

**Massachusetts Workers' Compensation
Advisory Council Minutes**

December 15, 2004

Department of Industrial Accidents

600 Washington Street, 7th Floor

Boston, MA 02111

Present: Chairman Thomas M. Jones; Vice-Chairman Paul Byrne. CM: Edmund C. Corcoran, Jr.; Kenneth J. Paradis, Jr.; John A. Pulgini;

Also Present: DIA: John Chapman, Commissioner; Jack Tynan, Director of Administration; Richard Morris, First Deputy Director of Administration; William Taupier, Deputy Director of Administration and EDP; Marlene McGarry, Commerce & Labor Committee; Joseph Pacheco, Commerce & Labor Committee; Karen Gibbons, WCRIBM.

Advisory Council Staff: Andrew Burton; Evelyn Flanagan.

Absent: CM: Mickey Long; Robert Banks; Inez Leonardo (Tony Frias); Jeanne-Marie Boylan; Carol Falcone; Bruce Cochrane; Departments of Labor and Workforce Development; Department of Business & Technology.

Agenda:

Chairman's Welcome

DIA Update

- Judicial Update - William Taupier, Deputy Director of Administration & EDP
- Stop Work Orders - William Taupier, Deputy Director of Administration & EDP
- Budgetary Matters - Jack Tynan, Director of Administration

Action Items

- Minutes - November 10, 2004

Fiscal Year 2004 Annual Report

Executive Director Update

Miscellaneous

Chairman's Welcome

Chairman Jones conducted today's meeting. He reminded all members and guests that the Advisory Council's Holiday Luncheon would take place immediately following today's meeting.

DIA UPDATE

Judicial Update

Mr. Bill Taupier updated Council Members on the information contained within the DIA's vital statistic report (see attached). Conference Queue: 576; Hearing Queue: 1,446; Reviewing Board Inventory: 134; Impartial Exams: 1,350 (26 waivers).

Mr. Taupier explained that the figures for the Impartial Exams and waivers were estimates and that exact numbers would be provided for next month's meeting.

Mr. Taupier reported that Senior Judge Daniel O'Shea was not in attendance at today's meeting because he is answering questions before the Governor's Council. Mr. Taupier stated that the Senior Judge had been nominated by Governor Mitt Romney to serve as an associate justice of the Wrentham District Court.

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: 1,751; Total SWOs issued: 10; Total SWOs issued for FY'05: 81; Total fines collected for November 2004: \$8,016; Total fines collected in FY'05: \$100,036; Total SWO fines collected in FY'04: \$343,528.

Discussion followed regarding the Stop Work Order procedures. Commissioner Chapman explained that the DIA was trying to become more business friendly by focusing efforts on bringing employers into compliance with the workers' compensation statute. The Commissioner reminded Council Members that the DIA is not a collection agency and that compliance should be the priority.

Commissioner Chapman explained that when the DIA suspects a company may be operating without insurance a compliance letter is mailed to that employer requesting they provide proof of workers' compensation insurance. Commissioner Chapman noted that a business that does not respond to the DIA's compliance letter will receive a follow up telephone call to ensure that their employees are covered by insurance. In addition, the DIA will notify the employer that an investigator will be sent out to the business if they do not comply and provide proof of workers' compensation insurance coverage. Commissioner Chapman indicated that the goal of the DIA was to get the business into compliance before the investigator is sent out to issue a Stop Work Order.

Executive Director Burton stated that a subcommittee of the Advisory Council will be meeting in January to discuss legislative proposals to strengthen the Stop Work Order fine structure. Mr. Burton explained that Council would welcome interested parties to participate in these discussions, including the DIA and the Insurance Fraud Bureau.

In a related matter, Chairman Jones brought to Council's attention a new study put out by Harvard and the University of Massachusetts titled, "*The Social and Economic Costs of Employee Misclassification in Construction.*" Chairman Jones explained that this study focused on those construction employers in Massachusetts that misclassify their employees as "independent contractors." The Chairman expressed concern regarding the huge amount of employer fraud that still exists. He commented on how fraud can have an adverse affect on the Commonwealth from unreported taxes to unemployment insurance. Chairman Jones suggested that all members review the report.

Mr. Taupier continued his update of the monthly vital statistics. Total number of cases filed for November: 1,208. Total number of cases filed for November 2003: 1,289.

Total number of cases filed for fiscal year 2005: 6,271. Total number of cases filed for fiscal year 2004: 16,394. Total number of First Report's of Injury filed for November 2004: 2,608. Total number of First Report's of Injury filed in FY'05 (to date): 14,583. Total number of First Reports of Injury filed in FY'04: 36,739. Total number of on-line filings in November 2004: 518 (20% 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: 1,523.

Discussion followed with respect to on-line filing. Mr. Tynan noted that the DIA has three new forms available on-line. He indicated that the DIA expects to have approximately 15 new forms on-line during the early part of the new year. The Director of Administration anticipates that the DIA will be able to offer on-line batch filing, which would significantly increase the DIA's ability to process forms. He is confident that the insurance companies will experience many benefits from these changes.

Mr. Taupier proceeded with his uninsured claims (§65) update. Estimated §65 claims filed for fiscal year 2005: 83 (with 68 actual uninsured injuries). Uninsured claims paid by the Trust Fund for fiscal year 2005: \$2,194,322. 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 (§37/37A). Number of §37/37A petitions filed in fiscal year 2005: 138. Number of §37/37A petitions paid in fiscal year 2005: 280. The amount paid on these claims in fiscal year 2005: \$11,841,484. 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): \$422,726. COLA reimbursements to insurers in FY'04: \$19,806,728.

Although the COLA reimbursements appear to be trending low, Mr. Tynan explained that the DIA had stopped all payments until insurers can produce the proper paperwork. Mr. Tynan anticipates the DIA will eventually reimburse the amount budgeted. The DIA will hire a temporary employee to help with the processing and to diminish the backlog.

Budget/Personnel Issues

Mr. Taupier stated that the DIA has hired three new employees, including one new Judge during the month of November. He explained that the total number of positions filled by full-time employees at the DIA (including the WCTF) as of November 2004 was 279 (248 DIA employees, 32 WCTF employees). As of this report, the DIA has no contract employees and six temporary employees are being utilized.

Discussion followed regarding the timetable for the transition process if the Senior Judge is confirmed by the Governor's Council to a judgeship in the Wrentham District Court. Commissioner Chapman explained that he has discussed this matter with the Senior Judge and assured the Council the transition would be conducted expeditiously.

ACTION ITEMS

Chairman Jones asked for a motion to accept the Minutes for November 10, 2004. Motion made to accept the Minutes for November 10, 2004.

MMS - passed.

FISCAL YEAR 2004 ANNUAL REPORT

The Executive Director reviewed the Fiscal Year 2004 Annual Report with Council Members. He explained that he and Ms. Flanagan would be delivering the report to Red Sun Press on December 22, 2004.

Mr. Burton recommended that a sentence be reworded in the Concerns & Recommendations section of the Annual Report regarding the Division of Occupational Safety (DOS). Council Members agreed.

Chairman Jones asked for a motion to accept the Fiscal Year 2004 Annual Report with the amended sentence regarding the Division of Occupational Safety. Motion made to accept the Fiscal Year 2004 Annual Report with the amended sentence regarding the Division of Occupational Safety.

MMS - passed.

EXECUTIVE DIRECTOR UPDATE

The Executive Director thanked the Advisory Council for a productive year in 2004. Mr. Burton reviewed some of the year's successes, including the work done with the Division of Occupational Safety, the enactment of the judicial staggering legislation, the safety specific meeting in Lawrence, and the completion of numerous judicial interviews.

Mr. Burton stated that he and Ms. Flanagan would be developing a survey to be completed by all Council Members to gather ideas and suggestions to improve the efficiency and effectiveness of the Advisory Council.

MISCELLANEOUS

Chairman Jones reminded all members and guests that the Holiday Luncheon would be held at Vinalia Restaurant following today's Advisory Council Meeting.

Chairman Jones adjourned the meeting at approximately 11:15 a.m.

The next regular meeting of the Advisory Council is scheduled for January 12, 2005 at 9:00 AM, at the Division of Industrial Accidents, at 600 Washington Street, 7th Floor, Boston, MA 02111.