

**Massachusetts Workers' Compensation
Advisory Council Minutes**

October 13, 2004

Department of Industrial Accidents

600 Washington Street, 7th Floor

Boston, MA 02111

Present: Chairman Thomas M. Jones; Vice-Chairman Paul Byrne. CM: Mickey Long; John A. Pulgini; Carol Falcone; Inez Leonardo (Tony Frias); Joan Lenihan (DLWD).

Also Present: DIA: John Chapman, Commissioner; Daniel O'Shea, Senior Judge; Jack Tynan, Director of Administration; William Taupier, Deputy Director of Administration and EDP; Marlene McGarry; Alan Pierce, President, Massachusetts Academy of Trial Attorneys.

Advisory Council Staff: Andrew Burton; Evelyn Flanagan.

Absent: CM: Robert Banks; Edmund C. Corcoran, Jr.; Jeanne-Marie Boylan; Kenneth J. Paradis, Jr.; Bruce Cochrane; Department of Business & Technology.

Agenda:

Chairman's Welcome

DIA Update

- Judicial Update - Daniel O'Shea, Senior Judge
- Stop Work Orders - William Taupier, Deputy Director of Administration & EDP
- Budgetary Matters - Jack Tynan, Director of Administration

Action Items

- Minutes - September 21, 2004

Industrial Accident Board Medical Rates

Alan S. Pierce, President, Massachusetts Academy of Trial Attorneys

Executive Director Update

Miscellaneous

Chairman's Welcome

Chairman Jones conducted today's meeting. He introduced the Senior Judge.

DIA UPDATE

Judicial Update

Senior Judge Daniel O'Shea updated Council Members on the information contained within the DIA's vital statistic report (see attached). Conference Queue: 1,167; Hearing Queue: 1,531; Reviewing Board Inventory: 136; Impartial Exams: 771 (13 waivers).

The Senior Judge stated that the newly appointed judges have begun hearing cases which has helped lower both the Conference and Hearing Queues. He noted that the judicial schedule has been adjusted to an 18-week cycle to assist in lowering the Hearing Queue.

The Senior Judge expects to decrease this cycle around Christmas, when the DIA should have a full-compliment of judges. Chairman Jones requested that the Senior Judge update the Council Members on the status of cases left behind by the judges no longer at the Board.

The Senior Judge reported that all the cases which have not been completed are being placed back into the queue and are being reassigned to new judges. He stated that each case will be prioritized by date.

Senior Judge O'Shea noted that the newly passed law pertaining to Industrial Accident Board Judges will become effective 90 days after the Governor signed the Bill. The Senior Judge stated that the Code of Conduct requirement would apply to all judges once the law becomes active.

The Senior Judge stated that Attorney Daniel Winslow has stepped down from his position as Governor's Chief Legal Counsel and is now acting in an advisory capacity in the Governor's Office. He explained that he had met with the new Governor's Chief Legal Counsel, Mark D. Nielsen. The Senior Judge stated that the Nominating Panel would be convening on November 4, 2004, to interview the new applicants.

Stop Work Orders/Caseload Statistics

Mr. Taupier updated Council Members on the Stop Work Order (SWO) and Caseload Statistics (see attached report). Total compliance investigations completed: 1,490; Field Investigations: 41 (with the result of 14 total Stop Work Orders issued); total fines collected for September 2004: \$16,504; total fines collected in FY'05: \$65,596; total SWO fines collected in FY'04: \$343,528.

Chairman Jones requested that the DIA provide a quarterly update on the Assessment Audit at next month's Advisory Council meeting.

Mr. Taupier continued his update of the monthly vital statistics. Total number of cases filed for September 2004: 1,435. Total number of cases filed for September 2003: 1,352. Total number of cases filed for fiscal year 2005: 3,831. Total number of cases filed for fiscal year 2004: 16,394. For FY'05, the number of cases filed appears to be tracking near FY'04 levels, although cases filed during the month of September slightly increased.

Total number of First Report's filed for September 2004: 3,314. Total number of First Report's filed in FY'05 (to date): 9,047. Total number of First Reports filed in FY'04: 36,739. Total number of on-line filings in September 2004: 246. Total number of First Reports filed on-line using the DIA's Information Portal on the Internet: 1,282.

Mr. Taupier proceeded with his Section 65 update. Estimated uninsured claims (§65) filed for fiscal year 2005: 52 (with 25 actual uninsured injuries). Uninsured claims paid by the Trust Fund for fiscal year 2005: \$1,298,278. Total number of Section 65 claims filed for fiscal year 2004: 213. Of those cases, 194 were actual uninsured injuries. Total number of uninsured claims paid by the Trust Fund for fiscal year 2004: \$4,415,278. CM Long stated that he was concerned with the names on the Stop Work Order List because they appeared to be large employers who were avoiding significant premiums.

He suggested that there needs to be a sufficient mechanism in place to discourage those employers in the construction industry who avoid paying premiums and put the Trust Fund at risk.

Mr. Tynan explained that the Investigation Unit had investigated these employers and found that the majority were in compliance with the law or were brought into compliance. Mr. Tynan noted that the list did not separate those employers who were in compliance vs. those who were brought into compliance. The Director of Administration stated that he would consider adding an additional column to make this distinction.

CM Long expressed his disappointment that a company can go for years without workers' compensation policy, only to purchase one on the day they are being investigated by the DIA. He stated that there needs to be a legislative solution to fine violating employers based on the amount of premium they have been avoiding.

Mr. Tynan commented that the DIA is attempting to place more emphasis on thorough investigations. He noted that the investigators were receiving training from members of the State Police and FBI to assist them in conducting better investigations. CM Long remarked that the underlining problem is that honest employers who purchase workers' compensation policies get out-bid by employers who avoid paying premiums. He stated that the Advisory Council needs to examine the incentives that exist for dishonest employers to flaunt the law. The Executive Director stated that this issue would be examined by the Advisory Council's Legislative Subcommittee in the coming months.

Mr. Taupier offered the vital statistics for the Second Injury Fund. Number of §37/37A petitions filed in fiscal year 2005: 93. Number of §37/37A petitions paid in fiscal year 2005: 170 (105 claims have been approved for payments totaling \$7,475,521). The amount paid on these claims in fiscal year 2005: \$7,475,521. Number of §37/37A petitions filed in fiscal year 2004 (to date): 365. Number of §37/37A petitions paid in fiscal year 2004: 460. The amount paid on these claims in fiscal year 2004: \$19.7 million. COLA reimbursements to insurers in FY'05 (to date): \$136,696. COLA reimbursements to insurers in FY'04: \$19,806,728.

Mr. Taupier stated that the DIA is continuing to review the COLA process as the requirements have been tightened and more documentation for justification is being requested from providers.

Budget/Personnel Issues

Mr. Taupier stated that the DIA has hired one Judge during the month of September and that one employee from the Trust Fund has departed. The total number of positions filled by full-time employees at the DIA (including the WCTF) as of September 2004: 276 (244 DIA employees, 32 WCTF employees). As of this report, the DIA has no contract employees and five temporary employees are being utilized.

ACTION ITEMS

Chairman Jones asked for a motion to accept the Minutes for September 21, 2004.

Motion made to accept the Minutes for September 21, 2004.

MMS - passed.

INDUSTRIAL ACCIDENT BOARD MEDICAL RATES

Attorney Alan Pierce, President of the Massachusetts Academy of Trial Attorneys, addressed the Council regarding the inadequacy of Industrial Accident Board Medical Rates. Attorney Pierce stated that he was concerned that injured workers were being denied proper medical access because the rates are much lower than the "usual and customary" rates of the medical provider and much lower than HMO and health insurance rates. He explained that the statute indicates that rates set by the Division of Health Care Finance & Policy are the only amount that an insurer is required to pay.

Attorney Pierce stated that it is becoming very difficult for injured workers to find medical providers that are willing to treat their injuries at these rates. Attorney Pierce stated that he had recently been under the impression that a major hospital in Massachusetts would no longer be accepting or negotiating Industrial Accident Board Medical Rates. He was concerned this could become harmful to injured workers if other hospitals experiencing financial difficulty make similar decisions.

Attorney Pierce does not believe this problems will go away and suggested that the Advisory Council consider this matter in their Concerns and Recommendations for the Fiscal Year 2004 Annual Report. He recommended that the Council consider various legislative solutions such as empowering administrative judges with the authority to determine a reasonable and fair rate in cases where disputed parties refuse to negotiate.

Attorney Pierce offered the following language: "in a case of a dispute where the parties refuse to negotiate, that a judge may have the power to determine what is a reasonable and a fair figure once the parties present the respective evidence." Commissioner Chapman reported that he would contact Secretary Ranch C. Kimball's office and inform them of this issue.

CM Long noted that this issue was raised during the Loss Cost Task Force meetings which are chaired by Representative Rodrigues, from the Joint Committee on Commerce & Labor. He stated that he will bring this matter up at the next meeting in two weeks.

EXECUTIVE DIRECTOR UPDATE

The Executive Director thanked everyone who volunteered to serve on the various Advisory Council subcommittees. Mr. Burton stated that the Insurance Rate Filing Subcommittee would begin interviewing vendors in November so that an actuary can be in place for the Rate Filing, which is scheduled to take place in March.

The Executive Director explained that the Budget Subcommittee would be receiving a copy of the DIA's Spending Plan once it receives approval. He noted that the Budget Subcommittee will not meet until after the Governor's House 1 Budget is released.

Ms. Lenihen indicated that the Spending Plan is not expected to be approved until November 19th and it will be forwarded to the Advisory Council after that date.

The Executive Director stated that he would contact all Council Members when a judicial interview schedule has been finalized. He believes the Council may get at least 7-15 applicants and therefore should plan for a busy November.

MISCELLANEOUS

Chairman Jones suggested that the Legislative Subcommittee meet during the week of November 15th. The Executive Director stated that he will coordinate a date with all of the parties.

The next regular meeting of the Advisory Council is scheduled for November 10, 2004 at 9:00 AM, at the Division of Industrial Accidents, at 600 Washington Street, 7th Floor, Boston, MA 02111.