

**Massachusetts Workers' Compensation  
Advisory Council Minutes**

February 16, 2005

Department of Industrial Accidents

600 Washington Street, 7<sup>th</sup> Floor

Boston, MA 02111

**Present:** Chairman Paul Byrne, Vice-Chairman Thomas M. Jones. CM: Robert Banks; Edmund C. Corcoran, Jr.; Mickey Long; Tony Frias (Ines Leonardo); John A. Pulgini; Carol Falcone; Kenneth J. Paradis, Jr.; Joan Lenihan, Departments of Labor & Workforce Development.

**Also Present:** DIA: John Chapman, Commissioner; Jack Tynan, Deputy Commissioner of Administration; Daniel O'Shea, Senior Judge; Richard Morris, First Deputy Director of Administration; William Taupier, Deputy Director of Administration and EDP; Joseph Pacheco, Joint Committee on Labor & Workforce Development.

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

**Absent:** CM: Jeanne-Marie Boylan; Bruce Cochrane; Department of Business & Technology.

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**Agenda:**

Chairman's Welcome

DIA Update

Assessment Audit Quarterly Update - Jim Boyle, Assessment Manager

Judicial Update - Daniel O'Shea, Senior Judge

Stop Work Orders - William Taupier, Deputy Director of Administration & EDP

Budgetary Matters - Jack Tynan, Deputy Commissioner of Administration

Action Items

- Minutes - January 12, 2005

Uninsured Employers and Misclassification

Historical Overview

Legislative Initiatives

Non-Legislative Initiatives

Executive Director Update

Miscellaneous

### **Chairman's Welcome**

Chairman Paul Byrne conducted today's meeting. He congratulated Senior Judge Daniel O'Shea on his appointment as associate justice of the Wrentham District Court. The Chairman expressed regret in the Senior Judges's departure and wished him well, as did all the Council Members.

### **DIA UPDATE**

Deputy Commissioner Jack Tynan introduced the new Assessment Manager, Jim Boyle.

#### Assessment Audit Quarterly Update

Mr. Jim Boyle, Assessment Manager, briefed the Council on his professional background and proceeded with his Assessment Audit Update (see attached). Mr. Boyle summarized the "recently remitted assessments," which totaled \$195,113. This amount was added to the previously remitted amount of \$3,950,180.75. Currently, the total amount remitted since the inception of the project (audit period 1996-1998) is \$4,145,293.75.

Mr. Boyle explained that he is working closely with the two remaining audit firms to evaluate the strengths and weaknesses of past audits. Mr. Boyle stated that he would be soliciting any suggestions the firms may have to improve future audits.

Mr. Tynan reminded Council Members that the agency is currently using two auditing firms out of the three firms that had been originally contracted by the DIA. He explained that it is the intent of the DIA to eventually phase out one of the two remaining firms. The firm they are proposing to keep has provided better results and has been more costeffective.

Mr. Tynan noted that the contract runs out in April and the DIA may need to conduct a new RFR. Mr. Tynan has contacted the Comptroller's Office and is currently discussing the situation with them.

#### Judicial Update

Senior Judge O'Shea updated Council Members on the information contained within the DIA's vital statistic report (see attached). Conference Queue: 307; Hearing Queue: 1,515; Reviewing Board Inventory: 143; Impartial Exams: 2,666 (53 waivers). Senior Judge O'Shea stated that the Governor had recently appointed Katherine Koziol to the Industrial Accident Board. The Senior Judge noted that one vacant ALJ position still remains.

#### Stop Work Orders/Caseload Statistics

Mr. Taupier updated Council Members on the Stop Work Order (SWO) and Caseload Statistics (see attached). Total compliance investigations completed: 1,688; total Stop Work Orders issued: 12; total number of SWOs issued for FY'05: 101; total fines collected for January 2005: \$12,729; total fines collected in FY'05: \$139,654; total SWO fines collected in

FY'04: \$343,528. Mr. Taupier noted that the Investigation Unit has experienced full compliance with all SWOs issued and with the collection of all fines.

Mr. Taupier continued his update of the monthly vital statistics. Total number of cases filed for January 2005: 1,464; total number of cases filed for FY'05: 9,100; total number of cases filed for FY'05: 7,636; total number of cases filed for fiscal year 2004: 16,394; total number of First Report's filed for January 2005: 3,000; total number of First Report's filed for FY'05: 17,719. In January of 2005, a total of 925 First Reports were filed on-line using the DIA's Information Portal on the Internet (30.8% of FRI filings).

Forms 103, 104 and 106 became available on-line in January. For FY'05 the number of on-line filings to date is 3,040. The number of cases filed for FY'05 continues to track below FY'04 levels. At the current rate, the year-end figure will be approximately 15,600 cases filed (seasonal adjustments have not been factored).

Mr. Taupier proceeded with his update on uninsured claims (§65). Estimated §65 claims filed for fiscal year 2005: 119 (with 103 actual uninsured injuries); uninsured claims paid by the Trust Fund for fiscal year 2005: \$3,129,657; 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 noted that the newly established Civil Litigation Unit utilizes the courts to recoup money paid on uninsured claims.

Council members requested that the DIA Administration provide an updated list of the 119 uninsured companies with §65 claims against the Workers' Compensation Trust Fund.

Commissioner Chapman stated that he would provide this list to Council Members. Mr. Taupier offered the vital statistics for the Second Injury Fund. Number of §37/37A petitions filed in fiscal year 2005: 173; number of §37/37A petitions paid in fiscal year 2005: 353; the amount paid on these claims in fiscal year 2005: \$14,984,247; number of §37/37A petitions filed in fiscal year 2004 (to date): 365; number of §37/37A petitions paid in fiscal year 2004: 460; amount paid on these claims in fiscal year 2004: \$19.7 million; COLA reimbursements to insurers in FY'05 (to date): \$1,124,472; COLA reimbursements to insurers in FY'04: \$19,806,728. Mr. Tynan explained that COLA reimbursements were about to accelerate because the backlogs on these cases were currently being cleared away.

#### Budget/Personnel Issues

Deputy Commissioner Tynan stated that the personnel statistics for the month of January were the same as December with the exception of one new temporary employee within the Workers' Compensation Trust Fund (WCTF). As of December 2004, the total number of positions filled by full-time employees at the DIA (including the WCTF) was 280 (248 DIA employees, 32 WCTF employees). As of this report, the DIA has no contract employees and seven temporary employees are being utilized.

#### **ACTION ITEMS**

Chairman Byrne asked for a motion to accept the Minutes for January 12, 2005. Motion made to accept the Minutes for January 12, 2005.

MMS - passed.

## **UNINSURED EMPLOYERS AND MISCLASSIFICATION**

Council Member Robert Banks congratulated the DIA on performing a great job. He noted that claims were going down and that the system was running smoothly. However, Mr. Banks stated that he was concerned that fraud continues to increase. Council Member Banks expressed his frustration with the legislature for not passing bills that could help strengthen the system.

Council Member Mickey Long also voiced his frustration with employer fraud. Mr. Long referred to a recent Harvard/UMASS study that attempted to measure the enormity of the problem. He explained that the study affirmed that employers who are cheating in one area of business are often cheating in other areas. Council Member Long remarked that this problem effects both workers and employers.

Commissioner Chapman agreed that this problem is affecting the whole workers' compensation community (employees, employers and insurers). The Commissioner recommended that a meeting be scheduled to include members of business and labor to bring this issue to the Governor's attention.

Council Member Banks suggested that a Task Force be created to further discuss this issue and develop recommendations to be presented to the legislature and the Executive Branch. Executive Director Andrew Burton offered a historical overview of the Advisory

Council's past efforts at deterring employers from violating the workers' compensation insurance mandate. Mr. Burton stated that the Advisory Council had formed a subcommittee in 1997 and worked with Senator Lynch to develop employer fine legislation. He noted that the current flat fine of \$100 per day has been in place for over 18 years. The Executive Director discussed the risk posed to the Trust Fund from uninsured claims.

He reported that in FY'97 there were 298 uninsured claims filed amounting to Trust Fund payments of \$4.6 million. Mr. Burton stated that although the number of claims has decreased significantly (213 claims in FY'04), the Trust Fund still paid out over \$4.3 million in FY'04. He noted that this number might rise significantly in FY'05 due to an unusually high number of paraplegic claims.

Mr. Burton reviewed the Advisory Council's past legislative proposal for increasing the fines and penalties on uninsured employers. He noted that each time this particular bill was filed it was "favorably rated" by the Commerce & Labor Committee but never passed.

The Executive Director mentioned that Rhode Island has had recent success in increasing their fines on uninsured employers due to the vast attention received after the Station nightclub fire. Mr. Burton referred to the \$1 million fine imposed on the Derderians for not securing workers' compensation insurance. The Executive Director stated that if a similar situation had happened in Massachusetts, the DIA would only be able to impose a maximum criminal penalty of \$1,500 and a year in prison.

**CM Long asked if the Executive Director could provide statistics on the amount of workers' compensation premium that poured into Rhode Island after the fire.**

Mr. Burton suggested that a Task Force meeting be scheduled to discuss specific solutions to these problems. The Executive Director stated that the Task Force should also review non-legislative solutions. He referred to recent initiatives in Oregon and Washington in which the general public has been given online access to review any company's workers' compensation policy status. Mr. Burton stated that this would empower competing employers to police their own industries and help level the playing field.

The Executive Director referred to "industry sweeps" that were being conducted in Rhode Island. He explained that Rhode Island has cracked down on business establishments that hold alcoholic beverage licenses. Mr. Burton stated that 1,725 businesses were identified and 96 (5.6%) were operating without insurance.

The Executive Director recognized the successful Public Awareness Campaign that was conducted last summer by the DIA in combating employer fraud. Mr. Burton stated that the insurance industry should be asked to contribute funding to future campaigns since they experience the benefits of increased premium dollars.

Council Member Paradis stated that the Council should consider implementing a minimum jail sentence into any employer fine legislation. Mr. Paradis believes this would help ensure that employer fraud cases are taken seriously in the courts. Council Member Banks suggested that the Council begin with a small Task Force consisting of WCAC members and the DIA. He stated that once the Task Force develops specific remedies, they could bring these solutions to the Labor & Workforce Development Committee, Secretariats, and the Governor. Mr. Burton stated that he would work with the Commissioner on scheduling a Task Force meeting and invited any interested members to participate.

#### **EXECUTIVE DIRECTOR UPDATE**

Mr. Burton updated the Advisory Council on the FY'06 Budget. He stated that the Governor's House 1 Budget Recommendation was released on January 26th and that the total amount appropriated for the DIA is \$19,788,444. He noted that this figure was \$453,006 more than FY'05's final appropriation of \$19,335,439. Mr. Burton stated that \$800,000 had been reserved for Safety Grants. The Executive Director stated that Advisory Council's Budget Subcommittee would be meeting in March to review these figures in detail.

#### **MISCELLANEOUS**

There were no other matters to be discussed at this time.

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

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