

**Massachusetts Workers' Compensation
Advisory Council Minutes**

January 14, 2004

Department of Industrial Accidents

600 Washington Street, 7th Floor

Boston, MA 02111

Present: Chairman Thomas M. Jones. CM: Robert Banks; Edmund C. Corcoran, Jr.; Fran Fanning; Alan S. Pierce; Joan Lenihan, (Department of Labor and Workforce Development); Rich Weitzel (Department of Business and Technology).

Also Present: DIA: Senior Judge Daniel O'Shea; Jack Tynan, Director of Administration; Richard Morris, First Deputy Director of Administration; Bill Taupier, Deputy Director of Administration; Karen Fabiszewski, Legal Counsel; Karen Gibbons (WCRIBM).

Advisory Council Staff: Andrew Burton; Evelyn Flanagan.

Absent: CM: Carol Falcone, Antonio Frias; Jeanne-Marie Boylan; Bruce Cochrane; Stephen Sampson; John Perry; Ken Owens.

Agenda:

DIA Update

Assessment Audit Update

Karen Fabiszewski, Assistant General Counsel, Workers' Compensation Trust Fund

Action Items

- Minutes - October 8, 2003
- Minutes - November 12, 2003
- Minutes - December 10, 2003

Fiscal Year 2003 Annual Report - Final Approval

Executive Director Update

Miscellaneous

Chairman's Welcome

Chairman Jones conducted today's meeting.

DIA UPDATE

Senior Judge O'Shea updated Council Members on the information contained within the DIA's vital statistic report (see attached). Conference Queue: 1,207; Hearing Queue: 1,968; Reviewing Board Inventory: 107; Impartial Exams: 2,327 (41 waivers).

The Senior Judge indicated that the Hearing Queue remains high. He noted that Judge Purcell will be coming off-line for a period of time on personal leave. The DIA has coordinated his schedule to accommodate him.

Council Member Robert Banks stated that he was recently asked to conduct a comparison on the Hearing Disability Benefits offered under the Massachusetts Workers' Compensation System versus the benefits offered under the State of Washington's OSHA Hearing Conservation Plan. Mr. Banks inquired of the Senior Judge if the DIA received many hearing disability claims. The Senior Judge stated that very few claims are submitted under Section 36.

Senior Judge O'Shea then referred the question to Attorney Alan Pierce for further clarification. Attorney Pierce explained that the problem with §36 claims is that all the subsections allow the claimant to collect compensation for a portion of the disability, except for the subsection concerning hearing loss. Attorney Pierce noted that the statute requires 100% (any loss over 70% is considered 100%) bi-lateral loss of hearing to be considered an impairment. For an employee to collect compensation, the injury must relate to 100% loss of hearing for all practical purposes.

The Senior Judge proceeded to guide Council Members through the operational aspects of Executive Order No. 456, which was signed by Governor Mitt Romney on December 18, 2003. The Senior Judge explained that this Executive Order was similar to how the Judicial Nominating Commission conducts their process for appointing Constitutional Judges. He noted that the previous Executive Order lacked specificity. The Senior Judge explained that this Executive Order was drafted to instill integrity into the nominating process.

Specifically, the Senior Judge explained how the Executive Order defines what is expected of the Nominating Panel members, as well as the applicants. He noted that the order defines each panel member's responsibilities and confidentiality requirements under a specific Code of Conduct. The Executive Order describes the necessary qualifications for both the AJs and the ALJs and the statutory obligations as stated in Chapter 23E(9). The Executive Order also serves to limit contributions of applicants and tightens up the time frame for interviews.

Chairman Jones voiced concern on the time constraints that the Executive Order imposed on the Advisory Council for interviewing judicial candidates. The Chairman explained that the Advisory Council could have a difficult time gathering members together to conduct interviews within seven days from receiving the candidate's names from the Nominating Panel. He noted that this problem is compounded by the fact that the Council is currently without a full compliment of voting members.

Council Member Ed Corcoran suggested that members of the Advisory Council remain after the meeting to draft internal guidelines that will provide set procedures for conducting judicial interviews. Council Members agreed. The Senior Judge noted that he would work with the Executive Director to help the Council expedite the process.

Stop Work Orders/Caseload Statistics

Mr. Bill Taupier updated Council Members on the Stop Work Order and Caseload Statistics. Stop Work Orders issued for December: 68 (since the agency has restructured the SWO process, the enforcement rate of SWOs has gone from 40% to 95% when comparing the last quarter with a year ago); Fines Collected: \$23,636; Fines Billed: \$10,400; YTD Collected: \$180,000; YTD Billed: \$71,400.

Council Member Banks inquired about the enforcement rate of SWOs before the new system was put into place. Mr. Taupier explained that there was a 7% enforcement rate before the new system took affect. He stated that the increased rate speaks to the new system employed by the agency. Mr. Taupier explained that phone calls are made to suspected violators to ensure SWOs are not issued blindly. He noted that every step of the process is followed thoroughly and that all offenders are aggressively approached.

Mr. Morris added that one of the keys to the success with collections is that the DIA is being more aggressive with internal research. The First Deputy Director of Administration explained that phone calls were never made in the past until the case was referred to a collection agency. He stated that investigators are doing a better job of notifying employers that they owe money. Mr. Morris also recognized the fact that credit card payments are accepted, allowing the payment process go much smoother. Mr. Morris explained that the fines collected go back into the Special Fund where they can be used for the agencies operating expenses.

Mr. Taupier continued his update on the monthly vital statistics. Total number of cases filed for December 2003: 1,239. Total number of cases filed for December 2002: 1,338. Total number of cases filed for fiscal year 2004: 8,271. Total number of cases filed for Calendar Year 2003: 16,987. Total number of First Report's filed for December 2003: 2,207. Total number of First Report's filed in Fiscal Year 2004 (to date): 19,046. Total number of First Report's filed in Fiscal Year 2003: 36,641.

Uninsured claims (§65) filed for fiscal year 2004: 103. Uninsured claims paid by the Trust Fund for fiscal year 2004: \$1,912,634. Total number of uninsured claims paid by Trust Fund for FY 2003: \$3.78 million. Number of §37/§37A petitions filed in fiscal year 2003: 284. Number of §37/§37A petitions paid in fiscal year 2003: 257. The amount paid on these claims in fiscal year 2003: \$19.8 million. Number of §37/37A petitions filed in fiscal year 2004 (to date): 174. Number of §37/§37A petitions paid in fiscal year 2004 (to date): 339. The amount paid on these claims in fiscal year 2004 (to date): \$12,170,872.

Budget/Personnel Issues

The total number of positions filled by full-time employees at the DIA (including the WCTF) as of December 2003: 280 (268 DIA employees, 12 WCTF employees). The DIA has no contract employees at this time. Five temporary employees are being utilized within the DIA as of this report. Two temporary employees were cut during the month of December.

Chairman Jones requested that next month's personnel update reflect the positions where there are vacancies and where they are being filled as done in previous years.

Chairman Jones thanked the members of the DIA for their update.

INSURANCE AUDIT REVIEW

Attorney Karen Fabiszewski presented to the members of the Advisory Council a brief review of the Insurance Audit (see attached Insurance Assessment Review). Attorney Fabiszewski reviewed a list of insurance companies which have recently remitted assessments, as well as those insurance companies which have previously submitted remittance on their assessments. She explained that both she and Greg White (General Counsel) intend to schedule a meeting with the General Counsel of Liberty Mutual in an attempt to resolve any outstanding issue regarding this assessment. Attorney Fabiszewski also stated that a meeting would be scheduled with Arbella to resolve any of their outstanding issues.

With respect to Atlantic Charter, the General Counsel and Attorney Fabiszewski have already met with this company and have reached a resolution in principle. One of the Trust Fund's reviewing firms (Parent McLaughlin & Nagle) is calculating the figures at this time.

Attorney Fabiszewski explained that when the insurance review was established, it was designed to take a snapshot of part of the year of 1996, the entire year of 1997, and part of the year of 1998. In order to ensure that the DIA is receiving the money it is entitled to receive, the agency needs to explore ways to prevent the problem from reoccurring.

Attorney Fabiszewski noted that the Chubb Group has been a model company to do business with because they have checked their own companies for past years and have submitted approximately \$197,000.

Mr. Jack Tynan stated that he and Mr. Morris were researching methods in which the DIA and insurance companies can come together to track these assessments to allow this process to be more effective.

Council members requested that future reports detail the following: insurance companies pending review, preliminary reports, who is doing the work, outstanding balances owed from insurance companies (status), and previously remitted balances.

ACTION ITEMS

Chairman Jones asked for a motion to accept the Minutes for October 2003, November 2003 and December 2003.

Motion made to accept the Minutes for October 2003, November 2003 and December 2003.

MMS - passed.

Chairman Jones asked for a motion to accept the Fiscal Year 2003 Annual Report.

Motion made to accept the Fiscal Year 2003 Annual Report.

MMS - passed.

EXECUTIVE DIRECTOR UPDATE

Andrew Burton, Executive Director, informed Council Members of a legislative meeting that took place on Monday, January 12, 2004, with Representative Rodrigues. He noted that the Council was represented by Tom Jones, Robert Banks, Ed Corcoran, Andrew Burton, and Evelyn Flanagan. The Executive Director explained that this meeting gave the Council the opportunity to express their endorsement of several pieces of legislation and review any questions that Chairman Rodrigues may have. The Executive Director stated that the Joint Committee on Commerce & Labor will hold an Executive Session on all workers' compensation bills on Tuesday, January 20, 2004.

The Executive Director recognized Council Member Robert Banks who was awarded the 2003 Cushing-Gavin Award. Council Members congratulated Mr. Banks for his success and achievements in the field of labor-management relations. Chairman Jones adjourned today's meeting at 11:30 p.m.

The next regular meeting of the Advisory Council: February 11, 2004 at 9:00 AM, Division of Industrial Accidents, 7th Floor Conference Room, at 600 Washington Street, Boston, MA 02111.