller will set a rate to recover any fringe benefits that is attributed to a trust or federal fund. Mr. Kenney noted that indirect costs are those costs under the Statewide Cost Allocation Program (SWCAP). These costs pay for services from different agencies including payment to the treasurer, comptroller, attorney general, etc.

Mr. Kenney explained that the indirect rates are paid in the course of the year and are allocated rates developed by the state. He noted that the costs for these indirect services have been fairly consistent, ranging from 1-2%. Mr. Kenney stated that the Fringe Benefits are benefits for the DIA employees.

Chairman Corcoran expressed concern about the rising assessment rates and asked if the DIA had ever performed a fringe benefit analysis. The Chairman cautioned that if assessment rates continue to increase they could eventually exceed an employer's own claim costs.

Executive Director Burton referred to a memorandum that outlined State and Federal injury reporting requirements. Mr. Burton explained that the Massachusetts Law fines a company \$100 for each violation if they do not submit a first report of injury form (Form 101) three times in a given year. Mr. Burton reported that Maine, Rhode Island and Vermont have similar reporting requirements and fines. Mr. Burton noted that New Hampshire charges a fine of \$2,500 and Connecticut can award compensation "proportionate to the prejudice that the employee sustained."

Council Member Stephen Falvey suggested increasing the first report of injury fines. He suggested making the fines more severe for cases when an employer fails to report an injury as opposed to filing late. CM Falvey suggested that the DIA could consider applying a surcharge to the fine, similar to the way the Registry of Motor Vehicles does.

Chairman Corcoran suggested that the Executive Director contact Council Members to see if there was interest in forming a subcommittee to discuss how to improve injury reporting compliance.

MISCELLANEOUS

Chairman Corcoran asked for a motion to adjourn the meeting.

Motion made to adjourn the meeting.

MMS - Passed.

The next regular meeting of the Advisory Council is scheduled for Wednesday, September 10, 2008, at 9:00 AM, at the Division of Industrial Accidents, 600 Washington Street, 7th Floor Conference Room, Boston, MA 02111