

**Massachusetts Workers' Compensation
Advisory Council Minutes**

September 9, 2009

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

Present: Vice-Chairman Edmund C. Corcoran, Jr.

CM: Stephen Joyce; Stephen Falvey; John Regan; David Powell; Teri McHugh; Tom Jones, Department of Labor.

Also Present: Commissioner Paul Buckley; Tim McMahon, Deputy Commissioner of Administration; William Tattan, Deputy Commissioner and General Counsel; William Taupier, First Deputy Director of Administration; Ray Marchand, Director of Investigations; Ellen Keefe, WCRIB; Paul Meagher, WCRIB; Chris Timbone, WCRIB; Michael Kelley, AIM Mutual Insurance Company; Will Monnin-Browder, JCLWD.

Advisory Council Staff: Andrew Burton; Evelyn Flanagan.

Absent: CM: Antonio Frias, John Pulgini; William T. Corley; Dennis Hines; Kenneth J. Paradis, Jr.; Peter A. Cook, Sr.; Department of Business Development.

Agenda:

Chairman's Welcome

DIA Update

- Vital Statistics - William Taupier, Deputy Director of Administration

Action Items

- Minutes - August 12, 2009

Employee Misclassification Subcommittee Update

Executive Director Update

Miscellaneous

CHAIRMAN'S WELCOME

Vice-Chairman Edmund C. Corcoran, Jr. began today's meeting at 9:00 a.m. The Vice-Chairman recognized Teri McHugh who was officially appointed to the Advisory Council. The Chairman stated that Council Member McHugh will be representing small businesses in the Commonwealth. Vice-Chairman Corcoran asked Senior Judge Martine Carroll to provide the 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 September 2009 (see attached). Conference Queue: 107; Hearing Queue: 637; Reviewing Board Inventory: 153; Impartial Exams for FY'10 (to date): 821 (8 waivers); Exam Fees Collected for FY'10: \$249,275. In fiscal year 2009 there were 5,069 Impartial Medical Examinations (64 waivers); Exam Fees Collected in FY'09: \$1,789,076.

Senior Judge Carroll reported that Judge Richard Heffernan had been reappointed and sworn in as an Administrative Judge (AJ) for a six-year term. The Senior Judge noted that next spring there would be thirteen judicial vacancies (8 Administrative Judges and 5 Administrative Law Judges) up for reappointment. The Senior Judge explained that she did not intend to take any judges off-line during this process since it could disrupt the ongoing cases and potentially lead to backlogs.

The Senior Judge reported that the present waiting period for a conference is between 4-6 weeks. She noted that the hearings were also being heard at a quicker pace.

Senior Judge Carroll reported that the Impartial Unit has made a huge effort in recruiting Impartial Physicians. The Senior Judge stated that the Impartial Physician List has approximately 280-290 physicians on board.

The Senior Judge reviewed the Decision Outstanding List and noted that one Judge stands out on the report. Senior Judge Carroll stated that she is working with this Judge to get caught up on writing decisions.

Vice-Chairman Corcoran informed the Council Members that the Disability Management Employer Coalition (DMEC) would be holding a Greater Boston Chapter Meeting about workers' compensation on October 21st at the Liberty Mutual Conference Center in Weston. The Chairman stated that Commissioner Buckley, Senior Judge Carroll and Rhode Island's Chief Judge, George Healy, would appear on the speaker's panel to address the workers' compensation aspect of disability.

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 285 SWOs in August (28 SWOs were reissued as the result of defaults of previous orders); total SWOs issued in FY'10 (to date): 609. Fine collection for July 2010: \$76,150; total fines in FY'10: \$158,450; SWOs issued in FY'09: 3,484; total fines collected in FY'09: \$885,980; compliance checks for July 2009: 3,298; estimated number of workers now covered by WC insurance as the result of a SWO: 1,476 (FY'10).

Mr. Ray Marchand indicated that it was difficult to gauge how extensive employer fraud is in Massachusetts. The Investigations Director noted that it was difficult to determine the exact number of businesses operating in the Commonwealth at any one time. Mr. Marchand stated that in many cases a company could have a policy but it is a minimal policy in which workers are misclassified.

Mr. Taupier continued the update of the monthly vital statistics. Total number of cases filed in August 2009: 940; total number of cases filed in FY'10 (to date): 2,231; total number of cases filed in FY'09: 13,806; total number of First Report of Injury Forms (FRI) filed in August 2009: 2,488; total number of FRI filed online in August 2009: 752 (30%); total number of FRI filed in FY'10 (to date): 5,252; total number of FRI filed in FY'09: 31,216; total number of FRI filed online in FY'09: 8,048 (26%).

Mr. Taupier proceeded with his update on uninsured claims (§65). Total number of §65 claims processed in FY'10 (to date): 15; total amount of §65 claims paid by the Trust Fund in FY'10 (to date): \$627,620; total number of §65 claims filed in FY'09: 162; total amount of §65 claims paid by the Trust Fund in FY'09: \$6,800,322.

Mr. Taupier proceeded with the vital statistics for the Second Injury Fund (§37/37A). Total amount of §37/37A petitions paid in FY'10 (to date): \$900,893; total amount paid on these claims in FY'09: \$24,078,327; total monies recovered by the Trust Fund in FY'10 (to date): \$83,941; total monies recovered in FY'09: \$1,410,782; total COLA reimbursements to insurers in FY'10 (to date): \$99,920; total COLA reimbursements to insurers in FY'09: \$34 million.

Budget/Personnel Issues

Mr. Taupier reported that as of August 2009, the number of employees whose salary is paid by either the Special Fund or the Trust Fund was 281 (230 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'10 (to date): 454; total referrals to OEVR in FY'09: 2,334; total mandatory meetings in FY'10 (to date): 348; total mandatory meetings in FY'09: 1,913; total Determinations of Suitability (DOS) in FY'10 (to date): 248; total DOS in FY'09: 1,286; total referrals to insurers in FY'10 (to date): 100; total referrals to insurers in FY'09: 627; total Individual Written Rehabilitation Plans (IWRP) approved in FY'10 (to date): 72; total IWRPs approved in FY'09: 404; total number of Return to Work (RTW) in FY'10 (to date): 11; total number of RTW in FY'09: 106; total number of IWRPs completed with no RTW in FY'10 (to date): 26; total number of IWRPs completed with no RTW in FY'09: 107.

Vice-Chairman Corcoran suggested that the Advisory Council invite some Vocational Rehabilitation Councilors to a future meeting to discuss how OEVR could be improved. The Vice-Chairman stated that he would like to see this program reach out to more injured workers, especially during these tough economic times.

Underground Economy Update

Mr. Tom Jones updated the Council Members on the recent activities of the Joint Task Force on the Underground Economy. Mr. Jones stated that the Executive Director of the Task Force, Michael Bradley, had resigned his position effective yesterday. Mr. Jones informed the Advisory Council that in the interim he would be assisting in this position until a replacement is identified.

Mr. Jones informed the Council Members that the Underground Economy has an upcoming Town Hall Meeting in Hyannis on September 22, 2009. He explained that the meeting would be a public forum for people to discuss the problem of misclassification.

Mr. Jones stated that on October 2, 2009, a Summit on the Underground Economy will be held for all northeast states at Holyoke Community College. He explained that the summit has been organized in conjunction with New York and would focus on data sharing. Mr. Jones informed the members that the Task Force efforts have been a revenue generator, as well as leveling the playing field for the employers that play by the rules. Mr. Jones noted that the underground economy is becoming a bigger issue, especially with the bad economy. He stated that he would provide a summary of events from this conference during the next meeting.

ACTION ITEMS

Vice-Chairman Corcoran asked for a motion to approve the minutes for August 12, 2009.

Motion made to approve the minutes for August 12, 2009. Motion Seconded and Passed.

EMPLOYEE MISCLASSIFICATION SUBCOMMITTEE UPDATE

Council Member Stephen Joyce updated Council Members on the first meeting of the Employee Misclassification Subcommittee. He explained that the purpose of the subcommittee was to develop a workable solution for identifying employee misclassification. Council Member Joyce stated that the subcommittee has decided to explore whether the Workers' Compensation Rating & Inspection Bureau (WCRIB) would be willing to share classification information with the DIA for public dissemination on a case-by-case basis.

WCRIB President, Paul Meagher, stated that the Governing Committee would be meeting next week to discuss this issue in further detail. Mr. Meagher explained that the subcommittee had discussed including a classification request form within the Proof of Coverage Tool to allow the public to request classification information on a particular employer. The DIA would then work with the WCRIB in obtaining classification information, which could then be shared with the party making the request.

Executive Director Andrew Burton stated that he would be organizing a second subcommittee meeting after the WCRIB's Governing Committee meets next week.

EXECUTIVE DIRECTOR UPDATE

Executive Director Andrew Burton stated that the Proof of Coverage Application would likely go online in the coming week. The Executive Director explained that he would contact the Advisory Council Members upon its release to the public.

Executive Director Burton stated that on Wednesday, September 30th, the Joint Committee on Labor and Workforce Development (JCLWD) would be holding a public hearing on workers' compensation legislation. The Executive Director noted that there were seven bills endorsed by the Advisory Council and that he would be providing testimony at the public hearing. He stated that he was attempting to organize a meeting with the JCLWD Chairs to discuss the pending legislation. Executive Director Burton stated that he would begin drafting the testimony and would send it to Council Members for review.

Council Member John Regan stated that there had recently been a major change to the lobbying laws. Mr. Regan stated that under the new definition, many more people would be required to register as a lobbyist. He noted that the Advisory Council should review this new law to ensure no violations occur when attending meetings or testifying.

Executive Director Burton stated that he would ask the DIA's Chief Legal Counsel to provide a legal opinion on the new law to see if it pertains to Advisory Council Members or staff.

MISCELLANEOUS

Vice-Chairman Corcoran 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, October 14, 2009, at 9:00 AM, at the Department of Industrial Accidents, 600 Washington Street, 7th Floor Conference Room, Boston, MA 02111.