

**Massachusetts Workers' Compensation
Advisory Council Minutes**

November 9, 2005

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

Present: Vice-Chairman Thomas M. Jones. CM: Robert Banks; John D. Boyle; Tony Frias (Ines Leonardo); Robert Fitzsimmons; Ken Paradis; John Ziemba, Director of Labor.

Also Present: DIA: John Chapman, Commissioner; James LaMothe, Senior Judge; Jack Tynan, Deputy Commissioner of Administration; Richard Morris, First Deputy Director of Administration; William Taupier, Deputy Director of Administration and EDP; James Boyle, DIA Assessment Manager; Gayl Mileszko, Chief of Staff, DOL; Mike Kelly, AIM Mutual.

Advisory Council Staff: Andrew Burton; Evelyn Flanagan.

Absent: Chairman Paul Byrne; CM: Edmund C. Corcoran; Jeanne-Marie Boylan; Mickey Long; John A. Pulgini; Jill S. Brown; Bruce Cochrane; Peter Scantalides, Department of Business & Technology.

Agenda:

Chairman's Welcome

DIA Update

Judicial Update - James LaMothe, Senior Judge

DIA Vital Statistics - William Taupier, Deputy Director of Administration & EDP

Assessment Audit Quarterly Update - Jim Boyle, Assessment Manager

Action Items

- Minutes - October 12, 2005

2005 Concerns & Recommendations Discussion

Executive Director Update

Miscellaneous

Chairman's Welcome

Vice Chairman Tom Jones began today's meeting at 9:00 a.m. Chairman Jones requested that Senior Judge James LaMothe proceed with his judicial update.

Before reviewing the judicial update, Senior Judge LaMothe stated that he had attended a meeting of the Health Care Services Board that focused on workers' compensation medical reimbursement rates. Commissioner Chapman added that the Health Care Services Board had passed a resolution to support the DIA's efforts in reexamining the adequacy of the workers' compensation medical rates.

DIA UPDATE

Judicial Update

Senior Judge LaMothe updated Council Members on the information contained within the DIA's vital statistic report for November of 2005 (see attached). Conference Queue: 347; Hearing Queue: 2,005; Reviewing Board Inventory: 132; Impartial Exams for FY'06 (to date): 1,803 (34 waivers). In fiscal year 2005 there were 4,779 Impartial Medical Examinations (119 waivers).

Senior Judge LaMothe informed the Advisory Council Members that he expects the Governor will begin the process of reviewing judicial candidates sometime near the beginning of next year. The Senior Judge noted that there is currently a Reviewing Board vacancy along with two Administrative Judge terms expiring at year's end.

Stop Work Orders/Caseload Statistics

Mr. Taupier updated Council Members on the Stop Work Order (SWO) and Caseload Statistics for November of 2005 (see attached). SWO compliance and fine collection remains at 100%. Total compliance investigations completed during October: 1,982; total SWOs issued in October: 13; total SWOs issued for FY'06 (to date): 73; total number of SWOs issued for FY'05: 173; total fines collected for October: \$11,774; total fines collected in FY'06 (to date): \$91,859; total fines collected in FY'05: \$267,061.

Mr. Taupier continued his update of the monthly vital statistics. Total number of cases filed for October: 1,344; total number of cases filed for FY'06 (to date): 5,133; total number of cases filed for FY'05: 16,276; total number of First Report's filed for October: 3,659; total number of First Reports filed for FY'06 (to date): 12,693; total number of First Reports filed for FY'05: 37,461. For FY'06, a total of 3,080 First Reports were filed online using the DIA's Information Portal on the Internet (24% of FRI filings).

Mr. Taupier proceeded with his update on uninsured claims (§65). Total number of §65 claims filed in FY'06 (to date): 91 (104 have been processed by the WCTF); uninsured claims paid by the Trust Fund for fiscal year 2006 (to date): \$1,760,831; number of §65 claims filed for FY'05: 247 (with 201 actual uninsured injuries); uninsured claims paid by the Trust Fund for fiscal year 2005: \$6,052,205.

Mr. Taupier proceeded with the vital statistics for the Second Injury Fund. Number of §37/37A petitions filed in fiscal year 2006 (to date): 111; number of §37/37A petitions paid in fiscal year 2006 (to date): 244; amount paid on these claims in

fiscal year 2006 (to date): \$4,033,390; number of §37/37A petitions filed in fiscal year 2005: 316; number of §37/37A petitions paid in fiscal year 2005: 530; amount paid on these claims in fiscal year 2005: \$25,299,116; COLA reimbursements to insurers in FY'06 (to date): \$9,027,697; COLA reimbursements to insurers in FY'05: \$16.1 million. Mr. Taupier explained that the reason for the high amount of COLA reimbursements is due to the backlog from the last fiscal year when new procedures were put in place.

Budget/Personnel Issues

Mr. Taupier reported that as of September 2005, the number of employees whose salary is paid by either the Special Fund or the Trust Fund was 270 (240 DIA employees, 30 WCTF employees). The DIA has no contract employees at this time. Seven temporary employees are being utilized within the DIA as of this report. Mr. Taupier noted that the DIA is utilizing 3 legal interns who are assisting the Office of Legal Counsel.

CM John Boyle requested that the DIA provide a detailed breakdown of the operating budget that displays the number of employees, who they are working for, and where the staffing is.

Deputy Commissioner Tynan stated that he would provide Mr. Boyle with these details.

CM Boyle inquired if the DIA had ever considered legislatively increasing the salary of judges to attract more qualified applicants. Senior Judge Lamothe explained that there was currently pending legislation that would increase the salaries of Trial Court judges. CM Boyle suggested that the Advisory Council revisit this topic and evaluate the salary and benefits of all incoming judges.

It was agreed that the Executive Director would review the salary and benefits of judges within the state, as well as workers' compensation judges in the other industrialized states.

Assessment Audit Quarterly Update

Mr. James Boyle, DIA Assessment Manager, explained that Phase I and Phase I-A of the Assessment Audit are complete. Mr. Boyle summarized the Audit Findings. Total amount collected from CPA firm reviews (1997-1998): \$7,569,625.21; total amount collected from internal reviews (1999-2003): \$1,882,674.64; total amount collected in both Phase I and Phase I-A: \$9,452,299.88. Mr. Boyle mentioned that the cost of the audit is roughly \$1.8 million or 30-40 cents for every dollar collected.

Mr. Boyle explained that collections are deposited within the Trust Fund and Special Fund. Approximately 75-80% of the collections are deposited into the Trust Fund, while the remaining 25-30% are deposited into the Special Fund. Mr. Boyle explained that the DIA anticipates that there will be some repeat offenders in future audits due to the past confusion in the industry regarding the definition of standard premium.

CM Banks requested that Mr. Boyle produce a list of all the umbrella companies for the parent insurance company AIG.

Vice-Chairman Jones questioned why the insurance company Old Republic was not listed on the spreadsheet as a company the DIA owed a refund to. The Vice-Chairman noted that the DIA had previously reported that Old Republic had overpaid assessments substantially. Mr. Boyle informed the Council Members that he was unaware of any amount the Department had owed Old Republic but noted he would investigate this. Mr. Boyle reported that he has established

internal control procedures to ensure the accurate tracking of all amounts. Mr. Boyle referred to the extensive outreach efforts of the DIA to educate and inform the insurance community on the details of the audit. He further noted that an Assessment webpage exist, which provides detailed information regarding the assessments, sample forms, all circular letters and the standard premium algorithm.

ACTION ITEMS

Vice-Chairman Jones asked for a motion to accept the Minutes for October 12, 2005.

Motion made to accept the Minutes for October 12, 2005.

MMS - passed.

CONCERNS AND RECOMMENDATIONS

Executive Director Andrew Burton reviewed an outline of potential concerns and recommendations for the Fiscal Year 2005 Annual Report (see attached). He informed the Council Members that these Concerns and Recommendations would be voted upon at the December Advisory Council meeting.

Suspension of Driver's License Legislation - (House Docket 4709)

The first concern and recommendation discussed was in regards to "Suspension of Driver's License Legislation."

Discussion followed.

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

Adequacy of IAB Medical Rates

The next concern and recommendation discussed was in regards to "Adequacy of IAB Medical Rates."

Discussion followed.

Council Members suggested that the recommendation be revised to emphasize the Advisory Council's support for the Department of Labor and the DIA to coordinate dialogue between the medical community, insurance companies and the Department of Health Care Finance & Policy on the adequacy of rates.

Scar-Based Disfigurement Legislation (House 1606 and Senate 1095)

The next concern and recommendation discussed was in regards to "Scar-Based Disfigurement Legislation."

Discussion followed.

Council Members suggested the recommendation be amended to include language stating that the Advisory Council will revisit the current \$15,000 maximum benefit level in fiscal year 2006 and determine whether this benefit should be indexed to a multiplier of the average weekly wage.

Private Right of Action to Recover WC Payments Legislation (Senate 1099)

The next concern and recommendation discussed was in regards to "Private Right of Action to Recover WC Payments Legislation."

Discussion followed.

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

Raising the Maximum Burial Allowance from \$4,000 to \$8,000

The next concern and recommendation discussed was in regards to "Raising the Maximum Burial Allowance from \$4,000 to \$8,000."

Discussion followed.

Council Members suggested the recommendation be amended to include language stating that the Advisory Council will revisit in fiscal year 2006 whether the maximum burial allowance should be indexed to a multiplier of the average weekly wage.

Funding for the Department of Labor in the General Appropriations Act

The next concern and recommendation discussed was in regards to "Funding for the Department of Labor in the General Appropriations Act."

Discussion followed.

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

Funding for the "Annual Survey of Occupational Injuries and Illnesses" (DOS)

The next concern and recommendation discussed was in regards to "Funding for the Annual Survey of Occupational Injuries and Illnesses."

Discussion followed.

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

Regulating the Wood-Floor Finishing Industry (Licensing)

The next concern and recommendation discussed was in regards to "Regulating the Wood-Floor Finishing Industry."

Discussion followed.

Council Members suggested that the recommendation be amended to include language stating that the Advisory Council will closely monitor the work of a newly formed committee that will be revising House Bill 3375. Upon the conclusion of the committee's work, the Advisory Council will examine any regulatory proposals to ensure that both workers and homeowners are protected from unnecessary hazards.

Earmarking Safety Grant Funds Towards High-Risk Industries

The next concern and recommendation discussed was in regards to "Earmarking Safety Grant Funds Towards High-Risk Industries."

Discussion followed.

Council Members suggested that the recommendation be revised to focus on the DIA's outreach and promotional efforts of the program to ensure that high-risk employers are aware of the grant opportunities.

Continuation and Automation of the Assessment Audit

The next concern and recommendation discussed was in regards to "Continuation and Automation of the Assessment Audit." Discussion followed. Council Members agreed to include this recommendation in the Annual Report.

Executive Director Burton stated that he would be drafting the Concerns and Recommendations and would email them to each Council Member upon completion.

EXECUTIVE DIRECTOR UPDATE

Executive Director Burton informed the Advisory Council Members that he was recently invited to speak before the WCRIBMA's Data Reporting Committee to discuss how other states are utilizing online premium verification tools. Mr. Burton explained that it would be a great opportunity to get feedback from the insurance community. The Executive Director stated his speaking engagement was scheduled for November 16th.

Mr. Burton also informed the Advisory Council that a holiday luncheon would take place after the December 14, 2005 Advisory Council meeting. Mr. Burton stated that the next meeting will begin at 10:00 a.m. and lunch would directly follow.

MISCELLANEOUS

Vice-Chairman Tom Jones thanked all parties for participating and asked for a motion to adjourn.

Motion made to adjourn.

MMS - passed. Meeting adjourned 11:35 a.m.

The next regular meeting of the Advisory Council is scheduled for Wednesday, December 14, 2005 at 10:00 AM, at the Division of Industrial Accidents, 7th Floor Conference Room, Boston, MA 02111.