

**MASSACHUSETTS WORKERS' COMPENSATION  
ADVISORY COUNCIL MINUTES**

November 12, 2003  
Department of Industrial Accidents  
600 Washington Street, 7<sup>th</sup> Floor  
Boston, MA 02111

**Present:** Chairman Thomas M. Jones. CM: Edmund C. Corcoran, Jr.; Antonio Frias (Inez Leonardo); Fran Fanning; Carol Falcone; Richard Weitzel (Department of Economic Development); Joan Lenihan (Department of Labor and Workforce Development).

**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 & EDP; Gayann Wilkinson, Safety Manager; Tony Salido (WCRIBM).

**Advisory Council Staff:** Andrew Burton; Evelyn Flanagan; Ann Helgran.

**Absent:** CM: Robert Banks; Jeanne-Marie Boylan; Bruce Cochrane; Stephen Sampson; Alan S. Pierce; John Perry.

---

**Agenda:**

DIA Update

Action Items

- Minutes - October 8, 2003

Presentation of Annual Survey of Occupational Injuries and Illness

Director Robert J. Prezioso, Division of Occupational Safety

Concerns & Recommendations

Executive Director Update

Miscellaneous

Chairman Jones conducted today's meeting.

## DIA UPDATE

Mr. Taupier offered a slide presentation of current monthly statistics (a hard copy of these statistics is attached to minutes).

### Judicial Update

With the assistance of Mr. Taupier, Senior Judge Daniel O'Shea updated Council Members on the monthly statistics for Dispute Resolution. Conference Queue: 889; Hearing Queue: 2,249; Reviewing Board Inventory: 112; Impartial Exams: 1,523 (41 waivers).

Senior Judge O'Shea remarked that the upcoming judicial nomination process will be very busy. With the judicial appointments approaching, he explained that his main concern was whether or not to pull judges off-line. The Senior Judge stated that he will leave the judges online unless a judge intends to leave the position, otherwise he would be pulling off-line half of the Administrative Judges, as well as all of the Administrative Law Judges. The Senior Judge informed the Council that there were other vacancies which needed to be filled within the Department. This included two Industrial Accident Board Judges and one Reviewing Board Judge. Senior Judge O'Shea expects that the nominating panel will convene sometime in February, allowing ample time to interview prospective candidates for judgeships prior to the termination of the existing judicial terms.

In a related matter, Senior Judge O'Shea explained to Council Members that there was a new Executive Order being drafted that would attempt to revise the judicial interview process for DIA judges. The Senior Judge noted that the draft should be finalized by January 1, 2004.

Council Members asked if the Executive Order would have any impact on the Advisory Council's role in the appointment process. The Senior Judge indicated that there would be no impact to the Advisory Council.

At this time, Council Member Corcoran took the opportunity to thank Senior Judge O'Shea, on behalf of Raytheon, for his participation in their Global Group Help Resource Conference last week.

### Stop Work Orders (SWO's)

Mr. Taupier updated Council Members regarding the status of the Stop Work Orders. Total Investigations for October: 780; Total SWO's Issued: 101; Total Fines Billed: \$15,400; Total Fines Collected: \$34,493.

Council Members had requested that the DIA provide the amount owed for SWOs. Mr. Taupier stated that with the inception of the Merchant Services Online Program and Electronic Payment Processing (as of

September 2003) the agency had billed \$28,000. Of the \$28,000, a total of \$14,000 was paid by credit card; \$8,400 was paid by other methods, which left an outstanding balance of \$5,600.

Richard Morris explained that the Department is currently reconciling all account receivables for FY'03/FY'04. Due to the revamping of the collection process for SWO's, the DIA has been able to collect 84% of the monies owed in the first three months of the year (First Quarter). Since the inception of credit card collections, over half the fines collected have been paid by credit card.

According to the graph on claims, the number of cases filed for October of 2003 was 1,516 compared to 1,834 filed in October of 2002. Cases continue to show a slightly downward trend in October of FY'04 compared to the final tally in FY'03, which accounted for 17,826 cases filed.

Uninsured claims paid by the Workers' Compensation Trust Fund (WCTF) in fiscal year 2003 totaled \$3.78 million. In fiscal year 2004, the total of uninsured claims paid by the WCTF totaled \$1,249,437 in benefits. Mr. Taupier stated that there had been no §37 cases filed this month. Mr. Taupier agreed to make every possible effort to check on the number of repeat offenders and make the list available at next months Advisory Council meeting.

**Council Member Corcoran requested that more data be provided at the next Advisory Council meeting regarding §37 claims.**

He remarked that approximately 4 or 5 years ago, Senior Judge Jennings indicated that §37 cases were almost wrapped-up. Council Member Corcoran would like an accounting of all monies spent on §37 cases, specifically detailing the amounts being paid and the types of cases being processed. Chairman Jones noted that the Americans with Disabilities Act (ADA) had eliminated the need for Second Injury Funds (§37) in certain states because the ADA promotes the hiring of disabled employees. The Chairman explained that Second Injury Funds were created at the end of WWII with the intention of protecting veterans. Chairman Jones questioned whether a necessity remains for the Second Injury Fund, especially where the ADA appears to serve the same purpose.

Council Member Falcone asked what procedures for §37's were in place. Mr. Taupier said the last revision was made in 1998 and that he does not believe there have been any other procedural changes since that time. **Council Member Falcone requested that the DIA provide a staff member knowledgeable in the working process of §37's to speak to the Advisory Council at the next meeting.**

### Budget/Personnel Issues

Mr. Morris addressed Council Members concerning the Budget and Personnel Issues. The total number of DIA positions filled as of September 2003: (264). There have been eight positions posted. Currently there are six temporary employees. He noted that the Conciliation Unit has four employees working on a rotation (one position number) and two consultant positions under contract.

Mr. Jack Tynan stated that the Department had hired one new employee (Ms. Gayann Wilkinson, Training and Safety Manager). He introduced Ms. Wilkinson noting her extensive background and experience. **Mr. Tynan agreed to provide the Advisory Council with the DIA's most current organizational chart at the December Meeting.**

Chairman Jones thanked members of the Department for their input and referred to the "Decision's Outstanding Report" included in Council Member's packets. Senior Judge O'Shea stated that the numbers on the list only captured cases 6 months overdue. The Senior Judge stated that each time the list is produced, a request is made for written clarification on the reason why each case is overdue.

### Action Items

No action was taken on the minutes for October 8, 2003. A vote will be taken on these minutes at the December meeting.

### Annual Survey of Occupational Injuries and Illnesses - Robert J. Prezioso

Chairman Jones informed Council Members that former Administrative Law Judge,Carolynn Fischel, had written a letter to the Executive Director regarding an article that had appeared in the Boston Globe entitled, "State Cuts Funds for Program to Collect Workers Injury Data." After reviewing the article, the Advisory Council requested that Mr. Prezioso be invited to address Council Members concerning this issue. Mr. Robert Prezioso, Director of the State's Division of Occupational Safety, came before the Council today to share the importance of the survey and to ask for the Council's assistance in obtaining funding for this program. Mr. Prezioso distributed various reports that were compiled from this study.

Director Prezioso explained that funding for the injury survey is split 50/50 between the Division of Occupational Safety (state funding) and the Bureau of Labor Statistics (federal funding). Mr. Prezioso noted that these reports were beneficial in designing safety programs and assisting employers with information that could be used to prevent injuries. The Director explained that the survey can identify the most dangerous occupations, as well as the industries which present the least danger to its workers. He

noted that the report is a great tool for comparing injury data throughout Massachusetts, New England and the United States.

A discussion followed in which Council Members were in agreement that these reports were beneficial and should be continued. Various recommendations and suggestions were made on where funding could be obtained. Council Members agreed to support Mr. Prezioso's attempt to secure future funding to finance these reports. It was agreed that this recommendations should be included in the fiscal year 2003 Annual Report. Chairman Jones thanked Ms.Carolynn Fischel for bringing this matter to the attention of the Advisory Council and for Mr. Robert Prezioso for attending today's meeting.

### **Concerns & Recommendations - FY'03 Annual Report**

Chairman Jones referred to the outline of potential concerns and recommendation for the FY'03 Annual Report that had been included in Council Members' packets. He stated that the Executive Director, Andrew Burton, would review this section with Council Members.

### **Strengthening the Stop Work Order Process**

With respect to the Stop Work Order process, Mr. Burton discussed the various concerns that had been outlined in the handout. Although it was too early to know if the Agency's revamping of the SWO process was a success, he informed Council Members that the report would recommend that the Advisory Council continue to support the DIA efforts to strengthen the SWO process internally. The Executive Director noted that the report would also recommend the passage of the following bills:

*House Bill 1705: Debarment or suspension of contractors who fail to carry workers' compensation insurance from participating in public contract bidding.*

*House Bill 2205: Provide vehicle for private citizens and insurers to bring civil action against employers who illegally fail to pay workers' compensation premiums.*

### **Office of Safety Training Grants - Increased Funding**

The Executive Director explained that the report would recommend that "not less than \$800,000" be earmarked in the fiscal year 2005 budget for the Office of Safety Training Grant Program. He noted that the DIA should attempt to measure the cost-savings to employers generated by this program to help create support within the Legislature for increased funding.

### **Funding for the Annual Survey of Occupational Injuries and Illnesses**

Advisory Council Members requested that a separate recommendation be made stating the Advisory Council's support for the Division of Occupational Safety to receive the necessary state-funding for the Annual Survey of Occupational Injuries and Illnesses.

### **Increased Building Security Measures - Boston and Regional Offices**

Council Members agreed that adequate funding should be contained within the fiscal year 2005 General Appropriation allowing the DIA to enhance security and internal control measures within the Boston and Regional Offices. The Executive Director explained that the report would also recommend that the DIA reinstate the photo-identification policy and the building security subcommittee so that the maximum amount of security can be provided for both the DIA employees and the general public who utilize the agency.

### **Legislation**

The Executive Director noted that the report would support the passage of the following bills, previously endorsed by the Advisory Council:

*House Bill 2924: IAB Appointments/Performance Review*

*House Bill 2380: Code of Judicial Conduct Legislation*

*House Bill 2382: Scar-Based Disfigurement Legislation*

*Office of Education and Vocational Rehabilitation*

*The Executive Director explained that the report would support the continuation of the Vocational Rehabilitation Subcommittee. Council Member Falcone reviewed with Council Member the subcommittee's various accomplishments in regards to improving OEVR and its delivery of services to injured workers.*

*Upon completion, it was suggested that Mr. Burton revise specific language contained within the outline and present a second draft at the upcoming meeting.*

### **Executive Director Update**

The Executive Director stated that in October he had attended the Sixth Annual New England Workers' Compensation Educational Conference in Newport Rhode Island. The Executive Director noted that he was impressed with the level of cooperation displayed by both the Rhode Island Department of Labor and Training and its Advisory Council in strengthening the workers' compensation laws after the tragic fire at

the Station Nightclub. Mr. Burton stated that he hopes to see this same level of cooperation between the DIA and this Advisory Council as future issues are discussed.

The Executive Director mentioned that the Advisory Council may want to consider inviting Ann Conway to attend a future meeting to discuss whether or not it would be a conflict of interest to have Tillinghast conduct the Advisory Council's analysis of the Rate Filing. As noted at past meetings, Tillinghast will be conducting a major portion of the rate filing for the WCRIBM.

Mr. Burton informed Council Members that he was advised that the Governor will soon be filling membership vacancies to the Advisory Council.

### **Miscellaneous**

Council Member Corcoran stated to Council Members that he had also attended the Annual New England Workers' Compensation Educational Conference in Newport Rhode Island and congratulated the members of the DIA for their participation.

It was suggested that a holiday luncheon be held immediately following the December 10th meeting if Council Members were in agreement.

Council Members agreed.

Chairman Jones adjourned the meeting.

Meeting adjourned 11:00 a.m.

**The next regular meeting of the Advisory Council: December 10, 2003 at 10:00 AM, Division of Industrial Accidents, 7th Floor Conference Room, at 600 Washington Street, Boston, MA 02111.**