

**Massachusetts Workers' Compensation
Advisory Council Minutes**

November 10, 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; Robert Banks; Kenneth J. Paradis, Jr.; John A. Pulgini; Carol Falcone; Inez Leonardo (Tony Frias).

Also Present: DIA: John Chapman, Commissioner; Daniel O'Shea, Senior Judge; Jack Tynan, Director of Administration; Richard Morris, First Deputy Director of Administration; William Taupier, Deputy Director of Administration and EDP; Karen Fabizewski, DIA Legal Counsel; Joseph Pacheco, Commerce and Labor; Karen Gibbons, WCRIBM; Stephen M. Genduso, Human Resources Division.

Advisory Council Staff: Andrew Burton; Evelyn Flanagan.

Absent: CM: Edmund C. Corcoran, Jr.; Jeanne-Marie Boylan; Bruce Cochrane; Depts. of Labor and Workforce Development; Dept. 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

Assessment Audit Quarterly Update - Karen Fabizewski

Action Items

- Minutes - October 13, 2004

Executive Director Update

Miscellaneous

Chairman's Welcome

Chairman Jones conducted today's meeting.

Mr. Tynan introduced Mr. John R. Glennon who will be serving as the DIA's new Director of Information Systems. Mr. Tynan stated that the DIA intends to present the Advisory Council with Phase 3 of the Oracle conversion project in 2005.

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: 972; Hearing Queue: 1,478; Reviewing Board Inventory: 154; Impartial Exams: 1,132 (22 waivers).

The Senior Judge stated that the DIA will attempt to fill the vacant Impartial Unit Manager position in the near future.

The Senior Judge was questioned about the volume of hardship cases filed at the DIA. He indicated that very few hardship requests are filed, especially in comparison with other claims entering the system.

With respect to the Industrial Accident Board, the DIA is currently down one Administrative Judge (AJ) and one Administrative Law Judge (ALJ). The Senior Judge stated that the DIA is allowed to utilize recall judges, however, there is no need for this measure at this time.

The Senior Judge explained that he is now formally transmitting the names of the ten judicial applicants, reviewed by the Nominating Panel, to the Workers' Compensation Advisory Council. The Senior Judge stated that the Governor's Chief Legal Counsel will allow the Advisory Council to submit their judicial recommendations by Monday, November 29, 2004. The Senior Judge stated that he had notified the candidates that the Advisory Council would be contacting them shortly to schedule an interview.

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: 1,468; Total Stop Work Orders issued: 10; total fines collected for October 2004: \$26,424 (includes one large fine of \$10,000); total fines collected in FY'05: \$92,020; total SWO fines collected in FY'04: \$343,528.

Mr. Taupier continued his update of the monthly vital statistics. Total number of cases filed for October 2004: 1,232. Total number of cases filed for October 2003: 1,516. Total number of cases filed for fiscal year 2005: 5,063. Total number of cases filed for fiscal year 2004: 16,394. Total number of First Report's of Injury filed for October 2004: 2,928. Total number of First Report's of Injury filed in FY'05 (to date): 11,975. Total

number of First Reports of Injury filed in FY'04: 36,739. Total number of on-line filings in October 2004: 424 (14% of total filings). Total number of First Report's of Injury filed on-line using the DIA's Information Portal on the Internet in FY'05: 1,005.

Mr. Taupier stated that the trend for cases filed appears to be decreasing from last fiscal year. He noted that the DIA has added two new on-line forms to their Internet portal: Form 103 and Form 104. Mr. Tynan stated that approximately ten new forms will be added by the end of the year. Chairman Jones asked about the factors that could be attributed to the drop in claims.

Mr. Taupier explained that although the DIA's caseload is dropping, this may not be reflective of fewer cases overall in the system. The Senior Judge stated that there are numerous factors for this decline, including a changing labor market with fewer heavy construction jobs.

Mr. Taupier proceeded with his uninsured claims (§65) update. Estimated §65 claims filed for fiscal year 2005: 69 (with 57 actual uninsured injuries). Uninsured claims paid by the Trust Fund for fiscal year 2005: \$1,779,709. Total number of §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.

Mr. Taupier offered the vital statistics for the Second Injury Fund. Number of §37/37A petitions filed in fiscal year 2005: 124. Number of §37/37A petitions paid in fiscal year 2005: 243. The amount paid on these claims in fiscal year 2005: \$9,826,741. 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 \$3.5 million of the amount paid for the §37/37A claims is carried over from last year's payments. He also stated that the volume of §37/37A petitions was rising. He noted that the DIA is being much more diligent with the eligibility requirements and therefore the process is taking longer for the payments to be made.

Budget/Personnel Issues

Mr. Taupier stated that the DIA has hired one Judge during the month of October and that one employee from the Trust Fund has departed. He explained that the total number of positions filled by full-time employees at the DIA (including the WCTF) as of October 2004 was 277 (245 DIA employees, 32 WCTF employees). As of this report, the DIA has no contract employees and six temporary employees are being utilized.

ASSESSMENT AUDIT QUARTERLY UPDATE

Karen Fabizewski, Legal Counsel for the Workers' Compensation Trust Fund, provided the Advisory Council with a brief Insurance Assessment Audit review. She presented the Advisory Council with updated tables for their review (see attached).

Since her last report, Liberty Mutual Insurance Company has remitted \$826,469; Atlantic Charter Insurance Company has remitted \$24,475; and Great Northern Insurance Company has remitted an additional \$1,604 to the previously remitted amount of \$47,778 (totaling \$49,382); Total remittance this quarter: \$852,944. To-date, the DIA has collected \$3,950,576.95.

Commissioner Chapman thanked Attorney Fabizewski for the great work she has done on this project. He asserted that the DIA continues to focus on the subsidiaries of Liberty Mutual. The Commissioner stated that the DIA intends to

establish an Assessment Compliance Unit which would allow for less reliance on outside accounting firms. The Commissioner stated that he would work with the Advisory Council to solicit ideas to make the process more efficient and accountable.

Council Member Banks applauded the DIA's efforts and reaffirmed that the assessment collection process should be administered internally.

Commissioner Chapman stated that he has met with the Commissioner of Insurance to ensure that the DIA could obtain enough information to collect the proper assessment

amounts from insurance companies. He stated that the Division of Insurance is very receptive to looking at ways in which to make the insurance industry more accountable.

Council Member Long stated that he helped draft legislation in New Hampshire that required employers to publicly reveal the amount of premium they are paying to a carrier.

Mr. Long stated that he would like to see Massachusetts to consider making an employers classification and premium amounts public information.

Council Member Falcone questioned whether the amount collected exceeds the costs of performing the audit. Attorney Fabizewski stated that at this point in time the DIA has collected more money than has been spent on performing the audit.

Council Member Banks stated that the DIA should investigate how other state agencies collect monies owed to them.

Commissioner Chapman welcomed the dialogue and the input from the Council on what the DIA can do to improve. The Commissioner explained that any dialogue within the industry would be beneficial and enable the agency to do a better job. Chairman Jones suggested that the DIA reach out to the Governing Committee of the Workers' Compensation Rating & Inspection Bureau.

Attorney Fabizewski reported that the DIA was approximately half way through the list of insurers for this period of time. She stated that many of the remaining companies on the list may not have written a significant amount of workers' compensation premium in the Commonwealth.

Mr. Tynan informed the Advisory Council that the DIA plans to install an internal mechanism that would allow for the automatic wire transfer of funds from the insurance companies. Mr. Tynan believes that this would improve both the speed and accuracy of the assessment payments.

ACTION ITEMS

Chairman Jones asked for a motion to accept the Minutes for October 13, 2004.

Motion made to accept the Minutes for October 13, 2004.

MMS - passed.

CONCERNS AND RECOMMENDATIONS

The Executive Director reviewed an outline of potential concerns and recommendations for the Fiscal Year 2004 Annual Report (see attached).

Enhancing the Enforcement Efforts of the WC Insurance Mandate

The first concern and recommendation discussed was in regards to "Enhancing the Enforcement Efforts of the WC Insurance Mandate."

Discussion followed.

Council Members agreed to include this recommendation in the Annual Report.

The Executive Director explained that a legislative subcommittee would be convening at the beginning of 2005 to further address this concern. Mr. Burton stated that he would invite administrative members from the DIA and Insurance Fraud Bureau to participate in these discussions.

Office of Safety Training Grants - Increased Funding

The next concern and recommendation discussed was in regards to "Office of Safety Training Grants - Increased Funding."

Discussion followed.

The Executive Director stated that the Advisory Council has previously endorsed \$1.2 million in funding for this program. According to the proposed recommendation, \$400,000 would be set aside for training high risk workers.

Commissioner Chapman expressed concern that the Office of Safety might be left with a surplus of funding if the DIA is required to spend \$400,000 for high risk workers.

Council Member Falcone suggested that the recommendation be revised to require "up to 25%" of the total funding be specifically earmarked for grants that address high risk employees such as children, immigrants, and non-English speaking workers. She further added that if an amount is fixed, the DIA will not have the flexibility to adapt to situations that could arise.

Council Members agreed to revise this recommendation in the Annual report.

Adequate Funding for the Division of Occupational Safety

The next concern and recommendation discussed was in regards to "Adequate Funding for the Division of Occupational Safety."

Discussion followed.

Council Members agreed to include this recommendation in the Annual Report.

Examining the Necessity for a Second Injury Fund in Massachusetts

The next concern and recommendation discussed was in regards to "Examining the Necessity for a Second Injury Fund in Massachusetts."

Discussion followed.

Chairman Jones stated that he was concerned about the rising costs associated with the Second Injury Fund in Massachusetts. Council Member Long questioned whether the Second Injury Fund was meeting its intended purpose and whether employers are benefiting from the reimbursements to insurers. Council Member Paradis explained that the state of New York is unable to close their Second Injury Fund because they are \$14 billion in debt. He agreed that the Massachusetts Trust Fund needs to be reformed, but any changes and modifications to the system need to be carefully planned.

Chairman Jones requested that a subcommittee be developed in 2005 to review this issue.

Council Members agreed to include this recommendation in the Annual Report.

Adequacy of Industrial Accident Board Medical Rates

The next concern and recommendation discussed was in regards to the "Adequacy of Industrial Accident Board Medical Rates."

Discussion followed.

Council Members agreed to include this recommendation in the Annual Report.

Language Barriers in Workers' Compensation

The next concern and recommendation discussed was in regards to "Language Barriers in Workers' Compensation."

Discussion followed.

The Executive Director explained that this concern had been first introduced to the Advisory Council by Marcy Goldstein-Gelb (Executive Director, MassCOSH).

Mr. Taupier explained that the DIA's website currently has a link to the Massachusetts Bar Association but does not have links to community organizations for legal assistance. He noted that there could be an issue of liability if links are included in the website. Chairman Jones suggested striking the word "legal" from the last sentence. The Chairman also recommended that the words "pre-approved non-profit" appear before "community organizations" in the last sentence. Council Members agreed to revise this recommendation in the Annual Report.

Scar-Based Disfigurement Legislation

The next concern and recommendation discussed was in regards to "Scar-Based Disfigurement Legislation." Discussion followed. Council Members agreed to include this recommendation in the Annual Report.

Continuation of the Assessment Audit

The next concern and recommendation discussed was in regards to the "Continuation of the Assessment Audit." Discussion followed.

Council Member Long advised the DIA to use less reliance on outside auditors and to find a mechanism to collect assessments internally. Mr. Long expressed caution to the DIA that any internal audit staff should be a temporary measure until assessments can be collected electronically through a wire transfer.

The Executive Director suggested that the Advisory Council support the DIA's efforts of hiring a temporary employee with an accounting background to examine how the

collections system can be automated.

Council Members agreed to include this recommendation in the Annual Report.

EXECUTIVE DIRECTOR UPDATE

The Executive Director updated Council Members regarding an Insurance Rate Filing Subcommittee that had interviewed two representatives from KPMG. Mr. Burton noted that this was the only vendor to submit a proposal for our actuarial review of the WCRIBM's rate filing. The Executive Director stated that the actuarial team that would be working on this project is based out of St. Louis and has over ten years of experience reviewing workers' compensation rate filings. Mr. Burton stated that the cost estimate for this proposal was \$25,000. The Executive Director explained that the subcommittee was in full agreement that the Advisory Council proceed with a contract for this company.

ACTION ITEM

Chairman Jones asked for a motion to utilize the statewide contract to procure actuarial consulting services from KPMG.

Motion made to utilize the statewide contract to procure actuarial consulting services from KPMG.

MMS - passed.

EXECUTIVE DIRECTOR UPDATE (continued)

The Executive Director informed Council Members that a Judicial Interview Meeting would take place on Tuesday, November 16, 2004, from 1:00 p.m. to 4:00 p.m. Mr. Burton invited the Council to attend a Holiday Luncheon following the December 14, 2004, Advisory Council Meeting.

Chairman Jones adjourned the meeting at approximately 11:40 a.m.

The next regular meeting of the Advisory Council is scheduled for December 15, 2004 at 10:00 AM, at the Division of Industrial Accidents, at 600 Washington Street, 7th Floor, Boston, MA 02111.